

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
U.S. Court of Appeals for the Fifth Circuit*

**BRIEF OF THE AMERICAN
FOUNDATION FOR ADDICTION RESEARCH
AND TEN SEX ADDICTION THERAPISTS AS
AMICI CURIAE IN SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

1. Did the State of Texas violate the First Amendment when it adopted a statute requiring the use of modern-day technological tools to ensure that minors cannot access pornographic content on the Internet?

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INTEREST OF THE AMICI CURIAE¹

The American Foundation for Addiction Research is a leading national center of scholarship and training on the causes of and treatments for sex addiction. The Foundation envisions a world where sex addiction is universally acknowledged, understood, and accepted as a mental health disorder. Through pioneering research, public education, and persistent advocacy, the Foundation strives to create a world where individuals, families, and communities can experience freedom from the disease of sex addiction.

Joining the Foundation in authoring and endorsing this brief are ten front-line professionals who are leaders in the field of sex addiction therapy.

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¹ No other counsel authored any part of this brief, and no other person or entity prepared or funded it. *R. 37.*

SUMMARY OF ARGUMENT & INTRODUCTION

“[W]hatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of freedom of speech and the press, like the First Amendment’s command, do not vary . . .” *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 790 (2011) (cleaned up). The basic principles of the First Amendment here are two-fold: On the one hand, adults have a right to view adult content. *Stanley v. Georgia*, 394 U.S. 557 (1969). On the other hand, states have a right and duty to protect minors from accessing adult-only content. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

Ashcroft v. ACLU, 542 U.S. 656 (2004), balanced those principles and struck down a statute similar to Texas’s law here because “[t]he Government has failed, at this point, to rebut the plaintiffs’ contention that there are plausible, less restrictive alternatives,” namely the installation of filtering software. *Id.* at 660, 667.

Twenty years later, the social science literature confirms the everyday experience of therapists: filtering does not work to prevent minors’ access to pornography. In a world of apps, incognito browsers, and phones, filters are easily and frequently evaded by children and teens whose tech savvy far exceeds that of the adults in their lives. The result is a heartbreaking epidemic of sexual dysfunction that shows up in the offices of addiction therapists day after day.

“At this point,” the supposedly less-restrictive alternative is an abysmal failure, such that stronger steps are

needed to protect America’s young people from an onslaught of destructive content.

ARGUMENT

“[W]hen confronted with the application of a constitutional requirement to new technology, we should proceed with caution. While the meaning of the Constitution remains constant, the application of enduring principles to new technology requires an understanding of that technology and its effects.” *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2439 (2004) (Alito, J., concurring in the judgment).

The aim of this brief is for America’s leading research center for sex addiction to give the Court, from social science and clinical experience, (1) an understanding of technology as it stands today and (2) its utter failure to protect minors from the devastating harms associated with widespread access to pornography.

Ashcroft decided against age verification on the then-plausible assumption that content-filtering technology could be employed by parents or schools to effectively protect minors against exposure to pornography. Sadly, this hope has been sorely disappointed in the two decades since. Filters have proven ineffective at protecting children even from an initial exposure to obscene materials. Given the addictive character of pornography—which is now far better understood than in 2004—once children are hooked on this content, filters are almost entirely powerless in keeping them from coming back for more. The results have been catastrophic for youth mental and sexual health.

Section I reviews the inadequacy of content filters and the resultant pervasiveness of pornography exposure among youth today. Section II shares what the best social science research and therapists' own clinical experience reveals about the deep harms that pornography exposure is having on teen and young adult physical and mental health.

I. Current regulations in the U.S. and the use of filters have proven ineffective at keeping children from sexually explicit content on the Internet, including pornography.

In 2003, this Court observed there is “an enormous amount of pornography on the Internet, much of which is easily obtained.” *United States v. Am. Library Ass’n*, 539 U.S. 194, 200 (2003) (plurality). Two decades later, the amount of pornography available online is far greater, and the ease of obtaining it is substantially greater as well. Texas has taken common-sense steps to combat this epidemic of access among minors, and this law is a vital tool to ameliorate the widespread negative damage wrought on young people by porn.

Social-science research and clinical experience alike confirm that content filters are simply not an effective protection against the tidal wave of obscene and violent content populating large swaths of the Internet. Even robust filters generally allow some objectionable content through on the devices or apps that they regulate. For instance, peer-to-peer file-sharing networks

and apps such as BitTorrent allow children to download and share pornography without being detected by typical web-based filters.²

More serious than any one set of loopholes, however, is simply the sheer number of such devices or apps. It is not a question anymore of installing software on a home computer but of regulating a whole ecosystem of Internet-connected devices within the typical home. Even the most attentive parent cannot perfectly control the child's broader social sphere, which is where much initial pornography exposure happens.³

Some of the best filters are those which parents can install on home WiFi routers; however, by design these can only regulate content accessed through the home network, leaving children exposed when using mobile data, where parental controls are typically more difficult to enforce. Indeed, the emergence of the smartphone was entirely unforeseen by the Court at

² Naomi Brown, *Effects of Pornography on Relationships*, Utah State University (undated), <https://extension.usu.edu/relationships/research/effects-of-pornography-on-relationships>. See Alyson Orcena, et al., *Parental Controls: Teens Still See Pornography Despite Parents' Best Intentions*, Evolve (Sept. 8, 2021), <https://evolvreatment.com/blog/parental-controls-teen-porn/>.

³ Andrew K Przybylski and Victoria Nash, *Internet Filtering and Adolescent Exposure to Online Sexual Material*, 21 *Cyberpsychological Behavior Social Network* 405 (2018).

the time of *Ashcroft* in 2004, but it has dramatically changed the technological landscape. In 2004, Pew Internet’s survey of 12-year-olds revealed that only 18% owned a cell phone, yet that increased to 51% by 2008.⁴ By 2024, Pew surveys find 95% of teens have regular access to a cell phone.⁵

Plus, today’s cell phones are so different from twenty years ago. They are now capable of taking and sharing high-resolution images and videos and anonymously accessing the whole universe of content on the Internet. It should surprise no one that teens have used this historically unprecedented access to view and share sexually explicit content with one another. Indeed, research shows that 23% of teen respondents were first exposed to pornography by a friend on their device, while a majority (51%) of teens “said they have accidentally encountered pornography via clicking a link,

⁴ Amanda Lenhart, “Teens and Mobile Phones Over the Past Five Years: Pew Internet Looks Back,” Pew Research Center (Aug. 19, 2009), <https://www.pewresearch.org/internet/2009/08/19/teens-and-mobile-phones-over-the-past-five-years-pew-internet-looks-back/>.

⁵ Monica Anderson, et al., “How Teens and Parents Approach Screen Time,” Pew Research Center (March 11, 2024), <https://www.pewresearch.org/internet/2024/03/11/how-teens-and-parents-approach-screen-time/>.

a search engine result, an online ad, or on social media in some way.”⁶

Perhaps most scandalously, our schools themselves have been complicit in the mass exposure of our children to pornography. For instance, in 2017 the Richland Public School District in Washington State issued more than 12,000 Chromebooks to its students. These laptops did not have appropriate filters and subsequent school board meetings were filled to capacity as upset and concerned parents recounted that their children had found or been exposed to pornography due to inadequate filters on the school-issued devices.⁷ Parents also reported that their elementary aged children were exposed to pornographic and sexually explicit materials on school buses by peers, and they found they could skim through an infinite array of unfiltered pornographic images as long as they didn’t click on or open an image.⁸ At subsequent school board meetings,

⁶ Michael B. Robb and Supreet Mann, *Teens and Pornography*, Common Sense Media at 14 (2022), <https://www.commonsensemedia.org/sites/default/files/research/report/2022-teens-and-pornography-final-web.pdf>.

⁷ Richland School District, Board of Directors, Regular Meeting Minutes, Oct. 10, 2017, <https://resources.finalsite.net/images/v1558473657/rsdedu/hbskhvfk3buk-twatnqe/minutes101017.pdf>.

⁸ Cameron Probert, “West Richland parents say school computer porn filter not good enough,” *Tri City Herald*

students themselves shared their own experiences of accidentally accessing adult content due to a lack of adequate filters.⁹

District IT staff responded by saying that there was no way to block out or appropriately determine what to filter, due to health, anatomy, human development and sexuality courses/content required and/or offered by the district.¹⁰ District IT employees also explained that they were powerless to anticipate everything that needed to be blocked.¹¹

(Sept. 25, 2017), <https://www.tri-cityherald.com/news/local/education/article175374506.html>.

⁹ Richland School District, Board of Directors, Regular Meeting Minutes, Oct. 23, 2018, <https://resources.finalsite.net/images/v1558471444/rsdedu/ufvscgbxxytzltegy8vr/MINUTES102318.pdf>.

Richland School District, Board of Directors, Regular Meeting Minutes, Nov. 13, 2018, <https://resources.finalsite.net/images/v1558471444/rsdedu/ty2pfltvlyv8cxsvaz8y/MINUTES111318.pdf>.

¹⁰ *Supra* note 9.

¹¹ *See* Richland School District, Board of Directors, Regular Meeting Minutes, Feb. 13, 2018, <https://resources.finalsite.net/images/v1558473655/rsdedu/zgnk4xygy6wmkk8xxgys/minutes21318.pdf>.

Sadly, this one district’s experience is not unique. In a recent survey, one in three (31%) teens reported they had “viewed pornography while attending school in person,” and “nearly half (44%) reported having viewed pornography on school owned devices.”¹²

Thus it is perhaps no surprise that the most rigorous empirical studies of the efficacy of content filtering have shown parental controls to have a negligible impact on the likelihood of a child’s exposure to pornography. One such study in the UK concluded that “more than 99.5 percent of whether a young person encountered online sexual material had to do with factors beside their caregiver’s use of Internet filtering technology.”¹³ Indeed, the authors were honest to admit: “evidence derived from a more stringent and robust empirical approach indicated that [filters] are entirely ineffective.”¹⁴

The result is a population of young people who are more likely than not to be viewing pornography on a regular basis—whether or not they originally went looking for it. A study of 3,000 respondents done by the Barna Group in 2016 found “nearly three-quarters of young adults (71%) and half of teens (50%) come across what they consider to be porn at least once a month,

¹² *Supra* note 7, at 5.

¹³ Andrew K. Przybylski, et al., *Internet Filtering and Adolescent Exposure to Online Sexual Material*, 21 *Cyberpsychology, Behavior, and Social Networking* 7 (2018).

¹⁴ *Id.*

whether they are seeking it or not.”¹⁵ These numbers have only increased in the years since.

Research released in 2023 found that “15% of teen respondents said they first saw online pornography at age 10 or younger. The average age reported for first viewing pornography is 12.”¹⁶ “While the vast majority of respondents said they have seen pornography, nearly half (44%) indicated that they had done so intentionally, while slightly more than half (58%) indicated they had encountered pornography accidentally.”¹⁷ “63% of those who said they have only seen pornography accidentally reported that they had been exposed to pornography in the past week.”¹⁸

By age 17, “[m]ost teens (73%) reported that they have consumed pornography.”¹⁹ Such exposure is disproportionately likely to form addictive behavior in minors versus adults, because the prefrontal cortex—which is essential for judgment, emotional regulation, decision making, logic and reasoning—does not mature until the young adult years (the 20s). *See Stanford v. Ky.*, 492 U.S. 361, 395 (1989) (Brennan, J., dissenting) (“Adolescents ‘are more vulnerable, more impulsive, and less self-disciplined than adults,’ and are without the same ‘capacity to control their conduct and

¹⁵ *The Porn Phenomenon*, Barna Group (2016).

¹⁶ *Supra* note 7, at *A Letter*.

¹⁷ *Supra* note 7, at 5.

¹⁸ *Supra* note 7, at *A Letter*.

¹⁹ *Supra* note 7, at 5.

to think in long-range terms.”²⁰). Developing 12 to 20-year-old brains are not adequately equipped to make mature decisions regarding the harmful impacts of porn.

In sum, filtering has failed to protect our children. America’s twenty-year experiment relying on filtering first has given us a generation of young people wrecked by consistent exposure to pornography. Technology has left the law in the dust, and states like Texas are rightly acting to update their laws with proven age-verification technologies that work. The less-restrictive alternative in *Ashcroft* has proven to be no alternative at all if the goal is protecting children.

II. Pornography has proven extremely harmful and addictive to minors.

The foregoing statistics might be dismissed as a moral panic if the content in question were analogous to the glossy nudes on the pages of *Playboy* fifty years ago. But they are not. Researchers who have braved the dark recesses of popular pornography websites have revealed strong trends toward violent and abusive content, as well as material that seeks to blur the boundaries of legal pornography and child pornography. For instance, a 2010 content analysis of popular pornography videos uncovered that the vast majority of scenes (88.2% percent) contained acts of physical assault (*i.e.*, spanking, slapping, gagging, choking, strangulation),

²⁰ Quoting Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* 7 (1978).

while a near majority (48.7%) included degrading verbal name-calling (*i.e.*, b*tch). Unsurprisingly, males were predominately perpetrating this violence against women and girls.²¹

A 2021 review of 131,738 titles of pornographic videos across three major porn platforms revealed that one in eight titles described sexually violent acts, “teen” was the most frequently occurring word, “schoolgirl” (17.6 percent), “girl” (9.6 percent), and “teen” (8.8 percent) were the words most often paired with the most coercive and exploitative content, and the most frequent theme involved incest.²²

A 2019 study of 172 “popular” videos on Pornhub showed that compared to adults, “teen performers” were five times more likely to be in titles suggesting aggressive anal penetration and facial ejaculation, and more likely to be featured “expressing pleasure” following these acts.²³

²¹ Ana J. Bridges, et al., *Aggression and sexual behavior in best-selling pornography videos: a content analysis update*, 16 *Violence Against Women* 1065 (2010).

²² Fiona Vera-Gray, et al., *Sexual violence as a sexual script in mainstream online pornography*, 61 *British J. of Criminology* 1243 (2021).

²³ Eran Shor, et al., *‘Harder and Harder’? Is Mainstream Pornography Becoming Increasingly Violent and Do Viewers Prefer Violent Content?*, 56 *J. Sex Research* 16 (2019).

It goes almost without saying that those routinely exposed to such sexual behaviors might be influenced to imitate them in their own relationships. Exposure to “rough sex” (defined as hair pulling, spanking, scratching, biting, bondage, fisting, and double penetration), for instance, prompts a significant increase in viewers’ desire for and subsequent participation in these behaviors, leading them to emphasize the “need to ensure that individuals can distinguish between consensual rough sex and sexual violence.”²⁴ As therapists, we have witnessed such effects in our own clinical practice, as clients addicted to pornography have sought to re-enact violent sexual behaviors on their own sexual partners, leading to domestic abuse and the breakdown of marriages. Statistics confirm this clinical experience—over half (58%) of college women reported having been choked during sex.²⁵

This problem of imitation is particularly acute with children, for whom exposure to such violent and obscene content is often their very first sexual experience, predating any relationships with real-world sexual partners and irresistibly shaping their expectations from those sexual partners. One study looked at 160 sexually reactive children and adolescents and their associations between sexually explicit material

²⁴ Emily Vogels, et al., *The Relationship Among Online Sexually Explicit Material Exposure to, Desire for, and Participation in Rough Sex*, 48 *Archives of Sexual Behavior* 653 (2018).

²⁵ Debby Herbenick, et al., *Young Women’s Experiences with Choking During Sex*, 51 *Archives of Sexual Behavior* 1103 (2022).

and sexually aggressive behavior. It found that adolescents who used sexually explicit material were more likely “to engage in coerced vaginal penetration and forced sexual acts such as oral or digital penetration, to express sexually aggressive remarks (obscenities), and to engage in sex with animals” than those who did not.²⁶ Another rigorous study looked at the longitudinal link between exposure to sexually explicit material and sexually aggressive behavior over a period of 36 months. It found that “adolescents who are intentionally exposed to violent sexually explicit material were six times more likely to be sexually aggressive than those who were not exposed.”²⁷

Another large European study of 14 to 17-year-olds found significant associations between boys’ regular viewing of pornography and their subsequent perpetration of sexual coercion and abuse, both in-person and/or online, indicating that teens who consume violent pornography “begin to view these acts as normative, legitimate, and perhaps even expected” and are driven to reenact those behaviors with their sexual

²⁶ EM Alexy, et al., *Pornography use as a risk marker for an aggressive pattern of behavior among sexually reactive children and adolescents*, 14 J. Am. Psychiatric Nurses Ass’n 442, 450 (2009).

²⁷ Whitney L. Rostad, *The Association Between Exposure to Violent Pornography and Teen Dating Violence in Grade 10 High School Students*, 48 Archives of Sexual Behavior 2137 (2019).

partners.²⁸ Indeed, “there is compelling evidence that too many boys and young men believe they have an absolute entitlement to sex at any time, in any place, in any way, and with whomever they wish. Equally worryingly..., girls feel they have no alternative but to submit to boys’ demands, regardless of their own wishes.”²⁹

In January 2024, the National Police Chiefs’ Council (NPCC) in the UK released a report indicating that there has been a quadrupling of underaged victims of sexual offenses over the past decade.³⁰ Of the 107,000 reported sexual offenses against children, 52% (55,640) of alleged offenders were also children.³¹ Ian Critchley, the NPCC lead for child protection, said: “This is predominantly a gender-based crime of boys

²⁸ N. Stanley, et al., *Pornography, Sexual Coercion and Abuse and Sexting in Young People’s Intimate Relationships: A European Study*, 33 *J. of Interpersonal Violence* 2919 (2018). Quoted in Alyson Dearborn, et al., *Pornography as School for Sex Abuse and Violence: A Review of Culturally Approved Harms to Women and Girls* (undated).

²⁹ Miranda A.H. Horvath, et al, *Basically... porn is everywhere*, Office of the Children’s Comm’r 4 (2017).

³⁰ “Child Sexual Abuse and Exploitation Analysis Launched,” Nat. Police Chiefs’ Council (Jan. 15, 2024), <https://news.npcc.police.uk/releases/vkpp-launch-national-analysis-of-police-recorded-child-sexual-abuse-and-exploitation-csae-crimes-report-2022>.

³¹ *Id.*

committing offenses against girls.”³² Police are making direct links between the availability and accessibility of violent pornography for boys and the increase in sexual violence perpetration: “Boys are watching violent porn on their smartphones and then going on to attack girls.”³³ A recent publication in the Weprotect Global Alliance’s Global Threat Assessment Report (2023) found an alarming 360% increase in ‘self-generated’ sexual imagery of 7–10-year-olds on the Internet from 2020 to 2022.³⁴ Weprotect in the same report also noted that the National Center for Missing and Exploited Children found an 87% increase in child sexual exploitation reports since 2019.³⁵

Even when pornography use does not lead to sexual violence, this does not mean that children escape it unharmed.

³² Nicole Dominique, “52% Of Child Sexual Abuse Is Committed By Other Children Due To Porn,” *Evie* (Jan. 11, 2024), <https://www.eviemagazine.com/post/52-child-sexual-abuse-children-are-committed-children-due-to-porn>.

³³ Vikram Dodd, “Children now ‘biggest perpetrators of sexual abuse against children,’” *The Guardian* (Jan. 9, 2024), <https://www.theguardian.com/society/2024/jan/10/children-now-biggest-perpetrators-of-sexual-abuse-against-children>.

³⁴ Weprotect Global Alliance, *Global Threat Assessment 2023*, <https://www.weprotect.org/wp-content/uploads/Global-Threat-Assessment-2023-English.pdf>.

³⁵ *Id.*

Girls in particular are at risk of internalizing shame when their bodies do not measure up to those depicted in pornography videos, they are not able to perform as the performers depicted do, or they do not desire behaviors depicted. One symptom of this has been a dramatic rise in the number of minors and young adults seeking “female genital aesthetic surgeries” worldwide.³⁶ Purported to “correct, shape, and beautify the female genital area,” the most frequently performed female genital operation worldwide is labiaplasty (genital lip reduction), with the rate of that operation in the US alone rising by 217.3% from 2012 to 2017.³⁷ The age distribution of patients included 469 (4.3%) under the age of 18 (read: minors) and 5,963 (55.3%) between 19 and 34 years old.³⁸ Girls and young women are being conditioned to surgically remodel their natural bodies to “match” the profit-driven pornography aesthetic. In other cases, they are responding by seek-

³⁶ See, e.g., Rajiv Saini, *Female Genital Cosmetic Surgery*, 4 *J. of Cutaneous and Aesthetic Surgery* 155 (2011); Fatemeh Alavi-Arjas, et al., *The Effect of Female Genital Cosmetic and Reconstructive Procedures on Body and Genital Self-Image: A Systematic Review and Meta-Analysis*, 43 *Aesthetic Surgery J.* 1161 (2023).

³⁷ *Statistics of Aesthetic Genital Surgeries*, Int’l Society of Aesthetic Genital Surgery and Sexology (undated), <https://www.isagss.org/en/procedures/statistics-of-aesthetic-genital-surgeries>.

³⁸ *Id.*

ing to opt out of the female sex altogether, as the surging rates of teen girls seeking double mastectomies suggests.

Boys too are liable to experience shame at being unable to perform sexually in the ways commonly depicted in porn videos, or being unable to elicit the expected responses from their sexual partners. Indeed, porn exposure does not simply widen the gap between ordinary sexual performance and unrealistic expectations of sexual performance, but it has been shown to dramatically impair ordinary sexual performance as well, as increasing rates of erectile dysfunction (ED) suggest.³⁹ There is a growing body of evidence linking regular pornography use with sexual dysfunction, particularly ED, as men, over-stimulated by frequent exposure to extreme pornography, struggle to experience arousal with real-life sexual partners.⁴⁰ This syndrome has even been given a name: PIED (Porn-Induced Erectile Dysfunction), along with a parallel phenomenon of PII (Porn-Induced Impotence) in women.

³⁹ Bryan Y. Park, et al., *Is Internet Pornography Causing Sexual Dysfunctions? A Review with Clinical Reports*, 6 Behavior Science 17 (2016), <https://www.mdpi.com/2076-328X/6/3/17>.

⁴⁰ Nicolas Sommet and Jacques Berent, *Porn use and men's and women's sexual performance: evidence from a large longitudinal sample*, 53 Psychological Medicine 3105 (2023).

For couples, these effects are compounded. Couples where one or both partners consume pornography report lower levels of satisfaction, commitment, and trust.⁴¹ Frequent users experience a 45% decrease in relationship stability and a 30% decrease in commitment.⁴² Research also indicates that 56% of divorces involved one party having an obsessive interest in pornographic websites, highlighting its role in marital breakdown.⁴³

As therapists, we have seen these tragic stories play out over and over. Our clients frequently report exposure to pornography at a young age, leading to significant problems in adulthood, including for some the formation of arousal templates centered around sexual violence against women. These patterns thwart healthy emotional, relational, and sexual development and create deep internal struggles marked by self-loathing and shame; secrecy and hiding are exacerbated by fears and internal narratives of being viewed as a ‘monster’ or ‘unloveable’ if discovered. This results

⁴¹ Beáta Bóthe, et al., *Are sexual functioning problems associated with frequent pornography use and/or problematic pornography use? Results from a large community survey including males and females*, *Addict Behavior* (Jan. 2021).

⁴² Brian J. Willoughby, et al., *The Porn Gap: How is Pornography Impacting Relationships Between Men and Women Today?*, Brigham Young University (Nov. 8, 2021), <https://wheatley.byu.edu/National-Couples-and-Pornography-Survey2021>.

⁴³ *Supra* note 2.

in isolation, which deepens depression and despair, including at times, suicidal ideation or self-harming behaviors. Despite being highly intelligent and well-educated, many lose employment, find themselves in manual labor jobs, or feel unfulfilled and disconnected from their potential. Relationship difficulties often arise, leading to cycles of additional loneliness, isolation, and shame, and increased acting out behaviors, which ultimately create relational losses—usually of spouses and children. Ultimately, these experiences entrench cycles of distress that impact the mental health, relationships, and overall quality of life of our clients, rippling out to children, spouses, family members, friends and co-workers as well.⁴⁴

CONCLUSION

When another *Ashcroft* case regarding pornography and free speech was decided in 2002, Justice Thomas concurred in the judgment by noting, “technology may evolve” and “if technological advances thwart prosecution of ‘unlawful speech,’ the Government may well have a compelling interest” in adopting different tactics. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 259 (2002) (Thomas, J., concurring in judgment).

⁴⁴ See Spencer Klavan, “The Fap/No Fap Election,” Fairer Disputations (Nov. 15, 2024), <https://fairerdisputations.org/the-fap-nofap-election/> (“many young men now associate their history of porn use not with harmless self-discovery but with oceanic depths of misery, isolation, and shame. . . . It’s not just that men are getting mired in a tar pit of sick desire, it’s that they recognize they’re being held back from real affection, real love.”).

Technological evolution has radically undermined the holding of *Ashcroft v. ACLU*, even as its principles remain constant. Texas has adopted a new law to effectively achieve its policy goal of protecting minors given current technology and culture. As this brief conclusively shows, Texas has a sufficient interest in its statute to protect its children from the dangerous and damaging content otherwise easily available.

Given that research over the past two decades has extensively documented the inadequacy of content filters, the resulting pervasiveness of pornography exposure, and its egregious harms on children and their relationships later in life, we as a society are complicit in an ongoing culture of child abuse if we continue to stand idly by. We know that adolescence is the most vulnerable period in a child’s development—marking biological, cognitive, emotional, and social changes imprinting individuals for adulthood—and yet we have to date allowed a legal regime that prioritizes the interests and sexual appetites of adults over the protection of the most vulnerable amongst us.

The solution lies in effective government regulation in alignment with the United Nations Convention on the Rights of the Child, which is the most ratified human rights treaty in the history of the world.⁴⁵ Principle 2 outlined in the 1959 UN Declaration on the Rights of the Child states: “The child shall enjoy special protection . . . by law and by other means, to enable him to

⁴⁵ Convention on the Rights of the Child, G.A. res. 44/25 (1989).

develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.”⁴⁶ Principle 7 specifies the obligation of providing children with an education that promotes their “general culture” enabling them to develop their “abilities,” “individual judgment,” and “sense of moral and social judgment to become a useful member of society,” and to “have full opportunity for play and recreation.” Principle 9 recognizes children’s rights to be free from exploitation.

Sexually explicit material is ubiquitous and can be accessed on many Internet sites including social media and pornography sites that children are not protected from. The United Nations, accordingly, has recommended that “[r]obust age verification systems should be used to prevent children from acquiring access to products and services that are illegal for them to own or use. Such systems should be consistent with data protection and safeguarding requirements.”⁴⁷

Thankfully, the technology now exists, through a variety of sophisticated and anonymous age-assurance products, to minimize children’s access to age-inappropriate and obscene content without interfering with

⁴⁶ Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

⁴⁷ UN Committee on the Rights of the Child, General comment No. 25, CRC/C/GC/25 (2021).

well-established First Amendment rights. We urge the Court to uphold the right of Texas to take urgent action to protect our children.

Respectfully submitted,

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