

Testimony in Support of S.B. 394

House Judiciary Committee

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Chairwoman Humphries, and members of the Committee, my name is Brittany Jones. I am an attorney and the Director of Policy and Engagement for Kansas Family Voice.

At Kansas Family Voice we believe that children are to be valued and should be protected so that they can be unleashed to have the greatest impact on our world. Children should be protected from things that harm their mental, physical, and relational development. Certain materials may be allowable for adults but should not be for children because of the increased negative impact it has on them. Age gating technology has been helpful in a variety of areas in protecting children from these materials.

As the internet has grown, so has access to material that is harmful to children. Likewise, the use of age gated technology has increased. There is a growing consensus that we cannot continue to simply allow children unfettered access to what studies show is harming them. Our children's future is at stake from the threat of material that is harmful to minors online.

Bills like S.B. 394 have received bipartisan support in every state that have passed it. And laws most similar to it have been upheld by the highest courts to consider them. The state has a compelling interest & a duty in ensuring that children do not have access to materials that have been shown to detrimentally harm them. That is why we ask that you support S.B. 394 and protect children online.

Today, I would like to look at some of the harms that children face from pornography, as well as address some of the legal considerations that surround bills like these.

1. Pornography harms developing minds.

Much like tobacco or other controlled products, pornography's harmful impacts are even more harmful on young minds, and should properly be age gated. We already know that three-quarters of children have viewed pornography by the age of 17, and that the average age of first exposure is just 12 years old.¹ Unfortunately, more than half of these exposures occurred because a child stumbled on pornography by accident.²

Research shows that pornography rewires an individual's brain. Pornography consumption leads to decreased brain volume in the right striatum, decreased left striatum activation, and lower functional connectivity to the prefrontal cortex.³ In a

¹ New Report Reveals Truths About How Teens Engage with Pornography, Common Sense Media, Jan. 10, 2023, <https://www.commonsensemedia.org/press-releases/new-report-reveals-truths-about-how-teens-engage-with-pornography>.

² *Id.*

³ Kühn S, Gallinat J. Brain Structure and Functional Connectivity Associated With Pornography Consumption: The Brain on Porn. *JAMA Psychiatry*. 2014;71(7):827–834. doi:10.1001/jamapsychiatry.2014.93.

developing brain this damage can have an even greater, long term impact.⁴ These neural changes in the brains are similar to the changes seen in brains of individuals addicted to cocaine, alcohol, and methamphetamines.⁵ Psychiatrist Norman Doidge explains: “Pornography satisfies every one of the prerequisites for neuroplastic change. When pornographers boast that they are pushing the envelope by introducing new, harder themes, what they don’t say is that they must, because their customers are building up a tolerance to the content.”

Studies also show that pornography puts children at risk for other risky behaviors like illegal drugs, alcohol, sexual abuse and tobacco.⁶ Further, children who view pornography are more likely to be associated with rape, violent crime, and sexual assault.⁷ It also leads to other physical sexual dysfunctions.⁸ Exposure to pornography can normalize sexual violence especially towards women.⁹

Further it has been shown to contribute to depression & bullying in adolescents.¹⁰ The list of the harms of pornography on young minds is quite extensive, we need to remember that they are often stumbling on to this content by accident and their brains are not developed enough yet to know what is normal and not normal in what they are viewing. Even the most dedicated parents struggle to protect their children from this predatory industry. That is why it is vital that this body take action and protect our children online.

2. Legal concerns surrounding age verification laws.

Because these harms have become so pervasive in our culture, age verification laws are seeing a resurgence. In the early 2000s, the federal government tried to pass age verification laws but they were struck down by the Supreme Court. Twenty years later, the capabilities of the internet have exacerbated the societal cost to our children of an unregulated pornography industry, we know more about the technology now, and we are compelled to take action. It is important to understand how courts have, and are currently, addressing the question of the constitutionality of age verification for pornography websites.

Over the last several decades, there have been batches of cases dealing with obscenity and pornography. Early cases on this subject, understood obscene content to

⁴ Hilton DL, Watts C. Pornography addiction: A neuroscience perspective. *Surg Neurol Int* 2011;2:19 <http://www.surgicalneurologyint.com/text.asp?2011/1/2/76977>.

⁵ Simone Kühn et al., Brain Structure and Functional Connectivity Associated with Pornography Consumption: The Brain on Porn, *71 Jama Psychiatry* 827, 828-29 (2014), <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1874574>.

⁶ Women's Age of First Exposure to Internet Pornography Predicts Sexual Victimization Sarah J. Harsey, University of California, Santa Cruz, *6 Dignity* 5 (2021), <https://digitalcommons.uri.edu/dignity/vol6/iss5/1/>; Kimberly M. Nelson et. al., Sexually Explicit Media Use Among 14-17-Year-Old Sexual Minority Males in the U.S., *48 Archives Sexual Behav.*, 2345, 2351-52 (2019).

⁷ Chatterjee S, Kar SK. Teen Pornography: An Emerging Mental Health Challenge. *Journal of Psychosexual Health*. 2023;5(1):30-34.

⁸ Is Internet Pornography Causing Sexual Dysfunctions? A Review with Clinical Reports by Brian York, et al., June 2018, *Behav. Sci.* 2018, 8(6), 55.

⁹ Hald GM, Malamuth NM, & Yuen C (2010). Pornography and attitudes supporting violence against women: Revisiting the relationship in nonexperimental studies. *Aggressive Behavior*, 36(1), 14–20. doi: 10.1002/ab.2032.

¹⁰ Magdalena Mattebo, Pornography consumption and psychosomatic and depressive symptoms among Swedish adolescents: a longitudinal study *123 Upsala J Med Sci* 4 (2018); Sandra Feijóoi et al, Cyberbullies, the Cyberbullied, and Problematic Internet Use: Some Reasonable Similarities *Vol. 33: 198-205* (2021).

be constitutionally unprotected.¹¹ “There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”¹²

While there may be a First Amendment right for adults to view these materials, there is not for children. That is why many states have defined materials harmful to minors. The Supreme Court said in *New York v. Ferber* that child pornography was outside the bounds of First Amendment because “the evil to be restricted so overwhelmingly outweighs the expressive interests...that it is permissible to consider these materials as without the protection of the First Amendment.”¹³ Further, in *Ginsberg v. New York*, the Court held that a legislature had an interest in preventing distribution to children of objectionable material recognized to be suitable for adults. The Court applied rational basis scrutiny because a minor did not have a First Amendment right to access the materials.¹⁴

Just a few years after the *Ginsberg case*, the Court in *California v. Miller* laid out the test that we still use for laws regulating pornographic content.¹⁵ It worked to strike a balance between protecting unwilling recipients and government censorship.¹⁶ Our statutes reflect this balance by recognizing that some content may have literary, artistic, political, or scientific value and would not fall under the requirements of this bill. There were a host of cases that dealt with regulating adult content in person ways during this time frame.

However, in the 90s with the development of the internet, Congress tried to combat what they saw as the rising threat to children of online pornography. The Supreme Court repeatedly struck down laws that were meant to protect children online. In *Reno v. ACLU*, striking down the Communications Decency Act, the Court did not think age verification worked and stated that the law was not narrowly tailored because there were other ways to block the content. Further, they did not think pornography was so pervasive that kids were finding the content by accident because, “the Internet is not as ‘invasive’ as radio or television”.¹⁷ The technology has changed significantly since legislatures first tried to pass age verification laws in the early 2000s and the internet is much more invasive than it was then.

In the last case in which the court addressed legislation passed by Congress on this issue. *Ashcroft v. ACLU*, the Court struck down COPA, the Child Online Protection Act, focusing on issues the definition of the crime, the high penalties and the difficulty of

¹¹ *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942); *Roth v. United States*, 354 U.S. 476 (1957).

¹² *Chaplinsky* at 571-72.

¹³ *New York v. Ferber*, 458 U.S. 747, 763-64 (1982).

¹⁴ *Ginsberg v. New York*, 390 U.S. 629 (1968).

¹⁵ *Miller v. California*, 413 U.S. 15 (1972).

¹⁶ *Ferber* at 756.

¹⁷ *Reno v. ACLU*, 521 U.S. 844, 869 (1997).

implementation.¹⁸ There have been few attempts to implement age verification since this case twenty years ago.

It is not a small matter for the government to restrict what is deemed to be a fundamental right. When a fundamental right is involved, it requires that the government have a compelling state interest for the infringement and must be done by the least restrictive means. Age verification for material that is harmful to minors arguably meets that test.

The courts have stated many times that there is a compelling interest in protecting the physical and psychological health of kids.¹⁹ The Court has said, “A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens.”²⁰ Courts have upheld laws that protect children’s physical and emotional well-being even when dealing with constitutional rights for adults.²¹

Further, the argument that age verification is not narrowly tailored and effective no longer holds the weight that it may have in 1997 or 2004. A lot has changed since the Court first considered age verification legislation as we know age gate a vast majority of materials online. In Kansas, it is used for alcohol, smoking, as well as sports betting. While the capabilities of the pornography industry have expanded, so have the capabilities of age verification technology. Slight inconvenience for adults does not mean the law is unconstitutional

Because of the impacts of the accessibility and harms of these materials, at least eight states have now passed laws that require age verification for adult material.²² These bills have received bipartisan support and been signed into law by both Republican and Democrat Governors. There have been legal challenges, but thus far all the challenges have failed. The highest court to consider one of these laws, the Fifth Circuit, recently stayed a lower court injunction and allowed the law to go into effect. There is a compelling interest in protecting kids from online adult material and this law is narrowly tailored to that end. Age verification is widely used and does not block adult access to these materials.

In Kansas, we declared pornography to be a public health crisis more than six years ago.²³ It is past time that our state begin to place barriers on what children can see online and begin to curb the tide of the harmful effects of pornography on Kansas children. I ask that you pass S.B. 394 out favorably, and I stand open for questions at the appropriate time.

Thank you!

¹⁸ *Ashcroft v. ACLU*, 542 U.S. 656 (2004).

¹⁹ It is evident beyond the need for elaboration that a State's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982).

²⁰ *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944).

²¹ *Ferber* at 757.

²² Texas, Utah, Louisiana, Virginia, North Carolina, Arkansas, Montana, Mississippi.

²³ KS HR 6016 (2017), KS SR 1762 (2018).