Court Upholds Age-Verification Laws for Explicit Content Websites

Free Speech Coalition, Inc. v. Paxton, 145 S. Ct. 2291 (June 27, 2025)

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In *Free Speech Coalition, Inc. v. Paxton*, the U.S. Supreme Court addressed the constitutionality of a Texas law—House Bill (HB)1181—requiring commercial pornographic websites (defined as websites with more than one-third of their content being "sexual material harmful to minors") to verify the age of their visitors. The plaintiffs, including a pornography industry trade association, website operators, and a performer, challenged the law on First Amendment grounds, arguing in large part that HB 1181 unconstitutionally burdened the right to access constitutionally protected speech.

The District Court for the Western District of Texas applied the most exacting standard—strict scrutiny—to the law, found it likely unconstitutional, and granted a preliminary injunction against its enforcement. The Fifth Circuit Court of Appeals instead applied the "exceedingly deferential standard" of rational basis review, held that the law was rationally related to the government's interest in preventing minors from accessing pornography, and vacated the injunction.

On its review, the Supreme Court held that both the district court and Fifth Circuit (as well as the petitioners and Texas) were wrong in the standards they applied. Rather than strict scrutiny or rational basis, the Supreme Court subjected the law to the less-used standard of "intermediate" or "heightened" scrutiny. Writing for the majority, Justice Thomas first traced the history and prevalence of laws regulating obscenity, despite the strict review that content-based speech restrictions ordinarily receive. The majority held that its precedents permit states to "impose greater limits on children's access to sexually explicit speech than they can on adults' access." In other words, a state *cannot* prohibit adults from accessing content obscene only to minors, but it *can* pass laws to prevent

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minors from accessing that content.

In so doing, the Supreme Court had to distinguish two relevant prior precedents issued at the "dawn of the internet age," both of which had applied strict scrutiny to, and held as unconstitutional, laws restricting the transmission of "indecent" or "offensive" materials to minors over the internet, including one that had an age-verification exception. The court held that these laws' prior age-verification requirements were "illusory" (given the technology at the time) or affirmative defenses (in a factually bound decision) that did not direct the result in this case.

Justice Thomas explained that intermediate scrutiny was the correct standard to apply because states have historically been allowed to prevent minors from accessing speech that is obscene from the perspective of a minor. The Supreme Court pointed out the commonplace nature of age restrictions—on everything from alcohol and tattoos to voter registration and marriage—and held that obscenity is no special exception to these kinds of protections long accepted by courts and society. And it further reasoned that no one has a right to access material that is obscene to minors *without* verifying one's age, so the burden on protected speech activity was "incidental," thus warranting only "intermediate" or "heightened" (but not strict) scrutiny. According to the majority, applying strict scrutiny to the Texas law would risk upsetting the "traditional" and "widespread" use of age-verification laws.

Applying the intermediate standard—which requires only that the government's interest "would be achieved less effectively absent the regulation" and that the regulation "does not burden substantially more speech than is necessary to further that interest"—the Supreme Court upheld the law. It found that the age-verification requirement was legitimate and feasible. And the mere availability of a less burdensome or more effective option, such as encouraging parents to install content-filtering software, did not mean that the law was constitutionally defective.

Justice Kagan, joined by Justices Sotomayor and Jackson, dissented. The dissent argued that the law imposed a significant burden on adult access to constitutionally protected speech and

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could chill lawful expression. The dissent was particularly concerned about the potential for overreach and the lack of less restrictive alternatives. Justice Kagan pointed to the Supreme Court's several precedents applying strict scrutiny to laws that burdened protected speech activity (including in the pornography context) and reasoned that the same standard should apply to HB 1181 because it burdens adults' generally protected ability to access that type of speech. The dissent also argued that the majority opinion was an end-oriented attempt to justify what was plainly a content-based regulation that should have been subjected to higher scrutiny.

Key Takeaways

- The Supreme Court clarified that laws regulating access to content that is obscene for minors—but not for adults—are reviewed under intermediate scrutiny, not strict scrutiny.
- States may impose reasonable restrictions to protect minors from harmful content, even in the digital age.
- State laws with age-verification requirements like Texas's are valid and may become more common.

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