No. 25-1779

IN THE

SUPREME COURT OF THE UNITED STATES

PACT AGAINST CENSORSHIP, INC., et al.,

Petitioner,

v.

KIDS INTERNET SAFETY ASS'N, INC., et al.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourteenth Circuit

BRIEF FOR RESPONDENT

TEAM NUMBER 20

Counsel for Respondent

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QUESTIONS PRESENTED

1. Did the Fourteenth Circuit correctly affirm the District Court's holding that Congress's delegation of authority to the Kids Safety Internet Association (KISA) was proper under the private nondelegation doctrine, since KISA functions subordinately to the Federal Trade Commission in rulemaking and enforcement?
2. Did the Fourteenth Circuit correctly reverse the District Court's holding that Rule ONE violated the First Amendment, based on a proper application of rational basis review?

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). Rule ONE (55 C.F.R. § § 1-4) and The Keeping the Internet Safe for Kids Act (55 U.S.C. §§ 3050-3059) are reproduced on pages 17-31 of the record (R. at 17-31) and in the Appendix. (App. at 25-39).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

US 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.

US Const. art. I, § 1, in part, provides:

> All legislative Powers herein granted shall be vested in a Congress of the United States.

US Const. art. II, § 1, cl. 1, in part, provides:

> The executive Power shall be vested in a President of the United States of America.

US Const. art. III, § 1, in part, provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

STATEMENT OF THE CASE

The matter before this Court was brought by the Pact Against Censorship, Inc. et al. ("Petitioners") against the Kids Internet Safety Association, Inc. et al. ("Respondents") to challenge the validity of Kids Internet Safety Association ("KISA," "Association") and Rule ONE. (R. at 16). Petitioners commenced this action on August 15, 2023, one month after Rule ONE went into effect (R. at 4), to enjoin KISA and Rule ONE based on alleged violations of the private nondelegation doctrine and the First Amendment. (R. at 5). In the United States District Court for the District of Wythe, Petitioners were unsuccessful in their claim against KISA; however, the court granted the injunction as to their claim against Rule ONE. (R. at 2). Upon cross-appeals sought by both Petitioners and Respondents, the United States Court of Appeals for the Fourteenth Circuit affirmed the District Court's holding regarding KISA and reversed the injunction as to Rule ONE. (R. at 2).

KISA and Rule ONE were developed out of concern that in the ever-evolving digital world, the government was not doing enough to safeguard this nation's youth from exposure to obscene material, specifically pornography. (R. at 2). Pursuant to Congress's constitutional authority, it enacted the Keeping the Internet Safe for Kids Act ("KIKSA") to oversee children's online activity and to ensure their safety while browsing. (R. at 2). Within KIKSA, Congress established the private entity KISA, "a 'private, independent, self-regulatory nonprofit corporation,' subject to the 'oversight' of the Federal Trade Commission." (R. at 2); 55 U.S.C. § § 3051(a), 3052(a), 3053. In supervising KISA, the Federal Trade Commission ("FTC", "Commission") oversees and controls KISA, reserving the power "to review de novo any enforcement that KISA brings before an ALJ." (R. at 3); Id. § 3058.

KISA wasted no time getting to work on Congress's objectives; by the end of "its first few meetings, KISA considered the deleterious effects that easy access to pornography has on minors." (R. at 3). Such effects included "a higher likelihood of later engagement with 'deviant pornography.'" (R. at 3). Additionally, regularly viewing pornography increased the risk of future "gender dysphoria, insecurities and dissatisfactions about body image, depression, and aggression." (R. at 3). Furthermore, research indicated a correlation between continual viewing of pornography and academic deficiencies in children. (R. at 3). Based on KISA's consideration of these findings, it crafted Rule ONE, which simply requires measures verifying viewers' ages before accessing pornography on the internet. (R. at 3). Rule ONE explains that this requirement attaches to "any commercial entity that knowingly and intentionally publishes and distributes material on an Internet website, including a social media platform, more than one-tenth of which is sexual material harmful to minors." 55 C.F.R. § 2(a). It further clarifies that "reasonable verification measures include government-issued ID, or another reasonable method that uses transactional data;" and that no individual's identifying information shall be retained by the commercial entity. Id. § 3. Given the harmful impact early exposure to pornography clearly has on children, KISA decided that violators of Rule ONE would be fined up to $10,000 per day that they are noncompliant, and $250,000 for every instance a minor was able to access their content because of their noncompliance. Id. § 4.

Because of Rule ONE, the pornography industry and its viewers are compelled to interact with these age verification measures and consequently have expressed some discontent (R. at 4). For instance, Jane and John Doe are unhappy with Rule ONE because they are afraid of identity breaches, causing their communities to find out about their indulgences in pornography. (R. at 4). For Jane Doe, she averred that these pornographic sites allow her to remain anonymous, hiding

her true indulgences behind a screen, whereas in a brick-and-mortar establishment, this would be impossible. (R. at 4). The pornography industry and its viewers believe that Rule ONE infringes on their freedom. (R. at 4). Moreover, Petitioners believe that these measures are ineffective because viewers can "be anonymous even when age verification is required," and "children can bypass security measures." (R. at 4-5). Instead, they suggest imposing "internet filtering and blocking software" as a way to prevent minors from finding and accessing pornography on the internet. (R. at 5). Regardless, both parties agree that children should not be exploring pornography sites, but Respondents offer the most effective and least restrictive method of preventing this. (R. at 9). Due to technological advancements, the facts substantiate Respondent's argument as age verification measures have been proven to be 91% effective. (R. at 9).

SUMMARY OF ARGUMENT

The District Court erroneously granted the preliminary injunction sought by the Petitioners, permanently enjoining the Respondents from operating and from Rule ONE taking effect. This Court should affirm the Fourteenth Circuit's reversal of the preliminary injunction.

The District Court and the Fourteenth Circuit correctly held that KISA does not violate the private nondelegation doctrine because KISA functions subordinately to the FTC, as the FTC sufficiently supervises KISA in rulemaking and enforcement. This appeal is controlled by the longstanding principle that a private entity can play a role in a statutory scheme if the private entity "functions subordinately" to an agency that retains "authority and surveillance" over the private entity. Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381, 399 (1940). Petitioner's claim fails because as a matter of law, KISA "functions subordinately" to the FTC. Id. at 399. While KISA can propose rules, no proposed rule can become law unless approved by the FTC. The Commission can modify a rule by rejecting it and directing KISA to revise and resubmit it,

incorporating the FTC's recommendations. The Commission can also promulgate rules itself, without input and participation from KISA, whenever the FTC deems necessary to serve the statute's purpose of keeping the Internet accessible and safe for the American youth. Likewise, the Commission exercises plenary power over KISA's enforcement actions, including the power to stay any civil sanction pending review by the Commission or by an administrative law judge; to make findings of fact and conclusions of law as the FTC deems appropriate; and to affirm, reverse, set aside, or remand any sanction, in whole or in part, as the FTC sees fit. Furthermore, KISA is analogous to the Financial Industry Regulatory Authority (FINRA), for which the statute is modeled after. Courts have consistently upheld FINRA as a valid delegation of authority under the private nondelegation doctrine. Hence, KISA does not violate the private nondelegation doctrine.

The Fourteenth Circuit has correctly reversed the District Court's holding, ruling that Rule ONE does not violate the First Amendment of the United States Constitution. The First Amendment is intended to be expansive, but long-held exceptions exist in order to protect groups of people, such as children. In determining whether or not a law violates the First Amendment, rational basis review is applied, as prescribed by Ginsberg v. New York. Rational basis review is a two-pronged approach which simply requires a legitimate government interest and a rational relation between the law at issue and that interest. Rule ONE seamlessly passes rational basis review being that the government's legitimate interest is protecting children from obscene, pornographic material on the internet, and that a rational relation exists between the law and the interest. With Rule ONE in effect, parents are taking back control of the material their child's tender eyes and ears are absorbing on the vast internet.

Although rational basis review is the appropriate standard pursuant to Ginsberg, if the Court decides to apply strict scrutiny instead, Rule ONE easily clears that hurdle. Strict scrutiny requires the satisfaction of three prongs: (1) the government must prove a compelling interest; (2) the law in question must be narrowly tailored; and (3) it must also be the least restrictive means available. As to the first prong, Rule ONE satisfies the compelling interest being that the objective is to provide measures that shield children from obscene, pornographic material on the internet. Secondly, with thorough and precise language, Rule ONE is narrowly tailored to achieve its goals, as it is not over-inclusive nor under-inclusive. Finally, Rule ONE is the least restrictive means available for protecting children. Considering how often individuals in the United States are asked to prove their age or identity with their government-issued identification, asking someone to do the same to access a website containing adult pornographic content is not burdensome. Moreover, such a miniscule screening measure is worthwhile considering the devastating impact viewing such content at too young of an age can have on a child. In the end, Rule ONE survives not only rational basis review, but also strict scrutiny; and this Court should uphold it.

ARGUMENT

I. STANDARD OF REVIEW

Preliminary injunctions are "extraordinary remedies" granted when the plaintiff has clearly shown that they are entitled to relief. Winter v. Nat. Res. Def. Council, 555 U.S. 7, 24 (2008). Preliminary injunctions are never awarded as a right. Id. This Court reviews preliminary injunctions for abuse of discretion, but may review *de novo* "decisions grounded in erroneous legal principles." Mock v. Garland, 75 F.4th 563, 577 (5th Cir. 2023). Petitioners, who are seeking to enforce the preliminary injunction granted by the District Court, must show that:

> (1) it has a substantial likelihood of succeeding on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Id. (quoting Speaks v. Kruse, 445 F.3d 396, 399-400 (5th Cir. 2006)).

Here, both parties stipulated to the second, third, and fourth factors. However, Petitioners are unable to succeed on the merits of their claim because the KISA (1) does not violate the private nondelegation doctrine, and (2) Rule ONE does not violate the First Amendment. The Fourteenth Circuit's reversal of the preliminary injunction was proper and should be affirmed.

II. KISA DOES NOT VIOLATE THE PRIVATE NONDELEGATION DOCTRINE BECAUSE KISA FUNCTIONS SUBORDINATELY TO THE FTC, WHICH RETAINS FULL AUTHORITY AND SURVEILLANCE OVER KISA.

The United States Constitution vests certain legislative, executive, and judicial powers into the three branches of the federal government. See U.S. Const. art I, § 1; art. II, § 1, cl. 1; art. III, § 1. These vesting clauses ensure a system of checks and balances among the three branches of government. Oklahoma v. United States, 62 F.4th 221, 228 (6th Cir. 2023), cert. denied, 144 S. Ct. 2679, 219 L. Ed. 2d 1298 (2024). Core governmental power must be exercised by the department on which it is conferred and must not be delegated to others in a manner that frustrates the constitutional design. Pittston Co. v. United States, 368 F.3d 385, 394 (4th Cir. 2004).

The private nondelegation doctrine restrains the federal government from delegating unchecked power to private entities. Oklahoma, 62 F.4d at 228. The central purpose of this doctrine is to assure governmental accountability. Nat'l Horsemen's Benevolent & Protective Ass'n v. Black, 53 F.4th 869, 880 (5th Cir. 2022) (*Black I*). Supreme Court precedent has held that when a private entity creates the law or retains complete discretion over any regulations, it is an unconstitutional exercise of federal power. See Carter v. Carter Coal Co., 298 U.S. 238

(1936); A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). In Carter Coal, the Supreme Court invalidated a federal law that authorized a private commission to fix wages and hours for all coal producers. 298 U.S. at 311-12. The Court reasoned that giving regulatory power to "private persons whose interests may be and often are adverse to the interests of others in the same business" was an unconstitutional "legislative delegation in its most obnoxious form." Id. at 311.

However, not all delegations are unconstitutional. Delegations by Congress have long been recognized as necessary in order that the "exertion of legislative power does not become a futility." Adkins, 310 U.S. at 398.

> The Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply.

Currin v. Wallace, 306 U.S. 1, 15 (1939), (quoting Panama Refin. Co. v. Ryan, 293 U.S. 388, 421 (1935)).

Numerous court decisions have held that private entities may serve as advisors that propose regulations, see Cospito v. Heckler, 742 F.2d 72, 89 (3d Cir. 1984); Sierra Club v. Lynn, 502 F.2d 43, 59 (5th Cir. 1974), and may undertake ministerial functions. See Pittston Co., 368 F.3d at 396. It follows that delegations by federal agencies to private entities are valid when the federal agency or official retains final reviewing authority. R. H. Johnson & Co. v. Sec. & Exch. Comm'n, 198 F.2d 690, 695 (2d Cir. 1952).

Thus, the prevailing test adopted by the lower courts is that a private entity may wield government power only if the private entity "functions subordinately" to a government agency that has "authority and surveillance" over the private entity. State v. Rettig, 987 F.3d 518, 532

(5th Cir. 2021); Adkins, 310 U.S. at 399. Here, KISA satisfies this test because it functions subordinately to the FTC in matters of rulemaking and enforcement. Additionally, the FTC retains authority and surveillance over KISA, as KISA must submit any proposed rule to the FTC. 55 U.S.C. § 3053. Congress did not grant the Association "lawmaking" power, or the ability "to make a rule of prospective force." Loving v. United States, 517 U.S. 748, 758 (1996). The powers of rulemaking and enforcement remain firmly vested within the FTC.

A. The plain language of the statute clearly establishes that KISA is subordinate to the FTC in the rulemaking process.

The Association's lack of rulemaking power is apparent from the plain language of the statute. While the KISKA recognizes the "private, independent, self-regulatory, nonprofit" Association "for purposes of *developing and implementing standards* of safety for children online," 55 U.S.C. § 3052(a) (emphasis added), the statute does not give the Association the ability to enact those rules independently. The government permissibly delegates power to a private entity when it retains control over the final product. See Cospito, 742 F.2d at 89; Todd & Co. v. Sec. & Exch. Comm'n, 557 F.2d 1008, 1013, (3d Cir. 1977).

Here, the plain language of the statute clearly subordinates the Association to the control and authority of the FTC in rulemaking. Section 3053 of KISKA, titled "Federal Trade Commission Oversight," provides that any rules developed by the Association from a specific list of topics shall be "submitted" to the FTC "in accordance with such rules as the Commission may prescribe" and be "publish[ed] in the Federal Register" for public comment. 55 U.S.C. §§ 3053(a), (b)(1). The FTC, not KISA, gets to control how rules are proposed. It is only the FTC who is responsible for publishing proposed rules in the Federal Register and soliciting public comments.

KISKA then grants the FTC the power to "approve and disapprove" the Association's proposed rules. 55 U.S.C. § 3053(c). If the FTC disapproves of a proposed rule, the FTC "shall make recommendations to the Association to modify the proposed rule," to which the Association "may resubmit for approval by the Commission a proposed rule or modification that *incorporates the modifications recommended*" by the FTC. Id. § 3053(c)(1)-(3) (emphasis added). Critically, any proposed rule or modification to a rule "shall not take effect unless the proposed rule or modification *has been approved by the Commission*." Id. § 3053(b)(2) (emphasis added). Here, the plain language of the statute does not permit KISA to unilaterally propose and enact any rules. If the Association seeks to have its proposed rules or modification to a rule approved, it must comply with and subordinate itself to the FTC's authority. Thus, the FTC oversees and controls the rulemaking process. See Cospito, 742 F.2d at 89; Todd & Co., 557 F.2d at 1013.

Contrary to what the Petitioners claim, the FTC is not a "rubber stamp" on the actions of the Association. Petitioners assert that the structure and text of KIKSA forbid the FTC from reviewing any rules of KISA. This argument ignores the plain language of the statute. Congress vested in the FTC the broad discretion to determine what rules to enact and/or promulgate based on the FTC's interpretation of the statute and prior rulemaking, as informed by public comment. Section 3053(e) allows the FTC to "abrogate, add to, and modify the rules of the Association as the Commission finds necessary or appropriate." 55 U.S.C. § 3053(e). "When the FTC decides to act—whether by abrogating one of the Horseracing Authority's rules or introducing its own—the FTC makes a policy choice and necessarily scrutinizes the Authority's policies." Oklahoma, 62 F.4th at 230. In a recent order, the FTC clarified that their amended rule to 15 U.S.C. § 3053(e), which KISKA is modeled after, allows the FTC "to exercise its own policy choices whenever it

determines that the [Horseracing Integrity and Safety] Authority's proposals, even if consistent with the Act, are not the policies that the Commission thinks would be best for horseracing integrity or safety." FTC, *Order Ratifying Previous Commission Orders as to Horseracing Integrity and Safety Authority's Rules* 3 (Jan. 3, 2023), https://perma.cc/6NKY-DRUV). When the FTC modifies, abrogates, approves, or disapproves of any of KISA's proposed rules or modifications to KISKA, the FTC is exercising its discretion and authority in policymaking, not KISA. Thus, the FTC has the ultimate say and control over the final product. *Black I*, 53 F.4th at 887.

B. Petitioner's arguments ignore the plain language of the statute as the FTC has full authority over KISA's enforcement actions.

In addition to giving the FTC the "ultimate discretion over the content of the rules that govern" technological companies, especially internet-based companies, the statute gives the FTC pervasive control over the Association's implementation and enforcement of those rules. See Oklahoma, 62 F.4th at 230. As previously stated, the Association is clearly subordinate to the FTC when it comes to rulemaking. Any proposed rules regarding enforcement actions, civil penalties, and civil sanctions must be approved by the FTC first before the rule takes effect. 55 U.S.C. § 3053(b)(2). The FTC's rulemaking power gives it pervasive oversight and control over the Association's enforcement actions. Section 3053(e) grants the FTC the power to add or require certain pre-enforcement standards to KISA's rules. As the Sixth Circuit in Oklahoma and the Fourteenth Circuit reasoned, the FTC may prohibit KISA from "issuing overbroad subpoenas and search warrants, require that the [Association] meet a burden of production before bringing a lawsuit, or preclear a decision with the FTC." Oklahoma, 62 F.4th at 231. Here, the FTC can control the Association's enforcement activities and ensure that the FTC, not the Association, ultimately decides how the KISKA is enforced. Id.

Petitioners and Justice Marshall, in his dissent, posit that the FTC's power to modify KISA's enforcement actions is inadequate. (R. at 12). Petitioners rely on the Fifth Circuit's argument, which held that the FTC's ability to control the Association's enforcement actions could only happen after the fact. In the words of the Fifth Circuit, the FTC could only review the Association's actions once "the horse was already out of the barn." Nat'l Horsemen's Benevolent & Protective Ass'n v. Black, 107 F.4th 415 (5th Cir. 2024) (*Black II*). It is not a question of whether the FTC chooses to require or add certain pre-enforcement standards to KISA's rules. The plain language of the statute gives the FTC the power to take such action. This alone clearly makes KISA subordinate to the FTC in its enforcement actions. Furthermore, if the Association disagrees with or wishes to modify its rules regarding enforcement, they must comply with the rules outlined in section 3053.

Moreover, the plain language of the statute imposes two layers of *de novo* review before an administrative law judge and the Commission regarding enforcement of rule violations. 55 U.S.C. § 3058. Any decisions to impose civil sanctions for rule violations are subject to de novo review by an administrative law judge *and* by the Commission itself. Id. § 3058(b), (c). First, upon request by an aggrieved person or by the FTC, any initial KISA decision is subject to a de novo review before an FTC administrative law judge, id. § 3058(b)(1), who may "affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part," after making "any finding or conclusion, that in the judgment of the administrative law judge, is proper and based on the record." Id. § 3058(b)(3)(B). When an ALJ reviews KISA's actions, the statute grants the judge the power to determine if "the final civil sanction of the Association was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Id. § 3058(b)(2)(A)(iii). Second, the FTC, on "its own motion" or on a petition from an aggrieved

person, may review any decision of an administrative law judge, including "the factual findings and conclusions of law," on a de novo basis. Id. § 3058(c)(1)-(3). Furthermore, it is the sole discretion of the FTC on whether to grant an application for review. Id. § 3058(c)(2)(C). The plain language of the statute does not give the Association any say in these matters. Lastly, section 3058(c) gives the FTC the power to "affirm, reverse, modify, set aside, or remand for further proceedings," any civil sanctions, "in whole or in part." Id. § 3058(c)(3). Here, the language of the KISKA gives the FTC plenary power over the Association's enforcement actions.

Petitioners contend that the FTC's review power of KISA is not enough to prevent a private party from abusing its power. Petitioners argue that despite the guardrails the FTC has in place, KISA could sue, investigate, adjudicate, or penalize past conduct undertaken by technological companies in violation of their rules. This argument is without merit and clearly contradicts the plain language of the statute. Section 3054(k) bars KISA and the FTC from investigating, prosecuting, or penalizing conduct in violation of the anti-trafficking and computer safety programs occurring before the program's effective date. 55 U.S.C. § 3054(k). Likewise, Petitioner's argument about retroactive enforcement is misguided since KISA can only levy civil sanctions and penalties for rule violations. Id. §§ 3054(i)-(j). Congress did not empower the FTC nor KISA to impose criminal penalties on technological companies found in violation of Rule ONE.

C. KISA is analogous to the Financial Industry Regulatory Authority.

Courts have consistently upheld the constitutionality of the Financial Industry Regulatory Authority (FINRA), which the KISKA is modeled after. See R.H. Johnson & Co., 198 F.2d 690 (2d Cir. 1952); Todd & Co., 557 F.2d 1008 (3d Cir. 1997); First Jersey Sec., Inc. v. Bergen, 605 F.2d 690 (3d Cir. 1979). FINRA is a private, not-for-profit corporation registered with the

Securities and Exchange Commission (SEC) under the Maloney Act of 1938. See 15 U.S.C. § 78o-3. FINRA is a self-regulated organization (SRO), which reviews the qualifications of broker-dealer firms, promulgates rules that govern FINRA members, and enforces compliance of those rules and federal securities laws. Id. §§ 78o-3(b)(2), 78s(b), 78s(g)(1).

The Supreme Court has recognized that "although FINRA plays an important role in formulating security industry roles, its role is ultimately 'in aid' of the SEC, which has the final word on the substance of the rules." *Black II*, 107 F.4th at 887 (quoting Adkins, 310 U.S. at 388). Because the SEC has the power to modify, add to, and delete FINRA rules among its oversight duties, SROs like FINRA are subordinate to the SEC. The SEC has the power to initiate its own rulemaking process, having the power to "abrogate, add to, delete, and delete from" the rules of an SRO "as the [SEC] deems necessary or appropriate to ensure the fair administration of the [SRO]" or to "conform the rules to the requirements" of the Exchange Act. 15 U.S.C. § 78s(c). This language is nearly identical to the language found in § 3053(e). Numerous courts had unanimously agreed with the Fifth Circuit's suggestion that the SEC's ability to make rules for FINRA and modify or delete FIRNA rules eliminates any concerns about an unconstitutional delegation of authority. Oklahoma, 62 F.4th at 229 (reasoning that the SEC's ultimate control the rules and their enforcement makes the SROs permissible aides and advisors). Second, the SEC must comply with public comment and notice rules in approving and amending SRO rules, 15 U.S.C. §§ 78s(b)(1), 78s(c), just like how the FTC must comply with the public comment and notice rules as provided in § 3053(b). Lastly, the SEC "applies fresh review to the SRO's decisions and actions." Oklahoma, 62 F.4th at 229 (citing 15 U.S.C. § 78s(c)). The SEC reviews FINRA's enforcement actions to determine whether they were consistent with the purposes of the Exchange Act, and the SEC may "affirm, modify, or set aside the sanction." 15 U.S.C. §

78s(e)(1). The language of § 78s(e)(1) is similar to the language found in § 3058(c)(3). As such, just as FINRA is subordinate to the SEC, KISA is subordinate to the FTC.

Petitioners assert that while the KISKA is modeled after the Maloney Act, the attributes which make the FINRA-SEC relationship work and pass constitutional muster do not appear between the FTC and KISA. This argument fails to comprehend the fundamental differences in the mission statements of the two agencies, and the scope and breadth of the industries these agencies regulate. The mission of the SEC is "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation." Sec. and Exch. Comm'n, Mission (Jan. 19, 2025, 12:07 AM), https://www.sec.gov/about/mission. The SEC's prerogative is to regulate the highly specialized and technical securities industry. Notwithstanding, the FTC's mission is much broader and encompasses a wider breadth of industries, as their mission is to protect consumers and promote competition. Fed. Trade Comm'n, Mission (Jan. 19, 2025, 12:07 AM), https://www.ftc.gov/about-ftc/history. The FTC has enforcement or administrative responsibilities for more than eighty laws, ranging from the Clayton Act (15 U.S.C. §§ 12-27) (antitrust law) to the Military Lending Act (10 U.S.C. § 987) (providing certain special protections for active duty servicemembers). As such, the authority delegated to KISA, under the supervision of the FTC, cannot be as rigid as FINRA. "The purpose of [KISKA] is to provide a comprehensive regulatory scheme to keep the Internet accessible and safe for the American youth." 55 U.S.C. § 3050(a). The FTC cannot be expected to micromanage KISA over its day-to-day operations. The Internet is rapidly changing and complex. Thus, the statute strikes a balance by providing flexibility to KISA in their rulemaking and enforcement powers, while at the same time placing KISA subordinate to the FTC. As the Supreme Court has repeatedly noted, the nondelegation doctrine does not require legislation to be drafted in exhaustive detail. See

Mistretta v. United States, 488 U.S. 361, 372 (1989) (when analyzing "congressional delegations, our jurisprudence has been driven by a practical understanding that in our increasingly complex society, replete with ever changing and more technical problems, Congress simply cannot do its job absent an ability to delegate power under broad general directives"). Henceforth, Congress's delegation of power to KISA was proper and does not violate the private nondelegation doctrine.

III. RULE ONE DOES NOT VIOLATE THE FIRST AMENDMENT BECAUSE IT SURVIVES RATIONAL BASIS REVIEW, AND EVEN IF THE COURT CHOOSES TO APPLY STRICT SCRUTINY, IT STILL PASSES STRICT SCRUTINY ANALYSIS.

In essence, the purpose of the First Amendment of the United States Constitution is to protect individuals' freedoms of expression and speech, or decision to refrain from such conduct. Free Speech Coal., Inc. v. Paxton, 95 F.4th 263, 264, (5th Cir. 2024), cert. granted, 144 S. Ct. 2714, 219 L. Ed. 2d 1318 (2024). It establishes that Congress shall not create a law that "abridg[es] the freedom of speech[.]" U.S. Const. amend. I. However, when children are involved, it is well established that the scope of the First Amendment is narrowed such that children are protected from exposure to certain inappropriate content. Ginsberg v. New York, 390 U.S. 629, 629 (1968). In cases concerning a particular statute and the First Amendment, the government bears the burden of proving the constitutionality of its statute. Ashcroft v. ACLU, 542 U.S. 656, 658 (2004) (*Ashcroft II*).

A. Rule ONE survives rational basis review, which is the appropriate standard established by Ginsberg.

In determining whether the government has sufficiently proven the constitutionality of the statute, this Court applies rational basis review. Ginsberg, 390 U.S. at 631. Rational basis review requires the government to prove it has (1) a "legitimate interest;" and (2) the statute in question is "rationally related to that interest." Paxton, 95 F.4th at 267. A legitimate interest includes "prohibiting dissemination or 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 v. California, 413 U.S. 15, 19 (1973). Obscene material, when it comes to juvenile exposure, is harmful and defined as including nudity, or material that is sexual or sado-masochistic in nature. Ginsberg, 390 U.S. at 629. Though the First Amendment is meant to expansively protect speech and expression, obscenity is one of the few well-established exceptions. Miller, 413 U.S. at 27.

Ginsberg exemplifies a law, similar to Rule ONE, cleanly passing the rational basis review analysis. Ginsberg, 390 U.S. at 629. In Ginsberg, the "[d]efendant was convicted in the Nassau County District Court" because he violated a "New York statute prohibiting sale to minors under [seventeen] years of age of obscene materials harmful to them." Id. at 629. The defendant violated the statute on two separate occasions when he sold to a boy, who was sixteen years of age, two magazines containing pornographic content. Id. at 631. The Court determined in this case that even though these magazines were being legally sold for adult consumption, these magazines matched the material defined within the statute which made it illegal to sell to minors. Id. at 632-634. In reaching this conclusion, the Court applied rational basis review. As a result of this case, rational basis review is the appropriate standard concerning First Amendment issues. Id. at 629. In applying this standard of review, the Court found that the state government had a legitimate interest in preserving "the well-being of its youth." Id. at 640. The Court also found that the New York statute was rationally related to the government's objective. Id. at 643. It reached this conclusion based on legislative fact-finding as to the harms that early exposure to pornography inflicts upon young viewers. Id. at 641. This fact-finding revealed that the exposure of this material to minors "impair[s] the ethical and moral development of [the] youth and a clear and present danger to the people of the state." Id. Considering that the state had a legitimate

interest in protecting children from such obscene material, and the statute as the means it chose was rationally related to this interest, the statute survived the rational basis review. Id.

Although Ginsberg and the instant case are separated by nearly six decades and a great deal of technological advances, Ginsberg remains binding precedent on this issue. Paxton, 95 F.4th at 267. In Ginsberg, the child was shopping for pornographic magazines at a brick-and-mortar store and in this case, children are accessing pornographic content over the internet. Ginsberg, 390 U.S. at 631. Regardless of the method in which children are accessing this content, the content itself does not change; therefore, the New York statute and Rule ONE convey the same meaning. Id. Essentially, the New York statute communicated that "nudity, sexual conduct, sexual excitement, or sado-masochistic" behavior were the types of content that the government sought to protect children from encountering. Id. at 629. Additionally, New York chose the language "patently offensive" and "without redeeming social important to minors." Id. In Rule ONE, similar language is used, and the objective appears identical. It reads in part: "[s]exual material harmful to minors' includes any material that . . . [is] patently offensive with respect to minors." 55 C.F.R. § 1(6)(B). Rule ONE also goes on to define parts of the body that may not be depicted, as well as sexual and sexually aggressive conduct that the government does not want illustrated for children. Id.

In Ginsberg, the legitimate government interest behind the New York statute was to shield impressionable youth from obscene, pornographic materials for sale to adults which they, as children, are not yet prepared to discover. Here, the interest behind Rule ONE is in insulating children's online activity from the unforgiving dark web, hosting a wide range of obscene, pornographic materials. As the New York statute in Ginsberg survived the first prong of rational basis review; undoubtedly, Rule ONE survives as well, with an almost identical approach.

Moving to the second prong, which is whether or not the law has a rational relation to the stated interest, as in Ginsberg, Rule ONE passes this analysis. In Ginsberg, New York offered fact-finding to support its argument, though it did not need much to convince the Court. Here, a great deal of fact-finding had been done and closely considered by KISA in order to carefully craft Rule ONE in the first place. The findings were alarming; for example, "[e]arly exposure to pornography results in a higher likelihood of later engagement with 'deviant pornography.'" (R. at 3). Furthermore, viewing pornography regularly enhanced the risk of future "gender dysphoria, insecurities and dissatisfactions about body image, depression, and aggression." (R. at 3). Additionally, the fact-finding indicated a correlation between frequent pornography engagement and lower academic performance. (R. at 3). Considering these facts, it is clear that Rule ONE was created with the goal of protecting children from such damaging material, and imposing age restrictions to viewing such pornographic material is rationally related to achieving this objective.

Petitioners argue that the state should have no "role in the rearing of children;" this kind of practice is not congruent with the traditions and closely held freedoms in this country. Ginsberg, 390 U.S. at 634. Moreover, censoring information to which children have access limits their ability to be free thinkers and learn to cautiously explore the online world. Id. After all, Rule ONE applies to circumstances in which more than one-tenth of the content is obscene, meaning that children could be shielded from obscenity at the expense of missing out on beneficial information. Thus, perhaps it is worth the risk of children encountering such obscene content in order to reach constructive or educational content. This argument is flawed because instead of the government taking over parental duties, the government is actually returning power back to parents. With age verification measures in effect, parents can rest assured that

their children may navigate the internet without fear that they will run into obscene, pornographic material. Parents will be able to choose whether or not their children have access to such material—the default is they simply will not unless the parents complete the age verification for them. If parents choose to expose their children to pornographic material on their own, unfortunately, nothing is stopping them. Id. at 639. Even though children are quite sophisticated at utilizing the internet, they cannot see around corners where age-inappropriate content exists. In an ever-changing world of technological advances in which parents often struggle to keep up, age verifications will simply serve as guardrails for their children to safely navigate the internet without veering off into content they are not ready to view. Ultimately, this sets the floor for protecting children from unsuitable content, and from there, parents can decide what is accessible to their children on the internet. Thus, Rule ONE passes rational basis review which is the appropriate standard under Ginsberg.

B. Even though it is not the appropriate standard of review, Rule ONE survives the strict scrutiny analysis.

Following binding precedent set forth by this Court, strict scrutiny is not the applicable standard of review for First Amendment cases such as this one. Ginsberg, 390 U.S. at 631. Strict scrutiny requires that the statute in question "must: (1) serve compelling governmental interest; (2) be narrowly tailored to achieve that interest; and (3) be [the] least restrictive means of advancing that interest." ACLU v. Mukasey, 534 F.3d 181, 182 (6th Cir. 2008). A statute is narrowly tailored when it is not overinclusive or underinclusive. *Ashcroft II*, 542 U.S. at 669. Furthermore, it fits within the least restrictive means criterion if no effective alternative means are available. Id. at 666.

In Reno and *Ashcroft II*, the Court chose strict scrutiny as the applicable standard of review, as determined by the circumstances of those cases. Respondents are not challenging the

rationale of those Court's decisions; instead, those cases are distinguishable from Ginsberg, which is analogous to the case at bar. Reno v. ACLU, 521 U.S. 844, 845 (1997). Because this case concerns a different issue, it requires a different standard of review: rational basis review. Id. In Reno, the statute at issue was the Communications Decency Act of 1996 (CDA) which was essentially intended to protect minors from becoming involved in the transmission of "'obscene or indecent' messages" via telecommunications. Id. The Court noted that the key difference between Reno and Ginsberg, which required the application of strict scrutiny instead of rational basis review, was the statute's handling of direct communications rather than "commercial transactions" which were at issue in Ginsberg. Id. at 845.

In applying strict scrutiny, the Court concluded in Reno that the CDA had indeed violated the First Amendment. Id. Beginning the analysis, the Court found that the CDA was created for a compelling government purpose which was to safeguard "children from potentially harmful materials." Id. After passing the first prong of the analysis, the Court moved on to determining whether the law was narrowly tailored to achieve that purpose. Id. As a result, it found that the CDA was not narrowly tailored because it was overbroad and "suppress[ed] a large amount of speech that adults have a constitutional right to send and receive." Id. Thus, it failed the second prong of strict scrutiny. Id. Finally, the third prong was also unmet because the Court decided that less restrictive means existed, such as implementing software, which would achieve the stated objective. Id. Even though the government was able to satisfy the first prong of the approach, it was insufficient to prove that the CDA was constitutional. Id. at 848.

Much like Reno, *Ashcroft II* is distinguishable from the case at bar. Id. at 845. Similar to the CDA in Reno, the Child Online Protection Act (COPA) was the law at issue in *Ashcroft II*. *Ashcroft II*, 542 U.S. at 657. COPA was enacted in response to the CDA's failure, and the

difference between the two was that COPA accounted for the less restrictive means that the Court indicated it would have liked to see under the CDA. Id. As to the first prong of strict scrutiny, the government was still able to prove a compelling purpose. Id. However, for the second prong of the approach, COPA failed for the same reason the CDA failed. Id. Finally, as to the third prong, even though COPA seemed to have properly adjusted its measures to suit the Court's wishes, it still failed. Id. at 673. As to the third prong, the government did not present any fact-finding as to the potential over-inclusiveness or under-inclusiveness of the law. Id. at 675. Therefore, COPA did not survive strict scrutiny. Ultimately, *Ashcroft II* and Reno are distinguishable from the instant case, and just because the Court chose the strict scrutiny analysis for those cases, this does not indicate that it is applicable here.

The case at bar is dissimilar to Reno and *Ashcroft II* because unlike the laws in those cases, Rule ONE passes strict scrutiny. Beginning with the first prong, Rule ONE serves a compelling government interest because it seeks to protect minors, of seventeen years and younger, from harmful content on the internet, namely sexual in nature. In both Reno and *Ashcroft II*, the Court did not take issue with either compelling government interest, so this prong is easily met here. As to the narrow tailoring of the law, Rule ONE is set apart from the CDA and COPA, respectively. Rule ONE is unique in that it thoroughly and explicitly defines the language of the restrictions communicated through the regulation. For instance, in order to understand further provisions of the law, it begins by defining a "commercial entity," a "minor," and what it means to "distribute." 55 C.F.R. § 1. Thus, this regulation does not suppress the speech of adults in general, as the government could not prove when it came to the CDA and COPA. Rule ONE is not over-inclusive or under-inclusive, unlike the CDA and COPA. Finally, as to the third prong, Rule ONE most certainly uses the least restrictive means available. Using government

identification to verify an individual's age happens all the time, across various establishments. For example, this kind of measure is utilized by establishments such as bars, clubs, casinos, hotels, rental cars companies, and airlines; even by the government in order for an individual to register to vote. Because this is such an efficient, common practice when visiting brick-and-mortar establishments, no substantive distinction exists when it comes to online platforms with content restricted to eighteen-year-olds and above. Hence, it follows that all three prongs of strict scrutiny are satisfied.

Petitioners argue that strict scrutiny is the appropriate standard and that Rule ONE is not narrowly tailored. Essentially, Petitioners argue that Rule ONE is both over- and under-inclusive. Petitioners assert that Rule ONE is over-inclusive because it suppresses the First Amendment rights of adults such as Jane Doe. In other words, where Rule ONE seeks to limit the exposure of minors to pornographic material on the internet, it also limits exposure to adults because Jane Doe is afraid to use her identification and lose her anonymity. Petitioners argue that Rule ONE is under-inclusive because children are tech-savvy and could easily figure out how to "bypass security measures," defeating the entire purpose of the age verification step. (R. at 5). However, this argument lacks merit. The law specifically states that "no entity performing age verification may 'retain any identifying information of the individual." 55 C.F.R. § 2(b). Therefore, as to over-inclusiveness, the Petitioner's argument is weak. As to the under-inclusiveness argument, even though children are well-versed in the digital world, that does not mean they are automatically going to get around the age verification measures. In fact, the suggested "internet filtering and blocking software" that have been suggested seems more easily hackable than faking a government-issued identification card.

As a matter of policy, children are born with an inherent gift of innocence that slowly erodes as they mature. For some children, this unfortunately occurs sooner than they are equipped to handle. Children are unaware of this gift and often challenge boundaries. This is when a child strays from the safety of wholesome, age-appropriate content to explore the far reaches of the internet of obscene pornographic material. When this happens, at least the child would encounter the age verification step that would screen them out of being able to access such disturbing content, preserving their precious innocence. When the impressionable minds of children are at stake, it is imperative that proper measures are in place to protect them from viewing obscene pornographic material. Considering that the only screening tool standing in the way of children viewing obscene content is a brief show of identification, Rule ONE is undoubtedly narrowly tailored. Thus, Rule ONE survives strict scrutiny.

CONCLUSION

This Court should affirm the Fourteenth Circuit. The District Court and the Fourteenth Circuit correctly held that Congress's delegation of authority to KISA was proper. KISA functions subordinately to the FTC in rulemaking and enforcement, to which the FTC retains full authority and surveillance over KISA. Additionally, the Fourteenth Circuit correctly reversed the District Court's grant of the preliminary injunction, ruling that Rule ONE does not violate the First Amendment. Rule ONE survives both rational basis review and strict scrutiny, for the law is narrowly tailored to serve a legitimate, compelling governmental interest; protecting the children's welfare. Respondent respectfully requests this Court to affirm the Fourteenth Circuit's ruling.

APPENDIX

FROM TITLE 55 OF THE CODE OF FEDERAL REGULATIONS ("RULE ONE")

SECTION 1. DEFINITIONS

(1) "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity.

(2) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(3) "Minor" means an individual younger than 18 years of age.

(4) "News-gathering organization" includes:

(A) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, who is acting within the course and scope of that employment and can provide documentation of that employment with the newspaper, news publication, or news source;

(B) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service who is acting within the course and scope of that employment and can provide documentation of that employment;

(5) "Publish" means to communicate or make information available to another person or entity on a publicly available Internet website.

(6) "Sexual material harmful to minors" includes any material that:

(A) the 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;

(B) 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:

(i) a person's pubic hair, anus, or genitals or the nipple of the female breast;

(ii) touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

(iii) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

(C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(7) "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. The term includes records from mortgage, education, and employment entities.

SECTION 2. PUBLICATION OF MATERIALS HARMFUL TO MINORS.

(a) A commercial entity that knowingly and intentionally publishes or distributes material on an Internet website, including a social media platform, more than one-tenth of which is sexual material harmful to minors, shall use reasonable age verification methods as described by Section 3 to verify that an individual attempting to access the material is 18 years of age or older.

(b) A commercial entity that performs the age verification required by Subsection (a) or a third party that performs the age verification required by Subsection (a) may not retain any identifying information of the individual.

SECTION 3. REASONABLE AGE VERIFICATION METHODS.

(a) A commercial entity that knowingly and intentionally publishes or distributes material on an Internet website or a third party that performs age verification under this chapter shall require an individual to comply with a commercial age verification system that verifies age using:

(A) government-issued identification; or

(B) a commercially reasonable method that relies on public or private transactional data to verify the age of an individual

SECTION 4. CIVIL PENALTY; INJUNCTION

(a) If the Kids Internet Safety Authority, Inc., believes that an entity is knowingly violating or has knowingly violated this Rule, the Authority may bring a suit for injunctive relief or civil penalties.

(b) A civil penalty imposed under this Rule for a violation of Section 2 or Section 3 may be in equal in an amount equal to not more than the total, if applicable, of:

a. $10,000 per day that the entity operates an Internet website in violation of the age verification requirements of this Rule;

b. $10,000 per instance when the entity retains identifying information in violation of Section 129B.002(b); and

c. if, because of the entity's violation of the age verification requirements of this chapter, one or more minors accesses sexual material harmful to minors, an additional amount of not more than $250,000.

(c) The amount of a civil penalty under this section shall be based on:

a. the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

b. the history of previous violations;

c. the amount necessary to deter a future violation;

d. the economic effect of a penalty on the entity on whom the penalty will be imposed;

e. the entity's knowledge that the act constituted a violation of this chapter; and

f. any other matter that justice may require.

(d) The Kids Internet Safety Association, Inc., may recover reasonable and necessary attorney's fees and costs incurred in an action under this Rule.

KEEPING THE INTERNET SAFE FOR KIDS ACT
Codified in Title 55 of the United States Code

55 U.S.C. § 3050. PURPOSE

a. The purpose of this Act is to provide a comprehensive regulatory scheme to keep the Internet accessible and safe for American youth.

55 U.S.C. § 3051. DEFINITIONS.

1. Association. The term "Association" means the Kids Internet Safety Association, Inc., designated by section 3052(a).
2. Commission. The term "Commission" means the Federal Trade Commission.
3. Technological Industry. The term "technological industry" refers to the sector of the economy that develops, researches, and distributes advancements in computers and other electronics.
4. Technological Company. The term "technological company" refers to a business that operates in the technological industry—especially internet-based companies.
5. Technological Constituency. The term "technological constituency" refers to an individualized interests (such as web designers or executives) within the technological industry.

55 U.S.C. § 3052. RECOGNITION OF THE KIDS INTERNET SAFETY ASSOCIATION

a. In general. The private, independent, self-regulatory, nonprofit corporation, to be known as the "Kids Internet Safety Association", is recognized for purposes of developing and implementing standards of safety for children online and rules of the road for adults interacting with children online.
b. Board of Directors.
    1. Membership. The Association shall be governed a board of directors (in this section referred to as the "Board") comprised of nine members as follows:
        A. Independent members. Five members of the Board shall be independent members selected from outside the technological industry.
        B. Industry members.
            i. In general. Four members of the Board shall be industry members selected from among the various technological constituencies
            ii. Representation of technological constituencies. The members shall be representative of the various technological constituencies and shall include not more than one industry member from any one technological constituency.
    2. Chair. The chair of the Board shall be an independent member described in paragraph (1)(A).
        A. Bylaws. The Board of the Association shall be governed by bylaws for the operation of the Association with respect to—
            i. The administrative structure and employees of the Association;
            ii. The establishment of standing committee

iii. The procedures for filling vacancies on the Board and the standing committees; term limits for members and termination of membership; and

iv. any other matter the Board considers necessary.

c. Standing Committees.

1. Anti-trafficking and exploitation prevention committee

A. In general. The Association shall establish an anti-trafficking and exploitation prevention standing committee, which shall provide advice and guidance to the Board on the development and maintenance of the Stop Internet Child Trafficking Program.

B. Membership. The anti-trafficking and exploitation prevention standing committee shall be comprised of seven members as follows:

i. Independent members. The majority of the members shall be independent members selected from outside the technological industry.

ii. Industry members. A minority of the members shall be industry members selected to represent the various technological constituencies and shall include not more than one industry member from any one technological constituency.

iii. Qualification. A majority of individuals selected to serve on the anti- trafficking and exploitation prevention standing committee shall have significant, recent experience in law enforcement and computer engineering.

C. Chair. The chair of the anti-trafficking and exploitation prevention standing committee shall be an independent member of the Board described in subsection (b)(1)(A).

2. Computer safety standing committee

A. In general. The Association shall establish a computer safety standing committee, which shall provide advice and guidance to the Board on the development and maintenance of safe computer habits that enhance the mental and physical health of American youth.

B. Membership. The computer safety standing committee shall be comprised of seven members as follows:

i. Independent members. A majority of the members shall be independent members selected from outside the technological industry.

ii. Industry members. A minority of the members shall be industry members selected to represent the various technological constituencies.

C. Chair. The chair of the computer safety standing committee shall be an industry member of the Board described in subsection (b)(1)(B).

d. Nominating committee

1. Membership

A. In general. The nominating committee of the Association shall be comprised of seven independent members selected from business, sports, and academia.

B. Initial membership. The initial nominating committee members shall be set forth in the governing corporate documents of the Association.

C. Vacancies. After the initial committee members are appointed in accordance with subparagraph (B), vacancies shall be filled by the Board pursuant to rules established by the Association.

2. Chair. The chair of the nominating committee shall be selected by the nominating committee from among the members of the nominating committee.

3. Selection of members of the Board and standing committees

A. Initial members. The nominating committee shall select the initial members of the Board and the standing committees described in subsection (c).

B. Subsequent members. The nominating committee shall recommend individuals to fill any vacancy on the Board or on such standing committees.

e. Conflicts of interest. Persons with a present financial interest in any entity regulated herein may not serve on the Board. Financial interest does not include receiving a paycheck for work performed as an employee.

f. Funding

1. Initial Funding.

A. In general. Initial funding to establish the Association and underwrite its operations before the program effective date shall be provided by loans obtained by the Association.

B. Borrowing. The Association may borrow funds toward the funding of its operations.

C. Annual calculation of amounts required

i. In general. Not later than the date that is 90 days before the program effective date, and not later than November 1 each year thereafter, the Association shall determine and provide to each technological company engaged in internet activity or business the amount of contribution or fees required.

ii. Assessment and collection

I. In general. The Association shall assess a fee equal to the allocation made and shall collect such fee according to such rules as the Association may promulgate.

II. Remittance of fees. Technological companies as described above shall be required to remit such fees to the Association.

2. Fees and fines. Fees and fines imposed by the Association shall be allocated toward funding of the Association and its activities.

3. Rule of construction. Nothing in this chapter shall be construed to require—

A. the appropriation of any amount to the Association; or

B. the Federal Government to guarantee the debts of the Association.

g. Quorum

1. For all items where Board approval is required, the Association shall have present a majority of independent members.

55 U.S.C. § 3053. FEDERAL TRADE COMMISSION OVERSIGHT.

a. In general. The Association shall submit to the Commission, in accordance with such rules as the Commission may prescribe under section 553 of Title 5, any proposed rule, or proposed modification to a rule, of the Association relating to-

1. the bylaws of the Association;
2. a list of permitted and prohibited content for consumption by minors;
3. training standards for experts in the field;
4. standards for technological advancement research;
5. website safety standards and protocols;
6. a program for analysis of Internet usage among minors;
7. a program of research on the effect of consistent Internet usage from birth;
8. a description of best practices for families;
9. a schedule of civil sanctions for violations;
10. a process or procedures for disciplinary hearings; and
11. a formula or methodology for determining assessments under section 3052(f) of this title.

b. Publication and Comment
   1. In general. The Commission shall—
      A. publish in the Federal Register each proposed rule or modification submitted under subsection (a); and
      B. provide an opportunity for public comment.
   2. Approval required. A proposed rule, or a proposed modification to a rule, of the Association shall not take effect unless the proposed rule or modification has been approved by the Commission.

c. Decision on proposed rule or modification to a rule
   1. In general. Not later than 60 days after the date on which a proposed rule or modification is published in the Federal Register, the Commission shall approve or disapprove the proposed rule or modification.
   2. Conditions. The Commission shall approve a proposed rule or modification if the Commission finds that the proposed rule or modification is consistent with—
      A. this chapter; and
      B. applicable rules approved by the Commission.
   3. Revision of proposed rule or modification
      A. In general. In the case of disapproval of a proposed rule or modification under this subsection, not later than 30 days after the issuance of the disapproval, the Commission shall make recommendations to the Association to modify the proposed rule or modification.
      B. Resubmission. The Association may resubmit for approval by the Commission a proposed rule or modification that incorporates the modifications recommended under subparagraph (A).

d. Proposed standards and procedures
   1. In general. The Association shall submit to the Commission any proposed rule, standard, or procedure developed by the Association to carry out the Anti-trafficking and exploitation committee.
   2. Notice and comment. The Commission shall publish in the Federal Register any such proposed rule, standard, or procedure and provide an opportunity for public comment.

e. Amendment by Commission of rules of Association. The Commission, by rule in accordance with section 553 of Title 5, may abrogate, add to, and modify the rules of the Association promulgated in accordance with this chapter as the Commission finds necessary

or appropriate to ensure the fair administration of the Association, to conform the rules of the Association to requirements of this chapter and applicable rules approved by the Commission, or otherwise in furtherance of the purposes of this chapter.

55 U.S.C. § 3054. JURISDICTION OF THE COMMISSION AND THE KIDS INTERNET SAFETY ASSOCIATION

a. In general. The Association is created to monitor and assure children's safety online. Beginning on the program effective date, the Commission and the Association, each within the scope of their powers and responsibilities under this chapter, as limited by subsection (j), shall—

1. implement and enforce the Anti-Crime Internet Safety Agenda; and
2. exercise independent and exclusive national authority over the safety, welfare, and integrity of internet access to children.

b. Preemption. The rules of the Association promulgated in accordance with this chapter shall preempt any provision of law or regulation with respect to matters within the jurisdiction of the Association under this chapter. Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provision of law.

c. Duties

1. In general. The Association--

A. shall develop uniform procedures and rules authorizing—

i. access to relevant technological company websites, metadata, and records as related to child safety on the internet;

ii. issuance and enforcement of subpoenas and subpoenas duces tecum; and

iii. other investigatory powers; and

B. with respect to a violation of section 3059, the Association may recommend that the Commission commence an enforcement action.

2. Approval of Commission. The procedures and rules developed under paragraph (1)(A) shall be subject to approval by the Commission in accordance with section 3053 of this title.

d. Registration of technological companies with Association

1. In general. As a condition of participating in internet activity or business that is potentially accessible by children, a technological company shall register with the Association in accordance with rules promulgated by the Association and approved by the Commission in accordance with section 3053 of this title.

2. Agreement with respect to Association rules, standards, and procedures. Registration under this subsection shall include an agreement by the technological company to be subject to and comply with the rules, standards, and procedures developed and approved under subsection (c).

3. Cooperation. A technological company registered under this subsection shall, at all times--

A. cooperate with the Commission, the Association, all federal and state law enforcement agencies, and any respective designee, during any civil investigation; and

B. respond truthfully and completely to the best of the knowledge of the technological company if questioned by the Commission, the Association, all federal and state law enforcement agencies, or any respective designee.

4. Failure to comply

A. Any failure of a technological company to comply with this subsection shall be a violation of section 3057(a)(2)(G) of this title.

e. Partnership programs

A. Use of Non-Profit Child Protection Organizations. When necessary, the Association is authorized to seek to enter into an agreement with non-profit child protection organizations to assist the Association with investigation and enforcement.

B. Negotiations. Any negotiations under this paragraph shall be conducted in good faith and designed to achieve efficient, effective best practices for protecting children and the integrity of technological companies and internet access to all.

C. Any agreement under this paragraph shall include a description of the scope of work, performance metrics, reporting obligations, and budgets. Elements of agreement. Any agreement under this paragraph shall include a description of the scope of work, performance metrics, reporting obligations, and budgets

f. Procedures with respect to rules of Association

1. Anti-Trafficking and Exploitation

A. In general. Recommendations for rules regarding anti-trafficking and exploitation activities shall be developed in accordance with section 3055 of this title.

B. Consultation. If the Association partners with a non-profit under subsection (e), the standing committee and partner must consult regularly.

2. Computer safety. Recommendations for rules regarding computer safety shall be developed by the computer safety standing committee of the Association.

g. Issuance of guidance

1. The Association may issue guidance that—

A. sets forth—

i. an interpretation of an existing rule, standard, or procedure of the Association; or

ii. a policy or practice with respect to the administration or enforcement of such an existing rule, standard, or procedure; and

B. relates solely to—

i. the administration of the Association; or

ii. any other matter, as specified by the Commission, by rule, consistent with the public interest and the purposes of this subsection.

2. Submittal to Commission. The Association shall submit to the Commission any guidance issued under paragraph (1).

3. Immediate effect. Guidance issued under paragraph (1) shall take effect on the date on which the guidance is submitted to the Commission under paragraph (2).

h. Subpoena and investigatory authority. The Association shall have subpoena and investigatory authority with respect to civil violations committed under its jurisdiction.

i. Civil penalties. The Association shall develop a list of civil penalties with respect to the enforcement of rules for technological companies covered under its jurisdiction.

j. Civil actions

1. In general. In addition to civil sanctions imposed under section 3057 of this title, the Association may commence a civil action against a technological company that has engaged, is engaged, or is about to engage, in acts or practices constituting a violation of this chapter or any rule established under this chapter in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, to enforce any civil sanctions imposed under that section, and for all other relief to which the Association may be entitled.

2. Injunctions and restraining orders. With respect to a civil action temporary injunction or restraining order shall be granted without bond.

k. Limitations on authority

1. Prospective application. The jurisdiction and authority of the Association and the Commission with respect to (1) anti-trafficking and exploitation and (2) computer safety shall be prospective only.

2. Previous matters

A. In general. The Association and the Commission may not investigate, prosecute, adjudicate, or penalize conduct in violation of the anti-trafficking and computer safety programs that occurs before the program effective date.

B. State enforcement. With respect to conduct described in subparagraph (A), the applicable State agency shall retain authority until the final resolution of the matter.

C. Other laws unaffected. This chapter shall not be construed to modify, impair or restrict the operation of the general laws or regulations, as may be amended from time to time, of the United States, the States and their political subdivisions relating to criminal conduct, computers, technology, or other law.

55 U.S.C. § 3055. Stop Internet Child Trafficking Program

a. Program required

1. In general. Not later than the program effective date, and after notice and an opportunity for public comment in accordance with section 3053 of this title, the Association shall establish the Stop Internet Child Trafficking Program.

b. Considerations in development of program. In developing the regulations, the Association shall take into consideration the following:

1. The Internet is vital to the economy.
2. The costs of mental health services for children are high.
3. It is important to assure children socialize in person as well as online.
4. Crime prevention includes more than education.
5. The public lacks awareness of the nature of human trafficking.
6. The statements of social scientists and other experts about what populations face the greatest risk of human trafficking.
7. The welfare of the child is paramount

c. (c) Activities. The following activities shall be carried out under Stop Internet Child Trafficking Program:

1. Standards for anti-trafficking measures control. Not later than 120 days before the program effective date, the Association shall issue, by rule--

A. uniform standards for—

i. assuring the technological industry can reduce the potential of trafficking; and

ii. emergency preparedness accreditation and protocols; and

B. a list of websites known to engage in prohibited acts.

d. Prohibition of Video Chatting. This Association shall make sure that no technological company permits minors from video chatting with strangers in an obscene way.

e. Agreement possibilities. Under section 3054(e), this is a good opportunity to try to partner with other nonprofits.

f. Enforcement of this Provision

A. Control rules, protocols, etc. When the Association opts to partner with a nonprofit under section 3054(e), the nonprofit shall, in consultation with the standing committee and consistent with international best practices, develop and recommend anti-trafficking control rules, protocols, policies, and guidelines for approval by the Association.

B. Results management. The Association shall assure compliance with its anti-trafficking agenda, including independent investigations, charging and adjudication of potential medication control rule violations, and the enforcement of any civil sanctions for such violations. Any final decision or civil sanction of the Association or its partnering nonprofit under this subparagraph shall be the final decision or civil sanction of the Association, subject to review in accordance with section 3058 of this title.

C. Testing. The Association shall perform random tests to assure that websites covered under this act comply with standards.

D. Certificates of compliance. The Association shall certify which websites most comply with their regulations

2. Anti-trafficking and exploitation standing committee. The standing committee shall regularly consider and pass rules for enforcement consistent with this section and its goals.

g. Prohibition. Any website caught violating these provisions or the regulations of the Association will be prohibited from operating for an equitable period of time.

h. Advisory committee study and report

1. In general. Not later than the program effective date, the Association shall convene an advisory committee comprised of anti-trafficking experts to conduct a study on the use of technology in preventing such crimes.

2. Report. Not later than three years after the program effective date, the Association shall direct the advisory committee convened under paragraph (1) to submit to the Association a written report on the study conducted under that paragraph that includes recommended changes, if any, to the prohibition in subsection (d).

3. Modification of prohibition

A. In general. After receipt of the report required by paragraph (2), the Association may, by unanimous vote of the Board, modify the prohibition in subsection (d) and, notwithstanding subsection (f), any such modification

shall apply to all States beginning on the date that is three years after the program effective date.

B. Condition. In order for a unanimous vote described in subparagraph (A) to affect a modification of the prohibition in subsection (d), the vote must include unanimous adoption of each of the following findings:

i. That the modification is warranted.
ii. That the modification is in the best interests of most children.
iii. That the modification will not unduly stifle industry.
iv. That technology is a benefit to our society.

i. Baseline anti-trafficking and exploitation rules.

1. (1) In general. Subject to paragraph (3), the baseline anti-trafficking and exploitation l rules described in paragraph (2) shall--

A. constitute the initial rules of the anti-trafficking and exploitation standing committee; and

B. remain in effect at all times after the program effective date.

2. Baseline anti-trafficking and exploitation control rules described

A. In general. The baseline anti-trafficking and exploitation control rules described in this paragraph are the following:

i. The lists of preferred prevention practices from Jefferson Institute
ii. The World Prevent Abuse Forum Best Practices
iii. Psychologists Association Best Practices

B. Conflict of rules. In the case of a conflict among the rules described in subparagraph (A), the most stringent rule shall apply.

3. Modifications to baseline rules

A. Development by anti-trafficking and exploitation standing committee.

B. Association approval.

55 U.S.C. § 3056. COMPUTER SAFETY PROGRAM

a. Establishment and considerations

1. In general. Not later than the program effective date, and after notice and an opportunity for public comment in accordance with section 3053 of this title, the Association shall establish a computer safety program applicable to all technological companies.

2. Considerations in development of safety program. In the development of the computer safety program, the Association and the Commission shall take into consideration existing safety standards, child development standards, existing laws protecting children, and relevant advances in technology

b. Plans for implementation and enforcement.

1. A uniform set of safety standards and protocols, that may include rules governing oversight and movement of children access to the internet.

2. Programs for data analysis.

3. The undertaking of investigations related to safety violations.

4. Procedures for investigating, charging, and adjudicating violations and for the enforcement of civil sanctions for violations.

5. A schedule of civil sanctions for violations.

6. Disciplinary hearings, which may include binding arbitration, civil sanctions, and research.
7. Management of violation results.
8. Programs relating to safety and performance research and education.

c. In accordance with the registration of technological companies under section 3054(d) of this title, the Association may require technological companies to collect and submit to the database such information as the Association may require to further the goal of increased child welfare.

55 U.S.C. § 3057. RULE VIOLATIONS AND CIVIL ACTIONS

a. Description of rule violations

1. In general. The Association shall issue, by regulation in accordance with section 3053 of this title, a description of safety, performance, and rule violations applicable to technological companies.

2. Elements The description of rule violations established may include the following:

A. Failure to cooperate with the Association or an agent of the Association during any investigation.

B. Failure to respond truthfully, to the best of a technological company's knowledge, to a question of the Association or an agent of the Association with respect to any matter under the jurisdiction of the Association.

C. Attempting to circumvent a regulation of the Association.

i. the intentional interference, or an attempt to interfere, with an official or agent of the Association;

ii. the procurement or the provision of fraudulent information to the Association or agent; and

iii. the intimidation of, or an attempt to intimidate, a potential witness.

D. Threatening or seeking to intimidate a person with the intent of discouraging the person from reporting to the Association.

3. The rules and process established under paragraph (1) shall include the following:

A. Provisions for notification of safety, performance, and anti-exploitation rule violations;

B. Hearing procedures;

C. Standards for burden of proof;

D. Presumptions;

E. Evidentiary rules;

F. Appeals;

G. Guidelines for confidentiality

H. and public reporting of decisions.

b. Civil sanctions

1. In general. The Association shall establish uniform rules, in accordance with section 3053 of this title, imposing civil sanctions against technological companies for safety, performance, and anti-trafficking and exploitation control rule violations.

2. Modifications. The Association may propose a modification to any rule established under this section as the Association considers appropriate, and the proposed

modification shall be submitted to and considered by the Commission in accordance with section 3053 of this title.

55 U.S.C. § 3058. REVIEW OF FINAL DECISIONS OF THE ASSOCIATION

a. Notice of civil sanctions. If the Association imposes a final civil sanction for a violation committed by a covered person pursuant to the rules or standards of the Association, the Association shall promptly submit to the Commission notice of the civil sanction in such form as the Commission may require.

b. Review by administrative law judge

1. In general. With respect to a final civil sanction imposed by the Association, on application by the Commission or a person aggrieved by the civil sanction filed not later than 30 days after the date on which notice under subsection (a) is submitted, the civil sanction shall be subject to de novo review by an administrative law judge.

2. Nature of review

A. In general. In matters reviewed under this subsection, the administrative law judge shall determine whether--

i. a person has engaged in such acts or practices, or has omitted such acts or practices, as the Association has found the person to have engaged in or omitted;

ii. such acts, practices, or omissions are in violation of this chapter or the anti-trafficking and exploitation control or computer safety rules approved by the Commission; or

iii. the final civil sanction of the Association was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

B. Conduct of hearing. An administrative law judge shall conduct a hearing under this subsection in such a manner as the Commission may specify by rule, which shall conform to section 556 of Title 5.

3. Decision by administrative law judge

A. In general. With respect to a matter reviewed under this subsection, an administrative law judge--

i. shall render a decision not later than 60 days after the conclusion of the hearing;

ii. may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Association; and

iii. may make any finding or conclusion that, in the judgment of the administrative law judge, is proper and based on the record.

B. Final decision. A decision under this paragraph shall constitute the decision of the Commission without further proceedings unless a notice or an application for review is timely filed under subsection (c).

c. Review by Commission

1. Notice of review by Commission. The Commission may, on its own motion, review any decision of an administrative law judge issued under subsection (b)(3) by providing written notice to the Association and any interested party not later than 30 days after the date on which the administrative law judge issues the decision.

2. Application for review

A. In general. The Association or a person aggrieved by a decision issued under subsection (b)(3) may petition the Commission for review of such decision by filing an application for review not later than 30 days after the date on which the administrative law judge issues the decision.

B. Effect of denial of application for review. If an application for review under subparagraph (A) is denied, the decision of the administrative law judge shall constitute the decision of the Commission without further proceedings.

C. Discretion of Commission

i. In general. A decision with respect to whether to grant an application for review under subparagraph (A) is subject to the discretion of the Commission.

ii. Matters to be considered. In determining whether to grant such an application for review, the Commission shall consider whether the application makes a reasonable showing that--

I. a prejudicial error was committed in the conduct of the proceeding; or

II. the decision involved--(aa) an erroneous application of the anti-exploitation or computer safety rules approved by the Commission; or (bb) an exercise of discretion or a decision of law or policy that warrants review by the Commission.

3. Nature of review

A. (A) In general. In matters reviewed under this subsection, the Commission may--

i. affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the administrative law judge; and

ii. make any finding or conclusion that, in the judgement of the Commission, is proper and based on the record.

B. De novo review. The Commission shall review de novo the factual findings and conclusions of law made by the administrative law judge.

C. Consideration of additional evidence

i. Motion by Commission. The Commission may, on its own motion, allow the consideration of additional evidence.

ii. Motion by a party

I. In general. A party may file a motion to consider additional evidence at any time before the issuance of a decision by the Commission, which shall show, with particularity, that--(aa) such additional evidence is material; and (bb) there were reasonable grounds for failure to submit the evidence previously.

II. Procedure. The Commission may—(aa) accept or hear additional evidence; or (bb) remand the proceeding to the administrative law judge for the consideration of additional evidence.

d. Stay of proceedings. Review by an administrative law judge or the Commission under this section shall not operate as a stay of a final civil sanction of the Association unless the administrative law judge or Commission orders such a stay.

55 U.S.C. § 3059
Creating false advertisements to lure unsuspecting persons to a website shall be considered an unfair or deceptive act or practice.