



The Freedom to Write



March 3, 2024

Honorable Kathleen Passidomo
President, Florida Senate
404 S. Monroe Street
Tallahassee, FL 32399-1100

Re: Free Speech Groups Opposition to HB 3: Online Access of Material Harmful to Minors, Senate Amendment

Dear President Passidomo:

We write as a nonpartisan coalition to express our concern and opposition to the Senate Amendment to HB3: Online Access of Material Harmful to Minors (“HB3”). HB3 attempts to bar minors under 14 from social media sites and require parental consent for users “14 or 15 years of age,” creating confusing age verification requirements that infringe on Floridians’ right to privacy. The sweeping exclusion of minors from social media sites and prohibiting their dissemination and receipt of information runs afoul of the First Amendment. This bill was irretrievably flawed when its language was included in HB1 and was vetoed by the governor. The minor changes set forth in HB3 do not cure these constitutional failures. We, PEN America, Chamber of Progress, PRISM, the First Amendment Foundation, ACLU of Florida, the Trevor Project, and LGBT Tech urge the Senate to vote no on HB3.

An open internet—free from government surveillance and censorship—is critical to modern freedom of expression. While the state has a strong interest in protecting minors from harm, “that does not include a free-floating power to restrict the ideas to which children may be exposed.” *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 794 (2011). Minors enjoy significant First Amendment protections “and only in relatively narrow and well-defined circumstances may the government bar public dissemination of protected materials to them.” *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213 (1975).

The Senate should pause and take stock of the depth of this bill's constitutional infringements and its responsibility to not involve the state in expensive and unwinnable litigation. Should this bill be passed, these constitutional concerns will almost certainly result in swift litigation that is already being contemplated.

HB3 includes minor differences from its predecessor, HB1. While it includes a parental consent option that allows parents to decide whether or not their minor children may maintain social media accounts, the vague and confusing language of HB3 and the sweeping prohibitions of youth under 14 from social media sites still infringe upon minors' First Amendment rights.

Additionally, the age-verification requirements in HB3, 501.1737, place barriers between users, whether they are adults or minors, and their constitutional right to speak online. Age verification requirements also blatantly chill the speech and threaten the privacy of adults by requiring them to surrender their anonymity to engage in constitutionally protected speech.

Section 501.1737 represents a specific threat of litigation as it runs contrary to established Supreme Court precedent. The Court has found that statutes restricting constitutionally protected speech will fail if "less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve." *Ashcroft v. Am. C.L. Union*, 542 U.S. 656, 665 (2004) (internal citations omitted). The Court in *Ashcroft* affirmed the injunction of a law remarkably similar to 501.1737, noting that the "purpose of the test is to ensure that speech is restricted no further than necessary to achieve the goal, for it is important to ensure that legitimate speech is not chilled or punished." *Id.*

HB3 is also at risk of swift injunction due to its intrusion on interstate commerce. The Supreme Court has long held that "a state law that has the 'practical effect' of regulating commerce occurring wholly outside that State's borders is invalid under the Commerce Clause." *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 332 (1989). The question of who has the final say on internet regulation is also not up for debate. The Eleventh Circuit unequivocally stated that "Congress has the power to regulate the internet and to prohibit its use for harmful or immoral purposes regardless of whether those purposes would have a primarily intrastate impact." *United States v. Faris*, 583 F.3d 756, 759 (11th Cir. 2009) (internal citations omitted). Florida cannot pass laws that so clearly implicate interstate commerce and make it impossible for social media and internet companies to understand how to comply amongst a national patchwork of state rules and regulations. This is the territory of the federal government.

HB3 will deprive Florida's youth of vital resources, educational engagement, support networks, and opportunities for personal and academic growth. At the end of the day, this bill does not protect children and teens and instead simply prohibits them from sharing and engaging

in a wide swath of constitutionally protected speech. This bill presents specific and significant harm to youth at risk, such as minors living in dangerous or abusive home environments who are frequently in desperate need of connection, resources, and support.

As advocates for free speech, privacy, and the well-being of Florida's youth, we urge you to vote 'no' on HB3. While the state has a legitimate interest in limiting the potential harms of social media, these harms should be addressed in a way that does not encroach upon the First Amendment, Floridians' fundamental right to privacy, and the commerce clause. We believe that any efforts to regulate minors' access to social media must be carefully tailored to address specific harms while preserving Floridians' rights to expression and access to information.

Sincerely,

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Director, PEN America Florida

Kirsten D'Souza
Coalitions Director, Chamber of Progress

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Kara Gross
Legislative Director & Senior Policy Counsel,
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Christopher Marchese
Director of Litigation, NetChoice

Cc: Members of the Florida Senate and Members of the Florida House of Representatives