

April 12, 2024

The Honorable Julie McCluskie  
Colorado House of Representatives  
200 E Colfax  
Room 307  
Denver, CO 80203

The Honorable Steve Fenberg  
Colorado Senate  
200 E Colfax  
Room 257  
Denver, CO 80203

Dear Speaker McCluskie and President Fenberg:

On behalf of the undersigned organizations, we write today to share our **opposition** to SB 158, as amended. Our opposition to this bill, in its present state, arises from the undefined age verification requirements imposed on social media platforms, its concerning parental control provisions and ambiguous criteria for “sexual content,” and the bill’s infringement on First Amendment rights – which doom it to a protracted and unwinnable legal battle, if passed. While we appreciate the amendments that have been offered, they fail to address the fundamental challenges of this bill, nor do they alleviate our apprehensions about its repercussions.

We recognize and appreciate the efforts of SB 158 to address harm to minors, and we remain committed to advocating for policies that prioritize online safety for young people. However, we must also emphasize the importance of safeguarding fundamental rights such as freedom of speech and privacy, and we are concerned about the potential harm this bill may cause to marginalized communities in Colorado.

**Age verification requirements threaten the privacy of *all* users**

As amended, SB 158 requires social media platforms to use a “commercially reasonable process” to verify users’ ages and “retain” data on “users’ identities and activities” for at least a year, a tremendous encroachment on individual privacy that potentially enables misuse of personal information. Inviting an independent third party doesn’t diminish privacy concerns regarding age verification; it merely relocates it. In fact, verifying the age of a user will require the collection, processing and storage of *more* data, acting contrary to data minimization efforts.

Age verification requirements are often reliant on government-issued IDs, which disproportionately impacts marginalized groups who lack such documentation, including underrepresented racial and ethnic communities and LGBTQ+ youth.<sup>1</sup> Only 25% of 16-year olds possess a driver’s license<sup>2</sup>, and 43% of transgender Americans lack identity

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<sup>1</sup> See <https://www.voteriders.org/analysis-millions-lack-voter-id/>

<sup>2</sup> See <https://www.fhwa.dot.gov/policyinformation/statistics/2020/pdf/dl20.pdf>

documents accurately reflecting their names or gender.<sup>3</sup> Despite efforts to accommodate those without government-issued IDs, research indicates that current age verification methods cannot consistently confirm age while ensuring data privacy for the entire population.<sup>4</sup>

Furthermore, compelling companies to gather personal information from so many users threatens cybersecurity. Specifically, services that cater to LGBTQ+ communities would be at particular risk for targeting since their data could be used for cyberbullying or blackmail. Privacy violations online often lead to violence offline. In 2022, 54% of LGBTQ+ survey respondents reported experiencing severe harassment, including stalking, physical threats, and doxing.<sup>5</sup> And more broadly, malevolent actors will see any covered company as a ripe target for ransomware attacks.

### **Parental controls and disparate impact on marginalized youth**

While the bill's intent to empower parents in supervising their children's online activities is commendable, we are deeply concerned about the significant risks it poses for LGBTQ+ youth, particularly concerning the implications of parental mandates in SB 158, which would require social media companies to provide parental controls and monitoring tools for their children's accounts. This legislation gives parents far-reaching power to “restrict purchases and financial transactions,” “implement maximum daily usage limitations,” “limit of opt out of private messaging and private content features,” and “delete the juvenile’s account and any personal data collected from or shared by the juvenile on the social media platform.” However well-intentioned, this could have dire consequences for the most vulnerable Colorado youth.

LGBTQ+ youth, especially those who may live in communities hostile to their identity, view social media as a crucial tool to connect with LGBTQ+ groups, access content from people's shared experiences, maintain positive connections, and reduce perceived isolation.<sup>6</sup> In fact, only 38% of LGBTQ youth report living in affirming households, while 68% reported finding online spaces to be supportive.<sup>7</sup> As such, LGBTQ+ youth use online platforms to seek emotional support, search for information about their identities, and

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<sup>3</sup> See <https://williamsinstitute.law.ucla.edu/publications/trans-voter-id-impact/>

<sup>4</sup> See <https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>

<sup>5</sup> <https://www.adl.org/sites/default/files/pdfs/2022-09/Online-Hate-and-Harassment-Survey-2022.pdf>

<sup>6</sup> Cesar Escobar-Viera, et. al., “Examining Social Media Experiences and Attitudes Toward Technology-Based Interventions for Reducing Social Isolation Among LGBTQ Youth Living in Rural United States: An Online Qualitative Study.” *Frontiers in Digital Health*, (2022).  
<https://pubmed.ncbi.nlm.nih.gov/35832658/>

<sup>7</sup> See <https://www.thetrevorproject.org/survey-2023/>

find communities that accept them when their own parents do not.<sup>8</sup> While it is important to encourage parental involvement to ensure minors' safety online, parents are not always best suited to control how their child uses a platform.

We agree that it is important to prevent harmful and explicit content online but SB 158's vague definition of "sexual" content poses a direct threat to LGBTQ+ representation and access to information. Historically, discriminatory policies have targeted LGBTQ+ material based on the perception of their identity as solely sexual. Ambiguous definitions and broad categorizations perpetuate these biases online, resulting in disproportionate censorship of LGBTQ+ content.<sup>9</sup> This means even educational or non-sexual LGBTQ+ material risks being suppressed or removed under unclear guidelines.

Moreover, research on teen social media usage has primarily focused on white teens and college students, creating disparities in understanding usage trends and impact for teens of color, resulting in the generalization of findings based predominantly on white youth.<sup>10,11</sup> Despite this, a large body of research focusing on teens of color has found that social media has facilitated academic success, political activism, belonging and community, mentorship, and identity empowerment.<sup>12,13,14</sup> According to a 2023 Common Sense Media report, 71% of adolescent girls of color who use TikTok and 72% who use Instagram report encountering positive or identity-affirming content related to race at least monthly on these platforms.<sup>15</sup> Social media platforms also provide a means for young individuals with disabilities to advocate for themselves, raise awareness about their disabilities, and find community with others.<sup>16</sup> For example, social media is a valuable way to communicate for Augmentative and Alternative Communication (AAC) users, enabling them to build self-identity, express themselves fully, maintain interests, and even take on social roles like blogging or mentoring. Research underscores the

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<sup>8</sup> Michele Ybarra, et. al., "Online social support as a buffer against online and offline peer and sexual victimization among U.S. LGBT and non-LGBT youth." *Child Abuse & Neglect* vol. 39 (2015).

<https://www.sciencedirect.com/science/article/pii/S014521341400283X?via%3Dihub>

<sup>9</sup> See <https://abcnews.go.com/US/lgbtq-community-facing-increased-social-media-bias-author/story?id=85463533>

<sup>10</sup> Hargittai, E., & Hinnant, A. (2008). Digital Inequality: Differences in Young Adults' Use of the Internet. *Communication Research*, 35(5), 602-621. <https://doi.org/10.1177/0093650208321782>

<sup>11</sup> Frey, W. R., Ward, L. M., Weiss, A., & Cogburn, C. D. (2022). Digital White Racial Socialization: Social Media and the Case of Whiteness. *Journal of research on adolescence : the official journal of the Society for Research on Adolescence*, 32(3), 919-937. <https://doi.org/10.1111/jora.12775>

<sup>12</sup> LeBlanc, T. and Loyd, AB. (2022) Freedom dreaming to STEM: A conceptual model for Black youth's racial and STEM identity development through social media. *Front. Psychol.* 13:944207. doi: 10.3389/fpsyg.2022.944207

<sup>13</sup> <https://www.pewresearch.org/short-reads/2020/12/11/social-media-continue-to-be-important-political-outlets-for-black-americans/>

<sup>14</sup> <https://www.bentley.edu/news/why-social-media-source-strength-black-americans>

<sup>15</sup> See page 35: [https://www.common sense media.org/sites/default/files/research/report/how-girls-really-feel-about-social-media-researchreport\\_final\\_1.pdf](https://www.common sense media.org/sites/default/files/research/report/how-girls-really-feel-about-social-media-researchreport_final_1.pdf)

<sup>16</sup> <https://www.reuters.com/investigates/special-report/health-social-media/>

profoundly positive impact of social media on AAC users' lives, including increased interaction, social closeness, reduced isolation, and enhanced independence.

Through its parental requirements and ambiguous definitions, SB 158 would limit and potentially cut off access for individuals under eighteen, disproportionately impacting marginalized communities, exacerbating disparities in access to vital resources, and ultimately cause more harm than good.

### **First Amendment and legal concerns**

SB 158 poses significant legal and practical challenges akin to recent legal challenges. By requiring platforms to verify users' ages, the bill necessitates sensitive data collection, heightening security risks and violating privacy. Courts, including the Supreme Court, have questioned the constitutionality of such mandates, warning of potential constraints on information access and free speech.

SB 158, through its content-based and speaker-based restrictions, infringes upon fundamental First Amendment protections. Similar legislative efforts aimed at restricting minors' access to protected speech have been met with significant judicial skepticism. Courts have consistently demanded a compelling justification for such measures alongside concrete evidence of their necessity and effectiveness in mitigating harm. Recent rulings from courts in Arkansas,<sup>17</sup> California,<sup>18</sup> and Ohio<sup>19</sup> underscore the principle that regulatory measures impacting the core editorial and curatorial functions of social media companies, even when intended to safeguard young users, are subject to rigorous constitutional scrutiny under the First Amendment – and the failure to meet this high bar of constitutional scrutiny renders these attempts legally untenable.

Consequently, SB 158 not only risks chilling speech and hindering the open exchange of ideas that are vital to a free and democratic society but is also likely to be adjudicated as unconstitutional on the grounds of the First Amendment, among other legal and policy considerations.

For these reasons, we ask that you **oppose SB 158**, and we urge you to reconsider the bill's provisions and pursue alternative measures that prioritize both online safety and fundamental freedoms for all Coloradans.

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<sup>17</sup> *NetChoice, LLC v. Griffin*, No. 5:23-cv-05105 (W.D. Ark. filed June 29, 2023). “If the State’s purpose is to restrict access to constitutionally protected speech based on the State’s belief that such speech is harmful to minors, then arguably Act 689 would be subject to strict scrutiny.”

<sup>18</sup> *NetChoice, LLC v. Bonta*, No. 5:2022cv08861 (N.D. Cal. 2023). “[T]he Act’s restrictions on the functionality of the services limit the availability and use of information by certain speakers and for certain purposes and thus regulate[s] protected speech.”

<sup>19</sup> *NetChoice, LLC v. Yost*, 2024 WL104336 (S.D. Ohio Jan. 9, 2024). “As the [Supreme] Court explained, ‘[s]uch laws do not enforce parental authority over children’s speech and religion; they impose governmental authority, subject only to a parental veto.’ The Act appears to be exactly that sort of law. And like other content-based regulations, these sorts of laws are subject to strict scrutiny.”

Sincerely,

Center for Democracy and Technology  
Chamber of Progress  
LGBT Tech  
Woodhull Freedom Foundation