

# Comment Report

SF 402

A bill for an act prohibiting the state or a political subdivision of the state from entering into contracts with, or providing tax incentives or any other benefits to, certain companies that censor online content, and including effective date and applicability provisions.(See SF 571, SF 580.)

Subcommittee Members: Chapman-CH, Mathis, Schultz

Date: 02/24/2021

Time: 08:30 AM

Location: RM 24A

**Name:** Carl Szabo

**Comment:** We respectfully ask that you not advance SF 402, because it: Impedes the ability of platforms to remove objectionable content. Takes away government incentives from service providers that block SPAM. Violates conservative principles of limited government and free markets. Violates the First Amendment of the US Constitution. SF 402 discourages the moderation of objectionable and extremist content and will result in many of the problems we outline in the attached testimony.

Carl Szabo, Vice President and General Counsel  
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[www.netchoice.org](http://www.netchoice.org)

February 21, 2021

RE: **Opposition to SF 402 regarding online content censorship**

We respectfully ask that you **not** advance SF 402, because it:

- Impedes the ability of platforms to remove objectionable content.
- Takes away government incentives from service providers that block SPAM.
- Violates conservative principles of limited government and free markets.
- Violates the First Amendment of the US Constitution.

SF 402 discourages the moderation of objectionable and extremist content and will result in many of the problems we outline below.

## **SF 402 impedes the ability of websites and platforms to remove objectionable content**

The First Amendment protects a lot of content that we don't want on our websites or for our children to see. The First Amendment protects pornography. The First Amendment protects extremist recruitment speech. The First Amendment protects bullying and other forms of verbal abuse.

Today, online websites and platforms take significant steps to remove this type of content from their sites. In just the six-months from July to December 2018, Facebook, Google, and Twitter took action on over 5 billion accounts and posts.<sup>1</sup> This includes the removal of 57 million instances of pornography. 17 million instances of content related to child safety.

Yet the removal of content related to extremist recruitment, pornography, and child safety is impeded by SF 402. This is because it essentially penalizes platforms for removing content that constitutes "constitutionally protected speech."

Imagine an extremist group making posts that read, "Join us to help America." Blocking or removing this statement would result in the platform losing all of its government benefits under SF 402, as it is constitutionally protected speech.

The end result is that websites and platforms will err on the side of leaving up lewd, lascivious, and extremist speech and content, making the internet a much more objectionable place to be.

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<sup>1</sup> See *Transparency Report*, at <http://netchoice.org/wp-content/uploads/Transparency-Report.pdf>

## SF 402 takes away incentives from providers that block SPAM

Today, platforms engage in robust content blocking of SPAM. But this blocking of not only unwanted but invasive content would result in the loss of all their government benefits under SF 402.

For decades, service providers have fought bad actors to keep our services usable. Through blocking of IP and email addresses along with removing content with harmful keywords, our services are more useful and user friendly. But services would be punished for doing this type of blocking under SF 402.<sup>2</sup>

Taking away platform's ability to remove SPAM content without jeopardizing all of their government benefits would contradict Congress's intent to "remove disincentives for the development and utilization of blocking and filtering technologies."<sup>3</sup>

## SF 402 violates conservative values of limited government and free markets

In 1987, President Ronald Reagan repealed the equivalent of SF 402, the infamous "Fairness Doctrine," a law requiring equal treatment of political parties by broadcasters. In his repeal, President Reagan said:

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*"This type of content-based regulation by the federal government is ... antagonistic to the freedom of expression guaranteed by the First Amendment.  
In any other medium besides broadcasting, such federal policing ... would be unthinkable."<sup>4</sup>  
– President Ronald Reagan*

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We face similarly unthinkable restrictions in SF 402, which condition generally applicable benefits on the condition that online platforms refrain from moderating their services in ways that they see fit for their customer base.

Today, conservative speech has never been stronger. No longer limited to a handful of newspapers or networks, conservative messages can now reach billions of people across thousands of different websites and platforms.

We've seen the rise of conservative voices without relying on a column from the Washington Post or New York Times, or a speaking slot on CNN. Social networks allow conservative voices to easily find conservative viewers.

All of this was enabled at effectively no cost to conservatives. Think about conservatives like Ben Shapiro and Mark Stein, whose shows are available to anyone with an internet connection and on whose websites conservatives can discuss and debate articles via the comments section.

Nonetheless, there are some who seek government engagement to regulate social networks' efforts to remove objectionable content. This forces us to return to an era under the "fairness doctrine" and create a new burden on conservative speech.

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<sup>2</sup> See, e.g. *Holomaxx Technologies Corp. v. Microsoft*, 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (That case involved an email marketer sued Microsoft, claiming that the SPAM blocking filtering technology Microsoft employed was tortious.)

<sup>3</sup> *Id.* at 1105 (citing 47 U.S.C. § 230(b)(4)).

<sup>4</sup> Veto of Fairness in Broadcasting Act of 1987, 133 Cong. Rec. 16989 (June 23, 1987), available at <http://www.presidency.ucsb.edu/ws/?pid=34456>.

SF 402 also violates the American Legislative Exchange Council (ALEC) [Resolution Protecting Online Platforms and Services](#), which says:

WHEREAS, online platforms are businesses that should be allowed to operate in ways that best serve their users — and the government should not interfere with these businesses in order to advance a particular belief or policy;

WHEREAS, even if online platforms were to exhibit political bias in content display or moderation, the First Amendment protects this exercise of editorial discretion from government intervention; ...

THEREFORE LET IT BE FURTHER RESOLVED, ALEC finds that it is well settled that the First Amendment restricts the government from regulating speech or restricting the publishing rights of online platforms or services, including the right to curate content.

As President Ronald Reagan said, “Government is not the solution to our problem; government is the problem.” Government regulation of free speech online would not safeguard the future of conservative speech. It would endanger it.

## **SF 402 violates the First Amendment of the US Constitution**

The First Amendment makes clear that government may not *regulate* the speech of private individuals or businesses. This includes government action that essentially compels speech – i.e., forces a website or platform to allow content they don’t want.

While government entities do have some leeway to condition funding on specific requirements, they still may not deny benefits in a way that infringes on a constitutionally protected interest.<sup>5</sup> When the government conditions a benefit in a way that impacts a constitutionally protected interest, it must be reasonably necessary to effectively advancing the reason the benefit was being offered. SF 402 violates the First Amendment as its overbroad conditioning of all government benefits is based on a requirement that is not reasonably necessary to advancing their purpose.

Imagine a private Church Chat site being required by the government to allow atheists’ comments about the Bible to receive any of the same benefits everyone else receives. That would violate the First Amendment. But that is exactly what SF 402 does.

As NetChoice favors limited government, a free-market approach, and adherence to the United States’ Constitution, we respectfully ask you to **oppose SF 402**.

We appreciate your consideration of our views, and please let us know if we can provide further information.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

*NetChoice works to make the Internet safe for free enterprise and free expression. [www.netchoice.org](http://www.netchoice.org)*

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<sup>5</sup> See *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).



## RESOLUTION PROTECTING ONLINE PLATFORMS AND SERVICES

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WHEREAS, the Internet has created millions of new American jobs and generated billions of dollars in revenue for American businesses;

WHEREAS, online platforms enabled users to generate, upload, and share their own content, and this capability has become a core component of the online experience;

WHEREAS, ALEC's principles of limited government and free markets suggest that the government should continue to take a light-touch approach to regulation online platforms and services;

WHEREAS, online platforms are businesses that should be allowed to operate in ways that best serve their users — and the government should not interfere with these businesses in order to advance a particular belief or policy;

WHEREAS, even if online platforms were to exhibit political bias in content display or moderation, the First Amendment protects this exercise of editorial discretion from government intervention;

WHEREAS, ALEC's principles of limited-government and free markets oppose the use of antitrust law for political purposes;

WHEREAS, even the threat of legal action can significantly affect the exercise of speech rights protected by the First Amendment, and thus also raises constitutional concerns;

WHEREAS, Section 230 of the Communications Decency Act of 1996 is a federal law limiting the liability of online platforms and services for content that they themselves did not share in creating and has been vital to the growth of user-generated content and free expression online;

WHEREAS, Section 230(c)(1) of the Communications Decency Act ensures that websites will not be held liable as publishers for how they arrange, promote, or prioritize content, unless they are responsible for creating it;

WHEREAS, Section 230(c)(2)(A) of the Communications Decency Act limits the liability of online platforms for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable”;

WHEREAS, Section 230 limits the government’s ability to prosecute social media companies in parallel with the First Amendment’s protection of editorial discretion;

WHEREAS, Section 230 does not shield online platforms from liability for violations of federal criminal law or intellectual property law; and

WHEREAS, the sheer volume of user-generated content hosted by online platforms is so vast that, as Congress presciently recognized in enacting Section 230, imposing legal liability for content moderation decisions will significantly chill content moderation or simply cause online services to decline to host user-generated content;

THEREFORE LET IT BE RESOLVED, ALEC finds that any antitrust action against any online platform or service must not be initiated based on its viewpoint or the procedures it uses to moderate or display content. Any antitrust suit should be based solely on a bona fide violation of antitrust laws, which require proof of economic injury to consumers through a reduction in competition.

THEREFORE LET IT BE FURTHER RESOLVED, ALEC finds that it is well settled that the First Amendment restricts the government from regulating speech or restricting the publishing rights of online platforms or services, including the right to curate content.

THEREFORE LET IT BE FURTHER RESOLVED, ALEC finds that online platforms and services do not lose Section 230 protections solely by engaging in moderation of content created by other individuals, and, indeed, Section 230 was intended to encourage such moderation by limiting second-guessing of such decisions.

THEREFORE LET IT BE FURTHER RESOLVED, ALEC opposes any amendment of Section 230 of the Communications Decency Act that would reduce protections for the rights to freely speak, publish or curate content online, as the law already enables prosecution of online platforms and services for violations of federal criminal law or intellectual property law.

**Name:** Tyler Diers

**Comment:** February 24, 2021 The Honorable Jake Chapman Iowa Senate State Capitol 1007 E. Grand Avenue Des Moines, IA 50319 RE: Opposition to SF 402 Good morning Mr. Chairman and members of the Subcommittee. My name is Tyler Diers and I am the Midwest executive director for TechNet. I am here today to respectfully submit testimony in opposition to SF 402 (Chapman), which will subject Iowa residents to more abhorrent and illegal content on the internet by forcing private companies to keep objectionable content on their platforms. TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50 state level. TechNets diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents more than three and a half million employees and countless customers in the fields of information technology, ecommerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. Our members are committed to keeping their users safe online, which is why social media companies review millions of pieces of content every day in order to remove harmful content that conflicts with their policies. Iowa should encourage these companies to have content policies, as they govern the removal of content showing the exploitation of children, bullying, harassment, gore, pornography, and spam. Instead, SF 402 perversely creates an incentive for companies to not prohibit and remove any objectionable content in order to keep tax incentives for projects that are providing jobs and economic development in the state. Private companies understand that they have an obligation to remove objectionable content, otherwise their users will be subjected to dangers like images of child endangerment, financial scams, spam, and other nefarious links. Companies take this responsibility seriously, removing harmful content in an unbiased manner while keeping their services open to a broad range of ideas. Say for example you live next door to a white supremacist, and that individual is posting obscenely racist remarks on social media, and the company removes the content; under this bill they would run the risk of losing any economic benefits they have in the state. Take the same situation but instead, the individual was yelling racist remarks in a restaurant. The restaurant has a right to remove someone from their establishment if they're acting obscene. Television shows get cancelled often because of unpopular opinions portrayed on the show or by an actor or actress, oftentimes at the pressure of advertisers. This isn't a violation of free speech; these are private entities. Under this bill, private companies would be forced by government to house on their servers objectionable speech inconsistent with their beliefs, and against their will. Policymakers should be encouraging incentive programs and tax policies that attract and grow jobs in the State of Iowa. It would be bad public policy for the legislature to weaponize economic development programs in order to forward a political agenda at the expense of the states economic interests. Iowa has made itself a significant leader in the Midwest for technology investment, particularly that of data centers. By considering this legislation, the states business environment and reputation would be damaged as companies that were considering moving to the state would have to weigh whether or not it is worth angering a set of lawmakers. And it's not just prospective tech companies looking to expand in the state, but other industries as well. Additionally, the bill runs counter to the American free speech law governing content liability on the internet, Section 230 of the federal Communications Decency Act. Since its enactment in 1996, Section 230's two key provisions have empowered online intermediaries to remove harmful content while providing them with the same conduit immunity that commonly exists in other real world offline contexts for example, not holding a bookseller liable for libelous books, but rather the individual who committed the libel. Due to Section 230, American companies have the right to curate information on their service to meet the needs and expectations of their customers. Section 230 has supported innovation across the internet while also encouraging companies to be Good Samaritans by allowing them to restrict access to or availability of material that the provider or user considers to



be obscene, lewd, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected. For these reasons, TechNet opposes SF 402. We thank you in advance for your consideration, and thank you for allowing me to testify this morning. Sincerely, Tyler Diers  
Executive Director,  
MidwestTechNet



**TECHNET**  
THE VOICE OF THE  
INNOVATION ECONOMY

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February 24, 2021

The Honorable Jake Chapman  
Iowa Senate  
State Capitol  
1007 E. Grand Avenue  
Des Moines, IA 50319

*RE: Opposition to SF 402*

Good morning Mr. Chairman and members of the Subcommittee.

My name is Tyler Diers and I am the Midwest executive director for TechNet. I am here today to respectfully submit testimony **in opposition to SF 402** (Chapman), which will subject Iowa residents to more abhorrent and illegal content on the internet by forcing private companies to keep objectionable content on their platforms.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents more than three and a half million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

Our members are committed to keeping their users safe online, which is why social media companies review millions of pieces of content every day in order to remove harmful content that conflicts with their policies. Iowa should encourage these companies to have content policies, as they govern the removal of content showing the exploitation of children, bullying, harassment, gore, pornography, and spam. Instead, SF 402 perversely creates an incentive for companies to not prohibit and remove any objectionable content in order keep tax incentives for projects that are providing jobs and economic development in the state.

Private companies understand that they have an obligation to remove objectionable content, otherwise their users will be subjected to dangers like images of child endangerment, financial scams, spam, and other nefarious links. Companies take

this responsibility seriously, removing harmful content in an unbiased manner while keeping their services open to a broad range of ideas.

Say for example you live next door to a white supremacist, and that individual is posting obscenely racist remarks on social media, and the company removes the content; under this bill they would run the risk of losing any economic benefits they have in the state. Take the same situation but instead, the individual was yelling racist remarks in a restaurant. The restaurant has a right to remove someone from their establishment if they're acting obscene. Television shows get cancelled often because of unpopular opinions portrayed on the show or by an actor or actress, oftentimes at the pressure of advertisers. This isn't a violation of free speech; these are private entities. Under this bill, private companies would be forced by government to house on their server's objectionable speech inconsistent with their beliefs, and against their will.

Policymakers should be encouraging incentive programs and tax policies that attract and grow jobs in the State of Iowa. It would be bad public policy for the legislature to weaponize economic development programs in order to forward a political agenda at the expense of the state's economic interests. Iowa has made itself a significant leader in the Midwest for technology investment, particularly that of data centers. By considering this legislation, the state's business environment and reputation would be damaged as companies that were considering moving to the state would have to weigh whether or not it is worth angering a set of lawmakers. And it's not just prospective tech companies looking to expand in the state, but other industries as well.

Additionally, the bill runs counter to the American free speech law governing content liability on the internet, Section 230 of the federal Communications Decency Act. Since its enactment in 1996, Section 230's two key provisions have empowered online intermediaries to remove harmful content while providing them with the same "conduit immunity" that commonly exists in other real world offline contexts – for example, not holding a bookseller liable for libelous books, but rather the individual who committed the libel.

Due to Section 230, American companies have the right to curate information on their service to meet the needs and expectations of their customers. Section 230 has supported innovation across the internet while also encouraging companies to be "Good Samaritans" by allowing them to "to restrict access to or availability of material that the provider or user considers to be obscene, lewd, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected."

For these reasons, TechNet opposes SF 402. We thank you in advance for your consideration, and thank you for allowing me to testify this morning.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tyler Diers', is positioned above the typed name.

Tyler Diers  
Executive Director, Midwest  
TechNet

Cc: Senators Mathis and Schultz

**Name:** Colleen Daley

**Comment:** IA respectfully opposes SF 402 because it would impede internet companies ability to moderate harmful online content by exposing companies to litigation and penalties when they moderate such content on their platforms as outlined in the attached letter in opposition and testimony.



February 23, 2021

The Honorable Josh Schultz, Chair  
Senate Committee on Commerce  
State Capitol  
1007 E. Grand Avenue  
Des Moines, IA 50319

RE: SF 402 - Internet Association Opposes

Dear Chairman Schultz and Members of the Committee:

Internet Association (IA) appreciates the opportunity to explain our opposition to SF 402 regarding online content moderation.

IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. Our mission is to foster innovation, promote economic growth, and empower people through the free and open internet. We believe the internet creates unprecedented benefits for society and the economy and, as the voice of the world's leading internet companies, IA works to ensure legislators, consumers, and other stakeholders understand these benefits.

IA explains, below, how Section 230's protections benefit consumers, but first it is important to note that your bill raises important constitutional concerns. As you know, Iowa's Constitution, Article 1, Section 7 protects freedom of speech. It is well established that the companies covered by this bill have First Amendment rights in their content moderation decisions. Justice Kavanaugh wrote for the Supreme Court that such rights are an inherent part of their property rights. Thus, we believe that SF 402 is unlikely to survive scrutiny in the courts, but there are also important policy reasons why it should not move forward.

In 1996 the US Congress passed Section 230 of the Communications Decency Act (Section 230) with bipartisan support. The purpose was to ensure that online service providers could allow individuals to post content to their platforms and that the platform could moderate that content without being legally viewed as the "publisher." Without Section 230, the law could treat a provider who turns a blind eye to harmful content more favorably than a platform that takes action to try to protect consumers. *Congress made clear its intent that Section 230 should empower providers to engage in content moderation.*

The plain language of Section 230, and decades of case law, have allowed online platforms to make their services safe for users and delete harmful, dangerous, and illegal content. Internet companies work hard to do this consistently through the use of machine learning and human review, and these efforts will continue to improve as the technology does.

In order to realize the full benefits of online services, it is critical that service providers are able to set and enforce robust rules designed to protect the quality and integrity of their services. Today, providers



regularly take action against spam, malware and viruses, child sexual abuse material, scams, threats and harassment, impersonation, non-consensual intimate images, and other content that, regardless of whether illegal or legal, is harmful to the users of their services and the public at large. SF 402 would put the safety measures providers take on a daily basis at risk by seeking to limit the scope of enforcement that can be undertaken without the threat of litigation and numerous other punitive measures. Consumers will not benefit from this.

Decisions regarding the removal of objectionable content are sometimes easy and uncontroversial, but other times these decisions are not black and white, they are tough calls, different shades of gray, where reasonable individuals can disagree with the results. Regardless, these decisions are made constantly and as consistently as possible as 100s of millions of pieces of new content are shared every single day across social media platforms. The companies aren't perfect, but they are doing their best to be a place where ideas can flourish while also enforcing these basic community standards.

SF 402, however, would put online companies in the position of defending these content moderation decisions in the court of law. Regardless of whether a platform was acting appropriately under the bill, individual users would still be empowered to sue and take the company to court to challenge content decisions. This would be an untenable situation, leading either to a more curated internet (where less diverse voices can be heard), or to an unbridled internet where harmful content overwhelms the healthy discourse and exchange of ideas that we all desire.

For those reasons, IA requests the Senate Commerce committee not move SF 402 forward. If you have any questions please reach out to me at [colleen@internetassociation.org](mailto:colleen@internetassociation.org) or 773-425-8515.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads 'Colleen Daley'.

Colleen Daley  
Director, Midwest Region, State Government Affairs