

No. 25-1179

**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 PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT*

BRIEF FOR PETITIONER

TEAM NUMBER 27
Counsel for Petitioner

QUESTIONS PRESENTED

1. Is a Congressional delegation of enforcement and lawmaking power a violation of the Private Nondelegation Doctrine when the power is given to a private entity with limited government oversight?
2. Does a federal law that restricts law-abiding adults from accessing Constitutionally protected websites by requiring age-verification measures comport with the First Amendment?

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OPINIONS BELOW

The opinion of the United States District Court for the District of Wythe is unreported and not produced in the record. The opinion of the United States Court of Appeals for the Fourteenth Circuit, written by Circuit Judge Bushrod Washington, is reported at *Kids Internet Safety Ass’n, Inc. v. Pact Against Censorship, Inc.*, 345 F.4th 1 (14th Cir. 2024) and is reproduced in the record. R. at 1–15.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. I. states:

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

U.S. Const. 1., § 1 states:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Keeping the Internet Safe for Kids Act of 2023, 55 U.S.C. §§ 3050–3059 (included in Appendix)

STATEMENT OF THE CASE

1. Statement of Facts

The Creation of KISA

Two years ago, Congress enacted the Keeping the Internet Safe for Kids Act (KISKA). R. at 2. In response to an onslaught of public criticism that Congress was not effectively protecting children from the dangers of the internet, Congress created KISKA with the goal of regulating the Internet and keeping it safe for American youth. R. at 2. Instead of establishing a strict set of rules or enforcing the Act itself, Congress created a private entity known as the Kids’

Internet Safety Association, Inc. (KISA). R. at 2. In doing so, KISKA granted private individuals expansive powers that are normally limited to the legislature, including making and enforcing regulatory rules. R. at 3.

KISA's role is "to monitor and assure children's safety online." R. at 2. KISA is subject to the oversight of the Federal Trade Commission (FTC), but is a "private, independent, self-regulatory nonprofit corporation." R. at 2. KISA also has the power to impose civil sanctions and file civil actions against companies when they are not complying with KISA imposed regulations. R. at 3. The FTC has some limited rulemaking power, and can "abrogate, add to, and modify" KISA's rules. R. at 3. However, KISA is doing the actual rulemaking and is subject to minimal oversight by the FTC. R. at 3.

Rule One

In February of 2023, KISA established a governing board of citizens. R. at 3. They conducted meetings where experts testified about potential dangers that children could face on the internet when they interact with adult content that is not intended for them. R. at 3.

Subsequently, KISA passed "Rule ONE," which requires websites and commercial entities that contain "adult material" to enable "reasonable age verification measures." R. at 3. The goal was to verify that only adults could access the content on these websites. R. at 3. The amount of explicit content required to trigger this rule is very thin. R. at 4. If a website, social media platform, or online entity includes "more than one-tenth" of material "which is sexual material harmful to minors" then the online site must require age verification measures. R. at 4.

The age verification measures include either "a government-issued ID, or another reasonable method that uses transactional data." R. at 4. A violation of Rule ONE includes "filing for injunctive relief; issuing up to \$10,000 of fines per day of noncompliance with the

rule itself; and fining violators up to \$250,000 for every time a minor accessed a site because of a site's noncompliance.” R. at 4.

The Consequences of Rule ONE

When this rule was released in June 2023, the adult film industry voiced their concerns. R. at 4. While website users were not embarrassed by their use of the internet to obtain adult material, users like Jane and John Doe were concerned that the identifying information that these websites obtained could be hacked. R. at 4. Particularly concerning was the fact that many websites that appear safe, like hospitals or schools, have suffered from data breaches where personal information of users was stolen. R. at 4. Jane Doe feared that she would face backlash from her community if her identifying information were to be revealed. R. at 4. Jane Doe also expressed that the use of online websites to obtain adult content was preferable because she did not risk running into other members of her community like she would if she went to a “brick and mortar store.” R. at 4. Because of Rule ONE, Jane and John Doe stopped visiting websites that required such identifying information.

2. Procedural History

On August 15, 2023, Petitioner—three Pact Against Censorship, Inc. (PAC) members, comprised of two adult entertainment performers and one studio—filed suit in the United States District Court for the District of Wythe seeking to permanently enjoin Rule ONE from enforcement and KISA from operation. R. at 5. Petitioner alleged two claims in their movement for preliminary injunction: (1) that KISA violated the private nondelegation doctrine; and (2) that Rule ONE violated the First Amendment freedom of speech. R. at 5. The district court held that KISA did not violate the private nondelegation doctrine, however, it found that Rule ONE burdened more speech than necessary and enjoined its enforcement. R. at 5.

On appeal, the United States Court of Appeals for the Fourteenth Circuit affirmed the district court's private nondelegation decision and reversed the ruling on the First Amendment claim. R. at 2. The Fourteenth Circuit held that Rule ONE contained no free speech violation and was a valid exercise of congressional power. R. at 2. Petitioner appealed and on December 23, 2024, this Court granted certiorari. R. at 16.

SUMMARY OF THE ARGUMENT

First, the private nondelegation doctrine prohibits delegations of legislative power to private entities when there is not proper oversight by a government authority. The private nondelegation doctrine should be interpreted in a manner that strengthens the doctrine and limits Congress's ability to transfer their legislative power to a non-governmental body. Under a strict private nondelegation analysis, KISA does not survive the nondelegation doctrine because it is not fully subordinate to the FTC, and it is not subject to pervasive authority and surveillance. Even if this Court were to apply a less strict interpretation of the doctrine, KISA would still be improper because it retains significantly more rulemaking authority than the Framers intended, infringing on the delicate balance of powers in the federal government.

Second, strict scrutiny is the proper standard to apply to content-based regulations on speech. Strict scrutiny requires that laws abridging constitutionally protected freedoms are narrowly tailored to further a compelling government interest. Under this analysis, Rule ONE will not survive because the law is not sufficiently narrowly tailored. The regulation is simultaneously underinclusive and overinclusive. However, even if this Court concludes that rational basis is the proper standard of review, Rule One would still not survive because it is not rationally related to any government interest.

ARGUMENT

I. CONGRESS VIOLATED THE PRIVATE NONDELEGATION DOCTRINE WHEN IT CREATED KISA BECAUSE IT IS NOT A SUBORDINATE ENTITY AND IT IS NOT SUBJECT TO DIRECT REVIEW BY THE FTC.

The Kids' Internet Safety Association, Inc. (KISA) is an unconstitutional delegation of rulemaking and law enforcement power to a private entity. When Congress enacted the Keeping the Internet Safe for Kids Act (KISKA), they impermissibly gave KISA enforcement power without ensuring that KISA functioned subordinately to the FTC and was subject to the FTC's direct authority and surveillance. R. at 19. Under the Article I, Section 1 of the Constitution, Congress is solely and uniquely vested with "all legislative powers" and cannot delegate that power to another governing body. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001). When Congress delegates its power to private entities, it undermines the separation of powers that the Framers intended and leaves lawmaking power in the hands of private individuals.

The Private Nondelegation Doctrine was intended to restrain the branches of federal government from delegating their roles to private entities without the proper authority and surveillance over those private entities' decision-making abilities. *Texas v. Rettig*, 987 F.3d 518, 532 (5th Cir. 2021); *Pittston Co. v. United States*, 268 F.3d 385, 394 (4th Cir. 2004); *United States v. Frame*, 885 F.2d 1119, 1128 (3rd Cir. 1989). This Court has held that a proper private delegation requires the private entity to "function subordinately" to its oversight commission (here, the FTC), and be subject to direct "authority and surveillance" by that commission. *Sunshine Anthracite Coal Co., v. Adkins*, 310 U.S. 381, 399 (1940). In so holding, this Court emphasized that it would uphold a private delegation only if the delegate is not privately entrusted with lawmaking or rulemaking abilities. *Adkins*, 310 U.S. at 399.

While on paper KISA appears to be subordinate and properly surveilled by the FTC, a deeper look at KISA reveals that its oversight structure is not sufficient to meet the standards set forth by this Court. *See Adkins*, 310 U.S. at 388; *see also Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936) (stating that delegations to “private persons” are “legislative delegation[s] in [their] most obnoxious form). The Fourteenth Circuit’s determination that “KISKA gives the FTC full authority to review and completely overrule KISA’s enforcement actions” fails to address the lack of actual supervision by the FTC and the fact that KISA’s enforcement power under 55 U.S.C. §§ 3054(j)(1)-(2) does not have *any* restraint or oversight by the FTC at all. R. at 7. This erroneous and expansive interpretation of KISKA fails to consider analogous cases and does not align with private nondelegation precedent. If upheld, this interpretation highlights the danger legislative delegations can pose to the separation of powers when private actors are given sole enforcement and investigative authority over other private individuals and entities without any checks or balances.

A. This Court Should Follow the Fifth Circuit’s Holding in *Black II* Because It Properly Applies the Private Nondelegation Doctrine to Ensure Proper Subordination and FTC Oversight.

In *Adkins*, this Court established a two-part test that applies to private delegations of legislative power, which asks (1) if the private entity functions subordinately to a government agency, and (2) if the government agency has direct authority and surveillance over the private entity. 310 U.S. at 399. The Fifth and Sixth Circuits are split over the proper interpretation of this private nondelegation test. It is Petitioner’s position that the Fifth Circuit’s interpretation of the test is proper because it strengthens the Private Nondelegation Doctrine and returns the lawmaking role to Congress. The Fifth Circuit specifically addressed whether the private entity functioned subordinately to the overseeing commission in every aspect of its assigned role, which is essential to ensuring that rulemaking power does not end up in the hands of a private

entity. *Nat'l Horseman's Benevolent & Protective Ass'n v. Black*, 107 F.4th 415 (5th Cir. 2024) (*Black II*). This interpretation is truest to this Court's intent and should be adopted by this Court in the present case.

The Fifth and Sixth Circuits have addressed the Private Nondelegation Doctrine in the context of the Horseracing Integrity and Safety Authority (HISA). *Black II*, 107 F.4th at 415; *Oklahoma v. United States*, 52 F.4th 221 (6th Cir. 2023); Horseracing Integrity and Safety Act of 2020, Pub. L. No. 116–260, 143 Stat. 1182 (2020) (amended 2023). KISA is modeled nearly identically to HISA. R. at 6. Because of this, looking to circuit decisions based on HISA are the most relevant, persuasive authority to determine KISA's constitutionality. As such, Petitioners urge this Court to follow the Fifth Circuit's interpretation of the scope of the Private Nondelegation Doctrine, outlined in *Black II*, which is more aligned with this Court's jurisprudence. In *Black II*, the Fifth Circuit held that HISA violated the Private Nondelegation Doctrine, explaining that the enforcement of the Horseracing Integrity and Safety Act of 2020 was assigned to a private entity and there was not proper surveillance over that entity. *Black II*, 107 F.4th at 421.

The Fifth Circuit addressed HISA twice, both times holding that the Act's delegation of authority did not survive the Private Nondelegation Doctrine. *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4th 869 (5th Cir. 2022) (*Black I*); *Black II*, 107 F.4th at 421. The Act was first addressed in 2022, after which Congress re-wrote part of it to add more supervision and authority over HISA. *Black I*, 53 F.4th at 872; 15 U.S.C. § 3051 (amended 2023). In 2023, the case was again brought to the Fifth Circuit, where the court considered a “nondelegation challenge to the Authority's enforcement power.” *Black II*, 107 F.4th at 420. As explained by the Fifth Circuit, HISA was improperly structured to authorize a private “[a]uthority to

investigate, issue subpoenas, conduct searches, levy fines, and seek injunctions—all without the FTC’s say-so.” *Id.* As permitted by the Act, HISA brought in the U.S. Anti-Doping Agency (USADA), a private non-profit, to enforce the doping and medication rules. *Id.* The Fifth Circuit explained that the USADA then acted independently to enforce rules, implement HISA’s anti-doping programs, conduct independent investigations, enforce sanctions, and charge violations. *Id.* Because the FTC (acting as the supervising agency) was not empowered to make any decisions regarding investigations, subpoenas, searches, or charging violations, and does not have the power to stop HISA from doing so, HISA does not actually “function subordnately” to the FTC, nor is it under the direct “authority and surveillance” of the FTC. *Id.* at 429. Therefore, the Fifth Circuit determined that the Act improperly delegated enforcement power to a private entity that was not subordinate to the FTC. *Id.* at 428-29.

Unlike the Fifth Circuit, the Sixth Circuit did not address the subordination specifics of HISA. In *Oklahoma*, the Sixth Circuit stated that after Congress amended HISA, the FTC was given “sweeping power” to “create rules that ‘abrogate, add to, and modify the rules of the Authority.’” 62 F.4th at 227 (citing 15 U.S.C. § 3503(e) (as amended)). In discussing private delegations, the court explained that based on this Court’s precedent, a private entity may serve as an advisor or undertake administrative functions, but “if a private entity creates the law or retains full discretion over any regulations,” that is an unconstitutional delegation of federal power to a private actor. *Oklahoma*, 62 F.4th at 227. at 229 (citing *Carter Coal*, 298 U.S. at 311; *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935)).

The Sixth Circuit incorrectly interprets the scope of the Private Nondelegation Doctrine and does not sufficiently consider this Court’s repeated affirmation that delegations must function subordnately to their respective legislative authority in its entirety. *See Adkins*, 310

U.S. at 398–99; *Curran v. Wallace*, 306 U.S. 1, 15-16 (1939) (stating that an act was valid when Congress “prescrib[ed] the conditions of its application”). The Sixth Circuit did not consider the fact that despite having FTC oversight in some respects, HISA still had extensive autonomy to act without any checks by the FTC. Allowing a private delegation to retain the power to make and enforce rules is inherently over-reaching what is permitted under the Private Nondelegation Doctrine. While the FTC may retain some rule-revision and rulemaking power, this allocation is not what this Court has deemed proper. For example, in *Adkins*, this Court addressed a private delegation to the Bituminous Coal Commission. 310 U.S. at 388; Bituminous Coal Conservation Act of 1937, Pub. L. No. 75–48, 1937 (50 Stat.) 72 (repealed 1966). The Commission there used District Boards with private members who functioned as aids to the Commission. *Adkins*, 310 U.S. at 388. The Commission’s job was to set rules and prices. *Id.* This Court upheld the private delegation because the private members were entrusted with no lawmaking power and the Commission had full authority and surveillance over the private members. *Id.* at 399.

Here, like in HISA, KISA was granted the power to impose civil sanctions, issue subpoenas, and conduct investigations. R. at 3. However, KISA was granted even more rulemaking ability than HISA, which is blatant violation of the Private Nondelegation Doctrine. Because of this, applying the Fifth Circuit’s analysis to KISA and making that the standard for private delegations would strengthen the Private Nondelegation Doctrine and ensure that Congress is fulfilling their role as the legislature. Additionally, the *Black II* analysis aligns with this Court’s holding in *Adkins*, and the interest in keeping any rulemaking ability out of the hands of private entities. Applying the Sixth Circuit’s interpretation to KISA would risk placing law and rulemaking power in the hands of unchecked, private individuals, something that this Court has ruled against in the past. *See Carter Coal*, 298 U.S. at 311.

The Fifth Circuit's analysis properly identifies that there is still a lack of subordination in certain elements of HISA, and similarly here, there is a lack of subordination in the enforcement provision of KISA. This Court has long-established the importance of proper delegations of power, and the Fifth Circuit's holding aligns with that precedent. Therefore, this Court should follow the Fifth Circuit's interpretation of the Private Nondelegation Doctrine.

B. KISA Is Not Properly Supervised by the Federal Trade Commission and Does Not Survive the Private Nondelegation Doctrine.

Under the *Black II* interpretation, this Court should look to the specifics within the Act itself and consider whether the FTC will be strongly compelled to fulfill their role of reviewing KISA's enforcement power. Should this Court apply the *Black II* interpretation of the private nondelegation test to KISA, it becomes clear that the FTC oversight here is not proper under the Private Nondelegation Doctrine.

1. *KISA does not operate fully subordinate to the FTC because it retains lawmaking authority.*

For a private delegation to be proper under the subordination prong, it must not be permitted to make laws or rules. *Adkins*, 310 U.S. at 399. The emphasis on functional subordination can be seen through both public and private delegations that this Court has addressed. *See Wash. ex. Rel. Seattle Trust Co. v. Roberge*, 278 U.S. 116, 118–19 (1928) (holding that Congress could not delegate zoning authority to private citizens). However, this Court has never said that a private delegation may enforce an act without any written and detailed oversight, and there is no guarantee that the oversight commission will act diligently in the execution of their role.

Several examples of proper subordination demonstrate what KISA lacks. The Eleventh Circuit upheld a private delegation in *Consumers' Rsch.* because the private entity in question

only performed ministerial and fact-finding roles, making it fully subordinate to the Federal Communications Commission (FCC). 88 F.4th at 926–27. Similarly, in *St. Louis, Iron Mountain & S. Ry. Co. v. Taylor*, this Court upheld a delegation of legislative power to the railway association because the statute in that case only permitted the association to set standards relating to height requirements. 210 U.S. 281, 287 (1908). Finally, in *Currin*, this Court upheld a statute because it found that Congress did not delegate legislative authority, it merely placed a restriction on its own regulation, and it was “not a case where a group of producers may make the law and force it upon a minority.” 306 U.S. at 15 (citing *Carter*, 298 U.S. at 238).

Here, KISA is not aligned with what has been deemed fully subordinate. KISKA sections 3054(j)(1)–(2) empower KISA to file civil actions against technological companies who fail to comply with KISKA’s terms. §§ 3054(j)(1)–(2). Unlike the private delegate in *Consumers’ Rsch.*, KISA is given rulemaking power, which is directly averse to what this Court and the circuit courts have permitted. § 3054(c)(1)–(2). Additionally, while section 3054(c)(2) of KISA states that the FTC approves the rules, this Court held in *Adkins* that rulemaking power is beyond what is permissible of a private delegation. 310 U.S. at 399; § 3054(c)(2).

Rulemaking is significantly more than a delegation of administrative or advisory power. *Consumers’ Rsch.*, 88 F.4th at 926. Further, section 3055 of KISKA grants KISA the power to assure compliance with KISA policies, including “the enforcement of any civil sanctions” for violations and the power to “regularly consider and pass rules for enforcement consistent with t[he] section and its goals.” § 3055(f). This falls squarely within the rulemaking power which was rejected by this Court and the Fifth Circuit. While section 3055(a)(1) requires “notice and public comment in accordance with section 3053,” this requirement does not require the FTC to comment or change any of the KISA’s rules or enforcement of those rules.

§ 3055(a)(1).

KISA's rulemaking and enforcement powers do not align with what this Court identified in *Adkins* as a fully subordinate private delegation. Similarly, while the *Taylor* delegation only involved a height regulation, KISA is establishing and enforcing rules that result in civil sanctions that broadly impact the entire Internet sphere. The types of rules that KISA is enabled to create are much more impactful on society, making the subordination requirement even more important. KISA retains broad power with little oversight and is permitted to write their own rules regarding enforcement and compliance, which antithetical this Court's holding in *Currin*. Not only does it allow KISA to function insubordinately to the FTC, but it goes against the principles behind the three branches of government. The fact that Congress continues to delegate this much power to private entities shows that they will continue to create legislation in a similar fashion, unburdening their plate and instead putting public interests in the hands of private entities who were not elected to govern.

2. *The FTC's authority and surveillance over KISA is not sufficient because the FTC does not have direct review of every KISA action.*

For a private entity to be subject to sufficient authority and surveillance, that entities' actions must remain "subject to government approval." *Consumers' Rsch.*, 88 F.4th at 927 (citing *Adkins*, 310 U.S. at 388). While this Court has held that inaction can be seen as authority and surveillance, the private entity must not have any lawmaking power entrusted to them. *Adkins*, 310 U.S. at 399. The authority and surveillance over the private entity must be ultimate, cover every aspect of their duties, and leave no discretion to the private entity. *Consumers' Rsch.*, 88 F.4th at 928.

Here, the FTC does not have full authority over several aspects of KISA and there is nothing to ensure proper surveillance. § 3053(a)(1)–(10). KISKA broadly grants the FTC the

power to review KISA's decisions, rules, and enforcement power. R. at 23. However, under the "authority and surveillance" standard, this oversight is not sufficient to survive the Private Nondelegation Doctrine. To have full authority over KISA, the FTC should be responsible for rulemaking. Under section 3054 of KISKA, KISA is responsible for developing uniform procedures and rules authorizing access to a variety of technological companies, rules authorizing the issue and enforcement of subpoenas, and rules and procedures regarding investigative powers. R. at 23. This is more than KISA acting as an administrative agent to the FTC; it is KISA operating without the authority of the FTC and making decisions that should be left to a legislative body. *See Black II*, 107 F.4th at 420; *Consumers' Rsch.*, 88 F.4th at 928. If KISA is creating rules, enforcing sanctions, and making legislative decisions, they are operating without the FTC's authority and surveillance. Even if the FTC has the power to modify the rules in the areas listed in section 3054, there is still no guarantee that they will truly review the rules prior to their approval. This allows KISA to operate without FTC surveillance or authority and is exactly what this Court has cautioned Congress to avoid.

Additionally, KISA is currently permitted to file civil suits without FTC surveillance or authority under section 3054(j)(1)–(2), and the FTC is not even required to review KISA's actions under this section *at all*. R. at 11; § 3054(j)(1)–(2). The power to file civil suits is a power that this Court stated cannot be delegated to any entity. *Buckley v. Valeo*, 424 U.S. 1, 138 (1976). The "oversight" here is not sufficient because there is no requirement that the FTC review KISA's actions when it comes to imposing civil sanctions. R. at 27. Any review is subject to the Commissions' discretion, which can ultimately result in a lack of surveillance over KISA's imposition of civil sanctions. § 3058. This is not a direct review of KISA. Thus, KISA

does not satisfy either the subordination or the authority and surveillance prong of the private nondelegation test and should accordingly be held to violate the Private Nondelegation Doctrine.

C. Policy Favors Strengthening the Private Nondelegation Doctrine Because It Reaffirms the Separation of Powers that the Framers Intended.

The Private Nondelegation Doctrine “does not permit Congress to delegate [legislative powers] to another branch of the government.” *Gundy v. United States*, 588 U.S. 128, 148 (Alito J., concurring) (citing *Whitman v. Am. Trucking Assn.’s*, 531 U.S. 457, 472 (2001)). Lawmaking is a power that the Framers left for Congress, and it is not something that Congress can delegate away. To maintain the separate branches of government and ensure that each branch is fulfilling their designated roles, this Court must strengthen the Private Nondelegation Doctrine and look to private delegations with a more careful examination to ensure there is no rulemaking or violations of the separation of powers.

1. *Less agency authority would require Congress to fulfill their constitutionally required role as the lawmaking branch.*

This Court has rarely overturned Congressional delegations, but in recent years, there has been a shift towards strengthening the nondelegation test, limiting the number of delegations, and decreasing agency lawmaking authority. *Gundy*, 588 U.S. at 149 (Gorsuch, J. dissenting).

This trend towards nondelegation of lawmaking power is exemplified in *Gundy v. United States*. In *Gundy*, this Court upheld the Sex Offender Registration and Notification Act (SORNA), which congressionally delegated power to the Attorney General of the United States. 588 U.S. at 132; Sex Offender Registration and Notification Act, Pub. L. No. 109–248, 2006 120 Stat. 590 (2006). While *Gundy* addressed a public delegation, both the concurrence and dissent emphasized that there is a desire to move towards strengthening the Nondelegation Doctrine and confining legislative power to Congress. *Gundy*, 588 U.S. at 148 (Alito, J. concurring); *id.* (Gorsuch, J. dissenting).

In his dissent, which was joined by the Chief Justice and Justice Thomas, Justice Gorsuch outlined why SORNA was an improper delegation of power to the executive branch. *Id.* (Gorsuch, J. dissenting). The dissent largely focused on the Framers’ intent when creating separate branches of government, explaining that the Framers knew “that the job of keeping the legislative power to the legislative branch couldn’t be trusted to self-policing by Congress” and that judges must follow the Constitution and “call foul when constitutional lines are crossed.” *Id.* at 156. Justice Gorsuch focused on the “intelligible principle” test, which applies to Public Nondelegation Doctrine, and explained how versions of the test have been used to permit many delegations of legislative power that would otherwise be deemed unconstitutional. *Id.* at 165. Similarly, although concurring with the majority’s opinion, Justice Alito explained that he would support an effort to reconsider the approach the Court has taken in the past regarding nondelegation arguments. *Id.* (Alito, J. concurring). However, because the majority was not willing to reconsider at that time, he stated “it would be freakish to single out the provision at issue here for special treatment.” *Gundy*, 588 U.S. at 148 (Alito, J. concurring).

While KISA involves a delegation to a private entity, the issue remains that Congress is delegating away its lawmaking power—a power that should remain within Congress. This is especially true for private delegations. While the Public Nondelegation Doctrine “restricts one branch of government from transferring its constitutional authority to another branch,” the Private Nondelegation Doctrine is different, “limit[ing] [the] transfer of government power to private entities.” Jacob D. Charles, Darrel A.H. Miller, *Violence and Nondelegation*, 135 HARV. L. REV. 463, 463 (2022). When power is transferred to another public branch of government, some checks remain, as that branch is still held accountable to the citizens who put them in

power. In contrast, when government power is transferred to a private entity, there is little to ensure that the private entity will make decisions that bear well for the public.

Applying Justice Gorsuch’s rationale to private delegations leads to the same idea—the private nondelegation test established by this Court in *Adkins* is being interpreted and applied differently in many lower courts, including the Sixth Circuit. When delegating roles to other government entities, the issue is whether there is at least some guiding principle for the assigned entity to follow. With private entities, there must be more stringent requirements with oversight for *every* aspect of that entities’ power, even enforcement power. It is not enough that a private entity may be theoretically subordinate to an agency like the FTC if there is nothing to ensure the FTC is going to check every action the private entity makes. By allowing a less stringent interpretation of the private nondelegation test to remain, courts will continue to uphold delegations that would otherwise not survive the Constitution.

2. *Only proper and full subordination will satisfy the separation of power that the Framers intended.*

The Framers did not intend to create a situation where the people are governed by private citizens who have no obligation to those they are governing. As stated by this Court in *Gundy*, “[i]f the separation of powers means anything, it must mean that Congress cannot give the executive branch a blank check to write a code of conduct . . .” 588 U.S. at 171. While *Gundy* involved delegating Congressional power to the President and the acting Attorney General, the idea is still the same. The Framers did not intend for Congress to be delegating its power to private entities without any guidance or checks when enforcing their power.

While it is true that the Framers intended for Congress to be able to divert some power to allow them to focus on pressing issues, this Court has said that the necessary distinction is between “the delegation of power to make the law, which necessarily involves a discretion as to

what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law.” *Loving v. United States*, 517 U.S. 748, 758–59 (quoting *Field v. Clark*, 143 U.S. 649, 693–94 (1892)). It is outside the scope of what this Court and the Framers intended to occur when a private entity is delegated the power to develop procedures and rules and then enforce those rules without government oversight.

The Framers believed, as explained by Justice Gorsuch, that allowing an excess of lawmaking was one of the worst “diseases to which our governments are most liable.” *Gundy*, 588 U.S. at 153–54 (Gorsuch, J. dissenting). Justice Gorsuch explained how John Locke influenced the Framers when he illustrated the idea that because the legislature’s power to make laws comes from the people, that power cannot be transferred to anyone else because it is not the legislatures to transfer. *Id.* (Gorsuch J. dissenting) (citing Locke, *Second Treatise* §141 at 71).

If this Court continues to permit Congress to hand away its power without ensuring that the recipient is fully subordinate with no rulemaking abilities, a separation of powers problem will remain. KISA does not survive the Private Nondelegation Doctrine and must be struck down by this Court to maintain the careful balance of powers. Should this Court uphold KISA, Congress will continue to push against the judicial safeguards put in place, knowing that this Court has set a precedent that Congress may delegate its power as it pleases with no repercussions.

II. KISA’S RULE ONE IS UNCONSTITUTIONAL BECAUSE IT INFRINGES ON THE PROTECTIONS OF THE FIRST AMENDMENT BY RESTRICTING LAW-ABIDING ADULT’S ACCESS TO CONSTITUTIONALLY PROTECTED WEBSITES.

Rule ONE’s requirement that users verify their age before visiting any website that contains “more than one-tenth” of sexual material deemed harmful to minors is a blatant violation of the principles enumerated in the First Amendment. US. Const. amend. I. The First

Amendment prohibits Congress from “abridging the freedom of speech.” US. Const. amend. I. Further, the First Amendment helps to prevent the government from skewing public opinion or prescribing a moral code to subjects which it protects. *Davenport v. Wash. Educ. Ass’n*, 551 U.S. 177, 189 (2007). Rule ONE violates the fundamental principles underlying the First Amendment because the age verification requirement impermissibly curtails access to otherwise protected speech.

The standard of review applied to laws and regulations that enter constitutionally protected areas of the First Amendment wholly depends on the content the law seeks to regulate. *Reed v. Town of Gilbert*, 576 U.S. 155, 165 (2015). Laws that are facially content-based are subject to the strict scrutiny standard of review, regardless of the government’s motive. *Reed*, 576 U.S. at 165 (holding that the proposed government interest is irrelevant where a law is content-based). Further, the government may not infringe on fundamental rights, like speech, regardless of the stated interest, without surviving strict scrutiny. *Schneider v. State*, 308 U.S. 147, 160 (1939). Unlike strict scrutiny, this Court will only apply rational basis where neither a fundamental right nor suspect class is the subject of government regulation. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 300 (2022). The Fourteenth Circuit erred in applying the rational basis test to Rule ONE, because Rule ONE amounts to a content-based restriction on speech and this Court *must* apply strict scrutiny to such restrictions. Thus, under the appropriate strict scrutiny standard, Rule ONE is an unconstitutional First Amendment violation.

A. Precedent Demands That Strict Scrutiny is Applied to Rule ONE Because Rule ONE is a Content-Based Restriction on Protected Speech.

Strict scrutiny is the proper standard of review because Rule ONE is a content-based restriction that is designed to exclusively target websites where adult-content comprises at least one-tenth of the website. R. at 4. First Amendment jurisprudence dictates that laws are

presumptively invalid and should be evaluated under strict scrutiny when they restrict expression which is based on communicative content. *Reed*, 576 U.S. at 163. To survive strict scrutiny, the government must first show a compelling interest and then must show that the law is narrowly tailored to achieve that interest. *Reed*, 576 U.S. at 171. This is true even where the content being regulated helps to curtail morally reprehensible consequences. *R.A.V. v. St. Paul*, 505 U.S. 377, 395 (1992); *see also Psinet, Inc. v. Chapman*, 362 F.3d 227, 234 (4th Cir. 2004) (explicitly holding that regulations chilling access to adult entertainment amounts to content-based regulation).

Laws that treat certain types of speech differently than others must be evaluated under strict scrutiny. *Reed*, 576 U.S. at 166. In *Reed*, this Court held that a law is content-based where it does not uniformly regulate all speech in the same manner. *Id.* at 173. There, the appellant challenged the Town of Gilbert's sign code, which established different regulations for signs depending on the message they conveyed. *Id.* at 159. In assessing the sign code, this Court reasoned that because certain categories of signs had more restrictions placed on them than others, the sign code was content-based on its face and therefore was to be evaluated under strict scrutiny. *Id.* at 171. As such, this Court found that the law failed strict scrutiny because it did not regulate all the categories of signs in the same manner and declared it unconstitutional.

Reed, 576 U.S. at 168–69, 171–73.

Here, Rule ONE's age verification requirement expressly singles out sexual material as the content KISA seeks to regulate. R. at 4. Like *Reed*, Rule ONE does not apply uniformly to all potentially harmful content on the Internet. R. at 3. Children have unfettered access to the rest of the Internet, with little to no regulations. Only imposing regulations on adult content places an unconstitutional burden on individuals who seek to use those websites. If all categories

of online speech are not regulated in the same manner, like the sign code in *Reed*, precedent dictates that strict scrutiny must apply.

Further, this Court has shown that it is not willing to make exceptions for content-based regulations when it comes to shielding minors from material that the government deems inappropriate for their consumption. *Reno v. ACLU*, 521 U.S. 844, 879 (1997). In *Reno*, this Court held that the Communications Decency Act (CDA) was a content-based regulation on speech. *Id.* at 871. The appellant, ACLU, argued that the statute, which aimed to shield minors from indecent and obscene content, was a content-based regulation on speech. *Id.* at 849. This Court agreed, and distinguished the CDA from *Ginsberg v. New York*, where this Court upheld a law that prohibited the sale of sexually explicit materials to minors. *Id.* at 865; (citing *Ginsberg v. New York*, 390 U.S. 629, 639 (1968)). In making this distinction, this Court reasoned that the statute upheld in *Ginsberg* was a much narrower restriction on expression than the CDA, specifically because the *Ginsberg* statute had no effect on adults who wished to consume material which the government deemed to be inappropriate to minors. *Reno*, 521 U.S. at 865 (citing *Ginsberg*, 390 U.S. at 639). This Court expressed concern that if regulation on such material was permitted, the government would essentially be steering the debate on issues regarding adult entertainment. *Reno*, 521 U.S. at 873. In agreement with the ACLU, this Court held that the CDA was a content-based regulation of speech because the statute expressly targeted indecent communications and was not narrowly tailored to achieve an interest in shielding minors. *Id.* at 871, 879; 47 U.S.C. § 223.

Similarly, while not binding on this Court, the Fourth Circuit, in a highly persuasive and analogous case, recognized that regulations targeting sexual content are still content-based in nature and thus subject to strict scrutiny. *Psinet, Inc. v. Chapman*, 362 F.3d 227, 235 (4th Cir.

2004). In *Psinet*, the Fourth Circuit struck down a Virginia law that criminalized the dissemination of harmful materials to minors over the internet. *Psinet*, F.3d 227 at 229. There, the court addressed whether requiring users to produce identification in order to access explicit material impermissibly chilled speech. *Id.* at 235. The court easily identified that the statute was a content-based regulation because the code explicitly targeted sexually explicit speech and thus held that it must be evaluated under strict scrutiny. *Id.*; *Va. Code Ann.* § 18.2-391.

Rule ONE's broad restriction on speech is analogous to *Reno* because both laws curtail adult access to otherwise constitutionally protected speech. The statute in *Ginsberg* is necessarily disanalogous for the same rationale, as Rule ONE has a direct effect on adults who wish to consume explicit content. *R.* at 4. Based on this Court's ruling in *Reno* and the Fourth Circuit's holding in *Psinet*, this Court should find that regulations concerning adult entertainment and sexually explicit content fall under strict scrutiny. While this Court has acknowledged that the government has a valid interest in protecting and shielding minors from indecent or obscene content, there is not an exception when it comes to applying strict scrutiny to this content. A law that regulates only certain types of explicit content falls directly under the classification of a content-based regulation and must be analyzed as such.

Rule ONE chills significantly more speech than is necessary to achieve KISA's interest in protecting minors. While their rationale may be laudable, the fact is that Rule ONE is a facially content-based restriction on speech because the restriction is based on the message the speaker chooses to communicate. Content-based restrictions on First Amendment protected speech are evaluated under strict scrutiny. This Court should not deviate from its precedent in analyzing Rule ONE.

B. Rule ONE Does Not Survive Strict Scrutiny Because it is Not Sufficiently Narrowly Tailored.

Rule ONE does not survive constitutional muster under the First Amendment because it is not narrowly tailored to achieve the government's interest in protecting minors. Content-based laws are presumptively invalid unless the government can demonstrate that the law is narrowly tailored to serve a compelling government interest. *R.A.V.* 505 U.S. at 395. This Court has established that there is a demonstrated compelling interest in the physical and psychological wellbeing of children, including in the context of adult entertainment. *Reno*, 521 U.S. at 869. However, Rule ONE is not narrowly tailored to achieve this interest.

Rule ONE is both underinclusive and overinclusive; therefore, it is not narrowly tailored under the strict scrutiny standard and is not constitutional. Statutes are narrowly tailored when they eliminate only the exact source of harm which the government seeks to address. *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). Legitimate governmental interests that may conflict with First Amendment protections may be pursued in a narrow manner provided that the means are neither under nor overinclusive. *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 805 (2011). Because Rule ONE does not curtail all the ways in which minors can access adult entertainment, while simultaneously having too broad of a reach to other internet users, the law is not narrowly tailored and fails strict scrutiny.

1. *Rule ONE is not narrowly tailored because less restrictive means are available to serve the government's interest in child welfare.*

Rule ONE is overinclusive in its scope because it chills more speech than is necessary to achieve the government's stated interest. To satisfy the narrow tailoring prong of a strict scrutiny analysis, a restriction must not affect more speech than is required. *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 804 (2011). As such, a law is overinclusive where it abridges the

rights of people who are outside the scope of regulation. *Brown*, 564 U.S. at 805; *see also Citizens United v. FEC*, 558 U.S. 310, 362 (2010) (holding that a law is invalid when it applies broader than the stated government interest).

Under this Court's precedent it is impermissible to ban certain content when the ban is not restricted to addressing the harm which it seeks to remedy. This Court in *Butler v. Michigan* overturned a statute which banned the dissemination of any book with subject matter relating to inciting violence or immoral acts. 352 U.S. 380, 384 (1957). In so doing, this Court held that when a law reduces the adult population's content consumption to only content which the government deems fit for minors, that law is an impermissible infringement on constitutionally protected freedoms. *Id.* at 383-384. The Court concluded that because the statute was not restricted to addressing the harm which it sought to remedy, it was overinclusive and unconstitutional. *Id.* at 384

Additionally, age verification requirements have been deemed to be easily circumvented and an ineffective means for achieving a government interest. *Ashcroft*, 524 U.S. 656, 668 (2004). Specifically, in *Ashcroft*, this Court explicitly invalidated a law which required Internet users to verify their age in order to access certain websites. *Ashcroft*, 524 U.S. at 673. The government was unable to show that less restrictive means should be disregarded, so the law was found to be unconstitutional. *Id.* at 673.

Here, the record documents multiple instances where parties outside the scope of Rule ONE were burdened by its age verification requirements. R. at 4. Like *Butler*, Rule ONE effectively takes the choice of what media adults can consume out of their hands. Rule ONE goes beyond the scope of its stated interests by causing direct hardship to the U.S. adult population of Internet users, such as Jane and John Doe. R. at 4. Additionally, the data breach

concerns that Rule ONE is creating leads to adults not accessing speech which they otherwise would seek out. R. at 4. These concerns about data breaches have been substantiated by other instances of seemingly trustworthy websites that have had user information stolen, and fear of community backlash if identifying information were to leak has prevented adults from accessing websites with explicit material. R. at. 4. Rule ONE is a paternalistic overreach into the rights of adults to freely choose the content that they want to consume.

Further, like the law in *Ashcroft*, the government does not meet its burden of demonstrating that the proposed less restrictive alternatives to Rule ONE should be disregarded. The district court accepted two alternatives to Rule ONE's age verification requirement. R. at 15. First, Rule ONE could require internet providers to filter out adult content until the purchasers opt out. R. at 15. Second, Rule ONE could require content filters to be placed on children's devices that have access to the Internet. R. at 15. The Government has made no showing that this Court should not consider these less restrictive alternatives. Therefore, based on *Ashcroft*, Rule ONE is underinclusive and not narrowly tailored.

Rule ONE's requirements affect a broader area than the stated governmental interest. This overbreadth is directly analogous to prior First Amendment cases and is an impermissible demonstration of congressional authority when there are less restrictive means available. Because of this overbreadth, Rule ONE is not narrowly tailored, and thus will not survive strict scrutiny.

2. *Rule ONE is not narrowly tailored because it does not chill all the speech necessary to achieve the government's stated interest.*

Rule ONE leaves open many other avenues that would allow minors to access explicit and obscene material. Despite any legitimate stated government interests, a law preventing minors from accessing material which was found to be harmful is underinclusive where it fails to

stop minors from accessing the material in other forms. *Brown*, 564 U.S. at 805. Where a regulation bans a certain type of expression based on its content, but leaves out other content that is equally harmful, it is underinclusive, and thus invalid under the First Amendment. *R.A.V.*, 505 U.S. at 390.

This Court has found that laws that are ineffective in achieving their stated interest are underinclusive under a narrow tailoring analysis. *Brown*, 564 U.S. at 802. In *Brown*, this Court found that a law prohibiting minors from purchasing violent video games was underinclusive. 564 U.S. at 802. This Court reasoned that despite California’s legitimate government interest in keeping violent material out of minors’ hands, the state failed to restrict minors’ access to violent cartoons and other depictions of violence. *Id.* at 801. This Court explained that the law was underinclusive because other dangerous, mind-altering material is still readily available to minors in unregulated mediums beyond videogames. *Id.* at 802. The fact that the statute did not do enough to further the stated government interest rendered it underinclusive, not narrowly tailored, and not permissible under the First Amendment. *Id.* at 804–805. This Court noted that although the graphic nature of violent video games undoubtedly had a detrimental effect on the minds of the youth who played them, the challenged legislation’s failure to restrict all the means which children could be exposed to violence did not allow it to withstand strict scrutiny. *Id.*

Rule ONE is not narrowly tailored because it does not encompass all the ways in which minors can circumvent the age verification requirement, and access “explicit material.” R. at 15. Like the video game law in *Brown*, Rule ONE does not restrict minors from accessing this content in other ways. It is undisputed that limiting minors’ exposure to sexually explicit material is beneficial to their development, however much of this material can be found on websites and mediums beyond Rule ONE’s scope. R. at 14. Additionally, children are able to

access these websites and fraudulently verify their age using their parent's IDs, fake IDs, or VPNs. R. at 14–15. Rule ONE cannot survive strict scrutiny, when it continues to allow minors to access the content which it seeks to remedy.

Bans on minors' access to adult content in one medium, but not another, does very little to achieve the stated government interest in reducing minors' access to explicit material. *See Free Speech Coal., Inc. v. Paxton*, 95 F.3d 363, 301 (5th Cir. 2024) (discussing social media sites such as Reddit with adult content that makes up less than ten percent of the platform). Further, this Court has already acknowledged that age verification measures on websites with adult content do little to deter minors from accessing the explicit material because of the relative ease by which these requirements can be circumvented. *Ashcroft*, 524 U.S. at 668. Finally, legal scholars have expressed concern that, despite the validity of government interests in preventing minors from accessing sexually explicit materials, age verification requirements often allow for increased methods of circumvention, rendering them underinclusive. Byrin Romney, *Screens, Teens, and Porn Scenes: Legislative Approaches to Protecting Youth From Exposure to Pornography*, 45 VT. L. REV. 43, 72 (2020); *see also* Richard A. Clarke, *Hostile State Disinformation in the Digital Age*, 6 J. FREE SPEECH L. 187, 208 (2024).

Rule ONE does not survive strict scrutiny because it fails to restrict children's access to all sexually explicit material on the Internet and simultaneously restricts significantly more than that which could hinder children's development. Therefore, the law is both overinclusive and underinclusive. Further, the regulation does not do enough to address the possible methods minors can use to circumvent the age verification requirements, adding further evidence that the law is underinclusive. Because of this, Rule ONE is not narrowly tailored to serve a compelling government interest, and therefore it cannot survive strict scrutiny.

C. Even if This Court Applies Rational Basis, Rule ONE Still Fails Because it is not Rationally Related to the Government's Interest in Protecting Minors on the Internet.

Although *Reno* does not require this Court to apply rational basis to Rule ONE, doing so would not prevent the regulation from being declared unconstitutional. To withstand rational basis scrutiny, laws must be reasonably related to a legitimate government purpose; therefore, laws premised on an irrational prejudice cannot survive rational basis review. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448. (1985). Additionally, this Court has invalidated laws where the legislature acted on nothing more than a bare desire to harm a politically unpopular group. *United States Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (holding that animus toward those receiving food stamps was not a rational basis on which to enact legislation).

Here, the government's motivation for enacting Rule ONE is questionable. On its face Rule ONE appears to be premised on a prejudice toward the Internet adult entertainment industry, rather than the safety of children. This is especially true considering the vast amount of adult media content that children still have access to, and which goes unchecked. Rule ONE demonstrates a congressional desire to curtail the freedoms of those who would seek out the adult entertainment industry, and those who work in the adult entertainment industry. Like in *City of Cleburne*, Rule ONE is merely a way for Congress to express animus toward a certain group under the guise of legislation. Accordingly, should this Court choose to apply the rational basis test, Rule ONE is still unconstitutional.

CONCLUSION

The separation of powers is essential in ensuring that no branch of government goes unchecked. The Private Nondelegation Doctrine upholds the separation of powers that the Framers intended, and because of this KISA does not survive the Private Nondelegation

Doctrine. Further, Rule ONE's infringement on speech is a content-based regulation that is unconstitutional under both strict scrutiny and rational basis. Accordingly, Petitioners respectfully request that the judgment of the Fourteenth Circuit Court of Appeals be reversed.

Dated: January 20, 2025

Respectfully Submitted,

Team 27

Counsel for Petitioner

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:
 - (1) government-issued identification; or
 - (2) 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:
 - (1) \$10,000 per day that the entity operates an Internet website in violation of the age verification requirements of this Rule;
 - (2) \$10,000 per instance when the entity retains identifying information in violation of Section 129B.002(b); and
 - (3) 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:
 - (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
 - (2) the history of previous violations;
 - (3) the amount necessary to deter a future violation;
 - (4) the economic effect of a penalty on the entity on whom the penalty will be imposed;
 - (5) the entity's knowledge that the act constituted a violation of this chapter; and
 - (6) 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 committees;
 - 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 antitrafficking 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 antitrafficking 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. 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
 - iii. The World Prevent Abuse Forum Best Practices
 - iv. 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.
 1. 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. (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 antiexploitation 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
- iv. 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 antiexploitation 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.