

California AB 3172

LETTER OF OPPOSITION

April 8, 2024

Dear Members of the Assembly Privacy and Consumer Protection Committee:

We respectfully urge you to **oppose AB 3172**. While well-intentioned, AB 3172 has significant policy and legal flaws. The bill imposes such extreme penalties and vague responsibilities that even the most conscientious online platform would find it difficult to comply.

While well-intentioned AB 3172:

1. Protects no children as it is unconstitutional
2. Ignores the fact that different children have different needs
3. Violate the First Amendment rights of minors

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. We share the sponsor's goal to better protect minors from harmful content online. NetChoice members have taken issues of teen safety seriously and in recent years have rolled out numerous new features, settings, parental tools, and protections to better empower parents and assist in monitoring their children's use of social media.

Would open the floodgates to frivolous lawsuits

AB 3172 is not a child safety bill but rather a massive private right of action proposal which signs over children's online safety to trial attorneys. The bill offers zero solutions to the plethora of public health issues it alleges are related to social media use. No increase for school counselors or mental health resources. No improvement to education or a public service campaign to empower parents. Instead, the legislation gives up and turns over the responsibility of child welfare to the trial attorneys. AB 3172 will lead to zero meaningful outcomes for children in California.

Rather than meaningfully address issues affecting mental health, AB 3172 imposes a blanket cause of action against social media companies for “harm.” Of course, “harm” is not defined. By leaving questions of liability so open-ended, the legislature would invite a flood of frivolous lawsuits against these companies. Indeed, AB 3172’s language is so broad that it would allow a person who read a post to bring suit alleging “harm” if the post induced a momentary feeling of sadness.

The real impact of this proposal will be to chill significant amounts of online speech.

Violates the First Amendment Rights of Minors

The Internet is the world’s largest private library. It made information on subjects as diverse as religion and politics to recipes and social gossip readily available to everyone. Yet, by allowing trial lawyers to sue social media companies for significant sums, this bill would impose a de facto tax on speech in direct violation of the First Amendment. Like previous such attempts to go after social media companies for harms suffered by children, AB 3172 is sponsored by Common Sense Media, no stranger to unconstitutional laws.

Because it would force social media companies to assume unprecedented costs for the vague and undefined “harm” to minors, AB 3172 would chill free expression online.¹ Social media companies will be incentivized to limit the ability to access content on their services—which would both reduce the size of their audience *and* infringe on the websites’ editorial rights to curate and disseminate content free from government interference.²

“The government cannot do indirectly what it is prohibited from doing directly.”³ The First Amendment prohibits the government from placing outright bans and restrictions on speech. So too, it prohibits the government from creatively drafting legislation that would accomplish the same ends. Because AB 3172 would have tremendous chilling effects on vast swaths of protected speech, it would necessarily be struck down as unconstitutional.

Ignores The Fact That Different Children Have Different Needs

¹ *Dombrowski v. Pfister*, 380 U.S. 479 (1965) (prohibitions on unprotected speech are unconstitutional if they chill protected speech); *see also Minneapolis Star Tribune v. MN Commissioner of Revenue*, 461 U.S. 575 (1983) (striking down a law taxing newspaper materials, thereby making speech of newspapers more expensive).

² *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974); *NetChoice v. Atty. Gen. Fla.*, 34 4th 1196 (2022).

³ *Cummings v. Missouri*, 71 U.S. 277 (1867).

Not all children are the same. Common sense and the existing research on children’s online safety bears this out. There is no question that certain children are not mature enough to use particular online tools and services. Others, however, are. The only people in a qualified position to judge the difference are the parents of California’s children, not its legislature.

AB 3172 erroneously places its thumb on the scale by mischaracterizing the nature of psychological research related to children’s online safety. It claims that, *“social media companies invent and deploy features they know injure large numbers of children, including contributing to child deaths”* and that the negative side effects of social media are so great as to justify a “society wide” i.e. government response.

There is no body of research that makes categorical claims on the use of online services by young people. While a percentage of young girls seem to be at a higher risk for negative effects from social media use related to body image, a greater proportion of young boys derive significant benefit from that same service.⁴ Indeed, a report from the American Psychological Association indicates the same reality: some children benefit from these tools and services while others are at higher risk.⁵ The most comprehensive independent study on the subject, coming out of Oxford University, has shown there is no correlation between Facebook and negative health outcomes at all.⁶

The characterization of safety technology in AB 3172 leads California parents down a more dangerous path. According to the bill, tools largely do not exist and they cannot keep children safe. This type of sensationalization will lead parents throughout the state to forgo these tools altogether. Companies offer filtering at the router and device levels, there are tools to block the downloading of apps, there are services to link devices and accounts to track what your children are doing. There are even methods to limit screen time, beyond the tried and true method of taking away the phone. The state would do well to promote these services and help parents become more aware of them.

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Again, we respectfully ask you to **oppose AB 3172**. 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.

⁴ Social Media and Youth Mental Health (hhs.gov)

⁵ American Psychological Association Health Advisory on Social Media Use in Adolescence (apa.org)

⁶ OII | No evidence linking Facebook adoption and negative well-being: Oxford study

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice

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