

## Pennsylvania SB 22

## OPPOSITION LETTER

October 3, 2023

Pennsylvania State Senate

NetChoice respectfully asks that you **oppose** SB 22 as it:

- Violates the First Amendment,
- Similar efforts have already been found unconstitutional in California and Arkansas, and
- Puts the privacy and security of every minor in Pennsylvania at risk.

We share the goal of the bill author and sponsors: keeping kids safe online. Families face significant challenges when it comes to their childrens' online lives. More can absolutely be done to empower parents and families to protect their children. However, when the government seeks to do this by regulating online speech and mandating the transfer of private data in order to access constitutionally protected avenues of expression, the government undermines its own intent and leaves our families worse off.

California and Arkansas are two states that have already acted on nearly identical legislation to Pennsylvania's proposed SB 22. NetChoice sued both states on behalf of our members and users in those states. In both cases, judges ruled in NetChoice's favor, finding that the legislation violated the First Amendment rights of both adults and children, and that this type of legislation presents a major privacy risk to children.

To begin with, SB 22 is an unconstitutional attempt to regulate online speech. Proponents of this type of legislation have argued that it does not regulate speech, merely conduct, and therefore does not violate the First Amendment. This has been categorically rejected by both the Northern District Court of California and the Western District Court of Arkansas. In short, by attempting to regulate the types of

content that minors may see, Pennsylvania would be mandating the removal of constitutionally protected speech on a massive scale. This straightforwardly violates the First Amendment.

Not to be overlooked are the significant privacy violations that come with a bill like SB 22. In NetChoice's suit against California's version of this legislation the judge stated the bill: "appears not only unlikely to materially alleviate the harm of insufficient data and privacy protections for children, but is actually likely to exacerbate the problem by inducing covered businesses to require consumers, including children, to divulge additional personal information." That is to say, in an attempt to improve privacy outcomes for children through SB 22, Pennsylvania would be making them materially worse.

The Commonwealth can take legislative steps to protect its children without violating theirs or their parents' constitutional and privacy rights. Legislation has been adopted in Florida this year that would require digital literacy be taught in schools. Proposals could also be drafted that expand education to parents to better inform them of the resources, like device filters and screen time controls, that are currently available. In these instances Pennsylvania would be putting more tools in parents' toolboxes without forcing them to hand over the private data of their children or sign away their own rights to access speech online.

The protection of children is one of the most noble and most legitimate motivations that those in public life can possess. NetChoice and its members share that motivation. We reject, however, the idea that it is possible to simultaneously protect young people while trampling on the rights to expression and privacy that they are entitled to and stand to fully inherit as adults.

We stand ready to work with any Senator who wishes to move forward on proposals that protect both the well being of children online and their underlying constitutional rights.

Sincerely,

Carl Szabo  
Vice President & General Counsel  
NetChoice

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