

Senate State Affairs Committee

Monday, February 05, 2024 - 8:00 A.M.

TESTIMONY ON: All Subjects

Written Testimony

Name (First & Last)	Subject	Manner Testifying	Representing Company/Organization	City	For / Against	Wish to Testify	District #
Amy Bos	S 1253	V	NetChoice	Boise	Against	Y	19

This bill would immediately invite constitutional challenges. In fact, the Supreme Court has already struck down a similar bill after finding it violated the First Amendment rights to receive information and to free speech.

Additionally, the bill represents a major government incursion into the traditional role that the family has played in Idaho and American history. Parents are the best stewards of their own children, not the state. S 1253 could give families the false impression that parental oversight into the online practices of their kids is no longer necessary, thereby making it more likely young Idaho citizens are exposed to vile content.

Finally, the bill is more likely to freeze the innovation of parental control products rather than spur them. To avoid any of these negative outcomes, the committee should reject S 1253.

G. Scott Shirley	S 1253	IP	Self	Rexburg	For	Y	34
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I was a public school principal for over three decades, though I am not here in that official capacity. I am also a Service Missionary for the Church of Jesus Christ of Latter-day Saints, serving in the Addiction Recovery Program, Likewise, I am not here to testify in that official capacity as well. Instead, on a personal note, based on my own experiences as well a choice, I wish to represent the children of our state.

Imagine driving along a busy highway and noticing an unaccompanied infant child standing in the middle of the highway. Can you see yourself immediately stopping your journey to go to the rescue of that child in danger? Can you see yourself taking the child into your arms and carrying him to safety? The time to reunite the child with his parents comes after provisions for immediate safety have been taken.

As one who conducts twelve-step meetings for those desiring recovery from pornography addiction, many of whom regret the fact they were exposed to pornography as small children, I echo their complaint. No one bothered to stop and rescue an innocent child from the heavy traffic. No one was there to take them into their arms and carry them to safety. No one could bother, besides, it's the

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parents' job to do that.

As one of those small children who was rescued by someone taking the time to stop and help, I urge passage of the proposed Child Safety bill. I believe you can see yourself stopping to help any and all children in danger.

Thank you for your time.

Charles Dunn	S 1253	W	Self	Rexburg	For	N	34
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My name is Charles Dunn, I am currently a student at Brigham Young University-Idaho, studying in the Marriage and Family Studies Department. I was raised in Boise, and have lived in Idaho most of my life. I wanted to share my testimony today regarding the Title 48 New Chapter 21 Child Device Protection Bill.

When I was 14 years old in 2011, I recall coming across pornographic material for the first time on the internet. It was shocking, confusing, and incited feelings I didn't quite understand. In the years since, I have seen a massive expanse in lascivious content wherein now I cannot even complete a simple sudoku puzzle on my phone without advertisement forcing what is effectively pornographic material onto my screen. I believe that it has become far too easy to access this kind of content. It has reached a point where the personal desires of individuals are being disrespected in the name of capitalizing on addictive and alluring content at the expense of young peoples' well-being.

I feel the need to testify regarding this matter because I believe that something needs to be done. One of the reasons we collectively feel so inclined to shield children from matters of a sexual nature is to enable them to learn about sex in a developmentally appropriate manner. Ideally, children learn about sexuality in such a way that doesn't encourage delinquency, doesn't damage their cognitions, and promotes healthy sexual behavior. Those that learn about sexual behavior from pornography can face issues ranging from addiction to stunted emotional development and the propensity to damage relationships with other people. I believe firmly in the right to choose for oneself what they do, though I do not believe that those proprietors of pornography feel the same way. Research has shown that pornography fits into the addiction framework, and shares basic mechanisms with standard substance abuse (National Library of Medicine, 2015).

I agree that parents should have the power to restrict their children's access to pornographic material, and I believe that proprietors of pornography should be required to validate the ages of those who use their services. While I recognize the inherent difficulty in producing a bill that is both fair to businesses and protects those that need to be protected, I believe it to be important. I do not believe that those making money from pornography are enough concerned with what damage their product does to its consumers. In fact, they have plenty of motive to get children hooked on pornography, when they are most vulnerable, and most likely to become

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long-term customers of it.

I would like to thank the Councilmembers for hearing my testimony today, and I only ask that if this bill is not passed, please keep working toward something that would enable us to protect children from those that would expose them to something as dangerous as pornography. If not this, then please, do something.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4600144/>

Matthew Smith	S 1253	IP	Silent Shield	Idaho Falls	For	Y	32
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Expert witness on the connection between pornography and sex trafficking.

Matthew Smith	S 1253	IP	Silent Shield	Idaho Falls	For	Y	32
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Expert witness on the connection between pornography and sex trafficking.

Adam Olson	S 1253	V	Self	Sugar City	For	Y	34
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I believe that it is in a child's best interest to have filters enabled on their phone by default. Soon they will hit the restrictions and then can go from there and feel better protected and at least know that they are there versus the opposite which doesn't let the child know the option.

Tanner Gronowski	S 1253	W	Self and Family	Boise	Against	N	18
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I am against this bill because I am a grown up, a parent, who can BE A PARENT for my children. All of these types of bills, whether for this or things like restricting access to books in libraries, only coddle the bad parents out there. If you can't handle talking to your kids about hard things, maybe you shouldn't be a parent. Grow up, be an adult, and learn how to talk to your kids. Sheltering them from the world only makes it worse when they get their freedom to explore the world.

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Caleb Williamson	S 1253	V	ACT The App Association	Boise	Against	Y	19

We are against the bill.

ACT | The App Association is a global trade association for small and medium-sized technology companies. Our members are entrepreneurs, innovators, and independent developers within the global app ecosystem that engage with verticals across every industry. Our members create innovative solutions that drive the world’s rapid embrace of mobile technology. Their products power consumer and enterprise markets across modalities and segments of the economy.

We strongly oppose SB 1253. While we understand the importance of protecting minors from accessing certain materials on devices, including smartphones and tablets, as well as on the web, we firmly believe that this bill is not the appropriate solution and urge the committee not to proceed with hearings on this bill. Enabling a device filter by default does not actually address the concerns being raised by the bill’s sponsors. In fact, it would undermine innovative approaches by small and medium-sized companies and developers who are building tools to enable a safer experience for minors online, despite the technological challenges..

There are five considerations we urge the committee to consider:

1. Failure to Address Key Concerns: While the intention behind the bill is to protect minors from accessing inappropriate content, the effect of the bill would be to create a state-wide obstacle for all users of mobile devices instead. This approach is both less effective and inadvertently inclusive of more conduct than current methods of shielding minors from inappropriate content online. For example, when parents set up smart devices for their children now, they can configure the device so that access to online content is only possible via the parents’ or guardians’ permission. You could consider investing state resources into education and training programs to help spread awareness of these features. Efforts like these would help enable better protections without imposing impractical requirements on parents, developers, and manufacturers.

2. Substituting Parents with Government Intrusion Would Yield Negative Results: Currently, parents are in control of their children’s access to content on smart devices. It is at parents’ discretion to decide which content their children may access without permission, which content may never be accessed, and which content may be accessed with parental permission. This legislation would fundamentally alter that relationship and put government in the driver’s seat. Not only would parents’ choices be strictly limited, the additional red tape on parents and guardians to verify their identities would be an Orwellian government intrusion that may be impossible for parents and guardians without the time or resources to comply. The current framework for parental control, meanwhile, is far more streamlined and accessible for parents and guardians. App developers currently must accurately indicate the age appropriateness of their apps when distributing through one of the official app stores—or else be subject to removal from the app stores. What about all the

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Caleb Williamson

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harmful content on the internet? When parents configure devices for their children, they can eliminate any possible access to the browser itself, confining their children’s experience to apps that are approved for their ages (apps with browser access are strictly for 17 and over on the app stores). Parents and guardians should not need to comply with layers of government red tape just to effectuate a much weaker level of control than what they currently have over their children’s online experience.

3. Enforcement and Compliance Challenges: Enforcing the proposed legislation poses significant challenges. The internet is vast, decentralized, and global, making effective enforcement of default device filters extremely difficult. The proposal sheds light on a collective action problem for which sole liability on one set of stakeholders is an awkward fit. For example, in order to ensure a device effectively blocks a user’s access to a specific website, that website must send a signal to the device indicating that it is on the harmful content list. Alternatively, the website could send a signal indicating that it is not harmful content. In either scenario, the device maker’s compliance is dependent on every actor on the internet cooperating with a standardized signaling system. With no other actors in the chain sharing this liability, there is little incentive for that cooperation to take place, and more realistically, selling a device for which the main user is under the age threshold is potentially no longer economically feasible. Abandoning the current flexible parental control framework for a sweeping prohibition on access to content that strongly discourages making devices available at all for children is a bad outcome for the app ecosystem—especially developers of educational software—and it is unrealistic to expect that families will accept being unable to purchase a device for their children.

4. Promotion of Electronic Waste: Requiring manufacturers to include a built-in filter for harmful and offensive content in all newly manufactured devices after January 1, 2025 may contribute to electronic waste by potentially rendering fairly new and fully functional devices obsolete. This mandate could accelerate the disposal of existing devices, raising environmental concerns and impacting the overall sustainability of electronic products. The current parental control framework is flexible and proves workable across generations of laptops, tablets, and smartphones. The bill creates a false presumption that older models on the market exacerbate a minor’s access to obscene and harmful content and suggests those devices be thrown to the wayside.

5. Disproportionate Impact on Small and Medium-sized Tech Companies: Small and medium-sized tech companies and developers, like our members, play a crucial role in helping manufacturers turn an ordinary phone or tablet into a smart device – through the creation of the apps and other layers of software are interoperable with the physical devices. They are at the forefront of creating new ways of empowering parents to enable access to educational and beneficial content for their children via smart devices in a way that keeps parents and guardians at the center of their children’s online experience and maximizes their ability to protect them. This legislation, instead of supporting the innovative spirit in the digital ecosystem, undermines the ongoing progress that these businesses and developers are making.

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Caleb Williamson	<i>cont.</i>						19

We encourage the committee to explore alternative approaches that prioritize education, increased awareness of parental controls, and responsible internet usage. By working together to foster digital literacy, awareness, and parental empowerment, we can create a safer environment for minors without stifling innovation or burdening small businesses.

Thank you for your time and consideration. We trust that you will carefully evaluate the points raised and remove the bill from consideration while focusing alternative ways to support both the protection of minors and the growth of the app economy.

Sincerely,

Caleb Williamson
State Public Policy Counsel
ACT | The App Association

Amy Dundon	S 1253	W	American Civil Liberties Union of Idaho	Nampa	Against	N	13
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WRITTEN TESTIMONY IN OPPOSITION TO SENATE BILL 1253
SUBMITTED TO THE IDAHO SENATE STATE AFFAIRS COMMITTEE
FEBRUARY 5, 2024, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION OF IDAHO

Chairman Guthrie and Members of the Committee.

I submit this testimony on behalf of the ACLU of Idaho and in strong opposition to Senate Bill 1253. If passed, SB 1253 would impose sweeping restrictions through censorship of online content. It would require manufacturers of smartphones and other internet-capable devices to equip those devices with automatic age-based censorship filters against certain online materials. The bill would impose criminal liability on manufacturers that do not equip devices with such filters. SB 1253 engenders serious privacy concerns both through its geographic specificity and by requiring all users, including adults, to verify their age upon activating an internet-capable device.

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Amy Dundon	<i>cont.</i>						13

SENATE BILL 1253 THREATENS PROTECTED SPEECH

In Idaho, our State Code (33-2741) and the federal Children’s Internet Protection Act (CIPA) already require the use of technology protection measures, such as filters, to inhibit and prevent obscene materials. Imposing a statewide filter would introduce a prior restraint on speech, which is unconstitutional. This restraint, because it would be enacted by an autonomous filtering system, is not a narrowly tailored instrument designed to limit speech in ways that ensure first amendment rights.

Research shows internet filters often block access to a swath of constitutionally protected speech. Such filters rely on computer code and algorithms that do not reliably interpret and categorize complex human communication, whether text or image. The unreliability of filters extends to sexually explicit content.

To be clear, the government can, and does, restrict narrowly defined kinds of speech, including obscene materials. Such regulations are currently in place across Idaho schools and libraries.

It is, however, against the law for the government to mandate content-based censorship. Such restrictions are in fact only legal when tailored to a specific (and narrow) government interest. Indeed, any and all government censorship must be tailored and narrow in order to avoid violating fundamental speech rights.

SB 1253 COULD CHILL SPEECH

If passed, SB 1253 bill would apply to all digital devices in Idaho. Manufacturers of internet-equipped devices would be required to not only conclusively determine users’ age but would also comprehensively categorize all internet content – and determine which content aligns with (or departs from) the definition of “harmful materials” across Idaho Code. As we have seen in recent years, the definition of “harmful to minors” is a moving target in our state. As a result, SB 1253 could have a chilling effect: manufacturers would likely be overly cautious in their censorship, and therefore, could run the risk of restricting constitutionally-protected speech.

SB 1253 THREATENS PRIVACY

Further, SB 1253 would require online filters activate in, and only in, Idaho. Installing filters for only one state and comparing online

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content to the particularities of that state’s code would likely be expensive and time-consuming. The geographic specificity of the bill opens additional questions of privacy, including whether a manufacturer could be responsible for violations involving a phone purchased in Oregon but activated in Idaho – or purchased in Idaho and activated in Oregon.

INTERNET FILTERS ARE UNRELIABLE

Troublingly, SB 1253 departs from current measures that restrict minors’ access to inappropriate materials (and, importantly, protect youth from harmful materials). The proposed bill would require manufacturers to install internet filters that prevent users access to certain websites on all digital devices. There are several legal issues with this stipulation.

For one, filters like those proposed in SB 1253 routinely and inexplicably block sites that clearly do not fall under the categories proscribed by obscenity laws, nor other regulations, including those outlined by the Children’s Internet Protection Act (CIPA). The unreliability of internet filters is reflected in caselaw; the courts have found, over and over, government regulation on the content of speech violates the United States Constitution.

The flaws inherent in internet filtering like that proposed by SB 1253 have generated a vast body of case law that has, time and again, affirmed that digital/Internet communications are afforded the same level of constitutional protections that books, newspapers, and other forms of speech and expression. The flaws in blocking programs are not a matter of individual flaws in particular products; they are inevitable given the task and the limitations of the technology. Everyone from a Congressional panel to Consumer Reports to parents have found blocking programs to be unworkable.

It is important to mention the context in which this legislation would be applied; our political climate is increasingly divisive. In recent years, notable increases in legislation aims to restrict or altogether eliminate certain kinds of content and speech. Mostly these are materials that portray LGBTQ+ communities in a positive light or even mention homosexuality. Several years ago we saw similar trends in government efforts to censor materials that accurately depict crucial, albeit difficult, aspects of our nation’s troubled history. Senate Bill 1253, given its broad provisions against certain kinds of speech, the well-known issues engendered by filtering, and our current political climate pose real threats to Idaho teens’ fundamental right to free speech and the free exchange of information.

Recent legal complaints indicate filtering technology provides wide latitude for unconstitutional government censorship. For example, websites that discuss minority faiths, including Native American spirituality, have been blocked. As mentioned, websites that affirm the LGBTQ community have also been blocked, as have digital art galleries, blogs, and more. Librarians, teachers, and the U.S. Department

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Amy Dundon	<i>cont.</i>						13
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of Educations have complained openly about unreasonable filtering and its impacts on the educational process. It is, therefore, not too difficult to imagine SB 1253 could implement the kinds of filters that restrict Idaho youth and teens from accessing crucial, accurate, enriching, and educational information about LGBTQ+ communities, reproductive health and sexual education, 19th century American history, and even classic artwork, poetry, or other culturally significant materials.

We urge your opposition to SB 1253. The bill would likely violate fundamental speech rights, would contradict decades of Supreme Court precedent, and is likely unconstitutional. The bill would likely cause a chilling effect by causing device manufacturers to be overly cautious in constructing and implementing filtering systems. What’s more, the bill has troubling implications for Idahoan’s privacy rights.

Respectfully,

Amy Dundon, Legislative Strategist, ACLU of Idaho

Khara Boender	S 1253	V	Computer & Communications Industry Association	Boise	Against	Y	19
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Dear Chair Guthrie and Members of the Senate State Affairs Committee:

On behalf of the Computer & Communications Industry Association (CCIA), I write to respectfully oppose SB 1253.

CCIA is an international, not-for-profit trade association representing a broad cross-section of communications and technology firms. Proposed regulations on the interstate provision of digital services therefore can have a significant impact on CCIA members. In recent sessions, there has been a notable surge in state legislation concerning children's online safety. CCIA and our member companies have a shared interest in ensuring strong protections are in place to protect children and provide parents and adults with simple but effective tools to provide a safe online environment for their families.

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Khara Boender

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Acknowledging policymakers' valid concerns about the online privacy of young individuals, it is imperative to prioritize the establishment of a comprehensive data privacy law applicable to all consumers. This law should incorporate safeguards for sensitive data, specifically addressing information commonly linked to younger users.

CCIA holds a firm conviction that children are entitled to a higher level of security and privacy in their online experiences. Our members continue to invest heavily to provide robust protective features in their devices, websites, services, and platforms. CCIA's members are leading global efforts to implement settings and parental tools to individually tailor younger users' online use to the content and services that are suited to age, unique lived experiences, and developmental needs. For example, best practices currently in place allow parents to set time limits, provide enhanced privacy protections by default for known child users, and other tools to allow parents to block specific sites entirely. In addition to strong technology features, CCIA supports the implementation of digital citizenship curriculum in schools to educate children, parents, teachers, and administrators about online safety and social media use to learn about technology features and existing mechanisms they can use now to protect their children.

It should also be recognized that protecting children from harm online does not include a generalized power to restrict ideas to which one may be exposed. Speech that is neither obscene to young people nor subject to other legitimate laws cannot be suppressed solely to protect young online users from ideas or images that a legislative body thinks are unsuitable for them. Proposals to keep children safe online should be established through a risk-based approach to developing protections for different ages of users and by focusing on tangible harm.

While CCIA strongly supports the overall goal of keeping children safe online, requiring a state-specific default filter is technologically infeasible and would create unobtainable expectations with regard to content that filters can reasonably block. Typically, internet service providers (ISPs) govern which websites users can access. For example, known pirating sites are blocked by ISPs, not the manufacturer who produces the devices. It is also important to note that mobile devices do not have the capability of enabling a filter and other protective features within the borders of a single state, much less change as a mobile device is transported from one state to another.

We appreciate the opportunity to further expand on our concerns with the proposed legislation.

There is a robust market with widely available options across a variety of platforms, operating systems, and devices for consumers to manage and restrict access to certain content.

Currently, there are many different filter technologies in a robust and competitive marketplace that provide individuals, families, and

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Khara Boender	<i>cont.</i>						19
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commercial entities with a wide range of choices, quality, and cost. Mandating that a device activate a “filter” undermines competition for competing products and ignores the different approaches to providing effective protection for networks, devices, and individual applications. Further, there is no “one size fits all” filter that addresses all potential concerns, including adult websites, scenes in mainstream movies, explicit lyrics in recorded music or videos, and a wide variety of adult-themed content that can be found online in a variety of formats. Different technology filters exist to address different types of content for different media, including videos, music, audio recordings, websites, written materials, and visual images.

Additionally, a thriving market currently exists in the realm of online content filters for devices designed for commercial use, a choice embraced by numerous schools. Beyond that, many school districts may opt for additional commercial solutions to enhance their content filtering capabilities. This includes solutions that are installed at the network level that manage what content students can and cannot access while on a school provided network. The decision to use these types of filters at the device and network level is a choice between administrators and parents free of any need of state government intervention or regulation.

It is important to note, however, that while there are many different types of protection technologies to address a wide range of potential harms, no filter is infallible. A law that sets unrealistic expectations for protection that are technologically impossible is a law that will fail to meet its intended purpose, resulting in consumer frustration and costly litigation.

Requiring a content filter intended to prevent younger users from accessing certain content ignores the fact that adults, by and large, are the primary users of the cellular phone and tablet devices that the bill explicitly seeks to regulate.

In the global economy, there are many products and services that we use that are not, by default, designed for younger users. For example, automobiles are designed with seats and seatbelts for adult consumers. However, car seats designed specifically for children’s safety are available and recommended for use to ensure that children are as safe as possible when riding in an automobile. In a similar vein, many devices and services have content filtering technologies that allow parents to individually tailor settings and preferences to enable both adults and children to make appropriate choices about the type of content and services they are able to see and use. These types of filters and settings, however, are not activated by default. SB 1253 could invite significant consumer confusion for adults who are not aware such filters aimed for children are set by default. CCIA would recommend that the use of such filters continue to be voluntary and an opt-in feature for the specific consumers who wish to utilize them.

Businesses operating online depend on clear regulatory certainty across jurisdictions nationwide.

Ambiguous and inconsistent regulation at the state or local levels would undermine business certainty, creating significant confusion

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surrounding compliance. This type of regulatory patchwork may deter new entrants, harming competition, innovation, and consumers. Devices sold into a national market are not and cannot be designed for functionality to trigger by the mere fact that they have moved within a state's borders.

Further, SB 1253 gives rise to substantial liability concerns stemming from the subjective interpretation of what qualifies as "obscene material" or "harmful content." Given diverse individual and community perceptions, there exists a considerable risk of legal liability for companies that struggle to adhere to dynamic and subjective norms, particularly when a device moves across state boundaries. Implementing these subjective requirements lacks technological feasibility.

CCIA advocates for alternative approaches to safeguarding children online such as Florida's recently passed SB 104. This legislation facilitates comprehensive training on internet and social media safety for students, parents, and teachers across the entire state. CCIA urges lawmakers to consider following a framework similar to Florida's law, and refrain from passing alternative regulations until laws like Florida's have been thoroughly implemented, allowing for a more informed assessment of the success of these programs.

Moreover, promoting online safety campaigns like CTIA's mobileparent.org provides an additional avenue for enhancing safety for children online. This offers parents a convenient and readily accessible method to promptly access and implement recommended safety measures in their homes. Both of these approaches avoid imposing a technologically and operationally infeasible law. To prevent the enactment of such legislation, states should explore narrowly tailored, risk-based strategies for crafting protections tailored to various age groups and concentrate on addressing tangible harms.

We appreciate your consideration of these comments and stand ready to provide additional information as the Legislature considers proposals related to technology policy.

Alexis Morgan	S 1253	IP	Idaho Congress of Parents and Teachers (Idaho PTA)	Eagle	For	Y	14
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Yes

Mike Guymon	S 1253	V	Self	Sugar City	For	Y	34
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I support the idea of having a default filter on smartphones that assists parents in encouraging healthy, safe adolescent internet consumption, whether at home or elsewhere. In essence, the filter is designed to filter out material that is harmful to minors. It

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ultimately places the decision in the parents' hands, as they will have the ability to disengage the filter if they choose.

Why the emphasis on this bill? Early exposure to pornography appears to derail healthy sexual development, increase risk of risky sexual behavior in adolescents, and has the potential to increase aggressive and law-breaking behaviors in adolescents. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9309635/>. Also, first time exposure often is in the home (intentionally or by accident) where access to digital devices is the norm. Thus, it would seem to me common sensical to assist parents in helping their children learn to navigate the internet safely, without the fear or concern of "happening" upon a pornographic site. Or if they choose to seek out that material, it may block their access and, hopefully, increase parent-child conversations about the nature of pornographic material. Furthermore, children's brains are still in the development stages for most of their adolescence and into young adulthood. Their brain neural pathways are constantly being built and nurtured / myelinated based on what they are exposed to. Thus, it would make sense that exposure to pornographic material at this age may begin the development of neural pathways that will only thrive if nurtured with pornography. This potentially could wreak havoc on healthy sexual development and healthy relationships.

A few more resources to consider:

Family Research Council: <https://downloads.frc.org/EF/EF12D43.pdf>

https://digitalcommons.georgiasouthern.edu/nyar_savannah/2020/2020/23/; this has a PPTX download which is the presentation referenced in the overview at this link.