

NOTE

IF YOU LOVE SOMETHING, LET IT GO: GIVING
UP GOVERNMENT MANDATED ONLINE AGE
RESTRICTIONS IN FAVOR OF § 230 INSPIRED
IMMUNITY

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*Across the United States, lawmakers are turning to age restrictions and verification mandates as a catchall solution for online risks to children. However, these laws raise concerns in the legal landscape and beyond, not the least of which are First Amendment constitutional issues. This Note critiques mandatory age gate policies and projects future applications in areas of emerging concern, specifically the potential for expansion to age gating artificial intelligence (“AI”) chatbots. Despite the Supreme Court’s approval of age verification and restriction as it applies to adult content online in *Free Speech Coalition v. Paxton*, their recent unsigned order on the matter of *NetChoice v. Fitch* indicates that their approval may not extend to other corners of the internet. However, this order is not necessarily predictive of what the Court would do in a full opinion on this or a similar matter. This Note closes by offering an alternative solution to the direct legislation efforts: Section 230 inspired laws that reward the choice to implement age verification and restriction rather than of requiring age verification and restriction and doling out punishments for non-compliance.*

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I. INTRODUCTION

The new and the unknown excite both curiosity and trepidation.¹ Technology is no different.² Technological advancements have always bred fear in humanity, as far back as the invention of the writing systems now largely taken for granted.³ While new technologies can solve varied issues and improve efficiency, they also pose the risk of

1. Mirella Veras, *How Humanity has Always Feared Change: are You Afraid of Artificial Intelligence?*, 17 CUREUS, May 2025, at 1, 1–2, <https://pmc.ncbi.nlm.nih.gov/articles/PMC12140851> [https://perma.cc/GCF4-5YV5].

2. *Id.*

3. *Id.*

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creating new problems.⁴ As technology continues to develop at a breakneck pace,⁵ issues abound⁶ and fear is inevitable.

Concerns about children's access to certain content on the internet have also existed almost as long as the internet itself.⁷ Worries have often focused on pornographic material,⁸ but have expanded in recent years to raise red flags regarding social media sites and their respective content.⁹

More recently, the emergence of artificial intelligence ("AI") has generated "fear[] surrounding job automation, ethical dilemmas, loss of creativity, and even existential risks . . . across multiple domains."¹⁰ Beyond that, researchers have voiced their concerns about the environmental harm that AI causes.¹¹

Parents, lawmakers, and regulatory agencies have growing concerns regarding children's use of AI chatbots ("chatbots").¹²

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4. Mat Honan, *Tackling Our Biggest Problems*, MIT TECH. REV. (Nov. 1, 2023), <https://www.technologyreview.com/2023/11/01/1081585> [https://perma.cc/JG6D-XNS6].
 5. Max Roser, *This Timeline Charts the Fast Pace of Tech Transformation Across Centuries*, WORLD ECON. F. (Feb. 27, 2023), <https://www.weforum.org/stories/2023/02/this-timeline-charts-the-fast-pace-of-tech-transformation-across-centuries/> [https://perma.cc/6949-K3JV].
 6. See, e.g., Yuni Wen & Matthias Holweg, *A Phenomenological Perspective on AI Ethical Failures: The Case of Facial Recognition Technology*, 39 A.I. & SOC. 1929, 1929–30 (2023).
 7. Eric N. Holmes, *Online Age Verification (Part I): Current Context*, CRS LEGAL SIDEBAR, CONG. RSCH. SERV. LSB 11020 at 1 (2023), <https://www.congress.gov/crs-product/LSB11020> [https://perma.cc/K42E-V9BA].
 8. See, e.g., Camille Mori et. al., *Exposure to sexual content and problematic sexual behaviors in children and adolescents: A systematic Review and Meta-analysis*, 143 CHILD ABUSE & NEGLECT 1, 1 (2023) <https://doi.org/10.1016/j.chiabu.2023.106255> [https://perma.cc/MB26-CLEK].
 9. *Id.*
 10. Veras, *supra* note 1, at 5.
 11. See, e.g., Edmund L Andrews, *AI's Carbon Footprint Problem*, STAN. DOERR SCH. SUSTAINABILITY (July 2, 2020), <https://sustainability.stanford.edu/news/ais-carbon-footprint-problem> [https://perma.cc/C3GK-AVFG]; Vaclav Moravec et al., *Environmental Footprint of GenAI—Changing Technological Future or Planet Climate?*, 10 J. INNOVATION & KNOWLEDGE, Mar. 2025, at 1, 1–2.
 12. Press Release, National Association of Attorneys General, Bipartisan Coalition of State Attorneys General Issues Letter to AI Industry Leaders on Child Safety (Aug. 26, 2025), <https://www.naag.org/press-releases/bipartisan-coalition-of-state->

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“[C]hildren are encountering AI more and more frequently in the early years,” and even chatbots that are “rated suitable for children” are unable to so much as “respond helpfully to” something as serious as “reports of child sexual abuse.”¹³

Unfortunately, the issues with chatbots go further than failing to aid vulnerable users seeking assistance. Many chatbots are “readily accessible” to children, as they are “not only free but also easily found with a simple online search.”¹⁴ Multiple reports indicate that these free and easily found chatbots are allegedly engaging in sensual and sexual conversations with minors.¹⁵ Furthermore, chatbots are even reportedly encouraging children to harm themselves and others.¹⁶

attorneys-general-issues-letter-to-ai-industry-leaders-on-child-safety/ [https://perma.cc/DJ23-U5FU]; *Parents Worry About AI But Know Little About It*, BARNAL (Apr. 22, 2024), <https://www.barna.com/research/parents-ai/> [https://perma.cc/RFY7-32EP] (“[N]early three in four parents (72%) are concerned about AI’s impact on children and teens.”); Cara Tabachnick, *Parents of Teens who Died by Suicide After AI Chatbot Interactions Testify in Congress*, CBS NEWS (Sep. 16, 2025, at 17:27 ET), <https://www.cbsnews.com/news/ai-chatbots-teens-suicide-parents-testify-congress/> [https://perma.cc/5DD6-JLZS] (“California State Senator Steve Padilla, who introduced legislation to create safeguards in the state around AI Chatbots, said in a statement to CBS News, ‘We need to create common-sense safeguards that rein in the worst impulses of this emerging technology that even the tech industry doesn’t fully understand.’”); Clare Duffy, *FTC Investigating AI ‘Companion’ Chatbots Amid Growing Concern About Harm to Kids*, CNN (Sep. 11, 2025, at 14:42 ET), <https://www.cnn.com/2025/09/11/tech/ftc-investigating-ai-companion-chatbots-kids-safety> [https://perma.cc/DFK9-8ULJ] (“The Federal Trade Commission has launched an investigation into seven tech companies around potential harms their artificial intelligence chatbots could cause to children and teenagers.”).

13. Nomisha Kurian, *AI’s Empathy Gap: The Risks of Conversational Artificial Intelligence for Young Children’s Well-Being and Key Ethical Considerations for Early Childhood Education and Care*, 26 CONTEMP. ISSUES EARLY CHILDHOOD 132, 133 (2025).
14. *Id.* at 134.
15. Complaint at 25, 77–81, A.F. ex rel. J.F. v. Character Technologies, Inc., No. 6:24-cv-01903-ACC-EJK (E.D. Tex. Dec. 9, 2024); Jeff Horwitz, *Meta’s ‘Digital Companions’ Will Talk Sex with Users—Even Children*, WALL ST. J. (Apr. 26, 2025, at 20:30 ET) <https://www.wsj.com/tech/ai/meta-ai-chatbots-sex-a2531rbf> [https://perma.cc/L2DF-W83M (dark-archive)].
16. Complaint, *supra* note 15, at 14–18, 26–29, 82–83; Chad de Guzman, *AI Chatbots Can Be Manipulated to Provide Advice on How to Self-Harm, New Study*
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Age verification and restriction in order to access an online product or service, also called age gating, is becoming a catchall solution to protect children online.¹⁷ This solution is easy enough in tangible spaces where identification documents can be checked and authenticated, though this system is subject to human error and contingent on enforcers' compliance.¹⁸

However, online age verification and restriction are rife with constitutional issues, and the Supreme Court has indicated that, in some areas, the weaknesses may be too great to overcome.¹⁹ Since direct governmental regulation is at risk of becoming non-viable, encouraging companies to choose to restrict minors from accessing their platforms is a plausible alternative.

This Note explores the likely expansion of age verification and restriction efforts into new spaces and proposes a viable alternative to government mandates. Part II overviews relevant concepts. Part III lays out the current age verification and restriction landscape in the United States. Part IV overviews the relevant Supreme Court decision, *Free Speech Coalition v. Paxton*, and a more recent unsigned Supreme Court order, *NetChoice v. Fitch*²⁰ regarding age verification and restriction. Part V applies constitutional principles and makes

Shows, TIME (July 31, 2025, at 06:00 ET) <https://time.com/7306661/ai-suicide-self-harm-northeastern-study-chatgpt-perplexity-safeguards-jailbreaking/> [<https://perma.cc/U6ZT-EFG8>].

17. Amber C. Thomson et al., *Children's Online Privacy: Recent Actions by the States and the FTC*, MAYER BROWN (Feb 25, 2025), <https://www.mayerbrown.com/en/insights/publications/2025/02/protecting-the-next-generation-how-states-and-the-ftc-are-holding-businesses-accountable-for-childrens-online-privacy> [<https://perma.cc/7QVC-N67T>]; Mark MacCarthy, *The Fragmentation of Online Child Safety Regulations*, BROOKINGS (Aug. 14, 2023), <https://www.brookings.edu/articles/patchwork-protection-of-minors/> [<https://perma.cc/N84V-GUU9>].
18. See *infra* note 25 and accompanying texts; BRAD KREVER ET AL., REDUCING YOUTH ACCESS TO ALCOHOL 1, 2, 7 (2018), https://www.nabca.org/sites/default/files/assets/publications/white_papers/RRForum%20and%20NABCA%20-%20Reducing%20Youth%20Access%20to%20Alcohol.pdf [<https://perma.cc/2X9N-3DAS>].
19. See discussion *infra* Part IV.B.
20. No. 25A97, slip op. 1–2 (U.S. Aug. 14, 2025) (Kavanaugh, J., concurring) (Kavanaugh, J., concurring), <https://www.supremecourt.gov/opinions/24pdf/25a97-5h25.pdf> [<https://perma.cc/NC28-PZ2G>].

predictions about the emerging conversation around chatbots, and Part VI suggests that the way forward may be by going around the mandatory framework in favor of immunity observant of constitutional rights.

II. THE BASICS OF AGE RESTRICTION, AGE VERIFICATION, AND AI CHATBOTS

A. Age Verification and Restriction

Age verification and restriction touch many areas of everyday life and mark large milestones of growing up. In person age verification and restriction are commonplace in the United States. Age is a criterion in evaluating who is eligible for a driver's permit or license,²¹ who is permitted to vote,²² and who can purchase or consume products containing nicotine and alcohol.²³ These age restrictions are usually maintained by verifying a person's age based on their government identification.²⁴ With in-person verification, the verifier can physically check a person's driver's license, passport, or other government identification that includes the person's age and evaluate the document's authenticity.²⁵

Age verification and restriction on the internet follow the same general steps as in-person verification: (1) set a minimum or maximum age (or both); (2) compare the age of the person attempting to access the site with the age requirements; and then (3) permit or deny access accordingly.²⁶ However, the methods of verification online can differ

21. See, e.g., N.C. GEN. STAT. § 20-9 (2025).

22. See, e.g., *id.* § 163-55.

23. See, e.g., *id.* § 14-313.

24. See, e.g., *id.* § 14-313(a)(2), (b), (b1), (c).

25. See, e.g., *Checking Identification*, CAL. DEP'T OF ALCOHOLIC BEVERAGE CONTROL, <https://www.abc.ca.gov/education/licensee-education/checking-identification/> [<https://perma.cc/9TNH-ZCJM>] (last visited Nov. 8, 2025) (laying out a system for evaluating the validity of identification that relies on the feel and look of the ID, and noting things to look for to identify minors and "how they may try to fool" examiners).

26. Compare *Checking Identification*, *supra* note 25 (discussing how to check identification documents for the sale of alcohol), with Chelsea Jarvie & Karen Renaud, *Are You Over 18?: A Snapshot of Current Age Verification Mechanisms* *footnote continued on next page*

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from those available in in-person situations. While there are methods for verifying age online using government documents, there are other processes available, each with varying effectiveness.²⁷

Online age verification can be done using many methods, from the extremely surface-level to the rigorous and invasive. The various methods include checkboxes, buttons, photo analysis, and document uploads.²⁸ Methods like checkboxes and buttons essentially work on the honor system, simply prompting users to claim or acknowledge that they are of or above a certain age.²⁹ More rigorous methods—like uploading images of government documentation that verifies age—can raise concerns about privacy and data security.³⁰ Intermediate methods, such as analyzing user photos with AI that estimates age, implicate potential accuracy issues.³¹

Like most age verification systems, these techniques are not foolproof. A virtual private network (“VPN”) is one common way to disguise a device’s actual location and can make it appear as though a user is in a state or country that does not require age verification and restriction.³² For methods that require an image of the user or an identification document, the user could use a fake, borrowed, or stolen identification document to gain access. For photo verification, the user could take a photograph of another person or a poster to circumvent the system.

at 2, 14–16 (Dewald Roode Info. Sec. Rsch. Workshop, 2021), <https://pure.strath.ac.uk/ws/portalfiles/portal/142093023/AgeVerification.pdf> [https://perma.cc/L5SN-XU26] (discussing the different ways to detect whether a person is lying when entering information into a smartphone for virtual age verification).

27. Jarvie & Renaud, *supra* note 26, at 9.

28. *Id.*

29. *Id.* at 8.

30. *Id.*

31. *Id.* at 15–17. See generally Tzvi Ganel, Carmel Sofer & Melvyn A. Goodale, *Biases in Human Perception of Facial Age are Present and More Exaggerated in Current AI Technology*, 12 SCL. REP. art. no. 22519 (2022) (comparing the performance of human observers and AI programs in estimating people’s ages from photos of their faces).

32. See Christine Marsden, *Age-Verification Laws in the Era of Digital Privacy*, 10 NAT’L SEC. L.J. 210, 238–39, 242 (2023).

These online loopholes often have lower barriers to entry and lower costs than workarounds for in-person verification. Though high-quality VPNs cost users, there are free options,³³ and borrowing a friend or parent's documentation (with or without permission) is free, quick, and easy. Even simpler is lying on checkbox forms that simply ask a user to confirm whether they are over a certain age. Acquiring fake government documentation for physical use involves high financial costs as well as difficulty in creation or acquisition,³⁴ though some find a free alternative—verifiers who do not enforce verification and restriction rules.³⁵ This multitude of concerns will follow age verification efforts as they continue, especially as age gates are implemented in new areas. One place that age gates may soon appear is in front of chatbots, as discussed in Part V.³⁶

B. AI Chatbots

Chatbots are a form of AI that “can mimic human conversation.”³⁷ Chatbots serve many purposes for users, like general entertainment, education, business use, and information retrieval.³⁸ Chatbots also

33. See generally Brett Cruz & Gene Petrino, *How Much is a VPN?*, SECURITY.ORG (Oct. 20, 2025) <https://www.security.org/vpn/cost/> [https://perma.cc/5FGV-SYHP] (discussing average monthly and average total cost of a sample of VPNs and noting low cost and free options).

34. See, e.g., Douglas Quenqua, *Fake IDs, Still Coveted, are Harder to Get*, N.Y. TIMES (July 23, 2014), <https://www.nytimes.com/2014/07/24/fashion/fake-ids-still-coveted-are-harder-to-get.html> [https://perma.cc/GR34-LY3Y] (“All told, Samantha said, she has probably spent more on IDs than alcohol.”). See generally Catherine Yan, *The Hidden Economy of Fake IDs: Supply, Demand, and the Game of Staying one Step Ahead*, 6 EMORY ECON. REV. 27 (2025) (discussing the push and pull caused by increased security and anti-counterfeit measures with better counterfeits and turnover in consumer base).

35. See, e.g., Alexander C. Wagenaar et. al., *Where and How Adolescents Obtain Alcoholic Beverages*, 108 PUBLIC HEALTH REPORTS 459, 460 (1993) (“Underage youth in most areas can easily locate an establishment that will sell or serve them alcohol.”).

36. See *infra* Part V.C.

37. Eleni Adamopoulou & Lefteris Moussiades, *An Overview of Chatbot Technology*, in ARTIFICIAL INTELLIGENCE APPLICATIONS & INNOVATIONS 373, 373 (Ilias Maglogiannis et al. eds., 2020), https://doi.org/10.1007/978-3-030-49186-4_31 [https://perma.cc/QEN6-S3G3].

38. *Id.* at 375.

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provide benefits to developers with advantages in the ease of development and maintenance.³⁹

Broadly speaking, experts categorize chatbots based on a few categories: “the knowledge domain, the service provided, the goals, the input processing and response generation method, the human-aid, and the build method.”⁴⁰ However, “chatbots do not exclusively belong to one category or another, [rather,] these categories exist in each chatbot in varying proportions.”⁴¹ Regardless of design, chatbots are not thinking or reasoning in a truly human way.⁴² Chatbots can only approximate human writing using pattern recognition and pattern mapping.⁴³ To reach a point where a chatbot can regularly, and believably, string together natural and human-sounding sentences and paragraphs, it must be trained on a significant amount of data.⁴⁴ A chatbot trains by extracting patterns from data derived from text written by humans on which to base its “speech.”⁴⁵

Chatbots pose possible risks to children,⁴⁶ and looking at the chatbots through the lens of existing protective frameworks, like the immunity offered by § 230, could help guide solutions.

III. THE CURRENT STATE OF AGE VERIFICATION AND RESTRICTION LAWS

Nearly half of the states have laws that require age verification and restriction on websites with explicit adult content.⁴⁷ Several states

39. *Id.* at 373–74.

40. *Id.* at 377.

41. *Id.* at 379.

42. *See id.* at 376–77 (explaining important terms that show how chatbots work).

43. *Id.*

44. *See id.* at 378–79 (illustrating how chatbots work and pointing out that it is difficult to train large language models).

45. *See id.* (describing how chatbots work and that training them is necessary).

46. *See, e.g., Horwitz supra* note 15.

47. *Online Pornography Age Verification Laws by U.S. State*, KINDBRIDGE BEHAV. HEALTH, <https://kindbridge.com/online-pornography-age-verification-laws-by-state-map/> [<https://perma.cc/YC77-DFES>]; *see also* Free Speech Coal., Inc. v. Paxton, 606 U.S. 461, 467 (2025) (explaining that the Texas law at issue “defines [s]exual material harmful to minors ‘as material that: (1) “is designed to appeal to or pander to the prurient interest” when taken “as a whole and

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have also passed laws requiring age verification and restriction for social media sites.⁴⁸ While some states restrict minors from making accounts on social media platforms, others police how social media companies interact with minor users or their data.⁴⁹ Unsurprisingly, most of the states with social media age verification and restriction laws are also among the states that have similarly restrictive laws regarding adult content sites.⁵⁰ After these states succeeded in restricting explicit online content, they passed new laws restricting social media to reduce children's use of online platforms and protect children online.⁵¹ Several other states have taken note and proposed bills that would implement age restrictions and verification requirements on social media.⁵² These legislative efforts indicate a

with respect to minors"; (2) describes, displays, or depicts "in a manner patently offensive with respect to minors" various sex acts and portions of the human anatomy, including depictions of "sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, [and] excretory functions"; and (3) "lacks serious literary, artistic, political, or scientific value for minors."").

48. *US State Age Assurance Laws for Social Media*, AGE VERIFICATION PROVIDERS ASS'N (Oct. 2025), <https://avpassociation.com/us-state-age-assurance-laws-for-social-media/> [https://perma.cc/6Y4J-7584].
49. *Compare* Utah Minor Protection in Social Media Act, S.B. 194, 2024 Gen. Sess. (Utah 2024) (Social Media Regulation Amendments) (requiring social media companies to verify a new account holder's age using an approved system), *with* Md. Kids Code, H.B. 603, 2024 Gen. Assemb., Reg. Sess. (Md. 2024) (requiring a covered entity that offers an online product reasonably likely to be accessed by children to complete a data protection impact assessment under certain circumstances).
50. *Compare* AGE VERIFICATION PROVIDERS ASS'N, *supra* note 48 (listing social media age assurance laws by state), *with*, KINDBRIDGE BEHAV. HEALTH, *supra* note 49 (listing online pornography age verification laws by state).
51. *Compare* Miss. S.B. 2346, 2023 Leg., Reg. Sess. (Miss. 2023) (outlining age-verification for explicit websites, passed in 2023), *with* Miss. H.B. 1126, 2024 Leg., Reg. Sess. (Miss. 2024) (laying out age-verification for social media platforms, passed in 2024).
52. Gary Guthrie, *Nearly a Dozen States are Moving Towards Requiring Age Verification for Internet Users*, CONSUMER AFFS. (June 12, 2024), <https://www.consumeraffairs.com/news/nearly-a-dozen-states-are-moving-towards-requiring-age-verification-for-internet-users-061224> [https://perma.cc/R463-BNAB].

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significant trend toward increased government interference across the internet.

The existing laws for age verification and restriction vary in their underlying motivations and requirements.⁵³ For example, New York’s law regarding minors on social media addresses site design—algorithm-based feeds and nighttime notifications⁵⁴—while Mississippi’s law focuses on minors’ access by requiring parental consent for account creation.⁵⁵ Thus, each law may face different challenges and be more or less likely to survive. Recently, in *NetChoice v. Fitch*,⁵⁶ the Court spoke on the issue of mandated age gates on social media sites in an unsigned order that, at first glance, appears to stray from a slightly earlier opinion regarding the age restriction of adult content sites in *Free Speech Coalition v. Paxton*.⁵⁷

IV. THE RECENT DEVELOPMENTS: ADULT CONTENT FOR ADULTS, SOCIAL MEDIA FOR ALL

A. Free Speech Coalition v. Paxton: *Children Lack the Right to Access Sexual Content*

In *Free Speech Coalition v. Paxton*,⁵⁸ the Court upheld a Texas age verification and restriction law preventing minors from accessing sites where sexual content comprised a certain percentage of the site despite a constitutional challenge.⁵⁹ The Court determined that

53. See *supra* note 49 and accompanying text.

54. Press Release, Letitia James, Off. of the N.Y. State Att’y Gen., Attorney General James Releases Proposed Rules for SAFE for Kids Act to Restrict Addictive Social Media Features and Protect Children Online (Sep. 15, 2025), <https://ag.ny.gov/press-release/2025/attorney-general-james-releases-proposed-rules-safe-kids-act-restrict-addictive> [<https://perma.cc/3LYW-YBS3>].

55. *Walker Montgomery Protecting Children Online Act*, Miss. H.B. 1126, 2024 Leg., Reg. Sess. (Miss. 2024) (“A digital service provider shall not permit an account holder who is a known minor to be an account holder unless the known minor has the express consent from a parent or guardian.”).

56. See *NetChoice, LLC v. Fitch*, No. 25A97, slip op. at 1–2 (U.S. Aug. 14, 2025) (Kavanaugh, J., concurring) <https://www.supremecourt.gov/opinions/24pdf/25a97-5h25.pdf> [<https://perma.cc/NC28-PZ2G>].

57. See *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 499 (2025).

58. *Id.* at 465–66.

59. *Id.*

minors lack a legal right to access explicit content, and adults are not impermissibly burdened by the law.⁶⁰ The decision labeled the potential burden of restrictions on the protected speech of adult users as merely “incidental” to the lawful restriction of minors accessing sexual content.⁶¹

Paxton only addressed restrictions on sexual content, which is considered obscene from the perspective of minors.⁶² The Court explained that obscenity is not a protected form of speech regardless of audience, and “[h]istory, tradition, and precedent establish that sexual content that is obscene to minors but not to adults is protected in part and unprotected in part.”⁶³ Further, the majority noted that “[t]he power to verify age is part of the power to prevent children from accessing speech that is obscene to them,” so “no person—adult or child—has a First Amendment right to access [speech obscene to minors] without first submitting proof of age.”⁶⁴

Notably, the Court evaluated the challenged law using intermediate scrutiny.⁶⁵ Intermediate scrutiny requires that the law in question “advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests.”⁶⁶ When a law classifies people by age, courts typically use rational basis review unless the law impinges upon a constitutionally protected right because age is not a suspect classification.⁶⁷ The law in question in *Paxton* did impinge upon a constitutionally protected right, that of the First Amendment, and was thus subject to a determination of what the proper level of scrutiny was beyond the age based classification.⁶⁸ In

60. *Id.* at 468–69, 472.

61. *Id.* at 478.

62. *Id.* at 469–70, 472–73.

63. *Id.* at 461.

64. *Id.* at 462, 478.

65. *Id.* at 462–63, 477–78, 483, 491.

66. *Id.* at 471.

67. See, e.g., *City of Dallas v. Stanglin*, 490 U.S. 19, 23–24 (1989).

68. *Paxton*, 606 U.S. at 470–71, 477–78.

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deciding upon intermediate scrutiny, the Court addressed the other levels of scrutiny and explicitly rejected them.⁶⁹

The law challenged in *Paxton* restricts minors' access based on content, only requiring age gates on sites with a certain percentage of explicit content.⁷⁰ Normally, content-based legal restrictions are subject to strict scrutiny.⁷¹ A content-based law "target[s] speech based on its communicative content" making it "presumptively unconstitutional" and only justified if it can satisfy strict scrutiny.⁷² In *Paxton*, Texas's law targets speech based on whether or not its content is obscene from the perspective of minors.⁷³ While obscenity is a category of speech that is "understood to fall outside the scope of the First Amendment," the speech is only obscene to minors and thus still protected for adults.⁷⁴

In deciding to use intermediate scrutiny rather than strict scrutiny, the Court noted that requiring proof of age does not *directly* regulate the protected speech of an adult and, as such, only incidentally burdens such speech.⁷⁵ The majority reasoned that while "[a]dults have the right to access speech obscene only to minors," they do not have a "First Amendment right to avoid age verification."⁷⁶ Further, they defined the government interest rather narrowly as "shielding children from sexual content," though they mention simply protecting minors as a broader category of government interest.⁷⁷ Although the explanation included a slippery slope argument that the use of strict scrutiny would call every single existing age restriction into question,⁷⁸ the Court's other reasons for rejection do the heavy

69. *Id.* at 477, 483–95 (discussing the level of scrutiny that applies and explaining the reasoning behind the Court's rejection of both the contention that the law should be subject to strict scrutiny and the opposing view that the law is only subject to rational-basis review).

70. *Id.* at 466.

71. *Id.* at 470–71.

72. *Id.* at 471.

73. *Id.*

74. *Id.*

75. *Id.* at 482–83.

76. *Id.*

77. *Id.* at 496–98.

78. *Id.* at 494.

lifting and make its fallacy-based argument forgivable, if not ignorable.⁷⁹

Additionally, the Court rejected Texas's recommendation to apply only the rational basis test.⁸⁰ According to the Court, rational basis "fails to account for the incidental burden that age verification necessarily has on an adult's First Amendment right to access speech obscene only to minors."⁸¹

Applying intermediate scrutiny allowed the Court to ensure that "legislatures do not use ostensibly legitimate purposes to disguise efforts to suppress fundamental rights" and that the decision would not "call into question *all* age-verification requirements, even longstanding in-person requirements."⁸² Courts may yet be willing to say that age gates as applied in other circumstances are subject to a different level of scrutiny. With expansions of age gating efforts onto social media generally,⁸³ the protected speech of the child users is likely impacted. This consideration may cause courts to apply a higher level of scrutiny to address that additional concern, especially as *Paxton* is so reliant on the argument that the speech was unprotected because explicit content is offensive from the perspective of minors. However, a law that age restricts social media may be considered content neutral. Content neutrality could maintain the same intermediate scrutiny, as in *Paxton*, or may only be subject to rational basis review, as with other age-based classifications. The level of scrutiny used is not determinative but can increase or decrease a law's likelihood of viability.

Despite *Paxton*'s emphasis and reliance on the nature of the content being restricted, some states have attempted to expand age verification and restriction efforts to other areas of the internet, notably social media sites. However, a more recent unsigned order from the Supreme Court has the potential to put a damper on states' power to age gate the internet beyond adult content.

79. *Id.* at 478–89, 492–95.

80. *Id.* at 477, 495.

81. *Id.* at 463.

82. *Id.* at 462 (emphasis in original); see also *id.* at 495.

83. See, e.g., *US State Age Assurance Laws for Social Media*, *supra* note 48.

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B. NetChoice v. Fitch: Age Gates on Social Media are “Likely Unconstitutional”

In August of 2025, the Supreme Court issued a brief unsigned order in the matter of *NetChoice, LLC v. Fitch* declining to block the enforcement of a Mississippi law that requires age verification and restriction on social media sites while the case is pending in the lower courts.⁸⁴ As an unsigned order, it is only certain to be binding as to Mississippi’s ability to enforce this particular statute while this specific litigation continues.⁸⁵ Further, the order does not address the case on its merits or provide a full opinion. Nevertheless, it is telling that the order—despite allowing the law to remain in effect during litigation—suggested that the law is likely unconstitutional.⁸⁶

Justice Kavanaugh joined in concurrence to explain that the denial rested on the failure of the plaintiff, NetChoice, to show that the balance of harms and equities tipped in its favor.⁸⁷ However, Justice Kavanaugh also noted that NetChoice is “likely to succeed on the merits—namely, that enforcement of the Mississippi law would likely violate its members’ First Amendment rights.”⁸⁸ Justice Kavanaugh’s only other statement was that the actions of the District Court were unsurprising, “and that seven other Federal District Courts have likewise enjoined enforcement of similar state laws.”⁸⁹ This acknowledgement points toward a general judicial aversion to the age verification and restriction of social media through legislative mandates and potentially on any expansions of age gating online.

84. *NetChoice, LLC v. Fitch*, No. 25A97, slip op. at 1–2 (U.S. Aug. 14, 2025) (Kavanaugh, J., concurring) <https://www.supremecourt.gov/opinions/24pdf/25a97-5h25.pdf> [<https://perma.cc/NC28-PZ2G>].

85. See, e.g., *Alpha Phi Alpha Fraternity, Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1326 (N.D. Ga. 2022) (referring to an injunction granted by the Supreme Court in an unsigned order as not precedential).

86. *NetChoice*, slip op. at 1–2 (Kavanaugh, J., concurring).

87. *Id.* at 1.

88. *Id.*

89. *Id.*

V. HURDLES FOR CURRENT AGE RESTRICTION MANDATES AND PREDICTIONS FOR FUTURE EXPANSION

A. *The Goals of Age Verification and Restriction*

The motivation for age verification and restriction laws may seem simple at first glance: protect children. However, the smaller-scale goals of age verification and restriction laws can vary substantially. These building-block goals are shaped by differing views about the risks children face and how to best address them.

For example, protecting children from dangerous situations like exploitation and trafficking was an early priority.⁹⁰ Luckily, human trafficking was illegal already and human trafficking laws cover trafficking activity online.⁹¹ Exploitation is also already prevented by federal child exploitation and obscenity laws.⁹²

“Harmful content” was the next wave, approved in part through *Paxton*.⁹³ However, what is considered “harmful” differs from person to person. Most may agree that trafficking and exploitation are harmful, but disagree on other issues spanning topics as diverse as which words

90. See, e.g., CBSNews.com staff, *How to Fight Off Online Predators*, CBS NEWS (May 19, 2000, at 11:30 ET), <https://www.cbsnews.com/news/how-to-fight-off-online-predators> [<https://perma.cc/D3QB-YRMV>].

91. *Human Trafficking: Key Legislation*, U.S. DEP’T JUST., <https://www.justice.gov/humantrafficking/key-legislation> [<https://perma.cc/3VUE-RF5Y>] (last visited Nov. 8, 2025); *Human Trafficking Laws & Regulations*, U.S. DEP’T HOMELAND SEC., <https://www.dhs.gov/human-trafficking-laws-regulations> [<https://perma.cc/G4UU-NFKE>] (last visited Nov. 8, 2025).

92. *Citizen’s Guide to U.S. Federal Child Exploitation and Obscenity Laws*, U.S. DEP’T JUST., CRIM. DIV. (Aug. 11, 2023), <https://www.justice.gov/criminal/criminal-ceos/citizens-guide-us-federal-child-exploitation-and-obscenity-laws> [<https://perma.cc/RQ9M-9CPD>].

93. See *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 467–68, 476, 488 (2025).

are “bad words”⁹⁴ and LGBTQ+ representation and affirmation.⁹⁵ Yet, these disagreements tend to change over time as social feelings shift and language evolves.⁹⁶ Additionally, what is actually “harmful” to a child depends on factors like their age, background, personality, and any mental or physical illnesses.⁹⁷ As discussed above, age gates that prevent children from accessing certain sites are one approach to protecting children from seeing or engaging with harmful content.⁹⁸ However, while age gates address children’s access and exposure, they do not address other concerns like data collection and use or addictive algorithms.⁹⁹

Another concern is data collected from children to allow websites to discern users’ ages. However, data protection is better addressed on the back end—with regulation of data collection and use by sites rather than restrictions placed on use.¹⁰⁰ Laws like the Children’s

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94. See generally Dinesh Deckker & Subhashini Sumanasekara, *Profanity Through Time: A Corpus-Based and Sociolinguistic Study of the Evolution, Usage, and Perception of English Curse Words*, 13 INT’L J. S. ECON. LIGHT 1 (2025) (investigating the historical development and contemporary usage of English curse words including semantic shifts, euphemism development, normalization, and censorship).
95. Compare GLAAD Shares Why LGBTQ Representation in Children’s Media is So Important, INTERNET & TELEVISION ASS’N (Aug. 25, 2021), <https://www.ncta.com/news/glaad-shares-why-lgbtq-representation-in-childrens-media-is-so-important> [<https://perma.cc/LXT3-YD6F>] (highlighting the importance of LGBTQ+ representation in children’s media), with Sue Bohlin, *Is There a Demonic Spirit of Homosexuality?*, PROBE (Mar. 27, 2010), <https://probe.org/is-there-a-demonic-spirit-of-homosexuality/> [<https://perma.cc/DPD2-9RHK>] (explaining beliefs about homosexuality being sinful).
96. Deckker & Sumanasekara, *supra* note 94, at 3–4.
97. See, e.g., Jacob R. Miller et. al., *Childhood Experiences and Adult Health: The Moderating Effects of Temperament*, 6 HELIYON, May 2020, at 1, 2, 3, 5 (exploring the influence temperament can have on how childhood experiences translate to adult health outcomes).
98. See Marsden, *supra* note 32, at 226.
99. Michelle Nie, *Algorithmic Addiction by Design: Big Tech’s Leverage of Dark Patterns to Maintain Market Dominance and its Challenge for Content Moderation*, ARXIV (Apr. 30, 2025), <https://doi.org/10.48550/arXiv.2505.00054> [<https://perma.cc/SKK9-D6CD>].
100. See, e.g., Cameron F. Kerry & John B. Morris, *Why Data Ownership is the Wrong Approach to Protecting Privacy*, BROOKINGS (June 26, 2019),
footnote continued on next page

Online Privacy Protection Act (“COPPA”) attempt to address data collection practices as they relate to children’s data.¹⁰¹ COPPA specifically governs the use of data collected regarding users under the age of thirteen and even offers parents a say regarding such data.¹⁰²

Though protecting children is a noble goal, the efforts to reach it—and smaller scale supporting goals—often take a dangerous ends-justify-the-means approach that risks overcorrecting and infringing on users’ constitutional rights.

B. *Issues with Mandating Age Gates Online*

Legislating mandatory age gates in online spaces comes with legal and logistical complications.¹⁰³ First, the legal concerns are glaring, especially the First Amendment right to the freedom of speech that Justice Kavanaugh pointed to in his *NetChoice* concurrence.¹⁰⁴ Second, such mandates include infringement on parents’ constitutional rights.¹⁰⁵ Separately, practical complications regarding mandatory age gates include loopholes, privacy risks, and costs to websites.

1. *Legal Challenges to Age Gate Mandates*

The main legal challenges to online age gates involve constitutional concerns about the First Amendment and parents’ rights. Each legal concern brings the potential for costly litigation and the need to rethink the direct legislative approach.

[https://www.brookings.edu/articles/why-data-ownership-is-the-wrong-approach-to-protecting-privacy/?utm](https://www.brookings.edu/articles/why-data-ownership-is-the-wrong-approach-to-protecting-privacy/?utm_source=ssrn&utm_medium=referral&utm_campaign=article&utm_term=.) [<https://perma.cc/E28D-7QKJ>] (explaining how data should not be viewed as a property right).

101. 15 U.S.C. §§ 6501–06 (2018).

102. See *id.*, at § 6502 (giving parents the right to notice, consent, review and delete, refuse or revoke consent, limit disclosure, and enforce by complaint to the Federal Trade Commission).

103. See generally Katharine Silbaugh & Adi Caplan-Bricker, *Regulating Social Media Through Family Law*, 15 U.C. IRVINE L. REV. 1 (2024) (discussing an alternative approach to age gating that follows principles of family law).

104. *NetChoice, LLC v. Fitch*, No. 25A97, slip op. at 1–2 (U.S. Aug. 14, 2025) (Kavanaugh, J., concurring), <https://www.supremecourt.gov/opinions/24pdf/25a97-5h25.pdf> [<https://perma.cc/NC28-PZ2G>].

105. See discussion *infra* Part V.B.2; see also discussion *infra* Part VI.B.

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First, age gates implicate both the First Amendment rights to freedom of speech¹⁰⁶ and the freedom of association.¹⁰⁷ The Supreme Court's analysis of the First Amendment concerns in *Paxton* leans heavily on the fact that the content in question is obscene to minors,¹⁰⁸ while Justice Kavanaugh's concurrence in *NetChoice* indicates that age restriction of social media content would not escape under the same argument.¹⁰⁹

The Court has already established that social media platforms and minors have First Amendment protections.¹¹⁰ First Amendment evaluation depends on whether the law is content-neutral or content-based.¹¹¹ Content-neutral laws are only subject to intermediate scrutiny while content-based laws must stand up against strict scrutiny.¹¹² However, even laws that appear content-neutral at the surface level may be evaluated as content-based where the justification cannot be made without reference to the content of the speech.¹¹³ Vagueness may cause a law to be deemed invalid because people cannot determine what is prohibited to avoid a potential

106. See generally *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461 (analyzing free speech infringement of age gates on websites with certain percentages of adult content).

107. See U.S. CONST. amend. I; *Internet Freedom and Technology and Human Rights*, U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., <https://www.state.gov/internet-freedom-and-technology-and-human-rights> [<https://perma.cc/BZU8-7ECJ>] (stating that people must be able to exercise the same rights online as they do offline) (last visited Nov. 8, 2025); see also Nico Brando & Laura Lundy, *Discrimination and Children's Right to Freedom of Association and Assembly*, HARV. HUM. RTS. J. (Dec. 2, 2022), <https://journals.law.harvard.edu/hrj/2022/12/discrimination-and-childrens-right-to-freedom-of-association-and-assembly/> [<https://perma.cc/7WKX-69LQ>] (discussing how children are often treated differently as related to political rights).

108. *Paxton*, 606 U.S. at 463.

109. *NetChoice*, slip op. at 1–2 (Kavanaugh, J., concurring) (“[E]nforcement of the Mississippi law would likely violate its members’ First Amendment rights.”).

110. Tanner Pool, *Honey, I Shrunk the Kids (Social Media Access): States’ Actions to Regulate Social Media Access for Minors through Parental Consent and the First Amendment*, 49 OKLA. CITY U. L. REV. 379, 395–97 (2025).

111. *Id.* at 397.

112. *Id.*

113. *Id.* at 397–99.

violation.¹¹⁴ Further, overbroad laws that could apply to protected speech may be unconstitutional.¹¹⁵ These basic constitutional principles guide the evaluation of any law challenged under the First Amendment and thus guide courts as they inspect social media age gates.

Age restrictions on social media could be evaluated as content-neutral if the law in question prevents young users from accessing the site altogether rather than restricting certain content on that site. This reading might encourage courts to use the same intermediate scrutiny evaluation employed in *Paxton*. Such an evaluation might lead to differing results depending on how a particular court interprets *Paxton*'s analysis of what the government interest was: protecting children more broadly or just shielding them from sexual content.¹¹⁶ Justice Kavanaugh's statement on the likely freedom of speech violation in *NetChoice* indicates that age restrictions on social media may be unconstitutional,¹¹⁷ though without his full reasoning it is impossible to know what even he might say if the Supreme Court decided the issue on its merits. In addition to the First Amendment challenges to age gating online, there are other areas of the law that offer grounds for concern including parental rights.

Since these laws effect children, they also concern the rights of parents. Government regulation of age-based access may infringe on parents' rights to control what their children are exposed to and engage with.¹¹⁸ Courts have long recognized parents' rights in the United States.¹¹⁹ Parents' rights are often discussed in relation to education and balancing the state's interests in schooling with those of parents,¹²⁰ but parental rights also raise questions about the

114. *Id.* at 399.

115. *Id.* at 400.

116. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 496, 499 (2025).

117. *NetChoice*, slip op. at 1–2 (Kavanaugh, J., concurring) (“[E]nforcement of the Mississippi law would likely violate its members’ First Amendment rights.”).

118. Silbaugh & Caplan-Bricker, *supra* note 103 at 42–47.

119. See, e.g., Ralph D. Mawdsley, *The Changing Face of Parents’ Rights*, 2003 BYU EDUC. & L.J. 165, 165 (2003) (exploring parents’ rights over time).

120. *Id.* at 165 (“Since the latter part of the nineteenth century, courts have recognized the right of parents to make educational decisions for their children.”).

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government's role in controlling children's access to particular online content.

Despite some political rhetoric, parental rights do not give parents the ability to control what all children see or have access to.¹²¹ Parental rights refer only to the established constitutional right for parents to control what information their children receive.¹²² For example, this constitutional right gives parents the ability to remove their children from public education in favor of private education or homeschooling to ensure their own children's educational curriculum aligns with their desired beliefs and messaging.¹²³

There are four main doctrines of parental rights, consisting of parents' ability to: "[1)] restrict contact between a minor and any third party; [(2)] restrict a minor's access to First Amendment protected expression; [(3)] decide how much privacy to grant to a minor; and [(4)] act on behalf of their children in repudiating contracts."¹²⁴ Logically, and lawfully, parents have a general "authority over [their] children's upbringing."¹²⁵ There is further a presumption in the law, and likely in most people's minds, "that parents act in their child's best interest."¹²⁶ These four doctrines map easily to the idea that parents should have control over their individual children's online presences rather than the government unilaterally deciding for them. The government's "independent interest in the well-being of its youth" supports laws that "emulate[] reasonable parental will in situations where parents could not be relied on," but should remain "subordinate to its interest in supporting parents."¹²⁷

The legal landscape of online age verification and restriction is murky at best, but legal challenges are not the only red flags age gate mandates raise.

¹²¹I. Silbaugh & Caplan-Bricker, *supra* note 103, at 24.

¹²². *Id.*

¹²³. *Id.*

¹²⁴. *Id.*

¹²⁵. *Id.* at 30.

¹²⁶. *Id.* at 20.

¹²⁷. *Id.* at 53 (internal quotation marks omitted).

2. Other Considerations

Beyond legal arguments, age gate legislation raises significant practical and policy concerns. These include questions about how such systems can be feasibly implemented, how likely these measures are to succeed, how reliable the proposed verification methods are, and how they might impact websites as well as data privacy and online safety.

Online age verification efforts could be circumvented in ways similar to physical age gates.¹²⁸ Any law or regulation can present the opportunity for unscrupulous characters, good faith actors, and civilly disobedient parties alike to exploit loopholes or outright violate its provisions.¹²⁹ Loopholes may even be “largely irremediable,” and even “central to legal practice,” as laws are subject to “the unavoidable imperfection of all human creations.”¹³⁰ However, that does not mean despair and complete inaction are the only responses. Though underage people may bypass real-life identification checkpoints with fake documentation, the law still restricts the purchase and sale of alcohol to those at least twenty-one years old, and bars and other businesses continue to attempt age verification and restriction.

Additionally, online sites face high costs and barriers to entry associated with operating in states that implement age verification and restriction requirements. Sites that continue operating must ensure compliance with each different set of rules across state and national borders.¹³¹ Some sites have already stopped supporting service

^{128.} See Jarvie & Renaud, *supra* note 26; Marsden, *supra* note 32 at 242.

^{129.} See Brian M. Sirman, *Loophole Entrepreneurship*, 29 FORDHAM J. CORP. & FIN. L. 33, 33 (2023) (“All entrepreneurs seek favorable legal or regulatory treatment for their businesses. Sometimes this leads an entrepreneur to build a business within a gap in the law—a loophole.”); see also Ashenafi Biru & Pia Arenius, *Perpetuating Enforcement Weakness: Entrepreneurs’ Destructive Actions in Normalizing Rule-Breaking*, 62 SMALL BUS. ECON. 1, 13 (2025) (“[A]n ambiguous regulatory environment encourages a cycle of opportunistic rule-breaking behaviors, which are not only tolerated, but often framed as characteristics of a ‘clever and wily’ entrepreneur.”).

^{130.} Leo Katz, *A Theory of Loopholes*, 39 J.L. STUD. 1, 1–2, 7 (2010).

^{131.} See CTR. FOR INFO. POL’Y LEADERSHIP, AGE ASSURANCE & AGE VERIFICATION LAWS IN THE UNITED STATES 1 (Sep. 2024), https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cip_l_age_assurance_in_the_us_sept24.pdf [<https://perma.cc/SR36-HVX2>]

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in states that mandate age verification and restriction.¹³² If large sites' cost-benefit analyses indicate that the compliance costs are too high to remain in operation in states with restrictions,¹³³ it is likely that smaller sites will follow their lead—excluding those that choose to continue operating in non-compliance.¹³⁴ The result would be that all users in that state are restricted, including those with rights to the content, not just the children the state aims to protect.

The design and interconnected nature of the internet itself is part of the reason for this high cost to sites and makes the creation of effective age gates difficult in general.¹³⁵ Sites subject to age gate laws must first check the location of every user and determine which ones are in an area with age verification and restriction rules. The site must then apply the proper age verification and possibly restrict the user depending on the relevant law for the user's location. This adds a

(“There is little agreement among the states, however, regarding the methods or tools to use when verifying the age of online users.”); see also Melanie Selvadurai et. al., *Tracking the Shifts: Age Assurance in Motion*, IAAP (Aug. 26, 2025), <https://iapp.org/news/a/tracking-the-shifts-age-assurance-in-motion> [<https://perma.cc/GP5E-EN3V>] (looking at age assurance laws in North America, Europe, the Middle East, Africa, Latin America, and the Asian-Pacific regions).

132. Tonya Riley, *Bluesky's Mississippi Exit Highlights Cost of Age Verification*, BLOOMBERG L. NEWS (Aug. 27, 2025, at 05:00 ET), <https://news.bloomberglaw.com/privacy-and-data-security/blueskys-mississippi-exit-highlights-cost-of-age-verification> [<https://perma.cc/LL6c-FPXH>]; Luciana Perez Uribe Guinassi, *Porn Sites Cut Access to NC Users Just Before New Age Check Law Starts Jan. 1*, NEWS & OBSERVER, <https://www.newsobserver.com/news/politicsgovernment/article28361178> [<https://perma.cc/J5BZ-H2DR>] (last updated Dec. 28, 2023, at 17:42 ET).

133. Riley, *supra* note 132; Guinassi, *supra* note 132.

134. See generally Stuart Shapiro & Debra Borie-Holtz, *Small Business Response to Regulation: Incorporating a Behavioral Perspective*, 7 HUMANS. & SOC. SCI. COMM'N art. No. 58 (2020) (explaining the ‘bandwagon effect’ reaction to regulation).

135. Noah Apthorpe, Brett M. Frischmann & Yan Shvartzshnaider, *Online Age Gating: An Interdisciplinary Evaluation*, SSRN (June 20, 2025) <https://ssrn.com/abstract=4937328> [<https://perma.cc/CCS2-QHV7>]; Madeline Bersch & Matthew Wallin, *Briefing Note—Internet Censorship and Circumvention*, AM. SEC. PROJECT 1–9 (June 1, 2014) <http://www.jstor.org/stable/resrepo6012> [<https://perma.cc/3BYH-9ZDB>].

process to check locations that the site might not otherwise employ, increasing costs.¹³⁶

Alternatively, sites could choose to apply the same age verification and restriction to all users to avoid having to check user locations. However, this increases the cost of their age verification efforts by multiplying the number of users being checked as well as data being collected and stored.¹³⁷ For example, one verification service charges twenty-five dollars per month plus fifty cents per verified user,¹³⁸ and the *Paxton* dissent noted costs of at least \$40,000 for every 100,000 verifications.¹³⁹ This approach also unnecessarily prevents access by people in locations that do not require restriction.

Since the internet has a global presence—at once deeply interconnected yet decentralized—restrictions put in place by a particular country, state, or in a specific geographic area, are relatively easy to evade. There are four main ways to get around online censorship, including age verification and restriction requirements: (1) proxies; (2) tunneling or VPN usage; (3) Domain Name System (“DNS”)-based filters; and (4) telescopic cryptography, also known as onion routing.¹⁴⁰ Each method ultimately disguises the actual location of the user and their device.¹⁴¹

Proxies essentially use a computer located in a different, unrestricted place to access the restricted site and send the information back to the original device.¹⁴² VPNs are similar, but also encrypt the communications between the unrestricted and restricted computers.¹⁴³ DNS-based filters alter a device’s information to appear unblocked to a filter that would otherwise prevent access.¹⁴⁴ Lastly,

¹³⁶. See Hailey Huffman, *Understanding the Factors that Influence Website Maintenance Costs*, SYZMIC (Aug. 29, 2023), <https://www.syzmic.com/blog/website-maintenance-cost/> [<https://perma.cc/5Y83-F4U8>].

¹³⁷. See Huffman, *supra* note 136; see Jarvie & Renaud, *supra* note 26.

¹³⁸. See Huffman, *supra* note 136; see Jarvie & Renaud, *supra* note 26.

¹³⁹. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 504 (2025) (Kagan, J. dissenting).

¹⁴⁰. Bersch & Wallin, *supra* note 135, at 3–4.

¹⁴¹. *Id.*

¹⁴². *Id.*

¹⁴³. *Id.* at 4.

¹⁴⁴. *Id.*

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onion routing obscures the user's device by "creating a system of network connections" and encrypting each connection, preventing every node from knowing anything more than the node immediately previous, and where to send the connection next.¹⁴⁵

VPNs will likely be the most popular tactic as they are easily available and already widely used.¹⁴⁶ However, some believe VPNs are not as concerning as they might first appear since "[m]ost 13- and 14-year-olds do not make it a habit of surfing the internet using a VPN."¹⁴⁷ Regardless, avoidance tactics suggest that state law age gates are unlikely to convince sites to comply rather than remove service for all users in that state because the benefit of implementation likely does not outweigh the costs.¹⁴⁸

Further, websites that use strict age verification methods—like requiring submission of government issued documents—create privacy risks.¹⁴⁹ Nationally, data breaches caused over \$300 million in reported losses in 2024, harming companies and consumers alike.¹⁵⁰ The number of reported data breaches had a net increase of 1,409

145. *Id.*

146. Youssef A. Kishk, *State-Based Online Restrictions: Age-Verification and the VPN Obstacle in the Law*, 2024 INT'L J. L. ETHICS TECH. 123, 139 (2024).

147. Marsden, *supra* note 32, at 238–39, 242.

148. See CTR. FOR INFO. POL'Y LEADERSHIP *supra* note 131 at 23 ("[I]nteroperability enables responsible provision of services across borders, broadens access, reduces compliance costs and improves compliance, increases legal certainty, and ensures consistent protection of the rights and interests of individuals.").

149. See Jarvie & Renaud, *supra* note 26; Free Speech Coal., Inc. v. Paxton, 606 U.S. 461, 504 (2025) (Kagan, J. dissenting) ("It is turning over information about yourself and your viewing habits—respecting speech many find repulsive—to a website operator, and then to . . . who knows? The operator might sell the information; the operator might be hacked or subpoenaed.").

150. See INTERNET CRIME COMPLAINT CENTER, 2024 IC3 ANNUAL REPORT 10 (Fed. Bureau of Investigation 2025), https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf [<https://perma.cc/HX9R-NMPJ>].

instances from 2019 to 2024,¹⁵¹ and it is unlikely that the threat will go away.¹⁵²

Discord, a social communication app, suffered a hack that exposed private user data, including images of users' government identification that were collected as a part of its verification efforts.¹⁵³ Breaches, like Discord's, put all users, children and adults alike, at a higher risk of falling victim to issues arising from the dissemination and misuse of their sensitive and personally identifying information.¹⁵⁴

With continuing risks in the data sector, and targeted efforts already being made to protect the data of children, it is antithetical to the protection of children to insist on increasing the collection of data from users. While risks can be lessened by reducing storage time and collecting minimal data, they cannot be reduced by any meaningful degree.¹⁵⁵ The safest data is data that is never shared or collected in the first place.

Additionally, compliant sites that implement age gates could cause children to seek out non-compliant sites likely operating without any

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151. INTERNET CRIME COMPLAINT CENTER, 2021 *INTERNET CRIME REPORT* 24, (Fed. Bureau of Investigation 2022), https://www.ic3.gov/AnnualReport/Reports/2021_I_C3Report.pdf [<https://perma.cc/K35B-EENT>]; INTERNET CRIME COMPLAINT CENTER, *supra* note 150, at 18.
 152. See All Things Considered, *Data Breaches Have Become a Fact of Modern Life. How Concerned Should Americans Be?*, NPR (Aug. 20, 2024), <https://www.npr.org/2024/08/20/nx-st-5081548/data-breaches-have-become-a-fact-of-modern-life-how-concerned-should-americans-be> [<https://perma.cc/369D-5FWE>].
 153. Rowland Manthorpe, *Discord Hack Shows Risks of Online Age Checks as Internet Hopes Put to the Test*, SKY NEWS (Oct. 10, 2025, at 11:29 GMT) <https://news.sky.com/story/discord-hack-shows-dangers-of-online-age-checks-as-internet-policing-hopes-put-to-the-test-13447618> [<https://perma.cc/D7YR-MC96>]; DISCORD <https://discord.com/> [<https://perma.cc/M8UV-P67S>] (last visited Nov. 17, 2025).
 154. See, e.g., Cassandra Cross & Thomas J. Holt, *Beyond Fraud and Identity Theft: Assessing the Impact of Data Breaches on Individual Victims*, J. CRIME & JUST. 1, 1–3, 4–5, 13–17 (2025) <https://www.tandfonline.com/doi/full/10.1080/0735648X.2025.2535007#abstract> [<https://perma.cc/9W2S-PRFY>] (explaining how the well-known effects of data breaches, fraud and identity theft, are not the only issue victims face, and examining the “physical, emotional, relational, and financial health outcomes associated with data breach victimization”).
 155. *Id.*

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regulation at all.¹⁵⁶ Such sites may expose children to even more harmful content than law-abiding sites would contain.¹⁵⁷ On adult content sites, this means revenge porn and child pornography.¹⁵⁸ On social media, this outcome could mean exposure to no-filter explicit content, extreme violence, threats, and exploitation.¹⁵⁹ As such, mandating age gates may mean “the cure [is] worse than the disease.”¹⁶⁰

C. Predictions: The Future of Age Gating and the Potential for Expansion to Chatbot Restrictions

As concerns for children’s safety continue to spread to emerging technologies, efforts to protect children will follow, and states will continue to try to expand age verification and restriction efforts. The Court’s choice of intermediate scrutiny in *Paxton* signaled to some a great departure and fundamental change around online restrictions.¹⁶¹ While that may, in some ways, be true, *NetChoice* indicates that *Paxton*’s ultimate finding is limited.

The Court’s use of intermediate scrutiny for age gates in *Paxton* relied on the idea that the protected speech of adults was only incidentally burdened because the adult users could still ultimately access the sites.¹⁶² Further, the content in question in *Paxton* was offensive from the perspective of minors, and only minors were prevented from accessing it.¹⁶³ The same is likely true of age gates on social media, as adults would still be able to ultimately access and engage in protected speech once they clear the age check. The question

¹⁵⁶. Brief for Int’l Ctr. for Missing and Exploited Child. as Amicus Curiae Supporting Petitioners, at 14–16, *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461 (2024) (No. 23–1122), https://www.supremecourt.gov/DocketPDF/23/23-1122/309948/20240516145744135_Amicus%20Brief%20%20Free%20Speech%20Coalition%20v.%20Paxton.pdf [<https://perma.cc/LM9J-68CR>].

¹⁵⁷. *Id.*

¹⁵⁸. *Id.*

¹⁵⁹. *Id.*

¹⁶⁰. *Id.*

¹⁶¹. Jessica Arciniega, Morgan Sexton, & Amelia Vance, *Supreme Court Upholds Age Verification: A Game-Changer for Child Online Safety Laws* (July 1, 2025), <https://publicinterestprivacy.org/paxton-age-verification/> [<https://perma.cc/H7UK-FTQZ>].

¹⁶². *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 492 (2024).

¹⁶³. *Id.*

of age gates on social media is thus more likely to hinge on whether the rights of the minors themselves are infringed by the restrictions. While age verification and restriction efforts are already in motion for social media, age gating efforts in other online spaces may be on the horizon.

Tragedies, like the recent deaths of two young boys aged fourteen and sixteen, allegedly at the digital hands of chatbots,¹⁶⁴ placed the chatbot sector under a microscope.¹⁶⁵ This spotlight revealed that some chatbots have encouraged some minors to harm themselves or others.¹⁶⁶ Further investigation reveals that chatbots have also engaged in suggestive and explicit sensual and sexual exchanges with children.¹⁶⁷

The current concerns with age restriction on social media are likely similar to the questions that will arise surrounding restriction in the AI sector. However, chatbots bring their own complications since they offer an artificial conversation and do not involve interactions with others or publication of speech.

Children “have a ‘lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.’”¹⁶⁸ However, children are also more technologically savvy at an earlier age now than even just a few years ago, and have frequent, unsupervised access to the internet.¹⁶⁹ With this increase in digital skill, parents and lawmakers should not “assume that children in the early years are ‘too young’ to be encountering AI, whether accidentally or intentionally.”¹⁷⁰

Considering the current efforts to expand age verification and restriction efforts, the chatbot arena may be the next target. The

164. Rhitu Chatterjee, *Their Teenage Sons Died by Suicide. Now, They Are Sounding an Alarm About AI Chatbots*, NPR (Sep. 19, 2025, at 07:00 ET), <https://www.npr.org/sections/shots-health-news/2025/09/19/nx-si-5545749/ai-chatbots-safety-openai-meta-characterai-teens-suicide> [<https://perma.cc/QG4X-LLH8>].

165. National Association of Attorneys General Press Release, *supra* note 12.

166. Complaint, *supra* note 15, at 14–18, 26–29, 82–83.

167. Complaint, *supra* note 15, at 25, 77–81; Chatterjee, *supra* note 164.

168. Samuel K. Lawrence, “*Children Are Different*” and Their Lawyers Should Be Too, 73 DUKE L.J. 1101, 1114 (2024).

169. Kurian, *supra* note 13, at 134.

170. *Id.*

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Court's decision in *Paxton* strongly supports an expansion based on the dangers of chatbots engaging in sexually explicit conversations. Age verification and restrictions or regulations of chatbot behavior would be easy under *Paxton* as to content that is offensive from a minor's perspective.¹⁷¹ Chatbots are much easier to restrict in this area than social media users because they can be programmed not to engage in certain conversations.¹⁷² However, regulating to prevent general harm to minors may be more complicated.

At first glance, age verification and restriction of AI seems simple: AI is not human and, therefore, does not have constitutional rights.¹⁷³ However, the relationship between AI and the First Amendment is already complicated,¹⁷⁴ and adding age gates to the discussion only adds to the complexity. Some argue that “strong AI”—an “as-yet-hypothetical machine[] that would think and generate expressive content independent of human direction”—should get First Amendment protections,¹⁷⁵ and others propose that AI “speech” be viewed as the speech of the company that owns the AI model or of the people that designed and coded it.¹⁷⁶ Regardless, people entering prompts and viewing the generated responses *are* human and do have constitutional rights, so untangling the constitutional questions about AI age restriction cannot end with AI's inhuman nature.¹⁷⁷

Whether the rights of the First Amendment lie only in the human users or in both the users and the AI system, there seem to be intricate First Amendment questions at play.¹⁷⁸ The rights of human users to hear the speech of an AI require that restrictions be “adequately justified.”¹⁷⁹ Considering the rights of the human users to engage with

171. See *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 474 (2025).

172. See Complaint, *supra* note 15, at 98–100.

173. Cass R. Sunstein, *Artificial Intelligence and the First Amendment*, 92 GEO. WASH. L. REV. 1207, 1210 (2024).

174. See generally Sunstein, *supra* note 173 (exploring the relationship between AI and the First Amendment).

175. Toni M. Massaro, Helen Norton & Margot E. Kaminski, *SIRI-OUSLY 2.0: What Artificial Intelligence Reveals About the First Amendment*, 101 MINN. L. REV. 2481, 2482 (2017).

176. Sunstein, *supra* note 173, at 1220–1221.

177. Sunstein, *supra* note 173, at 1217–1218.

178. Sunstein, *supra* note 173, at 1227.

179. Sunstein, *supra* note 173, at 1221–23.

the speech of the AI brings the question to a common First Amendment evaluation: Whether the law is content-neutral or content-based and, then, what is the relevant level of scrutiny? If a court's evaluation follows this logic, it is likely that age verification and restriction law on AI systems will face the same issues as with age gates on social media sites.

If the Court follows Justice Kavanaugh's lead and disapproves of age verification and restriction requirements online, legislatures and interest groups will be left searching for another way to achieve their goals. One possibility is building a § 230 inspired law that offers immunity protection to sites that choose to age gate when a child bypasses the restrictions and experiences harm.

VI. LET GO OF LEGISLATING (DIRECTLY)

With Justice Kavanaugh's indication in *NetChoice* that mandating age gates on social media is likely unconstitutional,¹⁸⁰ it is possible that legislating is, at the very least, an extremely challenging path forward. There are, however, alternative solutions that do not face the same constitutional challenges as government mandates, even if they are still government action.

A. Immunity Mirroring § 230

One possible solution is a law that offers immunity to sites that age restrict much the way § 230 protects interactive service providers from liability for the speech of another information content provider.¹⁸¹

Section 230 is a part of the Communications Act of 1934 and was added as a part of the Communications Decency Act of 1996.¹⁸² Section 230 has five provisions: (a) findings; (b) policy; (c) protection for "Good Samaritan" blocking and screening of offensive material; (d)

180. *NetChoice, LLC v. Fitch*, No. 25A97 slip op. at 1 (U.S. Aug. 14, 2025) (Kavanaugh, J., concurring) (Aug. 14, 2025) (No. 25A97) (https://www.supremecourt.gov/opinions/24pdf/25a97_5h25.pdf) [<https://perma.cc/WGEG-SNX3>].

181. 47 U.S.C. § 230(c) (2025).

182. Valerie C. Brannon & Eric N. Holmes, *Section 230: An Overview*, CONG. RSCH. SERV. R46751 at 1–5 (2024), <https://www.congress.gov/crs-product/R46751> [<https://perma.cc/7LJP-RVND>].

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obligations of interactive computer service; (e) effect on other laws; and (f) definitions.¹⁸³ The two most substantive are provisions (c) and (d).

Section 230(c) outlines two important concepts. First, that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider,”¹⁸⁴ which has been interpreted to “bar[] ‘lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content.’”¹⁸⁵

Second, § 230(c) states that interactive computer services are not to be held liable for good faith actions in attempt “to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected” nor for “any action taken to enable or make available to information content providers or others the technical means to restrict access to [that] material.”¹⁸⁶ Section 230(c) thus protects interactive computer services from liability when they choose to filter content. Though not explicitly addressing content offensive only from the perspective of minors, the inclusion of “whether or not such material is constitutionally protected”¹⁸⁷ allows for the provision to be used in that way. While § 230(c) protects sites that *choose* to restrict, *Paxton* allows for *mandated* restriction.

Section 230(d) more directly addresses concerns about children online such that interactive service providers shall notify customers “in a manner deemed appropriate by the provider . . . that parental control protections . . . are commercially available that may assist the customer in limiting access to material that is harmful to minors.”¹⁸⁸ This provision aids in user knowledge of parental control systems and does not directly require age restriction efforts on the part of the

183. 47 U.S.C. § 230 (2025).

184. *Id.*

185. Brannon & Holmes, *supra* note 182, at 11.

186. 47 U.S.C. § 230(c) (2025).

187. *Id.*

188. 47 U.S.C. § 230(d) (2025).

interactive computer services. Furnishing parents with knowledge and resources is helpful in increasing direct individual parental control over each child's internet use and interactions. However, a new law that takes § 230's foundation and builds upon it to encourage interactive service providers to implement age restrictions and make age verification efforts would make sites more confident that they will not be ruined if a child circumvents an age gate. The immunization and uniformity of a federal law like this could tip the scales of sites' cost-benefit analysis in favor of continuing operations and adding age gates.

Despite recent concerns regarding § 230's effectiveness on the modern internet,¹⁸⁹ § 230 exemplifies an approach that could be helpful in giving new direction to governmental efforts to protect children without infringing on their rights. The most important component of § 230 is that it does not *require* websites to filter user generated content—it merely protects the websites that choose to filter from issues that arise when things slip through the cracks.¹⁹⁰ Taking an approach to age restriction that mirrors § 230's protections will incentivize age restriction in much the same way § 230 did for filtering user posts.¹⁹¹

Offering immunity to sites that age gate, similar to the immunity offered by § 230, would provide an incentive to age gate in hopes of avoiding the cost of litigation associated with harm that befalls children. While § 230 already immunizes interactive computer services against liability for the speech of users,¹⁹² a new law expanding this protection with explicit immunity for sites that age gate would fill in

¹⁸⁹. See, e.g., Matthew Bellavia, *How Section 230 Fails to Address the Modern Internet*, WASH. J.L., TECH. & ARTS (Apr. 24, 2025), <https://wjlt.com/2025/04/24/how-section-230-fails-to-address-the-modern-internet/> [https://perma.cc/SNM8-RQVB].

¹⁹⁰. See generally 47 U.S.C. § 230 (2025) (protecting interactive computer services from being considered the speaker of information provided by another without requiring any particular action to gain the protection).

¹⁹¹. Ash Johnson & Daniel Castro, *Overview of Section 230: What It is, Why It Was Created, and What It Has Achieved*, INFO. TECH. & INNOVATION FOUND. (Feb. 22, 2021) <https://itif.org/publications/2021/02/22/overview-section-230-what-it-why-it-was-created-and-what-it-has-achieved/> [https://perma.cc/Z4QC-2L47].

¹⁹². See 47 U.S.C. § 230(c) (2025).

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the gaps for social media sites and especially for chatbots. Some have floated the possibility of adding carveouts to § 230 for bad actors, child abuse, and other harms.¹⁹³ These carveouts would leave gaps in immunity that could make immunizing sites that age gate more effective.

A law encouraging age gates that mirrors § 230 (hereinafter the “Mirror Law”) would require a section like § 230(c). Such a provision of the Mirror Law would need to outline what kinds of websites, applications, and online services are covered. A similar, or even identical, category to § 230’s interactive computer services would be a good place to start to address concerns about social media. The definition from § 230 could also be expanded or another category could be added to ensure chatbots would be covered by the Mirror Law. The Mirror Law would then need to outline protections for the interactive computer services such that good faith efforts to prevent minors from accessing their sites as a whole, or particular content on their sites, based on the user’s age would not create liability if an underage user were to circumvent the restriction. While § 230 protects against liability based on the choice to moderate content, the Mirror Law would protect against liability based on a website’s choice to implement an age gate.

Though the Mirror Law is a potential solution to the constitutional issues with age gate mandates, it may face challenges outside the legal field. Websites, applications, and other interactive computer services might not want to restrict their user bases. Such a restriction would limit their ability to participate in the attention economy¹⁹⁴ and reduce revenues from advertising or subscriptions. These monetary disincentives may hold some sites back from taking advantage of the Mirror Law’s protections. It may happen that already

¹⁹³. See, e.g., U.S. DEPT OF JUST., *Department of Justice’s Review of Section 230 of the Communications Decency Act of 1996* (Sep. 23, 2020), <https://www.justice.gov/archives/ag/department-justice-s-review-section-230-communications-decency-act-1996> [<https://perma.cc/WGY4-ER4R>] (discussing the Department of Justice’s suggestions for changes to § 230).

¹⁹⁴. Rai Hasen Masoud, *The Attention Economy and the Collapse of Cognitive Autonomy*, DENNY CTR. DEMOCRATIC CAPITALISM (July 15, 2025), <https://www.law.georgetown.edu/denny-center/blog/the-attention-economy/> [<https://perma.cc/4TFH-Q49U>].

unscrupulous sites are more likely to dismiss the Mirror Law and operate as normal. The same was true of § 230: some sites still chose not to filter user-generated content at all.¹⁹⁵ Despite this, the ensured liability protection that comes with compliance is a strong draw for both large sites, with shareholders to keep happy, and small sites, with shallow pockets.

The argument can be made that, under a Mirror Law, children could still simply choose to access sites that do not restrict. While this is true, there will likely be sites that still comply with mandatory laws even if they choose not to implement restrictions to gain immunity under the Mirror Law. Any law alone is unlikely to solve every problem and address every concern, but the Mirror Law would create an opportunity to encourage action in other sectors.

B. Other Proposed Solutions

Beyond legislation, there are tools for individual parents to determine what their children do and do not have access to. Options include built-in parental control systems on devices,¹⁹⁶ downloadable control software,¹⁹⁷ sites—like YouTube—that offer a separate version for children,¹⁹⁸ and parenting approaches that foster a child's respect for and understanding of their parents' rules.¹⁹⁹ These systems help

195. See, e.g., Dominik Bär, Nicolas Pröllochs & Stefan Feuerriegel, *New Threats to Society from Free-Speech Social Media Platforms*, 66 COMM'NS ACM 37, 37 (2023) (“[A]lt-techs self-proclaim as “free-speech” platforms and, because of that, eschew content moderation.”).

196. See, e.g., *Use Parental Controls to Manage Your Child's iPhone or iPad*, APPLE (Sep. 15, 2025), <https://support.apple.com/en-us/105121> [<https://perma.cc/R8VV-L9U2>] (explaining the built-in parental control features on Apple devices).

197. See, e.g., Esther Carlstone, *The Best Parental Control Apps to Manage Screen Time—And Keep Kids Safer*, FORBES (Sep. 19, 2025, at 17:30 ET), <https://www.forbes.com/sites/forbes-personal-shopper/article/best-parental-control-app/> [<https://perma.cc/FED3-BWU6>].

198. See, e.g., *Tips and Tools for Your Family*, YOUTUBE KIDS, <https://www.youtube.com/kids/parent-resources/> [<https://perma.cc/S4GE-HFGH>] (last visited Sep. 23, 2025) (explaining the parental control features of the kid's version of the YouTube app and other resources for developing healthy online habits).

199. See Ryan Harris, *Exploring the Psychological Impact of Parental Controls on Children*, SAFE SEARCH KIDS, <https://www.safesearchkids.com/exploring-the-psychological-impact-of-parental-controls-on-children/> [<https://perma.cc/JNQ5-HKPE>] (last visited Sep. 23, 2025).

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close some of the loopholes that accompany site-by-site verification and restriction . However, like any attempt to close off the internet, there are still ways around these parental controls. With built-in parental controls and downloadable control software, children still have the option to use a school-owned device that may have different restrictions or use a device that belongs to a friend whose parents place fewer or different restrictions. To get around the restrictions of a site like YouTube Kids, a child only needs to access the regular version of the YouTube website or app—likely through another device as parental controls can prevent access to the site and downloading of the app.²⁰⁰

Some proposals have even suggested a voluntary registry where parents can opt to register devices they bought for their children and attach the restrictions they want in place.²⁰¹ This system would keep parents in control but shift the monitoring and enforcement burden to tech companies. Others have suggested that mandating risk audits of recommendation algorithms²⁰² or adding digital literacy curricula to public school education could aid in addressing concerns.²⁰³ Individually, such solutions do not address every issue, but, in conjunction, they may provide more thorough protection, provide viable alternatives to age gate mandates, and obviate First Amendment concerns.

Exploring many alternative and creative solutions or combinations thereof will be key to achieving the goal of protecting children without stepping astray of the law to trample the rights of adults and children alike.

VII. CONCLUSION

As technological advancements race on, fear will follow close behind, and the desire to protect children will continue to spur actions and reactions. Despite this, the Constitution must not be cast aside in haste for what seems convenient or at first blush appears most

200. See, e.g., *Use Parental Controls to Manage Your Child's iPhone or iPad*, *supra* note 196.

201. Silbaugh & Caplan-Bricker, *supra* note 103, at 71–79.

202. Pool, *supra* note 110, at 414–16.

203. *Id.* at 421–22.

effective. As the internet and technology evolve, so too do the challenges they bring, and so too must the solutions to those problems. Creativity in addressing these new-age issues may be the key to prolonged success. Protecting children is an important and noble cause, but it cannot be used to control adults or be done at the expense of the delicate balance between safety, privacy, and freedom.

With growing concerns, new areas at issue, and the Supreme Court's indication of its disapproval of age gate expansions, backing away from direct legislation in favor of a reward-based law modeled after § 230 may provide a better way forward.