

September 17, 2024

The Honorable Cathy McMorris
Rodgers
Chair, House Energy &
Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member, House Energy &
Commerce Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chair McMorris Rodgers, Ranking Member Pallone and members of the House Energy & Commerce Committee:



AMERICAN CIVIL LIBERTIES UNION

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Advocacy Department**
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President

The American Civil Liberties Union urges you to oppose the Kids Online Safety Act (KOSA) both as currently drafted, and as drafted in the proposed amendment in the nature of a substitute (ANS) released today. While we appreciate the Committee's efforts to address the safety of minors online, the "duty of care" in both versions of the bill would stifle critical information about reproductive healthcare, sexual orientation, and gender identity. Both versions would also lead companies to collect more data about us, in an effort to verify the ages of their users in order to comply with the law.

The duty of care in KOSA's ANS would subject platforms to liability for not reasonably preventing and mitigating harms to minors, including "serious bodily harm, serious emotional disturbance, or death." Like in previous versions of KOSA, the FTC could find that platforms violated KOSA by showing minors content that could cause them mental harm. Additionally, platforms would now also be liable for content causing youth "serious bodily harm" – a term that would likely be easily exploited to target content relevant to LGBTQ+ individuals and those seeking gender-affirming care.

In the aftermath of the Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision, digital tools have been pivotal in ensuring youth maintain access to reproductive health care and information. However, we fear that anti-abortion officials are likely to weaponize the duty of care against reproductive healthcare information by claiming that abortion causes emotional disturbance, serious bodily harm, or death. In fact, anti-abortion advocates have long justified abortion restrictions by claiming that abortions are bad for people's health and wellbeing.

Likewise, the internet has been a critical resource for many LGBTQ+ youth in their journey of self-identity and discovery, and youth often turn to online platforms for support that they often lack in their local communities. These online communities keep LGBTQ+ youth informed, connected, and in many cases, alive. Suicide prevention resources, physical health information, and access to information on LGBTQ+ history and culture are key components of the LGBTQ+ digital space. We are concerned that the "duty of care" would



incentivize platforms to remove LGBTQ+ content to avoid legal penalties. As is the case with book bans occurring across the country, anti-LGBTQ+ officials often claim that access to information about sexual orientation and gender identity is harmful to children.

Not only would KOSA lead to the removal of important information for vulnerable populations, but it would also threaten privacy and violate the First Amendment. Because KOSA requires platforms to treat youth differently from adults, platforms would be incentivized to determine the ages of their users. However, doing this necessarily would require platforms to collect more information about us – increasing the likelihood that such information is leaked. Additionally, an age verification requirement would be a federal law preventing adults without valid identification (an estimated [21 million people](#)) from accessing entire websites, in violation of the First Amendment right to speak out and access information. Even those with valid identification might be reluctant to access information online over a fear that a data breach could lead to the disclosure of sensitive information contained within their browsing history.

We urge you to ensure that attempts to create safer spaces for young people do not inadvertently work against everyone's access to necessary information by voting “no” on KOSA and the proposed ANS. Please do not hesitate to contact Jenna Leventoff at jleventoff@aclu.org with any questions or comments.

Sincerely,

A handwritten signature in blue ink that reads "Jenna Leventoff".

Jenna Leventoff
Senior Policy Counsel

A handwritten signature in blue ink that reads "Christopher Anders".

Christopher Anders
Director, Democracy and Technology Division