

# AGE OF SURVEILLANCE

**CONSERVATIVE AGE SURVEILLANCE  
OF LGBTQ+ YOUTH**

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## I. Introduction

We're at an inflection point in the design of American internet as a new wave of laws seeks to dramatically expand government surveillance of everything from social media to libraries, all in the name of protecting children. But while few objectives are as laudable as keeping kids safe, the rhetoric of child protection frequently masks a far darker reality: an effort to use immense new surveillance powers to attack LGBTQ+ youth and the institutions that serve them. In recent years, far-right lawmakers have used this child protection narrative to pass a patchwork of new measures at the state level that are already radically remaking what content is available in their jurisdictions. But perhaps the most alarming discovery is how growing numbers of liberal lawmakers are now following suit, joining in to expand surveillance and control of internet platforms in ways that undermine anonymity and endanger the open internet. Of course, these newest progressive proponents of internet tracking don't share their conservative counterparts' anti-LGBTQ+ ideology. Instead, they've come to view expanded government surveillance of internet platforms as a corrective to platforms' unethical misuse of children's data and use of dangerous features. Unfortunately, while many of the measures making their way through statehouses are poorly positioned to address the real drivers of social media harms, they will unintentionally strengthen this far-right attack on the LGBTQ+ internet resources.

## II. Red State Internet

In post-Dobbs America, diverging state laws on abortion access and gender-affirming care have radically accelerated further apart. Many of the new restrictions on abortion and trans health care enacted in conservative states have been mirrored by new "sanctuary" laws in their progressive counterparts, enshrining stronger health protections in state laws and constitutions. While many of these health debates are quite low tech, a growing number of anti-LGBTQ+ ideologues are looking to internet regulations as a way to deprive the LGBTQ+ community of evidence-based healthcare, both in and out of state.

As we previously detailed in our paper *The Kids Won't Be Alright: The Looming Threat of Child Surveillance Laws*, measures in Utah and Louisiana are emblematic of the broader national movement on internet governance.<sup>1</sup> Notably, these states' age verification laws are now being mirrored coast to coast, deeply undermining privacy and autonomy in the process. Sadly, age verification technologies have proven ineffective, inequitable, and ripe for abuse. But as shown below, these measures are also increasingly tied to divisive and discriminatory ideologies.

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<sup>1</sup> Albert Fox Cahn et al., "The Kids Won't Be Alright: The Looming Threat of Child Surveillance Laws," September 28, 2023, <https://www.stopspying.org/child-surveillance>.

a. *Utah*

In March, 2023, Utah enacted the Utah Social Media Regulation Acts (“USMRA”), imposing sweeping age verification requirements for social media companies, banning minors from creating an account without parental consent, and banning their access to services between 10:30PM and 6:30AM.<sup>2</sup> As a result, beginning on March 1, 2024, social media companies must verify the age of adults seeking to open or maintain a social media account, obtain the consent of parents or guardians for users under 18, allow parents full access to their child’s account, create a default curfew setting that blocks overnight access to minor accounts (which parents can adjust), protect minor accounts from unapproved direct messaging, and block minor accounts from search results.<sup>3</sup> Additionally, social media sites are barred from collecting minors’ data, targeting minors’ accounts for advertising, and targeting minors’ accounts with addictive features.

Notably, the measure’s lead sponsor in the Utah House (Representative Jordan Teuscher) has a track record of targeting trans teens, both on and offline. The same month that Utah adopted USMRA, its governor signed a second measure sponsored by Teuscher into law barring trans athletes from student sports.<sup>4</sup> The measure requires students participating in extracurriculars in public schools to provide a birth certificate, and only permits students to compete in events that match their sex at birth. Teuscher also went on to sponsor Utah’s version of the federal Religious Freedom Restoration Act in 2024, which would dramatically expand protections for individuals claiming that state laws violated their religious beliefs, including individuals and businesses engaging in anti-LGBTQ+ discrimination.<sup>5</sup>

But Utah’s age verification doesn’t stop at social media. Just two months later, a similar measure aimed at blocking teens from accessing purportedly harmful content took effect, requiring large numbers of internet sites to collect invasive data from users proving their age.<sup>6</sup> While misleadingly described as a ban on pornography, the measure actually applies to any content that “the average person, applying contemporary community standards, would find...is designed to appeal to or is designed to pander to, the prurient interest.”<sup>7</sup> Such a broad and flexible definition, combined with the threat of ruinous penalties, leaves many internet sites in an uncertain position, forced to choose between collecting data on every user, tracking their identities, or withdrawing from the state as a whole.

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<sup>2</sup> Social Media Regulation Amendments, S.B. 152, 65<sup>th</sup> Leg. Sess. (Utah 2023).

<sup>3</sup> Social Media Regulation Amendments, S.B. 152, 65<sup>th</sup> Leg. Sess. (Utah 2023).

<sup>4</sup> Participation in Extracurricular Activities Amendments, H.B. 209, 65<sup>th</sup> Leg. Sess. (Utah 2023).

<sup>5</sup> Exercise of Religion Amendments, S.B. 150, 65<sup>th</sup> Leg. Sess. (Utah 2024).

<sup>6</sup> Sam Metz, “Utah Law Requiring Porn Sites Verify User Ages Takes Effect,” *The Associated Press*, May 3, 2023, <https://apnews.com/article/porn-age-verification-utah-8f8f4960ad1ec4afc5d59fd7d34c3b9d%20>.

<sup>7</sup> Online Pornography Viewing Age Requirements, S.B. 287, 65<sup>th</sup> Leg. Sess. (Utah 2023).

This type of chilling effect should give us pause, no matter the motivation, but when viewed in light of the sponsors' intent, the bill is nothing short of alarming. According to State Senator Todd Weiler, the measure's Republican sponsor, "I don't think it's helpful when a kid is forming their impressions of sex and gender to have all of this filth and lewd depictions on their mind."<sup>8</sup> Notably, Weiler also is a proponent of USMRA. And this sort of comment is far from an outlier. Senator Weiler pushed other bills that attacked trans rights even more explicitly, including a measure that would force schools to out trans kids to their parents, forcing students to obtain parental consent for any change in name or pronoun.<sup>9</sup> Even more alarmingly, the measure fully empowers parents with a history of transphobia or abuse, with no carve-out for situations where parent notification might pose an immediate threat to trans teens.<sup>10</sup>

*b. Louisiana*

In June 2023, Louisiana passed legislation requiring anyone under 18 to obtain parental consent before making accounts on nearly any website. Louisiana has historically been an aggressive proponent of online censorship, being one of the first states to pass a law requiring age verification for adult entertainment websites. The newly enacted HB61 raises similar concerns as Utah's USMRA, including broad-based curtailment of free expression for minors and adults. The vaguely written measure bans "Interactive Computer Services" from accepting sign-ups from users under age 18 but fails to clearly define what such services include.

HB61's sponsor, Representative Laurie Schlegel, didn't just take aim at social media sites. In 2022, Schlegel sponsored one of the first age verification requirements in the country, coercing sites to require users to provide government ID to prove their ages.<sup>11</sup> The bill, HB142, contains many of the same uncertainties as its Utah counterpart, applying to "[a]ny material that the average person, applying contemporary community standards would find...is designed to appeal to, or is designed to pander to, the prurient interest."<sup>12</sup> Unsurprisingly, just as this chilling legislation largely mirrors the Utah legislation, Louisiana's legislators also mirror Utah lawmakers' anti-trans ideology.

Two years before making HB61 law and chilling internet access across her state, Schlegel forcefully spoke out against the inclusion of trans athletes, framing the legislation as "protecting women in sports" from "biological males."<sup>13</sup> Without evidence, she claimed trans athletes were displacing cis-

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<sup>8</sup> Metz, "Utah Law Requiring Porn Sites Verify User Ages Takes Effect."

<sup>9</sup> Saige Miller, "Here's What Utah Sen. Todd Weiler's Bill on Gender Identity in Schools Actually Does," *KUER*, January 31, 2023, <https://www.kuer.org/politics-government/2023-01-31/heres-what-utah-sen-todd-weilers-bill-on-gender-identity-in-schools-actually-does>.

<sup>10</sup> School Gender Identity Policies, S.B. 100, 65<sup>th</sup> Leg. Sess. (Utah 2023).

<sup>11</sup> Maggie Harrison Dupre, "New Louisiana Law Makes Citizens Upload ID If They Want to Watch Porn," *Futurism*, January 5, 2023, <https://futurism.com/louisiana-law-upload-id-porn>.

<sup>12</sup> H.B. 142 (La. 2022).

<sup>13</sup> Laurie Schlegel, "S.B. 156 By Mizell" (2021), <https://www.youtube.com/watch?v=3aOJcQViNI8>.

women from competitive events.<sup>14</sup> When speaking about the mental impact of such discrimination, she said that the solution was to provide trans athletes with psychological treatment, not the chance to compete. And in 2024, Representative Schlegel co-sponsored a ban on trans bathroom access, framing it as support for “the protection of same-sex spaces.”<sup>15</sup>

A second Louisiana lawmaker at the heart of the age gating movement was even more brazen in her rhetoric. State Senator Heather Cloud was a key backer of SB162, also enacted in 2023, requiring age gating to prevent adults from communicating with teens on social media platforms, as well as giving parents broad access rights to their children’s digital content. Notably, as with other parental data access measures, the measure fully empowers parents with a history of transphobia or abuse, with no carve out for situations where parent notification might pose an immediate threat to teens’ safety.<sup>16</sup> Alarming, the measure not only has the potential to out many teens to parents who will refuse to accept them for who they are, but it will give parents the power to cut off LGBTQ+ teens from vital mental health services and peer support communities.

Cloud went on to back numerous other LGBTQ+ measures, including her 2023 sponsorship of SB7, which imposed one of the most sweeping library censorship regimes in the United States.<sup>17</sup> Much like with age gating legislation, SB7 shows how the rhetoric of child protection can mask deeply discriminatory and destructive legislation. Under the law, not only are parents permitted to control their children’s reading materials, but it also permits each locality’s library board of control to ban any materials it deems “sexually explicit.” The term, left largely undefined, has already been targeted at many notable LGBTQ+ authors, targeting their literary works as unsuitable for children, simply because they acknowledge the reality of their identity. Disturbingly, Cloud justified the invasive measure as a way to prevent “the grooming we’re seeing.”<sup>18</sup>

This is thematic of so many calling for library and internet surveillance targeted at LGBTQ+ content, perpetuating the anti-LGBTQ+ dog whistle of “grooming” to justify treating this content as a threat. We’ve witnessed a growing misappropriation of the term “groomer” across the country, shaping the false narrative that LGBTQ+ adults and content are somehow trying to groom children to engage in sexual activity.<sup>19</sup> Used in the context of book bans to target queer literature for simply discussing the existing of LGBTQ+ individuals, the claim becomes even more unhinged.

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<sup>14</sup> Schlegel, S.B. 156 By Mizell.

<sup>15</sup> Meghan Friedmann, “Transgender ‘bathroom Bill’ Filed in Louisiana Legislature. What to Know.,” *NOLA.com*, March 19, 2024, [https://www.nola.com/news/politics/transgender-bathroom-bill-filed-in-louisiana-legislature/article\\_61b00a8e-e61f-11ee-9b3b-3bf70bc1e6ec.html](https://www.nola.com/news/politics/transgender-bathroom-bill-filed-in-louisiana-legislature/article_61b00a8e-e61f-11ee-9b3b-3bf70bc1e6ec.html).

<sup>16</sup> S.B. 162 (La. 2023).

<sup>17</sup> S.B. 7 (La. 2023).

<sup>18</sup> “S.B. 162” (video) (2023), [https://senate.la.gov/s\\_video/VideoArchivePlayer?v=senate/2023/05/051523FNCE%20%20](https://senate.la.gov/s_video/VideoArchivePlayer?v=senate/2023/05/051523FNCE%20%20).

<sup>19</sup> Melissa Block, “Accusations of ‘grooming’ Are the Latest Political Attack — with Homophobic Origins,” *NPR*, May 11, 2022, sec. National, <https://www.npr.org/2022/05/11/1096623939/accusations-grooming-political-attack-homophobic-origins>.

This pattern extends all the way to the top of Louisiana politics, including the recently elected Governor and longtime Attorney General Jeff Landry. Landry forged a path to the governor's mansion by demonizing LGBTQ+ communities in the name of "child safety," including championing age verification legislation. As Louisiana's top lawyer, Landry not only supported the state's age verification laws, he even defended them in court.<sup>20</sup>

But as attorney general, Landry was just as willing to fight his states' laws in court as to defend them... at least if those laws promoted LGBTQ+ rights. In 2016, Landry sued to successfully overturn an executive order from then-governor John Bel Edwards banning anti-LGBTQ+ discrimination, eventually winning before the state supreme court.<sup>21</sup> Landry even opposed federal protections for LGBTQ+ foster youth, measures that were designed to protect children and young adults from discrimination based on their sexual orientation or gender identity while guaranteeing access to affirming behavioral health care.<sup>22</sup>

But it was only in the most recent months that Governor Landry started to say the quiet part out loud. In the run-up to his gubernatorial campaign, Landry began to ramp up his work under SB7, the Orwellian library legislation that controls teens' access to whatever local officials deem to be "sexually explicit." In an unprecedented move, the then-Attorney General created a library tip line, calling on the public to call in disfavored books with the same sense of alarmism that was once reserved for national security threats.<sup>23</sup> Framed under the heading "Protecting Minors," the webform asks the public to flag "taxpayer-subsided sexualization of children" and "extremely graphic sexual content."<sup>24</sup> In truth, the main thing the tip line targeted was LGBTQ+ existence.

Someone reading the term "extremely graphic sexual content" out of context might fear that Louisiana libraries were littered with hardcore pornography, shattering the minds of the young children. But Landry's 54-page *Protecting Innocence* report shows that even the most loving, anodyne displays of LGBTQ+ affection and identity amount to "graphic content."<sup>25</sup> The first book Landry lists is the award-winning memoir *Fun Home*.<sup>26</sup> *Fun Home* is so widely acclaimed that it became a Broadway musical. Maia Kobabe's *Gender Queer* is next, despite being the #1 best-selling LGBTQ+

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<sup>20</sup> Kevin McGill, "Judge Tosses Challenge to Louisiana's Age Verification Law Aimed at Porn Websites," *The Associated Press*, October 4, 2023, <https://apnews.com/article/porn-lawsuit-age-verification-louisiana-bbdf1afdc5c09feb104fe4199e20c22d>.

<sup>21</sup> Neal Broverman, "Louisiana Supreme Court Kills Order Protecting LGBT State Employees," *Advocate*, March 25, 2018, <https://www.advocate.com/politics/2018/3/25/louisiana-supreme-court-kills-order-protecting-lgbt-state-employees>.

<sup>22</sup> Piper Hutchinson, "Gov.-Elect Jeff Landry Joins Fight against Federal Protections for LGBTQ+ Foster Youth," *Louisiana Illuminator*, November 30, 2023, <https://lailuminator.com/2023/11/30/gov-elect-jeff-landry-joins-fight-against-federal-protections-for-lgbtq-foster-youth/>.

<sup>23</sup> Steve Zalusky, "Louisiana Attorney General Creates Online 'Tip Line' To Challenge Library Books," *Library Journal*, February 7, 2023, <https://www.libraryjournal.com/story/Louisiana-Attorney-General-Creates-Online-Tip-Line-To-Challenge-Library-Books>.

<sup>24</sup> "Protecting Minors," Louisiana Attorney General Liz Murrill, n.d., <https://www.aglizmurrill.com/protectingminors>.

<sup>25</sup> Jeff Landry, "Protecting Innocence" (Louisiana Department of Justice, 2023), <https://www.aglizmurrill.com/protectinginnocence>.

<sup>26</sup> Landry, "Protecting Innocence."

graphic novel, according to Amazon.<sup>27</sup> In both cases, the mere acknowledgement of LGBTQ+ sexuality was enough to transform these works from mainstays of the genre to “threat.”

And just like other pro age-gating lawmakers, Landry turned to the slur of “grooming.” According to the then-Attorney General, these new library tip lines and restrictions would not just ban books he disliked, but protect young Louisianans from “early sexualization, as well as grooming, sex trafficking, and abuse.”<sup>28</sup> To think that a comic book like *Fun Home* would lead to sex trafficking is so absurd as to defy belief.

*c. Race to the Bottom*

In recent months, a growing number of states have begun to enact similar measures to those already law in Utah and Louisiana. Arkansas, Indiana, Mississippi, Montana, Texas, and Virginia have all passed laws to require age verification for different types of internet content.<sup>29</sup> But one of the most disturbing versions of the legislation came mere days before the publication of this report. On March 26, 2024, the Republican-controlled Kansas legislature voted to pass SB394, one of the most aggressive age gating bills to date.<sup>30</sup>

Two features set the Kansas measure apart and raise imminent concerns about its impact on LGBTQ+ residents. First, the measure requires age surveillance for any site where 25% or more of pages contain material “harmful to minors.”<sup>31</sup> But the bill fails to specify what material exactly is harmful to minors, instead citing to an existing Kansas law: K.S.A. 21-6402.<sup>32</sup> That provision adopts language that would feel familiar in Utah or Louisiana, meaning materials that contain “nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors.”<sup>33</sup> But the law doesn’t end there. That’s because the state of Kansas defines the term “sexual conduct” so broadly, so discriminatorily, that it includes both a laundry lists of sex acts and the mere existence of “homosexuality.”<sup>34</sup>

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<sup>27</sup> Maia Kobabe, *Gender Queer: A Memoir*, Oni Press, May 28, 2019, <https://www.amazon.com/Gender-Queer-Memoir-Maia-Kobabe/dp/1549304003>.

<sup>28</sup> Piper Hutchinson, “Attorney General, Legislators Call for Restricting Minors’ Access to Library Materials,” *Louisiana Illuminator*, February 7, 2023, <https://lailuminator.com/2023/02/07/attorney-general-legislators-call-for-restricting-minors-access-to-library-materials/>.

<sup>29</sup> John Hanna and Sean Murphy, “Kansas Moves to Join Texas and Other States in Requiring Porn Sites to Verify People’s Ages,” *The Associated Press*, March 26, 2024, <https://apnews.com/article/internet-pornography-age-verification-states-2ad9939bb95ccc15126419b38067be94>.

<sup>30</sup> S.B. 394 (Kan. 2024).

<sup>31</sup> S.B. 394 (Kan. 2024).

<sup>32</sup> Kan. Stat. Ann. § 21-6402 (West).

<sup>33</sup> Kan. Stat. Ann. § 21-6402 (West).

<sup>34</sup> Kan. Stat. Ann. § 21-6402 (West).



Most states aren't as brazen as Kansas in trying to criminalize access to LGBTQ+ content. Most states don't plainly legislate that homosexuality is "harmful" to teens. But these states still work in parallel towards the same end, a world where the digital communities that provide a lifeline to LGBTQ+ teens are walled off, especially in more conservative and rural parts of the country.

### III. The Congressional Censorship Caucus

Unsurprisingly, the same anti-LGBTQ+ ideology that drove new internet and library surveillance laws in red states has also driven much of the debate in Congress, often with an even more explicit effort to aim new age gating measures at queer youth.

One of the leading social media surveillance and age gating bills pending before Congress currently in the Kids Online Safety Act ("KOSA"), which would grant regulators sweeping new powers to protect younger internet users from "harmful material," including provisions that could undermine encryption and anonymity safeguards.<sup>35</sup> In September 2023, video surfaced of Senator Marsha Blackburn (the bill's lead Republican sponsor) speaking in favor of the law.<sup>36</sup> In remarks before the faith-based Palmetto Family Council, Senator Blackburn not only lauded KOSA, but she claimed that one of Congress's top priorities should be "protecting minor children from the transgender in this culture."<sup>37</sup>

Throughout her time in the Senate, Blackburn has been a stalwart proponent of both anti-trans sentiments and expanded internet surveillance. In questioning future Supreme Court Justice Ketanji Brown Jackson about the definition of "man" and "woman," Blackburn quipped, "the fact that you can't give me a straight answer about something as fundamental as what a woman is underscores the dangers of the kind of progressive education that we are hearing about."<sup>38</sup>

This same pattern predictably percolates even to the highest levels of Republican leadership, including Speaker Mike Johnson. Long before Speaker Johnson could wield his gavel to advance measures like KOSA, he made his anti-LGBTQ+ views clear:

"Homosexual relationships are inherently unnatural and, the studies clearly show, are ultimately harmful and costly for everyone... Society cannot give its stamp of approval to such a dangerous lifestyle. If we

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<sup>35</sup> Kids Online Safety Act, S. 1409, 118<sup>th</sup> Cong, 2d Sess. (2023).

<sup>36</sup> Matt Laviertes, "Senator Appeared to Suggest Bipartisan Bill Would Censor Transgender Content Online," *NBC News*, September 5, 2023, <https://www.nbcnews.com/nbc-out/out-politics-and-policy/senator-appears-suggest-bipartisan-bill-will-censor-transgender-content-rcna103479>.

<sup>37</sup> Laviertes, "Senator Appeared to Suggest."

<sup>38</sup> Colby Itkowitz, "GOP Turns to False Insinuations of LGBTQ Grooming against Democrats," *Washington Post*, April 22, 2022, <https://www.washingtonpost.com/politics/2022/04/20/republicans-grooming-democrats/>.



change marriage for this tiny, modern minority, we will have to do it for every deviant group. Polygamists, polyamorists, pedophiles, and others will be next in line to claim equal protection. They already are.”<sup>39</sup>

Much like his state-level counterparts, Johnson has tried to implement his anti-LGBTQ+ ideology offline as well as on. In 2022, before ascending to the Speaker’s chair, Johnson introduced the so-called “Stop the Sexualization of Children Act of 2022,” which would ban “federal funds to develop, implement, facilitate or fund any sexually-oriented program, event or literature for children under the age of 10.”<sup>40</sup> In practice, as with Louisiana’s controversial library ban, this would broadly ban content that merely acknowledges sex and gender, including LGBTQ+ identity.<sup>41</sup> According to Johnson, the “Democrat Party and their cultural allies are on a misguided crusade to immerse young children in sexual imagery and radical gender ideology.”<sup>42</sup>

Since becoming Speaker, Johnson has stayed true to his anti-LGBTQ+ agenda. In recent weeks, Johnson was condemned by dozens of House members for inviting anti-LGBTQ+ pastor Jack Gibbs to be the chamber’s guest chaplain. According to a joint letter from House Democrats, “Hibbs is a radical Christian Nationalist who helped fuel the January 6th insurrection and has a long record of spewing hateful vitriol toward non-Christians, immigrants, and members of the LGBTQ community.”<sup>43</sup>

In DC, the pattern extends beyond members of congress to many of the conservative think tanks that help to support internet age surveillance. In defending KOSA, the Heritage Foundation—one of the largest, most conservative think tanks—posted on social media that “[k]eeping trans content away from children is protecting kids. No child should be conditioned to think that permanently damaging their healthy bodies to try to become something they can never be is even remotely a good idea.”<sup>44</sup> Heritage believes that preventing teens from going online, limiting their access to affirming spaces, will reduce the rate at which they come out as trans: “[w]ith social-media and

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<sup>39</sup> Matt Laviertes, “New House Speaker’s Views on LGBTQ Issues Come under Fresh Scrutiny,” *NBC News*, October 26, 2023, <https://www.nbcnews.com/nbc-out/out-politics-and-policy/mike-johnson-house-speaker-lgbtq-views-scrutiny-rcna122317>.

<sup>40</sup> “House Republicans Introduce Legislation to Ensure Taxpayer Dollars Cannot Fund Sexually Explicit Material for Children,” U.S. Congressman Mike Johnson, October 18, 2022, <https://mikejohnson.house.gov/news/documentsingle.aspx?DocumentID=1206>.

<sup>41</sup> “House Republicans Introduce Legislation.”

<sup>42</sup> “House Republicans Introduce Legislation.”

<sup>43</sup> U.S. Representative Jared Huffman, et. al., “Letter to Speaker Johnson and Chaplain Kibben,” February 25, 2024, [https://huffman.house.gov/imo/media/doc/Final\\_Huffman%20Letter%20Opposing%20Speaker%20Johnson%20Guest%20Chaplain.pdf](https://huffman.house.gov/imo/media/doc/Final_Huffman%20Letter%20Opposing%20Speaker%20Johnson%20Guest%20Chaplain.pdf).

<sup>44</sup> Heritage Foundation, X (Formerly Known as Twitter), May 20, 2023, <https://twitter.com/heritage/status/1660111875818790913>.

smartphone usage skewing young and younger, the threat of falling prey to ‘gender-affirming’ propaganda is greater than ever.”<sup>45</sup>

More populist right-wing commentators also highlight the link between KOSA and anti-LGBTQ+ bias. According to the notorious provocateur Charlie Kirk, who draws millions of followers from across various social media platforms, KOSA “looks to protect underage children from groomers, pornographers, and other predators online. But the bill ran into trouble because LGBT groups were worried it would make it too easy for red state AGs to target predators who try to groom children into mutilating themselves or destroying themselves with hormones and puberty blockers.”<sup>46</sup>

#### IV. Blue State Blues

Despite internet age surveillance’s origins in right wing, anti-LGBTQ+ ideology, the push for expanded age gating of the internet has sadly been taken up by Democratic, even progressive lawmakers as well. While many of these self-described LGBTQ+ allies would be eager to denounce the sort of bigotry driving age surveillance bills across the country, they have been seduced by the myth that expanded government surveillance can better protect teens online. Even worse, these blue state measures, if passed, will help to build pressure for national identity verification standards, making it harder and harder for LGBTQ+ teens and other marginalized groups to securely and safely access the internet.

Introduced in 2023, New York’s S7694 Stop Addictive Feeds Exploitation (SAFE) for Kids Act has been dubbed the “Unsafe For Kids Act” by some civil rights and LGBTQ+ groups. The bill, which was mirrored by a 2024 budget proposal from New York Governor Kathy Hochul, makes many of the same missteps as other age surveillance laws around the country. The law would impose stringent penalties on companies that provide algorithmically generated content (everyone from LinkedIn to the New York Times), if they do so without imposing age surveillance technologies.<sup>47</sup> A company could find itself facing ruinous penalties and the threat of bankruptcy if a single child logs on without verification, even if the company never targeted children as users. The combined effect of these broad standards and high penalties is that many apps and websites will take drastic, invasive measures to prevent young adults from accessing their sites and to identify those who do.<sup>48</sup>

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<sup>45</sup> Jared Eckert and Jay Richards, “How Not To Keep Children Safe Online,” *The Heritage Foundation*, March 21, 2022, <https://www.heritage.org/technology/commentary/how-not-keep-children-safe-online>.

<sup>46</sup> Charlie Kirk, *X (Formerly Known as Twitter)*, February 16, 2024, <https://twitter.com/charliekirk11/status/1758530799270511018>.

<sup>47</sup> Stop Addictive Feeds Exploitation (SAFE) for Kids Act, S. 7694, 246<sup>th</sup> Leg. Sess., (N.Y. 2023).

<sup>48</sup> New York Child Data Privacy and Protection Act, S. 3281, 246<sup>th</sup> Leg. Sess. (N.Y. 2023).

Notably, the law is silent on what methodology companies will be compelled to use to verify users' ages.<sup>49</sup> Promoters of the law have been quick to point out that the bill doesn't include any mandate for using government ID, but they have been unwilling and unable to say what method exactly companies will be forced to use, whether biometric scans, digital IDs, or something else.<sup>50</sup>

If passed, this bipartisan ratification of expanded age surveillance will reverberate far beyond the borders of the Empire State. At a moment when far-right lawmakers are looking to shield their surveillance legislation from backlash about its anti-trans motivation and impact, at a time when conservative commentators know that federal measures like KOSA are already being watered down in response to these critiques, blue state surveillance statutes like the Unsafe for Kids Act give conservatives political cover to push their radical reforms as "bi-partisan."

On a practical level, New York's adoption of age surveillance would carry outsized impact too. Given the size of the New York market and the number of consumers based here, New York's adoption of age checks would go a long way towards the promotion of a national age surveillance standard. Right now, with different conservative states pushing different methodologies to track trans teens online (and in libraries), New York's approach risks becoming a national model, especially if adopted by much smaller markets like Utah and Louisiana. By building a national surveillance model, progressive states like New York risk unintentionally empowering some of the most dangerous and fringe views of the far right, building the foundation for a future of ever great surveillance, censorship, and control.

## V. Conclusion

This is a decisive time for the future of the American internet. Today, users face the threat of a level of government-mandated surveillance that is truly unprecedented. In past crises, such as the aftermath of the 9/11 attacks, America has invested billions of dollars to dramatically expand mass surveillance of internet activity, both at home and abroad. But even in the darkest days of the early 2000s, we never reached a point where government-approved IDs or biometric scans were required to log onto our websites or apps. But today we're faced with the threat of a world where Americans lose the ability to log on without a license.

No matter where they're adopted, it's impossible to divorce age surveillance laws from the anti-LGBTQ+ forces that have driven their adoption in conservative corners of America. If progressive

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<sup>49</sup> New York Child Data Privacy and Protection Act, S. 3281, 246<sup>th</sup> Leg. Sess. (N.Y. 2023).

<sup>50</sup> Holly Pretsky, "Parents Concerned about Addictive Social Media Have the Ear of Tish James," *City & State NY*, March 4, 2024, <https://www.cityandstateny.com/policy/2024/03/parents-concerned-about-addictive-social-media-have-ear-tish-james/394645/>.

states continue to push parallel panopticons in their respective jurisdictions, it will pose an imminent threat to millions of LGBTQ+ Americans. Thankfully, there is still time to turn the tide of age verification, pushing privacy protections that can safeguard users of every age from harmful platforms, while also preserving privacy, autonomy, and an open internet. The question is whether self-described progressives and LGBTQ+ allies will act before it's too late.



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