



May 13, 2024

The Honorable Phil Scott
Executive Office of the Governor
109 State Street, Pavilion
Montpelier, VT 05609

Re: S. 289

Dear Governor Scott:

On behalf of Chamber of Progress – a tech industry association supporting public policies to build a more inclusive country in which all people benefit from technological leaps – I write today to urge you to **veto S. 289**, as amended, which would compromise online privacy, degrade online services for all users, and undermine First Amendment rights, likely leading to a protracted and unwinnable legal battle.

We recognize the efforts of SB 289 to address harm to minors, and we remain committed to advocating for policies that prioritize online safety for young people. However, we must also emphasize the importance of safeguarding fundamental rights such as freedom of speech and privacy, and we are concerned about the potential harm this bill may cause to struggling youth in Vermont.

While the amended version of the bill includes the removal of a hard age verification requirement, we remain concerned that the threat of enforcement may function as a de facto age verification requirement and chill expression online.

Platforms will over-moderate for all users, removing life-saving resources

S. 289 would require that a covered platform “owes a minimum duty of care to the minor consumer” users, including the prohibition of “excessive or compulsive

use” of an online service, product, or feature without providing clear guidance about what that entails.

We believe that promoting online safety for young people is important. Unfortunately, in practice, this requirement would make each site the arbiter of appropriate content for children of all age ranges and circumstances. Platforms would face difficult choices about what types of content to consider and would end up over-moderating in fear of litigation, degrading the online experience for all users and restricting constitutionally protected speech.

When platforms fear legal consequences for under-moderation, the inevitable consequence is the over-removal of content – especially vital resources for at-risk youth – and could deprive individuals of much-needed online safe spaces for accessing supporting resources on eating disorders, combating addiction, and self-harm. For Vermonters struggling with opioid addiction, this bill could inadvertently cut off lifelines and vital support systems.

S. 289 risks stifling innovation in Vermont

Moreover, the extensive regulations in the bill may hinder the development of new digital platforms and technologies. S. 289 could discourage platforms from developing new products and features—even products and features that could materially benefit and improve safety for youth—to avoid future litigation risks. Overall, the bill's stringent provisions may hamper the growth and innovation of Vermont's economy.

S. 289 guarantees litigation and raises major First Amendment issues

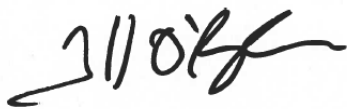
The First Amendment restricts governmental interference with both the editorial discretion of private entities and the rights of individuals, regardless of age, to access lawful expression. S. 289, through its content-based and speaker-based restrictions, infringes upon these freedoms. Moreover, similar legislative efforts aimed at restricting minors' access to protected speech have been met with significant judicial skepticism. Courts have consistently demanded a compelling justification for such measures, alongside concrete evidence of their necessity and effectiveness in mitigating harm. Recent rulings from courts in Arkansas,¹

¹ *NetChoice, LLC v. Griffin*, No. 5:23-cv-05105 (W.D. Ark. filed June 29, 2023). “If the State’s purpose is to restrict access to constitutionally protected speech based on the State’s belief that such speech is harmful to minors, then arguably Act 689 would be subject to strict scrutiny.”

California,² and Ohio³ underscore the principle that regulatory measures impacting the core editorial and curatorial functions of social media companies, even when intended to safeguard young users, are subject to rigorous constitutional scrutiny under the First Amendment – and the failure to meet this high bar of constitutional scrutiny renders these attempts legally untenable.

We agree with the need to build greater protections for young users, but some of this bill's requirements would undermine the protections it tries to create and would end up harming vulnerable users. As such, we request you **veto S. 289**.

Sincerely,

A handwritten signature in black ink, appearing to read "T O'Boyle", with a stylized flourish at the end.

Todd O'Boyle
Senior Director, Technology Policy
Chamber of Progress

² *NetChoice, LLC v. Bonta*, No. 5:2022cv08861 (N.D. Cal. 2023). “[T]he Act’s restrictions on the functionality of the services limit the availability and use of information by certain speakers and for certain purposes and thus regulate[s] protected speech.”

³ *NetChoice, LLC v. Yost*, 2024 WL104336 (S.D. Ohio Jan. 9, 2024). “As the [Supreme] Court explained, ‘[s]uch laws do not enforce parental authority over children’s speech and religion; they impose governmental authority, subject only to a parental veto.’ The Act appears to be exactly that sort of law. And like other content-based regulations, these sorts of laws are subject to strict scrutiny.”