



1411 K St. NW
Suite 900
Washington, D.C. 20005
202-525-5717

Free Markets. Real Solutions.
www.rstreet.org

Testimony from:
Josh Withrow, Fellow, Tech & Innovation Policy, R Street Institute

Testimony in Opposition to NH HB 293, “AN ACT preventing minors from accessing obscenity on certain electronic devices with internet access.”

February 5, 2025

New Hampshire House Judiciary Committee

Chairman Lynn and members of the committee,

My name is Josh Withrow, and I am a resident fellow with the Technology and Innovation Policy team at the R Street Institute, which is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including the technology and innovation sector. This is why we have a strong interest in House Bill 293.

HB 293 requires every mobile phone or tablet activated within the state of New Hampshire to have a built-in “obscenity filter” that is enabled by default. Although the aim of the bill to protect children from exposure to obscene content is meritorious, a device-level content filter mandate is likely to prove ineffective and be found unconstitutional because it poses an unduly broad burden on accessing speech.¹ It also substitutes a government mandate for parental choice in how to best protect children and teens who are given access to cell phones and tablets.

Practically speaking, the bill would require mobile device manufacturers to run a modified operating system that builds a default-enabled content filter into every device sold in the U.S., because it applies to any such device “when activated in this state.” This filter must block obscene materials accessed via

¹ For more on R Street’s analysis on the problems posed by device content filter mandates, see: Josh Withrow, “Device-level Content Filter Mandates Defy Common Sense and the Constitution,” R Street Institute, June 1, 2023. <https://www.rstreet.org/commentary/device-level-content-filter-mandates-defy-common-sense-and-the-constitution/>



1411 K St. NW
Suite 900
Washington, D.C. 20005
202-525-5717

Free Markets. Real Solutions.
www.rstreet.org

“[I]nternet browsers or search engines owned or controlled by the manufacturer [...] including blocking known websites linked to obscene content” via any internet connection.²

Better and more thorough means to protect kids from accessing obscene material on a mobile device already exist than what this mandate is likely to accomplish. Two decades ago, the U.S. Supreme Court considered a similarly broad duty to protect against the dissemination of obscene speech in *Reno v. ACLU*, resulting in a unanimous decision to strike down the majority of the Communications Decency Act (CDA) of 1996.³ One of the court’s findings in *Reno v. ACLU* was that “The CDA’s burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the Act’s legitimate purposes.”⁴ Similarly, mandating a new, device-level content filter is redundant with the many other methods of protecting minors from obscene content that already exist—some pre-built into apps, browsers and operating systems, and others which are easily available for parents to download.⁵

Forcing manufacturers to modify their operating systems to include a content filter is far from a less-restrictive way to prevent children from accessing obscene content. That is because adults would still have to figure out how to disable the filter to access the full internet. As a result, these device content filter mandates are likely to face a fate in court similar to that of the CDA.

These government-mandated content filters will also compete with the existing, diverse market for parental online safety tools that already exist. This will doubtlessly undermine investment and innovation in the online safety market, as many parents are likely to default to just accepting and trusting whatever filters device manufacturers can get approved by the government.

The mandate may also send a false signal to parents that the filter-enabled devices are fully safe to protect their kids against obscene content, when in fact it can only prevent a couple of the many ways that such content may be received and accessed. Parental education on the superior resources that are

² New Hampshire General Court, 2025 Legislative Session, House Bill 293, Last accessed February 4, 2025: https://gc.nh.gov/bill_status/billinfo.aspx?id=605&inflect=2

³ *Reno v. ACLU*, 521 U.S. 844 (1997), U.S. Supreme Court, June 26, 1997. <https://supreme.justia.com/cases/federal/us/521/844>.

⁴ Ibid.

⁵ See, e.g., “Child online safety tools,” Competitive Enterprise Institute, <https://cei.org/children-online-safety-tools/> and “Parental Controls,” Internet Matters, <https://www.internetmatters.org/parental-controls/>



1411 K St. NW
Suite 900
Washington, D.C. 20005
202-525-5717

Free Markets. Real Solutions.
www.rstreet.org

already available to protect their children online would be a more effective way of protecting kids than placing the onus on device manufacturers.

Altogether, HB 293 creates a new government mandate that would impose additional burdens for both device manufacturers and their users, in order to solve a problem for which superior private solutions already exist. Rather than burdening every adult who buys a smart device with having to figure out how to disable content filtering on their device, the responsibility should lie with parents to configure as they see fit any device to which their children may have access. And ultimately, if enacted, the bill will likely end up struck down by the courts on First Amendment grounds, after costly litigation. For these reasons, we urge you to oppose HB 293.

Thank you for your time,

Josh Withrow
Fellow, Technology & Innovation Policy
R Street Institute
(540) 604-3871
jwithrow@rstreet.org