



April 8, 2024

The Honorable Rebecca Bauer-Kahan  
Chair  
Assembly Committee on Privacy And Consumer Protection  
Room 162, Legislative Office Building  
1020 N Street  
Sacramento, CA 95814

RE: AB 3172

Dear Chair Rebecca Bauer-Kahan and members of the Committee:

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 **oppose AB 3172**, as its unclear language would chill online speech through over-moderation, disproportionately harming marginalized communities, and will lead to a protracted and unwinnable legal battle.

**Platforms may over-moderate for all users**

As written, AB 3172 presents a significant challenge with its broad language and obscurely-defined parameters, holding covered platforms “liable for specific damages” and “injuries” if the platform “fails to exercise ordinary care or skill toward a child.” Social media platforms serve as valuable tools for communication and connection. They take their responsibilities to keep young users safe, but they are not meant to replace parental guidance. While AB 3172’s concern for young users are important considerations, in practice, its requirement would make each platform the arbiter of appropriate content for children of all age ranges and circumstances. Platforms would face difficult choices regarding what types of content to deem as causing “injury,” resulting in excessive moderation and hesitation to deploy new features – including those aimed at improving online experiences for young people – in fear of potential litigation.

Platforms have long understood the concerns raised by many stakeholders, from parents to schools to government entities, that children require greater protection online. While state and federal policymakers have explored legislation to address this issue with mixed

results, many platforms are already prioritizing child safety, and are putting in place tools and procedures aimed at child safety on their platforms.

For example, YouTube Kids is a child-focused platform through which parents choose the types of videos their children can view, such as instructional videos on American Sign Language, or entertaining videos like those of peers playing Minecraft.<sup>1</sup> With data privacy in mind, YouTube Kids does not allow children to share personal information with third parties or make it publicly available.<sup>2</sup> YouTube's parent company, Google, has a Family Link tool that assists parents in supervising their children under 13, providing features such as screen monitoring and app permissions.<sup>3</sup> What's more, Google does not present personalized ads to children, meaning ads are not based on information from a child's account or profile.

Furthermore, imposing strict liability on social media platforms could limit freedom of expression online. It's essential to strike a balance between protecting children and preserving the openness and creativity of the internet.

### **Disparate impact on marginalized communities**

AB 3172 presupposes a strict causal relationship between social media platforms and "injuries," yet scientific research on this matter is far from conclusive and is quite mixed.<sup>4,5</sup> This assumption ignores the many benefits that social media offers young people, especially historically marginalized communities like LGBTQ+ youth, youth of color, and youth with disabilities, who often rely on digital spaces like social media as their primary avenue of accessing mental health support or other resources.<sup>6</sup>

LGBTQ+ youth, especially those who may live in communities hostile to their identity, see social media as a crucial tool to connect with LGBTQ+ groups, access content from people's shared experiences, maintain positive connections, and reduce perceived isolation.<sup>7</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

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<sup>1</sup> See Youtube Kids. <https://www.youtubekids.com/>

<sup>2</sup> YouTube Kids, "Privacy Notice" YouTube, (2023). <https://kids.youtube.com/t/privacynotice>

<sup>3</sup> Google, "Family Link & Parental Supervision" Google, (2023). [https://support.google.com/families/answer/7101025?hl=en&ref\\_topic=7327495&sjid=9062330972920503214-NA#zippy=%2Cgoogle-services-your-childs-google-account%2Cchow-account-management-works](https://support.google.com/families/answer/7101025?hl=en&ref_topic=7327495&sjid=9062330972920503214-NA#zippy=%2Cgoogle-services-your-childs-google-account%2Cchow-account-management-works)

<sup>4</sup> <https://www.nytimes.com/2023/10/25/health/social-media-addiction.html>

<sup>5</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8221420/>

<sup>6</sup> <https://www.jmir.org/2019/11/e13873/>

<sup>7</sup> 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/>

parents do not.<sup>8</sup> In fact, only 38% of LGBTQ youth report living in affirming households, while 60% reported finding online spaces to be supportive<sup>9</sup>.

Moreover, research on teen social media usage has primarily focused on white teens and college students, creating disparities in understanding usage trends and impact for teens of color, resulting in the generalization of findings based predominantly on white youth.<sup>10,11</sup> Despite this, a large body of research focusing on teens of color have found that social media has facilitated academic success, political activism, belonging and community, mentorship, and identity empowerment.<sup>12,13,14</sup> According to a 2023 Common Sense Media report, 71% of adolescent girls of color who use TikTok and 72% who use Instagram report encountering positive or identity-affirming content related to race at least monthly on these platforms.<sup>15</sup> Social media platforms also provide a means for young individuals with disabilities to advocate for themselves, raise awareness about their disabilities, and find community with others.<sup>16</sup>

Through its ambiguous mandates on social media platforms, AB 3172 would limit and potentially cut off access for individuals under eighteen, disproportionately impacting marginalized communities, exacerbating disparities in access to vital resources, ultimately causing more harm than good.

### **AB 3172 invites litigation and raises major First Amendment issues**

AB 3172 stands in direct contradiction to established legal precedent. The First Amendment stringently restricts governmental interference with both the editorial discretion of private entities and the rights of individuals, regardless of age, to access lawful expression. AB 3172, through its content-based and speaker-based restrictions, unequivocally infringes upon these fundamental 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

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<sup>8</sup> 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>9</sup> See <https://www.thetrevorproject.org/survey-2023/>

<sup>10</sup> Hargittai, E., & Hinnant, A. (2008). Digital Inequality: Differences in Young Adults' Use of the Internet. *Communication Research*, 35(5), 602-621. <https://doi.org/10.1177/0093650208321782>

<sup>11</sup> Frey, W. R., Ward, L. M., Weiss, A., & Cogburn, C. D. (2022). Digital White Racial Socialization: Social Media and the Case of Whiteness. *Journal of research on adolescence : the official journal of the Society for Research on Adolescence*, 32(3), 919-937. <https://doi.org/10.1111/jora.12775>

<sup>12</sup> LeBlanc, T. and Loyd, AB. (2022) Freedomdreaming to STEM: A conceptual model for Black youth's racial and STEM identity development through social media. *Front. Psychol.* 13:944207. doi: 10.3389/fpsyg.2022.944207

<sup>13</sup> <https://www.pewresearch.org/short-reads/2020/12/11/social-media-continue-to-be-important-political-outlets-for-black-americans/>

<sup>14</sup> <https://www.bentley.edu/news/why-social-media-source-strength-black-americans>

<sup>15</sup> See page 35: [https://www.commonensemedia.org/sites/default/files/research/report/how-girls-really-feel-about-social-media-researchreport\\_final\\_1.pdf](https://www.commonensemedia.org/sites/default/files/research/report/how-girls-really-feel-about-social-media-researchreport_final_1.pdf)

<sup>16</sup> <https://www.reuters.com/investigates/special-report/health-social-media/>

effectiveness in mitigating harm. Recent rulings from courts in Arkansas,<sup>17</sup> California,<sup>18</sup> and Ohio<sup>19</sup> 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.

As such, AB 3172 not only risks chilling speech and hindering the open exchange of ideas that are vital to a free and democratic society, but also is likely to be adjudicated as unconstitutional on the grounds of the First Amendment, among other legal and policy considerations. For these reasons, we urge you to **oppose AB 3172**.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Singleton". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Singleton".

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

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<sup>17</sup> *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.”

<sup>18</sup> *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.”

<sup>19</sup> *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.”