— AGE ASSURANCE · CAPABILITY ADMISSION · CREDENTIALED-ADULT FAILURE MODE · DUTY ALLOCATION · DESIGN DEFAULTS · ESRB · SYNAR AMENDMENT · PLATFORM ACCOUNTABILITY · CHILD ONLINE SAFETY · INFEASIBILITY DEFENSE · AGE VERIFICATION · INDUSTRY SELF-REGULATION

The Feasibility Era Is Over

Thirty Years of Retail Age Assurance and the Reallocation of Duty in Platform Child Safety

> Shops have been checking children's ages for thirty years, and it works. The claim that software cannot do the same has just been signed away in a contract.

Travis Gilly, *The Feasibility Era Is Over: Thirty Years of Retail Age Assurance and the Reallocation of Duty in Platform Child Safety*, August 2026 (v0.5).

Travis Gilly
Real Safety AI Foundation

WHERE THIS STARTS

A gate nobody is required to build, that no law could require, and that works

This November the most eagerly awaited entertainment release ever made goes on sale across America from behind an age check. No statute demands it. The Constitution bars any legislature from demanding it. A seventeen-year-old who walks up to a counter and tries to buy it will be turned away roughly nine times in ten.

That is the fact this argument is built on, and almost nobody in the debate about children online has looked at it.

SOURCES Fed. Trade Comm'n, FTC Undercover Shopper Survey on Entertainment Ratings Enforcement (Mar. 25, 2013); Brown v. Entertainment Merchants Ass'n, 564 U.S. 786 (2011).

THE DEFENCE BEING ANSWERED

One excuse, wearing several costumes

For twenty years, companies asked to work out which of their users are children have given a single reply in different outfits. It cannot be done. Checking ages online is impossible, or it would cost too much, or it would change the service into something else entirely.

Two records close that reply, and the argument about children online has joined neither of them.

SOURCES This Article, Part I.

THE TWO RECORDS

What has never been put on the table

1. **Thirty years of shop counters**

   America has been running this experiment at national scale since the early nineties, twice over, once with the force of law behind it and once with nothing at all.

2. **The industry's own paperwork**

   A settlement signed in August 2026, plus a detection system already shipped, in which the companies commit to doing the very thing they describe in court as impossible.

SOURCES This Article, Parts II and III.

PART ONE

The Shop Counter Experiment

two schemes launched two years apart, one compulsory and one not

I

They finished in the same place, which is the finding that matters.

A COMPARISON NOBODY DESIGNED

Two schemes, launched within two years of each other

Compulsory

The Synar programme, from 1992. Federal money, tied to each state agreeing to run random unannounced checks on tobacco sellers and report every year on how it was going.

Voluntary

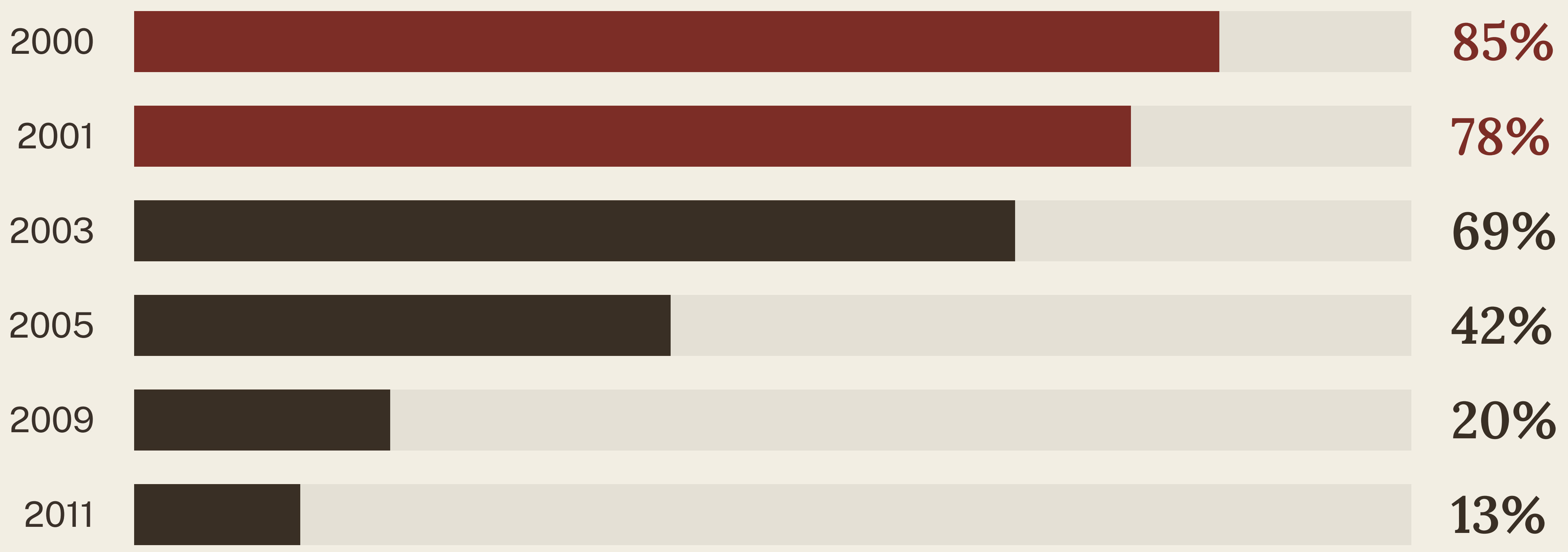
The games ratings board, from 1994. Set up by the industry under threat of legislation, and backed by nothing whatsoever after 2011, when the Supreme Court ruled that nothing could ever back it.

One had every lever government possesses. The other had none. Watch where they end up.

SOURCES Synar Amendment, 42 U.S.C. § 300x-26; Brown v. Entertainment Merchants Ass'n, 564 U.S. 786 (2011).

THE VOLUNTARY ARM

Share of underage shoppers who walked out with a Mature-rated game



Regulators sent unaccompanied thirteen to sixteen year olds into shops and counted. In eleven years the leak fell by seventy-two percentage points, and no law tightened, no penalty attached, and the ratings themselves never changed.

SOURCES Fed. Trade Comm'n undercover shopper surveys (2006, 2009, 2011, 2013).

WHAT DID THE FALLING

The gate was built at the till

Nothing about the law moved. What moved was shop practice: prompts on the register, staff asking for identification, and policy set at head office rather than store by store.

The regulator's own instruments caught the mechanism. Staff asked a shopper's age in 15 percent of visits at the start of the decade and half of them by 2005, while the big chains outperformed smaller sellers by twenty-eight points.

SOURCES Fed. Trade Comm'n, Undercover Shop Finds Decrease in Sales of M-Rated Video Games to Children (Mar. 2006).

WHAT THE FALLING SURVIVED

The threat vanished in 2011 and compliance still went up

That year the Supreme Court held that games are protected speech and struck down a state law restricting their sale to minors. The legislative threat the ratings board had been created to head off was gone permanently.

On the usual account of self-regulation, where industry good behaviour is a ransom paid against the risk of a statute, enforcement should have slipped. It did not. The next survey, taken in the first full year after the ruling, found compliance at its best ever recorded, and the games industry ahead of every other medium measured.

SOURCES Brown v. Entertainment Merchants Ass'n, 564 U.S. 786, 790, 803–04 (2011); Fed. Trade Comm'n (2013).

SO WHAT HOLDS IT UP

Structure, not fear

Hardware makers refuse to license a title without a rating. Big chains refuse to stock the adults-only band. The rating ended up carrying weight inside distribution itself, so taking away the legal threat took away nothing that was actually holding anything up.

That identifies the kind of incentive that actually keeps a gate standing once somebody has built one, and it is not the fear of a statute.

SOURCES Fed. Trade Comm'n, Marketing Violent Entertainment to Children: A Sixth Follow-Up Review of Industry Practices (2009).

THE COMPULSORY ARM

Every lever government has, and sixteen years

40%

national retailer violation rate for tobacco in 1997

16 yrs

of federal mandate, dedicated funding and annual inspection to get below 10 percent

~9%

where it has hovered since 2008

States had to keep their violation rate at or under 20 percent or lose a slice of their block grant. At the start the worst state was failing three quarters of the time. Grinding it below ten percent took until 2008.

SOURCES Substance Abuse & Mental Health Servs. Admin., FFY 2008 Annual Synar Reports; Synar Program Annual Reports: Youth Tobacco Sales; Nat'l Ass'n of State Alcohol & Drug Abuse Dirs., An Overview of the Synar Provision (2023).

SET THEM SIDE BY SIDE

Compulsion buys speed, never height

Armed with everything Washington could bring, the compulsory scheme travelled from roughly 40 percent down to roughly 10 across sixteen years. Armed with nothing, the voluntary one travelled from 85 to 13 across eleven.

The two finishing lines sit inside each other's margin of error. The populations, the protocols and the products all differ, and nothing here needs a winner declared. Parity is the claim, and parity is enough.

> **If the ceiling is a property of gatekeeping itself, reachable with or without a law, then what a law buys you is how fast you get there, not how high you climb.**

SOURCES This Article, Part II.A–II.B.

THE EXPERIMENT RAN ITS OWN CONTROLS

Alcohol shows what happens without maintenance

No national scheme of the tobacco kind was ever built for alcohol. What exists instead is a scatter of state and local enforcement. When researchers first measured it properly in the early nineties, underage buyers succeeded in a substantial share of attempts, and the trial literature found that only sustained community-level pressure moved seller behaviour, with the gains sitting where inspection kept up.

So checks decay unless something keeps them up, which is the tobacco finding and the console-licensing finding arriving by a third road.

SOURCES Preusser, D. F., & Williams, A. F. (1992). *Journal of Public Health Policy*, 13, 306–317; Wagenaar, A. C., et al. (2000). *Journal of Studies on Alcohol*, 61, 85–94; Forster, J. L., et al. (1998). *American Journal of Public Health*, 88, 1193–1198.

THE SECOND CONTROL

When the leak is the manufacturer, not the shop

Investigators working across thirty-four jurisdictions for two years concluded that a vaping firm had sold nicotine to the young via launch events, advertising cast with youthful models, social media pushes and giveaways, while relying on age checks it understood to be useless. It paid $438.5 million in 2022, a further $462 million in 2023, over a billion across state settlements in all, and $1.7 billion to resolve private claims.

What gives the game away is the remedy imposed. Verify age on every single sale, and restrict how the product is displayed in shops. The answer to courting children upstream turned out to be fitting precisely the check platforms describe as unbuildable.

> **Whoever is now pleading that it cannot be built controls the advertising and the check together. They stand in both places simultaneously.**

SOURCES Press Release, Conn. Att'y Gen., AG Tong Leads Multistate Agreement with JUUL Labs (Sept. 6, 2022); Christensen, J. (2022, September 6). *CNN.*

PART TWO

They Have Stopped Denying It

in the two places where a denial has consequences, contract and code

II

You cannot sign a promise to do the thing you are telling a court cannot be done.

THE ADMISSION IN WRITING

A settlement signed in the middle of a trial

Partway through a test trial on 26 August 2026, Meta settled with fifty-two state and territorial attorneys general at once, on claims running under consumer protection law and the children's privacy statute.

The headline numbers took nearly all the attention: roughly $12.7 billion guaranteed to the states over ten years, with another $5.3 billion payable only if two rivals adopt comparable youth-safety measures and pay a matching share.

SOURCES Settlement Agreement & Consent Judgment, People v. Meta Platforms, Inc., No. 4:23-cv-05448 (N.D. Cal. Aug. 26, 2026), ECF No. 572-1.

THE TERMS THAT MATTER

Error ceilings, certified and audited

3%

ceiling on thirteen to fifteen year olds wrongly read as adults, within one year

10%

the same ceiling for sixteen and seventeen year olds

Those apply to commercially available methods. Where the company uses its own methods rather than bought-in ones, the permitted error starts higher, at 7 and 14 percent, and must come down to 5 and 10 by the second year. An accredited outside tester certifies the numbers and an independent auditor reviews them. On the under-thirteen side the company must build, train and test a detection model within a year, report how well it works to that auditor, and hit annual removal targets the auditor supervises.

SOURCES Settlement Agreement, *supra*, §§ II.A.6(a)(i)–(ii), II.A.2, II.A.6(b).

WHY THAT IS DIFFERENT FROM MONEY

The cash can be amortised. The promise cannot.

At Meta's scale a payment spread over ten years is a licensing cost, booked as a single quarterly charge, and it changes no behaviour the company has not already priced in.

An engineering commitment does not work that way. It is a warranty that a capability exists, with measurement, auditing and dates attached.

> A party cannot promise in a contract to perform the thing it is telling a court is impossible.

SOURCES Settlement Agreement, *supra*, § II.A.6.

MEASURED AGAINST THE SHOP COUNTERS

The industry accepted a stricter discipline than the shops ever faced

Be careful with the units. Getting somebody's age wrong and selling to a minor are not the same measurement, so what follows compares one scheme against another, never one figure against another.

Even so. The celebrated retail schemes were never held to a specified error ceiling, never certified, never independently audited. The tobacco scheme sits at nine or ten percent under federal mandate. The games scheme leaked thirteen percent in its best measured year. Neither ever had its method tested by an outsider.

> The industry did more than concede that it can be done. It signed up to a standard of measurement and audit that the physical world never imposed on its most admired gates.

SOURCES Fed. Trade Comm'n (2013); SAMHSA Synar annual reports; Settlement Agreement, *supra*.

THE ADMISSION IN CODE

And it was already shipping a year earlier

YouTube gave notice of this in July 2025 and started switching it on across America the following month: a trained model that decides whether somebody is under eighteen from how they behave, meaning the sorts of things they watch, what they type into search, and how long the account has existed. Teen protections then apply automatically to whoever it infers is a minor.

Note what that does to the oldest excuse in the field. The system reaches its conclusion regardless of the birthday the user typed in.

SOURCES Beser, J. (2025, July 29). *Extending our built-in protections to more teens on YouTube*. YouTube Official Blog.

PART THREE

Objections

the constitutional boundary, the leak, and the demand for perfection

III

The leak has a shape, and the shape turns into the design question.

FIRST OBJECTION

If the Constitution forbids that gate, does it forbid all of them?

The objection arrives holding the 2011 ruling. But that case struck down a content-based restriction: a state picked out a category of expression, violent games, and limited what minors could reach. Where expression is not obscene as to children and falls under no long-standing exception, a legislature cannot shut it away from them merely because it disapproves of the ideas.

In 2025 the Court supplied the other half. The Court approved a Texas rule obliging commercial sites that publish material obscene as to children to check who is visiting, finding that the rule attracts the middle tier of review and clears it, since any burden on adults is incidental.

SOURCES Brown v. Entertainment Merchants Ass'n, 564 U.S. 786, 794–95 (2011); Free Speech Coalition, Inc. v. Paxton, 606 U.S. 461 (2025); Erznoznik v. Jacksonville, 422 U.S. 205, 213–14 (1975); Ginsberg v. New York, 390 U.S. 629 (1968).

THE CHANNEL BETWEEN THEM

What government may not do, and what it may

Singling out protected material it dislikes and fencing children away from it is closed to government. Requiring somebody's age to be established, where the underlying power to keep that material from children already exists, is open to it.

The Ninth Circuit has been marking that line in real time. One California statute, written to cover anything a child might plausibly see and to force providers to assess harms flowing from content, has been blocked again and again. Its separate social-media statute, which keys obligations to whether a platform has reasonably determined a user is an adult, has gone through the same court on design ground instead.

> **Write your rule around kinds of content and it dies on the content trigger. Write it around working out who is a minor, and what their account does by default, and the fight becomes an argument about product design.**

SOURCES NetChoice, LLC v. Bonta, 113 F.4th 1101 (9th Cir. 2024); NetChoice, LLC v. Bonta, 152 F.4th 1002 (9th Cir. 2025); Turner Broad. Sys., Inc. v. FCC, 520 U.S. 180, 189 (1997); Ward v. Rock Against Racism, 491 U.S. 781, 800 (1989).

WHERE THIS ARGUMENT SITS

Below both holdings, and it needs neither to move

The duty claim regulates no category of expression and blocks nobody's access to ideas. Establishing age accurately, shipping safe starting settings for anyone identified as a child, and building the configuration screens are duties attaching to behaviour and to the thing itself, much as a rule about seatbelts attaches to the vehicle rather than to wherever somebody drives it.

The retail evidence is used strictly as proof that gates can work. None of this depends on what sits behind the check, and that is why the strongest evidence comes from a trade whose product won constitutional protection in 2011 and which carried on checking regardless.

> The boundary still has to be policed honestly. Age checks can be conscripted into content restriction, and a duty scheme that ends up governing what minors may read, without ever saying so, walks straight back into the 2011 ruling.

SOURCES This Article, Part IV.A.

SECOND OBJECTION

Gates leak, so why bother

Granted on the premise, refused on the conclusion, because what escapes has a consistent pattern. In every scheme examined here, whatever slips past is not some outsider who outsmarts the check. It is a grown-up with valid credentials carrying the item through.

The ten-year-old with a Mature-rated game did not outwit the till. A grown-up bought it past the rating, the signage and the prompt. A child watching from a grown-up's profile has beaten no maturity setting. Whoever owns the account simply never set one.

SOURCES Fed. Trade Comm'n (2013).

THE SETTLEMENT CONCEDES IT

Automatic for some things, manual for the ones that count

The bulk of the fresh safeguards arrive already active on a teenager's account. Turning off autoplay, and the recommended feed, is a manual job for a parent or the teenager themselves. Researchers flagged that split immediately as the thing that will decide whether any of it gets used.

One of them had already found that close to sixty percent of safety features across the industry were failing to protect young users effectively.

> No check stops somebody holding a valid key. What a designer does control is the state those keys are in: whether safeguards can be skipped, and whether a fresh account arrives shut or wide open.

SOURCES Jackson, A., *New Meta Safeguards for Teens*, CNBC Make It (Aug. 28, 2026).

A CONCESSION, BEFORE ANYONE ELSE MAKES IT

The till is a shrinking venue

That shopper programme stopped in 2013, and much of games retail has since shifted to digital storefronts, where the built-in check is the birthday you type yourself, which is exactly what the previous part showed the industry walking away from.

None of which damages the evidence, since it was never put forward to show that buying happens in shops. It shows that a check placed where people get in works at scale provided something keeps it working. Where people get in has changed, and the check travelled along: from an assistant asking your age to a model working it out, with testing and auditing now standing in the spot the undercover shopper used to occupy.

SOURCES This Article, Parts II.A and III.A–III.B.

THIRD OBJECTION, INVERTED

It will misclassify people, so it must be rejected

The retail record turns this one over. No scheme in thirty years came near perfection. The admired schemes lose nine to thirteen percent and stay admired, for the simple reason that nobody was ever choosing between a flawed check and a flawless one. The real choice was between a flawed check and nothing.

The systems already running price the cost of getting it wrong and send it to whoever can bear it most cheaply. A grown-up caught by mistake sorts it out in minutes with a document or a photo, and the settlement loads the measuring, the auditing and the error limits onto the firm.

> Flawlessness gets demanded of anything new and waived without comment for whatever is already running. Any case that holds up only when the two sides are judged by different rules is not really a case at all. It is a preference wearing one.

SOURCES Fed. Trade Comm'n (2013); SAMHSA Synar annual reports; Settlement Agreement, *supra*.

PART FOUR

Where The Fact Pays Out

three places a feasibility record decides an element

IV

A fact is only worth what it settles, so here is what this one settles.

THREE DOCTRINAL PAYOUTS

What the record decides, and where

1 Product liability: the missing proof

One court has ruled that checking ages counts as part of the product and can therefore be sued over, rather than being covered by the platform immunity statute, but left unresolved whether a safer way of building it was genuinely on offer. The admissions supply that missing element: an alternative that was not hypothesised but contracted for, priced and delivered.

2 Accommodation law: defences you have to prove

Too costly and it would change the service are not things a body gets to say. They are defences it has to prove. A body that has guaranteed the same capability in another document cannot prove the thing is beyond it.

3 First Amendment tailoring: the hinge

Since the 2025 decision, proof about what can actually be built moves the level of review a court applies, and the shop-counter history is precisely the proof underpinning the Court's remark that checking ages is an old and respectable practice.

SOURCES Free Speech Coalition, Inc. v. Paxton, 606 U.S. 461 (2025); Settlement Agreement, *supra*; this Article, Part V.

PART FIVE

What Is Left

with feasibility closed, the remaining question is who owes what

V

Duty allocation is a question about defaults, and defaults belong to whoever writes them.

THE QUESTION THAT REMAINS

Not whether it can be done, but who has to do it

Once impossibility is off the table, the argument stops being about capability and becomes an argument about allocation. Who is responsible for determining age, who is responsible for the state a new account starts in, and who is responsible when a keyholder hands their credentials to a child.

The retail record answers the maintenance half of that already. Gates hold where something structural holds them: licensing conditions, chain policy, funding conditions. They rot where nothing does.

SOURCES This Article, Part VI.

THE CLAIM, RESTATED

The excuse has a signature on it now

Shops have been checking ages at national scale for thirty years, with and without a law behind them, and both routes arrive at roughly the same place. The residual leak in every one of them is a credentialed adult rather than a defeated gate.

And the largest firm in the industry has now put its name to specified error ceilings, outside certification, independent audit and a schedule, while shipping a system that works out who is a minor no matter what birthday was typed in.

> **From here on, any assertion that a platform cannot check ages, or that checking would cost too much, or that it would turn the service into something else, has to be weighed against a document the industry signed, in which it costed that very capability and took on the targets, the testing and the deadlines.**

SOURCES Settlement Agreement, *supra*; Beser (2025); Fed. Trade Comm'n (2013); SAMHSA Synar annual reports.

REFERENCES

References

Travis Gilly, *The Feasibility Era Is Over: Thirty Years of Retail Age Assurance and the Reallocation of Duty in Platform Child Safety*, August 2026 (v0.5).

Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. No. 102-321, § 1926, 106 Stat. 323 (1992).

American Amusement Machine Association v. Kendrick, 244 F.3d 572 (7th Cir. 2001).

Ashcroft v. American Civil Liberties Union, 542 U.S. 656 (2004).

Beser, J. (2025, July 29). *Extending our built-in protections to more teens on YouTube*. YouTube Official Blog. https://blog.youtube/news-and-events/extending-our-built-in-protections-to-more-teens-on-youtube/.

Brown v. Entertainment Merchants Association, 564 U.S. 786 (2011).

Christensen, J. (2022, September 6). Juul to pay $438.5 million in settlement with dozens of states. *CNN*. https://www.cnn.com/2022/09/06/health/juul-settlement-marketing/.

Erznoznik v. Jacksonville, 422 U.S. 205 (1975).

Federal Rules of Evidence, Rule 408.

Federal Trade Commission. (2006). *Undercover shop finds decrease in sales of M-rated video games to children*. https://ftc.gov/news-events/news/press-releases/2006/03/.

Federal Trade Commission. (2009). *Marketing violent entertainment to children: A sixth follow-up review of industry practices*. https://www.ftc.gov/sites/default/files/documents/reports/.

Federal Trade Commission. (2011). *FTC undercover shopper survey on enforcement of entertainment ratings*. https://www.ftc.gov/news-events/news/press-releases/2011/04/.

Federal Trade Commission. (2013). *FTC undercover shopper survey on entertainment ratings enforcement*. https://www.ftc.gov/news-events/news/press-releases/2013/03/.

Forster, J. L., Murray, D. M., Wolfson, M., Blaine, T. M., Wagenaar, A. C., & Hennrikus, D. J. (1998). The effects of community policies to reduce youth access to tobacco. *American Journal of Public Health*, 88, 1193–1198. https://doi.org/10.2105/ajph.88.8.1193.

Free Speech Coalition, Inc. v. Paxton, 606 U.S. 461 (2025).

Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 (2019).

Ginsberg v. New York, 390 U.S. 629 (1968).

Interactive Digital Software Association v. St. Louis County, 329 F.3d 954 (8th Cir. 2003).

Markey, P. M., Markey, C. N., & French, J. E. (2015). Violent video games and real-world violence: Rhetoric versus data. *Psychology of Popular Media Culture*, 4, 277–295. https://doi.org/10.1037/ppm0000030.

National Association of State Alcohol and Drug Abuse Directors. (2023). *An overview of the Synar provision*. https://nasadad.org.

Preusser, D. F., & Williams, A. F. (1992). Sales of alcohol to underage purchasers in three New York counties and Washington, D.C. *Journal of Public Health Policy*, 13, 306–317. https://doi.org/10.2307/3342730.

Prince v. Massachusetts, 321 U.S. 158 (1944).

Przybylski, A. K., & Weinstein, N. (2019). Violent video game engagement is not associated with adolescents' aggressive behaviour: Evidence from a registered report. *Royal Society Open Science*, 6, 171474. https://doi.org/10.1098/rsos.171474.

Substance Abuse and Mental Health Services Administration. (n.d.). *Synar program annual reports: Youth tobacco sales*. https://www.samhsa.gov/synar/annual-reports.

Substance Abuse and Mental Health Services Administration. (2020). *Synar guidance on tobacco regulation for the substance abuse block grant*. https://www.samhsa.gov/sites/default/files/synar-guidance-tobacco-21.pdf.

Synar Amendment, 42 U.S.C. § 300x-26.

Turner Broadcasting System, Inc. v. FCC, 520 U.S. 180 (1997).

United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000).

United States v. Stevens, 559 U.S. 460 (2010).

Wagenaar, A. C., Murray, D. M., Gehan, J. P., Wolfson, M., Forster, J. L., Toomey, T. L., Perry, C. L., & Jones-Webb, R. (2000). Communities mobilizing for change on alcohol: Outcomes from a randomized community trial. *Journal of Studies on Alcohol*, 61, 85–94. https://doi.org/10.15288/jsa.2000.61.85.

Ward v. Rock Against Racism, 491 U.S. 781 (1989).

Winters v. New York, 333 U.S. 507 (1948).