

Pornhub suspends site in Texas due to state's age-verification law

Legal experts say a 5th Circuit decision to uphold part of a Texas law regulating adult entertainment websites conflicts with U.S. Supreme Court precedent regarding minors' access to obscene material online

BY **WILLIAM MELHADO** MARCH 14, 2024 15 HOURS AGO

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In the latest installment of the dispute between adult content websites and Texas lawmakers, Pornhub suspended service to Texans on Thursday arguing a state law infringes on adults' rights to access protected speech.

Pornhub, one of the most visited websites in the world, sued Attorney General Ken Paxton last year to block enforcement of a 2023 state law that requires websites that host pornography to institute age-verification measures and display health warnings on its pages.

Pornhub disabled its website in Texas after the 5th Circuit Court of Appeals upheld the age-verification requirement in a ruling last week that cited a 1968 U.S. Supreme Court decision preventing the sale of obscene materials to minors. But the question of regulating minors' access to online material has already been well established, legal experts say, and it stands in sharp contrast to the most recent decision from the 5th Circuit.

The appeals court previously reversed an injunction of a U.S. District Court judge, which had blocked the law from going into effect in August. The 5th Circuit's temporary stay required pornography websites to impose age-verification measures and display health warnings that said pornography is proven to harm brain development.

In the most recent decision on March 7, the 5th Circuit decided the age-verification component of the law could stand, but ruled that the law's required health warnings unconstitutionally compelled speech.

In response to the 5th Circuit's decision, Pornhub blocked Texans from their site.

“Unfortunately the Texas law for age verification is ineffective, haphazard, and dangerous. Not only will it not actually protect children, it will inevitably reduce content creators’ ability to post and distribute legal adult content and directly impact their ability to share the artistic messages they want to convey with it,” said Alex Kekesi, vice president of brand and community at Aylo, Pornhub’s Canadian-based parent company.

Kekesi said content creators would lose out on revenue from the millions of Texas users no longer able to access Pornhub. Kekesi added that Aylo planned to appeal the decision and continue fighting for the adult entertainment industry and the performers who earn a living through it.

In a message that appears when a user tries to access Pornhub from a Texas address, the company argued that safety measures, like age-verification requirements, do not protect minors. The adult entertainment behemoth said the restriction only pushes users to access other sites with fewer privacy protections.

Paxton celebrated his victory against Pornhub and other sites that tried to block the law from taking effect in a Thursday statement to the Tribune.

“Sites like PornHub are on the run because Texas has a law that aims to prevent them from showing harmful, obscene material to children,” said Paxton. “In Texas, companies cannot get away with showing porn to children. If they don’t want to comply, good riddance.”

The 5th Circuit’s decision on Pornhub’s lawsuit, concerning online content, cited a 1968 ruling from the Supreme Court, which upheld a New York statute that prohibited the sale of obscene magazines to minors. In *Ginsberg v. New York*, the nation’s highest court decided that children could be constitutionally denied access to material that was “harmful to minors.”

Decades later, with the internet widely available to the public as a platform to distribute material — obscene and not — similar questions about minors’ access to “harmful material” came before the Supreme Court.

In two separate cases stemming from congressional legislation aiming to prevent the distribution of obscene material to minors, the Supreme Court ruled that the 1996 Communications Decency Act and the 1998 Child Online Protection Act were unconstitutional restrictions of free speech.

The court argued that efforts to prevent minors from accessing obscene materials, such as age verification, could impede communication between adults.

“As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it,” Justice John Paul Stevens wrote in the majority opinion of *Reno v. American Civil Liberties Union* that found the anti-indecency provisions of the Communications Decency Act violated the First Amendment.

Nearly three decades after Stevens’ opinion, Texas lawmakers tried to impose age-verification measures online.

“We did all this. Everything that’s been discussed here has already been discussed and resolved,” Eric Goldman, a professor at the Santa Clara University School of Law who specializes in internet law, told The Texas Tribune.

Goldman said the Supreme Court has already ruled on the regulation of online obscene materials in light of the *Ginsberg* case. He said the nation’s highest court determined that the internet is different from the offline world, and the two cannot be treated the same way.

He maintained Texas’ age-verification requirement is categorically unconstitutional because it forces all users to complete a mechanical process before accessing protected material, which can slow people down and act as a barrier to content. Goldman added it drags down the earning potential of publishers and adds costs to users who create content.

In drafting House Bill 1181, Goldman said, Texas legislators weren’t creative or careful to present new legal questions to longstanding concerns.

“The law hasn’t changed in between the last round of battles and today,” Goldman said. “So they’re gambling on the hope that a court might change. And to me, that’s a very dicey way of making legislation because they’re basically saying, ‘We know it was [unconstitutional], we just don’t care.’”

Using the 2023 law, Goldman said, Texas legislators are tempting the Supreme Court to “overturn its own precedent, which it has a recent history of doing.”

Thomas Leatherbury, director of the First Amendment Clinic at SMU Dedman School of Law, said he’s concerned about the trend in the courts regarding First Amendment cases. But threats to free speech have also been originating on the opposite side of the legal process, he said.

“There’s a troubling trend in the Legislature … where, despite all the lawyers that are in the Legislature, they don’t seem to care about constitutional issues as long as it’s popular with

their voters,” Leatherbury said.

As an example of compelled speech that Leatherbury said violates the First Amendment is the Star Spangled Banner Protection Act. The 2021 Texas law requires professional sports teams to play the national anthem before games if they have contracts with the state government. No one has successfully sued to overturn it.

Last year, the Texas Legislature passed HB 1181 as part of a broader Republican priority to prevent children from being exposed to sexual material.

Two other bills that Gov. Greg Abbott signed into law — one of which required book vendors to rate the explicitness of materials sold to Texas schools and another that restricted certain drag shows — have been at least partially blocked in federal courts. In both cases, federal judges argued the new state laws crossed a line protected by the First Amendment.

Free Speech Coalition, an association of adult entertainment industries and one of Pornhub’s co-plaintiff in the lawsuit against Texas, argued that the age-verification law was weaponized to censor LGBTQ+ literature, reproductive rights resources, sex education, art and healthcare. The coalition said adult entertainment has been “the canary in the coal mine of free speech.”

“Many of the First Amendment protections Americans hold dear are the result of hard battles fought by the adult industry and others over issues such as these,” the coalition said in a statement following the 5th Circuit’s decision. “None of these battles has ever been simple or easy, though they have been important and just.”

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