



June 11, 2024

The Honorable Kathy Hochul
Office of the Governor
New York State Capitol Building
Executive Chambers
Albany, NY 12224

Re: Safe for Kids Act (S.7694)

Dear Governor Hochul:

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 respectfully **urge you to veto S.7694.**

While well intentioned, this bill could promote toxic posts over healthy content

When a teen shows interest in healthy content – like journalism, sports figures, or book trends – online platforms can nurture that spark and build community with peers who share the same interests by serving relevant content. However, this bill prohibits online platforms from showing teens a feed with relevant content by default.

Worst of all, algorithmically curated feeds can protect users from harassment and cyberbullying. Unfortunately, S.7694 could require platforms to display cyberbullying from classmates in a reverse chronological feed. Content curation allows platforms to downrank or even remove unwanted interactions like coordinated racial or gender-based harassment.

In a recent survey conducted by Common Sense Media, the research showed that teenagers rely on curated feeds to maintain positive online experiences.¹ The results of the survey came from 1,274 teenagers and young adults, aged 14 to 22, conducted late

¹https://www.common sense media.org/sites/default/files/research/report/2024-double-edged-sword-hopela-b-report_final-release-for-web-v2.pdf

last year with an oversampling of LGBTQ+, Black, and Latino respondents.² The survey found teenagers overwhelmingly valued algorithmically-curated feeds in their social media services:

- 76% of social media users aged 14 to 22 used tools to control content they did not want to see in their feeds.
- 67% of teenagers said that, over the last year, they had attempted to "curate their feed" by liking or spending more time on certain content to see more of what interests them.
- LGBTQ+ young people were significantly more likely to curate their feeds to improve their experience. 89% of LGBTQ+ youth social media users said that, over the past year, they have tried to avoid content they don't like on these platforms, compared to just under three-fourths of non-LGBTQ+ social media users (74%).
- LGBTQ+ youth were also significantly more likely (78%) to have tried to tailor their feed to better align with their interests vs. non-LGBTQ+ youth (65%).
- 90% of teenagers with moderate to severe depressive symptoms had tried to see less of what they do not like on social media, versus 67% of those with no symptoms.
- 81% of youth with moderate to severe depressive symptoms had taken actions to try to curate their social media feed, compared to 55% of those with no symptoms.

Instead of ensuring the internet is a positive place where young people can find community and thrive, this bill, in practice, could strip platforms of their ability to protect those same vulnerable users altogether.

This bill could prevent age-appropriate design of online services

Online services are working hard to design age-appropriate services for teenagers, particularly younger teens. Online platforms use algorithms to provide a different experience for a thirteen-year-old than the experience they provide for a seventeen-year-old. Just like movie ratings restrict access to films depending on the age of a minor, algorithms tailor content by age. Instead, S.7694 would bar technology platforms from curating social media feeds by default, forbidding services from tailoring content to younger teens based on age inference.

²https://www.common sense media.org/research/double-edged-sword-how-diverse-communities-of-young-people-think-about-social-media-and-mental-health?j=9664249&sfmc_sub=232043373&l=4953157_HTML&u=235541285&mid=6409703&jb=5046&utm_source=advocacy_hopelab_research_20240521&utm_medium=email

This bill could threaten refuge for at-risk youth

The bill includes provisions that make teen access to online resources contingent on parental consent. For many teens – including those from abusive families and LGBTQ+ teens with unsupportive parents – online communities are a refuge – and sometimes their only safe space. Under this bill, online services couldn't help a teenager interested in coming-out-guides, bullying prevention, or dealing with abuse and harassment unless their parents – sometimes the perpetrators – okay it. And even in the most supportive households, the requirement for verifiable consent further escalates privacy risks, as it necessitates the processing of personal information of both the parent and the teen.

This bill will likely be struck down as a violation of the First Amendment

A.8148/S.7694 infringes the First Amendment by targeting minors' access to protected speech and encroaching upon the editorial freedoms of online platforms. Age verification mandates compromise privacy and violate the First Amendment. Echoing the Supreme Court's decision in *Reno v. ACLU*, courts have consistently ruled these mandates unconstitutional, as they indiscriminately limit access to protected speech for both adults and minors.³

From a legal perspective, the creation and use of algorithmically curated feeds are central to the editorial functions of online platforms, which are protected under the First Amendment. This protection affirms platforms' rights to determine their content presentation methods.

Recent legal decisions, such as in *NetChoice v. Bonta*⁴, *NetChoice v. Griffin*⁵, and *NetChoice v. Yost*⁶, reinforce the principle that algorithmic curation, serving as a mechanism for speech delivery and user engagement, is protected by the First Amendment. Any legislation that prescribes specific content delivery methods, by inherently favoring one type of feed over another, constitutes an overreach into regulated speech.

For instance, the *NetChoice v. Bonta* decision critically noted:

“[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<https://www.aclu.org/cases/reno-v-aclu-challenge-censorship-provisions-communications-decency-act>

⁴<https://netchoice.org/wp-content/uploads/2023/09/NETCHOICE-v-BONTA-PRELIMINARY-INJUNCTION-GRANTED.pdf>

⁵ <https://netchoice.org/wp-content/uploads/2023/08/GRIFFIN-NETCHOICE-GRANTED.pdf>

⁶ <https://netchoice.org/wp-content/uploads/2024/01/2024.01.09-ECF-27-ORDER-Granting-TRO.pdf>

Echoing this sentiment, the NetChoice v. Griffin decision stated:

“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.”

As long as the New York bill continues to enforce restrictions on how content is curated and displayed, its First Amendment issues will persist unresolved.

For these reasons, **we respectfully urge you to veto A.8148/S.7694.**

Sincerely,

A handwritten signature in black ink, appearing to read "B. January". The signature is fluid and cursive, with the first letter being a large, stylized "B".

Brianna January
Director, State & Local Government Relations
Northeast Region
Chamber of Progress