

103^D CONGRESS
2^D SESSION

H. RES. 281

Respecting child pornography.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1993

Mr. SMITH of New Jersey (for himself, Mr. DOOLITTLE, Mr. McMILLAN, Mr. PARKER, Mr. HYDE, Mr. SOLOMON, Mr. BARRETT of Nebraska, Mr. DELAY, Mr. FIELDS of Texas, Mr. BUYER, Mr. CANADY, Mr. WOLF, Mr. HUTCHINSON, Mr. RAHALL, Mr. DICKEY, Mr. GILCHREST, Mr. HEFLEY, Mr. SENSENBRENNER, Mr. PORTER, Mr. BACHUS of Alabama, Mr. LINDER, Mr. HOEKSTRA, Mr. LEWIS of Florida, Mr. BAKER of California, Mr. COX, Mr. RAVENEL, Mr. DORNAN, Mr. ROYCE, Mr. CAMP, Mr. CUNNINGHAM, Mr. SUNDQUIST, Mr. BAKER of Louisiana, Mr. ROTH, Mr. TALENT, Mr. HERGER, Mr. STUMP, Mr. BATEMAN, Mr. QUILLEN, Mr. RIDGE, Mr. HANCOCK, Mr. SANTORUM, Mr. HORN, Mr. LIPINSKI, Mrs. ROUKEMA, Mr. TAYLOR of North Carolina, Mr. BARTLETT of Maryland, Mr. CALLAHAN, Mr. SAXTON, Mr. HUTTO, Mr. FALEOMAVAEGA, Mr. WALSH, Mr. INGLIS of South Carolina, Mr. HUNTER, Mr. ZELIFF, Mr. GINGRICH, Mr. GEKAS, Mr. MCCOLLUM, and Mr. KYL) submitted the following resolution; which was referred to the Committee on the Judiciary

APRIL 14, 1994

Additional sponsors: Mr. STEARNS, Mr. GOSS, Mr. COLLINS of Georgia, Mr. SMITH of Texas, Mrs. VUCANOVICH, Mr. RAMSTAD, Mr. COMBEST, Mr. CRANE, Mr. GILLMOR, Mr. BLILEY, Mr. PAXON, Mr. KNOLLENBERG, Mr. UPTON, Mr. EWING, Mr. ARMEY, Mr. POMBO, Mr. BUNNING, Mr. MANZULLO, Mr. OXLEY, Mr. KING, Mr. McCANDLESS, Mr. KIM, Mr. FAWELL, Mr. YOUNG of Alaska, Mr. EMERSON, Mr. HOLDEN, Mr. PETE GEREN of Texas, Mr. BARCIA of Michigan, Mr. LAZIO, Mr. GALLEGLY, Mr. BILIRAKIS, Mr. LIGHTFOOT, Mr. KLUG, Mr. BLUTE, Mr. HANSEN, Mr. McKEON, Mr. SHAW, Ms. DUNN, Mr. McDADE, Mr. BALLENGER, Mr. MACHTLEY, Mr. BOEHNER, Mr. BURTON of Indiana, Mr. CALVERT, Mr. CASTLE, Mr. WELDON, Mr. SKEEN, Mr. SMITH of Oregon, Mr. SPENCE, Mr. TORKILDSSEN, Mr. CRAPO, Ms. PRYCE of Ohio, Mr. SAM JOHNSON of Texas, Mr. ARCHER, Mrs. BYRNE, Mr. INHOFE, Mr. JOHNSON of South Dakota, Mr. EVERETT, Mr. FISH, Mrs. FOWLER, Mr. FRANKS of Connecticut, Mr. GALLO, Mr. MOORHEAD, Mr. PACKARD, Mr. QUINN, Mr. KASICH, Mr. KINGSTON, Mr. LEVY, Mr. LEWIS of California, Mr. KOLBE, Mr. LEACH, Mr. KILDEE, Mr. MONTGOMERY, Mr. COBLE,

Mrs. MEYERS of Kansas, Mr. BARTON of Texas, Mrs. JOHNSON of Connecticut, Mr. THOMAS of Wyoming, Mr. ROGERS, Ms. DANNER, Mr. GENE GREEN of Texas, Mr. SARPALIUS, Mr. HASTERT, Mr. ZIMMER, Mr. JOHNSTON of Florida, Mr. SCHIFF, Mr. DREIER, Mr. LIVINGSTON, Mr. HALL of Texas, Mr. GOODLATTE, Mr. SCHAEFER, Mr. WALKER, Mr. GRAMS, Mr. BONILLA, Ms. ROS-LEHTINEN, Mr. MICA, Ms. MOLINARI, Mr. MYERS of Indiana, Mr. KLINK, Mr. PETERSON of Minnesota, Mr. BOEHLERT, Mr. STENHOLM, Mr. FINGERHUT, Mr. CRAMER, Mr. McCLOSKEY, Mr. HUFFINGTON, Mr. MCHUGH, Mr. GILMAN, Mr. CONDIT, Mr. LANCASTER, Ms. CANTWELL, Mr. ROBERTS, Mr. ISTOOK, Mr. POMEROY, Mr. HALL of Ohio, Mr. SHARP, Mr. TEJEDA, Mr. TAYLOR of Mississippi, Mr. BARLOW, Mr. HOUGHTON, Mr. FROST, Mr. DUNCAN, Mr. ROHRABACHER, Mrs. BENTLEY, Mr. GREENWOOD, Mr. MILLER of Florida, Mr. PORTMAN, Mr. SHAYS, Mr. THOMAS of California, Mr. FRANKS of New Jersey, Mr. PENNY, Mr. GUNDERSON, Mr. ORTIZ, Mr. REGULA, Mr. TRAFICANT, Mr. PETERSON of Florida, Mr. NUSSLE, Mr. HEFNER, Mr. MICHEL, Mr. GRANDY, Mr. MCINNIS, Mr. BEREUTER, Mr. SKELTON, Mr. WHITTEN, Mr. MURTHA, Mr. VOLKMER, Mr. PETRI, Mr. COOPER, Mr. YOUNG of Florida, Mr. HOKE, Mr. BORSKI, Mr. HOBSON, Mr. TAUZIN, Mr. McNULTY, Mr. McCRERY, Mr. MURPHY, Mr. MOLLOHAN, Mr. GORDON, Mr. POSHARD, Mr. BACCHUS of Florida, Ms. LONG, Mr. ALLARD, Mrs. MORELLA, Mr. SMITH of Michigan, Mr. DIAZ-BALART, Ms. KAPTUR, Mr. ANDREWS of New Jersey, Mr. COSTELLO, Mr. SHUSTER, Ms. SNOWE, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. CLINGER, Mr. LAFALCE, Mr. WILSON, Mr. GOODLING, Mr. HOCHBRUECKNER, Mr. HAYES, Mr. DERRICK, Mr. KLECZKA, Mr. ROWLAND, Mr. EHLERS, Mr. SLATTERY, Mr. DARDEN, Mr. BAESLER, Ms. LAMBERT, Mr. OBERSTAR, Mr. MANN, Mr. PRICE of North Carolina, Mr. TORRICELLI, Mr. WHEAT, Mr. NEAL of Massachusetts, Mr. MANTON, Mr. BARCA of Wisconsin, Mr. STUPAK, Mr. VALENTINE, Mr. HAMILTON, Mr. INSLEE, Mr. BARRETT of Wisconsin, Mr. BREWSTER, Ms. SCHENK, Mr. CLEMENT, Ms. SHEPHERD, Mr. DE LA GARZA, Mr. GLICKMAN, Mr. STRICKLAND, Mr. SANGMEISTER, and Mr. BROWDER

RESOLUTION

Respecting child pornography.

Whereas child pornography is the permanent record of the sexual abuse or exploitation of children;

Whereas children who are victims of child pornography often suffer severe physical and emotional harm;

Whereas child pornography is a serious national problem;

Whereas the Congress of the United States has a compelling interest in the protection of children from sexual abuse and exploitation by pornography (see *New York v. Ferber*, 458 U.S. 747 (1982));

Whereas the Congress of the United States, in pursuit of this compelling interest, has taken every opportunity to strengthen child pornography laws and has, in clear and unambiguous language, criminalized the production, interstate distribution, receipt and possession of child pornography;

Whereas the United States Department of Justice in its brief to the United States Supreme Court in the case of *Knox v. United States*, 92–1183, has failed to support the conviction of a child pornographer won by the Department in the United States District Court for the Middle District of Pennsylvania and affirmed on appeal in the United States Court of Appeals for the Third Circuit;

Whereas the Department of Justice has used its brief in the *Knox* case as a vehicle for reinterpretation of the Federal child pornography laws in contravention to legislative history and past prosecution practices of the Department of Justice;

Whereas the Department of Justice by declaring in its brief in the *Knox* case that a pornographer who lasciviously exhibits the genitals of children is prosecutable within the Federal child pornography laws only if the depictions show a minor engaged in the conduct of lasciviously exhibiting his or her genitals or pubic area, creates a federally protected class of child pornography, e.g. child pornography involving children who are not knowingly engaged in lasciviously exhibiting their genitals or pubic

areas but whose genitals or pubic areas are nonetheless lasciviously depicted by others;

Whereas the Department of Justice by declaring in its brief in the Knox case in contravention to legislative history, that a pornographer who lasciviously exhibits the genital or pubic area of children is prosecutable within the Federal child pornography laws only if the genitals are nude or visible creates a federally protected class of child pornography, e.g. depictions which focus on a minor child's clothed genital or pubic area with the obvious intent of eliciting a sexual response in pedophiles;

Whereas the plan meaning and congressional intent of the language in section 2256 of title 18, United States Code, is that the term "lascivious exhibition" refers to whether the depiction is intended to elicit a sexual response from the viewer, and not to the actions of the child;

Whereas the Department of Justice has employed this meaning of the term "lascivious exhibition" since it was included in the laws in 1984, and Congress has not changed the meaning of the term;

Whereas Congress specifically repudiated a "nudity" requirement for child pornography statutes (see *United States v. Knox*, 977 F. 2d 815, at 820–823, (3rd Cir., 1992));

Whereas the "harm Congress attempted to eradicate by enacting child pornography laws is present when a photographer unnaturally focuses on a minor child's clothed genital area with the obvious intent to produce an image sexually arousing to pedophiles." (see *Knox* at 822); and

Whereas the Congress of the United States believes that the reinterpretation of the Federal child pornography laws by Department of Justice, unless reversed, will bring back

commercial child pornography and lead to a substantial increase of sexual exploitation of children: Now, therefore, be it

- 1 *Resolved*, That it is the sense of the House of Rep-
- 2 resentatives that the Department of Justice repudiate its
- 3 reinterpretation of Federal child pornography laws, defend
- 4 the conviction won in lower courts in the Knox case, and
- 5 vigorously prosecute sexual exploitation of children.

