



**TECHNET**  
THE VOICE OF THE  
INNOVATION ECONOMY

WRITTEN TESTIMONY OF TYLER DIERS  
TECHNET  
Ohio House of Representatives  
HOUSE CIVIL JUSTICE COMMITTEE  
REPRESENTATIVE HILLYER, CHAIRMAN  
IN OPPOSITION TO HB 441

February 1, 2022

Good afternoon, Mr. Chairman and members of the Committee:

My name is Tyler Diers and I serve as the Midwest executive director for TechNet.

TechNet is a national, bipartisan technology trade association advocating for the innovation economy at the federal and state level. We represent 87 member companies in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

I am before you today in opposition to HB 441, a bill related to content moderation.

We're opposed to this legislation for 3 main reasons. First, the internet can be a scary place. 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. Ohio should encourage these companies to have content policies, as they govern the removal of content showing the exploitation of children, child sexual abuse materials, pornography, bullying, harassment, gore, and spam. Instead, this bill perversely creates an incentive for companies to not prohibit and remove any objectionable content in order to avoid the frivolous lawsuits that these bills would create. The result would be the rapid spread of abhorrent and illegal content that will cause real-world harm in Ohio communities and beyond.

Social media 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. In the overwhelming number of cases, removal of offensive content is accomplished as intended.

However, the sheer volume of content – hundreds of millions of posts per day – ensures that both artificial intelligence and human reviewers at companies cannot get it right 100 percent of the time. Billions of transactions, after all, will inevitably lead to errors. It would be fundamentally unfair to implement such a draconian penalty for instances where code misfired or a simple mistake was made.

Second, we believe this bill starts Ohio down a slippery slope of preventing American business owners from making decisions about how their businesses operate. And those decisions relate to whether content that violates community standards must be allowed. After all, if an individual were yelling racist remarks in a restaurant, we'd all agree that the restaurant has a right to remove someone from their establishment for acting that way. So, removing someone espousing a racist viewpoint from a restaurant is okay – but removing a racist post from a social media platform will open the platform up to lawsuits.

And third, courts in Florida and Texas have since determined that these types of bills are an unconstitutional infringement of First Amendment rights. This bill would unconstitutionally require platforms to disseminate, for example, pro-Nazi speech, terrorist propaganda, foreign government disinformation, and medical misinformation. We don't have to wonder about the constitutionality of these bills because courts in Florida and Texas have issued preliminary injunctions against similar bills on constitutional grounds to protect Florida and Texas consumers, small businesses, and free speech. This is not a legal analysis but precedent.

I know we heard a lot about the Declaration of Independence last hearing, but to be sure, free speech is an immutable right protected by the First Amendment, which provides that "Congress shall make no law...abridging the freedom of speech..." The right to free speech ends where it begins: with the plain language of the Constitution which guarantees it. The First Amendment only prohibits Congress – the legislative branch of the United States government – from abridging the right to free speech. The First Amendment does not prohibit private individuals, companies and employers from restricting speech. The social media platforms curating content are privately owned and operated, and they are free to limit the content on their sites without implicating the First Amendment. Thus, the First Amendment is not implicated in the decisions made by *private* social media platforms in this regard.

We thank you for the opportunity to come before you all today. We respectfully ask that you not advance this bill because it would be undoubtedly be a waste of taxpayer resources as it would be enjoined by federal courts for violating the First Amendment of the U.S. Constitution.

Thank you Mr. Chairman and I'd be happy to answer any questions that you may have.