



September 5, 2024

The Honorable Gavin Newsom  
Governor of California  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

Re: SB 976 - "Protecting our Kids from Social Media Addiction Act"

Dear Governor Newsom:

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 SB 976**, the *Protecting our Kids from Social Media Addiction Act*.

**However 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, SB 976 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.<sup>1</sup> The results of the survey came from 1,274 teenagers and young adults, aged 14 to 22, conducted late

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<sup>1</sup>[https://www.common sense media.org/sites/default/files/research/report/2024-double-edged-sword-hopelab-report\\_final-release-for-web-v2.pdf](https://www.common sense media.org/sites/default/files/research/report/2024-double-edged-sword-hopelab-report_final-release-for-web-v2.pdf)

last year with an oversampling of LGBTQ+, Black, and Latino respondents.<sup>2</sup> 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, SB 976 would bar technology platforms from curating social media feeds by default, forbidding services from tailoring content to younger teens based on age inference.

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<sup>2</sup>[https://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](https://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 condition teens' access to algorithmically curated 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. As a practical matter, SB 976 offers no guidance on how platforms should handle situations where parents differ on consent, or worse when parents weaponize consent. If parents are at odds with each other, they can use consent provisions to override each other's decisions, especially when they disagree on what's in the best interest of their child.

Lastly, 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**

SB 976 infringes the First Amendment by targeting minors' access to protected speech and encroaching upon the editorial freedoms of online platforms. While the text avoids explicit age verification, the impact will be a *de facto* age verification requirement - platforms will implement age verification procedures to avoid potential legal jeopardy.

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.<sup>3</sup>

For example, relying on Supreme Court precedent in *Ward v. Rock Against Racism*, the district court in *NetChoice v. Griffin* 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.”

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<sup>3</sup><https://assets.aclu.org/live/uploads/legal-documents/reno-supremecourt-decision.pdf>, see also *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 794-799 (2011) <https://www.law.cornell.edu/supct/pdf/08-1448P.ZO>

Additionally, 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. Most recently, the Supreme Court's decision in *Moody v. NetChoice* affirmed that the First Amendment protects content moderation and algorithmic curation. As Justice Kagan wrote for the majority,

“Deciding on the third-party speech that will be included in or excluded from a compilation—and then organizing and presenting the included items—is expressive activity of its own. And that activity results in a distinctive expressive product. When the government interferes with such editorial choices—say, by ordering the excluded to be included—it alters the content of the compilation. (It creates a different opinion page or parade, bearing a different message.) And in so doing—in overriding a private party’s expressive choices—the government confronts the First Amendment.”<sup>4</sup>

This ruling has significant implications for any proposal to regulate algorithmic content curation, including social media feeds. Laws that infringe on platforms’ curatorial and editorial decisions—which SB 976 does—will be subject to strict scrutiny, and a standard SB 976 is likely to fail.

For these reasons, **we respectfully urge you to veto SB 976.**

Sincerely,



Robert Singleton  
Director of Policy and Public Affairs, California  
Chamber of Progress



Kerry Maeve Sheehan  
Legal Advocacy Counsel  
Chamber of Progress

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<sup>4</sup> *Moody v. NetChoice, LLC*, 2024 WL 3237685, 2 (U.S. July 1, 2024)