

New Hampshire HB 293

OPPOSITION TESTIMONY

February 5, 2025

New Hampshire House House Judiciary Committee

Subject: Opposition to HB 293, preventing minors from accessing obscenity on electronic devices

Dear Chair Lynn, Vice-Chair Mannion, and members of the Judiciary Committee:

NetChoice respectfully asks that you **oppose** HB 293 because the bill:

- Violates the First Amendment;
- Burdens users of all ages trying to access common online resources;
- Would be ineffective at preventing access to obscene material.

As further outlined below, this bill would immediately invite constitutional challenges. In fact, the Supreme Court has already struck down a similar law after finding it violated First Amendment rights to receive information and to free speech.

While certainly well intended, HB 293 contains several practical flaws. The unlimited risk of lawsuits would likely force device providers to significantly restrict access to popular, benign websites and search services *for users of all ages*. Further, HB 293 would harm efforts to protect youth users from obscene material, since it fails to address countless internet access avenues while creating a false sense of security for parents.

HB 293 violates the First Amendment

Congress passed the Communications Decency Act in 1996. The law was an attempt to restrict the access of minors to obscene content on the internet. The legislation criminalized the “knowing” dissemination of “obscene or indecent” material or knowingly sending messages “that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards,

sexual or excretory activities or organs" to those under the age of 18.¹ It created safe harbors for those who made good faith attempts to restrict minors' access to such content.²

The law was quickly enjoined and then struck down as unconstitutional by a District Court. The federal government lost on appeal to the Supreme Court in the 9-0, landmark case, *Reno v. ACLU*. The Supreme Court held that the broad nature of the restrictions, their punitive nature, and their attachment to a medium which enjoys full First Amendment protections, among other issues, were enough to rule that the Communications Decency Act was violative of the First Amendment.

The bill sponsors, just like Congress in 1996, are concerned with the welfare of children online. That is a laudable goal, and one that NetChoice shares. The reality however, is that the Supreme Court looks more seriously at unintended negative consequences to constitutional rights rather than well-intentioned goals. There is no question, seeing as the issues at the core of both cases are identical, that HB 293 would quickly meet the same fate as the Communications Decency Act. The confusion and significant cost to the New Hampshire taxpayers a challenge would bring is best avoided in an already settled case as this one.

HB 293 would impact users of all ages seeking to use common websites

In the unlikely case HB 293 survives judicial scrutiny, the bill's provision for unlimited private lawsuits with statutory damages of \$50,000 per violation would create untenable business risks for device providers. These companies would face two equally problematic scenarios:

First, they could choose to cease all sales and service operations in New Hampshire. This would mean withdrawing smartphones and tablets from the market, while also potentially geo-blocking New Hampshire IP addresses from accessing their online services. Such a withdrawal would significantly impact both consumers and businesses in the state.

Alternatively, companies could implement stringent age verification systems requiring government-issued identification from all users, to prove they were over 18 years old. While HB 293 requires that users self-report their age, that creates a risk of lawsuits with unlimited damages if a device provider relied upon self-reported age from a teen setting up their phone or tablet.

¹ Cornell Law school, Legal Information Institute, [Reno v. ACLU | US Law | LII / Legal Information Institute \(cornell.edu\)](https://www.law.cornell.edu/USLaw/II/LII/LegalInformationInstitute/cornell.edu)

² *Ibid*

This unlimited legal risk would require maintaining extensive databases of sensitive personal information, raising privacy concerns and potentially making New Hampshire residents more vulnerable to data breaches. The cost of implementing and maintaining such systems would be substantial, potentially making New Hampshire a financially non-viable market for many companies.

Under either of the alternatives discussed above, New Hampshire residents would face severely restricted access to essential online services, including fundamental tools like browsers and search. The impact would extend far beyond the bill's intended scope of protecting minors, creating significant obstacles for adults conducting business, pursuing education, or simply trying to access basic online services. Local businesses that rely on these digital platforms for marketing, sales, and operations would face particular challenges, potentially affecting the state's economic competitiveness.

HB 293 would be ineffective at preventing access to obscene material

Despite the filters that device providers would be compelled to have, the limited scope of the required filter, as defined in HB 293, would not meaningfully inhibit the ability of minors to access obscene content. The filter only applies to internet browsers and search engines owned or controlled by the device provider. This does nothing to stop access to obscene material through browsers, apps, and search engines on the device that are not affiliated with the device manufacturer. For example, users of Safari on iPhone or Chrome on Android would have to show ID to view the web, but adolescent users of DuckDuckGo would still be able to access obscene material.

In addition, an awful but predictable side effect of HB 293 is that the bill would give parents a false sense of security. Filtering technology is only so precise, and HB 293 leaves countless content access methods uncovered. HB 293 sends a false “all-clear” message to parents who would otherwise remain vigilant in supervising their children's online activity

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The problem HB 293 seeks to tackle is not without constitutional and practical policy solutions. Florida has passed a law requiring specific online and social media education in the classroom. This helps arm young people with the information they need to keep their data more secure, focused on age appropriate content, and away from bad actors who would do them harm. New Hampshire could take

steps to publicize the resources that are available to filter content or monitor and control screen time. Solutions for families and kids don't need to come in the form of government mandates.

For these reasons, we respectfully ask you to **oppose HB 293**. As ever, 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.

Sincerely,

Patrick Hedger
Director of Policy
NetChoice

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