Zachary Lilly
Deputy Director of State & Federal Affairs, NetChoice
1401 K Street NW, Ste 502
Washington, DC 20005

NetChoice
Defending Free Speech and Free Enterprise Online

Virginia SB 684

OPPOSITION TESTIMONY

Jan. 30, 2023

Virginia Senate General Laws & Technology Committee

NetChoice respectfully asks that you **oppose** SB 684, legislation that would greatly diminish the rate of technological innovation in Virginia, and presents a prior restraint on free speech that directly violates the First Amendment of the United States Constitution.

While the goal of protecting children online is a noble one, and one that NetChoice shares, government mandates that slow improvements to technology actually make kids, and adults, less safe. Private businesses compete against each other to bring better, safer, and more family friendly products to market. Legislation that complicates and slows that process only serves to harm consumers, regardless of good intent.

Additionally, a law that controls how private individuals or entities are able to express themselves is referred to as a prior restraint. Prior restraint on speech is a blatant violation of the First Amendment. SB 684 qualifies as a prior restraint because it seeks to require covered platforms from qualifying or banning particular categories of speech.

For these reasons we ask you not advance SB 684 as it:

> 1. Artificially slows technological innovation and harms consumers;
> 2. Violates the First Amendment by implementing a prior restraint on speech.

NetChoice is a trade association of leading internet businesses that promotes the value, convenience, and choice that internet business models provide to American consumers. Our mission is to make the internet safe for free enterprise and free expression.

1. SB 684. Gets Innovation Wrong

SB 684 represents innovation at the speed of government, and fundamentally misunderstands how important breakthroughs make it to market. While certain innovations are a long time coming, the product of years of research and development, many explode onto the scene due to bursts of ingenuity or even driven by customer feedback or creativity. Indeed, many public safety innovations that the bill seeks to spur were created in direct response to in-the-moment threats to user safety. Once can easily recall such instances as the so-called "Tide Pod Challenge" that sent social media sites reeling to clamp down on the proliferation of those videos.

In instances like those, and so many other types of scenarios, we want companies and the innovators who work at them to be as free as possible to introduce new and improved ways of serving and keeping their customers safe.

If every innovation comes with a two-year bureaucratic process, the chances of those innovations actually being introduced or making it to markets substantially lessen. While improved safety is an important goal of legislation, we have to give greater weight to the likely unintended consequences. Innovation through formal government mandated reporting is a recipe for disaster.

2. SB 684 is a Prior Restraint on Speech

SB 684 takes multiple steps to ensure that certain types of information are withheld on the platforms covered by the legislation. This takes the form of requiring reports be filed prior to new products, services, and innovations, as well as requiring certain subjective criteria regarding "best interest of the child" be met in order to avoid significant legal liability for the dissemination of speech. This attempt to deter or prevent speech the state finds objectionable is the definition of a prior restraint.[1] Indeed, a regulation may qualify as a prior restraint even if it does not ban or restrict speech outright.

SB 684's prior restraint provisions closely mirror California's AB 2273, a law which NetChoice is in the process of litigating. While California has appealed the ruling, NetChoice has enjoyed an early victory in that case. As the judge put it in her ruling, "The First Amendment prohibits prior restraints on speech, including state action designed to deputize private actors to serve as censors by proxy."[2] There is a significant and growing body of legal precedent that shows clearly the efforts being taken up in SB 684

[1] *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70-71 (1963)
[2] *NetChoice v. Bonta*

violate the First Amendment, would attract immediate constitutional challenge if passed, and would be swiftly struck down. Such a process would leave no Virginian safer.

Again, we respectfully **ask you to oppose SB 684.** As always we offer ourselves as a resource to discuss any of these issues with you in further detail, and we appreciate the opportunity to provide the committee with our thoughts on this important matter.[3]

Sincerely,

Zachary Lilly
Deputy Director of State & Federal Affairs, NetChoice
NetChoice is a trade association that works to protect free expression and promote free enterprise online.

[3] The views of NetChoice expressed here do not necessarily represent the views of NetChoice members.