

California Senate Appropriations Committee

AB 2408 Undermines Parental Choice, Fails Children and Teens, and Violates the First Amendment

Aug. 2, 2022

Dear Chair Portantino, Vice-Chair Bates, and Members of the Senate Appropriations Committee:

We ask that you **oppose** AB2408 as it:

- Undermines parental choice,
- Removes the access to beneficial technologies from young people, and
- Raises clear concerns regarding the proposal's constitutionality.

While the California legislature's concern about the content children and teenagers may be exposed to online and offline is important and well-intentioned, there remain concerns that the unintended consequences of this bill could make things more difficult for young people, parents, and innovators.

As a former educator myself, I understand the good intentions behind such a proposal; however, it is not the solution and will have significant constitutional issues on First Amendment grounds.

As a result, even though the intentions of protecting teenagers online are laudable, the committee should **not advance AB 2408**.

The Bill Undermines Parental Choice and Creates a False Sense of Security

Today, parents have a wide range of opinions about what sort of content they deem appropriate for their children at any age. This includes their decision about whether or not to allow their teenagers to be on social media or other online services and what age it may be appropriate to give their child access to certain devices. They also have a range of choices when it comes to safeguards like filtering software, time limits, website settings, and alerts to help them engage in conversations around responsible use in accordance with their values and preferences.

But AB 2408 would undermine parental choice as it dictates to content providers that teens cannot interact in the ways technologies currently work. In doing so, AB 2408 sends a message to parents that the state, not parents, will determine the specific age at which a child or teenager is ready to interact with technology. Doing so takes away the option from parents to choose the balance and risks that work best for their family.

Additionally, the law would create a false sense of security and might mean that parents and other adults won't have important conversations with teens about what to do when exposed to harmful content. With AB 2408, parents would be *less* likely to engage in conversations with their teenagers on how to distinguish reliable sources, what to do if they encounter concerning content, or the distortion that can come from photo filters. Parents would be *less* likely to check how long a child has been engaging with a

technology or website as they would presume that the law insures an appropriate amount of time. Instead, parents may even let their teenagers engage on social media for more time or before they are ready without critical online safety tools or parental involvement.

A better solution is to empower parents and young people to understand the content they consume online and make the appropriate choices. AB 2408 is a one-size-fits-all approach. AB 2408 lacks the nuances of different online experiences and treats all recommendations as equally harmful. The result could be that parents are less likely to talk to their teenagers about the content they are consuming online and create more secretive behaviors around many devastating issues such as bullying, eating disorders, or depression. Teenagers may instead bounce around from website to website engaging in the same problematic behavior but making it more difficult for positive adults to help or intervene.

The Bill Undermines Children and Teenagers' Beneficial Usage of Technology and Requires More Data Collection

Because the bill presumes use of technology to be “addictive,” the impact of the proposal is incredibly broad and presumes all recommendations and algorithms are potentially harmful to young people. The results would have a negative impact on children and teenagers' ability to use a range of technology beyond just social media in beneficial ways. Proposals like AB 2408 hold all uses of algorithms equal and penalize the good elements that can empower, encourage, and protect teens along with the bad.

For example, AB 2408 not only impacts those social media platforms like Instagram or YouTube, but it would potentially impact a wider array of connected sites that benefit young people. For example, book review sites like GoodReads could not recommend another similar book, Peloton could not recommend young people try the next workout in the series, and a math app could not recommend a player continue to the next level or try a similar game.

Finally, while the goal of AB 2408 is to protect young people, it would actually require companies to collect *more* data and information about users under 18. It is unlikely that the proposal is technologically feasible in many cases, but even if it were, a company would have to know the age of the user and if they were subject to the California law to then disable any algorithmic recommendations or limit their continued use of an app. In order to do so, information that may not have been previously collected regarding age and location would be required.

The Bill Violates the First Amendment and Raises Dormant Commerce Clause Issues

In many cases, the proposal might not be technologically feasible and would result in undermining the safety features and user interfaces that make the internet more enjoyable for users. But even more concerning, the law may be unconstitutional as a regulation of the distribution of speech.

In *Sorrell v. IMS*, the Supreme Court ruled that information is speech and that a Vermont law could not prohibit the creation and dissemination of information including the selling of data to a database. Even more relevant here, multiple court cases have held that the distribution of speech, including by algorithms such as those used by search engines, are protected by the First Amendment. This proposal would result in the government restraining the distribution of speech by platforms and Californians' access to information. Thus, AB 2408 will be deemed by courts as a violation of the First Amendment.

In addition to these significant First Amendment concerns, the proposal also raises concerns that it may violate the dormant commerce clause due to its impact on interstate commerce.

The internet by its very nature is interstate, and state regulations such as the ones proposed place a significant burden on interstate commerce and interactions well beyond the young people the law seeks to protect. This bill will only further contribute to an emerging patchwork of laws that disrupts the advantages of the internet for consumers and burdens on small businesses resulting in fewer opportunities and innovations.

Given the negative impacts on innovation, parental choice and young people themselves, and its likely unconstitutionality, we ask you to **not** advance AB 2408.

Thank you, and we welcome the opportunity to speak with you further about the protection of children and teens online.

Sincerely,

Jennifer Huddleston
Policy Counsel
NetChoice

NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.