No. 23-112

In the
Supreme Court of the United States

FREE SPEECH COALITION, ET AL.,
Petitioners,

v.

KEN PAXTON,
Respondent.

On Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENT

AIDEN HICKMAN

20088
Creekview High School
3201 Old Denton
Carrollton, Texas 75007

NOMI SELLERS
Counsel of Record
20088
Creekview High School
3201 Old Denton
Carrollton,Texas,75007

12/16/24

QUESTIONS PRESENTED

Whether Texas House Bill 1181 should be reviewed with rational-basis review scrutiny or strict scrutiny?

TABLE OF AUTHORITIES

ARGUMENT

I. Part I

whenever the topic of explicit content is brought up, you'd imagine that it would be behind some sort of wall, ID for a strip club, and for a bar, etc etc, so why hasn't porn had this kind of restriction? HB-1181 is the state solution to this problem, in Denver area education telecommunication consortium, inc v. FCC, 518 U.S 727 (1996) it ruled that "The Court held.... allowing them to restrict the transmission of "patently offensive" or indecent programming - is consistent with the First Amendment." this court has previously stated that restricting access to programs that are obscene to minors is constitutional under the first amendment, and HB-1181 expands upon that by limiting the minor's access to the content of porn. as an evolving society, our goal is to be better than we have before.

unlike in Reno v. ACLU, 521 U.S. 844 (1997) this bill is not overbearing on the adult's rights, it barely scratches into it, just as much as it is putting in card information into amazon. Although the court ruled "that the CDA's terms "indecent" and "patently offensive" were too vague" (Reno v. ACLU) HB-1181 is specific in what it wants to put a restriction on. quote from HB-1181, the bill itself "a person's pubic hair, anus, or genitals or the nipple of the female breast; (ii) touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or (iii) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act" this is what the bill puts restrictions on, not works of art, not

regular YouTube videos, explicit content, and ONLY explicit content. it is not an outright ban, but merely a wall that stops minors from accessing this content. not only is this the priority of the state, but it is also the priorities of the parents as well, this bill not only fulfills the job of the state, but also lightens the burden of parents, by making it easier for the parents to stop, and prevent their child from watching porn. in our case, the goal of the state is to prevent children from watching, and accessing pornography. this court has upheld such goals before, but on a lesser level (See Ginsburg) just like whenever Ginsburg was decided, this court should agree with the goals of the state, in that it is not burdensome on the parents, it in fact lightens their burden, by making it easier for the parents to stop their child from accessing pornography.

II. Part II

The First Amendment, ratified in 1791 largely through the efforts of James Madison, states: "Congress shall make no law abridging the freedom of speech, or of the press." However there is a substantial precedent to show that the first amendment does not protect obscene speech. In Miller v. California, 413 U.S. 15 (1973) it is stated point blank “Obscene material is not protected by the First Amendment”. This case has been cited many times including in the opinion of Sable Communications v. FCC, 492 U.S. 115 (1989), “There is no constitutional barrier under Miller

to prohibiting communications that are obscene in some communities under local standards even though they are not obscene in others". We can ban obscene content for minors even if for some minors it is not obscene. Another case that shows the relevance of Ginsberg is Brown, et al. v. Entertainment Merchants Assn. et al., 564 U.S. 786 (2011), "Because speech about violence is not obscene, it is of no consequence that California's statute mimics the New York statute regulating obscenity-for-minors that we upheld in *Ginsberg* v. *New York*. That case approved a prohibition on the sale to minors of *sexual* material that would be obscene from the perspective of a child".

By the end of the 18th century, social attitudes toward pornography were decidedly opposed; today's access to pornography is vastly greater, whereas the prevailing sentiment toward it at that time was one of danger. Still, it should be noted that this view underwent a dramatic change in the course of the 1950s and later. The reason for this change was not an academic or philosophical one, but rather driven by fears about the potential consequences of pornography on children, as a major public health concern and raising deep questions about what constitutes obscenity. This point will no doubt be confirmed by research centers, institutions, and agencies that have done work to point at the possible harm that can come from youthful access to pornography, including the National Institutes of Health and the American College of Pediatricians.

Thus, in the landmark case, Ginsberg v. New York 390 U.S. 629 (1968), which is still good law, the courts of law recognized and found that there is a valid and

proper governmental interest in restricting and circumscribing the availability of pornography to children. The courts further held that such regulations are constitutionally acceptable and valid, when viewed and analyzed under a rational basis level of scrutiny. This landmark case set a memorable precedent which clearly distinguished the availability of adult material to adults from the access that could be allowed to minors, strongly underpinning the protection to be afforded to the younger generation. The details of this far-reaching legislative scheme are even more convoluted in reviewing the specific case of Ashcroft, 535 U.S. 234 (2002). Other requirements as to age verification have thus been put forward and adopted in this case, adding more complexities to the practicality of the law. This has thus shifted the burden of satisfying the provisions of the meeting, and accordingly, the current legislation still prescribes specific provisions applicable to specified businesses. This is as a substitute for requiring those who serve as providers of content to do their due diligence. This kind of provision helps to create a business-operating atmosphere that grows more manageable and possible with time.

The ruling in United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000) upheld and reaffirmed the basic premises created by the Ginsberg case. It reaffirmed the critical distinction that, while the First Amendment guarantees adults the right to view a wide range of works, the same protection does not apply to children. The ruling also made clear that a legislative body does have the constitutional authority to pass laws specifically

designed to protect children from access to adult materials, without enacting an outright ban of such materials. As such, it has been reiterated in subsequent case law that the First Amendment rights afforded to adults do not automatically transfer to minors in the same manner. This only creates a huge responsibility for the government to take serious measures in protecting such vulnerable groups from destructive influences they may be easily swayed by.

We should not go back on our previous president because of baseless claims of hardship as previously stated.

Respectfully submitted,

AIDEN HICKMAN

20088
Creekview High School
3201 Old Denton Road
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Counsel of Record
20088
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