

June 26, 2024

The Honorable Robert Rivas
Speaker of the Assembly
Suite 8330, State Capitol
1020 O Street
Sacramento, CA 95814

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

Dear Speaker Rivas:

The undersigned organizations urge you to oppose SB 976. This bill would make children less safe online, compromise online privacy, isolate at-risk youth, and threaten to violate First Amendment rights. Moreover, it is preempted by Section 230 of the Communications Act of 1934 and the Children's Online Privacy Protection Act (COPPA), guaranteeing a protracted and unwinnable legal battle if ratified.

Personalized feeds and age-appropriate design are essential to protecting young users

Curated feeds are vital in keeping online experiences safe, especially for young people. However, as amended, SB 976 would bar technology platforms from curating social feeds in most cases by forbidding services from tailoring content to younger teens based on age inference. In other words, **this bill would prevent platforms from implementing age-appropriate design**. Personalized feeds are essential for platforms to protect users from toxic content, like posts that promote self-harm, eating disorders, and suicide. Without algorithmic content curation, users are likely to be exposed to *more* of this type of harmful content, worsening the problem the SB 976 is trying to address.

Social platforms use algorithmic content curation to create age-appropriate experiences. However, SB 976 would make that impossible in many instances. At a time when internet and social media usage are nearly ubiquitous across the U.S., it is critical to remember that minors represent a broad and diverse group of people online. What may be appropriate for a 17-year-old often is not appropriate for a 13-year-old. For instance, movie ratings G, PG, and PG-13 distinguish

between minors of different ages. However, this bill ignores this nuance and forces social media to treat them equally.

For example, Instagram has announced that it would be stricter about what types of content it recommends to 13 to 18-year-olds and rolled out new settings that give teens and parents more control over potentially upsetting content.¹ Additionally, in 2021, Instagram started steering teens who are searching for disordered eating topics toward helpful support resources.² Similarly, Snapchat algorithmically highlights resources, including hotlines for help, if teenagers encounter sexual risks, like catfishing or financial extortion.³

Moreover, algorithmically curated feeds can protect users from unwanted attention and coordinated harassment. Yet, SB 976's provisions would likely break these tools, which rely on algorithms to sift through posts and weed out upsetting content. Instead of ensuring the internet is a positive place where young people can thrive, this bill would strip platforms of their ability to protect users altogether.

SB 976 would undermine the privacy and online experiences of all users

SB 976 would effectively require social media companies to verify the identity and age of ALL users. SB 976 does not specify how platforms are expected to “reasonably determine” the age of a user, which will lead platforms to pursue explicit age verification to avoid the potential of subsequent litigation. Moreover, SB 976 opens the door to explicit age verification by empowering the Attorney General to “adopt regulations including regulations regarding age verification and parental consent.” 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 forgo the enjoyment of that online service entirely.

¹See New Protections to Give Teens More Age-Appropriate Experiences on Our Apps:
<https://about.instagram.com/blog/announcements/giving-teens-age-appropriate-experiences>

² See How we're supporting people affected by eating disorders and negative body image:
<https://about.instagram.com/blog/announcements/how-were-supporting-people-affected-by-eating-disorders-and-negative-body-image>

³ See Snapchat adds new teen safety features, cracks down on age-inappropriate content:
<https://techcrunch.com/2023/09/07/snapchat-adds-new-minor-safety-features-cracks-down-on-age-inappropriate-content/>

Consent laws and disparate impact on marginalized youth

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.

SB 976 would mandate social media companies obtain "verifiable parental consent" for all users under eighteen. This legislation allows parents to monitor and restrict their children's accounts with access to the minor user's account, including "text, audio, an image, or a video." SB 976 also requires platforms to implement an effective curfew for minor users that restricts access between "12 AM and 6 AM, inclusive and between the hours of 8 AM and 3 PM, inclusive, Monday through Friday from September through May," unless modified by the consenting parent. However well-intentioned, this could have dire consequences for the most vulnerable Californian youth.

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.⁴ In fact, only 38% of LGBTQ youth report living in affirming households, while 60% reported finding online spaces to be supportive.⁵ As such, 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 do not.⁶ Young LGBTQ+ Californians who are just coming to understand their identities may be cut off from affirming online communities and resources if SB 976 passes. 63 percent of LGBTQ+ individuals joined social media before the age of 18, and a majority report that they joined specifically to find LGBTQ+ support, resources, and community.⁷

⁴ César G. 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* 4 (June 27, 2022), <https://doi.org/10.3389/fdgth.2022.900695>.

⁵ See "2023 U.S. National Survey on the Mental Health of LGBTQ Young People": <https://www.thetrevorproject.org/survey-2023/>

⁶ Michele L. 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* 39, no. 39 (January 2015): 123-36, <https://doi.org/10.1016/j.chiabu.2014.08.006>.

⁷ See ctrl+alt+lgbt: Digital Access, Usage, and Experiences of the LGBTQ+ Community: https://www.lgbttech.org/files/ugd/d77b01_0f4f1eba3cdf4c7da07844b443c07bff.pdf

Even in the most supportive households, the requirement for verifiable consent further escalates privacy risks, as it necessitates processing the personal information of both the parent and the teen. This dual data collection intensifies the potential cybersecurity vulnerability as any company holding so much personal data would be a ransomware target.⁸

SB 976 guarantees litigation and raises major First Amendment and preemption issues

SB 976 contradicts established legal precedent. The First Amendment restricts governmental interference with the editorial discretion of private entities and the rights of individuals, regardless of age, to access lawful expression. SB 976, through its content-based and speaker-based restrictions, infringes upon these fundamental freedoms. Moreover, similar legislative efforts to restrict 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,⁹ California,¹⁰ and Ohio¹¹ 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.

Moreover, Section 230 of the federal Communications Act preempts state laws in conflict with its protections. Section 230 shields websites and users from being treated as publishers or speakers of third-party content.¹² This applies to any service that allows multiple people to access a computer server, including those

⁸ See If platforms are required to have your government IDs and face scans, hackers and enemy governments can access them too:

<https://www.rstreet.org/commentary/if-platforms-are-required-to-have-your-government-ids-and-face-scans-hackers-and-enemy-governments-can-access-them-too/>

⁹ *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.”

¹⁰ *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.”

¹¹ *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.”

¹² 47 U.S.C. § 230(c)(1).

that algorithmically sort content.¹³ Congress included tools that filter, organize, and analyze content within these protections.¹⁴ SB 976 effectively requires age verification and parental consent for online services that use algorithms to distribute user content. This could create new burdens on activities protected by Section 230, likely making the bill inconsistent with and overridden by Section 230.

Similarly, the bill is likely also preempted by the Children's Online Privacy Protection Act (COPPA), especially regarding the collection of personal information from children under 13.¹⁵ COPPA overrides state laws that conflict with its rules for collecting covered information and requires parental consent if the service knows it is collecting data from children. Since the proposed bill lacks this knowledge requirement, it will likely conflict with COPPA and could be overridden, at least for children under 13.

For these reasons, we respectfully request that you **oppose SB 976**. Thank you.

Sincerely,

Chamber of Progress
LGBT Tech
The Trevor Project
Woodhull Freedom Foundation

CC: California Assembly Democrats

¹³ 47 U.S.C. § 230(f)(2).

¹⁴ 47 U.S.C. § 230(f)(2), (4).

¹⁵ 15 U.S.C. § 6502(d); *see also, e.g., New Mexico ex rel. Balderas v. Tiny Lab Prods.*, 457 F. Supp. 3d 1103 (D.N.M. 2020).