

No. 23-1122

IN THE
Supreme Court of the United States

FREE SPEECH COALITION, INC., *et al.*,

Petitioners,

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

**BRIEF FOR THE WOMEN'S LIBERATION
FRONT AS *AMICUS CURIAE*
SUPPORTING RESPONDENT**

ELSPETH B. CYPHER
Counsel of Record

ALICE BULLARD

LAUREN A. BONE

NANCY K. STADE

WOMEN'S LIBERATION FRONT

1802 Vernon Street, NW #2036

Washington, DC 20009

(202) 507-9475

elspeth@womensliberationfront.org

Counsel for Amicus Curiae

130551



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the court of appeals erred as a matter of law by applying rational-basis review to a law requiring age verification to access Internet pornography, instead of strict scrutiny.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, amicus curiae states it is a non-profit 501(c)(3) organization. Amicus curiae has no corporate parent and is not owned in whole or in part by any publicly-held corporation.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF CITED AUTHORITIES	v
INTEREST OF <i>AMICUS CURIAE</i>	1
Interest of Women’s Liberation Front (WoLF)	1
SUMMARY OF ARGUMENT	1
ARGUMENT.....	2
I. Pornography Is Harmful to Children	2
A. Internet pornography harms children	2
B. Contemporary Internet pornography differs from historical pornography (considered in prior cases)	4
C. Sexual abuse of children includes exposure to pornography	7
D. Exposure to pornography is a cause of child participation in CSAM	9
II. Internet pornography is a violent criminal enterprise	9

Table of Contents

	<i>Page</i>
A. There is no First Amendment right to record and profit from committing a crime.....	9
B. Platform content consists of actual crimes.....	10
III. State Action Is Necessary To Safeguard Children From Internet Pornography.....	16
IV. There is No Protected Interest in Viewing Internet Pornography Anonymously.....	17
CONCLUSION.....	21

TABLE OF CITED AUTHORITIES

Page

Cases

Fleites v. MindGeek,
2:21-cv-04920, US District Court,
Central District of California (Los Angeles)15

Free Speech Coalition v. Paxton,
No. 23-50627 (5th Cir. 2024)18

Grado v. State,
559 S.W.3d 888 (Mo. 2018)8

State v. Dearth,
211 N.E.3d 246 (Ohio 2023)8

State v. Taylor,
966 N.W. 330 (Iowa Ct. App. 2001)8

U.S. v. Playboy Entertainment Group, Inc.,
529 U.S. (2000)7, 10

Virginia v. Black,
538 U.S. 343 (2003)6

Statutes and Other Authorities

U.S. Const. Amend. I1, 6, 9, 10, 12

Cited Authorities

	<i>Page</i>
American College of Pediatricians, Factsheet: The Impact of Pornography on Children (Aug. 2024), https://acpeds.org/assets/positionpapers/factsheet_the-impact-of-pornography-on-children.pdf	3, 4
American College of Pediatrics, <i>Patient Handout: Porn-Proof Your Children</i> (Aug. 2024), https://acpeds.org/assets/positionpapers/_parent-handout-pornography-8.24.pdf	8
Allison Baxter, <i>How Pornography Harms Children: The Advocate’s Role</i> , American Bar Association (May 1, 2014), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/may-2014/how-pornography-harms-children--the-advocate-s-role	5
Aylo Brands on Aylo Inc. website, (last visited Nov. 3, 2024), https://www.aylo.com/about/	16
Matt Burgess, <i>Pornhub Is Being Accused of Illegal Data Collection Complaints Filed in the European Union Claim the Porn Site Fails to Follow Basic Data-collection Policies Under GDPR</i> , Wired (June 29, 2023 at 3:00 AM CT), https://www.wired.com/story/pornhub-tracking-cookies-gdpr-video-history/	18, 19

Cited Authorities

	<i>Page</i>
Faye Chadwick-Brown, Joyce J Endendijk, <i>Associations Between Sexualized Media Consumption, Sexual Double Standards, and Sexual Coercion Perpetration and Victimization in Late Adolescent Sexually Active Boys and Girls from The Netherlands</i> , Arch Sex Behav. Sep 3, 2024	2
Samantha Chery, <i>R. Kelly's daughter alleges singer sexually abused her as a child</i> , Washington Post (Oct. 13, 2023 at 5:13 PM EDT), https://www.washingtonpost.com/style/2024/10/13/buku-abir-kelly-daughter-sexual-abuse-documentary/	8
<i>Can the Line Between Consent and Coercion Get Blurred During Porn Production?</i> , Fight the New Drug, (last visited Nov. 10, 2024), https://fightthenewdrug.org/consent-and-coercion-blurred-in-porn-production	13
Gabriela Coca, Jocelyn Wikle, <i>What Happens When Children Are Exposed to Pornography?</i> , The Institute for Family Studies (April 30, 2024), https://ifstudies.org/blog/what-happens-when-children-are-exposed-to-pornography	5
Common Sense Media, <i>New Report Reveals Truths About How Teens Engage with Pornography</i> (Jan. 10, 2023), https://www.commonsensemedia.org/press-releases/new-report-reveals-truths-about-how-teens-engage-with-pornography	5

Cited Authorities

	<i>Page</i>
Gail Dines, <i>Pornland: How Porn has Hijacked our Sexuality</i> . xix (2010); Niki Fritz et al., <i>A Descriptive Analysis of the Types, Targets, and Relative Frequency of Aggression in Mainstream Pornography</i> , 49 <i>Archives of Sexual Behav.</i> , 3041 (2020).	4, 6, 7
Greg Farrell, <i>Hedge Funds' Pornhub Loans Aided Sex Abuse, Suit Says (Correct)</i> , <i>Bloomberg Law</i> (May 24, 2024 at 3:52 PM CDT), https://news.bloomberglaw.com/white-collar-and-criminal-law/hedge-funds-pornhub-financing-aided-sex-trafficking-suit-says	10, 15
Mónica Fernández-Ruiz, Olga María López-Entrambasaguas, Jose Manuel Martínez-Linares, José Granero-Molina, <i>Young Women's Attitudes and Concerns Regarding Pornography and Their Sexual Experiences: A Qualitative Approach</i> , <i>Healthcare</i> (Basel), Nov. 2023.	3
Niki Fritz, Vinny Malic, Bryant Paul, Yanyan Zhou, <i>A Descriptive Analysis of the Types, Targets, and Relative Frequency of Aggression in Mainstream Pornography</i> , <i>Arch Sex Behav.</i> 2020 Nov;49(8):3041-3053	4, 12

Cited Authorities

	<i>Page</i>
Graig Graziosi, <i>Pornhub Parent Company Faces \$80m Lawsuit for Hosting Videos of ‘Trafficked’ Women</i> , Independent (Dec. 16, 2020 at 8:31 PM GMT), https://www.independent.co.uk/news/world/americas/pornhub-lawsuit-girlsdoporn-sex-trafficking-b1775259.html	11
H.B. 1181.	6, 9, 10, 16, 17, 19, 20
Hughes, Donna M., <i>Sex Trafficking of Women for the Production of Pornography</i> , Citizens Against Trafficking (July 10, 2010), https://www.academia.edu/4847671/Sex_Trafficking_of_Women_for_the_Production_of_Pornography . . .	11, 13
Shaziya Inayath, <i>Types of Mirroring Behavior in Children</i> , Islaah Center For Psychological Wellness (Nov. 10, 2023), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/may-2014/how-pornography-harms-children--the-advocate-s-role	12
Nicholas Kristof, <i>The Children of Pornhub</i> , New York Times (Dec. 4, 2020), https://www.nytimes.com/2020/12/04/opinion/sunday/pornhub-rape-trafficking.html	10

Cited Authorities

	<i>Page</i>
Belinda Luscombe, <i>How an Ordained Rabbi Ended Up Owning the World's Most Famous Porn Company</i> , Time Magazine (Sept. 9, 2024), https://time.com/7017403/solomon-friedman-pornhub-ethical-interview	13, 14, 15
Office of Film and Literature Classification, <i>Breaking Down Porn: A Classification Office Analysis of Commonly Viewed Pornography in NZ</i> , 20 (Dec. 2019), https://www.classificationoffice.govt.nz/resources/research/breaking-down-porn	5
Office of the High Commissioner for Human Rights, <i>Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography</i> (May 25, 2000), https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child	6, 17
<i>Online Grooming of Children: A Literature Review on the Misuse of Social Networking Sites for Grooming Children for Sexual Offenses</i> , International Centre for Missing & Exploited Children, 5 (Sept. 18, 2017), https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf	7, 8

Cited Authorities

	<i>Page</i>
Javier P., <i>Pornography and It's Impact On Sexual Exploitation</i> , SOS International (Feb. 16, 2023), https://sosresponds.org/blog/pornography-and-its-impact-on-sexual-exploitation	7, 12
Pornhub. Pornhub (@Pornhub), Tweet (June 30, 2023, 10:00 AM), https://x.com/Pornhub/status/1674774396773318658	20
Michael Toscano, <i>Online Age Verification Laws Are a Bet Worth Making</i> , Newsweek (March 4, 2024, at 10:37 EST) https://www.newsweek.com/online-age-verification-laws-are-bet-worth-making-opinion-1874764	2, 3
U.S. Department of Justice, <i>Sextortion, Crowdsourcing, Enticement, and Coercion</i> (last visited Oct, 18, 2024), https://www.justice.gov/d9/2023-06/sextortion_crowdsourcing_enticement_and_coercion_2.pdf	9
Jordan Valinsky, <i>Pornhub Removes a Majority of Its Videos After Investigation Reveals Child Abuse</i> , CNN Business (Dec. 15, 2020 at 12:24 PM EST), https://www.cnn.com/2020/12/15/business/pornhub-videos-removed/index.html	11

Cited Authorities

	<i>Page</i>
Sally Weale, <i>One in 10 children 'have watched pornography by time they are nine'</i> , The Guardian (Jan. 31, 2023 at 7:01 PM EST), https://www.theguardian.com/society/2023/jan/31/one-in-10-children-have-watched-pornography-by-time-they-are-nine	9
Rhiannon Williams, <i>The US now hosts more child sexual abuse material online than any other country</i> , MIT Technology Review (April 26, 2022), https://www.iwf.org.uk/news-media/iwf-in-the-news/the-us-now-hosts-more-child-sexual-abuse-material-online-than-any-other-country	4
Gary Wilson, <i>Your Brain on Porn; Internet Pornography and the Emerging Science of Addiction</i> 21-102 (2014)	7
Ashton Yount, <i>When You Watch Online Porn, Who Is Watching You?</i> , Annenberg School of Communications (July 24, 2019), https://www.asc.upenn.edu/news-events/news/when-you-watch-online-porn-who-watching-you	19

INTEREST OF *AMICUS CURIAE***Interest of Women’s Liberation Front (WoLF)¹**

WoLF is a non-profit feminist organization dedicated to the liberation of women and safe-guarding of children by advancing the rights of women and children, ending the exploitation of women and children, and promoting freedom by fighting coercive control, dehumanization, and violence. WoLF’s supporters include over 400 “sisters in action” who advocate for its mission and live across the U.S. WoLF’s interest in this case stems from its interest in empowering and protecting the rights of women and children. Among WoLF’s core tenets is that pornography injures in its production and its consumption. WoLF recognizes that contemporary Internet pornography is not speech within the meaning of the First Amendment and is demonstrably directly harmful to participants, women, and children as well as intimidating and threatening. WoLF submits this brief to advance and defend this truth: Women and children are harmed by the production of Internet pornography and by the consumption of such pornography.

SUMMARY OF ARGUMENT

At stake in this case is whether a state may act to safeguard children by ensuring they reach adulthood unharmed by exposure to Internet pornography. Pornography inflicts grievous harm in its production

1. No counsel for any party authored any part of this brief, and no party, their counsel, or anyone other than WoLF, has made a monetary contribution intended to fund its preparation or submission.

and consumption. Its transmission through the Internet amplifies these harms because of the ubiquitous and extreme nature of pornographic content readily available online. A state's right to protect its children from these harms cannot be defeated by purported concerns about privacy and the chilling of speech, concerns revealed to be bogus by examination of pornographers' own data handling practices.

ARGUMENT

I. Pornography Is Harmful to Children

A. Internet pornography harms children.

Children who view pornography suffer significant and various harms as a result. Adolescents who view violent pornography have been known to re-enact that violence. Faye Chadwick-Brown, Joyce J Endendijk, *Associations Between Sexualized Media Consumption, Sexual Double Standards, and Sexual Coercion Perpetration and Victimization in Late Adolescent Sexually Active Boys and Girls from The Netherlands*, Arch Sex Behav. Sep 3, 2024.

Children who regularly view pornography tend to struggle with forming stable relationships and disproportionately suffer from mental health problems. Michael Toscano, *Online Age Verification Laws Are a Bet Worth Making*, Newsweek (March 4, 2024, at 10:37 EST).² Internet porn purveyors use techniques to bring

2. <https://www.newsweek.com/online-age-verification-laws-are-bet-worth-making-opinion-1874764>

young consumers back to the platforms repeatedly, which exposes them not just to pornography, but also to large amounts of extremely effective third-party advertisements. *Id.*

Young women report that exposure to pornography creates difficulty refusing consent for “unwanted or humiliating sexual practices.” Mónica Fernández-Ruiz, Olga María López-Entrambasaguas, Jose Manuel Martínez-Linares, José Granero-Molina, *Young Women’s Attitudes and Concerns Regarding Pornography and Their Sexual Experiences: A Qualitative Approach*, Healthcare (Basel), Nov. 2023.

Teenagers report that the average age they first saw pornography was 12 and that “52% of teens report seeing violent or aggressive behavior in pornography.” American College of Pediatricians, Factsheet: The Impact of Pornography on Children (Aug. 2024) (internal citations omitted).³

In addition, frequent pornography use may lead to feelings of social isolation and loneliness, lower levels of self-confidence, anxiety, stress, and depression. Pornography use is addictive in nature and the neural changes in the brains of users are similar to those seen in individuals addicted to cocaine, alcohol, and methamphetamines. Juvenile sex offenders self-report pornography use at higher rates than juvenile non-sexual criminal offenders. *Id.*

3. https://acped.org/assets/positionpapers/factsheet_-the-impact-of-pornography-on-children.pdf

And, “[c]hildren under twelve years old who have viewed pornography are statistically more likely to sexually assault their peers.”*Id.* at 2 (internal citations omitted).

These harms rise to the level of child abuse and it is the state’s duty to adequately safeguard children from such abuse.

B. Contemporary Internet pornography differs from historical pornography (considered in prior cases)

Pornography in 2024 is akin to 1968 pornography only in the remotest definition of the term and is completely unlike the “reproductive lore” of the 18th Century, which certainly did not include group ejaculation onto women’s faces, double anal penetration, and gang-bangs. Petitioners’ Brief at 19. Streaming videos of violent gang sexual assaults, fecal-focused videos, and extremely obscene and abusive acts, including rape and other criminal acts carried out against, almost always, women, and less frequently, children. Gail Dines, *Pornland: How Porn has Hijacked our Sexuality*. xix (2010); Niki Fritz et al., *A Descriptive Analysis of the Types, Targets, and Relative Frequency of Aggression in Mainstream Pornography*, 49 *Archives of Sexual Behav.*, 3041, 3041 (2020). Rhiannon Williams, *The US now hosts more child sexual abuse material online than any other country*, MIT Technology Review (April 26, 2022).⁴ Participation in the production of such pornography is frequently forced, coerced, and/or without consent or awareness of those

4. <https://www.iwf.org.uk/news-media/iwf-in-the-news/the-us-now-hosts-more-child-sexual-abuse-material-online-than-any-other-country>

being filmed. Office of Film and Literature Classification, *Breaking Down Porn: A Classification Office Analysis of Commonly Viewed Pornography in NZ*, 20 (Dec. 2019).⁵

There is no reason to assume that those whose images are captured for sale are freely consenting participants. These increased harms transfer to child consumers whose developing brains mirror behavior from said videos. Gabriela Coca, Jocelyn Wikle, *What Happens When Children Are Exposed to Pornography?*, The Institute for Family Studies (April 30, 2024).⁶ Internet pornography has demonstrably and egregiously harmed numerous children so as to require state action, and so long as children can access Internet pornography, those harms multiply every hour of every day.

Those exposed to violent video pornography are 24 times more likely to perpetrate sexual violence. Currently, the majority of children are exposed to pornography before the age of 13, and such exposure creates attachment disorders, mood disorders, and criminality. Common Sense Media, *New Report Reveals Truths About How Teens Engage with Pornography* (Jan. 10, 2023).⁷ See generally Allison Baxter, *How Pornography Harms Children: The Advocate's Role*, American Bar Association (May 1, 2014).⁸

5. <https://www.classificationoffice.govt.nz/resources/research/breaking-down-porn>

6. <https://ifstudies.org/blog/what-happens-when-children-are-exposed-to-pornography>

7. <https://www.common sense media.org/press-releases/new-report-reveals-truths-about-how-teens-engage-with-pornography>

8. https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/may-2014/how-pornography-harms-children--the-advocate-s-role

Pornography in 2024 is more violent in content, more abusive in its production, and more harmful for its consumers compared to earlier pornography. Gail Dines, *Pornland: How Porn has Hijacked our Sexuality*. xvii-xix (2010). The state duty to protect children is also elevated because pornography in 2024 is so demonstrably harmful that state failure to protect children is a dereliction in its duty to protect the fundamental human rights of children, as the United States has agreed to do. Office of the High Commissioner for Human Rights, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography* (May 25, 2000).⁹

The free speech claims of Petitioners rest on the premise that the content reached by H.B. 1181 is expressive, thus it must withstand strict scrutiny. However, such content is obscene for children and therefore is outside the boundary of First Amendment protections because “nearly 90% of [pornographic] scenes contained at least one aggressive act, with an average of nearly 12 acts of [verbal or physical] aggression per scene,” because pornography often contains real physical assaults that are not mere simulation for the camera, and because such pornographic content is directly harmful to children. Such content is also outside constitutional protection because it harms more directly than the intended intimidation of targeted cross-burning. *Virginia v. Black*, 538 U.S. 343 (2003) (upholding the prohibition on intended intimidation via cross-burning); Dines, *supra*,

9. <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child>

at xxii; Javier P., *Pornography and Its Impact On Sexual Exploitation*, SOS International (Feb. 16, 2023).¹⁰ The “unique problems” in the means of expression entail non-stop video streaming. *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 813 (2000) (cable television).

The Internet in 2024 offers instant access to extreme videos of gang rape, strangulation, bondage, fecal ingestion, and more, to any child with a networked device. Neuroscientist and addiction specialist Gary Wilson explains how videos impact the brain differently from static images and how such videos easily lead to impairment of physical and mental health, including addiction, erectile dysfunction, depression, social phobias, anti-social behavior, inability to form relationships, low self-esteem and more. Gary Wilson, *Your Brain on Porn; Internet Pornography and the Emerging Science of Addiction* 21-102 (2014). Children exposed to Internet pornography are especially vulnerable because of their maturing brain processes. The severity of the harms to children requires state safeguarding action.

C. Sexual abuse of children includes exposure to pornography.

Exposure of children to pornography is child sexual abuse and is a gateway to further sexual abuse, trafficking, coercion of children into self-produced porn, and participation in pornographic filming. *Online Grooming of Children: A Literature Review on the Misuse of Social Networking Sites for Grooming Children for Sexual*

10. <https://sosresponds.org/blog/pornography-and-its-impact-on-sexual-exploitation>

Offenses, International Centre for Missing & Exploited Children, 5 (Sept. 18, 2017).¹¹ For example, R. Kelly sexually abused two of his daughters, filmed the abuse, and shared it as child sexual abuse material (“CSAM”). Samantha Chery, *R. Kelly’s daughter alleges singer sexually abused her as a child*, Washington Post (Oct. 13, 2023 at 5:13 PM EDT).¹²

“Sexual predators have purposefully exposed young children to pornography for the purpose of grooming them for sexual exploitation.” American College of Pediatrics, *Patient Handout: Porn-Proof Your Children* (Aug. 2024).¹³ See e.g., *State v. Dearth*, 211 N.E.3d 246, 248–49 (Ohio 2023) (investigating officer testified that during a forensic interview of the abused children, allegations arose that the defendant sexually molested a granddaughter, and showed pornography to the children while they were visiting his home.); *State v. Taylor*, 966 N.W. 330 (Iowa Ct. App. 2001) (abused child was shown pornography by the abuser.); *Grado v. State*, 559 S.W.3d 888, 898–99 (Mo. 2018), opinion modified on denial of reh’g (Dec. 4, 2018)(State’s expert testified that the accused “showed pornography to a child he abused.”)

11. https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf

12. <https://www.washingtonpost.com/style/2024/10/13/buku-abi-r-kelly-daughter-sexual-abuse-documentary/>

13. https://acpeds.org/assets/positionpapers/_parent-handout-pornography-8.24.pdf

D. Exposure to pornography is a cause of child participation in CSAM.

Susie Hargreaves, chief executive of the Internet Watch Foundation, emphasizes that, “Anything which normalises sexualised behaviours in children can be exploited by online predators, who are only too ready to trick children into performing sexually on camera.” Sally Weale, *One in 10 children ‘have watched pornography by time they are nine’*, The Guardian (Jan. 31, 2023 at 7:01 PM EST).¹⁴

CSAM is a growing concern as more and more children fall victim as demonstrated by the U.S. Department of Justice, *Sextortion, Crowdsourcing, Enticement, and Coercion* (last visited Oct, 18, 2024).¹⁵

State action such as H.B. 1181 is required to stem the access of children to Internet pornography because the sources of the threats are pervasive and the harms are increasing, as are harms from CSAM.

II. Internet pornography is a violent criminal enterprise.

A. There is no First Amendment right to record and profit from committing a crime.

The Internet content reached by H.B. 1181 is immediately harmful to children as well as harmful in

14. <https://www.theguardian.com/society/2023/jan/31/one-in-10-children-have-watched-pornography-by-time-they-are-nine>

15. https://www.justice.gov/d9/2023-06/sextortion_crowdsourcing_enticement_and_coercion_2.pdf

its production processes to many or most those who are filmed. Even without further inquiry, the facts here are already enough to determine that this Internet content is not constitutionally protected behavior and falls outside of the scope of First Amendment protections for speech.

Petitioners argue that “H.B. 1181...discriminates against particular speakers.” Petitioners’ Brief at 34 (citing *Playboy*). We must consider, however, whether the “speaker” in question is in fact a perpetrator of sexual assault, a vendor of films of sexual assault, or a forced, coerced, or compelled participant and whether the “speech” is in fact criminal behavior. Women suffered assault in 10 million videos on Pornhub. Greg Farrell, *Hedge Funds’ Pornhub Loans Aided Sex Abuse, Suit Says (Correct)*, Bloomberg Law (May 24, 2024 at 3:52 PM CDT).¹⁶

B. Platform content consists of actual crimes.

An exposé of Pornhub found it “infested with rape videos.” It monetizes child rapes, revenge pornography, spy cam videos of women showering, racist and misogynist content, and footage of women being asphyxiated in plastic bags. A search for “girls under18” (no space) or “14yo” leads in each case to more than 100,000 videos. Nicholas Kristof, *The Children of Pornhub*, New York Times (Dec. 4, 2020).¹⁷

Pornhub subsequently erased 80% of its content, a staggering admission of massive amounts of criminal

16. <https://news.bloomberglaw.com/white-collar-and-criminal-law/hedge-funds-pornhub-financing-aided-sex-trafficking-suit-says>

17. <https://www.nytimes.com/2020/12/04/opinion/sunday/pornhub-rape-trafficking.html>

content. Jordan Valinsky, *Pornhub Removes a Majority of Its Videos After Investigation Reveals Child Abuse*, CNN Business (Dec. 15, 2020 at 12:24 PM EST).¹⁸ There have been no prosecutions but there have been numerous civil suits. Graig Graziosi, *Pornhub Parent Company Faces \$80m Lawsuit for Hosting Videos of ‘Trafficked’ Women*, Independent (Dec. 16, 2020 at 8:31 PM GMT).¹⁹ The constitutional protection of pornographers’ products protects forced participation, drugging, physical and psychological coercion, trafficking, and more. It is time to consider whose expression is actually “free,” and who is gagged, unable to speak, and repeatedly exploited for profit.

This is an unfathomable scale of criminality with untold numbers of victimized “performers,” and Pornhub is just one among Internet commercial pornography. In such a scenario, most of those whose “free expression” rights are at stake are profiting from mediatized sexual violence. One young woman described how, “My first movie I was treated very rough by 3 guys. They pounded on me, gagged me with their penises, and tossed me around like I was a ball! I was sore, hurting and could barely walk. My insides burned and hurt so badly. I could barely pee and to try to have a bowel movement was out of the question.” Hughes, Donna M., *Sex Trafficking of Women for the Production of Pornography*, Citizens Against Trafficking (July 10, 2010), at 3.²⁰

18. <https://www.cnn.com/2020/12/15/business/pornhub-videos-removed/index.html>

19. <https://www.independent.co.uk/news/world/americas/pornhub-lawsuit-girlsdoporn-sex-trafficking-b1775259.html>

20. https://www.academia.edu/4847671/Sex_Trafficking_of_Women_for_the_Production_of_Pornography

Such collaborative behaviors plainly put such Internet content outside the protection of the First Amendment.

Data from the U.S. National Trafficking Hotline show that the second most frequent Hotline complaint is pornography-related trafficking and such trafficking is increasingly prevalent. Javier P., *supra*.

A recent study found that violence appears in at least “45% of Pornhub scenes” and in “35% of scenes from Xvideos.” Niki Fritz, Vinny Malic, Bryant Paul, Yanyan Zhou, *A Descriptive Analysis of the Types, Targets, and Relative Frequency of Aggression in Mainstream Pornography*, Arch Sex Behav. 2020 Nov;49(8):3041-3053. These scenes most commonly include spanking, gagging, slapping, hair pulling, and choking.” This violence is directed against women “in 97% of the scenes, and their response to aggression was either neutral or positive and rarely negative. Men were the perpetrators of aggression against women in 76% of scenes.” This same study notes that viewing videos of violence without repercussions has resulted in some viewers “mirroring” violence they see. *Id.*

Children are especially susceptible to mirroring violent behavior because their brains are not fully matured. Shaziya Inayath, *Types of Mirroring Behavior in Children*, Islaah Center For Psychological Wellness (Nov. 10, 2023).²¹

21. https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-33/may-2014/how-pornography-harms-children--the-advocate-s-role

Anti-trafficking organizations have documented that female victims in pornography are forced into participation via coercion, threats, fraud, and by preying on drug and alcohol dependence. *Can the Line Between Consent and Coercion Get Blurred During Porn Production?*, Fight the New Drug, (last visited Nov. 10, 2024).²² Advocates for women who have exited the pornography business call for criminal investigations and prosecutions under the Trafficking Victims Protection Act of 2000. Hughes, *supra*, at 1. One participant described pervasive drugging of participants so that they could comply in excruciating group assaults; she added that some stars had personal ‘doctors’ on set to provide pills and injections, and she felt convinced that the doctors providing drugs to women received kick-backs from the pornography producers. *Id* at 3-4.

The “reformed” Pornhub practices mandate that “contributors have to go through a rigorous process of identifying themselves, using a state ID, a face scan done by a third party, and a sign-off from a human moderator.” Belinda Luscombe, *How an Ordained Rabbi Ended Up Owning the World’s Most Famous Porn Company*, Time Magazine (Sept. 9, 2024).²³

Anyone who can be coerced into enduring sexual violence can be coerced into signing a consent form. Such information could easily be hacked and/or sold, which could easily be used to further coercive control of those whose identities have been recorded.

22. <https://fightthenewdrug.org/consent-and-coercion-blurred-in-porn-production>

23. <https://time.com/7017403/solomon-friedman-pornhub-ethical-interview>

Astoundingly, until September 2024, Aylo (the owner of Pornhub) relied on “an honor system in which uploaders stated that they got consent from participants”; post-September 2024 uploaders have to provide “proof of that consent. Approved IDs and consent forms have to be submitted for any other person appearing in the videos, even if their face is not shown.” *Id.*

Uploader maintenance of consent forms demonstrated substantial criminal coercion and absence of consent on GirlsDoPorn (GDP). “According to GDP employees who pleaded guilty to charges brought by the Justice Department, GDP used fraud, coercion, and force to persuade very young women to film pornographic videos, which, these women were told, would not be posted online or released in the U.S. Instead, not only were the videos marketed heavily on Pornhub, hundreds of the women’s real names were made available on a site called PornWikileaks.” The victims suffered harassment and “had to keep a low profile for years. ‘It’s incredibly heartbreaking,’” says DeBarber. ‘Most of these women lost their 20s.’” *Id.*

Accountability for Internet pornography production and dissemination crimes, and the absence of any right to view images of the criminal victimization of individuals staged for the production of pornography and/or commercial exploitation, have crystallized in law, safe-guarding of children requires state action. In 2023 Ethical Capital Partners (ECP) acquired MindGeek, which rebranded as Aylo, and hence ECP became the parent company of Pornhub. The ECP - Aylo -Pornhub corporation signed a deferred prosecution agreement with federal prosecutors in Brooklyn, NY, “to pay damages

to women who appeared on its sites without consent.” Farrell, *supra*.

Another victim is suing MindGeek (now called Aylo) as well as MindGeek funders Redwood Capital Management and Colbeck Capital Management. *Fleites v. MindGeek*, 2:21-cv-04920, US District Court, Central District of California (Los Angeles). MindGeek/Aylo also owns Peeperz, YouPorn and Brazzers. The plaintiff, Serena Fleites “alleges that, at age 13, her boyfriend induced her to appear in videos that later appeared on Pornhub without her consent. *Id.* The funders of Pornhub received due diligence reports that Pornhub hosted CSAM and nonconsensual pornography but the funders “provided and continued to provide MindGeek hundreds of millions of dollars in financing because they too had a singular focus on profits they would earn from the exorbitant interest rates and other fees they could demand because others were unwilling to finance this illicit business.” The complaint in *Fleites* alleges, “[d]uring the decade of such financing, [Redmond and Colbeck] were fully aware that MindGeek would be using the financing to monetize CSAM and other nonconsensual content.” *Id.*

MindGeek also “resolved a case with 50 victims connected to GirlsDoPorn in 2021, but Aylo [formerly MindGeek] is facing a lawsuit from a further 62 GDP plaintiffs, each of whom is seeking more than \$10 million, for alleged racketeering and trafficking.” Aylo also faces a class-action lawsuit on behalf of minors who were featured on MindGeek’s sites. Should the plaintiffs prevail, the minimum allowable amount for each member of the class is \$150,000. Luscombe, *supra*

These cases are just one tiny shard of giant icebergs of crimes committed in producing Internet pornography. As noted, Pornhub scrubbed 10 million videos in the wake of the expose on PornHub in the New York Times. The numbers of victims in those 10 million videos are unimaginable. This is criminality of epic proportions and yet those 10 million videos only came from one website, Pornhub, and leave unaccounted for all the nonconsensual pornography on all the other pornography websites.

III. State Action Is Necessary To Safeguard Children From Internet Pornography

Such overwhelming, organized criminal activity for enormous profit is not protected by the Constitution and demands an effective state response. One part of this response is to protect our nation's children via H.B. 1181 age verification requirements. To force individual families to confront this tide of Internet content solely through applying filters, is unconscionable.

The state's legitimate interest in protecting children from the harm of pornography outweighs Petitioner's claim that adults will suffer. The pornography business is a contemporary Goliath dominated by Aylo, owned by the private equity firm Ethical Capital Partners, which owns and operates most of the popular online streaming pornographic websites, including: Pornhub, RedTube, and YouPorn, as well as pornographic film studios like: Brazzers, Digital Playground, Men.com, Reality Kings, and Sean Cody. Aylo Brands on Aylo Inc. website, (last visited Nov. 3, 2024).²⁴ The content they are responsible for

24. <https://www.aylo.com/about/>

is inherently injurious to those who appear in the content and to the children exposed to the content.

Considering the ease of access to connected devices and the heightened danger from the brutality of pornography today, it is unreasonable to expect parents to bear the full burden of protecting children from Internet pornography. Parents should not be required to keep pace with the evolution of consumer technology just to keep their children safe, particularly when so many families struggle with significant burdens of family care and work. Even children raised in extremely guarded households can access the Internet on numerous devices in numerous locations, including *inter alia* libraries, schools, gyms, clubs, video parlors, the homes of relatives, neighbors and friends, and via the hand-held devices of friends, acquaintances, and even strangers on the street, on the bus, on trains, and movie theaters. Unless lawmakers can enact modest safeguards against exposing children to pornography like the age verification requirement of H.B. 1181, parents will be left to face pornographic behemoths like Pornhub on their own, with wholly predictable consequences of emotional and developmental harms to children. Under these circumstances, states can and must be allowed to step in to protect children. See generally Office of the High Commissioner for Human Rights, *supra*. Under the circumstances, the state action is rationally related to a legitimate state interest.

IV. There is No Protected Interest in Viewing Internet Pornography Anonymously.

Petitioners cannot defeat Texas' interest in protecting children by claiming that HB 1181 unduly burdens an

adult's right to the private consumption of Internet pornography. There is no such right, but even if there were, the porous and public nature of the Internet would defeat any expectation of privacy there. In fact, pornographers commonly exploit the non-private nature of the Internet at their customers' expense, making Petitioners' asserted concern for customer privacy disingenuous at best.

As the Fifth Circuit noted below, "the statute at issue in Ginsburg necessarily implicated, and intruded upon, the privacy of those adults seeking" to make in-person purchases of pornographic magazines by limiting sales to those over seventeen, and potentially requiring a "reasonable bona fide attempt to ascertain age." *Free Speech Coalition v. Paxton*, No. 23-50627 (5th Cir. 2024). Yet the Court, applying rational basis review, found the statute in Ginsburg to be an appropriate exercise of the state's interest in protecting children from exposure to pornography. See Ginsburg at 643. Petitioners make no argument for why consumption of Internet pornography deserves a higher degree of protection.

If anything, the expectation of privacy is diminished online and this is especially true of Internet pornography. Pornographers make profligate use of trackers and cookies that effectively make forfeiture of privacy the price of admission. As one article noted, "Pornhub doesn't allow people to easily opt out of being tracked by cookies; the site isn't clear about the data it shares with third parties; and its algorithm 'assigns' people sexual preferences, based on the videos they watch." Matt Burgess, *Pornhub Is Being Accused of Illegal Data Collection Complaints Filed in the European Union Claim the Porn Site Fails to Follow Basic Data-collection Policies Under GDPR*, Wired

(June 29, 2023 at 3:00 AM CT).²⁵ That article discusses a recent analysis of 22,484 porn websites that “found that 93 percent of them leak data to third parties, 44.97 percent ‘expose or suggest’ a gender or sexual identity that is likely to be linked to the user, and 79 percent used tracking cookies from outside companies. Google’s trackers were on the vast majority of websites.” *Id.* The scope and coerciveness of these data collection practices pose a far greater threat to privacy than the age verification process set forth in H.B. 1181, yet consumers continue to flock to Pornhub, apparently undeterred.

If adults who consume pornography understood the regular exposure of their activities and habits, they might not choose to view such Internet content: their Internet activities are known by their Internet Service Providers (ISPs) and are tracked by commercial entities. Such data is routinely aggregated and sold, making it discoverable by researchers. See, e.g., Ashton Yount, *When You Watch Online Porn, Who Is Watching You?*, Annenberg School of Communications (July 24, 2019).²⁶ Put simply, no person has a reasonable expectation of privacy when viewing Internet pornography. Petitioners cannot reconcile their demand that the Court create a Constitutional right to privacy when viewing Internet pornography with their own business practices because those practices demonstrate that they have no respect for their consumers’ privacy.

25. <https://www.wired.com/story/pornhub-tracking-cookies-gdpr-video-history/>

26. <https://www.asc.upenn.edu/news-events/news/when-you-watch-online-porn-who-watching-you>

In light of the data practices of pornographers, including unwanted distribution of the data to third parties, to criminals, and to the state, Petitioners' argument that the processes for age verification are flawed must not be taken at face value. See Petitioners' Brief at 25-26. In contrast, H.B. 1181 requires that consumers' identification be handled with care and privacy. Enjoining H.B. 1181 would only feed the misperception that consumers of Internet pornography have an expectation of privacy, serving the interests of the pornography companies that model their businesses on the exploitation of their customers' false sense that they can consume Internet pornography in privacy. The gulf between the protections of H.B. 1181 and the business practices of pornographers points to what is actually at stake with age-verification laws: by Pornhub's own report, in Louisiana, the implementation of age verification decreased traffic by 80% on Pornhub. Pornhub (@Pornhub), Tweet (June 30, 2023, 10:00 AM).²⁷ This Court should not sacrifice the safety of children to a business interest that profits from the exploitation of its customers and the degradation and abuse of women and children.

27. <https://x.com/Pornhub/status/1674774396773318658>

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

ELSPETH B. CYPHER
Counsel of Record

ALICE BULLARD

LAUREN A. BONE

NANCY K. STADE

WOMEN'S LIBERATION FRONT

1802 Vernon Street, NW #2036

Washington, DC 20009

(202) 507-9475

elspeth@womensliberationfront.org

Counsel for Amicus Curiae