



June 14, 2024

The Honorable Jill Krowinski  
Speaker of the House  
Vermont General Assembly  
115 State Street  
Montpelier, VT 05633

**Re: Sustain Governor Scott's Veto of H. 121**

Dear Speaker Krowinski:

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 **sustain Governor Scott's veto of H. 121**. Should this bill become law, it would compromise online privacy, degrade online services for all users, and undermine First Amendment rights, likely leading to a protracted and unwinnable legal battle.

We recognize the efforts of H. 121 to address harm to minors, and we remain committed to advocating for policies that prioritize online safety for young people. However, we must also emphasize the importance of safeguarding fundamental rights such as freedom of speech and privacy, and we are concerned about the potential harm this bill may cause to struggling youth in Vermont.

While the amended version of the bill includes the removal of a hard age verification requirement, we remain concerned that the threat of enforcement may function as a de facto age verification requirement and chill expression online.

**Platforms will over-moderate for *all* users, removing life-saving resources**

H. 121 would require that a covered platform “owes a minimum duty of care to the minor consumer” users, including the prohibition of “excessive or compulsive use” of an online service, product, or feature without providing clear guidance about what that entails.

We believe that promoting online safety for young people is essential. Unfortunately, in practice, this requirement would make each site the arbiter of appropriate content for

children of all age ranges and circumstances. Platforms would face difficult choices about what types of content to consider and would end up over-moderating in fear of litigation, degrading the online experience for all users and restricting constitutionally protected speech.

When platforms fear legal consequences for under-moderation, the inevitable consequence is the over-removal of content – especially vital resources for at-risk youth – and could deprive individuals of much-needed online safe spaces for accessing supporting resources on eating disorders, combating addiction, and self-harm. For Vermonters struggling with opioid addiction, this bill could inadvertently cut off lifelines and vital support systems.

### **H. 121 risks stifling innovation in Vermont**

Moreover, the extensive regulations in the bill may hinder the development of new digital platforms and technologies. H. 121 could discourage platforms from developing new products and features—even products and features that could materially benefit and improve safety for youth—to avoid future litigation risks. Overall, the bill's stringent provisions may hamper the growth and innovation of Vermont's economy. Governor Scott thoughtfully explained this risk in his veto notification: “One area of risk comes from the bill's ‘private right of action,’ which would make Vermont a national outlier, and more hostile than any other state to many businesses and non-profits – a reputation we already hold in a number of other areas. I appreciate this provision is narrow in its impact, but it will still negatively impact mid-sized employers, and is generating significant fear and concern among many small businesses.”<sup>1</sup>

### **H. 121 guarantees litigation and raises major First Amendment issues**

The First Amendment restricts governmental interference with both the editorial discretion of private entities and the rights of individuals, regardless of age, to access lawful expression. H.121, through its content-based and speaker-based restrictions, infringes upon these 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 effectiveness in mitigating harm.

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<sup>1</sup> <https://governor.vermont.gov/press-release/action-taken-governor-phil-scott-legislation-june-13-2024#:~:text=On%20June%2013%2C%20Governor%20Scott%20returned,for%20both%20consumers%20and%20the%20economy>

Recent rulings from courts in Arkansas,<sup>2</sup> California,<sup>3</sup> and Ohio<sup>4</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.

Governor Scott rightfully acknowledged this risk in his veto action notification. “Another area of risk comes from the ‘Kids Code’ provision. While this is an important goal we can all support, similar legislation in California has already been stopped by the courts for likely First Amendment violations. We should await the decision in that case to craft a bill that addresses known legal pitfalls before charging ahead with policy likely to trigger high risk and expensive lawsuits.”<sup>5</sup>

We agree with the need to build greater protections for young users, but some of this bill’s requirements would undermine the protections it tries to create and would end up harming vulnerable users. Passing a bill that will be tied up in years of litigation and may never have the force of law does not advance child safety. As such, we request you to **sustain the Governor’s veto of H. 121.**

Sincerely,



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

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<sup>2</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>3</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>4</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.”

<sup>5</sup> <https://governor.vermont.gov/press-release/action-taken-governor-phil-scott-legislation-june-13-2024#:~:text=On%20June%2013%2C%20Governor%20Scott%20returned,for%20both%20consumer%20and%20the%20economy>