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August 15, 2022

The Honorable Daniel B. Verdin, III
South Carolina Senate Medical Affairs Committee
P.O. Box 142
Columbia, SC 29202

Re: TechNet Input on S. 1373

Dear Chairman Verdin and Members of the Senate Medical Affairs Committee,

I write to respectfully express TechNet's concerns to certain provisions in S. 1373, which consider hosting or maintaining an Internet website with information on abortions a violation of state law.

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. Our diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over five 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.

S. 1373 as filed includes a provision that would consider "hosting or maintaining an internet website, providing access to an internet website, or providing an internet service purposefully directed to a pregnant woman who is a resident of this State that provides information on how to obtain an abortion, knowing that the information will be used, or is reasonably likely to be used for an abortion" as qualifying as aiding and abetting performance or inducement of an abortion in the State. TechNet believes this provision is problematic as it extends liability to companies for actions and content they don't make or create.

The provisions that attempt to regulate communications and internet services and websites violate the First Amendment of the United States Constitution and Section 230 of the Communications Decency Act, a federal law that preempts state regulation of platform liability. As currently written, S. 1373 presents several constitutional challenges. Specifically, the legislation:

1. Violates platforms' rights to editorial discretion under the First Amendment. Bills impermissibly intrude on their editorial discretion to decide what third-party content may be published or removed on their sites, in violation of the First Amendment. See, e.g., *Miami Herald Publishing Co. v. Tornillo*.
2. Results in compelled speech in violation of the First Amendment.
3. Is impermissibly vague in violation of the First Amendment.
4. Has a high chance of having a chilling effect on free speech in collateral censorship in violation of the First Amendment given its overbreadth. In *Smith v. People of the State of California*, the intermediary's "self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered."
5. Violates the Dormant Commerce Clause. The Dormant Commerce Clause "denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce." *Or. Waste Sys., Inc. v. Dep't of Env't'l Quality*, 511 U.S. 93, 98 (1994). One of the ways in which a state law may impermissibly "burden interstate commerce" is when it "has the practical effect of requiring out-of-state commerce to be conducted at the regulating state's direction." *SPGGC, LLC v. Blumenthal*, 505 F.3d 183, 193 (2d Cir. 2007).

In addition to the constitutional challenges regarding the regulation of speech in S. 1373, the Communications Decency Act has an express preemption clause. See 47 U.S.C. § 230(e)(3) ("No cause of action may be brought, and no liability may be imposed under any State or local law that is inconsistent with this section.")

TechNet urges the committee to remove the provision Section 44-41-860 in S. 1373. Thank you for your consideration. Please do not hesitate to contact me if I can provide any additional information.

Sincerely,



Servando Esparza
Executive Director, Southeast
TechNet