No. 22-227

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 PETITIONERS

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QUESTIONS PRESENTED

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

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INTRODUCTION

"If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought that we hate" *United States v. Schwimmer*, 279 U.S. at 944 (1929) (Holmes, J., dissenting). Irrespective of personal or communal opinion on a certain genre of speech, the First Amendment explicitly guarantees not only freedom of speech but also the freedom to access lawfully protected expression. While speech in the digital age may differ from speech in the Founding era at face value, undue restraints on speech threaten the exchange of ideas vital to democracy all the same.

Pornography, and the distribution of pornographic material via digital platforms, is one such form of speech contentious in the American legal system. This Court, however, has long recognized adult Americans' constitutionally protected access to pornographic material. The Court has also recognized that government regulation of sexual expression must meet strict scrutiny review, the most rigorous standard of judicial review, if it burdens adults' access to protected speech regardless of purported intent.

In effort to limit minors' access to sexual material, the Texas State Legislature recently passed House Bill 1181 ("the Act"), subsequently requiring websites with one-third or more of their content categorized as "sexual material harmful to

minors". The law defines "harmful" material to be determined arbitrarily from the perspective of an "average person applying contemporary community standards." If the site fails this arbitrary standard it must then verify users' ages before granting access. The Act additionally mandates these websites publish "sexual materials health warnings" written by the Texas Health and Human Services Commission.

Owing to the content-based nature of the Act's regulations and provisions, H.B. 1181 warrants strict scrutiny review, this Court's long-established standard of judicial review for similar laws implicating the First Amendment *Police Dept. of City of Chicago v. Mosley,* 408 U.S. 92 (1972). Such scrutiny is especially warranted given that the Act's overbroad and vaguely tailored provisions chill access to constitutionally protected speech and violate the anonymity safeguarded by this Court, particularly as this speech does not meet the obscenity standard established in *Miller v. California*, 413 U.S. 15 (1973). Jurisprudence regarding the Act should be no different than the decades of similar provisions that triggered strict scrutiny, failed review, and were struck *Denver Area Educ. Telecomm. Consortium,* Inc. v. FCC, 518 U.S. 727 (1996). Put simply, "The First Amendment was designed to avoid these ends by avoiding these beginnings" *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). The Act's mandated publication of state-written "health warnings" exemplifies this overreach, constituting an intrusion into the realm

of private speech, which this Court has consistently found unconstitutional. Such government-mandated speech fundamentally "alters the content of [a speaker's] speech" *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781 (1988), and cannot withstand First Amendment scrutiny. OK though Riley is a different context

Texas H.B. 1191 stifles access to protected free speech, compels specific speech in violation of legal precedent, and undermines otherwise protected privacy and autonomy. This Court must hold the Act to strict scrutiny and reverse the Fifth Circuit's unwarranted reversal of the lower court's injunction.

SUMMARY OF ARGUMENT

Texas H.B. 1181 imposes significant burdens on adults' access to constitutionally protected speech, particularly through age-verification requirements and mandated health warning, and should be subject to strict scrutiny review, as determined in the preliminary injunction.

I. The Fifth Circuit's decision to review H.B. 1181 directly violates decades of precedent by this court. The court has long upheld the standard of strict review for content-based restrictions on protected speech, as H.B. 1181 is due to specifically targeting specified sexual material. The Fifth Circuit knowingly dismissed applicable rulings from this court in cases including *Ashcroft* and *Reno,* where the court found that laws that restrict access to adult material disproportionately infringe on adult First Amendment rights and cannot be justified by an interest in protecting minors.

The law also forces adult websites to display government-drafted health warnings that lack factual basis, compelling speech that could discourage lawful expression. The Supreme Court has consistently held that such compelled speech is subject to strict scrutiny, which H.B. 1181 fails to meet.

II. online pornography is protected under the First Amendment. It generally does not meet the *Miller* obscenity test's high threshold of prurient interest, patent offensiveness, or lack of artistic value. Many adult films feature artistic, narrative, or social themes, qualifying as valuable content beyond their sexual nature.

III. H.B. 1181's age-verification requirements undermine anonymity, a fundamental aspect of free speech recognized in cases like *McIntyre* and *Talley*. By mandating personally identifiable information disclosure, the law compromises individuals' privacy, deterring participation in protected speech.

ARGUMENT

I. The Fifth Circuit's Decision to Review H.B. 1181 Under Rational Basis Review is Erroneous

The Fifth Circuit's application of rational basis review in overturning the lower court's injunction of H.B. 1181 marks a significant and erroneous departure from established legal precedent. Such content-based regulations on free speech, especially those that implicate access to constitutionally protected speech, have historically triggered strict scrutiny review in decades of precedent. The Fifth Circuit is unique in its failure to acknowledge the content-based nature of the Act, its chilling effect on protected speech, and its marked intrusion into the anonymity of online activity and expression.

A. Content-Based Restrictions on Free Speech Have Historically Been Reviewed Under Strict Scrutiny

This court has long held laws that regulate speech based on its communicative content "presumptively unconstitutional", enforceable only "if the government proves they are narrowly tailored to serve compelling state interests" *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). As Justice Thomas wrote for the majority in *Reed*, "government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed". H.B. 1181 explicitly targets sexual material determined harmful to minors, a paradigmatically content-based restriction.

The category of speech purportedly targeted by Respondent, however, is obscenity, most recently defined in Miller as "patently offensive" content designed to "appeal to the prurient interest", largely lacking "serious literary, artistic, political or scientific value". *Miller v. California*, 413 U.S. 15, 24 (1973). While the exact definition of obscenity has been adjusted with regard to minors since *Ginsberg v. New York,* 390 U.S. 629 (1968), this Court has definitively defended non-obscene sexual expression as constitutionally enshrined. *Reno v. ACLU*, 521 U.S. 844 (1997). Specifically, this Court,

via strict scrutiny review, has decisively protected adult access to non-obscene sexual expression against various forms of content-based burdens. *Playboy*, 529 U.S. at 813; *Ashcroft*, 542 U.S. at 665-66; *Sable Comms v. FCC*, 492 U.S. 155 (1989). Though Respondent allegedly aims to permissibly restrict minors' access to pornographic material as affirmed in *Ginsberg*, they flagrantly burden adults' access to constitutionally protected speech.

This Court has applied strict scrutiny in decades of relevant rulings beyond sexually expletive material. In *Winters* for example, this Court applied strict scrutiny in condemning New York Penal Law subsection 2 of §1141 as "vague and indefinite" in its attempts to bar publication of magazines depicting criminal deeds, bloodshed, or lust, overturning the lower court's ruling. Winters *v. New York*, 333 U.S. 507 (1948). This Court furthered similar reasoning in *Butler v. Michigan*, 352 U.S. 380 (1957), unanimously striking the Michigan statue which leaned on a single trial judge's subjective opinion of the corruptibility of books sold to the public.

Time and time again, content-based regulation of constitutionally protected speech has triggered strict scrutiny review, frequently struck down by this Court. The Fifth Circuit's application of rational basis review to H.B. 1181 is indefensible given this Court's decades-long trend of consistent jurisprudence.

B. As a Content-Based Restriction on the Free Speech of Adults, Texas H.B. 1181 is Subject to Strict Scrutiny Review

This Court has designated adults' access to pornography constitutionally protected speech against a plethora of laws, bills, and ordinances similar to those included in H.B. 1181. In *Reno v. ACLU*, 521 U.S. 833 (1997) for example, Petitioners challenged the constitutionality of two provisions from the 1996 Communications Decency Act (CDA); the CDA both criminalized transmission of "obscene or indecent" messages, and messages which conveyed "sexual or excretory activities or organs", the offensiveness of both media determined by community standards. This Court delivered a decisive majority, finding that the CDA "fail[ed] to provide any definition of

"indecent" and "omit[ted] any requirement that "patently offensive" material lack socially redeeming value. These provisions triggered strict scrutiny review, failed it, patently violated the First Amendment, and were struck down by this Court.

This Court reaffirmed this precedent in years since. In *Ashcroft I*, petitioners filed a suit against the 1996 Child Pornography Protection Act (CPPA), challenging the provisions that expanded federal prohibition of child pornography; these included "visual depictions" that "appear to be" or "convey the impression" of minors engaging in "sexually explicit conduct § 2256(8)(B); § 2256(8)(D). This Court found these sections of the CPPA overbroad—extending to images not obscene under the *Miller* standard—and unconstitutional. As Kennedy wrote in the majority opinion, "The Government fail[ed] to explain how [the] ban serv[ed] any compelling state interest…the provision therefore fails strict scrutiny". *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

This court, again, upheld a similar standard in *Ashcroft II*. There, petitioners filed a facial challenge against the 1998 Child Online Protection Act (COPA) which

prohibited online transmission of content deemed "harmful to minors" via the obscenity standard defined in *Miller*, requiring jurors apply "contemporary community standards" to assess flagged material. *Ashcroft v. ACLU*, 535 U.S. 564 (2002). COPA, like the CPPA in *Ashcroft I* and CDA in *Reno*, burdened adults' access to constitutionally protected speech. These vague—and broad—provisions historically trigger strict scrutiny review, and this Court did not deviate in its precedent. This Court upheld an injunction of COPA, finding the statute unconstitutional as "less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statue was enacted to serve". H.B. 1181 suffers from nearly identical constitutional flaws to COPA. Like COPA, its provisions rely on sweeping, imprecise, and vague standards to restrict certain online content under the guise of protecting minors. Both provisions fail to clearly and explicitly define what material qualifies as "harmful to minors", egregiously rising over-censorship and demanding strict scrutiny review. Implicated websites may restrict more speech than necessary to shirk liability, a policy this court has repeatedly decried. This

is precisely what makes the Fifth Circuit's decision so striking in its departure from well-established precedent. Strict scrutiny review has been, is currently, and should be the only standard of judicial review rigorously applied to content-based restrictions on constitutionally protected speech. H.B. 1181 must be narrowly tailored to serve a compelling state interest, and prove that less restrictive alternatives, like household-specific website blockers, parental filters, and content-rating systems could not achieve Texas' purported goal of protecting minors, which this Court has previously disagreed with. *United States v. American Library Association, Inc.*, 539 U.S. 194 (2003). H.B. 1181 does not.

The precedent established by these cases is unbroken: strict scrutiny review must be applied to laws that burden adults' rights to constitutionally protected expression whether or not it be sexual in nature, and regardless of a provision's purported intent to protect minors. "Content based regulations are", and should continue to be "presumptively invalid," R.A.V. v. City of St. Paul, 505 U.S. 377, 382 (1992) citing *Simon & Schuster, Inc. v. Members of N.Y. State*

Crime Victims Bd., 502 U.S. 105, (1991) (Kennedy, J., concurring in judgment).

Yet, nearly two decades later, Texas filed House Bill 1181. H.B. 1181's primarily mandates age verification by any commercial website "more than one third of which is sexual material harmful to minors," Tex. Civ. Prac. & Rem. Code § 129B.002(a). This definition, elaborated as material that "the average person applying contemporary community standards would find…designed to appeal to or pander to the prurient interest", is a glorified rewording of the adapted *Miller* obscenity standard Congress employed in *Ashcroft II*. These definitions are similarly overinclusive and underinclusive—covering speech constitutionally protected for adults—flagrantly content-based, indistinguishable from the definition that triggered strict scrutiny in *Ashcroft II*, and from the same breed as the restrictions in *Reno*, *Sable* and *Playboy*. The bill's syntax demands strict scrutiny review. Sexual education documentaries, nude modeling, scripted sex scenes in commercial films, and sexual depictions in romance novels are just few examples of the myriad of content H.B. 1181 can effectively restrict. As H.B. 1181 applies

to any website that meets the arbitrary one-third quota, enormous amounts of constitutionally protected content would fall under its discretion.

a. Age-Verification Burdens Adults' Access to Constitutionally Protected Speech

Though this Court has long distinguished unprotected obscenity and protected speech, *Ginsberg* demarcated unique standard for minors. The Court in *Ginsberg* upheld a New York prohibition against the sale of sexual material to minors "whether or not it be obscene to adults"; because the law rationally served the "objective of safeguarding…minors from harm", the Court held the law did not violate minors' First Amendment rights. Of note, the law in *Ginsberg* was found to not infringe the constitutionally protected speech of adults or older minors.

Ginsberg's unique standard stands alone. In *Brown* v. *Ent Merchs. Ass'n* 564 U.S. 786 (2011) for example, when

considering California's reliance on *Ginsberg* to prohibit the sale of violent video games to minors, this Court declined to extend *Ginsberg* beyond its scope. The law at issue in *Ginsberg*—where merchants made earnest, subjective determinations of the age of minors—did not restrict adults' access to sexual materials or impose any age verification requirements, as proposed in H.B. 1181. While the State "ha[d] an independent interest in protecting the welfare of children and safeguarding them from abuses", the Court emphasized that the law survived strict scrutiny only because it was narrowly tailored with specific provisions. The Court even distinguished the New York restriction in *Ginsberg* from Michigan's in *Butler*, which the Court found failed strict scrutiny review.

Yet, dismissing decades of precedent in relying on the narrowly tailored provisions reinforced in *Ginsberg*, the Fifth Circuit upheld H.B. 1181's sweeping requirements despite their serious burden on adults' access to constitutionally protected speech. Most egregious among these is age-

verification requirements. Under H.B. 1181, hosting websites demand adults concede personally identifying information anytime they wish to access this speech, which—such as when government-issued driver's licenses are used—heightens risk of leaks or hacks of this information. H.B. 1181 is largely unconcerned with these issues; while it demands providers "not retain any identifying information" Tex. Civ. Prac. & Rem. Code § 129B.002(b), it doesn't prohibit transmission or trafficking of this information to any number of other websites, third parties, or bad actors. Considering the intimate nature of pornographic material, disclosure of such personally identifying information significantly burdens adults' access to this speech. Many righteously consenting adults would fear for the safety of their information. Many forms of age-verification would also preclude adults from accessing this speech altogether—millions of adult citizens do not have any form of government-issued photo ID, for example, and millions more do not possess a driver's license. A plethora of other options exist to

reasonable protect minors from their unwanted exposure to pornographic material as this Court has previously recognized. *United States v. American Library Assn., Inc.,* 539 U.S. 194 (2003).

b. Texas H.B. 1181's Mandated Speech Further Triggers Strict Scrutiny Review

H.B. 1181 additionally mandates adult websites post government drafted "sexual materials health warnings" on their "landing page", "all [subsequent] advertisements" a user might encounter, and the "helpline" numbers for "substance abuse and mental health" Tex. Civ. Prac. & Rem. Code § 129B.004. These warnings would describe pornography as "potentially biologically addictive", "proven to harm human brain development", "associated with low self-esteem and body image", and other subjective critiques. These statements allegedly derive from the Texas department of Health and Human Services, though this agency hasn't issued a precedent or the text of the

warning describing these findings.

This court has consistently found government-mandated speech subject to strict scrutiny. *National Institute of Family and Life Advocates v. Becerra*; 585 U.S. 755 (2018); *Zauderer v. Off. Of Disciplinary Couns.*, 472 U.S. 626, 651 (1985); *303 Creative LLC v. Elenis*,600 U.S. (2023); *Wooley v. Maynard*, 430 U.S. 705 (1977); *Hurley v . Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995). H.B. 1181's "health warnings" should be no exception. These warnings, which make claims about pornography's effects that has not originated from their alleged authors, are not merely informational; they impose a government-mandated viewpoint that could discourage adults from accessing protected speech. By requiring the display of these warnings, H.B. 1181 effectively compels speech, which the Court has consistently held is subject to strict scrutiny. Such compelled speech, without a factual or legal basis, interferes with the free expression rights of adults seeking to engage with constitutionally protected material.

This Court's jurisprudence regarding similar cases is clear. In *Zauderer v. Office of Disc. Counsel*, 471 U.S. 626 (1985) for example, this court upheld required speech in form of "purely factual and uncontroversial information" to "dissipate the possibility of consumer confusion or deception". H.B. 1181's speech is unlike that in *Zauderer* and a long chain of similar speech mandates that have been upheld: it is hardly "uncontroversial", and as it has not been disseminated from a Texas-based health authority, cannot be deemed factual. Beyond *Zauderer*, this Court has consistently applied strict scrutiny to content-based speech regulation laws, consistently striking down those that "risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information," *Turner Broadcasting Systems, Inc. v. FCC*, 512 U. S. 622, 641 (1997); *Sorrell v. IMS Health, Inc.*, 564 U.S. 552 (2011). While Respondent might identify H.B. 1181's "health warnings" as protected "professional speech"—impartial, factual health doctrines and warnings—"this Court has

never recognized "professional speech" as a separate category of speech subject to different rules"; that is, speech is not protected simply because it derives from professionals or health authorities. *National Institute of Family and Live Advocates v. Becerra,* 585 U.S. 755 (2018)

II. Online Pornographic Material is Protected Under the First Amendment

The first amendment has, and always will broadly protect the participation in and digestion of a robust marketplace of ideas, especially ideas including content perceived to be controversial or explicit. This principle safeguards our nation's open exchange of thoughts, even if some are unpopular or offensive to some. This protection explicitly applies to the production and consumption of online pornography. Courts have historically recognized that both the legitimate role that adult-oriented material plays in society, and its consumption by consenting adults warrant the same constitutional protections as other forms of expression.

A. Online Pornographic Material Does Not Generally Constitute Obscenity as Defined in *Miller*

In *Miller,* this Court established a three-pronged test to determine whether material qualifies as obscene and is thus

exempt from first amendment protection. To qualify as obscene the work must (1) appeal to the prurient interest in sex based on contemporary community standards; (2) depict sexual conduct in a patently offensive way as defined by applicable state law; (3) lack serious literary, artistic, political, or scientific value when taken as a whole. These criteria provide a high threshold for classifying material as obscene, protecting a wide range of expressive content that falls short of meeting all three prongs.

a. Online Pornographic Material Fails the First or Second Clause of the *Miller* Obscenity Test

The first prong of the Miller test requires that the material appeals predominantly to the prurient interest as judged by contemporary community standards. This requirement of contemporary community standards was first established as far back as *Roth v. United States*, 354 U.S. 476 (1957). Courts have long recognized that "community standards" develop and evolve over time. In *Brown v.*

Entertainment Merchants Association, the court applies the principle of evolving standards in the context of violent videogames, rejecting arguments that such speech should be treated as obscenity, despite its previously unrecognized status. In *Brown,* the court "emphatically rejected" the "'startling and dangerous' proposition" that "it [The Government] could create new categories of unprotected speech by applying a 'simple balancing test' that weighs the value of a particular category of speech against its social costs and then punishes that category of speech if it fails the test." Brown, et al. v. Entertainment Merchants Assn. et al., 564 U.S. 786 (2011). In *Stevens* as well, this Court rejected the nation that the government could expand categories of *unprotected* speech by balancing the value of the speech against its perceived social cost *United States v. Stevens,* 559 U.S. 460. This Court has, and should here, reaffirm the robust protections of the First Amendment for controversial material that may not fall under historically protected categories, especially considering the ever-evolving

"community standards" defendant would bind this material to.

The contemporary community standards resulting from the internet's ubiquity, accessibility, and normalization of explicit content through adult sites result in quite broader standards of judgement. The "community" of internet users spans diverse cultural and geographical background, creating a boarder tolerance for sexually explicit material. Additionally, the court recognizes "courts still have a necessary role in protecting those entities' rights of speech, as courts have historically protected traditional media's rights." *Moody v. NetChoice*, LLC, 603 U.S. (2024). The content available on petitioning sites are consumed by millions of consenting adults and regularly distributed through legal platforms, suggesting they align with contemporary community norms for online adult entertainment. The primary audience—consenting adults—engages with such material for private, lawful purposes, falling far outside the realm of prurience in a standard recognized by this Court *Erznoznik v. City of*

Jacksonville, 422 U.S. 205 (1975). In much the same manner such content cannot be considered as "patently offensive" due to the nature of its normalized and abundant consumption.

In accordance with the law and the contemporary standard of the internet, mainstream adult websites implement strict terms of services prohibiting content deemed obscene, including bestiality, child exploitation, and depictions of abuse. These policies demonstrate the intentional effort of these companies to comply with the legal standards as well as societal norms. Indeed, this Court should reaffirm its apprehension of sweeping restrictions on speech. *Smith v. California,* 361 U.S. 147 (1959). *By* excluding illicit and extreme material, these platforms can promote consensual and lawful adult entertainment that remains far outside the realm of prurience and patent offensiveness, as this Court has rightfully vilified *Paris Adult Theater I v. Slaton,* 413 U.S. 49 (1973).

b. **Much of Online Pornographic Material Fails the Third**

Clause of The Miller Obscenity Test.

The third prong of the Miller obscenity test provides that material cannot be obscene if it has serious literary, artistic, political, or scientific value. Online pornography frequently includes elements that meet this standard, placing it outside the scope of obscenity.

The Supreme Court has held that the works should be evaluated with regard to the general context and purpose of the work. In *Jenkins v. Georgia*, 418 U.S. 153 (1974), the Court vacated a conviction against the film *Carnal Knowledge*, finding that despite its sexually explicit content, it held redeeming artistic and social value. This precedent highlights the need to consider the potential value of adult-oriented content beyond its explicit themes. Many current adult films include artistic cinematography, narrative, and social themes, offering value beyond mere sexual expression.

> Additionally, in *Pope v. Illinois*, 481 U.S. 497 (1987), the Court specified that the determination of whether material has serious value is not determined by local community standards but rather requires an objective evaluation. This ruling protects material that could hold artistic or scientific significance even if certain groups may find it offensive. Online pornography, often featuring diverse cultural representations and storytelling, reflects evolving norms about sexuality and expression.

Mainstream pornography produced by and for consenting adults fails to meet each of these prongs and is therefore subject to the same first amendment protections as all other non-obscene speech. This precedent further bolsters the necessity for strict scrutiny review with any kind of content-based restriction on online sexually explicit material, ensuring the continued protection of lawful expression.

III. Texas H.B. 1181 Undermines Anonymity, a Critical Component of the First Amendment

The mandatory age-verification requirements proposed by H.B. 1181 are a significant intrusion onto the anonymity of internet users. Anonymity is a fundamental aspect of distributing and consuming constitutionally protected free expression. By requiring users to disclose personally identifiable information (PII), H.B. 1181 burdens freedom of speech and privacy.

A. Anonymity is a Protected Aspect of Free Speech

This Court has long recognized anonymity as a critical component of access to constitutionally protected speech. In *McIntyre* for example, this Court held "anonymity [a] shield from the tyranny of the majority", striking down an Ohio law requiring campaign materials disclose the name and address of their sponsor, *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334 (1995).

In *Talley*—in a decisive 6-3 majority—this court struck a similar Georgia ordinance that forbade distribution of literature without a license. The Court found that defense of the ordinance "would restore the system of license and censorship in its baldest form". *Talley v. California,* 362 U.S. 60 (1960). This Court subjected the provisions in both *McIntyre* and *Talley* to strict scrutiny review, determined them content-based regulations on speech, and struck them down. The provisions of H.B. 1181 should be reviewed no differently.

Requiring adults provide personally identifying information to access pornographic material is a content-based burden on constitutionally protected speech and should be reviewed under strict scrutiny as this Court has done before. Submitting such personally identifying information—especially via the proposed method of scanning government-issued drivers licenses—endangers adult's right to anonymously access protected speech and sacrifices it for the millions of American and Texan citizens without it. Furthermore, this identification risks unintentional leaks,

hacks, or disclosure of this information to third party bad actors. While H.B. 1181 prevents the age-verification providers from "retain[ing] any identifying information," Tex. Civ. Prac. & Rem. Code § 129B.002, H.B. 1181 doesn't prevent providers from selling, disclosing, or trafficking the information to any third party—a real and effective deterrent. Rational adults would reconsider and potentially decide against their use of content-hosting websites. Considering the private and intimate nature of the speech H.B. 1181 seeks to burden, these risks should warrant additional concern.

CONCLUSION

Texas H.B. 1181 is facially a content-based restriction on the free speech of adults. The Fifth Circuits decision to consider the bill under rational basis directly defies this court's overwhelming precedent.

This court should apply strict scrutiny review to H.B. 1181, and the judgement of the Fifth Circuit should be reversed.

Respectfully submitted,

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