

# How a Texas App Store Case Could Reshape Child Safety Laws

by Meg Leta Jones



Congress is preparing to vote on a package of bills aimed at protecting children online. The proposals span content moderation requirements for social media platforms, data collection restrictions, and controls over how minors access apps through their phones. Behind all these legislative efforts lies a fundamental constitutional question that remains unresolved: What is the scope of a child's First Amendment right to access digital platforms?

States are responding to their constituents and moving aggressively. Some have passed age verification laws for pornography websites. Others have enacted social media access restrictions. And in May 2025, Texas passed the App Store Accountability Act, which requires age verification for app store users and parental consent for every app download and in-app purchase by minors. The law doesn't tell Apple or Google which apps they can offer, but instead requires parental approval before minors can create commercial relationships with apps by downloading them or making purchases.

In December 2025, a federal district court [blocked](#) the law before it could take effect, finding it violated the First Amendment. The judge ruled that requiring age verification and parental consent for every app download, from news apps to library apps to Bible study apps, was "akin to a law that would require every bookstore to verify the age of every customer at the door." While the decision delivered a setback to efforts to regulate children's digital access, the ruling offers an opportunity to clarify the path forward and tees up the precise constitutional question that needs answering.

When Texas's appeal reaches the Fifth Circuit, it will land in a very different doctrinal landscape than existed even a year ago. Last term, in [Free Speech Coalition v. Paxton](#), the Fifth Circuit upheld Texas's age verification law for pornography websites, and the Supreme Court affirmed that decision in a 6-3 ruling. The Court's reasoning matters for understanding what comes next. Justice Thomas's majority opinion held that age verification creates merely incidental burdens on adults' access to content in relation to the state's legitimate goal of preventing minors from accessing material the state has authority to restrict them from seeing. Because age verification was a means to enforce restrictions on harmful content that minors don't have a First Amendment right to access, the Court applied intermediate scrutiny rather than strict scrutiny. The decision represented a major doctrinal shift, with Justice Thomas drawing on Justice Story's principle that when "a general power to do a thing is given, every particular power necessary for doing it is included." Age verification, the Court held, is an "ordinary and appropriate means" of enforcing age-based restrictions, just as states require ID to purchase alcohol or tobacco.

The *Paxton* framework suggests a critical distinction: age verification may survive constitutional scrutiny when it enforces restrictions the state has the authority to impose. Texas can prohibit minors from accessing pornography and age verification is just the mechanism to enforce that prohibition in the digital environment.

The App Store Accountability Act extends the logic beyond porn to commercial regulation. Does Texas have authority to prohibit minors from entering commercial relationships with app platforms without parental consent?

Texas says yes. Minors' contracts have long been voidable under the infancy doctrine, which is why businesses routinely require parental consent for significant commercial relationships like opening a bank account. States have explicitly required parental consent for certain transactions and relationships including employment and medical services. Apple's own terms of service state: "These terms and conditions create a contract between you and Apple." Texas argues that app store accounts create ongoing commercial relationships with terms of service, privacy policies, and purchase obligations that fall within the state's traditional authority to regulate minors' contractual capacity.

If courts accept this framing, then age verification becomes an incidental burden on a regulation the state has authority to impose. Just as *Paxton* held that age verification could enforce restrictions on harmful content access, the Fifth Circuit could hold that age verification can enforce parental consent requirements for digital commercial transactions. The standard would be intermediate scrutiny, asking whether the law is substantially related to an important governmental interest. But if courts reject this framing, as the District Court did, if they find that the practical effect of restricting app downloads is to burden minors' access to protected speech regardless of how Texas characterizes it, then strict scrutiny applies. And under strict scrutiny, the law will have a fairly difficult row to hoe.

This is the doctrinal fork in the road. And it's playing out against a backdrop of uncertainty about minors' First Amendment rights more broadly.

In 2011, the Supreme Court struck down California's attempt to restrict minors' access to violent video games in *Brown v. Entertainment Merchants Association*, but the 7-2 decision left fundamental questions unanswered. Justice Scalia's majority warned that accepting California's parental consent rationale could justify requiring parental permission before admitting minors to a political rally or church. But Justice Thomas dissented on originalist grounds, arguing that "the freedom of speech," as originally understood, does not include a right to speak to minors (or a right of minors to access speech) without going through the minors' parents or guardians." Justice Breyer's dissent suggested courts should apply a less restrictive standard when states are trying to restrict access by minors. Justice Alito's concurrence, joined by Chief Justice Roberts, similarly suggested that properly drafted restrictions on new media might survive constitutional scrutiny, urging courts to "proceed with caution" given technological change.

With the current 6-3 conservative majority, *Brown*'s reasoning may not command the same support it did in 2011. Laws framed as empowering parents rather than as direct state censorship may receive more favorable reception. Moreover, the regulatory landscape has shifted. COPPA has required parental consent for data collection from children under 13 for over two decades without constitutional challenge. In January 2025, the FTC updated COPPA to require separate parental consent before companies can use children's data for targeted advertising. While these regulations have implications for which platforms children can easily access, they survive as restrictions on commercial practices rather than direct limits on speech, a distinction that may prove critical for laws like Texas's App Store Accountability Act.

Texas's appeal to the Fifth Circuit will test whether *Paxton*'s age verification framework extends beyond pornography to commercial transactions. If it does, there may be constitutional space to regulate the commercial infrastructure of children's digital access, like app stores, data collection, targeted advertising, without triggering the same strict scrutiny that applies to direct content restrictions for adults. As Congress considers KOSA and other child safety legislation, the

Fifth Circuit may, at least for the near future, determine whether age-aware regulation has a constitutional future beyond obscenity laws.

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