

# Testimony Before the Michigan House Committee on Communications and Technology on HB 5597



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Across the country, many citizens are concerned about social media platforms removing content or even cutting some people off from using their services due to political preferences. Indeed my own organization has had its content removed from two different social media platforms because their moderators deemed it violated their terms of use or standards.

And even if we disagree with their decisions in those instances, we entirely support their right to refuse to share some of our content. Companies have rights similar to individuals, including free speech and the freedom to choose which customers they want to serve, and these rights preserve our free and fair marketplace. Like any private business, social media platforms are based on mutually beneficial exchanges where both business and customer benefit. If either the business or customer does not benefit from the exchange, they have the right to walk away. Just as we can decide we don't want to use their services, they can decide they don't want to provide us services. A Christian baker may refuse to make a wedding cake for a gay couple, and a Jewish photographer may refuse to take pictures at a Klan rally, and any customers who don't like those decisions may take their business elsewhere as a result.

The right way to respond to businesses that have policies you don't like is to take your business elsewhere, not use regulations to force those business owners to toe your line.. And social media companies are no exception.

In light of these realities and constitutional protections afforded to individuals and businesses, it is not surprising that laws very similar to HB 5597 passed by the Texas and Florida legislatures last year were promptly overturned by the courts.

Narrowing the scope of this bill to those running for political office in Michigan does not change the fact that such legislation is unconstitutional. It is also antithetical to our American system of democracy to treat political candidates as a special class of citizens under the law. Indeed, the more political candidates are like everyday citizens, and the more ordinary their day to day lives are, the more true we are to the Founding Fathers' vision for our democracy.

HB 5597 would also create a host of impractical problems for regulators, social media companies and the state's local governments. It defines a "social media platform" as "any information service, system, internet search engine, or access software provider." A search engine is not a social media company. Users have no profile and cannot share content on a search engine. Nor do users identify themselves,

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which makes the bills requirement that search engines “provide each user a method by which the user may be identified as a candidate” nonsensical.

The most recent Census of Local Governments reports that Michigan has 2,864 total state and local government units.<sup>1</sup> Cities, counties, townships, villages, school districts, special districts, etc. If, conservatively, each municipality has a dozen elected officials and each office has 2-3 candidates, we are looking at around 60,000 to 90,000 people, or perhaps many more, for whom HB 5597 would create special protections and force social media companies to carry all of their speech regardless of what it is or how harmful or undesirable it is to those companies.

Think of the incentives that would create. Political activists of all stripes, ANTIFA to the KKK, would flood the field of political candidates, if only on paper, for these special protections. Michigan statutes 168.737a states that anyone can become a write-in candidate so long as they file by a certain deadline, for example.<sup>2</sup> It would be a logistical struggle for social media companies to interact with each of Michigan’s local governments to confirm the name of write-in candidates and verify they are actually candidates.<sup>3</sup> Local governments simply do not have the technology to establish databases for social media companies to access. Without this verification, social media companies would be forced to accept any profile which claims to be a write-in candidate. This loophole could be exploited by advertisers, spam, and other unacceptable content producers clogging the feeds of otherwise unsuspecting users. Equally bad, only large established social media companies could possibly try to comply with this, it will most likely preclude any new start up social media company because they could not hope to comply with this law.

HB 5597 also does not provide language regarding the enforcement of these rules or punishment for individuals who claim to social media to be a candidate but are not. The also legislation fails to mention a timeframe for its special protections. Do they end at midnight on election night? What if there is a runoff election? How is the social media company to know of those? In fact, across the board HB 5597 creates a morass of information and operational requirements on social media companies that may cost far more than the benefit of serving residents of Michigan.

HB 5597 violates free speech and the very notion of limited government. The legislation before you is impracticable and would create incentives for widespread abuse that actually may harm democracy and local government campaigns in Michigan in a way that social media content removal in a highly competitive media environment, does not.

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<sup>1</sup> <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>

<sup>2</sup> [http://www.legislature.mi.gov/\(S\(1k0epvwk1yagpen4urgmeaz\)\)/mileg.aspx?page=getObject&objectName=mcl-168-737a](http://www.legislature.mi.gov/(S(1k0epvwk1yagpen4urgmeaz))/mileg.aspx?page=getObject&objectName=mcl-168-737a)

<sup>3</sup> <https://netchoice.org/wp-content/uploads/2021/05/NetChoice-CCIA-Complaint-for-Declaratory-and-Injunctive-Relief-5.27.21.pdf>