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Testimony from:

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In Opposition to SF 580, "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."

March 22, 2021

Chair Holt, Vice Chair Gustafson, Ranking Member Wolfe and members of the House Judiciary Committee:

Protecting free speech online is a challenge worth exploring, and the public has consistently voiced concerns regarding the moderation practices of many of the major social media platforms. However, federal law strikes a delicate balance designed to incentivize the removal of harmful, obscene or otherwise unwanted content while ensuring platforms do not unnecessarily limit the ability for their users to communicate.

This bill would threaten this delicate balance by adding uncertainty and political pressure onto the scales. This is not only unconstitutional (and likely pre-empted by federal law), but it also could create or expand the harms this body seeks to address. It can be a frustrating challenge for legislators, but we urge this Committee to carefully consider the practical impacts of advancing this legislation, and how those impacts will affect Iowans.

Primarily, the bill prohibits governmental entities from entering into any contract or providing any tax benefits to social media companies unless the company refuses to moderate user-generated content, barring some exceptions.

If Iowa threatens the company with the loss of tax benefits or contracts for moderating content, they will likely refuse to do so at all. Seriously damaging content, especially to children using these platforms, will go unimpeded as platforms worry that any moderation may go too far. For example, the bill tries to target specific categories of content such as "excessively violent content." However, whether specific content is "excessively" violent will be case-specific, meaning a platform that wishes to both moderate excessively harmful content and still receive existing contracts or tax benefits will need to defend each



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decision in court. This is true for obscene material as well, meaning almost any moderation decision could threaten litigation.

Most, especially smaller platforms, will simply decide to refuse to moderate. Iowan children could face significant harms such as terrorist content, violent imagery or obscene material despite efforts to exempt this type of material from the bounds of the bill.

But even beyond the direct effect on Iowans, the bill clearly violates the First Amendment. People all too often blame things like Section 230 for a platform's moderation decision, but these companies have a first amendment right to do so. By threatening the removal of contracts and tax relief on the specific speech that a platform decides to allow or remove, the bill would unconstitutionally infringe on these rights.

R Street understands and appreciates your concerns. The internet allows for people across the globe to connect and share information, and limitations on that ability strike right at the heart of our principles. But the current regulatory regime best supports free speech online because it incentivizes companies to target truly harmful content without fear that this moderation will leave them liable for the content that remains. This bill would upset this fine balance, threatening to increase the spread of harmful, obscene or otherwise objectionable content. R Street therefore respectfully opposes SF 580.

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