

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

On Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit

**BRIEF OF *AMICI CURIAE*
MAJOR RELIGIOUS ORGANIZATIONS
SUPPORTING RESPONDENT
AND AFFIRMANCE**

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QUESTION PRESENTED

The question presented by this case would more appropriately be framed as follows:

Assuming adults have a right under the First Amendment to access pornography (a proposition with which *Amici* disagree), and assuming a state law imposes some burden on such access, may the State nevertheless restrict minors' access to pornographic materials by requiring a commercial entity to take commercially reasonable steps to verify the ages of its customers?

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*¹

In a more innocent age, this Court rejected laws that would “reduce the adult population *** to *reading* only what is fit for children.” *Butler v. Michigan*, 352 U.S. 380, 383 (1957) (emphasis added). But today, because of smartphones and other streaming devices, States face the opposite problem: Absent meaningful legal guardrails, virtually all children are condemned to regularly *seeing* sexual materials unfit even for adults. And many children so exposed experience a cascade of negative outcomes, including increased risk of poor mental health, sexism, objectification, sexual violence, and a reduced ability to form durable marital relationships. That is why Texas acted reasonably—and laudably—in requiring pornographic websites to verify their visitors’ ages.

The validity of such laws is of great concern to *Amici*—major religious organizations and faith communities including the National Association of Evangelicals,² the American Islamic Congress, the Anglican Church in North America, the United States Conference of Catholic Bishops, the Union of Orthodox Jewish Congregations of America, The Church of Jesus Christ of Latter-day Saints, the African Methodist Episcopal Church, the Salvation Army USA, BAPS Swaminarayan Sanstha, the

¹ This brief was not authored in whole or in part by counsel for any party, and no person or entity other than *Amici Curiae* or their counsel has made a monetary contribution toward the brief’s preparation or submission.

² The name of each *Amicus* is hyperlinked to its mission statement.

International Society for Krishna Consciousness, the Queens Federation of Churches, the Religious Freedom Institute's Islam and Religious Freedom Action Team, and HinduACTion.

Amici are concerned, not only about the psychological and social harms arising from children's exposure to pornography, but also about the spiritual harm that pornography exposure inflicts on them and their parents. *Amici* consider pornography an evil influence that impedes people's relationships with the divine. And, while *Amici* believe such spiritual and other injuries accompany pornography use regardless of the viewer's age, those harms are compounded in children. Children are unprepared to understand both the content of pornographic media and why viewing such materials is harmful not only emotionally and psychologically, but also spiritually.

Consistent with their beliefs about the harms of pornography, *Amici* are diligently arming parents with tools to protect children from it. And in this effort, *Amici* and the parents who form their religious communities need all the help they can get—including from the State: Given today's technology, and the spiritual harms pornography inflicts, laws like H.B. 1181 are essential to religious parents' ability to raise their children in their chosen faith.

This Court can and should allow Texas to provide that help: In decisions such as *Ginsberg v. New York*, 390 U.S. 629, 639 (1968), the Court has already held that parents are "entitled to the support of laws designed to aid" them in "discharg[ing]" their primary responsibility to protect children from pornography,

and the Court has applied rational-basis review to laws so designed. And here, the Fifth Circuit correctly applied *Ginsberg* to hold that Texas retains the right to enact legislation which, by requiring proof of a user's age, assists parents in that critical work. As a matter of law—and sound policy—that is the right conclusion. The Court should affirm.

STATEMENT

The Texas Legislature enacted H.B. 1181 as part of its ongoing effort to “combat the spread of hardcore pornography to minors.” Br. in Opp’n 8. H.B. 1181 applies whenever “more than one-third” of a website’s “material” that is “knowingly and intentionally” published “is sexual” and “harmful to minors.” Tex. Civ. Prac. & Rem. Code §129B.002(a).

The law defines “[s]exual material harmful to minors” consistent with this Court’s First Amendment precedents. It includes any material (1) that an “average person applying contemporary community standards would find, taking the material as a whole and with respect to minors, is designed to appeal to or pander to the prurient interest”; (2) that, “in a manner patently offensive with respect to minors, exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated displays or depictions” of sexual activity or nudity; and (3) that “taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.” *Id.* §129B.001(6). Where the law applies, a website must verify its users are at least 18 years old. *Id.* §129B.002(a), §129B.004(1).

Petitioners are a group of online pornographers that challenged H.B. 1181 before it became effective,

securing a preliminary injunction against the law's age-verification requirement. The Fifth Circuit reversed the district court's injunction against that requirement after finding that H.B. 1181 survived the rational-basis review this Court applied in *Ginsberg*. Pet.App. 1a-27a.

SUMMARY OF ARGUMENT

Amici are convinced the Fifth Circuit reached the correct result and should be affirmed. They write separately to highlight two points.

First, in deciding this important case, the Court should bear in mind that many religious groups hold strong beliefs about the unique evils presented by pornography and therefore seek to support the efforts of parents—the backbone of religious communities—in fulfilling their sacred duty to protect their children from those evils. In an era when technological advancements make pornography available anytime and anywhere, religious parents need all the help they can get to protect their children. Parents' attempts both to instill religious beliefs in their children and to protect their children from the evils of pornography are furthered by H.B. 1181 and similar laws.

Second, both this Court's decisions and a sound history-and-tradition approach to interpreting the First Amendment caution against unduly cabining States' ability to limit children's exposure to pornography. For example, if Petitioners were correct that strict scrutiny applies to laws that (unlike H.B. 1181) genuinely burden adults' ability to consume pornography, States could not readily give to "parents *** who have *** primary responsibility for

children’s well-being *** the support of laws designed to aid discharge of that responsibility.” *Ginsberg v. New York*, 390 U.S. 629, 639 (1968). Such a result would flout *Ginsberg*’s express holdings that (1) legislatures can “properly conclude” that parents are “entitled to the support” of laws that limit the exposure of pornography to children and (2) the resulting laws are subject only to rational-basis review. *Ibid.*

And here, Texas’ law easily passes such review—as well as any other standard—because it is narrowly tailored to help protect children from all the harms identified above. That it also protects children from enormous spiritual harm and facilitates religious parents’ ability to raise their children in their chosen faith is an important bonus.

Nor will reaffirming *Ginsberg*’s vitality weaken protection for First Amendment rights such as the freedom of speech and the free exercise of religion. Petitioners concede (at 3, 41-42) that the materials affected by Texas’ law are obscene, at least for children. And this Court has long held that the creation and viewing of obscenity falls outside the First Amendment’s ambit. So there is no genuine risk that affirming the Fifth Circuit’s decision will put this Court on a slippery slope that threatens genuine First Amendment rights.

Accordingly, the Court should affirm the decision below and, in so doing, reaffirm that—whatever flaws *Ginsberg* may have—it provides the legal standard by which laws like H.B. 1181 should be assessed.

ARGUMENT**I. Allowing Children to Access Pornography Severely Harms Them, Their Parents, and the Faith Communities to Which They Belong.**

Texas, in common with all other States, has a compelling interest in shielding minors within its boundaries from exposure to pornography. That interest, as Respondent explains (at 35-42) provides ample reason to affirm. But another reason is that, when minors have unlimited access to pornography despite their parents' best attempts to shield them from it, such access harms people and communities of faith. As this Court recognized in *Ginsberg*, States have a legitimate interest in ensuring that those "who have *** primary responsibility for children's well-being" have "the support of laws designed to aid discharge of that responsibility." *Ginsberg*, 390 U.S. at 639. That interest, properly understood, extends to religious and non-religious parents alike.

A. Faith communities from diverse religious backgrounds sincerely believe that viewing pornography is immoral.

Many religious groups share the belief that viewing pornography is immoral. While most ancient scriptural texts do not explicitly reference pornography, they outline clear principles of sexual morality. And many modern faith communities understand these ancient doctrinal principles and values to prohibit the creation and viewing of pornography—in large part because of the spiritual

threat pornography poses to individuals, families, and society.

1. ***Christian Teachings.*** For example, many Christian groups (including Roman Catholics, Southern Baptists, Evangelicals, and The Church of Jesus Christ of Latter-day Saints) consider the viewing of pornography to be sinful. The Bible specifically commands its readers “not to look lustfully”³ at others, “not [to] lust in [their] heart after [a person’s] beauty or let [a person] captivate [them] with her eyes.”⁴ And, grounded in the Old Testament commandment not to “commit adultery,”⁵ Jesus’ New Testament teachings also require purity of thought—emphasizing, for example, that “whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart.”⁶ Entwined with these biblical commandments is the belief that pornography offends God by trivializing the sacredness of sexual acts. And that is why many Christian groups consider viewing pornography to violate God’s commands.

The Roman Catholic Church, for example, warns that pornography is one of the sins “gravely contrary to chastity.”⁷ The Church’s Catechism teaches that pornography perverts sexual acts by removing them “from the intimacy of the partners,” objectifying

³ *Job* 31:1 (NIV).

⁴ *Proverbs* 6:25 (NIV).

⁵ *Exodus* 20:14 (KJV).

⁶ *Matthew* 5:28 (KJV).

⁷ *Catechism of the Catholic Church*, § 2396 (2d ed. rev’d 2023) (“CCC”), <https://tinyurl.com/5fkvwb97>.

participants, and “immers[ing] all who are involved in the illusion of a fantasy world.”⁸ Given these beliefs, the Roman Catholic Church considers pornography to do “grave injury to the dignity of its participants (actors, vendors, the public), since each one becomes an object of base pleasure and illicit profit for others.”⁹ The Church thus urges civil authorities to “prevent the production and distribution of pornographic materials.”¹⁰ And the Church admonishes its membership to repent for viewing pornography.¹¹

Similarly, Southern Baptists consider pornography to be “a major contributor to deviant sexual behavior,” a precursor to “sexual addiction,” and devastating not only to “relationship[s] between husbands and wives,” but also “between adults and children.”¹² For these reasons, Southern Baptists believe pornography use is contrary to properly ordered sexuality¹³ and urge “those who have fallen in sexual sin” to “look to [Jesus Christ] in faith and repentance.”¹⁴

⁸ *Id.* § 2354.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Jane Adolphe, *Pope Francis Is Right: Pornography Consumption Opens a Gate to the Demonic*, Nat’l Cath. Reg. (Dec. 3, 2022), <https://tinyurl.com/dh9db7yk> (collecting sources confirming that pornography use is a grave matter).

¹² S. Baptist Convention, *Resolutions: On the Plague of Internet Pornography* (June 1, 2001), <https://tinyurl.com/26sf8zw2> (hereinafter “SBC, *Internet Pornography*”).

¹³ *Ibid.*

¹⁴ S. Baptist Convention, *Resolutions: On Pornography and*

Evangelical Christians likewise condemn pornography as “powerfully corrosive” not only to society at large, but also to those involved “in the production of it as well as *** those who use it.”¹⁵ That belief is grounded in the view that such “materials exploit persons made in God’s image, destroy healthy relationships and distort God’s gift of loving, mutual sexuality between husband and wife.”¹⁶ For these reasons, they consider pornography use to be “sinful” and encourage their members to help “those who have been harmed” by it.¹⁷

Seventh-day Adventists, for their part, “deem pornography to be destructive, demeaning, desensitizing, and exploitative.”¹⁸ In their Official Statement on Pornography, the Church expresses particular concern with pornography’s tendency to ruin relationships, including the marital relationship.¹⁹ Adventists are thus counseled to “fix [their] minds on the things which are holy and right and pure and beautiful and good”²⁰ and to support

Sexual Purity (June 1, 2015), <https://tinyurl.com/mrr3keww> (hereinafter, “SBC, *Pornography*”).

¹⁵ Nat’l Ass’n of Evangelicals, *Resolution: Pornography and Obscenity* (Jan. 1, 1998), <https://tinyurl.com/37pvxvyf>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Seventh-day Adventist Church Gen. Conf., *Official Statements: Pornography* (July 5, 1990), <https://tinyurl.com/4xsa66wr> (hereinafter Seventh-day Adventist, *Pornography*”).

¹⁹ *Ibid.*

²⁰ *Id.* (quoting *Philippians* 4:8-9 (Phillips)).

those “seeking freedom from an addiction to pornography.”²¹

And finally, The Church of Jesus Christ of Latter-day Saints “condemns pornography in any form” because, among other reasons, consuming it “drives away the Spirit of the Lord.”²² The Church, like other Christian faiths, also highlights the damage caused by pornography to “individual lives, families, and society.”²³ And, reiterating counsel from the Book of Mormon, the Church requires those who have gone “after the lusts of [their] eyes” to “repent and forsake [their] sins.”²⁴

2. *Jewish Teachings.* Many adherents to Jewish tradition likewise affirm that viewing pornography is morally wrong. The Torah emphasizes responsibility for thoughts of the heart.²⁵ It teaches that Jews should remember the commandments of God and must not “follow [their] heart[s] and eyes in [their] lustful urge.”²⁶ Jewish tradition even speaks of an entire generation of Jews who required atonement because “they nourished their eyes from nakedness,”

²¹ *Id.*

²² Church of Jesus Christ of Latter-day Saints, *Church Policies and Guidelines: Pornography, General Handbook* § 38.6.13, <https://tinyurl.com/bdh3cpmn>.

²³ *Ibid.*

²⁴ *Alma* 39:9 (Book of Mormon).

²⁵ *Midrash Tanchuma, Tzav* 13:13.

²⁶ *Numbers* 15:39 (The Contemporary Torah), <https://tinyurl.com/ywj3ya5j>.

hence there was needed an “atonement *** for the sin of looking.”²⁷

3. **Islamic Teachings.** Like other Abrahamic faiths, Islam likewise prohibits the viewing of pornography. Islamic teachings emphasize sexual purity and the avoidance of indecency. The Qur’an commands Muslims to “lower their gaze and guard their chastity.”²⁸ It further warns to “not go near to fornication” because “[i]t is an indecent act, an evil way.”²⁹ And Islamic scholars generally interpret these verses “as having relevance and applications to viewing modern-day pornography,” which they view as “a form of sexual immorality that can lead to sinful thoughts and actions that contradict the teachings of Islam.”³⁰ Thus “the Islamic perspective on pornography *** is one of strong disapproval and condemnation,” viewing it is a “sin[] detrimental to one’s soul and conduct.”³¹

4. **Non-Abrahamic Religious Groups.** Nor is the belief that pornography is harmful unique to Abrahamic traditions.

For example, the ancient Sanskrit text *Bhagavad-gita*, or the Song of God, which is sacred to all Hindus (including members of the International

²⁷ Babylonian Talmud, Shabbat 64b, (Adin Even-Israel (Steinsaltz) trans.), <https://tinyurl.com/rsdpvk5c>.

²⁸ *Qur’an* 24:30-31, <https://tinyurl.com/y7d9b96b>.

²⁹ *Qur’an* 17:32, <https://tinyurl.com/25k9cjkc>.

³⁰ Remojo, *Is Porn Haram? And Other Questions Related to the Islamic View of Pornography*, <https://tinyurl.com/nhcp9knu> (last visited Nov. 20, 2024).

³¹ *Ibid.*

Society for Krishna Consciousness), warns of the danger of lust and uncontrolled desires, especially sexual desire. Lust is described as “the sinful, all-devouring enemy in the world.”³² Pornography, while not mentioned by name, exemplifies the danger posed by “contemplating the objects of the senses,” which causes a person to fall into ignorance and the trappings of material illusion and to forget one’s relationship with the divine.³³

In short, many faith communities consider the viewing of pornography a sinful act. For that reason alone, legislation on that subject is a matter of keen interest to those communities.

B. Children’s access to pornography harms religious parents’ ability to raise their children consistent with their faith.

Members of these religious groups also believe they have a duty to teach their children how to live in harmony with religious doctrines of sexual purity. That responsibility has, of course, always been difficult to fulfill, with many religious texts offering examples of children leaving their families to live contrary to their religious upbringing. *E.g.*, *Luke* 15:11-32 (Jesus’ parable of the prodigal son). But that only heightens the obligation felt by believers to raise their children in the faith, regardless of whether they later exercise their moral agency to live differently. Religious parents are thus harmed when pornography is readily available to children—because parents are

³² *Bhagavad-gita*, Ch. 3, v.37, <https://tinyurl.com/2rwashez>.

³³ *Bhagavad-gita*, Ch. 2, vv.62-63.

then less able to protect their children from its spiritually and psychologically destructive influence. And this is true for all the faith groups described above.

1. Among Christian groups, for example, the Roman Catholic Church teaches that parents must “educate their children to fulfill God’s law” and “avoid the compromising and degrading influences which threaten human societies,” such as pornography.³⁴ Church teachings also highlight the *community’s* responsibility to ensure protection against the dangers of pornography.³⁵

Southern Baptists likewise believe that parents are the primary stewards of their children, especially on issues of morality.³⁶ Consistent with that sacred duty, Southern Baptists encourage families “to exercise deliberate care and concern for instructing [their] children how to wisely use online resources for good and to show appropriate discernment in protecting [their] children from harmful influences.”³⁷ The Southern Baptist Convention has also explicitly called for governments to do what Texas has done here: to enact laws supporting the family and

³⁴ CCC, *supra* note 7, §§ 2222, 2224.

³⁵ *Id.* § 2211.

³⁶ S. Baptist Convention, *Resolutions: On the God-Given Rights and Responsibilities of Parents* (June 12, 2024), <https://tinyurl.com/y2w8rstd> (hereinafter “SBC, *Parents*”).

³⁷ SBC, *Pornography*, *supra* note 14.

nurturing children by guarding them against exposure to pornography.³⁸

Similarly, The Church of Jesus Christ of Latter-day Saints teaches that “parents have a sacred duty to teach their children and instill righteous values in them” and to protect them “from the influence of the adversary.”³⁹ It thus urges parents “to teach children to avoid any pornographic photographs or stories” and to help their “[c]hildren and youth *** to know *** that pornography of any kind is a tool of the devil; and if anyone flirts with it, it has the power to addict, dull, and even destroy the human spirit.”⁴⁰ And the Church “invite[s] parents to have family discussions to develop guidelines about how to use media and technology in positive and safe ways,” and to ensure that such conversations “provide opportunities for parents to teach that the powers associated with creating families”—powers that pornography perverts—“are sacred and central to God’s plan.”⁴¹

2. Jewish parents bear a similarly strict responsibility. They are expected to instruct their

³⁸ SBC, *Internet Pornography*, *supra* note 12; SBC, *Parents*, *supra* note 36.

³⁹ The Church of Jesus Christ of Latter-day Saints, *Topics & Questions: Pornography*, <https://tinyurl.com/bdcu4nmw> (last visited Nov. 21, 2024).

⁴⁰ LDS Fam. Servs., *Safeguarding Our Homes, Protecting Our Children*, The Church of Jesus Christ of Latter-day Saints (quoting M. Russell Ballard, *Like a Flame Unquenchable*, Ensign 86 (May 1999)), <https://tinyurl.com/2fmavjak>.

⁴¹ Letter from the First Presidency, The Church of Jesus Christ of Latter-day Saints, to All Members of the Church (Jan. 29, 2020) (on file with author).

children “to keep the way of Adonai and to do what is right and just.”⁴² This obligation is further reflected in God’s exhortation to Moses: “[T]ake heed to thyself, and keep thy soul diligently, lest thou forget the things which thine eyes saw, and *** make them known unto thy children and thy children’s children.”⁴³ This divine injunction includes a requirement that parents who “see[] [their] son becoming associated with evil influences”—such as pornography—rebuke him, even as it condemns parents who “refrain[] from rebuking” in such circumstances.⁴⁴

3. Islam likewise directs parents to protect their families from, and teach them to avoid, all sexual immorality. The Qur’an teaches: “O believers! Protect yourselves and your families from a Fire whose fuel is people and stones.”⁴⁵ According to a common interpretation, this verse directs parents to teach their families “what Allah has made obligatory for them and what Allah has forbidden for them”⁴⁶—including any kind of illicit sexual activity, such as pornography. Islamic teachings also oblige parents to prevent disobedience to those commandments.⁴⁷

4. As pornography has become more widespread, it has become increasingly difficult for parents—

⁴² *Genesis* 18:19 (CJB).

⁴³ *Deuteronomy* 4:9 (ASV).

⁴⁴ *Mishneh Torah*, *Hilchot Teshuvah* 4:1.

⁴⁵ *Qur’an* 66:6 (Mustafa Khattab trans.), <https://tinyurl.com/yzbvrvh4>.

⁴⁶ *Commentary on Qur’an* 66.6 (Ibn Kathir abridged), <https://tinyurl.com/2mky5fy4>.

⁴⁷ *Ibid.*

including parents striving to raise their children consistent with their religious traditions—to prevent their children from viewing it.⁴⁸ And the Internet has made it increasingly difficult to create laws that fully protect children from pornography.⁴⁹

For example, one expert reports that “kids are becoming increasingly tech-savvy, often outmaneuvering [their parents’] best efforts to protect them online.”⁵⁰ This means that “[n]o matter how hard [parents] try” to protect their children from pornography, “children *** are sly and constantly finding ways to circumvent the controls [their parents] implement.”⁵¹ Another commentator explains that, “[a]lthough parents can block adult websites and nudity from being accessed in a web browser, these filters don’t work inside of apps. When a child can get to Pornhub in five clicks inside Snapchat, all without leaving the app, such filters become meaningless.”⁵²

Given their children’s technical savvy, parents need multiple defenses. Anything that removes one line of defense—such as age-verification

⁴⁸ L. David Perry, Am. Coll. of Pediatricians, *The Impact of Pornography* (Aug. 2024), <https://tinyurl.com/5yb3uezt>.

⁴⁹ Ronald J. Krotoszynski, Jr., *Childproofing the Internet*, 41 Brandeis L.J. 447, 456 (2003).

⁵⁰ *How Kids Bypass Parental Controls in 2024: A Parent’s Guide*, SafeTelecom:KosherOS Blog (Oct. 8, 2024), <https://tinyurl.com/ydcyrzf4>.

⁵¹ Tony Perez, *How Kids are Bypassing Porn Content Filters*, CleanBrowsing (Mar. 6, 2020), <https://tinyurl.com/mr2vk72n>.

⁵² Clare Morell, Opinion, *Parents need help to protect their kids from online pornography*, The Hill (July 6, 2024), <https://tinyurl.com/28kdjcv5>.

requirements—hinders the ability of religious parents (and others with similar moral views) to protect their children. And that is a matter of serious concern to faith communities.

C. Children’s exposure to pornography creates many challenges later in life.

Religious concerns about the increase of children’s exposure to pornography are exacerbated by the long-term adverse effects of pornography use. *Amici* have a great deal of real-world experience with these effects.

1. For the religious groups discussed above, the consequences stemming from their youth’s having unfettered access to pornography are enormous, even eternal. One study, for example, found that “increases in pornography viewing are negatively related to religious service attendance, *** prayer frequency, and closeness to God, while positively related to religious doubts.”⁵³

This study reflects what many religious groups have always known about the spiritual dangers of pornography. To quote the Apostle Peter, “fleshly lusts”—which are exacerbated by pornography—“war against the soul.”⁵⁴ Thus, as *Amicus* The Church of Jesus Christ of Latter-day Saints puts it in its guidance to members, pornography “brings darkness into [the] lives” of those who use it and is “particularly

⁵³ Samuel L. Perry & George M. Hayward, *Seeing is (Not) Believing: How Viewing Pornography Shapes the Religious Lives of Young Americans*, 95 Soc. Forces 1757, 1774-1775 (2017), <https://tinyurl.com/f47xtm34>.

⁵⁴ 1 *Peter* 2:11 (KJV).

harmful in how it affects [a person's] relationship with God and [that person's] ability to feel" divine guidance.⁵⁵

Amici have seen this sad cycle play out repeatedly as community members fall prey to pornography, only to turn away from their faith rather than abandon their pornography addictions. Religious parents are thus rightly concerned that pornography use has a direct secularizing, anti-religious effect on their children.

Besides facing such potentially eternal spiritual consequences, children who view pornography face a host of other concrete injuries. These are not only well-documented in the scientific literature discussed below, but they are also confirmed by *Amici's* own experiences helping their members recover from pornography addiction and the other serious harms pornography produces. For example, in *Amici's* experience, pornography exposure distorts intimate relationships, including the marital sexual relationship—often leading to divorce.

2. Pornography's adverse impact on marriage is exacerbated by the fact that, as the record in this case demonstrates, pornography often depicts unhealthy and even violent sexual practices, including dominant behaviors, incest, and rape. J.A.158-159. And these depictions influence the behavior of those who view them. Indeed, a recent study found that even sexually mature men who viewed such violent pornography

⁵⁵ The Church of Jesus Christ of Latter-day Saints, *How does using pornography affect me?*, <https://tinyurl.com/2s8dk6mj> (last visited Nov. 21, 2024).

were much more likely to exhibit sexual aggression.⁵⁶ And violent pornography cannot be avoided on pornographic websites.

Another recent study analyzed content on popular “mainstream” pornographic websites—including many run by Petitioners. It found that one in eight titles on the landing pages of those sites described acts that “would fall under the most widely used policy definition of sexual violence.”⁵⁷ The study authors noted that, because they looked only at the landing pages of some of the most popular pornographic websites, the study’s results reflected not the “practices of individual users,” but instead “the actions of the sites themselves.”⁵⁸ The study further found that exposure to such sexual material affects the user’s perception of sexual norms, contributing to normalization of deviant sexual behavior for those exposed.⁵⁹

And, as *Amici* have seen, when sexually violent behaviors become normalized in a marriage, the spouses’ sexual relationship will almost inevitably be damaged—as will the stability of the marriage itself.

The harm from exposure to violent pornography is only compounded when such material is viewed by

⁵⁶ Wenqi Zheng et al., *Pornography Exposure Profiles Differentiate Sexual Aggression and Its Risk Factors: A Person-Centered Approach*, 14 Psych. Violence 280, 285 (2024), <https://tinyurl.com/2n3r4pvw>.

⁵⁷ Fiona Vera-Gray et al., *Sexual violence as a sexual script in mainstream online pornography*, 61 British J. Criminology 1243, 1257 (2021), <https://tinyurl.com/ye22nxyk>.

⁵⁸ *Id.* at 1246.

⁵⁹ *Id.* at 1257.

children. To be sure, exposure to pornography at any age increases the risk of unhealthy and violent sexual practices. But the risk is higher when the exposure occurs at younger ages.⁶⁰

For example, adolescent boys exposed to pornography are “more prone to violence, aggression, and sexual coercion, and are more susceptible to sexual coercion by peers and adults.”⁶¹ This, in turn, leads to “higher divorce rates, infidelity, and feelings of sexual incompetence.”⁶² And the age when males first see pornography directly “shapes their sexual behavior and tendency to seek power over women” by increasing the likelihood that young men will expect young girls to engage in pornographic—and often violent—sexual acts and coercing young girls to meet their expectations.⁶³

For their part, adolescent girls exposed to pornography are “more likely to tolerate emotional, physical, and sexual abuse.”⁶⁴ One study of British children found that more than a third of girls (39%) believe that even the most violent pornography realistically reflects normal sexual behavior.⁶⁵ Such

⁶⁰ Ethan A. Marshall & Holly A. Miller, *Age and Type of First Exposure to Pornography: It Matters for Girls and Boys*, 45 *Deviant Behav.* 377, 387 (2023), <https://tinyurl.com/ft3hssme>.

⁶¹ Focus for Health Found., *How Pornography Impacts Violence Against Women and Child Sex Abuse*, <https://tinyurl.com/yvnkec8x> (last visited Nov. 21, 2024).

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Elena Martellozzo et al., Middlesex Univ., for Nat’l Soc’y for

beliefs lead to altered expectations of sexual experiences, imitation of deviant behavior shown in pornographic material, and unhealthy attitudes toward sex—all of which profoundly harm women.

These direct consequences of exposure to pornography are troubling in any context. But within a marriage, they imperil the marriage's quality and durability. *Amici* see these consequences regularly as they counsel men and women in troubled marriages.

3. Exposure to pornography—violent or not—is also associated with increased mental health problems such as depression, especially for adolescents.⁶⁶ And scientific studies confirm *Amici*'s own experience with these threats to their members' mental health.

For example, a 2009 study found that pornography exposure can lead to emotional disturbances that affect the way children interact with others.⁶⁷ Another study found that adolescents who are exposed to pornography are “less socially integrated and more socially marginal[, and] *** express less commitment to their families, fewer pro-

Prevention of Cruelty to Children and Children's Comm'r for Eng., *“I Wasn't Sure It Was Normal to Watch It...”: A quantitative and qualitative examination of the impact of online pornography on the values, attitudes, beliefs, and behaviours of children and young people* 9, Forensic Psych. Servs. (2016), <https://tinyurl.com/4j7sphjj>.

⁶⁶ Magdalena Mattebo et al., *Pornography Consumption and Psychosomatic and Depressive Symptoms Among Swedish Adolescents: A Longitudinal Study*, 123 *Upsala J. Med. Scis.* 237, 237, 243 (2018), <https://tinyurl.com/2fmsxfyz>.

⁶⁷ Michael Flood, *The Harms of Pornography Exposure Among Children and Young People*, 18 *Child Abuse Rev.* 384, 391-392, 393-394 (2009), <https://tinyurl.com/3pfhcfy9>.

social attitudes, and less attachment to school.”⁶⁸ And lower social integration is correlated with negative mental health outcomes such as depression, anxiety, and suicide.⁶⁹

Still another study weighed the effect of exposure to pornography on a person’s sense of identity.⁷⁰ The study concluded that “[r]eligious young men who use pornography may have more problems with identity formation if they are having to struggle to find a place for pornography use in their identity, especially as it relates to family formation and dating, as well as the perception of oneself as a religious individual who thinks pornography is wrong.”⁷¹ Here again, this risk was “particularly problematic” when pornography use happened during “emerging adulthood”—exactly the problem addressed by Texas’ effort to limit childhood pornography consumption.⁷²

These consequences of adolescent pornography exposure are but a few of the harms discussed in the literature. And they accord with *Amici*’s own experiences assisting their members as they try to

⁶⁸ Gustavo S. Mesch, *Social bonds and Internet pornographic exposure among adolescents*, 32 J. Adolescents 601, 616 (2009), <https://tinyurl.com/yr2ndm67>.

⁶⁹ Alejandra Arango et al., *Social Connectedness and Adolescent Suicide Risk*, 65 J. Child Psych. & Psych. 785, 786 (2023), <https://tinyurl.com/59vvpa7j>.

⁷⁰ Larry J. Nelson et al., “*I Believe It Is Wrong But I Still Do It*”: *A Comparison of Religious Young Men Who Do Versus Do Not Use Pornography*, 2 Psych. Religion & Spirituality 136, 144 (2010), <https://tinyurl.com/4d95xe85>.

⁷¹ *Ibid.*

⁷² *Ibid.*

forsake pornography. In short, both science and *Amici's* experience show that pornography undermines the spiritual and mental health of children exposed to it.

D. Ubiquitous smartphone use makes pornography more accessible to children than ever before.

Childhood access to pornography has been supercharged by the smartphone, which now permeates all levels of society. Whatever benefits smartphones provide, their ubiquity comes at great cost: Smartphones now allow everyone—minors and adults alike—24/7 access to hardcore pornography. And, although parents have other tools, regulations like the Texas law here give parents meaningful, even critical, assistance in their efforts to protect their kids from pornography's dangers.

1. Gone are the innocent days when parents could safeguard their children from pornography simply by scrutinizing which VHS tapes come into their houses or keeping the family computer in a shared space. Today, smartphones are owned not only by 91% of adults,⁷³ but also by 53% of 11-year-olds⁷⁴ and an astounding 95% of teens.⁷⁵ And children are

⁷³ *Mobile Fact Sheet: Mobile Phone Ownership Over Time*, Pew Rsch. Ctr. (Nov. 13, 2024), <https://tinyurl.com/yypjzyuc>.

⁷⁴ Aliah Richter et al., *Youth Perspectives on the Recommended Age of Mobile Phone Adoption: Survey Study*, 5 *JMIR Pediatrics & Parenting* e40704, at 1 (2022), <https://tinyurl.com/y8havv45>.

⁷⁵ Emily A. Vogels et al., *Teens, Social Media and Technology 2022*, Pew Rsch. Ctr. (Aug. 10, 2022), <https://tinyurl.com/44wzd39a>.

getting smartphones younger than ever. A 2021 study found that 42% of children have smartphones by age 10,⁷⁶ up from 2009 when just 9% of children had cell phones of any type by that age.⁷⁷

Thus, even if parents deny their own children a smartphone—as many concerned about pornography will do—those children likely have friends whose parents did *not* make that choice and whose phones thus serve as a conduit for exposure. With such unfettered access to the Internet, pornography can be accessed in the car, at the park, in school restrooms, and, indeed, almost anywhere.

2. Because a significant amount of pornography is viewed by accident, the growth of smartphone use not only makes pornography more accessible, it also makes it more invasive. A 2022 study found that an astounding 73% of teens “reported that they ha[d] consumed pornography.”⁷⁸ And 15% of respondents who were 10 or younger reported the same, with the average teen “report[ing] having first consumed pornography when they were 12.”⁷⁹

⁷⁶ Natasha Burgert & Valerie Williams, *What Is The Best Age For A Child's First Smartphone?*, Forbes Health (Oct. 9, 2023), <https://tinyurl.com/uum8kkk7> (citing Victoria Rideout et al., *The Common Sense Census: Media Use by Tweens and Teens, 2021*, Common Sense (2022)).

⁷⁷ Amanda Lenhart, *Is the Age at Which Kids Get Cell Phones Getting Younger?*, Pew Rsch. Ctr. (Dec. 1, 2010), <https://tinyurl.com/4u8ccktn>.

⁷⁸ Michael B. Robb & Supreet Mann, *Teens and Pornography, 2022*, at 5, Common Sense (2023), <https://tinyurl.com/razb6m48>.

⁷⁹ *Ibid.*

Many children are also exposed through no fault of their own. In one British study, children were asked about the first time they were exposed to pornography.⁸⁰ Of survey respondents, 32% of children reported they saw it by accident.⁸¹ And 22% reported they were shown pornography by someone else without expecting it or having asked for it.⁸²

Further, even those who view pornography accidentally the first time may not be able to avoid it in the future. That is because youthful “[p]ornography exposure *** not only harms children in the short term but can develop into an addiction.”⁸³ All this means that, even when parents prevent visible forms of pornography consumption in their homes, parents may still fall short of shielding their children from exposure or even addiction.

3. Smartphones are largely to blame for this early exposure. As one study concluded, “[i]n 2020, mobile devices made up 84% of all [Petitioner] Pornhub’s traffic worldwide.”⁸⁴ By October 2023, smartphones had nearly entirely eclipsed other devices as the chosen portal for this illicit activity as

⁸⁰ Martellozzo et al., *supra* note 65, at 23.

⁸¹ *Id.* at 25.

⁸² *Ibid.*

⁸³ Gabriela Coca & Jocelyn Wikle, *What Happens When Children Are Exposed To Pornography?*, Inst. for Fam. Stud. (Apr. 30, 2024), <https://tinyurl.com/49rnb8sf>.

⁸⁴ *What Devices Do Consumers Use the Most to Watch Porn?*, Fight the New Drug, <https://tinyurl.com/m3e2naej> (last visited Nov. 21, 2024).

“approximately 97 percent of the traffic to Pornhub.com came from mobile devices.”⁸⁵

That devices owned by 95% of teenagers are now being used to view more than 90% of pornography online is especially alarming for *Amici*, whose youth are regularly using smartphones to access that material. And the fact that smartphones can be used to freely find pornography online belies any claim that the modest protections for children reflected in H.B. 1181 and similar laws in other States will materially burden adults.

4. For all these reasons, smartphones have revolutionized the problem of childhood exposure to pornography since this Court last addressed that issue in *Ashcroft v. ACLU*, 542 U.S. 656 (2004). There, the Court was largely addressing stable “home computers” often placed in a central location, not small devices that can be hidden in a child’s pocket. *Id.* at 667. So *Ashcroft* is readily distinguished on that basis alone.

In short, given the rise of smartphones, if States like Texas cannot respond legislatively to the increased risks of ubiquitous pornography in the hands of children, then parents and religious communities will be left to fight this vicious plague alone. And it is likely to be a losing battle.

⁸⁵ Laura Ceci, *Worldwide visits to Pornhub from April 2022 to January 2024, by device*, statista (Apr. 5, 2024), <https://tinyurl.com/4zxmn8du>.

II. Applying Strict Scrutiny Here Would Improperly Block States from Exercising Their Police Powers to Protect Children.

Thankfully, this Court's decisions do not compel that result, or the strict scrutiny standard for which Petitioners and their *Amici* advocate. To the contrary: Consistent with this Nation's history and tradition of regulating obscenity, this Court's decision in *Ginsberg* establishes that rational-basis review is the proper standard for laws that, even if they incidentally burden adult access to pornography, are designed to protect children from its dangers.

A. Under Petitioners' theory, most laws seeking to protect children from pornography would be invalid.

Most laws seeking to protect children from pornography are likely to have at least some incidental effects on adults. Although those effects are vanishingly small here, if, as Petitioners urge, strict scrutiny applied to H.B. 1181, many analogous laws would likely be invalid—or at least subjected to protracted litigation before they could take effect.

1. Given the realities of the digital age, we no longer live in a world where laws *directly* limiting the sale of pornography to minors can adequately further society's compelling interest in limiting exposure to minors. As discussed above, even when parents are conscientious, children can often find pornography online. If children are to be meaningfully protected, an all-hands-on-deck approach is required.

Such an approach, which may require multiple technological safeguards for children, may impose at

least *some* burden on adult access to pornography, however small. Thus, if even H.B. 1181’s commercially reasonable steps to ensure that only adults can access pornography are enough to trigger strict-scrutiny review—despite imposing no more than a *de minimis* burden on adults—it is hard to imagine what other incidental burdens would *not* trigger such review.

Petitioners effectively concede as much: While rattling off (at 37-41) a long list of ways they consider H.B. 1181 to fail narrow tailoring, they offer *no* example—for there is none—of a law that would protect children without incidentally imposing at least a *de minimis* burden on adults who wish to view pornographic materials.

2. Because most laws regulating child access to pornography may incidentally impose such minor burdens on adults, the logical consequence of Petitioners’ proposed rule is that any attempt to protect children from pornography must be narrowly tailored. And, of course, strict scrutiny is “extremely difficult to satisfy”⁸⁶ because “speech restrictions rarely outweigh speech under strict scrutiny.”⁸⁷

The difficulty of satisfying strict scrutiny is established in this Court’s other obscenity cases, in which laws subject to strict scrutiny rarely, if ever, survive this Court’s review. See *Sable Commc’ns of*

⁸⁶ Ashutosh Bhagwat, *What if I Want My Kids to Watch Pornography?: Protecting Children from “Indecent” Speech*, 11 Wm. & Mary Bill of Rts. J. 671, 672-673 (2003).

⁸⁷ Daniel J. Solove, *The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure*, 53 Duke L.J. 967, 983 (2003).

Cal., Inc. v. FCC, 492 U.S. 115, 131 (1989); *Denver Area Educ. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 753, 753-755, 760, 766 (1996); *Reno v. ACLU*, 521 U.S. 844, 874, 879 (1997); *Ashcroft*, 542 U.S. at 665, 673; *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 806-807, 827 (2000). *Amici* agree with Texas’ showing (at 25-29) that the laws at issue in those cases are distinguishable from H.B. 1181 in that they “banned protected speech for all listeners” rather than “requir[ing] the speaker to serve as the gatekeeper to ensure those individuals who have a constitutional right to do so (and only those individuals) can access the material.”

But these cases are nevertheless helpful in demonstrating that the burden of proving sufficient tailoring to satisfy strict-scrutiny review is hard for States to carry: The potential that a given law will incidentally burden adults makes it difficult to establish the tight fit between means and ends that strict scrutiny requires. After all, a law that furthers the State’s interest in protecting children from pornography, but fails to regulate every way that children access it, will face claims of underinclusiveness. See, *e.g.*, *Reed v. Town of Gilbert*, 576 U.S. 155, 172 (2015). And more robust laws that would be more successful in protecting children may impose higher burdens on adults and thus will face the inverse problem of facial overbreadth challenges. See, *e.g.*, *AFPPF v. Bonta*, 594 U.S. 595, 615 (2021).

3. Congress learned these lessons the hard way. Although Congress sought to protect children from pornography through the Child Online Protection Act, this Court in *Ashcroft* declared the statute

unconstitutional because there were less restrictive means available. *Ashcroft*, 542 U.S. at 660, 673. A State’s nominal authority to prevent childhood pornography exposure is little help if it inevitably faces a burden of proof that, in most cases, is impossible to satisfy. That general fact is no less true even though, as Texas shows (at 35-38), H.B. 1181 would survive even strict scrutiny.

In sum, if Petitioners’ reading of this Court’s cases were correct, it would virtually guarantee that any law seeking to protect children from pornography on the Internet will face strict scrutiny—thus guaranteeing that most such laws will fail.

B. Under *Ginsberg*, laws regulating distribution of obscene materials to minors are subject to rational-basis review.

Fortunately, this Court can (and should) ensure that States are able to protect minors from the dangers of pornography by reaffirming that *Ginsberg*’s rational-basis standard remains good law. That will ensure that States retain meaningful tools to protect children from the scourge of pornography.

1. *Ginsberg* applied rational-basis review to a New York law that forbade selling magazines or pictures considered obscene for minors to minors. 390 U.S. at 633, 639. The *Ginsberg* Court recognized that “[t]he well-being of its children is of course a subject within the State’s constitutional power to regulate.” *Id.* at 639.

Ginsberg further explained that “two interests” justified the State’s power. *Ibid.* First, “the parents’

claim to authority in their own household to direct the rearing of their children” justified such laws because States “could properly conclude that parents and others *** who have this primary responsibility for children’s well-being are entitled to the support of laws designed to aid discharge of that responsibility.” *Ibid.* And second, States have “an independent interest in the well-being of [their] youth.” *Id.* at 640.

2. Those two interests are no less compelling today. As Texas persuasively explains (at 18-22), nothing has changed since *Ginsberg* that would justify abandoning the application of rational-basis review to laws regulating children’s ability to access pornography. *Ginsberg*’s holding as to the correct legal standard should control.

Moreover, only the rational-basis standard applied in *Ginsberg* would give States the leeway necessary to further the joint parental/state interests in protecting children from pornography. 390 U.S. at 641-643. As in other areas, States must be free to experiment with laws regulating childhood access to pornography to ensure that children are effectively protected. See, e.g., *West Virginia v. EPA*, 597 U.S. 697, 739 (2022) (Gorsuch, J., concurring) (states must be “laborator[ies]” for “novel social and economic experiments” (citation omitted)).

If States are not so empowered, they will be unable to respond to the many ways that children can be exposed to pornography even when their parents diligently try to protect them. After all, technology is constantly changing. And, as technology evolves, laws that might adequately protect children today may not do so in the future. Only rational-basis review gives

States enough discretion to enact laws that respond to such technological changes without always trying to hit a moving target. This Court should endorse the Fifth Circuit’s conclusion on that important point.

C. This Court can affirm States’ authority to regulate minors’ access to pornography without undermining First Amendment protections.

Ginsberg also reached the correct result as a matter of first principles. As *Ginsberg* correctly recognized, America has a long history of regulating obscenity. Given that history, Texas’ regulation of minor’s access to pornography can stand without calling into question the protection of other types of expression that, unlike obscenity, *have* historically been protected.

1. This Court has consistently turned to America’s history and tradition for guidance in assessing the existence and scope of individual rights under the Constitution. In *United States v. Rahimi*, 144 S. Ct. 1889 (2024), for example, all nine Justices understood their role to be to “ascertain whether [a] new law is relevantly similar to laws that our tradition is understood to permit.” *Id.* at 1898; *accord id.* at 1930 (Thomas, J., dissenting) (“A firearm regulation that falls within the Second Amendment’s plain text is unconstitutional unless it is consistent with the Nation’s historical tradition of firearm regulation.”).

The Court has likewise encouraged the practice of looking at “history and tradition *** when considering the scope of the First Amendment.” *Vidal v. Elster*, 602 U.S. 286, 301 (2024). Indeed, the Court has often

recognized that a “history and tradition of regulation are important factors in determining” whether expression is protected. *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 446 (2015) (citation omitted).

Consistent with these cases, the Court can—and should—turn to history and tradition to determine how, if at all, the First Amendment protects pornography, especially pornography to which children have access.

2. The relevant history shows that America has a long tradition of regulating obscenity—if not forbidding it outright. And that is because, until recently, “it was universally assumed that, whatever obscenity was, it was not protected by the First Amendment” at all.⁸⁸

Consistent with that understanding, Congress has long regulated obscenity unrestricted by the First Amendment. Thus, in *Roth v. United States*, 354 U.S. 476 (1957), the Court itself recognized that, between 1842 and 1956, Congress had enacted 20 different obscenity laws. *Id.* at 485. State legislatures also regulated obscenity starting as early as 1712 and, by 1957, *every* state had obscenity laws. *Id.* at 482-483, 485.

So strong was the historical record of regulating obscenity that, by the time the Court articulated its now-controlling obscenity standard, it could say, correctly, that it was “categorically settled *** that obscene material is *unprotected* by the First

⁸⁸ Geoffrey R. Stone, *Sex and the First Amendment: The Long and Winding History of Obscenity Law*, 17 First Amend. L. Rev. 134, 139 (2018).

Amendment.” *Miller v. California*, 413 U.S. 15, 23 (1973) (emphasis added, citations omitted). And *Miller*, while paying homage to that history, sharply departed from it by imposing “free speech standards” that “lack any overt mooring in” either “the text or original meaning of the Constitution,” *Utah v. Watts*, 2021 UT 60, ¶ 63, 498 P.3d 365, 380 (Lee, A.C.J., concurring) (cleaned up), or the Nation’s history and tradition of obscenity regulation.

3. That history and tradition contrasts with our history and tradition of protecting other expression, such as religious speech. Religious freedom, unlike the freedom to consume obscene materials, stems from America’s colonial history, with roots going at least as far back as the Maryland Toleration Act in 1649. Since then, the Court has acknowledged an American history and tradition in legislative prayer, *Town of Greece v. Galloway*, 572 U.S. 565, 575-576 (2014); legislative chaplains, *Marsh v. Chambers*, 463 U.S. 783, 786-792 (1983); church tax exemptions, *Walz v. Tax Comm’n of City of N.Y.*, 397 U.S. 664, 680 (1970); and private prayer in public spaces, *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 540 (2022). Political speech and other forms of expression have a similarly strong tradition of *protection*, unlike obscenity’s history and tradition of *regulation* outside First Amendment protection. See, e.g., *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-572 (1942) (recognizing the exceptions to speech protections as “well-defined and narrowly limited”).

Under a historical approach, the difference between obscenity and other forms of expression could not be starker. As Justice Breyer explained, obscenity

is one of the few categories of speech that are “generally unprotected by the First Amendment entirely because of [its] content.” *Barr v. American Ass’n of Pol. Consultants, Inc.*, 591 U.S. 610, 644 (2020) (Breyer, J., concurring in part and dissenting in part). To invalidate Texas’ law based on perceived incidental burdens on adult access to obscene materials would elevate protections for smut far beyond what our history and tradition justify.

In short, consistent with long tradition, this Court should allow Texas to regulate minors’ access to material obscene for them, as States have always done. And the Court can do so without undermining the protections afforded to other forms of expression because obscenity has a distinctly *unprotected* status in America’s history and tradition.

CONCLUSION

Texas rationally concluded that it could protect children from the evils of pornography by requiring pornographers to verify the age of those seeking to access it. In so doing, Texas furnished religious parents with an important tool that helps them fulfill their religious duty to protect their children from pornography. That tool, if lost, would increase the risk that children will be subjected to pornography’s spiritually, emotionally, and mentally damaging influence. The Court should affirm.

Respectfully submitted,

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