NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

NetChoice

Carl Szabo, Vice President and General Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org

Rep. Curtis Trent, Chair
General Laws Committee
Missouri House
Jefferson City, MO

February 13, 2021

RE: **Opposition to HB 783 Impeding the ability to remove harmful and objectionable content**

Dear Chairman Trent and members of the committee:

We respectfully ask that you **not** advance HB 783, as it impedes the ability of websites and platforms to remove truly horrible content, terrorist speech, and pornographic materials.

HB 783 Impedes the ability of websites and platforms to remove objectionable content

The First Amendment protects a lot of content that we don't want on our websites or for our children to see. The First Amendment protects pornography. The First Amendment protects extremist recruitment speech. The First Amendment protects bullying and other forms of verbal abuse.

Today, online websites and platforms take significant steps to remove this type of content from their sites. In just the six-months from July to December 2018, Facebook, Google, and Twitter took action on over 5 billion accounts and posts.[1] This includes the removal of 57 million instances of pornography. 17 million instances of content related to child safety.

Yet the removal of content related to terrorist recruitment, pornography, and child safety would be impeded by HB 783. This is because it essentially penalizes platforms for removing this content as it is "protected by the First Amendment." And the provision allowing removal of content "expressly stated" is no help, as even our US Supreme Court cannot *expressly* define something like obscenity.[2]

Imagine the Taliban making posts that read, "Join us to help America." Blocking or removing this statement is illegal under HB 783 unless those specific terms are addressed in the terms of service.

The end result is that websites and platforms will err on the side of leaving up lewd, lascivious, and extreme speech and content, making the internet a much more objectionable place to be.

---

[1] *See Transparency Report*, at http://netchoice.org/wp-content/uploads/Transparency-Report.pdf
[2] *See Miller v. California*, 413 U.S. 15 (1973).

HB 783 Applies to nearly all websites, not just "Marketplaces," to include Mommy Bloggers, Church Websites, and E-Mail Services

Because the term "marketplaces" is defined as someone who connects a buyer and a seller, any website that has an advertisement will be considered a marketplace – as the advertisement is likely to connect a buyer with a seller. This means that "Mommy Bloggers," the classified section of a Church website, and even a PTA website that has Box-Tops for kids, are covered by HB 783. Since most email services offer a website portal, they too are covered, as emails often connect buyers and sellers.

This also means that on these websites, preventing pornographic or bullying content becomes nearly impossible as explained above.

HB 783 Makes it illegal for providers to block SPAM, and punishes platforms for removing terrorist speech and pornography

And as explained above, HB 783 certainly applies to email services. Today, platforms engage in robust content blocking of SPAM. But this blocking of not only unwanted but invasive content would be illegal under HB 783.

For decades, service providers have fought bad actors to keep our services usable. Through blocking of IP and email addresses, along with removing content with harmful keywords, our services are more useful and user friendly. But services couldn't engage in this type of blocking under HB 783.[3]

The *de facto* requirement to make decisions crystal clear in HB 783 would make it easier for bad actors to circumvent protections and a duty to explain why SPAM content was blocked would contradict Congress's intent to "remove disincentives for the development and utilization of blocking and filtering technologies."[4]

HB 783 violates conservative values of limited government and free markets

In 1987, President Ronald Reagan repealed the equivalent of HB 783, the infamous "Fairness Doctrine," a law requiring equal treatment of political parties by broadcasters. In his repeal, President Reagan said:

> *"This type of content-based regulation by the federal government is … antagonistic to the freedom of expression guaranteed by the First Amendment.*
> *In any other medium besides broadcasting, such federal policing … would be unthinkable."*[5]
> *– President Ronald Reagan*

---

[3] *See, e.g. Holomaxx Technologies Corp. v. Microsoft*, 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (That case involved an email marketer sued Microsoft, claiming that the SPAM blocking filtering technology Microsoft employed was tortious.)

[4] *Id*. at 1105 (citing 47 U.S.C. § 230(b)(4)).

[5] Veto of Fairness in Broadcasting Act of 1987, 133 Cong. Rec. 16989 (June 23, 1987), *available at* http://www.presidency.ucsb.edu/ws/?pid=34456 .

We face similarly unthinkable restrictions in HB 783 which forbid online platforms from moderating their services in ways that they see fit.

Today, conservative speech has never been stronger. No longer limited to a handful of newspapers or networks, conservative messages can now reach billions of people across thousands of websites and platforms.

We've seen the rise of conservative voices without relying on a column from the Washington Post or New York Times, or a speaking slot on CNN. Social networks allow conservative voices to easily find conservative viewers.

All of this was enabled at effectively no cost to conservatives. Think about conservatives like Ben Shapiro and Mark Stein, whose shows are available to anyone with an internet connection and on whose websites conservatives can discuss and debate articles via the comments section.

Nonetheless, there are some who seek government engagement to regulate social networks' efforts to remove objectionable content. This forces us to return to an era under the "fairness doctrine" and create a new burden on conservative speech.

HB 783 also violates the American Legislative Exchange Council's (ALEC) *Resolution Protecting Online Platforms and Services,* which says:

> WHEREAS, online platforms are businesses that should be allowed to operate in ways that best serve their users — and the government should not interfere with these businesses in order to advance a particular belief or policy;
>
> WHEREAS, even if online platforms were to exhibit political bias in content display or moderation, the First Amendment protects this exercise of editorial discretion from government intervention;
>
> …
>
> THEREFORE LET IT BE FURTHER RESOLVED, ALEC finds that it is well settled that the First Amendment restricts the government from regulating speech or restricting the publishing rights of online platforms or services, including the right to curate content.

As President Ronald Reagan said, "Government is not the solution to our problem; government is the problem." Government regulation of free speech online would not safeguard the future of conservative speech. It would greatly endanger it.

As NetChoice favors limited government and a free-market approach, we respectfully ask you to **oppose HB 783**. We appreciate your consideration of our views, and please let us know if we can provide further information.

Sincerely,

Carl Szabo
Vice President and General Counsel, NetChoice
NetChoice works to make the Internet safe for free enterprise and free expression. www.netchoice.org

RESOLUTION PROTECTING ONLINE PLATFORMS AND SERVICES

WHEREAS, the Internet has created millions of new American jobs and generated billions of dollars in revenue for American businesses;

WHEREAS, online platforms enabled users to generate, upload, and share their own content, and this capability has become a core component of the online experience;

WHEREAS, ALEC's principles of limited government and free markets suggest that the government should continue to take a light-touch approach to regulation online platforms and services;

WHEREAS, online platforms are businesses that should be allowed to operate in ways that best serve their users — and the government should not interfere with these businesses in order to advance a particular belief or policy;

WHEREAS, even if online platforms were to exhibit political bias in content display or moderation, the First Amendment protects this exercise of editorial discretion from government intervention;

WHEREAS, ALEC's principles of limited-government and free markets oppose the use of antitrust law for political purposes;

WHEREAS, even the threat of legal action can significantly affect the exercise of speech rights protected by the First Amendment, and thus also raises constitutional concerns;

WHEREAS, Section 230 of the Communications Decency Act of 1996 is a federal law limiting the liability of online platforms and services for content that they themselves did not share in creating and has been vital to the growth of user-generated content and free expression online;

WHEREAS, Section 230(c)(1) of the Communications Decency Act ensures that websites will not be held liable as publishers for how they arrange, promote, or prioritize content, unless they are responsible for creating it;

WHEREAS, Section 230(c)(2)(A) of the Communications Decency Act limits the liability of online platforms for "any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable";

WHEREAS, Section 230 limits the government's ability to prosecute social media companies in parallel with the First Amendment's protection of editorial discretion;

WHEREAS, Section 230 does not shield online platforms from liability for violations of federal criminal law or intellectual property law; and

WHEREAS, the sheer volume of user-generated content hosted by online platforms is so vast that, as Congress presciently recognized in enacting Section 230, imposing legal liability for content moderation decisions will significantly chill content moderation or simply cause online services to decline to host user-generated content;

THEREFORE LET IT BE RESOLVED, ALEC finds that any antitrust action against any online platform or service must not be initiated based on its viewpoint or the procedures it uses to moderate or display content. Any antitrust suit should be based solely on a bona fide violation of antitrust laws, which require proof of economic injury to consumers through a reduction in competition.

THEREFORE LET IT BE FURTHER RESOLVED, ALEC finds that it is well settled that the First Amendment restricts the government from regulating speech or restricting the publishing rights of online platforms or services, including the right to curate content.

THEREFORE LET IT BE FURTHER RESOLVED, ALEC finds that online platforms and services do not lose Section 230 protections solely by engaging in moderation of content created by other individuals, and, indeed, Section 230 was intended to encourage such moderation by limiting second-guessing of such decisions.

THEREFORE LET IT BE FURTHER RESOLVED, ALEC opposes any amendment of Section 230 of the Communications Decency Act that would reduce protections for the rights to freely speak, publish or curate content online, as the law already enables prosecution of online platforms and services for violations of federal criminal law or intellectual property law.