



March 26, 2024

The Honorable Donna Bullock
House Children & Youth Committee Chair
Room 321, Irvis Office Building
450 Commonwealth Avenue
Harrisburg, PA 17120-0303

RE: PA HB 1879 - "Online Safety Protection Act"

Dear Chair Bullock 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 HB 1879**, which will degrade online services for users of *all* ages, impose fundamental changes to critical online services, rendering many of them unusable for vulnerable populations in Pennsylvania, and threaten to violate First Amendment rights, likely leading to a protracted and unwinnable legal battle.

Platforms may over-moderate for all users

HB 1879 requires covered platforms to prioritize the "best interests of a child" in the development and provision of their services or products. However, the definition of this term is overly broad, leading to various interpretations and lacks clear guidance on its specific requirements.

While "prioritizing the privacy, safety, and well-being of children" is an important consideration, in practice, this requirement would make each site the arbiter of appropriate content for children of all age ranges and circumstances. The ambiguous provisions in HB 1879 will cause social media platforms to avoid litigation by over-moderating, resulting in a diminished experience for users of *all* ages.

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.¹ With data privacy in mind, YouTube Kids does not allow children to share personal information with third parties or make it publicly available.² 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.³ 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.

We agree with the need to build in greater protections for young users, but this bill's requirements would undermine the protections it tries to create and would end up harming vulnerable users.

For minors, social media connections can provide a lifeline

In the CDC's latest [Adolescent Behaviors and Experiences Survey](#), more than half (55%) of young people experienced emotional abuse in the home and more than 10% reported experiencing physical abuse in the home. A majority of adolescents [report](#) that social media helps them feel more accepted (58%).

The support social media and other online platforms offer from peers to mitigate stress can be especially important for youth who are often marginalized, including racial, ethnic, and sexual and gender minorities. For example, minors within the [LGBTQ+ community](#) use social media to find friends, seek emotional support, and search for information about their identities and health - especially those growing up in unsupportive families or communities. HB 1879, which could lead to unintended over-moderation, could restrict vulnerable youth from the resources they need the most. This disproportionately impacts young people of color, as social media has provided a platform for teens and students of color to speak up against racial prejudice, with 82% of Black and Hispanic users stating that social media is effective for creating sustained social movements and preserving historically-marginalized groups' access to protected speech.⁴

Data Protection Impact Assessments guarantee litigation and raise major First Amendment issues

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

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

³ 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

⁴ See Pew Research Center, <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/>

For any website that is “likely to be accessed by children,” HB 1879 requires a platform to create and deliver Data Protection Impact Assessments (DPIAs) each time the service creates a new service, product, or feature. Because all websites could be accessed by a child and all websites carry a nonzero risk of harm to children, HB 1879’s DPIA requirements effectively chill internet services from developing new products and features—even products and features that could materially benefit and improve safety for children—to avoid future litigation risks associated with their DPIAs. Furthermore, recent rulings from courts in Arkansas,⁵ California,⁶ and Ohio⁷ 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.

HB 1879 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. HB 1879, 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.⁸ Courts have consistently demanded a compelling justification for such measures, alongside concrete evidence of their necessity and effectiveness in mitigating harm. The failure to meet this high bar of constitutional scrutiny renders these attempts legally untenable.

As such, HB 1879 not only contravenes core constitutional values 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 HB 1879**.

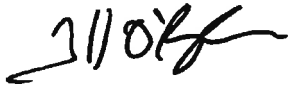
⁵ *NetChoice, LLC v. Griffin*, No. 5:23-cv-05105 (W.D. Ark. filed June 29, 2023). “If the State’s purpose is to restrict access to constitutionally protected speech based on the State’s belief that such speech is harmful to minors, then arguably Act 689 would be subject to strict scrutiny.”

⁶ *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.”

⁷ *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.”

⁸ The *Griffin* Court noted “[E]ven though the State’s goal of internet safety for minors is admirable, ‘the governmental interest in protecting children does not justify an unnecessarily broad suppression of speech addressed to adults.’” Similarly, the *Bonta* and *Yost* Courts found that the California Age Appropriate Design Code is not based on any direct evidence demonstrating a causal link between social media use and harm to younger users.

Sincerely,

A handwritten signature in black ink, appearing to read 'T O'Boyle', with a stylized flourish at the end.

Todd O'Boyle
Senior Director, Technology Policy
Chamber of Progress