

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES

#### 68th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON (H) ENERGY, TECHNOLOGY AND FEDERAL RELATIONS

**Call to Order:** Chair Katie Zolnikov-R, on February 1, 2023 at 3:42 PM, in 472

#### ROLL CALL

**Members Present:** Rep. Katie Zolnikov, Chair (R)  
Rep. Steven Galloway, Vice Chair (R)  
Rep. Laurie Bishop (D)  
Rep. Larry Brewster (R)  
Rep. Paul Fielder (R)  
Rep. Paul Green (R)  
Rep. Derek Harvey (D)  
Rep. Joshua Kassmier (R)  
Rep. Greg Kmetz (R)  
Rep. Kelly Kortum (D)  
Rep. Bob Phalen (R)

**Members Excused:** Rep. Katie Sullivan, Vice Chair (D)  
Rep. Casey Knudsen (R)

**Staff Present:** Lucinda Blair, Secretary  
Trevor Graff, Research Analyst

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

#### **Committee Business Summary:**

Hearing & Date Posted:

HB 349 01/27/2023

Executive Action:

**HEARING ON HB 349 – Establish obscenity filter requirements for electronic devices**

**Opening Statement:**

15:43:30 Rep. Lola Sheldon-Galloway (R), HD 22, opened the hearing on HB 349, Establish obscenity filter requirements for electronic devices.

**Proponent Testimony:**

15:47:00 Benjamin Bull, National Center on Sexual Exploitation (NCSE)  
15:51:35 Chris McKenna, Protect Young Eyes (PYE)  
15:57:00 Eleanor Gaetan, National Center on Sexual Exploitation (NCSE)  
15:59:50 Jeff Laszloffy, Montana Family Foundation (MFF)  
16:02:10 Erin Walker, Project Stand and Yellowstone County Area Human Trafficking Task Force  
16:06:10 Cecilia Phelps, Self  
16:09:20 Kate Freedman, Project Stand  
16:12:30 Chelsea Culpon, Self  
16:13:07 Brittany Homer, Project Stand

**Opponent Testimony:**

16:17:35 John Sonju, TechNet

**Informational Witness Testimony:**

None

**Questions from Committee:**

16:19:20 Vice Chair Steven Galloway  
16:19:35 Rep. Lola Sheldon-Galloway  
16:21:15 Vice Chair Katie Sullivan  
16:24:00 Rep. Laurie Bishop  
16:24:44 Benjamin Bull, NCSE  
16:29:35 Rep. Kelly Kortum  
16:31:00 Chris McKenna, PYE  
16:33:10 Rep. Greg Kmetz  
16:34:18 Rep. Bob Phalen  
16:34:40 John Sonju, TechNet

16:35:20 Chair Katie Zolnikov  
16:38:25 Erin Walker, Project Stand

**Closing Statement:**

16:44:35 Rep. Lola Sheldon-Galloway (R), HD 22, closed the hearing on HB 349.

**ADJOURNMENT**

Adjournment: 16:50:10

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Lucinda Blair, Secretary

Additional Documents: EXHIBIT(230201FEH)



*The Big Sky Country*

MONTANA HOUSE OF REPRESENTATIVES

ENERGY, TECHNOLOGY AND  
FEDERAL RELATIONS

ROLL CALL

DATE: <sup>LB</sup> 2-~~1~~<sup>1</sup>-2023

NAME	PRESENT	ABSENT/EXCUSED
REP. BISHOP	X	
REP. BREWSTER	X	
REP. FIELDER	X	
VICE CHAIR GALLOWAY	X	
REP. GREEN	X	
REP. HARVEY	X	
REP. KASSMIER	X	
REP. KMETZ	X	
REP. KNUDSEN		X
REP. KORTUM	X	
REP. PHALEN	X	
VICE CHAIR SULLIVAN		X
CHAIR ZOLNIKOV	X	

13 MEMBERS



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

VISITOR REGISTER

FEDERAL RELATIONS, ENERGY & TECHNOLOGY COMMITTEE

DATE 2-1-2023

BILL NO: HB349

SPONSOR(S): Rep. Sheldon - Galloway

SHORT TITLE: Establish obscenity filter requirements

Please leave prepared testimony with the clerk.

Witness Statement forms are available if you care to submit written testimony.

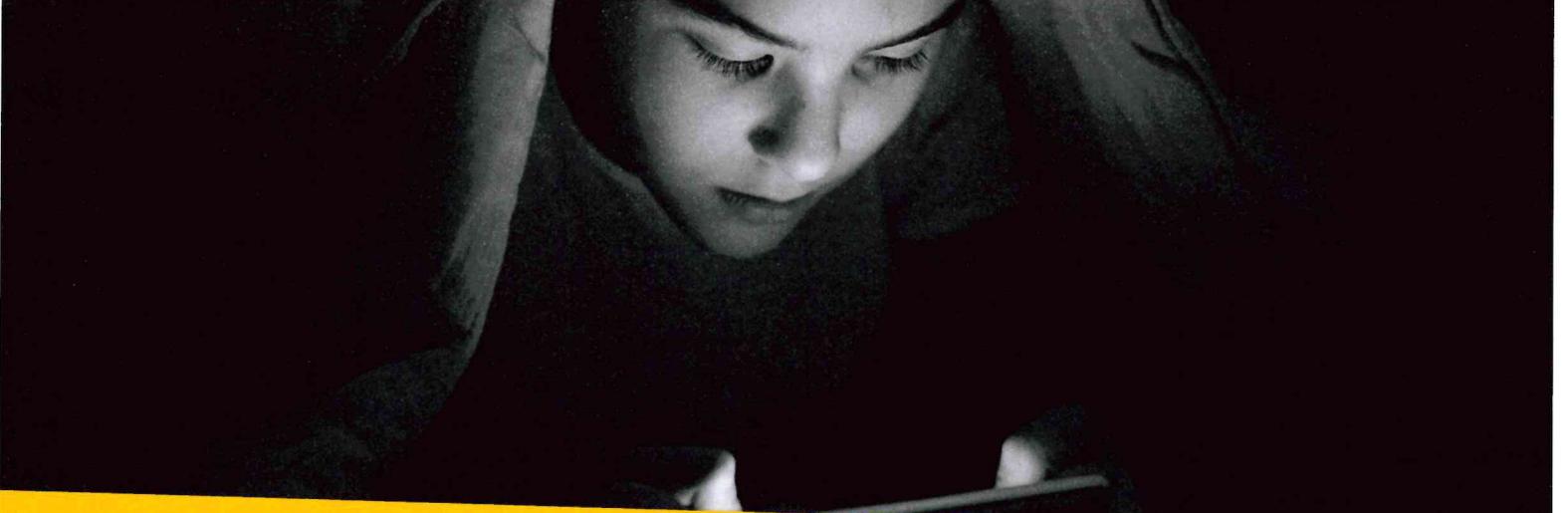
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Table with 5 columns: Name, Representing, Support, Oppose, Informt'l. Rows include Erin Walker, Kate Friedman, Brittany Horner, Cecilia Phelps, Andrew Vincent, Jon Sanjin, and Chelsea Culpon.



# Children's Default to Safety Bill

EXHIBIT

Feb 1

3419

This legislation recognizes the serious harm that can result to children from online pornography exposure while empowering parents to determine what material is appropriate for their children.

**What is the Children's Default to Safety Bill?** Manufacturers already have filtering capabilities available on smart phones and tablets, but they are overly complicated and cumbersome for parents to navigate. This bill requires manufacturers to have the filtering technology turned ON when activated, instead of OFF as it is now. By activating filters on the device itself, instead of the network, the filter protects a child online wherever the device is used. With a provided passcode at activation, adults can change the default settings.

**Why is this law needed?** This law simplifies what is now an overwhelming process for families, some of whom are unaware that filtering options even exist on their devices or do not have the technical know-how to activate them. It also recognizes that not all children are privileged with parents who are involved in their digital well-being. With this simplification, we can prevent early exposure to potentially life-altering sexually explicit content for Montana children.

**How does pornography harm children?** • A meta-analysis of 37 studies found that exposure to violent or rape pornography increased a child's odds of experiencing sexual exploitation by nearly three times.<sup>1</sup>

• Research shows that children are more susceptible than adults to addictions and to developmental effects on the brain.<sup>1</sup>

• Internet pornography use is linked to increases in problematic sexual activity at younger ages, and a greater likelihood of engaging in risky sexual behavior such as hookups, multiple sex partners, anal sex, group sex, and using substances during sex as young adolescents.<sup>1</sup>

**Won't kids find other ways to access pornography?** This is a widespread problem that can't be solved with a snap of the fingers, but activating the existing device filters is a simple and significant step in the right direction. It is our responsibility to implement measures that provide protection to children. With more than half of children in the U.S. now owning smartphones by age 11 and the time kids spend on digital devices averaging 4 to 7 hours per day,<sup>1</sup> this decision becomes a no-brainer.

**Who will be affected by this policy?** Besides all the children in Montana who will be provided with a basic level of protection from stumbling upon harmful content, this policy only affects manufacturers. It will not affect retailers or people who have already activated their devices. The policy will be implemented on new devices manufactured after Jan 1, 2024.

**How are manufacturers likely to implement this policy?** Manufacturers will simply update their operating system so that defaults on the existing filters will be turned ON. The iPhone 14, for instance, houses these filters under Settings > Screen Time > Content & Privacy Restrictions > Content Restrictions, where there are various areas of filtering capabilities.



**How will manufacturers know where exactly to set the defaults?** As stated in the bill text, manufacturers will set the defaults in accordance with current Montana law, which defines obscenity and states it is illegal to publicly display or disseminate obscene material to minors. Implementation of this bill could look like, for instance, the "clean" default setting under Books instead of "explicit," and "limit adult websites" under Web Content instead of "unrestricted."

**Is there a precedent for this type of policy?** Yes. In 2021, Google set a precedent for "defaulting to safety" when they announced that all Chromebooks going to students K-12 across the nation would have the filters defaulted ON. Utah enacted this model legislation in 2021. It will go into effect when five more states take action to protect young people from pornography on smart devices. There are at least 7 states actively working on this legislation in the 2023 session.<sup>2</sup>

**Does the model law meet constitutional free speech requirements?** The U.S. Supreme Court has repeatedly recognized that the state may restrict children's exposure to pornographic material. The court also has found that the state has a compelling interest in protecting children from this material. Furthermore, the court has recognized that parents are entitled to laws that support their ability to safeguard their children from harm. In *Ashcroft v. ACLU* (2004), the Supreme Court found that filters on devices at the receiving end met the requirements of the First Amendment. (A full legal memorandum is available upon request.)

**How is the law enforced?** Parents, guardians, and state attorneys general will be able to bring civil actions against manufacturers of devices that do not comply.

“ I've been struggling so long, and it's taxing on my mind and body. I'm tired and have little motivation, which often leads to me skipping homework assignments and social gatherings just because of porn. I'm honestly scared, scared for my future, my relationships, and my well-being. ”

- Male, 18 years old

“ We have seen children who have been exposed to pornography, which contributes to significant disturbances in their perceptions of "normal" sexual thoughts, feelings, and behaviors. Many exhibit symptoms of trauma, similar to sexual abuse. Some go on to exhibit inappropriate sexualized behaviors that cause distress for them, their families, and others in their lives. They have grown up to have distorted beliefs about their bodies and sexuality, leading to depression, anxiety, and unhealthy and often abusive relationships. ”

- Yellowstone Counseling Center

**We can protect children while not eroding adults' right to free speech.**

## THE MOST DANGEROUS PLAYGROUND IS NOW...IN OUR KIDS' POCKETS

### Hardcore Pornography on Digital Devices is Damaging America's Children



**READILY AVAILABLE** A large majority of both girls and boys report having watched pornography online during adolescence.<sup>1</sup> A simple search of various slang sexual terms quickly yields myriad results that include hardcore videos and pictures. No proof of age is required to view them.



**FREQUENTLY VIOLENT** In 2021, one in eight video titles presented to first-time viewers of three mainstream pornography websites described sexual violence involving incest, physical aggression and sexual assault, non-consent, and teens.<sup>1</sup>



**POORLY CONTROLLED** Technology corporations have placed the burden on parents, schools, and even children to protect themselves from pornography, and government agencies have been slow to recognize and address childhood pornography exposure and exploitation of children online.

For citations and additional information:

1 <https://endsexualexploitation.org/wp-content/uploads/Device-Filter-Factoid-Cited.pdf>;

[https://endsexualexploitation.org/wp-content/uploads/NCOSE\\_Most-Dangerous-Playground\\_Web-Version\\_w-Citattations\\_FINAL\\_3-31-22..pdf](https://endsexualexploitation.org/wp-content/uploads/NCOSE_Most-Dangerous-Playground_Web-Version_w-Citattations_FINAL_3-31-22..pdf)

2 <https://www.projectstand.org/default-to-safety>

## Damage Caused by Childhood Exposure to Pornography

Adolescents are more susceptible than adults to addictions and to developmental effects on the brain.<sup>4</sup> Accordingly, there are many potential negative consequences related to children viewing pornography:

**Sexual Violence:** Longitudinal research shows that childhood exposure to violent pornography predicts a nearly six-fold increase in self-reported sexually aggressive behavior later in life.<sup>5</sup> A meta-analysis of 37 studies found that exposure to violent or rape pornography increased a child's odds of experiencing sexual exploitation by nearly three times.<sup>6</sup>

**Sharing of Self-produced Child Sexual Abuse Material:** In 2020, 34% of 13- to 14-year-olds said it is normal for kids to share self-generated nude photos of themselves with others.<sup>7</sup> Sending, receiving, and asking someone for nude images ("sexts") is significantly associated with pornography use among boys and girls.<sup>8</sup> Sexting, when involving minors, is legally classified as child sexual abuse material (child pornography) which is a serious U.S. federal crime.

**Child Sexual Exploitation:** Self-generated imagery now accounts for nearly a third of web pages featuring sexual images of children (child pornography).<sup>9</sup>

**Poor Academic Achievement:** The more adolescent boys view pornography online, the poorer their grades are.<sup>10</sup> Low academic performance among adolescents is linked with poor social skills, aggressive behavior, and earlier sexual intercourse.<sup>11</sup>

**Mental and Social Disorders:** Use of hardcore pornography is linked to harmful outcomes such as mental health problems,<sup>12</sup> child-on-child harmful sexual behaviors,<sup>13</sup> risky sexual behaviors,<sup>14</sup> and physical and sexual victimization.<sup>15</sup>

**Long-Term Pornography Use:** Among males, younger age of first exposure to pornography has been linked to higher rates of pornography use later in life,<sup>16</sup> as well as the viewing of animal and child sexual abuse material (i.e., child pornography) as adults.<sup>17</sup>

**Links to Prostitution:** Frequent male users of pornography are significantly more likely to have sold and purchased sex than other males of the same age."<sup>18</sup>

### What Youth Say About the Impact of Their Exposure to Pornography

"Because of porn, I have slowly become unsociable towards my friends and family, and I have never been able to have a romantic relationship with anyone besides the screen of my computer."

— Male, 19 years old<sup>19</sup>

"I think pornography has made me react positively to non-consensual sex and violence against women."

— Female, 16 years old<sup>20</sup>



"I've been struggling for so long, and it's taxing on my mind and body. I'm tired and have little motivation, which often leads to me skipping homework assignments and social gatherings just because of porn. I'm honestly scared, scared for my future, my relationships, and my well-being."

— Male, 18 years old<sup>21</sup>

"I think it really destroyed my brain, and I feel incredibly devastated that I was exposed to so much porn."

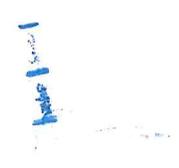
— Female pop star Billie Eilish, 19 years old<sup>22</sup>



- <sup>1</sup> Victoria Rideout and Michael B. Robb, *The Common Sense Census: Media Use by Tweens and Teens*, 2019 (San Francisco, CA: Commonsense Media, 2019), <https://www.common-sense-media.org/sites/default/files/research/report/2019-census-8-to-18-full-report-updated.pdf> (accessed March 24, 2022).
- <sup>2</sup> Chiara Sabina, Janis Wolak, and David Finkelhor, "The Nature and Dynamics of Internet Pornography Exposure for Youth," *CyberPsychology & Behavior* 11, no. 6 (2008): 691–693, <http://unh.edu/ccrc/pdf/CV169.pdf> (accessed February 9, 2022).
- <sup>3</sup> Fiona Vera-Gray et al., *The British Journal of Criminology* (2021): 1–18, doi:10.1093/bjc/azab035.
- <sup>4</sup> Tamara L. Doremus-Fitzwater, Elena I. Varlinskaya, and Linda P. Spear, "Motivational Systems in Adolescence: Possible Implications for Age Differences in Substance Abuse and Other Risk Taking Behaviors," *Brain and Cognition* 71, no. 1 (2010): 114–123, doi: 10.1016/j.bandc.2009.08.008 (accessed February 9, 2022); Frances E. Jensen with Amy Ellis Nutt, *The Teenage Brain: A Neuroscientist's Survival Guild to Raising Adolescents and Young Adults*, (New York: Harper Collins, 2015).
- <sup>5</sup> Michele L. Ybarra et al., "X-Rated Material and Perpetration of Sexually Aggressive Behavior among Children and Adolescents: Is There a Link?" *Aggressive Behavior* 37, no. 1 (2011): 1–18, doi: 1002/ab.20367 (accessed January 11, 2022).
- <sup>6</sup> Jessica Laird et al., "Demographic and Psychological Factors Associated with Child Sexual Exploitation. A Systematic Review and Meta-analysis," *JAMA Network Open* 3, no. 9 (2020): 1–17, doi: 10.1001/jamanetworkopen.2020.17682 (accessed January 11, 2022). Note mean age of the total 67,453 unique participants was 16.2 years.
- <sup>7</sup> THORN and Benson Strategy Group, *Self-Generated Child Sexual Abuse Material: Youth Attitudes and Experiences in 2020. Finding from 2020 Quantitative Research among 9–17 Year Olds*, (November 2021); [https://info.thorn.org/hubfs/Research/SGCSAM\\_Attitudes&Experiences\\_YouthMonitoring\\_FullReport\\_2021\\_FINAL\(1\).pdf](https://info.thorn.org/hubfs/Research/SGCSAM_Attitudes&Experiences_YouthMonitoring_FullReport_2021_FINAL(1).pdf) (accessed January 12, 2022).
- <sup>8</sup> Joris van Ouytsel, Koen Ponnet, and Michael Walrave, "The Association between Adolescent's Consumption of Pornography and Music Videos and Their Sexting Behavior," *Cyberpsychology, Behavior, and Social Networking*, 17, no. 12 (2014): 772–778, doi:10.1089/cyber.2014.0365 (accessed February 9, 2022).
- <sup>9</sup> Internet Watch Foundation (IWF), "The Dark Side of the Selfie: IWF Partners with the Marie Collins Foundation in New campaign to Call on Young Men to Report Self-generated Sexual Images of Under 18s," January 15, 2020; <https://www.iwf.org.uk/news/dark-side-of-selfie-iwf-partners-marie-collins-foundation-new-campaign-to-call-on-young-men-to> (accessed January 11, 2022).
- <sup>10</sup> Ine Beyens, Laura Vandenbosch, and Steven Eggermont, "Early Adolescent Boys' Exposure to Internet Pornography: Relationships to Pubertal Timing, Sensation Seeking, and Academic Performance," *The Journal of Early Adolescence* 35, no. 8 (2015): 1045–1068, doi:10.1177/0272431614548069 (accessed February 9, 2022).
- <sup>11</sup> Ibid.
- <sup>12</sup> Megan S. C. Lim, Paul A. Aguis, Elise R. Carroette, et al., "Young Australians Use of Pornography and Associations with Sexual Risk Behaviors," *Australian and New Zealand Journal of Public Health* 41, no. 4 (2017): 438–443, doi: 10.1111/1753-6405.12678 (accessed February 9, 2022).
- <sup>13</sup> Michael C. Seto and Martin L. Lalumiere, "What is So Special about Male Adolescent Sexual Offending? A Review and Test of Explanations through Meta-Analysis," *Psychological Bulletin* 136, no. 4 (2010): 526–575, doi: 10.1037/a0019700 (accessed February 9, 2022); Ybarra et al., "X-Rated Material and Perpetration of Sexually Aggressive Behavior among Children and Adolescents: Is There a Link?" *Aggressive Behavior* 37, (2011): 1–18, doi: 10.1002/ab.20367 (accessed February 9, 2022).
- <sup>14</sup> Meghan Donevan and Magdalena Mattebo, "The Relationship between Frequent Pornography Consumption, Behaviours, and Sexual Preoccupancy among Male Adolescents in Sweden," *Sexual & Reproductive Health* 12 (2017): 82–87, doi: 10.1016/j.srhc.2017.03.002 (accessed February 9, 2022); Debra K. Braun-Courville and Mary Rojas, "Exposure to Sexually Explicit Web Sites and Adolescent Sexual Attitudes and Behaviors," *Journal of Adolescent Health* 45 (2009): 156–162, doi: 10.1016/j.adohealth.2008.12.004 (accessed February 9, 2022); C. Marston and R. Lewis, "Anal Heterosex among Young People and Implications for Health Promotion: A Qualitative Study in the UK," *BJM Open* 4 (February 4, 2016): 1–6, doi: 10.1136/bmjopen-2014-004996 (accessed February 9, 2022); Emily R. Rothman, et al., "Multi-Person Sex among a Sample of Adolescent Female Urban Health Clinic Patients," *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 89, no. 1 (2011): 129–137, doi: 10.1007/311524-011-9630-1 (accessed February 9, 2022); E. Häggström-Nordin, U. Hanson, and T. Tydén, "Association between Pornography Consumption and Sexual Practices among Adolescents in Sweden," *International Journal of STD & AIDS* 16 (2005): 102–107, doi: 10.1258/0956462053057512 (accessed February 9, 2022); Lim et al., *ibid.*
- <sup>15</sup> Michele L. Ybarra and Kimberly Mitchell, "Exposure to Internet Pornography among Children and Adolescents: A National Survey," *CyberPsychology & Behavior* 8, no. 5 (2005): 473–486, doi: 10.1089/cpb.2005.8.473 (accessed February 9, 2022).
- <sup>16</sup> Chyng Sun, Ana Bridges, Jennifer Johnson, and Matt Ezzell, "Pornography and the Male Sexual Script: An Analysis of Consumption and Sexual Relations," *Archives of Sexual Behavior* 45, no. 4 (2016): 983–994, doi:10.1007/s10508-014-0391-2 (accessed February 9, 2022).
- <sup>17</sup> Kathryn Seigfried-Spellar and Marcus K. Rogers, "Does Deviant Pornography Use Follow a Guttman-Like Progression?" *Computers in Human Behavior* 29, no. 5 (2013): 1997–2003, doi:10.1016/j.chb.2013.04.018; Kathryn Seigfried-Spellar, "Deviant Pornography Use: The Role of Early-Onset Adult Pornography Use and Individual Differences," *International Journal of Cyber Behavior, Psychology and Learning* 6, no. 3 (Jul, 2016): 34–47, doi:10.4018/IJCBPL.2016070103 (accessed February 9, 2022).
- <sup>18</sup> Carl Göran Svedin, Ingrid Åkerman, and Gisela Priebe, "Frequent Users of Pornography. A Population Based Epidemiological Study of Swedish Male Adolescents," *Journal of Adolescence* 34, no. 4 (2011): 779–788, doi: 10.1016/j.adolescence.2010.04.010 (accessed February 9, 2022).
- <sup>19</sup> Fortify, Fortify Essays, unpublished compilation (2017).
- <sup>20</sup> Ibid.
- <sup>21</sup> Ibid.
- <sup>22</sup> CNN and Reuters, "Billie Eilish says watching porn from age 11 'really destroyed my brain,'" December 16, 2021



# CHILDREN'S DEFAULT TO SAFETY LEGISLATION PASSES CONSTITUTIONAL MUSTER



## I. The First Amendment

In discussing efforts to restrict pornography websites on the Internet, **the Supreme Court has found that filters on devices in the hands of the user pass constitutional muster.** Most notably, the Child Online Protection Act, which prohibited any person from posting content on the Internet that was harmful to minors, was struck down by the Supreme Court because it was not the most effective and least restrictive way to protect minors from harmful online content. *Ashcroft, ACLU*, 542 U.S. 656, 673 (2004). By contrast, the Supreme Court found that filters on devices at the receiving end met the requirements of the First Amendment. The Court:

Blocking and filtering software ... is less restrictive and ... more effective as a means of restricting children's access to materials harmful to them ....

Filters are less restrictive [because they] impose selective restrictions on speech at the receiving end, not universal restrictions at the source. Under a filtering regime, adults without children may gain access to speech they have a right to see without having to identify themselves or provide their credit card information. Even adults with children may obtain access to the same speech on the same terms simply by turning off the filter on their home computers. *Id.* at 670.

It was the tech industry that promoted filters over Internet bans in *Ashcroft*. *Id.* at 669-70. Unlike bans at the point of transmission, filters on user devices permit adult access. *Id.* And see *Butler v. Michigan*, 352 U.S. 380, 383 (1957) (the state may not restrict adult access to material on grounds that it is unsuitable for minors).

So long as adults are permitted access, Supreme Court has repeatedly recognized that the State may restrict children's access to harmful material. *Ginsberg v. State of N.Y.*, 390 U.S. 629, 636-638 (1968). The Court has also found that the State has a compelling interest in protecting children from pornographic material. *Id.* at 638-640. Furthermore, the Court has recognized that parents are entitled to laws which support their ability to safeguard their children from harm. *Id.* at 639

Under the filtering law, adults can easily access sexually explicit material if they choose to, as noted. During activation, adults can deactivate the filters entirely. This imposes little or no burden on adults' access to speech while effectively protecting children.

Following the Court's cue in *Ashcroft*, other efforts to protect children online through filtering software have been upheld by the Supreme Court. For instance, the Children's Internet Protection Act requires libraries to use software that prevents Internet users from accessing obscenity or child pornography online as a condition of receiving federal funds. 20 U.S.C. § 9134(f)(1)(A)(i) (2005). See also 47 U.S.C. § 254(h) (2005). The Supreme Court held that requiring filters on library computers passed constitutional muster. *U.S. v. Am. Library Ass'n*, 539 U.S. 194, 211-12 (2003). The Court determined such filters met constitutional requirements since the filter could be easily disabled by library staff at the request of an adult patron. *Id.* at 209-210.

Compared to the Children's Internet Protection Act in *Am. Library Ass'n*, the CHILDREN'S DEFAULT TO SAFETY legislation is far less restrictive and burdensome for adult users since adult users have the ability to change filter settings or deactivate filters themselves. If it is a small burden for an adult to ask a librarian to turn off a filter at a library, then requiring an adult to turn off a filter on their own device, using a passcode provided at activation, poses little or no burden.

Nor is the material to be filtered unconstitutionally vague or overbroad as the definition of material that is "harmful to minors" has been found fully constitutional by the Supreme Court in *Ginsberg v. New York*, 390 U.S. 629 (1968). It "gives...adequate notice of what is prohibited." *Id.* at 643 (1968), quoting *Roth v. United States*, 354 U.S. 476, 492 (1957). Additionally, community standards regarding what is harmful to minors has also passed constitutional muster as it is not likely to vary so much as to cause uncertainty among those working to comply with the legislation. *Ashcroft v. ACLU*, 535 U.S. 564, 583-85 (2002).

## II. The Federal Dormant Commerce Clause

The CHILDREN'S DEFAULT TO SAFETY bill complies with the Dormant Commerce Clause. The purpose of the clause is to prevent economic protectionism, that is, laws which are designed to burden out of state businesses in favor of in state businesses. *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 390 (1994). As long as all producers are treated the same, it does not matter "when only out-of-state businesses are burdened because there are no comparable in-state businesses." *de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 948 (9th Cir. 2013)

A two-tiered analysis is used. First, is the state acting discriminatorily to out of state producers or regulating wholly out of state activities. *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573 (1986). The answer is no. Second, is any burden imposed on interstate commerce greater than the benefit to the State. *Id.* The answer again is no. This CDTIS bill does not discriminate based on the origin of the product; it does not directly regulate interstate commerce; and it does not create nor impose a substantial burden on interstate commerce, and thus, it cannot outweigh the State's compelling interest in protecting children.

Even if the "practical effect" of the law is to regulate something made out of state, this bill is only seeking to activate the filter in its own state for its own citizens. *Greater Los Angeles Agency on Deafness, Inc. v. Cable News Network, Inc.*, 742 F.3d 414, 433 (9th Cir. 2014) (where the California law requiring captions on CNN videos accessible by Californians was upheld, even though the videos were made outside of the state.); *Chinatown Neighborhood Ass'n v. Harris*, 794 F.3d 1136, 1146 (9th Cir. 2015) (upholding the California Shark Fin law which barred the sale or possession of shark fins within the state but did not fix prices or impose the ban outside the state).

As discussed above, **it is well recognized that the state has a compelling interest in protecting children from exposure to pornography.** *Ginsberg v. New York*, 390 U.S. 638-40. Any assertion that the law would place a substantial burden on interstate commerce cannot be taken seriously given the minimal obligation of simply turning an existing filter to ON rather than OFF when activated in the state. And no serious argument has been raised to date that the *faux* ON/OFF burden could conceivably outweigh the compelling State interest in protecting children from harm.



**FEH Remote Participant List**

Date	Committee	H/S	Bill #	Position	Requester Name	Location	Email	Phone	Affiliation	Date									
2/1/23	FEH	HB	349	Proponent	Chris McKenna	Massachusetts	[REDACTED]	[REDACTED]	Protect Young Eyes										
2/1/23	FEH	HB	349	Proponent	Eleanor Kennedy Gaetan, Public Policy Dir	Washington DC	[REDACTED]	[REDACTED]	National Center on Sexual Exploitation										
2/1/23	FEH	HB	349	Proponent	Benjamin Bull	Washington DC	[REDACTED]	[REDACTED]	N/A										