No. 25-1779

IN THE

SUPREME COURT OF THE UNITED STATES

PACT AGAINST CENSORSHIP, INC., ET AL.

***Petitioner*,**

v.

KIDS INTERNET SAFETY ASSOCIATION, INC., ET AL.,

***Respondent*.**

ON A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

TEAM 10
Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases — Page(s)

United State Court of Appeal Cases

Federal Statutes

Federal Regulations

Articles of the United States Constitution

Amendments to the United States Constitution

Other Authorities

QUESTIONS PRESENTED

I. Is Congress's delegation of power to the Kids Internet Safety Association constitutional under the seldom used private nondelegation doctrine when the FTC maintains authority and surveillance over the Association's action?

II. Does a rule requiring age verification before granting access to sexual material harmful to minors comply with First Amendment precedents concerning children's access to obscene and indecent material?

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourteenth Circuit is unreported but reproduced on pages 1–15 of the record. (R. at 1–15).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. art. I, § 8, cl. 18 provides:

> [The Congress shall have Power] to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

U.S. Const. amend. I provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

55 U.S.C. § 3050–59 is reproduced in full on pages 19–31 of the record. (R at 19–31).

STATEMENT OF THE CASE

I. Factual Background

A. Congress created a private entity supervised by the FTC to keep children safe from pornography online.

Congress enacted the Keeping the Internet Safe for Kids Act (hereinafter "KISKA" or "the Act") in response to growing criticism that the United States government was not doing enough to protect children from exposure to pornography on the internet. (R. at 2). The purpose of the Act is to "provide a comprehensive regulatory scheme to keep the Internet accessible and safe for American youth." (R. at 2); Keeping the Internet Safe for Kids Act, 55 U.S.C. § 3050. Because the internet is constantly evolving, Congress created the Kids Internet Safety Association, Inc. (hereinafter "the Association") to "monitor and assure children's safety online," rather than enact an inflexible set of rules. (R. at 2); H.R. Rep. No. 92-544, at 1 (2022) (Conf. Rep.); 55 U.S.C. § 3054(a).

Although the Association is a private nonprofit corporation, it is subject to the oversight and supervision of the Federal Trade Commission (hereinafter "FTC"). (R. at 2). The Association is similar to another private entity created by Congress, the Horserace Integrity and Safety Authority (hereinafter "HISA" or "the Horseracing Authority"). (R. at 2). The Association is able to regulate children's access and safety on the internet and to enforce its own rules through investigative powers and the imposition of civil sanctions or injunctions. (R. at 3); 55 U.S.C. § 3054(c). As the Association's supervisor, the FTC is able to make its own rules, modify the Association's rules, and review at any time any enforcement action brought by the Association. (R. at 3).

B. The Association enacted Rule ONE to prevent children from viewing pornography online.

The Act became effective in January of 2023 and the Association began meeting in February 2023. (R. at 2–3). In its first meetings, the Association heard testimony from experts on the deleterious effects on minors of having early access to pornography. (R. at 3). The experts testified that early exposure to pornography results in a higher likelihood of children later engaging with "deviant pornography." *Id.* Children who frequently consumed pornography are increasingly likely to suffer from "gender dysphoria, insecurities, and dissatisfactions about body image, depression, and aggression." *Id.* Further, higher use of pornography correlates with lower grades. *Id.*

Relying on this expert testimony, the Association issued Rule ONE (hereinafter "the Rule"), which requires pornographic websites and commercial entities to restrict children's access to pornographic material by using reasonable age verification measures. *Id.* Rule ONE only applies to a commercial entity that knowingly and intentionally publishes material on its website when more than one-tenth of that material is pornographic. (R. at 3–4). Such age verification may be accomplished by requiring a government-issued ID or other reasonable transactional data, but no entity may retain any identifying information about the individual. (R. at 4). Entities that do not comply with Rule ONE are subject to a $10,000.00 fine per day of noncompliance and a $250,000.00 fine for every time a minor accessed the website due to the entity's noncompliance. *Id.*

Following the release of Rule ONE in June 2023, Petitioner Pact Against Censorship, Inc. (hereinafter "PAC") filed to enjoin the Association and Rule ONE. (R. at 5). PAC operates the largest association for the American pornography industry. (R. at 5). In support of its request for

injunction, PAC submitted evidence that most pornographic websites also offer non-objectionable material, including discussion boards about business, professional, and educational opportunities. (R. at 4). Other evidence reflects that it is easy for a person to remain anonymous even where age verification is required and that children are able to bypass security measures on occasion. (R. at 5). Some experts suggested alternative methods for preventing children from accessing pornography, such as internet filtering and blocking software. (R. at 5).

Members of the pornography industry claim that Rule ONE would have a negative effect on the amount of traffic to their websites, risking their livelihoods. (R. at 4). Indeed, John and Jane Doe, two regular viewers of pornography, alleged that they had stopped visiting pornographic websites that required age verification out of concern for their personal information. (R. at 4). While Jane Doe is not ashamed of her viewing pornography, she fears backlash community should her personal information leak, despite the Rule's prohibition on retaining such information, and claims she uses internet sites to avoid recognition from others at a pornography store. (R. at 4).

II. **Procedural History**

On August 15, 2023, PAC and three PAC members–two pornography performers and one studio–filed for a permanent injunction against the Association and Rule ONE in the District of Wythe. (R. at 5). PAC asserted that Congress's delegation of power to the Association violates the private nondelegation doctrine and that Rule ONE violates the First Amendment of the United States Constitution. (R. at 2). The district court found that the delegation does not violate the private nondelegation doctrine because the FTC maintains sufficient supervision over the Association. (R. at 2, 5). However, the district court granted the injunction on the grounds that Rule ONE violates the First Amendment. (R. at 2, 5). The Association appealed the district

court's ruling on the First Amendment and PAC cross-appealed its ruling on nondelegation. (R. at 5).

SUMMARY OF THE ARGUMENT

This Court should uphold the Fourteenth Circuit's ruling because: (1) Congress's delegation of rulemaking and enforcement power to the Association was constitutional under Article I of the United States Constitution and (2) Rule ONE is a constitutional restriction of speech under the First Amendment under a rational basis, intermediate scrutiny, and strict scrutiny analysis.

First, Congress's delegation of power to the Association under KISKA is constitutional under Article I because the Constitution only bars the delegation of unrestricted power to private entities. Because Congress identified an intelligible purpose when enacting KISKA and restricted the power of the Association, its delegation of rulemaking and enforcement power was constitutional. Further, the FTC has sufficient authority and supervision over the Association such that Congress's delegation of power does not violate Article I's doctrine of unrestricted delegations.

Second, Rule ONE is a restriction on children's access to obscene sexual material on the internet and is thus subject to rational basis review. Because the Rule's age verification restriction is rationally related to the government's legitimate purpose of protecting children from viewing harmful pornography on the internet. Rule ONE additionally survives an intermediate analysis because it is narrowly tailored to serve the government's important purpose of protecting children from the harmful secondary effects of early access to pornography. Further, Rule ONE survives strict scrutiny because it is the least restrictive means of accomplishing the compelling governmental interest of protecting children from viewing pornography on the internet.

ARGUMENT

I. Congress's delegation of power to the Association is constitutional because the FTC maintains authority and surveillance over the Association such that the Association is sufficiently subordinate to the FTC.

The Fourteenth Circuit correctly held that Congress's delegation of power to the Association through the Act is constitutional because the Act does not delegate unchecked legislative power to the Association. Article I, Section 1 of the United States Constitution provides, "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States," meaning that Congress cannot give up its legislative power. *See Whitman v. Am. Trucking Ass'ns.*, 531 U.S. 457, 472 (2001). However, Congress is also authorized to make all laws which are "necessary and proper" to execute its general powers. U.S. Const. art. I, § 8, cl. 18. There is a presumption of constitutionality which attaches to every Act of Congress. *See, e.g.*, *Walters v. Nat'l Ass'n of Radiation Survivors*, 486 U.S. 1323, 1324 (1984).

Congress's delegation of power to the Association under KISKA is constitutional. This Court has repeatedly upheld Congress's authority to delegate powers to private entities when accompanied by an intelligible principle and limitations to the entity's power without differentiating between a private and public entity. *See Butte City Water Co. v. Baker*, 196 U.S. 119, 126–27 (1905); *Currin v. Wallace*, 306 U.S. 1, 15–16 (1939). Because of the rapidly evolving nature of the internet, delegation of power to KISKA is necessary to effectively enact legislation that protects children online. (R. at 2). KISKA includes limitations on the Association's rulemaking power such as prohibiting individuals with conflicts of interest from becoming board members, restricting the Association's rulemaking to specified areas, and subjecting all rules to FTC approval. 55 U.S.C. § 3054. Because Congress identified a purpose and limited the Association's rulemaking authority, its delegation of power to the Association

does not violate Article I of the Constitution. *See United States v. Rock Royal Co-op*, 307 U.S. 533, 577–78 (1939).

Even if this Court's precedent of upholding private delegations is not controlling in this case, the delegation of power remains constitutional because the FTC retains oversight and supervision over the Association's rulemaking and enforcement powers. The FTC's oversight over the Association in KISKA mirrors its supervision over the Horseracing Integrity and Safety Authority under the Horseracing Integrity and Safety Act, which was upheld in the Fifth and Sixth Circuits. *See Oklahoma v. United States*, 62 F.4th 221, 225 (6th Cir. 2023); *Nat'l Horseman's Benevolent and Protective Ass'n v. Black*, 107 F.4th 415, 424 (5th Cir. 2024) [*Black II*]. Under KISKA, the FTC can abrogate, modify, or reject proposed rules and review enforcement actions. 55 U.S.C. § 3053(e); 55 U.S.C. § 3058(c). This framework ensures that the Association operates subordinately to the FTC and thus, is constitutional under Article I.

A. Congress's delegation of power to the Association is constitutional because Congress has provided a purpose and terms under which the Association is to act.

This Court has a long history of upholding Congress's delegation of power to private entities without differentiating between public and private entities. *See Butte City Water Co.*, 196 U.S. at 126–127 (holding Congress's powers to delegate to private entities and state legislature are equal); *St. Louis, Iron Mountain & S. Ry. Co. v. Taylor*, 210 U.S. 281, 287 (1908) (upholding delegation of power to a private railway association and the Interstate Commerce Commission); *Currin*, 306 U.S. at 15–16 (comparing the delegation of power to tobacco growers to the delegation of power to the president); *United States v. Rock Royal Co-op*, 307 U.S. 533, 577–78 (1939) (applying the same standard to Congress's delegations of power to the Secretary of Agriculture and to private entities).

Delegation of power by Congress "has long been recognized as necessary in order that the exertion of legislative power does not become a futility." *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 398 (1940) (citing *Currin*, 306 U.S. at 15). The doctrine of nondelegation is so rarely invoked that Justice Marshall referred to it as "moribund," stating that the doctrine has been "virtually abandoned" by this Court. *Nat'l Cable Television Ass'n, Inc. v. United States*, 415 U.S. 352, 353–54 (1974) (Marshall, J., concurring in part and dissenting in part). Indeed, this Court has not found an unconstitutional delegation of power in nearly ninety years. *See Carter v. Carter Coal Co.*, 298 U.S. 238, 256 (1936); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 555 (1935).

Congress may delegate its power under broad standards. *See Dakota Cen. Tel. Co. v. South Dakota ex rel. Payne*, 250 U.S. 163, 170 (1919); *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 610 (1944). "It is generally enough that, in conferring power upon an appropriate authority, Congress indicates its general policy, and act in terms or within a context which limits the power conferred." *United States v. Robel*, 389 U.S. 258, 274–75 (1967) (Brennan, J., concurring) (citing *Arizona v. California*, 373 U.S. 546, 584–85 (1963); *FCC v. RCA Commc'ns, Inc.*, 346 U.S. 86 (1953); *Lichter v. United States*, 334 U.S. 742 (1948)). When indicating the policy under which it seeks to act, Congress need only specify so far as is reasonably practicable. *Rock Royal Co-op*, 307 U.S. at 574.

This case is differentiated from the cases where this Court has found an unconstitutional delegation of power. In *Schechter Poultry*, the Court invalidated a statute because it delegated unrestricted power to the president, not because of a delegation of power to private entities. *See* 295 U.S. 495, 542 (1935). The Court could not have found an improper delegation of power to private entities because the statute at issue did not delegate power to private entities–it merely

allowed private industries to propose codes to the president, who ultimately had the power to decline or approve the proposals. *Id.* at 523. Indeed, the majority of the Court's analysis revolved around the president's power to enact regulations without restriction under the statute. *Id.* at 538–42 As such, its comments regarding delegations to private entities are not binding on the Court's decision in this case. Alexander Volokh, *The Myth of the Federal Private Nondelegation Doctrine*, 99 Notre Dame L. Rev. 203, 234 (2023).

Carter Coal involved a delegation of power to coal producers to fix the minimum wage and maximum hours of labor for miners within their districts. 298 U.S. at 310–11. Although this Court held that the delegation was unconstitutional, it was not because Congress delegated power to private parties. *See id.* at 311. Rather, it was because the delegation conferred unlimited power to coal producers, a majority of whom could impose regulations that disadvantaged a minority of coal producers, their direct market competitors. *Id.* Because the Court found there was no intelligible principle for the delegation, it found the statute to be unconstitutional. *Id.* Thus, *Carter Coal* does not bar private delegations completely, just unrestricted delegations, which is consistent with this Court's precedent. Volokh, *Myth of the Private Nondelegation Doctrine*, *supra,* at 236.

Here, Congress's delegation of power to the Association is necessary for Congress to exert its legislative power. In enacting KISKA, Congress recognized that the internet is constantly evolving at a rapid rate and thought it unwise to enact strict rules which would not evolve at the same rate. (R. at 2). Conversely, it would not be feasible for Congress to continuously be required to make new regulations as the internet evolves. The Association consists of individuals from the technological industry, business, and academia who are best able to conduct investigations into the safety of children online and propose rules to ensure that

safety. *See* 55 U.S.C. § 3052. Such delegation of power is exactly the kind which has been repeatedly upheld by this Court. *See Sunshine Anthracite*, 310 U.S. at 398.

Congress's delegation of power to the Association is constitutional because Congress has specified the policy and limited the power it conferred to the Association. Congress stated that its purpose in enacting KISKA is "to provide a comprehensive regulatory scheme to keep the Internet accessible and safe for American youth." 55 U.S.C. § 3050. Such a purpose is stated as specifically as is reasonably practicable and falls within the broad standards within which Congress may delegate power. *See Rock Royal Co-op*, 307 U.S. at 574. Additionally, § 3052(e) bars individuals with competing financial interests from serving as members of the Association's Board of Directors, mitigating the risk of a majority interfering with the business interests of its competitors, as was the case in *Carter Coal*. 298 U.S. at 311.

KISKA's limitations on the Association's rulemaking power ensure that Congress is not delegating unrestricted power to the Association. Section 3054 of KISKA sets forth the jurisdictions of the Association and the FTC. 55 U.S.C. § 3054. It provides that the Association is only to act within the scope and responsibilities of its powers under KISKA to "implement and enforce the Anti-Crime Internet Safety Agenda; and exercise independent and exclusive national authority over the safety, welfare, and integrity of internet access to children." 55 U.S.C. § 3054(a). This provision alone limits the scope of the Association's rulemaking authority as it is restricted from proposing rules related to any subject matter other than those specified in the Act. Section 3054(k) further restricts the Association's rulemaking and enforcement authority by providing that the Association is limited to penalizing prospective conduct and that state agencies retain authority until final resolution of a matter. 55 U.S.C. § 3054(k).

The Association's rulemaking power is further restricted under KISKA by the requirement that the FTC publish each proposed rule in the Federal Register for public comment before approval. *See* 55 U.S.C. § 3053. The publication requirement is the same as that required of all administrative agencies under the Administrative Procedures Act and ensures that the FTC does not have the authority to approve or deny proposed rules without restriction. *See* 5 U.S.C. § 553. Such a requirement in turn restricts the FTC's ability to approve or deny the proposed regulations and thus does not run afoul of the nondelegation doctrine as set forth in *Schechter Poultry*. 295 U.S. at 542. Because Congress has identified an intelligible principle under which the Association is to act and has restricted its rulemaking power, the Act does not violate Article I of the Constitution.

B. Even if this Court's precedent is not controlling, Congress's delegation is constitutional because the FTC maintains authority and surveillance over the Association.

Assuming, *arguendo*, that this Court finds its own precedent unconvincing in this case, Congress's delegation of power to the Association is constitutional because the FTC maintains authority and surveillance over the Association's rulemaking and enforcement powers. A federal agency may delegate power to a private entity so long as the entity functions subordinately to the federal agency and the federal agency "has authority and surveillance over [the entity's] activities." *Texas v. Rettig*, 987 F.3d 518, 532 (5th Cir. 2021) (quoting *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940)). Private entities are sufficiently subordinate to a federal agency where the agency has the power to "abrogate, add to, and modify" the entity's regulations. *See Oklahoma v. United States*, 62 F.4th at 225; *see also*, *Nat'l Horsemen's Benevolent and Protective Ass'n v. Black*, 107 F.4th 415, 424 (5th Cir. 2024) [*Black II*].

The FTC maintains authority and supervision over the Association's rulemaking powers. In 2022, the Fifth Circuit determined that HISA was unconstitutional because HISA improperly delegated power to a private entity, the Horseracing Integrity and Safety Authority, to create regulations regarding the thoroughbred horseracing industry with insufficient review from the FTC. *Nat'l Horsemen's Benevolent and Protective Ass'n v. Black*, 53 F.4th 869, 872 (5th Cir. 2022) [*Black I*]. However, the Fifth Circuit's holding heavily relied on the Supreme Court's decisions in *Schechter* and *Carter Coal*, which, as discussed above, do not bar delegations to private entities altogether, but merely bar unrestricted delegations of power. To the degree that the Fifth Circuit relied on *Schechter Poultry* and *Carter Coal* to hold that HISA was unconstitutional, it erred.

Following the Fifth Circuit's decision in *Black I*, Congress amended HISA to provide that the FTC "may abrogate, add to, and modify" the Horseracing Authority's regulations. 15 U.S.C. § 3053(e). When the Sixth Circuit reviewed the amended HISA, it held that Congress's amendment sufficiently brought the Horseracing Authority's rulemaking power under the FTC. *Oklahoma*, 62 F.4th at 225. When the Fifth Circuit reviewed the amended HISA in *Black II*, it agreed with the Sixth Circuit's decision in *Oklahoma*, stating that "the amendment cured the nondelegation defect identified in [*Black I*]." *Black II*, 107 F.4th at 424–26 ("[T]he problem was that the agency lacked power to second-guess [the rules] once they were proposed.").

Here, Congress's delegation of power is constitutional because the FTC maintains sufficient authority and control over the Association's rulemaking and enforcement powers. KISKA was modeled after the amended HISA and provides the FTC with the same authority over the Association as HISA provides the FTC over the Horseracing Authority. Under KISKA, the FTC has the same ability to abrogate, add to, or modify the Association's regulations. 55

U.S.C. § 3053(e). Therefore, the FTC has sufficient supervision over the rulemaking authority of the Association under KISKA.

Congress's delegation of power to the Association to enforce its own regulations is not a violation of the Constitution. Because the FTC had ultimate authority over the regulations promulgated by the Horseracing Authority under HISA, the Sixth Circuit held that the FTC also had authority over the Horseracing Authority's enforcement actions. *Oklahoma*, 62 F.4th at 233. Absent a challenge to an individual enforcement action, the court saved any ruling on an as-applied challenge until such circumstances arose. *Id.* However, the Fifth Circuit again held that HISA was unconstitutional because the FTC did not "retain the discretion to approve, disapprove, or modify" the Horseracing Authority's enforcement actions. *Black II*, 107 F.4th at 435.

Contrary to the dissent in the Fourteenth Circuit, Congress may delegate to the Association the power to bring a civil suit. (R. at 11). The United States has a long history and tradition of enacting statutes which allow for private parties to bring civil action on behalf of the United States in *qui tam* actions. *See United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 424 (2023); *see also Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 776 (2000) (stating that *qui tam* actions were authorized in statutes passed immediately before and after the framing of the Constitution). When the False Claims Act ("FCA"), which allows for *qui tam* actions, came before this Court in 2023, the Court did not rule that the FCA is unconstitutional due to an improper delegation of power to private entities. *See Polansky*, 599 U.S. at 424. The United States' long history and tradition of allowing *qui tam* actions indicates that the delegation of power to bring a civil suit is not as profound as the dissent suggests.

The delegation of enforcement power to the Association is constitutional because the FTC maintains ultimate authority over all of its rulemaking. *See Oklahoma*, 62 F.4th at 233. Further, unlike in the amended HISA under review in *Black II*, the FTC retains the ability to "affirm, reverse, modify, set aside, or remand" any enforcement action by the Association after review by an administrative law judge. *See* 55 U.S.C. § 3058(c). Under KISKA, the Association is required to promptly submit any civil sanction it imposes to the FTC, meaning that the FTC has prompt notice and can review every enforcement action taken by the Association. *See* 55 U.S.C. § 3058. Thus, KISKA is constitutional as the FTC maintains supervision over all enforcement actions, not only through its supervision of the Association's rulemaking power but also through its ability to modify its enforcement actions. Because the FTC has supervision and authority over the Association's rulemaking and enforcement powers under KISKA, the Act does not violate Article I of the Constitution.

II. Rule ONE is constitutional under the First Amendment because it survives all standards of scrutiny.

The First Amendment of the United States Constitution states "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. Const. amend. I. However, the First Amendment is not intended to protect every utterance. *Roth v. United States*, 354 U.S. 476, 483 (1957). Indeed, since 1791, "the First Amendment has 'permitted restrictions upon the content of speech in a few limited areas,' and has never 'included a freedom to disregard these traditional limitations.'" *Brown v. Ent. Merch. Ass'n*, 564 U.S. 786, 791 (2011) (quoting *United States v. Stevens*, 559 U.S. 460, 468 (2010)). Certain areas of speech, such as obscenity, incitement, and fighting words, are not protected by the First Amendment. *Id.* Thus, the

government can regulate such speech without violating the First Amendment. *See Miller v. California*, 413 U.S. 15, 23 (1973).

Rule ONE is subject to rational basis review because it restricts children from viewing obscenity, which is speech that is not protected by the First Amendment. Because the Rule has a legitimate purpose of preventing children from viewing pornography online and its age-verification requirement is rationally related to that purpose, it survives a rational basis review. However, even if this Court finds that Rule ONE is not subject to rational basis review, the Rule would be subject to intermediate scrutiny because it is content neutral as its purpose is to prevent children from the harmful secondary effects of viewing pornography before adulthood. In which case, the Rule survives intermediate scrutiny because the government has a significant interest in protecting children from viewing harmful sexual material and Rule ONE does not narrowly tailored to serve that interest.

Should this Court instead implement a strict scrutiny analysis of Rule ONE, it should find that it additionally survives such analysis because it (1) furthers a compelling government interest (2) by the least restrictive means. Therefore, this Court should uphold the decision of the Fourteenth Circuit and find that Rule ONE is constitutional under the First Amendment.

A. Rule ONE survives rational basis review because it protects children from obscenity, which is not protected by the First Amendment.

This Court should uphold the decision of the Fourteenth Circuit and find that Rule ONE is subject to rational basis review, which it ultimately passes, because it protects children from viewing obscenity. The First Amendment does not protect obscene material. *Ginsberg v. New York*, 390 U.S. 629, 635 (1968) (citing *Roth v. United States*, 354 U.S. 476, 485 (1957)). The purpose of the First Amendment is to "assure unfettered interchange of ideas for the bringing

about of political and social changes desired by the people." *Roth*, 354 U.S. at 484. "[T]o equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment." *Miller v. California*, 413 U.S. 15, 34 (1973).

The standard this Court has established to define obscenity is:

> whether the 'average person, applying contemporary community standards' would find the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the [applicable law]; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Id. at 24. This standard is to be applied uniformly as courts cannot apply different standards for what is patently offensive to minors and what is patently offensive to adults. However, the government may shield minors from content that is obscene as to minors even if adults have a First Amendment right to view similar materials. *See Ginsberg*, 390 U.S. at 638; *Brown*, 564 U.S. at 793–94.

In order to survive rational basis review, a statute must have a legitimate purpose and must be rationally related to that purpose. *See Ginsberg*, 390 U.S. at 641–43. Under rational basis review, a statute has a strong presumption of validity. *FCC v. Beach Commc'ns*, 508 U.S. 307, 314 (1993). There is no doubt that the government has a "legitimate interest in prohibiting dissemination of exhibition of obscene material when the mode of dissemination carries with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles." *Miller*, 413 U.S. at 18–19 (citations omitted); *see also Ginsberg*, 390 U.S. at 640–41 (recognizing the government has an interest to protect the children from abuses which might prevent their "growth into free and independent well-developed men and citizens").

In *Ginsberg*, this Court upheld New York's prohibition on the sale of sexual material to minors that would be obscene from the perspective of a child. 390 U.S. at 636–37. This Court held that the legislature could "adjus[t] the definition of obscenity to 'social realities by permitting the appeal of this type of material to be assessed in terms of the sexual interests . . .' of . . . minors." *Id.* at 638. Because obscenity is not protected by the First Amendment, this Court upheld the prohibition because it found that "it was not irrational for the legislature to find that exposure to material condemned by the state is harmful to minors." *Id.* at 641. This Court later affirmed the same rational basis test for the protection of minors from non-protected speech in *Brown*, 564 U.S. at 794.

Most recently, the Fifth Circuit upheld a similar law that requires pornography sites to implement an age verification system in order to protect children from being exposed to pornography. *See Free Speech Coal., Inc. v. Paxton*, 95 F.4th 263, 276 (5th Cir. 2024). There, the court relied on this Court's decision in *Ginsberg* and held that the appropriate level of review for such a restriction is rational basis. *Id.* at 270 (stating that *Ginsberg* remains good law and binding on the court's decision). The statute at issue in *Paxton* requires pornography websites to implement an age verification system by digital verification, government-issued identification, or other commercially reasonable methods. *Id.* at 271. The court declined to find that any privacy concerns arising from such methods of age verification were inconsequential to its decision as it was not bound by any precedent to depart from this Court's holding in *Ginsberg* on such grounds. *Id.*

Rule ONE prevents children from viewing harmful sexual material on the internet, which is not protected speech under the First Amendment. The definition of "sexual material harmful to minors" under Rule ONE almost exactly mirrors this Court's standard of obscenity. *Compare* 55

C.F.R. § 1(6) *with Miller*, 413 U.S. at 24. The definition includes material that an average person applying "contemporary community standards" would find is designed to appeal to sexual interest and in a patently offensive manner depicts certain sexual body parts and acts delineated by the rule. 55 C.F.R. § 1(6)(A)–(B). The definition does not apply to sexual material that taken as a whole has a "serious literary, artistic, political, or scientific value for minors." 55 C.F.R. § 1(6)(C). The definition's only deviation from this Court's definition is the inclusion of the language of "with respect to minors" in Sections 1(6)(A) and 1(6)(B).

Rule ONE's inclusion of the language "with respect to minors" in the definition of "sexual material harmful to minors" is permissible under this Court's precedent. *See Ginsberg*, 390 U.S. at 638. The definition adjusts the definition of obscenity established by this Court in *Miller* so that it is assessed with the interests of minors in mind. *See id.* As the Fifth Circuit noted in *Paxton*, there is no binding precedent which contradicts this Court's decision in *Ginsberg* that rational basis review is the correct standard to apply to cases involving the restriction of children's access to pornography although such a restriction might inconvenience adult's access to the same material. *See Paxton*, 95 F.4th at 271. While adults such as Jane and John Doe may have concerns about their privacy being invaded because of the age verification requirement, this Court has not found that such concerns are a basis for a heightened level of scrutiny. *See id.*

Rule ONE is constitutional under rational basis review because the government has a legitimate interest in protecting children from viewing obscene materials online and its age verification requirement is rationally related to protecting children. There is no doubt in this Court that the legislature has a legitimate interest in protecting children from viewing pornography. *See Miller*, 413 U.S. at 18–19; *Ginsberg*, 390 U.S. at 640–41. As acknowledged by the Fourteenth Circuit, children who frequently engage with pornography are increasingly likely

to struggle in school and suffer from depression, aggression, and negative body image. (R. at 3). Further, exposure to pornography as a child increases the likelihood of engaging with "deviant pornography" later in life. (R. at 3). Rule ONE's age verification requirement is rationally related to its legitimate purpose of protecting children from such harmful effects as it restricts children from being exposed to pornography on the internet.

B. Even if rational basis does not apply, Rule ONE is constitutional under intermediate scrutiny because it is concerned with the secondary effects of exposure to internet pornography on children.

Should this Court find that the rational basis standard does not apply, it should apply only intermediate scrutiny because any potential burdens on protected speech are incidental to its content-neutral restrictions. *See Turner Broad. Sys. v. FCC.*, 520 U.S. 180, 189 (1997). Under this Court's secondary-effects doctrine, Rule ONE must satisfy only intermediate scrutiny as long as the regulation is aimed "not at the *content* of the [restricted material], but rather at the *secondary effects* of such [materials] on the surrounding community." *City of Renton v. Playtime Theaters*, 475 U.S. 41, 47 (1986) (emphasis in original). Under intermediate scrutiny, a content-neutral restriction on speech need only be "narrowly tailored to serve a significant governmental interest, and [] leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

Rule ONE is targeted at the secondary effects of children's early exposure to pornography. By definition, Rule ONE applies only to materials that are "sexual material harmful to minors." 55 C.F.R. § 2. The dangerous effects of exposure to internet pornography are well-documented. *See*, *e.g.*, *Paxton*, 95 F.4th at 278 (collecting evidence of the deleterious effects of pornography on children). Before enacting Rule ONE, the Association heard testimony regarding the deleterious effects of early exposure to pornography on children and sought to

protect children from such effects. (R. at 3). Rule ONE does not restrict children's access to pornography because of the content of such material, but rather because of the negative impact pornography has on children. Because Rule ONE is intended to protect children from the secondary effects of early exposure to pornography on children, it is a content-neutral restriction and subject to intermediate scrutiny.

Rule ONE survives intermediate scrutiny because it is narrowly tailored to restrict only the access of dangerous sexual materials by children, a significant (even compelling) government interest. *See infra*, Section II(C)(i). The Rule has, at most, an incidental and minor burden on adult expression and the ability of minors to access materials not covered by the Rule. It leaves open all channels of communication, closing off only children's access only to harmful sexual materials. No additional speech is restricted, and therefore Rule ONE is constitutionally sound under the intermediate scrutiny standard.

C. Even if this Court finds that strict scrutiny applies, Rule ONE's age-verification requirement should be upheld because it is the least restrictive means of achieving a compelling governmental interest.

Due to the compelling nature of the government's interest in safeguarding children from harmful sexual materials, Congress has made repeated attempts to restrict children's access to pornography through various statutory methods. While the statutes were struck down as unconstitutional by this Court's application of the strict scrutiny standard, the dissent in the Fourteenth Circuit erred in drawing the erroneous conclusion that the unconstitutionality of these prior statutes should somehow be taken as summary evidence that Rule ONE is likewise unconstitutional. It is not, even if strict scrutiny applies.

Rule ONE distinguishes itself from every prior attempt by Congress to make good on its compelling interest in protecting America's children. It rectifies each and every issue brought up

by this Court's past rejections of similar law. In doing so, it has at last provided a method of accomplishing that compelling interest through the least restrictive means, satisfying the strict scrutiny standard and achieving constitutionality under the First Amendment.

i. The government unquestionably has a compelling interest in safeguarding the well-being of children by preventing exposure to harmful sexual material.

To satisfy the first prong of the strict scrutiny test, the Rule must "further a compelling interest." *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015). Rule ONE, as an essential part of Congress's "comprehensive regulatory scheme to keep the Internet accessible and safe for American youth," unquestionably meets this requirement. 55 U.S.C. § 3050. The Fourteenth Circuit agreed. (R. at 9) ("Here, all agree that children's welfare is a legitimate—even 'compelling'—interest.") The dissent did not question the compelling nature of the interest at hand. (*See* R. at 14–15).

It is well-settled that the government has "a compelling interest in protecting the physical and psychological well-being of minors. This interest extends to shielding minors from the influence of literature that is not obscene by adult standards." *Sable Commc'ns of California, Inc. v. FCC*, 492 U.S. 115, 126 (1983); *see also Ginsberg*, 390 U.S. at 640 ("The State also has an independent interest in the well-being of its youth."); *New York v. Ferber*, 458 U.S. 747, 756 (1984) (quoting *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 607 (1982)) ("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.'"); *FCC v. Pacifica Found.*, 438 U.S. 726, 798 (1978) (justifying special treatment of indecent broadcasting based on the government's interest in the "well-being of its youth".).

ii. Rule ONE is the least restrictive means of preserving the psychological well-being of America's youth.

Rule ONE is the least restrictive means by which the government may safeguard American children from harmful sexual materials. As stated within the statute, Congress passed KISKA with the purpose of "keep[ing] the Internet accessible and safe for American youth." 55 U.S.C. § 3050. It is targeted solely at preventing children, and children alone, from exposure to pornography and other harmful sexual materials. *Id.* To this end, Rule ONE does not bar or restrict the access of such materials by adults, nor does it restrict any minor's ability to access any material that falls outside of Congress's limited purpose.

The dissent below questions whether Rule ONE is, in fact, the least restrictive means of preventing children from being exposed to pornography. (R. at 15). The alternatives mentioned by the dissent, without examination or explanation, may or may not themselves pass constitutional muster. It is impossible to weigh the hypothetical efficacy and flaws of technology mentioned only cursorily, so the analysis must itself be cursory: it is irrelevant whether these methods would be constitutionally acceptable as long as Congress's chosen method is itself the least restrictive means. It is.

iii. Rule ONE does not restrict or chill the publication, distribution, or access of sexual or indecent material by adults.

Rule ONE does not prohibit, block, or even attempt to discourage the continued distribution of sexually explicit materials by adults to adults. The Association's carefully crafted Rule is written to prevent **only** minors from accessing harmful sexual material, and it limits that restriction **only** to harmful sexual material. It prevents children, not adults, from "reading only what is fit for children," and in so doing, it avoids the overreach of otherwise similar cases that

"burn[ed] the house to roast the pig." *Butler v. Michigan.*, 352 U.S. 380, 383 (1957); *Reno v. ACLU*, 521 U.S. 844, 882 (1997).

The civil nature of Rule ONE avoids the increased chilling effect of otherwise similar statutes that include criminal penalties. When reviewing the Communications Decency Act (hereinafter "CDA") in *Reno*, the Court found that, because the law at issue was a criminal statute, it had an "increased deterrent effect" that "pose[d] greater First Amendment concerns than those implicated by the civil regulation reviewed by [] civil regulation. . . ." *Reno*, 521 U.S. at 872. It justified its increased concern by citing the "opprobrium and stigma of a criminal conviction . . . with penalties including up to two years in prison for each act of violation." *Id.* The CDA chilled speech, the Court said, "[g]iven that the risk of *criminal* sanctions 'hovers over each content provider, like the proverbial sword of Damocles.'" *Id.* at 882 (emphasis added).

Similarly, the Court stated in *Ashcroft II* that "there is a potential for extraordinary harm and a serious chill upon protected speech" in cases "[w]here prosecution is a likely possibility." *Ashcroft v. ACLU*, 542 U.S. 656, 670–71 (2004) [*Ashcroft II*]. In contrast, possibilities that "do[] not condemn as criminal any category of speech" eliminate the potential chilling effect. *Id.* at 668. The unconstitutionality of the Child Online Protection Act (hereinafter "COPA") rested not in any fault in its "compelling interest in protecting minors from exposure to sexually explicit material," but rather in its reliance on criminal punishments instead of "less drastic means." *Id.* at 675 (Stevens, J., concurring).

Rule ONE is a civil regulation, not a criminal statute. It restricts the Authority to civil remedies for knowing violations of the Rule, allowing it to do nothing more than "bring a suit for injunctive relief or civil penalties." 55 C.F.R. § 4. There is no threat of imprisonment or stigma of criminal prosecution, and there is no "sword of Damocles" stemming from any risk of

criminal sanctions. Under *Reno*, the solely civil nature of the sanctions poses lesser First Amendment concerns, and on this basis, the Court should distinguish Rule ONE and KISKA from the CDA. *Reno*, 521 U.S. at 872. Current precedent may suggest that criminal sanctions go too far, but as explained in *Ashcroft II*, there is no chilling effect in purely civil enforcement. 542 U.S. at 668.

Further, modern technology provides a reliable means by which to screen recipients and participants for age. The march of technology has long since passed the clunky and imprecise attempts at age verification explored in *Reno*, which attempted to rely on email accounts, credit card transactions, or paid "adult passwords" that lacked any real ability to verify the age of the user. *Reno*, 521 U.S. at 856. Importantly, there was no proof that these methods did anything to actually distinguish adults from the children they were meant to protect. *Id.* As Justice O'Connor explained, it was "impossible to confine speech to an 'adult zone' [and] the only way for a speaker to avoid liability under the CDA [was] to refrain completely from using indecent speech," thus dooming the statutes to fall short of strict scrutiny "[u]ntil gateway technology is available throughout cyberspace, and it [was] not in 1997." *Id.* at 891 (O'Connor, J., concurring in part).

It is not 1997. Reliable and convenient age verification technology not only exists, but it has been in use throughout the internet, throughout the world, for years. *See* Lauren Jackson, *A Driver's License for the Internet*, N.Y. Times Newsl. (Jul. 3, 2023), https://www.nytimes.com/2023/07/03/briefing/age-verification.html; *see also UK to Require Porn Sites to Verify Users are 18 or Older*, Associated Press (Feb. 8, 2022), https://apnews.com/article/technology-entertainment-business-europe-pornography-0dcfabe3c15d3def446d521feb396fa9. Leading technological companies are already relying on

existing age verification platforms to "make sure teens and adults are in the right experience for their age group." *See, e.g.*, *Introducing New Ways to Verify Age on Instagram*, Meta (Jun. 23, 2022), https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/; *see also* Jacob Kastrenakes, *Roblox Will Start Verifying the Age of Teenage Players*, Verge (Sep. 21, 2021, 1:00 P.M.), https://www.theverge.com/2021/9/21/22684672/roblox-age-verification-optional.

Reno does not stand for the proposition that age verification technologies are unconstitutional, but instead stands only for the fact that, in 1997, the Court could not "rely on the unproven future technology" to narrow, and therefore save, the CDA. 521 U.S. at 882. Like in *Reno*, this Court "must evaluate the constitutionality of [the statute] as it applies to the Internet as it exists today." *Id.* at 891 (O'Connor, J. concurring). Today, there is no dependence on "unproven future technology" to save the statute, only on technology that pervades the modern internet at this very moment.

Rule ONE's age verification requirements are closely analogous to other constitutionally sound methods. At the time of *Reno* and *Ashcroft II*, proposed age verification requirements depended on imperfect methods that, due to the technological restrictions of the era, created too great a hurdle between adult users and materials suitable for adults, thus rendering age-based filtering requirements as unconstitutionally overbroad in the eyes of the Court. In *Reno*, the statute at issue relied on either credit card verification or paid "adult passwords" to verify age. *Reno*, 521 U.S. at 856–57. However, neither method offered the intended benefit, being both ineffective at separating adults from children and, critically, eliminating access to adults who were either deterred from access by the need to make payment to previously free materials or who lacked a credit card and the resources to obtain one. *Id.* at 856; *see also Ashcroft II*, 542

U.S. at 667–68 ("[V]erification systems may be subject to evasion and circumvention, for example, by minors who have their own credit cards.")

However, the Court's rejection of the age verification requirements in both cases rested squarely on these shared inadequacies, not on the concept of age verification as a whole. In *Ginsberg*, the Court upheld a statute that restricted the sale of indent materials to minors, which made it an affirmative defense to criminal penalties "if the defendant made a reasonable boa fide attempt to ascertain the true age of such minor." *Ginsberg*, 390 U.S. at 644. In those cases in which online age verification was struck down, comparisons were drawn between the potentials of future technology and real-world instances of age verification that are constitutionally permissible. *See Reno*, 521 U.S. at 890 (O'Connor, J., concurring) (analogizing burgeoning technology to "a bouncer check[ing] a person's driver's license before admitting him to a nightclub."); *see also Ashcroft II*, 542 U.S. at 683 (Breyer, J., dissenting).

Rule ONE defines reasonable age verification methods to include an exact analogue to real-world identification checks, permitting the use of age verification systems that rely on the user's government-issued identification. 55 C.F.R. § 3(a)(1). Additionally, in a technological mirror of a store clerk briefly confirming a customer's age and returning a driver's license, the commercial entities tasked with verifying ages are forbidden from retaining any identifying information. 55 C.F.R. § 2(b).

At most, it might be argued that age verification may discourage some number of adults from visiting pornographic websites out of a sense of embarrassment that their identities will be connected, however momentarily, with their prurient proclivities. However, this Court has explicitly rejected the argument that potential embarrassment is too great a deterrent for the law to bear. *United States v. Am. Libr. Ass'n, Inc.*, 539 U.S. 194, 209 (2003) ("But the Constitution

does not guarantee the right to acquire information . . . without any risk of embarrassment."). As in *American Library*, Rule ONE creates no burden on adult access to material unsuitable for children other than that they make a request for a third-party to unblock the material, temporarily and necessarily revealing their face as part of that request. *Compare id. with* 55 C.F.R. §§ 2–3.

Additionally, the age verification of Rule ONE distinguishes itself from *Reno* and *Ashcroft II* in that it does not require any financial transactions on the part of the user, permitting currently free resources to remain free of charge. *See* 55 C.F.R. § 3. In doing so, it avoids placing burdens on websites and their users that would "discourage users from accessing their sites." *Reno*, 521 U.S. at 856. Neither of the acceptable age verification methods require the use of payment as a prerequisite for website access, instead relying on government-issued identification cards or previously existing transactional documentation, such as mortgage or employment records. 55 C.F.R. §§ 1, 3.

By placing no real barriers to adult access to adult material, Rule ONE has avoided the overbreadth of prior statutes by narrowly tailoring itself to only to blocking children from accessing those materials which are inappropriate for children.

iv. Rule ONE does not restrict children's access to any content other than harmful sexual material.

Not only does Rule ONE not prevent access to harmful sexual materials by anyone other than children, but it does so without preventing children from accessing any materials other than those that are sexually harmful. Unlike prior laws with similar goals, Rule ONE does not risk blocking children from materials that lie outside the narrow scope of the government's compelling interests.

For the first time since Congress first sought to address children's access to internet pornography, the technology exists to prevent children from accessing such materials while "still allow[ing] them access to the remaining content, even if the overwhelming majority of that content was not indecent." *Reno*, 521 U.S. at 856. Within the last several years, "[t]he recent advancements in AI through state-of-art algorithms, computational power and the ability to handle huge data have opened doors to automate the detection process of online content." Vaishali U. Gonane et al., *Detection and Moderation of Detrimental Content on Social Media Platforms: Current Status and Future Directions*, 12 Soc. Network Analysis and Mining 129 (2022).

Along with advances in technology now making it possible to process the enormous quantity of content online to detect and flag harmful sexual material, Rule ONE also limits itself to avoid the risk of overly broad filtering that may raise First Amendment concerns. The age verification requirement applies only to an entity that "knowingly and intentionally publishes or distributes" content, more than one-tenth of which is sexual material harmful to minors. 55 C.F.R. § (2)(a).

The Rule does not require that these entities filter all content once that one-tenth limit is reached, but it instead requires only that they verify the ages of those attempting to access the harmful sexual material. *Id.* Further, the enforcement actions of the Association are limited to instances in which a commercial entity "is knowingly violating or has knowingly violated" the age verification rule. 55 C.F.R. § 4(a). The requirement that violations be "knowingly" committed offers safe haven for entities that act in good faith to comply with the Rule without demanding perfection in doing so. This greatly reduces, if not entirely eliminates, any incentive commercial entities may otherwise possess for overzealous flagging and filtering of content that should, in reality, be available to children.

v. Rule ONE does not bar parents from providing access to their children if they so desire.

While the government maintains "an independent interest in the well-being of its youth," current precedent suggests that, under the First Amendment, a statute generally cannot interfere with a parent's ability to consent to their children's use of restricted materials. *See Reno*, 521 U.S. at 865; *see also Ginsberg*, 290 U.S. at 639. Rule ONE avoids interfering with any parental rights that may arise under the First Amendment, both through its age verification requirements and its limited enforcement provision.

Rule ONE does not interfere with a parent's ability to share or provide any materials covered under the Rule because it requires commercial entities to verify the age of only users attempting to access the material. 55 C.F.R. § 2. Once that user has obtained access, there is no obligation for the commercial entities to conduct ongoing age verification during the course of that access. Under the Rule, parents may provide their children access to restricted materials, if they so choose, simply by accessing the materials themselves and allowing their children to make use of the unfiltered materials. Additionally, there is no risk of "a lengthy prison term" for "a parent allowing her 17–year–old to use the family computer to obtain information on the Internet that she, in her parental judgment, deems appropriate," as there was with the CDA. *Reno*, 521 U.S. at 878. Not only does Rule ONE contain no criminal penalties whatsoever, it also does not allow for even civil penalties against parents. *See* 55 C.F.R. § 4. The only entities that are subject to any penalties under the Rule are those operating websites and those conducting age verification under the rule. *Id.* at 4(b).

Because Rule ONE addresses the government's unquestionably compelling interest in protecting children from exposure to harmful sexual materials, and because the Rule does so in the

least restrictive manner, it satisfies even this Court's strictest constitutional test: strict scrutiny. This Rule contains none of the overbreadth issues upon which prior statutes were found to be unconstitutionally broad, and it survives every test suggested or explicitly stated by the relevant precedent. Therefore, this Court should find that Rule ONE is constitutional under the First Amendment, even should strict scrutiny apply.

D. If this Court's precedent is incompatible with the enforcement of Rule ONE, this Court should reevaluate that precedent.

Even in the unlikely event that this Court determines that the existing caselaw weighs against Rule ONE and in favor of easy access to pornography by minors, it is not without recourse to safeguard the youth of America. It, and no other, has the power to correct any erroneous decisions that stand in the way of Congress achieving the vital task of protecting children from sexual material online. "*[S]tare decisis* is not an inexorable command, and it is at its weakest when the Court interprets the Constitution." *Dobbs v. Jackson Women's Health Org.*, 592 U.S. 215, 264 (2022) (internal quotation marks omitted). In "appropriate circumstances," this Court "must be willing to reconsider and, if necessary, overrule constitutional decisions." *Id.* No circumstance is more appropriate than protecting American children.

This Court acknowledged in *Ashcroft II* that the rapid pace of technological progress can quickly render prior cases stale, stating that "technological developments important to First Amendment analysis" can occur in a span of just five years. 542 U.S. at 671. Twenty-eight years have passed since the *Reno* decision, which was published twenty-eight years after the birth of what would become the internet. *Reno*, 521 U.S. at 849–50 (placing the origins of the internet at 1969). Both the scope of the issues and the technological possibilities of addressing them bear so

little resemblance to those presently at issue that, to the extent *Reno* would bar the enforcement of Rule ONE, it is *Reno*, and not the Rule, that should be struck down by this Court.

Congress has chosen to address the ever-growing problem of children's exposure to sexually harmful material online. The tools upon which it has chosen to rely, safe and effective age verification programs, are now practical realities rather than "unproven future technology," as they were in *Reno*'s day. 521 U.S. at 882. It would be a grave error to allow the bounds of the First Amendment to be drawn by an opinion written at a time when the internet was a "wholly new medium" of communication. *Id.* at 850. Should this Court's precedent demand that children cannot be protected from pornography, this Court should refuse to impose that antique precedent on a modern technological landscape. The world and the internet have moved far beyond the likes of *Reno*, and this Court should take this opportunity to announce that it has done the same.

CONCLUSION

For the foregoing reasons, this Court should uphold the decision of the Fourteenth Circuit and hold (1) that Congress's delegation of power to the Association under KISKA was constitutional and (2) that Rule ONE is constitutional under the First Amendment.