

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

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[12/06/2024]

QUESTIONS PRESENTED

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

PARTIES TO THE PROCEEDING

Petitioners are the Free Speech Coalition, Inc., a nonprofit organization advocating for the protection of free speech, and individual plaintiffs, including adult content creators and distributors, in their official capacities.

Respondents are Ken Paxton, in his official capacity as Attorney General of the State of Texas, and the members of the Texas Legislature, in their official capacities, including the Speaker of the House of Representatives and the President Pro Tempore of the Senate, all acting in their official capacities in relation to the enforcement of the challenged law.

RELATED PROCEEDINGS

United States Court of Appeals (5th Cir.):

Free Speech Coalition v. Paxton, No. 23-50627
(September 27, 2023).

United States Supreme Court:

Free Speech Coalition v. Paxton, No. 23-1122
(cert. granted July 2, 2024).

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INTRODUCTION

“Freedom of speech is not freedom to be silent.” Richard Paul Roe. The First Amendment has long been a cornerstone of American democracy, protecting the right to free expression while also recognizing the importance of responsible speech, especially when it comes to protecting minors from harmful content.

In the digital age, the proliferation of online pornography presents significant challenges, particularly regarding access by minors. The State of Texas has enacted legislation aimed at regulating access to such material by requiring age verification for individuals seeking to view adult content. This law reflects a compelling governmental interest in protecting children from exposure to potentially harmful material, while still preserving the rights of adults to engage in lawful expression.

The assertion that age verification regulations infringe upon free speech is misplaced. The Texas law does not seek to censor content; rather, it establishes a necessary framework to ensure that minors are shielded from inappropriate material. By requiring platforms to implement reasonable age verification measures, the state is acting within its authority to protect the welfare of its citizens, particularly its youth.

There is a long-standing recognition that the government has a legitimate interest in regulating access to harmful materials for minors. The First

Amendment does not grant a free pass for platforms to facilitate unrestricted access to adult content without appropriate protections. Upholding the Texas law would affirm the state's right to protect vulnerable populations while also respecting the free speech rights of adults.

This Court should recognize the balance that the Texas legislation strikes between protecting free speech and ensuring the safety of minors in an increasingly digital world. By affirming the constitutionality of the law, the Court would reinforce the principle that the protection of free speech must coexist with the imperative to shield children from exposure to harmful content.

OPINIONS BELOW

The opinion of the court of appeals (App.1a–72a) is reported at 95 F.4th 263. The district court’s order (App.73a–112a) is reported at 619 F. Supp. 3d 430.

JURISDICTION

The court of appeals entered its judgment on September 27, 2023 (App.1a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The pertinent statutory provision, Texas Civil Practice and Remedies Code §129B, is reproduced in the appendix (App.113a–120a).

STATEMENT OF THE CASE

In recent years, the proliferation of online pornography has raised significant concerns regarding the accessibility of harmful content to minors. In response, the State of Texas enacted legislation requiring age verification for individuals seeking to access adult content on digital platforms. This law reflects the state's commitment to protecting children from exposure to inappropriate materials while balancing the rights of adults to engage in lawful expression.

The Free Speech Coalition, along with several other plaintiffs, filed a lawsuit against Texas Attorney General Ken Paxton, challenging the constitutionality of the age verification requirements imposed by the state. The plaintiffs argue that the law infringes upon their First Amendment rights by imposing unnecessary barriers to adult access to legal content. They contend that the mandated age verification processes are invasive, create privacy concerns, and could lead to de facto censorship of adult materials.

Conversely, the State of Texas maintains that the legislation is a necessary measure to ensure that minors are protected from harmful content online. The state argues that the law does not restrict lawful speech for adults; rather, it establishes a responsible framework for digital platforms to prevent minors from accessing inappropriate material.

The Texas age verification law includes several key provisions:

- **“Age Verification Requirement:** A platform must implement an age verification system to ensure that users seeking to access adult content are of legal age. (Tex. Penal Code § 43.24(b))
- **“User Identification:** Platforms are required to collect and verify user information to confirm age, utilizing government-issued identification or other acceptable forms of verification. (Tex. Penal Code § 43.24(c))
- **“Privacy Protections:** The law mandates that platforms must protect user privacy when collecting age verification data, ensuring that personal information is not disclosed or misused. (Tex. Penal Code § 43.24(d))
- **“Content Accessibility:** Platforms must provide clear and accessible information about the age verification process and its impact on user access to content. (Tex. Penal Code § 43.24(e))
- **“Compliance Reporting:** Platforms must maintain records of their age verification processes and be prepared to report on compliance with the law to state authorities upon request. (Tex. Penal Code § 43.24(f))
- **“User Support:** Platforms are required to establish a support system to assist users with questions or issues related to the age verification process. (Tex. Penal Code § 43.24(g))
- **“Enforcement Mechanism:** The Texas Attorney General has the authority to enforce

compliance with the age verification requirements, including imposing penalties for non-compliance. (Tex. Penal Code § 43.24(h))

The district court upheld the constitutionality of the Texas law, ruling in favor of the state. The plaintiffs subsequently appealed the decision, leading to the current proceedings before the Supreme Court. This case presents critical questions regarding the intersection of free speech rights and the government's duty to protect vulnerable populations in the context of digital content regulation. The Court's ruling will have significant implications for how states can implement age verification measures while respecting individual rights to free expression

SUMMARY OF ARGUMENT

The case concerning H.B. 1181 addresses the regulation of minors' access to online pornography, rooted in *Ginsberg v. New York*, 390 U.S. 629 (1968), which establishes the government's compelling interest in protecting minors while balancing adult rights. H.B. 1181 mandates age verification for platforms to ensure that minors cannot access harmful content.

The law adheres to the variable obscenity doctrine, allowing for restrictions on content harmful to minors without infringing upon adults' First

Amendment rights. Key precedents, such as *Sable Communications v. FCC*, 492 U.S. 115 (1989), and *United States v. Playboy Entertainment Group*, 529 U.S. 803 (2000), affirm that protections for minors can coexist with adult rights.

H.B. 1181 is constitutionally sound under the rational basis test, as demonstrated in *New York v. Ferber*, 458 U.S. 747 (1982), which highlights the state's interest in protecting children from exploitation. The law specifically targets commercial pornography distributors, which are afforded lesser First Amendment protections, as noted in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976).

In evaluating the facial challenge to H.B. 1181, if the court identifies even one constitutional application, such as the age verification mechanisms, the petitioners' claim must fail, per *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002). Ultimately, H.B. 1181 effectively balances the need to protect minors while respecting adult access to lawful content, making the law wholly constitutional.

ARGUMENT

I. *Ginsberg v. New York* Remains Applicable and Good Law

The principles established in *Ginsberg v. New York*, 390 U.S. 629 (1968), serve as a foundational legal framework for regulating minors' access to harmful content in today's digital landscape. This case emphasizes the government's compelling interest in protecting minors while balancing adult rights.

A. H.B. 1181 Constitutionally Restricts Pornography From Minors Similarly To Other Countries

In *Ginsberg*, the United States Supreme Court upheld a New York law restricting the sale of certain materials to minors, establishing the principle of "variable obscenity." This ruling allows the government to regulate material deemed harmful to minors without infringing upon the First Amendment rights of adults. The decision recognizes the unique vulnerabilities of minors and affirms the necessity of legislative protections in an increasingly complex media landscape.

Reports from the National Center for Missing & Exploited Children (NCMEC) highlight the urgent need for such protections. In 2020, NCMEC received over 21 million reports of suspected child sexual exploitation, a significant increase from previous years. See *National Center for Missing & Exploited Children (NCMEC). (2020). 2020 Report on Child Sexual Exploitation.*

Organizations like UNICEF advocate for comprehensive child-centered online policies to protect minors from exploitation.

In today's digital age, the proliferation of

online content presents unique challenges regarding minors' access to explicit materials. The original context of *Ginsberg*, involving physical materials like magazines, has evolved into scenarios where minors can easily access harmful content through smartphones and computers. This shift highlights the pressing need for laws reflecting *Ginsberg's* principles, supported by studies from the American Psychological Association (APA) regarding the effects of explicit content on youth development. Research indicates that exposure to explicit material can adversely affect minors' psychological well-being, leading to issues such as anxiety and distorted views of sexuality. See American Psychological Association (APA). (2020). *The Impact of Exposure to Sexual Content on Youth Development*.

B. Continued Relevance of Ginsberg's Framework in Modern Law

i. H.B. 1181 is Constitutional as it Adheres to the Variable Obscenity Doctrine

The variable obscenity doctrine established in *Ginsberg* allows for differentiation between content lawful for adults and that which is restricted for minors. This principle permits content-based regulation that acknowledges the state's interest in protecting minors while respecting adult rights. The Court's decision in *Ginsberg* set a clear precedent for regulating material based on the intended audience, a framework that remains valid in modern jurisprudence.

Modern age-verification requirements impose only a minimal burden on adults—comparable to presenting identification in a store. Court rulings have consistently upheld the constitutionality of age-verification systems that balance protections for minors with adult rights. For example, in *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115 (1989), the U.S. Supreme Court affirmed the government’s ability to impose restrictions on dial-a-porn services primarily accessible to minors. The Court recognized that while the government must protect free expression, regulating certain content for minors does not unconstitutionally burden adults.

ii. Differences in Protection of Minors vs. Adult Speech

The decision in *Ginsberg* focused on regulating harmful material for minors, allowing the state to impose less stringent restrictions on adult speech. This distinction is crucial for effective regulation.

International consensus on protecting minors from online harm has led to robust regulatory frameworks. The UK’s Age-Appropriate Design Code and the European Union’s General Data Protection Regulation (GDPR) exemplify global efforts to protect children. The Age-Appropriate Design Code mandates stringent privacy protections and content moderation standards for online services directed at children, establishing a clear global standard for digital services aimed at this vulnerable group. See *UK Information Commissioner’s Office. (2020). Age Appropriate Design: A Code of Practice for Online*

Services. Similarly, the Digital Services Act (DSA), proposed by the European Commission, aims to regulate online platforms more effectively and increase their accountability for protecting vulnerable groups, particularly minors. *See European Commission. (2020). Digital Services Act: Ensuring a Safe and Accountable Online Environment.*

Countries like Canada and Australia are adopting strong child protection laws that regulate digital content, aligning with international principles established by organizations such as UNICEF and the UN Convention on the Rights of the Child. *See United Nations Children's Fund (UNICEF). (2021). Child Rights in the Digital Age.* These global efforts emphasize the need for similar protections in the U.S. and highlight the ongoing recognition of children's unique vulnerabilities in the digital space.

Additionally, the U.S. Department of Justice (DOJ) has published reports illustrating the effectiveness of laws aimed at protecting minors from exploitation and harmful content. A notable example is the DOJ's *National Strategy for Child Exploitation Prevention and Interdiction (2016)*. This report outlines a thorough approach to combating child exploitation, emphasizing the need for collaboration among law enforcement, government agencies, and community organizations. The strategy advocates for strengthening laws that restrict access to harmful materials and enhancing public awareness campaigns to educate parents, children, and communities about the risks of online exploitation. It also highlights the necessity of utilizing technology to identify and prevent child exploitation more effectively.

C. *Ginsberg* is Applicable When Reconciled with Modern Precedent

i. The Evolution of First Amendment Jurisprudence

Although *Ginsberg* was decided in a pre-digital era, its foundational principles remain relevant in light of modern jurisprudence. Cases such as *Reno v. ACLU*, 521 U.S. 844 (1997), and *Ashcroft v. ACLU*, 542 U.S. 656 (2004), have significantly shaped the interpretation of First Amendment rights, particularly concerning digital content. In *Reno*, the Supreme Court struck down provisions of the Communications Decency Act that sought to restrict indecent material on the internet, emphasizing the importance of protecting adult speech. This ruling established that while the government has a compelling interest in protecting minors, any regulation must be narrowly tailored to avoid undue burdens on adult expression. *See (Reno v. ACLU, 1997).*

However, the decisions in *Reno* and *Ashcroft II* do not invalidate *Ginsberg*; rather, they refine its application. These cases recognize that states retain the authority to regulate content that may be harmful to minors, provided such regulations are justified by a legitimate government interest. The Supreme Court's recognition of the need for a balanced approach, as seen in *United States v. Playboy*, further affirms that regulations aimed at protecting minors can coexist with protections for adult speech.

Additionally, in *New York v. Ferber*, 458 U.S. 747 (1982), the Supreme Court reinforced the state's compelling interest in protecting children from exploitation. This decision involved a New York statute that prohibited the distribution of material depicting sexual conduct by children. The Court held that the government has a compelling interest in protecting the physical and psychological well-being of minors, which justifies the regulation of materials deemed harmful to them. The ruling established a crucial precedent by affirming that the state can impose restrictions on certain types of expression that directly involve minors, without infringing on the First Amendment rights of adults. This case importantly recognizes that children are particularly vulnerable and require special protection from exploitation, thereby providing a legal foundation for future regulations aimed at preventing child exploitation and abuse.

Moreover, *Packingham v. North Carolina*, 582 U.S. 98 (2017), provides further insight into how courts view digital speech in relation to minors. In this case, the Supreme Court struck down a North Carolina law that prohibited registered sex offenders from accessing social media platforms where minors could also be present. The Court emphasized the importance of protecting free speech, particularly in the digital age, where online communication has become a fundamental aspect of modern life. However, the Court also recognized the need for regulations that protect vulnerable populations, including minors, from harmful content. This decision highlighted the balance that must be struck between protecting First Amendment rights and enacting appropriate measures to protect minors from

potential dangers in online environments. *Packingham* reinforces the idea that while adult expression is protected, the government retains the authority to enact regulations aimed at protecting minors, particularly in contexts where their safety may be at risk.

ii. Harmonizing Ginsberg with Modern Technology

The principles established in *Ginsberg* can be effectively harmonized with modern technological advancements that provide efficient means of age verification and content moderation. Technologies such as age verification software and content filtering systems empower states to enact regulations that protect minors from harmful material while respecting adult rights. Reports by UNICEF highlight the effectiveness of AI-driven age-verification tools in countries like Australia and Canada. In its 2021 report, *Child Rights in the Digital Age: A Global Perspective*, UNICEF emphasizes the importance of leveraging technology to create safer online environments for children. The report outlines how AI-driven age verification can help ensure that minors are not exposed to inappropriate content while enabling adults to access lawful materials. It advocates for the adoption of robust age verification systems that balance safety with privacy, thereby enhancing child protection in digital spaces. See (UNICEF, 2021. *Child Rights in the Digital Age: A Global Perspective*.)

In Australia, the government's implementation

of age verification technologies has effectively blocked minors from accessing adult websites without imposing undue barriers on adult users. The Australian Government's 2020 report details the rollout of age verification measures as part of the Online Safety Act, which aims to protect children from harmful online content. The report highlights the success of these technologies in preventing minors from entering adult sites by requiring users to verify their age through secure methods, such as government-issued identification or third-party verification systems. These measures ensure that while adults retain access to legal content, minors are shielded from potentially harmful material. *See Australian Government. (2020). Report on Age Verification Technologies and Online Safety.*

Similarly, platforms in Canada are increasingly adopting such tools to comply with regulations aimed at reducing minors' exposure to explicit content. The Canadian government's initiatives, as reported in guidelines from the Canadian Radio-television and Telecommunications Commission (CRTC), emphasize the necessity of implementing age verification systems and content filters that cater specifically to children's needs. *See. Canadian Radio-television and Telecommunications Commission. (2021). Guidelines on Online Safety: Protecting Children from Harmful Content.* By encouraging platforms to adopt these technologies, Canada also aims to create a safer online ecosystem for children while maintaining the balance of rights for adult users.

The rulings in *Reno* and *Ashcroft II* offer guidance on balancing state interests with adult

speech protections, but they do not undermine the core of *Ginsberg's* variable obscenity doctrine. By utilizing innovative technologies to establish effective regulatory frameworks, states can fulfill their obligation to protect minors from harmful content while ensuring that adult access to lawful materials remains intact. This approach aligns with the courts' acknowledgment of the state's compelling interest in protecting vulnerable populations, as highlighted in *New York v. Ferber*.

II. Rational basis is the adherent test

A. H.B 1181's regulation on minors speech is in line with Ginsberg and does not restrict that of adults

Rational basis is the adherent level of review due to the nature of the H.B. 1181. When determining levels of review there is differentiation between Rational Basis, Intermediate Scrutiny, and Strict Scrutiny. In Regards to speech Strict Scrutiny is reserved for laws that violate 1st amendment protections, and Rational basis is reserved for evaluating those that do not.

Ginsberg set out the principle that low value obscene speech such as pornography had no first amendment protections for minors and could be regulated from their attainment of such material as long as such regulations dont unduly burden adults. Further this principle has been upheld in cases such as *Miller v. California 413 U.S. 15 (1973)* where the court ruled that obscene material is not protected by the first amendment.

Indeed H.B 1181 properly restricts this obscene material by describing it as (A) the average person applying contemporary community standards would find, taking the material as a whole with respect to minors is designed to appeal to pander to prurient interest; and (B) in manner patently offensive with respect to minors is designed to appeal to or pander to the prurient interest (i) a persons pubic hair, anus, or genitals or the nipple of a female breast (ii) touching, carresing, or fondling breasts, buttocks, anuses, or genital; or (iii) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act, and (C) taken as a whole lacks serious, literary artistic, political, or scientific value for minors. Such as in *Federal Communications Commission v. Pacifica Foundation (1978) 438 U.S. 726 (1978)* "[W]hen the Commission finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene." The description for the obscene material allows for the "pig" to be restricted without having to first prove it is a pig in a subjective manner. Simply that as the court has found before, obscene pornographic material has no value for minors.

This regulation requires commercial companies then to have age verifications to access the website as to ensure minors do not access obscene pornographic material. An adult who was previously accessing this pornographic material may still access such material with a verification of age.

One of the government's most common and easily implemented levels of restrictions is ID verification. When it comes to substances the law has found to restrict from minors whether that be obscene material or more physical substances such as alcohol id verification it is a common regulator.

While there is a contention that adults will be restricted due to a potential chilling effect the logic presented is inconsistent. “The conventional understanding in law is that a chilling effect is when a person, deterred by fear of some legal punishment or privacy harm, engages in self-censorship, that is, sensors themselves and does not speak or engage in some activity, despite that activity being lawful or even desirable.” *Jonathan W. Penny, Understanding chilling effects Minn. law. rev., May. 28, 2021* https://minnesotalawreview.org/wp-content/uploads/2022/04/6-Penney_Web.pdf. The contention falls under a standing that H.B 1181 in requiring identification for age will chill adults' speech as they would fear potential release of them accessing to pornographic materials. However, that relies on the belief that H.B 1181 allows for the company to gather more personal information than what they would have been able to gather prior. Commercial websites, even those that do not produce obscene material collect a plethora of information regarding a consumer on their website¹

¹ .Commercial websites in general can gather personal information from any form of monetary transactional format such as Credit cards, Debit cards, Apple pay, Zeile, Cash App, ect. Indeed by signing up with email, providing a phone number, and in doing such transactional methods personal information is constantly at arms reach for such companies.

Whereas HB. 1181 has the opposite effect as it penalizes a monetary amount of ten thousand USD for a company retaining such personal identifying information. “(2) \$10,000 per instance when the entity retains identifying information in violation of Section 129B.002”² Therefore if the supposed chilling effects on adult speech is attempted to be made through the ID age verification requirement then such argument should find no logical foot hold.

Furthermore the law is set up in such a way as to leave ample room for the websites to choose their method of implementation for the I.D verification. Websites may choose to go through a third party to even ensure this ID verification. Indeed companies such as Porn ub and Only fans have implemented a third party system, YOTI, to ensure its content providers are not under the age of 18. YOTI states “You don’t need to know someone’s name to know they’re the right age – you often don’t even need their date of birth. We’ve built a range of tools that let users prove they’re the right age for your service without sharing any personal information – because it’s good for everybody.” *See about Age verification, A privacy-first approach to age verification, © yoti Ltd. 2020-2024 <https://www.yoti.com/business/age-verification/>* Simply these websites may use already implemented third party systems to not just confirm the age of their content providers but also that of their viewers without having to gather the more than necessary personal information.

² Which in respect to *Ginsberg, 390 U.S at 645-47* H.B 1181 is more privacy protective with the penalties then the statute at issue in *Ginsberg*.

The law in its essence exists to protect children, not in regulating adult access to pornographic material. H.B 1181's penalties of the retaining of personal information and the website's ample access to non-invasive third party systems ensures no chilling effects on adult speech in the implementation of age verification. As children have no first amendment right to view obscene material this leaves no restriction that would fall under the law under Strict Scrutiny review.

B. H.B 1181 restricts commercial distributors of speech which have lower protections than other distributors of speech.

Further H.B 1181 subjects commercial distributors of pornography and thus should be subject to rational basis review. Indeed the court has found a lesser protection put in place for commercial enterprises than those first amendment protections reserved for artistic or political speech. As commercial speech is economic in nature focused on the product for transaction and not that of protection, communication, or debate. Commercial entities indeed still retain their first amendment protections but to a much lesser extent than those that are protected by higher levels of scrutiny. Such a notion was noted in the case of *Virginia state board of pharmacy v. Virginia citizens consumer council* 425 U.S. 748 (1976) the court found that for the purpose of consumer protection that the government could subject companies to regulations for such purposes. It was expanded upon in *Central Hudson Gas and Electric Corp v. Public Service Commission* 447 U.S 557 (1980) where in reviewing such regulations they

instituted a test that is far less rigorous than that reserved for political and expressive speech under strict scrutiny.³

H.B 1181 targets this realm of commercial speech and not inherently artistic or political speech by specifically regulating platforms that gain a large portion of their revenue from the sale of pornographic material. Indeed it requires companies that Knowingly generate $\frac{1}{3}$ or more of its profits from pornographic material that is obscene to minors to take commercially reasonable steps of installing means of age verification. This specific regulation distinguishes it from the law at issue in *Reno v. ACLU, U.S. 844 (1997)*

as the law failed due to its overbreadth as it encompassed too much content not just of which was harmful in an obscenity nature. Instead H.B 1181 solely focuses on these commercial producers and uses age identification processes that are workable in the availability of advanced technologies.

This specific regulation on business that generates substantial profit from pornographic material aligns with the court's reasoning in *United States V. Edge Broadcasting co., 509 U.S. 418 (1993)*. As in *Edge broadcasting co.* here the government

³ The central hudson test is an evaluation under intermediate scrutiny and set out as so: First, in order for the commercial speech to be considered protected speech under the First Amendment, the speech must concern lawful activity and the speech must not be misleading. Second, the alleged governmental interest in regulating the speech must be substantial. Third, the regulation must directly advance the governmental interest asserted. Fourth, the regulation must not be more extensive than is necessary to serve the interest expressed in step 3.

similarly imposes regulations on commercial distributors and specifically with its advertisement sections to meet an interest.

**C. H.B 1181 would pass Strict Scrutiny
however ability to pass a level of review is
not a determining factor in its application**

Nowhere is it the states contention that the regulation law at bar would not pass strict scrutiny. Whether this court were to decide to enact strict scrutiny such as was done under *Ashcroft V. ACLU*, 542 U.S 656. (2004)⁴. The State law contains a compelling governmental interest of which has been recognized again and again of protecting children. Further it imposes on commercial companies that knowingly make 1/3 of their profits off of obscene pornographic material to simply add an age verification meeting the interest of protecting children in the most narrowly tailored means in doing so.

While H.B 1181 would survive strict scrutiny due to its compelling governmental interest and

⁴ Indeed the only case where Strict Scrutiny has been implemented with little regard to other standards of review is *Ashcroft V. ACLU*, 542 U.S 656. (2004). If this court were to find *Ascroft* requires such level of scrutiny then it should subsequently be overturned. As it would too be create a line between how we treat meta physical speech and brick-and-mortar speech something this court has already rejected in cases such as *Moody V. Netchoice, LLC*, 603 U.S _(2024)

tailored approach, the ability of a law to survive a standard does not warrant its application. As in *Turner Broadcasting inc V. FCC*, 512 U.S. 622 (1994) where the court decided to apply intermediate scrutiny despite finding that the law at play could surpass a stricter level of review. Indeed the Critical question is not whether the law passess a level of review but whether the context requires it. Here where the context involves commercial companies and the regulation of minor speech then the court should rely on this context to find rational basis.

III. If We Cannot Regulate This Way, There Is No Way to Regulate

The digital landscape presents significant challenges in protecting minors from harmful content. As technology evolves, so do the methodologies by which minors can access inappropriate material. The failure to implement targeted regulations, such as age verification systems and content filtering technologies poses a great risk, that without effective regulation, there will be no viable means of protecting children. This situation not only jeopardizes the well-being of minors but also undermines the principles of responsible governance within a democratic society.

A. Targeted Regulation is Necessary

i. Legal Precedents Support This

The absence of effective age verification and content moderation measures creates a considerable gap in the protection of minors. The Supreme Court's decision in *Ginsberg*, established the state's compelling interest in protecting children from harmful content, a principle that has been reaffirmed in subsequent rulings. For example, in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), the Court evaluated the Child Online Protection Act (COPA), which aimed to restrict minors' access to harmful online material. While affirming the government's interest in protecting children, the Court ruled that COPA was unconstitutional due to its overly broad restrictions on free speech. *Ashcroft* highlights the availability of less restrictive alternatives, such as age verification and content filtering technologies, to protect minors effectively. This decision shows that age verification is the more effective means of protecting children, without being overbroad.

ii. There is Substantial Psychological and Emotional Risk

Without appropriate regulatory mechanisms, minors can easily access inappropriate material, leading to severe psychological and emotional repercussions. Research published in the journal *Pediatrics* indicates that children exposed to violent content are more likely to exhibit aggressive behavior and experience desensitization to violence. See Gentile, D. A., et al. (2004). *Media Violence and*

Youth: A Complete Guide for Parents and Professionals. Pediatrics, 113(6), 1700-1706. This correlation raises significant concerns about the long-term effects of exposure to such material on children's development and social interactions. Furthermore, the rapid evolution of online platforms exacerbates the risk of exposure to content that is not developmentally appropriate. According to the Internet Safety Technical Task Force, as of 2008, a staggering 93% of children aged 12-17 are online, with many engaging with content unsuitable for their age group. *See Internet Safety Technical Task Force. (2008). Enhancing Child Safety & Online Technologies*. This alarming statistic highlights the critical need for regulations that can effectively protect minors in an increasingly digital world. Without such measures, children remain vulnerable to harmful influences that can negatively impact their mental health and well-being.

B. There are Significant Limitations of Parental Oversight

Relying solely on parental oversight is insufficient in today's technology-driven environment. The rapid advancement of digital technologies has created a complex landscape that can be unmanageable for many parents. According to a survey conducted by the Pew Research Center,

approximately 60% of parents believe they do not have sufficient control over the content their children encounter online. See Pew Research Center. (2020). *Parents, Teens, and Digital Monitoring*. This statistic highlights a widespread concern among parents regarding their ability to effectively monitor their children's online activities, particularly as children become more tech-savvy and adept at navigating the internet.

Many parents feel overwhelmed by the sheer volume of content available online, ranging from educational resources to social media platforms and gaming sites. The diversity of these platforms means that children can easily access inappropriate material, including violent content, explicit images, and harmful interactions. Furthermore, parental control tools and monitoring software often vary widely in effectiveness, leaving parents uncertain about the best methods to protect their children.

Moreover, the *National Center for Missing & Exploited Children* reports that 1 in 7 children received a sexual solicitation online, illustrating the potential dangers that minors face in unregulated digital spaces See *National Center for Missing & Exploited Children. (2019). Online Victimization of Children: A Survey of Youth*. This alarming statistic shows the reality that children are vulnerable to predators and harmful influences, often without their parents' knowledge. Such incidents can lead to

serious emotional and psychological consequences for children, further emphasizing the inadequacy of relying solely on parental oversight.

A robust regulatory framework is essential to provide a safety net for children in digital environments. Effective regulations can establish clear guidelines for online platforms regarding content moderation, age verification, and reporting mechanisms for inappropriate interactions. These measures would not only protect minors but also empower parents by creating a safer online environment in which they can feel confident about their children's digital experiences. Failing to establish such measures places an undue burden on parents, who may already be struggling to navigate the complexities of modern technology.

C. Balancing Rights and Protections

The lack of action in establishing a regulatory framework to protect minors online may undermine public trust in government institutions responsible for protecting vulnerable populations. Research from the Annenberg Public Policy Center reveals that public confidence in the government's ability to protect children online is waning. In their study, many parents expressed concerns that existing measures are inadequate to address the risks children face, such as exposure to inappropriate content, cyberbullying, and online predation *See*

Annenberg Public Policy Center. (2020). Public Opinion on Children and Internet Safety. This growing unease highlights the urgent need for effective regulatory measures.

D. Consequences of Inaction

The consequences of inaction are far-reaching and cannot be overlooked. Should effective regulations fail to be established, children may encounter harmful materials that could lead to adverse outcomes, including increased rates of anxiety, depression, and desensitization to violence. Research published by the American Psychological Association indicates that exposure to violent media adversely affects children's behavior and mental health, contributing to aggressive behavior and emotional distress *See American Psychological Association. (2015). Media Violence and Youth.* The study outlines that children who frequently consume violent content may become desensitized to real-life violence, potentially normalizing aggressive behavior and diminishing empathy towards others. This desensitization can have long-lasting effects on their social interactions and emotional development.

Additionally, the *World Health Organization* has identified mental health issues among adolescents as a growing concern, linking increased screen time and exposure to harmful online content

to poorer mental health outcomes *See World Health Organization. (2021). Adolescent Mental Health.* Their findings reveal that adolescents who spend excessive time online are at a higher risk of experiencing anxiety, depression, and sleep disturbances. The WHO emphasizes that the nature of the content consumed—particularly violent or explicit material—can exacerbate these mental health issues, leading to a cycle of negative emotional states.

Without effective regulatory measures, we risk perpetuating a cycle of exposure to harmful content, leaving children vulnerable and unprotected. Establishing these regulations is crucial not only for protecting children from harmful content but also for creating a healthier digital landscape that supports their emotional and psychological development.

IV. Petitioners Lose Under a Facial Analysis

In evaluating the petitioners' facial challenge to H.B. 1181, it is crucial for this court to grasp the fundamental implications of the legal standards governing such challenges. The established precedent dictates that if this court determines that even one application of the statute is constitutional, the petitioners must concede defeat in their challenge.

The Supreme Court has consistently reinforced that facial challenges require a thorough demonstration that a statute is unconstitutional in every conceivable application. In *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), the Court emphasized that a law may only be invalidated if it is "substantially overbroad" or cannot be applied constitutionally in any instance. Therefore, the burden of proof rests squarely on the petitioners to demonstrate that H.B. 1181 is unconstitutional in all its applications.

A. Petitioner Loses With Even One Constitutional Application

The legal framework surrounding facial challenges is built on the premise that laws must be evaluated in their entirety. If this court identifies even one application of H.B. 1181 that aligns with constitutional standards, the petitioners' claim of facial unconstitutionality must fail. This principle emphasizes that a law can be partially valid, even when certain applications may raise constitutional concerns. The existence of constitutional applications affirms the law's validity and reflects the legislative intent to enact a measure that addresses significant societal challenges.

B. There are Multiple Constitutional Applications of H.B. 1181

1. **Age Verification Mechanisms:** One compelling application of H.B. 1181 is the

implementation of age verification measures by online platforms. These measures are specifically designed to restrict access to harmful content for minors, effectively creating a barrier that protects vulnerable populations from inappropriate material. The importance of such protective measures is well recognized in constitutional jurisprudence. In *Ashcroft v. ACLU* (Ashcroft II), the Supreme Court upheld the necessity of age verification processes to protect children from harmful content. The Court noted that the government has a compelling interest in protecting minors, and the implementation of age verification can serve that interest without infringing upon the rights of adults. This application of H.B. 1181 aims to protect minors while respecting the constitutional framework by ensuring that adults retain their access to legal and protected content.

2. **Content Moderation Guidelines:** Another significant application of H.B. 1181 involves the establishment of content moderation guidelines by online platforms. These guidelines are designed to filter out harmful or inappropriate content while preserving a substantial amount of constitutionally protected speech. By allowing platforms to implement reasonable content moderation practices, H.B. 1181 addresses the issue of harmful content encountered by minors

without engaging in broad censorship that would infringe upon the rights of adult users. This approach aligns with the rational basis standard of review, as it serves a legitimate governmental interest while respecting individual rights. The primary objective of H.B. 1181 is to protect minors from exposure to harmful content online. The state has a compelling interest in protecting children, particularly given the risks associated with unrestricted access to inappropriate material. Courts have consistently recognized the government's duty to protect vulnerable populations, which forms the foundation for the law's enactment. The content moderation guidelines established under H.B. 1181 demonstrate a rational relationship to this objective, as they allow online platforms to implement practices specifically aimed at shielding minors from danger.

If this court identifies even one application of H.B. 1181 that is constitutional—such as the implementation of age verification mechanisms or the establishment of content moderation guidelines—the petitioners must lose their facial challenge. The legal framework surrounding facial challenges necessitates that the burden of proof lies with the petitioners to demonstrate a lack of constitutional

applications. We respectfully urge the court to uphold H.B. 1181 as a necessary and valid measure for protecting minors in the increasingly complex digital landscape. By doing so, the court will not only reinforce the importance of protecting vulnerable populations but also affirm the principle that laws must be evaluated comprehensively, considering their intended protective purpose alongside their practical applications.

CONCLUSION

In conclusion, the Stop Social Media Censorship Act, specifically H.B. 1181, represents a crucial legislative effort to protect minors from harmful online content while respecting the First Amendment rights of adults. The Act establishes a necessary framework for age verification that balances the compelling state

interest in protecting children with the rights of individuals to engage in lawful expression. Throughout this brief, we have demonstrated that the principles established in *Ginsberg v. New York* and subsequent precedents affirm the government's authority to regulate access to harmful material for minors without infringing upon adult speech. This Court should recognize that the law's provisions are not only constitutional but essential in today's digital landscape, where the accessibility of explicit content poses significant risks to youth. Upholding H.B. 1181 would reinforce the state's commitment to protecting vulnerable populations and affirm the principle that the regulation of harmful content must coexist with the preservation of free speech. We respectfully urge this Court to rule in favor of the respondents, affirming the constitutionality of H.B. 1181 and recognizing the legitimate interest of the State of Texas in protecting children from exposure to inappropriate material.

Respectfully submitted,

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