

## SF 3933 Undermines Parental Choice, Fails Children and Teens, and Violates the First Amendment

March 28, 2022

While well intentioned, we ask that you **not** advance SF 3933 as it:

- Undermines parental choice,
- Removes the access to beneficial technologies from young people, and
- There are clear concerns regarding the proposal's constitutionality.

Many policymakers and voters are understandably concerned about the content children and teenagers may be exposed to on and offline.

As a parent myself, I understand the good intentions of these bills; however, proposals such as SF 3933 are not the solution and will be unconstitutional on First Amendment grounds.

As a result, even though the intentions of protecting teenagers are laudable, the committee should **not advance SF 3933.**

### The Bill Undermines Parental Choice and Creates a False Sense of Security

Today parents have a wide range of opinions of what sort of content they deem appropriate for their children at any age. This includes their decision about whether or not to allow their teenagers to be on social media.

But SF 3933 would undermine parental choice as it dictates to content providers that these teens cannot interact in the ways technologies currently work. In doing so, SF 3933 sends a message to parents that the state, not parents, will determine the specific age at which a child or teenager is ready to interact with technology. Doing so takes away the option from parents to choose the balance and risks that work best for their family and determine when their teenager is ready to interact with technology.

Additionally, the law would create a false sense of security and might mean that parents and other adults won't have important conversations with teens about what to do when exposed to harmful content. With SF 3933, parents are less likely to engage in conversations with their teenagers on how to distinguish reliable sources or the distortion that can come from photo filters. Instead, parents may even let their teenagers engage on social media before they are ready or without critical online safety tools.

A better solution is to empower parents and teenagers to understand the content they consume online and make the appropriate choices. SF 3933 is a one-size-fits-all approach. SF 3933 lacks the nuances of different online experiences and treats all recommendations as equally harmful. The result could be that parents are less likely to talk to their teenagers about the content they are consuming online and create

more secretive behaviors around many devastating issues such as bullying, eating disorders, or depression.

## The Bill Undermines Children and Teenager’s Beneficial Usage of Technology and Requires More Data Collection

Definitions of terms like “social media” used in the bill are incredibly broad and presume all recommendations are potentially harmful to young people. The results would have a negative impact on children and teenager’s ability to use technology in beneficial ways. SF 3933, however, holds all uses of algorithms equal and so penalizes the good elements that can empower, encourage, and protect teens along with the bad.

But SF 3933 not only impacts those traditional social media platforms like Instagram or YouTube, it would potentially impact a far wider array of user generated content sites online including those that would be useful for research and education. For example, given that social media includes any website or app that “allows users to create, share, and view user-created content,” this could include resources such as book review site GoodReads or even newspapers with comments sections. As a result, young people would be unable to receive recommendations done by algorithms that guide them to books based on their previous interests and reviews by similar readers. A newspaper might not be able to recommend further related news stories by algorithm to a student doing research if comments are attached.

Finally, while the goal of SF 3933 is to protect teenagers, it should be noted that it would actually require companies to collect *more* information about users under 18. It is unlikely that the proposal is technologically feasible in many cases, but even if it were, a company would have to know the age of the user and that they were located in Minnesota to then disable any algorithmic recommendations. In order to do so, information that might not otherwise be collected regarding age and location would be needed.

## The Bill Violates the First Amendment and Raises Dormant Commerce Clause Issues

In many cases the proposal might not be technologically feasible and would result in undermining the safety features and SPAM filters that many of us rely on.

In *Sorrell v. IMS*, the Supreme Court ruled that information is speech and that a Vermont law could not prohibit the creation and dissemination of information including the selling of data to a database. Even more relevant here, multiple court cases have held that the distribution of speech, including by algorithms such as those used by search engines, are protected by the First Amendment. This proposal would result in the government restraining the distribution of speech by platforms and Minnesotans access to information. Thus, SF 3933 will be deemed by courts as a violation of the First Amendment.



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### ASHCROFT V. ACLU: SUPREME COURT MAINTAINS BAN ON CENSORSHIP LAW



#### Feature on Ashcroft v. ACLU

The ACLU welcomed a federal appeals court ruling that a law meant to safeguard children against Internet pornography would block lawful and valuable speech for adults.

The case has to do with a law passed by Congress in 1998 called the Child Online Protection Act (COPA), a broad censorship law that severely restricts any speech on the Web that is “harmful to minors,” and imposes steep fines and prison terms for violators. [Read more >>](#)

And while the government is entitled to take reasonable steps to protect minors from harmful content that might otherwise be constitutionally protected, it may not do so in a way that is so broad it limits adults' access to legal content. In *Ashcroft v. ACLU*, the Supreme Court struck down a federal law that attempted to prevent the posting of content harmful to teenagers on the web due to such impact as well as the harm and chilling effect that the associated fines could have on legal protected speech. This bill will face similar challenges.

This proposal should be considered distinct from those proposals that require libraries and schools to have filters on computers or other connected devices through which children and teens access the internet - this is constitutional, in part, because the restrictions are based on receipt of federal and state funding.

However, SF 3933 enjoys no such protections as it is a mandate that specifies that a specific type of technology must be disallowed for all content for users under 18 even if the algorithm is being employed to protect the user from harmful content.

Beyond the significant First Amendment concerns with the proposal also raises concerns that it may violate the dormant commerce clause due to its impact on interstate commerce.

The internet by its very nature is interstate and state regulations such as the ones proposed place a significant impact on interstate commerce and interactions well beyond the young people the law seeks to protect.

The currently broad definitions make it likely that the bill would be interpreted as applying beyond Minnesota's borders but unclear entirely to whom and how.

- If a Minnesota teenager is on a class field trip to Washington, DC does the law still apply?
- What about an Arizona teenager visiting their grandparents in Minnesota?

The lack of clarity provides both uncertainty for companies and constitutional concerns in these scenarios.

Given the negative impacts on parental choice and young people themselves, and its likely unconstitutionality, we ask you to **not** advance SF 3933.

Thank you and we welcome the opportunity to speak with you further about the protection of children and teens online.

Sincerely,

Carl Szabo  
Vice President & General Counsel

**NetChoice**

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



# HF 3724 and SF 3933 would HARM Minnesotan use of...

HF 3724/SF 3933 HARMS use of  
Employment Services like:



HF 3724/SF 3933 HARMS use of  
Education Tools like:



HF 3724/SF 3933 HARMS use of  
Recommendation Services like:



HF 3724/SF 3933 HARMS use of  
Shopping Sites like:



## Oppose HF 3724 and SF 3933.



NetChoice





# Minnesota HF 3724 and SF 3933 violate the First Amendment – just like the Children’s Online Protection Act.

The First Amendment addresses government actions “prohibiting the free exercise thereof; or abridging the freedom of speech.”

Whether it is content based or speaker based restrictions, both create First Amendment violations—just like how *ACLU v. Ashcroft* invalidated the Children’s Online Privacy Act.

By dictating the use or nonuse of an algorithm, the government is intervening in the decision of private businesses around how they disseminate speech or information—another First Amendment violation.

| The Unconstitutional Children’s Online Protection Act   | Minnesota HF 3724 and SF 3933   |
|---|---|
| Purpose is blocking pornography.  | <b>Even broader and less constitutional</b> as its purpose is to block any recommended or sorted content.   |
| Court considered it overly broad as it applied to those under 17.   | <b>Even broader and less constitutional</b> as it applies to those under 18.  |
| Attempted to narrowly define “harmful to minors” is narrowly defined as porn under the Supreme Court’s Miller test. | <b>Even less constitutional</b> as core terms like “targeting” are undefined or defined exceptionally broadly like “algorithm” —together and individually these ambiguities and over-inclusive provisions will <b>chill constitutionally protected speech</b> . |

Under First Amendment analysis, legislation must have compelling governmental interest and be narrowly tailored to achieve that interest.

While protecting children may be a compelling government interest, the law fails to be narrowly tailored. We can see this both in the *ACLU v. Ashcroft* decision and the realities of modern parenting in a digital age.

## Oppose HF 3724 and SF 3933.



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