

Chapter 5

Protecting Youth's Right to Engage Media: Sexting

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Introduction

A sixteen-year-old girl is dating a sixteen-year-old boy and decides to send a naked photograph of herself to his phone. The boyfriend receives the sext and keeps it to himself, not sending it to anyone else. A sheriff then asks to search that same boy's phone for information in an unrelated case, and the boy's mother allows the sheriff to search the phone without a warrant. While searching the phone, the sheriff discovers the naked photograph of the boy's sixteen-year-old girlfriend, and initiates a sexting investigation, suspends the charging of the sixteen-year-old girl and boy with felony counts for violating child pornography laws. This story seems far-fetched, since the boy and girl were in a consensual sexual relationship; however, this situation was a reality for two teenagers in North Carolina (Drew and Weiss 2015).

With teenage sexting on the rise, many states have prosecuted minors for sexting under existing child pornography laws. Criminally punishing teenagers for consensual sexting acts against the best interest of the teenager. The Supreme Court has repeatedly looked to the "best interests of the child" when making decisions to make sure minors' rights are protected. Punishing minors under a statute that was meant to protect minors, such as child pornography statutes, acts against the best interests of the minor. Accordingly, consensual teen sexting cases should be removed from criminal justice systems and lawmakers should enact statutes decriminalizing consensual sexting between minors. Rather than punishing teenagers, schools and parents should educate teenagers about the risks associated with sexting so that teenagers are able to better protect themselves.

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A Closer Look at “Sexting”

“Sexting” is a combination of the words “sex” and “texting” (Mummert 2010). The term “sexting” refers to sexually suggestive content (in the forms of words or images) sent through an electronic medium, including text messages and emails (Machometa 2014). People of all ages can sext, but the practice is typically associated with teenagers for whom sexting is a common practice. Since sexting has become so prevalent among teenagers, sexting has been described as a “form of ‘relationship currency’” for teens. Some teens use sexting as part of their sexual activity, while others sext in lieu of actual sex; other teens use sexts for nonsexual purposes, “such as a joke or entertainment” (Mummert 2010, p. 74). Every sext involves “four different roles: (1) the subject of the photo, (2) ‘the person who took the photo,’ (3) ‘the distributor(s) of the photo,’ and (4) ‘the recipient(s) of the photo’” (Ryan 2010, pp. 360–361). Individuals can, and often do, play more than one role. Sexting may occur between two minors, between two adults, or between a minor and an adult.

Prevalence

Sexting is prevalent among teenagers. A study conducted in 2012 by different researchers showed that sexting was related to the high school grade: freshman, sophomore, junior, or senior. For females, the percentage of students reporting having sent a sext increases from freshmen at 14 % to seniors at 24.2 % (Strassberg et al. 2012). Senior females are also more likely (46.2 %) to receive sexts than their freshmen peers (25 %). The same is true for males, with 26.5 % of senior males reporting having sent a sext, while only 9.2 % of freshman males reported sending a sext. The most shocking statistic is that 65.1 % of senior males reported having received a text, an increase from 38.5 % of male freshmen.

While the exact statistics vary by study, one result remains consistent: sexting has become commonplace for teenagers. Because sexting is a relatively new social phenomenon and legal issue that so many teens are participating in, current legal responses to regulated sexting are characterized by “rapid change, uncertainty, and ad hoc application of laws that are poorly suited to protecting teenagers from the harms of sexting” (Lampe 2012–2013, p. 705).

Consensual Versus Exploitative Sexting

Even though so many teenagers reported that they willingly participated in sexting, sexting is not harmless. Like the rest of the Internet, sexting poses potential harms to minors participating in sexting. According to the World Health Organization,

“the most polarizing public health threat presented by the Internet may be as a means to intentionally or unwittingly jeopardize the safety of children and adolescents” (World Health Organization 2011, p. 10). The World Health Organization's concerns also apply to sexting. Sexting can be unsafe because it can be done at the push of a button and once the creator of the image has transmitted it to anyone else, the creator loses control of the image.

Sexting is also harmful when it is not consensual. “Consensual sexting” occurs when there is consent from the subject of the sexting image, the person who transmits the image, and the person who receives the image (Machometa 2014). Often, consensual sexting occurs when the creator, subject, and transmitter of the sext are all the same person. “Non-consensual” or “exploitative sexting” occur when there is not consent from either the subject of the sexting image, the person who sent the image, or the recipient of the image. When a sext is transmitted to other people besides the intended recipient, it is exploitative sexting. This form of exploitative sexting happens in many situations: an ex-significant other sending the sext to other teenagers, an ex-significant other sending the sext to a revenge porn website, the recipient of the sext simply decides to send the sext to others for no obvious reason, or, even worse, the recipient of the sexted image blackmails the person in the photo with a threat of disclosure (see Sabbah-Mani 2015). The blackmail can include performing sexual services. Worse yet, the sext may make its way to the child pornography market, and the minor in the photo may become commercially exploited or entice predators. Exploitative sexting may damage the minor through mental anguish from embarrassment and humiliation of the photo being dispersed, harassment and bullying, economic harm if the image is found by a potential employer or college recruiter, suspension or expulsion from school if the school prohibits sexting, or criminal punishment and the associated social stigma with being forced to register as a sex offender.

Issues of Consent for Teenagers

The ability of minors to give consent to sexual activities raises both legal and social issues. In the United States, the age of consent varies by state, and has changed throughout the years. In the past, the legal age of consent ranged from as young as 7-years-old in Delaware to as old as 21 in Tennessee (Korenis and Billick 2013). Most states currently set their age of consent to around seventeen to eighteen. One scholar argues that the age of sexual consent should be, “not be so early that little protection is provided for the child but it should also not be so late that a person can be convicted of statutory rape when the victim is fully capable of consent and readily acquiesced to a proposal or even invited a relationship” (Korenis and Billick 2013, p. 176). For example, states that set the age of consent at 17-years-old, a 17-year-old dating a 15-year-old can be charged with statutory rape. The arbitrary bright-line age of consent legal standards are often in contrast with human development and maturity.

Additionally, while teenagers who reach the age of consent may consent to sexual activity, they still may be prosecuted for sexting because of their status as a minor. Since sexting is often punished under child pornography statutes, teenagers are unable to consent to photos of themselves being released. This is particularly problematic when the minor is taking a photo of himself or herself and sexting it, since the minor “consents” to the auto-pornography sext in the colloquial sense, yet still may be punished under the child pornography statute.

Despite the legal standards, are adolescents realistically able to consent to sexual activity and sexting? Age of consent laws presume that a person of a certain age has the capacity to make a voluntary decision to engage in sexual activity. The social science arguments surrounding teenagers’ ability to consent focus on whether consent by a minor to an inherently risky activity, such as sexting, should be treated the same as consent by an adult. Social scientists have aptly pointed out that capacity may not always be a bright-line rule, but situational (Benedet 2010). Therefore, it is difficult to pinpoint the factors that indicate a teenager is capable of consenting.

Consent includes the capacity of the parties involved and the relative power possessed by each party in sexting (Drobac and Hulvershorn 2014). Age has been one of the factors used to determine “power,” as it relates to consent. Since teenagers generally have little power, child pornography statutes (theoretically, at least) protect teenagers from exploitative sexting by adults.

Decision-making capacity is another factor to consider when discussing teenagers’ ability to consent. When it comes to decision-making, adolescents’ brains are trained to seek and appreciate stimuli that is rewarding, more so than adults’ brains (Drobac and Hulvershorn 2014). This is one of the ways in which teenagers are more vulnerable than adults, and may make it more difficult to differentiate between exploitative and consensual sexting for teenagers. If a teenager engages in sexting and receives positive feedback for sexting, it makes it more likely the teenager will decide to engage in sexting again to seek that same reward. However, there is a fine line between encouragement and coercion, and a teenager’s desire for positive responses may lead the teenager to fall victim to an exploitative sexting situation.

The gender of both parties engaged in sexting also impacts a minors’ ability to truly consent. One scholar suggests that the relative power of parties engaged in sexual situations may be more affected by gender than by age (Benedet 2010). Therefore, whether a teenager is able to consent may be partially dependent on the teenagers’ gender.

While there may not be one specific age at which all teenagers have the capacity to consent, setting a bright-line rule provides protection to vulnerable adolescents who fall below that line. With bright-line rules, it is clear that if a person engages in sexting with a minor, it is illegal. However, this point cuts both ways, since often times when there is a bright-line rule parties who are above the line, yet are exploitative sexting another adult, may be overlooked because they meet the statutory requirements (Benedet 2010).

There will always be the question of whether teenagers can truly consent to inherently risky behaviors, such as sexting, in the same way that adults can. Since

all teenagers mature at different rates and have different experiences, it is unrealistic to conclude that one age can successfully act as the age of consent for all teenagers. Many teenagers may be able to fully consent to sexual activity, but it is unrealistic to believe that all teenagers are capable of consenting to sexting in the same way as adults.

Prosecution of Minors for Sexting Under Child Pornography Laws

Lawmakers, judges, and prosecutors have crafted legal responses to the potential problems caused by teen sexting. Nearly all “solutions” have been rooted in criminal law. Some state governments have prosecuted minors for sexting under existing child pornography laws—which is the focus of this chapter—while other state governments have drafted criminal statutes specifically to address teen sexting (Lampe 2012–2013).

Under the federal child pornography statute, commonly known as the “Child Protection Act,” a maximum sentence of 30 years in prison may be imposed on:

Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in...with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct.
18 U.S.C. § 2251(a).

Categorizing sexting as child pornography makes it so all actors involved could face the same charge, regardless of whether they created the sext, were the subject of the sext, distributed it, or received it.

Since passing the Child Protection Act, the Supreme Court has explained the purpose of the Child Protection Act. In *New York v. Ferber*, the Supreme Court articulated five reasons why the government has greater leeway to regulate child pornography: the government has a compelling interest in child protection, the distribution of child pornography is related to the sexual abuse of children, advertising and selling child pornography creates an economic motive, there is no real value of permitting child pornography, and child welfare trumps the First Amendment rights of individuals (*New York v. Ferber* 1982).

Applying these rationales to consensual teenage sexting leads to doubt whether the government should have greater leeway in regulating sexting. The application of child pornography laws to sexting is difficult, since on the surface, teen sexting may be indistinguishable from adult-produced exploitative child pornography. However, sexting is easy to differentiate from child pornography when considering the motives behind each and the possible harms that may result.

First, the government absolutely has a compelling interest in child protection. Since there are harms that may result from sexting, the government has a compelling interest to protect minors from those harms. However, is the government

protecting a minor if they incarcerate a teenager for consensual sexting with their high school girlfriend or boyfriend? Prosecuting teenagers under child pornography laws for consensual sexting does not serve the governmental interest of child protection. This factor weighs in favor of the government *not* having the leeway to regulate consensual teenage sexting.

Second, the distribution of sexts does not necessarily lead to sexual abuse in the same way that child pornography does. Since sext photos are primarily created and distributed by the same individual, there is less of a risk that the image will be exploited and pass into the child pornography network. One of the Supreme Court's concerns in *Ferber* was that "the materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation" (*New York v. Ferber* 1982, p. 759). One of the crucial ways child pornography differs from sexting is that sexts are largely self-created and self-distributed. The subjects in the images in consensual sexts choose to take the photograph and distribute it. Children depicted in exploitative child pornography do not have that choice. Therefore, the degree and kind of harm that teens may suffer from consensual sexting is less than the harm that may be suffered by children from adult production and distribution of child pornography. This rationale also weighs in favor of the government not being able to regulate consensual teenage sexting like child pornography.

Third, generally, there is no economic incentive to sexting. It could be argued that sexts may end up in the child pornography network, but with the way teenagers communicate through sexting, it seems unlikely that this is the result in a majority of cases, especially with consensual sexting. This factor comes out neutral in the case of sexting.

Fourth, sexts do have value to teenagers. As discussed earlier, a large amount of teenagers sext. Many teenagers incorporate sexting as a regular part of their dating life, and use sexting as a way to either supplement sexual activity, or use sexting in place of sexual activity (e.g. Hiffa 2011). This value to teenagers further tilts the scale in favor of the government not having more leeway to regulate consensual sexting.

Fifth, while child welfare trumps the rights of individuals, should child welfare trump the rights of children? Sexting prosecution is an interesting situation where a law that was made to protect children has been used to prosecute children. The statute is infringing on the rights of the people it is trying to protect.

Overall, the government has a compelling interest to protect children. However, in consideration of the reasons why a government may place special regulations on child pornography articulated in *New York v. Ferber*, the government should not have more authority to regulate consensual teenage sexting. The government needs to recognize that using child pornography statutes to prosecute children may not be promoting child welfare.

It is reasonable to take issue with the fact that, regardless of whether all parents involved consent to sexting, it is still illegal under child pornography statutes. Child pornography statutes are too broad to apply to sexting cases. In other areas relating to minors' rights, such as medical treatment, legislatures have enacted targeted

statutes, under which minors are considered adults for the purpose of consenting (Alderson et al. 2006). These statutes allow minors to consent for treatment for sexually transmitted diseases, birth control, pregnancy, substance abuse, and mental health problems. Under these specialized statutes, legislatures are concerned about the vulnerability of minors. The concern is the harm of requiring parental consent for these services. Removing the hurdle of parental consent was designed to encourage minors to seek treatment when it is important to their help. But since sexting is not something as serious as medical treatment, and also parents could not consent to their child sexting, sexting will probably not be classified as an area where minors may consent like adults. In the current legal landscape, consent plays no role in sexting for teens.

Consensual Teenage Sexting Under Child Pornography Laws

In multiple states, teenagers have been prosecuted or threatened with prosecution for participating in sexting. In *A.H. v. State*, a Florida appellate court upheld a 16-year-old girl's conviction for sending sexually explicit photos to her 17-year-old boyfriend (*A.H. v. State* 2007). For her role in taking the photos, A.H. was convicted of a second-degree felony for "producing, directing or promoting a photograph or representation that she knew to include the sexual content of a child," in violation of Florida's child pornography statute (*A.H. v. State* 2007; Fla. Stat. § 82.071(3)).

In justification of its decision, the court explained its interpretation of the child pornography statute's purpose:

The statute is not limited to protecting children only from sexual exploitation by adults, nor is it intended to protect minors from engaging in sexual intercourse. The state's purpose in this statute is to protect minors from exploitation by anyone...The State's interest in protecting children from exploitation in this statute is the same regardless of whether the person inducing the child to appear in a sexual performance and then promoting that performance is an adult or a minor. (*A.H. v. State* 2007, p. 235)

If the majority accurately stated the purpose of child pornography statutes—to protect minors from exploitation from others (although the dissent disagreed about this)—the statute should not apply to minors who voluntarily produce and transmit sexts of themselves to others. If two consenting minors are engaged in sexting, were both minors exploited? Was either of the two minors *actually* exploited? The court contradicted itself when it stated that A.H. "was simply too young to make an intelligent decision about engaging in sexual conduct and memorializing it" (*A.H. v. State* 2007, pp. 238–239). The court openly admitted that A.H. did not have the capacity to make an informed decision about sexting, yet held A.H. criminally liable for her behavior.

Other states have also threatened to prosecute minors under child pornography statutes for self-created or “auto-pornographic” sexts. In *Miller v. Mitchell*, a high school principal confiscated students’ cell phones and found photos of “scantily clad, semi-nude and nude teenage girls” (*Miller v. Skumanick* 2009, p. 637). The principal then gave the phones to the district attorney, and the district attorney conducted an investigation and threatened to file child pornography charges against approximately twenty-five students unless the students agreed to complete a counseling-diversion program. The first photo at issue depicted two girls “from the waist up, each wearing a white, opaque bra,” the second photo showed a third girl in a white, opaque towel that was wrapped around her body “just below her breasts” (*Miller v. Skumanick* 2009, p. 639). The girls in the photos claimed that they did not distribute the photo to anyone, but rather, another person sent it to a large group of people without their consent. The parents’ of the girls in the photos brought suit pursuant to 42 U.S.C. § 1983, alleging: (1) violation of plaintiffs’ First Amendment right to free expression; (2) “violation of plaintiffs’ First Amendment right to be free from compelled expression”; and (3) retaliation against parents for exercising their Fourteenth Amendment rights as parents to direct the upbringing of their children (*Miller v. Skumanick* 2009, p. 640). Ultimately, plaintiffs were granted a temporary restraining order, enjoining the district attorney from pressing charges against the students.

Teenagers should not be charged, convicted, or even accused of “committing a crime” by participating in consensual sexting. This does not act in the best interest of the minor nor does it solve a larger problem.

Best Interest of the Child

The current statutory regime of prosecuting minors for sexting under child pornography statutes does not act in minors’ best interest. In *Bellotti v. Baird*, the Supreme Court determined the constitutionality of a state statute that prohibited unmarried pregnant minors from obtaining an abortion without either consent from both of the girls’ parents or judicial bypass (*Bellotti v. Baird* 1979). The court ultimately determined the statute was unconstitutional since it did not act in the minor’s best interest. The Supreme Court provided three reasons as the basis for limiting minors’ abortion rights: (1) “the peculiar vulnerability of children;” (2) “their inability to make critical decisions in an informed, mature manner”; and (3) “the importance of the parental role in child rearing” (*Bellotti v. Baird* 1979, p. 634). The Court stated that these reasons justify the conclusion that children’s constitutional rights cannot be equated with adults’ constitutional rights.

Analyzing these factors in light of consensual sexting reveals that teenagers’ rights should not be limited, and their rights *should* be equated with those of adults. First, the vulnerability of children is undeniable, especially in the context of peer-pressure. This goes in favor of limiting teenagers’ rights. Scholars note that minors face a period of increased vulnerability during the middle of their

adolescence due to brain development and maturing, and relative to adults, adolescents' decision-making process is based on seeking heightened reward, rather than avoiding harm (e.g., Scott and Steinberg 2008).

Second, teenagers have the same cognitive functions as adults. Even though individuals continue to psychologically develop and mature in their adult years, there is not a large difference between the decision-making capacity of late adolescents and adults (Scott and Steinberg 2008). All adolescents develop and mature at different rates and in different environments. By the age of sixteen, adults and adolescents share the same logical competencies. However, adolescents still exhibit a tendency to take more risks than adults, which displays that adolescents are able to understand the risks, yet sometimes do not make "good" decisions. Scholars attribute this to adolescents being influenced by emotions and social influences (Scott and Steinberg 2008). Scholars have suggested that an adolescent's decision-making capacity is not tied to age, but to when the adolescent goes through puberty (Scott and Steinberg 2008). Child pornography statutes do not consider the maturity level of individual teenagers, and assume that all minors are too immature to make decisions regarding sexting. Because of this categorical approach, minors are treated legally as children even when they are competent to perform adult functions and make competent decisions.

Third, parents play an important role in child rearing, but they do not play an important role in their child's sexting. A survey conducted by a family support charity in the United Kingdom revealed that many parents would prefer to ignore the sexting phenomenon: 46 % of parents indicated they did not intend to talk to their children about sexting before it occurred (Gunter 2014). Many parents felt ill-equipped to deal with sexting because they did not have enough information about sexting; when parents who were surveyed accidentally found out that their child was sexting, they were often shocked (Gunter 2014).

If we accept the theory that adolescence is a period of heightened vulnerability, and prosecuting minors and sentencing them to jail will negatively impact the development of minors at such a crucial time in their lives. Prosecuting minors for sexting under child pornography statutes does not act in the best interest of the child, and teenagers' rights should not be limited in the sphere of consensual sexting. Therefore, under the rationale used in *Bellotti v. Baird*, the use of child pornography laws for prosecuting minors for sexting would be unconstitutional, since it does not act in the minors' best interest.

Spare the Prosecution—Benefit the Child

Consensual teen sexting cases should be removed from criminal justice systems and lawmakers should enact statutes decriminalizing consensual sexting between minors, and perhaps consensual sexting between a minor and an individual within 3 years of age of the minor (the 3-year exception is borrowed from Joanna R. Lampe's proposal for decriminalizing consensual teen sexting, Lampe 2012–2013).

Preventing long prison sentences and sex offender registrations for consensual teenage sexting is essential to serve the best interest of minors. However, since sexting still has some harmful consequences, minors must learn the legal and non-legal consequences that may result from sexting and learn how to practice safe-sexting.

Decriminalize Consensual Teenage Sexting

The purpose of teenage sexting laws should be to protect minors from harms associated with sexting. Governments should enact statutes that decriminalize consensual teenage sexting, while allowing charges to be brought for exploitative sexting. This allows criminal charges to be brought when the sext is not consensual by any party involved in the sexting. In the current legal system, the potential harms that may result from consensual teenage sexting do not justify the potential harm of prosecution and convictions leading to jail time and registering as a sex offender. Simply put, the punishment does not fit the “crime.”

With the potential harms in mind, affirmative consent is necessary by all actors for a sext to be consensual. Additionally, the sext must be between two minors or between a minor and a young adult within three years of age of the minor. Throughout the semester, we have evaluated the pros and cons of bright-line laws. Therefore, my solution is a hybrid: a bright-line rule with an exception. Since many teenagers and young adults have relationships, and an 18-year-old should not be legally punished for consensually sexting her 17-year-old boyfriend, a 3-year exception is appropriate. This exception aims to protect younger children from being exploited by adults. This proposed statute still gives the government the ability to punish traditional child pornography and limits teenagers’ sexting to only consensual situations between minors and young adults within three years of the minor.

Education and Parent Approach

Since teenagers spend a majority of their time at school or at home, parents and schools are in the best position to educate and prevent against teenage sexting. Schools play an influential role in teenagers’ lives and are critical to the education and protection of teenagers. Schools should play a critical role in preventing and educating teenagers about sexting.

The Supreme Court has a wide range of views for the level of authority a school should have over its students. For example, the Supreme Court held that strip searches in schools are unconstitutional under the Fourth Amendment in *Safford Unified Sch. Dist. #1 v. Redding*. But Justice Thomas disagreed with this assertion, arguing that the Supreme Court should return to the common-law doctrine of *in*

loco parentis, under which courts were reluctant to interfere with the routine business of school administration (*Safford Unified School District #1 v. Redding* 2009).

Sexting education should be incorporated into schools' existing sexual education curriculums, health classes, and other previously existing initiatives—such as the anti-bullying initiative, which would address concerns about exploitative sexting (Machometa 2014). Anti-sexting initiatives should begin early, such as middle school, before the teenagers begin sexting. These programs should teach students how to resist peer-pressure to sext, explain the dangers associated with sexting, offer advice for how to deal with receiving unsolicited sexts, and offer students the opportunity to speak with teachers or counselors about sexting without the threat of discipline or criminal action. School sexting policies should not include punishment for sexting, since discipline discourages a student seeking help for issues related to sexting. School districts should also educate parents about the prevalence of sexting and the related issues. Schools should provide parents with literature that informs them how to detect warning signs of sexting or the ramifications of sexting. Since there is so much information available online, schools should direct parents to certain websites that address sexting prevention.

Courts have recognized the importance of parents in guiding the moral upbringing of children. Almost a century ago, the Supreme Court recognized the parents' right to educate their children in *Pierce v. Society of Sisters* (1925). In *Wisconsin v. Yoder* (1972), the Supreme Court applied this right to Amish parents who wished to homeschool their children, holding that parents can control their children's education based on the parents' right to religious freedom. The rights of parents' are not unlimited, and in *Prince v. Massachusetts* (1944), the Supreme Court held that the government's interest in protecting children (through child labor laws) outweighed the parent's constitutional rights to rearing children and the child's right to practice religion. Likewise, in *Bellotti v. Baird* (1979), the Supreme Court reiterated the importance of the parental role in child rearing. Justice Rehnquist, dissenting in *Cary v. Population Services International* (1977), argued that moral issues concerning adolescents (such as the distribution of contraceptives, at issue in *Cary*) are best left to parents, not legislatures and courts. Because of the importance of the parental role in the moral upbringing of children, parents should also be involved in educating their children about sexting.

Opponents may argue that, since parents do not have a large influence on their child's sex decisions and sexting, parents are not in the best place to educate their child about the issues of sexting. While parents do not play as large of a role in their children's sexual lives as parents do in other areas, parents working in conjunction with schools to educate students about sexting may be the best solution.

Parents and schools—with their unique ability to influence adolescents—are in the best situation to deal with teenage sexting. This also aligns with the current views of our legal system, since it leaves the moral issue of texting to the parent, in conjunction with the school. This is in sync with the government's goals of child protection and protecting parental rights.

Conclusion

Adolescents' sexting raises many important issues relating to the protection of youth. But, current legal responses to protecting youth make one thing clear. Minors should not be prosecuted for consensual sexting under traditional child pornography laws. First, sexting is a common practice among teenagers, and is prevalent among teenagers all over the world. When sexting is consensual, there is not a "culpable party" and a "victim." Rather, teenagers who engage in consensual sexting are often sending sexual photos to their significant other or friends. Sexting generally remains innocent behavior for many teenagers, and they should not have to spend time in prison for taking a sexual photo of themselves and sending it to a consenting party. Child pornography laws have been used to prosecute minors in many situations, including when a 16-year-old girl sent her 17-year-old boyfriend a sext of herself, in the case of *A.H.*, and when a school official confiscated cell phones and found semi-naked photos of girls on the phone, in *Miller v. Mitchell*. The five rationales articulated in *New York v. Ferber* do not justify the government exercising additional authority to regulate consensual teenage sexting under child pornography laws. Likewise, the factors from *Bellotti v. Baird* indicate that it should be unconstitutional to prosecute a minor for consensual sexting, since it does not act in the best interest of the minor.

To solve problems raised by prosecuting minors for sexting, lawmakers should enact statutes that decriminalize consensual teenage sexting. Doing so will ensure that parties may recover from the harms associated with exploitative sexting, while minors will not be prosecuted for engaging in sexting with other minors. In place of criminalizing minors, schools and parents should work together to implement an effective sexting education regime. In schools, this could be incorporated in previously existing courses or initiatives, including those that help students understand coercive behavior. Since parents do not have all the necessary information to teach their child about sexting, or detect if their child is involved in an exploitative sexting situation, schools should educate parents about the reality and dangers of sexting.

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