

Vindication by the Fifth Circuit Court of Appeals



Institute for
Family Studies



**CENTER FOR
RENEWING
AMERICA**

On March 8, 2024, the U.S. Court of Appeals for the Fifth Circuit upheld a Texas law requiring age verification measures to guard the state's kids from pornography sites. The decision is a major win for the children of the Lone Star State. It also represents a vindication of the policy work of scholars from the [Center for Renewing America](#), the [Ethics and Public Policy Center](#), and the [Institute for Family Studies](#), who have fought a David-and-Goliath battle against powerful interests to see such laws enacted throughout the country.

In August 2022, scholars from these three organizations published a joint policy brief titled, "[Protecting Teens from Big Tech: Five Policy Ideas for States](#)." The overarching objective of this brief was to provide legislative strategies to states seeking to protect children online and empower parents. Because of the inaction of Congress and some misguided rulings by the Supreme Court—decided long before social media and smartphones were invented—social media platforms and pornography sites have been free to addict America's children and expose them to obscene content with impunity, all of which has fostered a mental health crisis among adolescents on a historic scale. The brief encouraged states to take action to protect children, rather than wait for the breaking of Congressional gridlock, and gave guidance for how states could do this effectively and constitutionally.

The very first policy idea that our scholars proposed was to require age-verification for pornography sites and age-verification with parental consent for social media platforms. In 2023, nearly a dozen states implemented one or both of these measures. In 2024, [by some counts](#), more than a dozen additional states are considering following their example.

But these efforts have not come without challenge. Lobbyists representing Big Tech and Big Porn, aided by the American commentariat, have been fiercely contesting these laws throughout the country, with an undue confidence that courts would find them

unconstitutional. These gargantuan companies have taken a shock and awe approach, suing every such law passed, trying to scare states away from taking action or causing them to second guess the underlying logic of their bills.

From the beginning of this effort, the scholars of the Center for Renewing America, the Ethics and Public Policy Center, and the Institute for Family Studies have maintained that judicial precedent only superficially weighed against these measures. A closer analysis of the relevant rulings shows that the underlying factual predicates upon which these decisions relied have been radically undermined by advances in technology, and, therefore, the precedents are ripe for revisiting.

Our scholars have always maintained that the implementation of these laws was going to entail a ferocious battle, but that it was one that states could ultimately win. Therefore, we were vindicated and overjoyed, but not surprised, when the Fifth Circuit Court of Appeals [ruled the following](#):

Applying rational-basis review, the age-verification requirement is rationally related to the government's legitimate interest in preventing minors' access to pornography. . . . Therefore, the age-verification requirement does not violate the First Amendment.

We believe that the logic of this ruling can also be applied to age-verification for social media platforms. With this decision, we strongly encourage lawmakers in more states to adopt these types of laws, and prepare to fight for them all the way up to the Supreme Court. What we are striving for is nothing less than the heart and soul of America's children.