

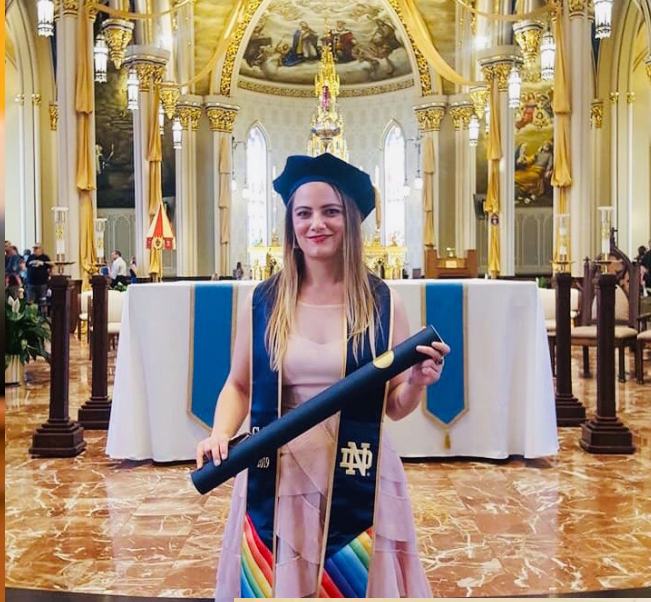
LGBTQ+ Privacy & Civil Liberties:

Navigating Social Media and Age Assurance Legislation

Katelyn Ringrose, CIPP/EU, CIPP/US, CIPM, FIP

AGENDA:

- Introduction
- Motivation
- Central Arguments
- Background / Context
- Open Questions
- Next Steps



MOTIVATION

PRIVACY OF LGBTQ+ YOUTH

LGBTQ+ youth are disproportionately represented among homeless youth populations, often due to family rejection.

LGBTQ+ students are significantly more likely to experience bullying and harassment at school compared to their cishet peers.

LGBTQ+ individuals are more likely to be online than their cishet peers.

LGBTQ+ individuals depend on the privacy community, and privacy protections, to protect their autonomy online.

CENTRAL ARGUMENT

ANTI-OBSCENITY LAWS AND CONTENT-BASED RESTRICTIONS

A Flawed Approach That Puts Youth at Risk

Increased Parental Surveillance

Restricts Access to Supportive Resources

Poses Privacy & Data Security Risks

Drives Youth Elsewhere

There are Less Restrictive Alternatives

SECTION 4. (1) A digital service provider may not enter into an agreement with a person to create an account with a digital service unless the person has registered the person's age with the digital service provider. A digital service provider shall make commercially reasonable efforts to verify the age of the person creating an account with a level of certainty appropriate to the risks that arise from the information management practices of the digital service provider.

(2) 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. Acceptable methods of obtaining express consent of a parent or guardian include any of the following:

(a) Providing a form for the minor's parent or guardian to sign and return to the digital service provider by common carrier, facsimile, or electronic scan;

(b) Providing a toll-free telephone number for the known minor's parent or guardian to call to consent;

(c) Coordinating a call with a known minor's parent or guardian over video conferencing technology;

(d) Collecting information related to the government-issued identification of the known minor's parent or guardian and deleting that information after confirming the identity of the known minor's parent or guardian;

(e) Allowing the known minor's parent or guardian to provide consent by responding to an email and taking additional steps to verify the identity of the known minor's parent or guardian; or

(f) Any other commercially reasonable method of obtaining consent in light of available technology.

NETCHOICE V. FITCH

Restrictions on fully protected expression online, as imposed by Mississippi House Bill 1126 (the “Act”), disproportionately harm LGBTQ+ individuals by limiting their ability to explore their identities, connect with peers, find affirming content, and express themselves, thereby undermining their well-being and access to essential lifelines.

LGBT Tech
The Trevor Project
PFLAG, Inc.
Bay Area Lawyers for Individual Freedom
Hacking the Workforce
Fight for the Future

IN THE
Supreme Court of the United States

NETCHOICE,
Applicant,

v.

LYNN FITCH, IN HER OFFICIAL CAPACITY AS ATTORNEY
GENERAL OF MISSISSIPPI,
Respondent.

On Application to the Honorable Samuel A. Alito, Jr.,
Associate Justice of the Supreme Court of the United States and Circuit
Justice for the Fifth Circuit

AMICI CURIAE BRIEF OF THE LGBT TECHNOLOGY INSTITUTE,
THE TREVOR PROJECT, PFLAG INC., BAY AREA LAWYERS FOR
INDIVIDUAL FREEDOM, HACKING THE WORKFORCE, AND FIGHT
FOR THE FUTURE IN SUPPORT OF APPLICANT

KATELYN N. RINGROSE
Counsel of Record
J. JONATHAN HAWK
SAMANTHA J. SMART
DORIS L. YUEN
NATHAN W. GRAY
McDermott Will & Emery LLP
500 North Capitol St. NW
Washington, DC 20001
kringrose@mwe.com
+1 (202) 756-8176
Counsel for Amici Curiae



BACKGROUND / CONTEXT

EARLY AMERICAN ANTI-SODOMY LAWS



Charles Altwatter was convicted of an "infamous crime against nature" in 1915 in Shoshone County.

He was one of the first men to challenge Idaho's law, challenged by the ACLU and overturned in 2022.

THE LAVENDAR SCARE & THE ROLE OF EMPLOYMENT PRIVACY PROTECTIONS



POLICE RAIDS AND ENTRAPMENT IN THE MID-1900S



Police raids, 1960s

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-51-1401, is amended by adding the following language as a new subdivision:

"Adult cabaret performance" means a performance in a location other than an adult cabaret that features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators who provide entertainment that appeals to a prurient interest, or similar entertainers, regardless of whether or not performed for consideration;

SECTION 2. Tennessee Code Annotated, Section 7-51-1407, is amended by adding



*Texas, Tennessee,
Montana*

THE HIV/AIDS EPIDEMIC & THE ROLE OF MEDICAL PRIVACY

New Pneumonia Linked To Gay Lifestyle

Atlanta, GA - According to the U.S. Public Health Service's Center for Disease Control, five sexually active gay men, two of whom died, were treated between October 1980 and May 1981 for pneumonia caused by the Pneumocystis carni parasite. The center reported: "The fact that these patients were all




TODAY'S CASES AND NEWS

 Reason Magazine

A Ruling That Eliminates Important Privacy Rights in Many Stored Internet Contents—And The Legal Challenge to It

18 U.S.C. § 2702, part of the Stored Communications Act, is one of those laws that you rely on every day but you have probably never heard...

Aug 14, 2024

 Oklahoma House of Representatives (.gov)

Bill to Limit Youth Access to Social Media Passes House

OKLAHOMA CITY – Rep. Chad Caldwell, R-Enid, on Monday passed legislation in the House that would restrict social media accounts for youth...

3 days ago

 Mississippi Today

'This is a complete attack': At least 31 anti-LGBTQ+ bills introduced this session in Mississippi

Lawmakers have introduced 31 bills targeting the rights of LGBTQ+ Mississippians in education and health care as the first deadline to pass bills out of...

Jan 31, 2023

 Maryland Matters

Supreme Court says parents can pull kids from classes with LGBTQ-themed books

The U.S. Supreme Court handed a victory Friday to Montgomery County parents who object, for religious reasons, to the school system's use of...

1 month ago



WSJ WSJ

States Consider App-Store Age-Verification Laws as Child-Safety Advocates Push for Age Checks

At least nine states, including Utah and South Carolina, recently proposed bills that would require app-store operators to check the ages of...

1 month ago



 LGBTQ Nation

Florida is already trying to use the "Skrametti" decision to take away trans healthcare from adults

The Supreme Court ruled in favor of a trans health care ban for minors. Now it could take care away from trans adults.

2 weeks ago



OPEN QUESTIONS

OPEN QUESTIONS

How do the privacy and free expression rights of children differ from the rights of adults?

How should legislation account for technical limitations associated with age verification?

How do recent SCOTUS cases, *Skrmetti* and *Mahmoud*, square with issues of bodily autonomy and access to information?

INTIMATE PRIVACY AND FREE EXPRESSION CASES

Legislative History

***Griswold v. Connecticut (1965) —
contraceptive use***

***Bowers v. Hardwick (1986) —
same sex intimacy, “bedroom privacy”***

***McVeigh v. Cohen (1998) —
don’t ask, don’t tell***

***Lawrence v. Texas (2003) —
striking anti-sodomy laws***

***United States v. Jones (2012) —
location privacy***

***Obergefell v. Hodges (2015) —
repealing same-sex marriage bans***

***Bostock v. Clayton County (2020) —
applying civil rights protections to both sexual orientation and gender identity***

NEXT STEPS

THE WRITING PROCESS

Identify co-authors.

Discuss avenues for publication.

Streamline research.

Socialize drafts.

THANK YOU / QUESTIONS

kringrose@mwe.com

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RESOURCES / CITATIONS

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- Daniel Solove, Privacy at the Margins: An Interview with Scott Skinner-Thompson on Privacy and Marginalized Groups, TeachPrivacy (Feb. 24, 2021)
- Kirby Phares & Rob Todaro, ctrl+alt+lgbt: Digital Access, Usage, and Experiences of the LGBTQ+ Community, LGBT Tech (May 29, 2024)
- Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 HARV. L. REV. 193 (1890)
- Scott Skinner-Thompson, Privacy at the Margins, TeachPrivacy (Feb. 24, 2021)
- Shae Gardner, Beyond The Binary, LGBTQ+ Rights in the Digital Landscape, LGBT Tech (Jan. 2025)