



Established 1962

Written Testimony of Tori Hirsch, Esq., Policy Counsel

National Center on Sexual Exploitation

1201 F St NW, Washington, D.C. 20004

Testimony in Favor of MD S.B. 0780, Internet-Connected Devices and Internet Service Providers – Default Filtering of Obscene Content (Maryland Online Child Protection Act)

Maryland State Senate, Finance Committee

March 13, 2024

Chairwoman Beidle, Vice Chair Klausmeier, and Members of the Committee,

My name is Tori Hirsch, and I am a Maryland attorney with the National Center on Sexual Exploitation, an organization with a mission to expose and eradicate all forms of sexual exploitation and abuse. I urge you to support SB 0780.

The road map for this bill comes directly from the United States Supreme Court’s important First Amendment decisions in *Reno v. ACLU*, 521 U.S. 844 (1997) (Communications Decency Act) and *Ashcroft v. ACLU*, 542 U.S. 656 (2004) (Child Online Protection Act) where the Supreme Court struck down age verification laws at the internet platform level, the ISP level, meaning at the source.

In *Ashcroft* the Supreme Court explicitly stated that filtering pornography at the device level was the best and most constitutional means of protecting children from harmful content. To quote the Court, it stated: “Blocking and filtering software is less restrictive and ... most effective as a means of restricting children’s access to [pornographic material]. Filters are less restrictive [because they] impose selective restrictions on speech at the receiving end, not universal restrictions at the source.” *Ashcroft*, at 670.

Through this type of filtering regime, children are protected from obscene material, and adults are allowed unimpeded access.

As stated in the *Ashcroft* case—no chill on free speech is implicated by a filter at the user level because no speech is censored for any adult who wants to hear or see the speech.

This constitutional solution imposes a small burden on the manufacturer, simply requiring existing filtering software to default to “ON” when a device is activated for a minor. Any argument to the contrary is difficult to accept, since manufacturers can default to “ON” as easily as they can default to “OFF,” as they do currently. In fact, Apple recently did exactly this for smart phones used by children 12 and under. All this bill is asking, is that manufactures default the filter to the ON position for all minors below the age of 18, which is in line with Maryland law making it a crime to distribute obscene material to children. MD § 11-202. Maryland S.B. 0780 passes constitutional muster and will protect minors in Maryland.

