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NetChoice
Protecting Free Speech and Free Enterprise Online

Chicago's Proposed Social Media Amusement Tax

LETTER OF OPPOSITION

November 14, 2025

To: The Honorable Members of the Chicago City Council City Hall, Chicago, IL

Subject: Opposition to the Proposed Social Media Amusement Tax (SMAT)

On behalf of NetChoice, a trade association of leading internet businesses committed to promoting free enterprise and free expression online, I write to express our strong opposition to the proposed Social Media Amusement Tax (SMAT), which would impose a $0.50 monthly fee per active user on platforms with over 100,000 users operating in Chicago. This proposal is not only legally deficient but threatens significant and unintended harm to Chicago's residents, businesses, and reputation as a center for innovation and community connection.

The Proposed Tax Violates Federal Law

The Permanent Internet Tax Freedom Act (PITFA), signed into law in 2016, explicitly prohibits "discriminatory taxes on electronic commerce"—defined as taxes that are either "not generally imposed" or "not imposed at the same rate" on similar transactions "accomplished through other means."[1]

SMAT would expressly violate PITFA because it exclusively targets online social media platforms while exempting comparable non-digital businesses that also facilitate social connection and community engagement. Traditional social venues—social clubs, professional societies, community centers, and networking organizations—connect people and monetize these services through membership fees and sponsorships. By excluding these offline counterparts from the same tax burden, SMAT creates a distinction based solely on digital versus non-digital nature.

This is precisely the discriminatory tax Congress intended to prevent. Courts have consistently upheld these protections—the U.S. District Court for the District of Maryland recently struck down Maryland's Digital Advertising Gross Revenues Tax as discriminatory and in violation of PITFA. Chicago would be inviting similar costly litigation.

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[1] Congressional Report of Rep. Goodlatte, July 3, 2014, at https://www.congress.gov/congressional-report/113th-congress/house-report/510/1#:~:text=16%20Purpose%20and%20Summary%20In,105%2D277%2C%20Sec.

The Proposed Tax Violates the First Amendment

SMAT raises serious First Amendment concerns by targeting media companies for disfavored tax treatment based on audience size. In *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, the Supreme Court struck down a tax on paper and ink that applied only after publishers exceeded $100,000 in expenditures. The Court found that exempting smaller publishers while discriminating based on circulation size violated the First Amendment.[2]

As the Supreme Court reaffirmed recently, the First Amendment "does not go on leave when social media are involved."[3] SMAT mirrors the unconstitutional structure in *Minneapolis Star*—exempting platforms with fewer than 100,000 users while penalizing popular platforms with larger audiences. This discriminatory treatment based on audience size violates the First Amendment.

The Tax Mandates Invasive Data Collection

SMAT forces platforms to collect highly sensitive personal data to comply. The proposal would require platforms to track and verify residential addresses of active Chicago users to determine tax liability, compelling far more personal data collection than currently occurs or than users have consented to provide. This directly contradicts Illinois's strong commitment to privacy protection and could conflict with existing Illinois privacy laws, including the Biometric Information Privacy Act (BIPA). Illinois has been a national leader in privacy protection—SMAT would undermine that leadership by mandating invasive data collection and creating new security vulnerabilities for Chicago residents.

The Tax Will Harm Chicago Residents and Small Businesses

The $0.50 per user monthly fee will ultimately be borne by Chicago residents through higher subscription fees, new charges for previously free services, or reduced access as platforms may withdraw from the Chicago market entirely. Small businesses relying on social media marketing will face increased costs. Auto dealers using targeted ads, restaurants promoting daily specials on Instagram, community organizations coordinating volunteers on Facebook, and Chicago artists reaching audiences would all face higher costs or reduced access.

Platforms unable to absorb this flat user tax—which is disconnected from any revenue or profit they generate in Chicago—may simply exit the market, cutting residents off from vital online communities, educational resources, and business services.

We understand Chicago faces budget challenges, but taxing social media is not the solution. This approach will backfire, generating legal challenges, compliance costs, reduced services for residents, and

[2] *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575 (1983).
[3] *Moody v. NetChoice, LLC*, 603 U.S. ___, slip op. at 20 (2024) (Kagan, J.)

reputational damage that far exceed any revenue gained. Similar proposals in Minnesota and Washington were abandoned by lawmakers who recognized the inherent flaws, harmful economic effects, and complex legal risks. We urge the Council to learn from these experiences rather than inviting costly litigation and economic harm.

Sincerely,

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