



October 11, 2024

The Honorable Julie Rogers  
Chair, Health Policy Committee  
Michigan House of Representatives  
Room 519, Cora B. Anderson House Office Building  
124 North Capitol Avenue  
Lansing, MI 48933

RE: Oppose HB 5920, relating to social media platforms

Dear Representative Rogers and members of the Committee:

On behalf of Chamber of Progress – tech industry association supporting public policies to build a more inclusive society in which all people benefit from technological advancements – I write to **oppose HB 5920**, as it would inadvertently harm the very youth it aims to protect. While we share the goal of protecting young people online, the bill raises privacy concerns and threatens access to critical resources for marginalized Michigan youth.

### **HB 5920 would undermine the privacy and online experiences for *all* users**

HB 5920 requires social media platforms to verify the identity and age of ALL users (Section 5). Inviting an independent third party doesn't diminish privacy concerns regarding age verification; it merely relocates it. Moreover, estimating the age of a user will require more data, undercutting data minimization efforts. Moreover, many adult users reasonably would prefer not to share their identifying information with online services - creating an unpleasant dilemma for adult users: turn over sensitive personal data to access protected speech online, or forego enjoyment of that online service entirely.

Moreover, compelling companies to gather personal information from so many users threatens cybersecurity. Specifically, services that cater to LGBTQ+ communities would be at particular risk for targeting since their data could be used for cyberbullying or blackmail. Privacy violations online often lead to offline violence. In 2022, 54% of LGBTQ+ survey respondents reported experiencing severe harassment, including stalking, physical threats, and doxing.<sup>1</sup> And more broadly, malevolent actors will see any covered company as a ripe target for ransomware attacks.

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<sup>1</sup> See <https://www.adl.org/sites/default/files/pdfs/2022-09/Online-Hate-and-Harassment-Survey-2022.pdf>

## **Consent laws and restricted access disparate impact on marginalized and at-risk youth**

In addition to age verification, HB 5920 mandates that social media platforms obtain parental consent for social media users under the age of 18 (Section 9). This proposal would have severe consequences for Michigan's most vulnerable youth, granting parents and guardians with far-reaching power to monitor and restrict their children's accounts.

While it is important to encourage parental involvement to ensure minors' safety online, parents are not always best suited to control how their child uses a platform. Consent laws, for example, can be weaponized by divorced parents who share custody of a child. If the parents are at odds with each other, they can use consent laws to override each other's decisions, especially when they disagree on what's in the best interest of their child.

Consent laws also disproportionately harm LGBTQ+ youth, with only 39% of LGBTQ+ youth in Michigan reporting that they live in affirming households and only 42% identifying their schools as a supportive environment,<sup>2</sup> while 60% find online spaces to be supportive.<sup>3</sup> LGBTQ+ youth use online platforms to seek emotional support, search for information about their identities, and find communities that accept them when their own parents and local communities do not.<sup>4,5</sup> Similarly, youth in abusive households who turn to social media for supportive resources may not be able to obtain parental consent safely.

This bill also gives parents expanded authority to access "all responses to messages sent to or by the minor on the minor account" (Section 9), restricts access to the account between 10:30 PM and 6:30 AM, and allows parents to set daily usage limits for their child's account (Section 11). Despite its good intentions, this bill could severely limit access to essential support and resources for many young people who depend on online platforms for connection and well-being. Research indicates that social media can enhance meaningful interactions; a recent Pew survey reveals that 81% of American teens feel more connected through social media, and 68% believe it provides a support network during challenging times.<sup>6</sup>

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<sup>2</sup> See <https://www.thetrevorproject.org/wp-content/uploads/2022/12/The-Trevor-Project-2022-National-Survey-on-LGBTQ-Youth-Mental-Health-by-State.pdf>

<sup>3</sup> See <https://www.thetrevorproject.org/survey-2023/>

<sup>4</sup> See Michele Ybarra, et. al., "Online social support as a buffer against online and offline peer and sexual victimization among U.S. LGBT and non-LGBT youth." *Child Abuse & Neglect* vol. 39 (2015).

<https://www.sciencedirect.com/science/article/pii/S014521341400283X?via%3Dihub>

<sup>5</sup> See Cesar Escobar-Viera, et. al., "Examining Social Media Experiences and Attitudes Toward Technology-Based Interventions for Reducing Social Isolation Among LGBTQ Youth Living in Rural United States: An Online Qualitative Study." *Frontiers in Digital Health*, (2022). <https://pubmed.ncbi.nlm.nih.gov/35832658/>

<sup>6</sup> See Jafar, Z., Quick, J. D., Larson, H. J., Venegas-Vera, V., Napoli, P., Musuka, G., Dzinamarira, T., Meena, K. S., Kanmani, T. R., & Rimányi, E. (2023). Social media for public health: Reaping the benefits, mitigating the harms. *Health promotion perspectives*, 13(2), 105–112. <https://doi.org/10.34172/hpp.2023.13>

## HB 5920 Violates Both Adults' and Minors' First Amendment Rights

As the Supreme Court declared this past term: “[The First Amendment] does not go on leave when social media are involved.”<sup>7</sup> Indeed, the increasing importance of social media as one of “the most important places...for the exchange of views,”<sup>8</sup> means that “to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights.”<sup>9</sup>

### I. HB 5920 unconstitutionally burdens adults' access to constitutionally protected speech

The Supreme Court has repeatedly held that age-verification laws, like HB 5290, impose an impermissible burden on adults' access to constitutionally protected speech, and “discourage users from accessing [the regulated] sites.”<sup>10</sup> Under HB 5290, adult users of social media will be forced to choose between sacrificing their anonymity and privacy and accessing lawful speech. That is untenable under the First Amendment.<sup>11</sup> While the state has a valid interest in protecting children from harm, that interest “does not justify an unnecessarily broad suppression of speech addressed to adults.”<sup>12</sup> This remains true even when that speech may be “upsetting or arouses contempt.”<sup>13</sup>

### II. HB 5920 unconstitutionally restricts minors' access to constitutionally protected speech.

The First Amendment's protections apply to people of all ages, not just those 18 and older. While the state may, in limited circumstances, restrict some categories of speech available to minors, the Supreme Court has been emphatic that “minors are entitled to a significant measure of First Amendment protection and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them.”<sup>14</sup> These First Amendment principles “do not vary[] when a new and different medium for communication appears.”<sup>15</sup> HB 5920's prohibition against minors creating or maintaining a social media account without parental consent restricts

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<sup>7</sup> *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2394 (2024).

<sup>8</sup> *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017) (quoting *Reno v. ACLU*, 521 U.S. 844, 868 (1997) (internal citation omitted)).

<sup>9</sup> *Packingham*, 582 U.S. at 104.

<sup>10</sup> *Reno v. Am. C.L. Union*, 521 U.S. 844, 875, 117 S. Ct. 2329, 2346, 138 L. Ed. 2d 874 (1997)

<sup>11</sup> *Am. C.L. Union v. Ashcroft*, 322 F.3d 240, 255, 259 (3d Cir. 2003), aff'd and remanded, 542 U.S. 656, 124 S. Ct. 2783, 159 L. Ed. 2d 690 (2004); See also *Am. C.L. Union v. Mukasey*, 534 F.3d 181, 193 (3d Cir. 2008)

<sup>12</sup> *Reno v. Am. C.L. Union*, 521 U.S. 844, 875, 117 S. Ct. 2329, 2346, 138 L. Ed. 2d 874 (1997)

<sup>13</sup> *Snyder v. Phelps*, 562 U.S. 443, 458 (2011); see *Carey v. Population Servs. Int'l*, 431 U.S. 678, 701 (1977); *Reno*, 521 U.S. at 874.

<sup>14</sup> *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794, 131 S. Ct. 2729, 2735, 180 L. Ed. 2d 708 (2011); *Erznoznik v. Jacksonville*, 422 U.S. 205, 212–213, 95 S.Ct. 2268, 45 L.Ed.2d 125 (1975)

<sup>15</sup> *Ent. Merchants Ass'n*, 564 U.S. at 790 (2011) (quoting *Joseph Burstyn v. Wilson*, 343 U.S. 495, 503 (1952)).

minors' access to all content available on social media, far exceeding the "narrow and well-defined circumstances" the Supreme Court had in mind.<sup>16</sup> The state's interest in protecting children from harm cannot justify such a broad restriction.<sup>17</sup>

### III. HB 5920's Parental Consent Requirement is Unconstitutional

The state cannot make an end-run around the First Amendment by allowing minors to exercise their First Amendment rights only if their parent or guardian explicitly consents. As the Supreme Court explained in striking down a regulation restricting minors' access to violent video games without parental consent, while parents may "have traditionally had the power to control what their children hear and say . . . it does not follow that the state has the power to prevent children from hearing or saying anything without their parents' prior consent."<sup>18</sup>

### IV. HB 5920 Will Not Survive a Legal Challenge

Federal courts across the country have enjoined laws nearly identical to HB 5920. Indeed, every federal district court that has heard a legal challenge to a similar age verification law has enjoined that law for violating the First Amendment. This includes courts in Ohio,<sup>19</sup> Utah,<sup>20</sup> Mississippi,<sup>21</sup> Arkansas,<sup>22</sup> and California.<sup>23</sup> If faced with a legal challenge on constitutional grounds, a court would be highly likely to block HB 5920 as well.

Pursuing constitutionally flawed policies will not help Michigan's most vulnerable youth. Instead, implementing this proposal in a way that undermines privacy and essential online protections will only put them at even greater risk. It is for these reasons, we ask you to **oppose HB 5920**.

Sincerely,

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<sup>16</sup> See *Id.* ("Speech that is neither obscene to youths nor subject to some other legitimate prescription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.")

<sup>17</sup> See *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 804–05 (2011) (striking down a law prohibiting sales or rentals of violent video games for minors); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212–13 (1975) (striking down a restriction on drive-in movies where the state sought to protect children from nudity); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 874 (1997) (striking down a law prohibiting indecent communications available to minors online).

<sup>18</sup> *Ent. Merchants Ass'n*, 564 U.S. at 795.

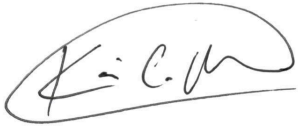
<sup>19</sup> *NetChoice, LLC v. Yost*, No. 2:24-CV-00047, 2024 WL 555904 (S.D. Ohio Feb. 12, 2024)

<sup>20</sup> *NetChoice, LLC v. Reyes*, No. 2:23-CV-00911-RJS-CMR, 2024 WL 4135626 (D. Utah Sept. 10, 2024)

<sup>21</sup> *NetChoice, LLC v. Fitch*, No. 1:24-CV-170-HSO-BWR, 2024 WL 3276409 (S.D. Miss. July 1, 2024)

<sup>22</sup> *NetChoice, LLC v. Griffin*, No. 5:23-CV-05105, 2023 WL 5660155, at \*1 (W.D. Ark. Aug. 31, 2023)

<sup>23</sup> *NetChoice, LLC v. Bonta*, 692 F. Supp. 3d 924, 939 (N.D. Cal. 2023), *aff'd in part, vacated in part*, 113 F.4th 1101 (9th Cir. 2024)

A handwritten signature in black ink, enclosed within a hand-drawn oval. The signature appears to be 'K. Marshall'.

**Kouri Marshall**  
**Director of State & Local Government Relations, Central Region**