

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-1122

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

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,
AND FOR ENLARGEMENT OF TIME FOR ORAL ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae; that the time allotted for oral argument be enlarged to 65 minutes; and that the time be allocated as follows: 25 minutes for petitioners, 10 minutes for the United States, and 30 minutes for respondent. The United States has filed a brief as amicus curiae supporting vacatur of the judgment of the court of appeals. Petitioners have agreed to cede five minutes of their argument time to the United States, and petitioners and respondent have consented to the enlargement of the time for argument by five minutes.

This case is a First Amendment challenge to a Texas law, H.B. 1181, requiring certain websites that host sexually explicit material to verify that visitors to the websites are adults. Tex. Civ. Prac. & Rem. Code Ann. § 129B.001 et seq. (West Supp. 2023). The district court applied strict scrutiny and preliminarily enjoined enforcement of H.B. 1181, but the court of appeals applied rational-basis review and vacated the preliminary injunction in relevant part. The United States has filed a brief as amicus curiae supporting vacatur of the judgment of the court of appeals. The brief argues that this Court's precedents require a content-based age-verification law like H.B. 1181 to be assessed under strict scrutiny; that the Court should remand to allow the court of appeals to apply that standard; and that appropriately tailored age-verification laws may satisfy strict scrutiny.

The United States has a substantial interest in the First Amendment issues presented in this case. Congress has previously enacted laws to protect minors from exposure to harmful sexual material on the Internet and in other media, including a statute with age-verification provisions similar to those at issue here. See Ashcroft v. ACLU, 542 U.S. 656 (2004); see also United States v. Playboy Entm't Grp., Inc., 529 U.S. 803 (2000); Reno v. ACLU, 521 U.S. 844 (1997); Sable Commc'ns of Cal., Inc. v. FCC, 492 U.S. 115 (1989). Congress may legislate in this area again. Cf. Kids Online Safety and Privacy Act, S. 2073, 118th Cong., 2d Sess. (as

passed by the Senate, July 30, 2024). The United States accordingly has a substantial interest in the legal standard governing constitutional challenges to laws like H.B. 1181.

The United States presented oral argument as a party in each of the above-cited cases, as well as argument as amicus curiae in recent cases involving the application of the First Amendment in the Internet context. See, e.g., Moody v. NetChoice, LLC, 144 S. Ct. 2383 (2024); Lindke v. Freed, 601 U.S. 187 (2024). In light of the substantial federal interest in the question presented, the United States' participation in oral argument could materially assist the Court in its consideration of this case.

As noted, the United States' brief argues that the court of appeals' judgment should be vacated and the case remanded for application of strict scrutiny. The brief also urges the Court to "make clear that the First Amendment does not foreclose appropriately tailored measures to restrict the distribution of harmful sexual material to children on the Internet -- potentially including age-verification measures." U.S. Br. 24; see id. at 23-32. That position is partly adverse to petitioners, who urge this Court to apply strict scrutiny itself and reverse the judgment of the court of appeals outright. Pet. Br. 37-44. Because of that divergence, we have requested only five minutes of time from petitioners and are seeking to enlarge the time for argument to afford the United States a total of ten minutes. Cf. Dewberry

Grp. v. Dewberry Eng'rs Inc., No. 23-900 (Nov. 4, 2024) (enlarging argument by five minutes in a similar situation); City of Grants Pass v. Johnson, 144 S. Ct. 1289 (2024) (No. 23-175) (same); Tyler v. Hennepin County, 143 S. Ct. 1443 (2023) (No. 22-166) (same).

Respectfully submitted.

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Solicitor General
Counsel of Record

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