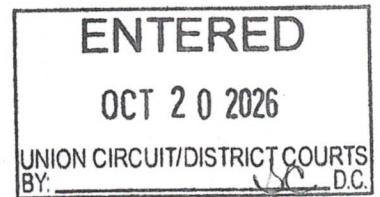


COMMONWEALTH OF KENTUCKY
UNION CIRCUIT COURT
CASE NO. 25-CR-00065



COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

KENNETH J. MOORE

DEFENDANT

ORDER

This matter having been before the Court on motion of the Defendant, Kenneth J. Moore, by and through counsel, Hon. Richard Walls, pursuant to the United States Constitution and the Commonwealth of Kentucky Constitution and all other applicable federal and state laws, requesting that the Union Circuit Court find that the entire 2024 Kentucky Acts Chapter 15 (2024 H.B. 207) is unconstitutional on its face, and as applied to Kenneth J. Moore, and requesting dismissal on all charges filed under these specific statutes.

As required under Kentucky law, KRS 418.075(1); *Commonwealth v. Hamilton*, 411 S.W. 3d 741, 751 (Ky. 2013), the Attorney General has been put on notice and is “entitled to be heard” any matter involving the challenge to the constitutionality of a Kentucky statute, as such a challenge impacts the protections and rights of all Kentuckians. In the subject matter, the Attorney General, Hon. Russell Coleman, has been joined as a party, and Assistant Solicitor General, Hon. James Harvey has filed a formal response to the pending motion, with the Hon. Timothy G. Arnold of the Appeals Branch of the Department of Public Advocacy having filed a formal reply to the A.G.’s response. All matters having been fully briefed and submitted to the Union Circuit Court for a ruling and decision.

On or about August 5, 2025, Kenneth J. Moore, was indicted by the Union County Grand Jury for trafficking in a controlled substance in the first degree, first offense, greater than or

equal to 2 grams of methamphetamine, drug paraphernalia, and possession of marijuana in 25-CR-00068, Union Circuit Court. Kenneth J. Moore was also indicted on that same day in 25-CR-00065, the subject action, on ten (10) counts of possession or viewing matter portraying a sexual performance by a minor under KRS 531.335(3); five (5) counts of promoting a sexual performance by a minor under KRS 531.320(2b), and one (1) count of knowingly trafficking a child sex doll under KRS 531.366.

Although the Court has yet to take any, much less sufficient proof, to make proper findings, or conduct a proper as-applied constitutional challenge, it would appear that both the Defendant and Commonwealth agree with the contention that legal adult pornography was edited or morphed both manually and by computer generation with non-pornographic facial photos of real individuals who were minors at the time the non-pornographic photo was taken but who are no longer minors at the current time.

The Court has not received any formal evidence to date in the subject action, but at the request, agreement, and consent of both parties herein the Court did view the photographs, videos, and purported child sex doll(s) or parts thereof, all currently being held as evidence by the investigating law enforcement agency. Although no formal evidence has yet been admitted, and such evidence may or may not be admitted at trial for any number of potential unknown reasons, it would appear at this time that the primary evidence possessed by the Commonwealth consists of approximately ten (10) nude or sexually explicit photographs containing a combination of a nude/sexually explicit body with a child's face, so that each photograph is a morphed image of what appears to be a real child's face on a nude/sexually explicit body. There are also approximately five (5) sexually explicit computer-generated videos containing subjects that appear to be the combination of an adult (or what appears to be an adult) nude/sexually

explicit body with a child's face, so that each video appears to be a morphed sexually explicit video with an actor/actress possessing what appears to be a real child's face on a nude body. The videos contain animated graphics and sexually explicit language with non-verbatim statements which could be paraphrased as follows: "Cum on me (or in me) to make my tits grow big." and "Please cum in my 13-year-old pussy." The Court reserves the right to amend or strike this language depending upon the exact proof provided at trial.

The one (1) count of knowingly trafficking a child sex doll is supported with evidence of two or more purported child sex dolls, torsos, or parts thereof, as said evidence appears to be a combination of doll heads and homemade sex dolls or body parts, including at least one head or doll with extremely childlike in appearance head and facial features.

The Defendant argues that references to "computer generated image" in KRS 531.010, KRS 531.300, KRS 531.306, KRS 531.320, KRS 531.330, KRS 531.335, KRS 531.340, KRS 531.350, and KRS 531.360 violates the First Amendment of the United States Constitution as construed and interpreted by *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) and Kentucky Constitution Sec. 1. Defendant sets out that 2024 Ky. Acts Ch. 15 ("the Act") contains several provisions related to "computer generated images" and Sec. 2 of the Act amends KRS 531.010(3) to state "computer-generated image" means any visual depiction, including any photograph, film, video, or picture, where the depiction has been created, adapted, or modified by a computer to appear to be an identifiable person," and subsection (5) states that an "identifiable person" – "means a person who is recognizable by the person's face, likeness, or other distinguishing characteristic." Defendant further contends that Sec. 3 of the Act incorporates the idea of a "computer generated image" by amending KRS 531.300(2) to state "[p]erformance" – "means any play, motion picture, photograph, dance or any other visual

representation or computer-generated image exhibited before an audience.” Further Defendant sets out that KRS 531.306, which was adopted as Sec. 14 of the Act, provides that “in any prosecution under KRS 531.300 to KRS 531.370 where the offense involves matter or material portraying a computer-generated image of a minor, the Commonwealth shall not be required to prove the actual identity or age of the minor or that the minor actually exists.” Lastly, the Defendant contends that the “computer generated image” concept is incorporated into counts 1-10 of the indictment (Act, Sec. 10, amending KRS 531.335) and counts 11-15 of the indictment (Act, Sec. 8, amending KRS 531.320).

With respect to Count 16, the Defendant alleges that the prohibitions on Possession and Trafficking in a Child Sex Doll under KRS 531.365 to KRS 531.368 are unconstitutionally vague and unconstitutionally prohibit the possession or transfer of a non-obscene child sex doll. Defendant also alleges that the statute improperly shifts the burden of proof to the Defendant creating a presumed trafficking presumption due only to the number of child sex dolls possessed.

The Commonwealth argues that counts 1-10 of the indictment (possession or viewing of matter portraying sexual performance by a minor) were not brought under the Act’s 2024 amendments to KRS 531.335 and therefore the Commonwealth did not address counts 1-10 in its formal written response. The Commonwealth argues that counts 11-15 implicate unprotected speech under the First Amendment and that count 16 does not implicate speech and is not protected under the constitution.

Kentucky law is clear that duly enacted statutes are strongly presumed to be constitutional. *Graham v. Adams*, 684 S.W. 3d 663, 675 (Ky. 2023). When considering an attack on the constitutionality of duly enacted statutes, Kentucky courts have “continually resolved any doubt in favor of constitutionality” as opposed to unconstitutionality. *Commonwealth v. Frazier*,

722 S.W. 3d 541, 547 (Ky. App. 2025). Courts are required to give a statute, if it is possible, an interpretation which upholds its constitutional validity as any “doubt should be resolved in favor of the voice of the people as expressed through their legislative” representatives in government. *Id.* Further, it is the party challenging a statute’s constitutionality that bears the burden of establishing that the statute is in fact unconstitutional. *Seum v. Bevin*, 584 S.W. 3d 771, 775 (Ky. App. 2019). Courts shall limit any constitutional review to only the applicable statutes involved in the underlying case and they shall not render advisory opinions. *Nordike v. Nordike*, 231 S.W. 3d 733, 739 (Ky. 2007).

Constitutional challenges to statutes generally fall within one of two categories: a facial challenge or an as-applied challenge. Generally, in order to declare a statute unconstitutional on its face, a court must find that the law is unconstitutional in all its applications and ‘it is a well established principle that [a] facial challenge to a legislative Act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.’ *Commonwealth v. Bredhold*, 599 S.W. 3d 409, 415-416 (Ky. 2020). “On the other hand, in order to declare a statute unconstitutional as applied, a court must find the law unconstitutional as applied to the challenger’s particular circumstances.” *Id.*

The United States Supreme Court has established that facial challenges are disfavored for several reasons: 1) Claims of facial invalidity often rest on speculation, 2) Increase the risk of premature interpretation of statutes based on factually deficient barebones records, 3) Violate the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than required by the exact facts to which it is to be applied, 4) Frustrate the intent of the elected representatives of the people by voiding or preventing laws embodying the will of the

people. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450-451 (2008).

In 1982, the United States Supreme Court first addressed a ban on the distribution of child pornography, which did not meet the traditional definition of “obscene” as set forth in *Miller v. California*, 413 U.S. 15, 24 (1973). Although, the criminal ban applied to materials that were not “obscene” according to prior precedent, the U.S. Supreme Court upheld the statute as constitutional and that child pornography, even if it does not qualify as “obscene,” falls outside of First Amendment protection because of the legitimate state interest in protecting “the physiological, emotional, and mental health” of children. *New York v. Ferber*, 458 U.S. 747, 758 (1982). The highest Court further emphasized that children are harmed not only through the actual production of child pornography, “but also by the knowledge of its continued circulation.” *Id.* at 756-759. The Court in *Ferber*, also noted that “the value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceedingly modest, if not de minimis” [and w]e consider it unlikely that visual depictions of children performing sexual acts or lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance.” *Ferber* at 758.

Nearly a decade later and based largely on the psychological harm to children, the U.S. Supreme Court upheld a statute criminalizing the mere possession of child pornography. *Osborne v. Ohio*, 495 U.S. 103, 110-111 (1990). The Court noted that the “materials produced by child pornographers permanently record the victim’s abuse and [t]he pornography’s continued existence causes the child victims continuing harm by haunting the children in years to come.” *Id.* The Court further acknowledged that it was “surely reasonable for the state to conclude that it will decrease the production of child pornography if it penalizes those who [only] possess and

view the product, thereby decreasing demand.” *Id.* at 109-110. In rendering its holding in *Osborne*, the Court recognized that its seemingly incompatible holding in *Stanley v. Georgia*, 394 U.S. 557, 567 (1969), which held that states cannot criminalize mere private possession of obscene material, was a “narrow” decision. *Osborne*, 495 U.S. at 108.

Throughout the 1980s and early 1990s, federal statutes defined child pornography as the type of depictions or images using actual minors, however in 1996, Congress passed the Child Pornography Prevention Action of 1996 (“CPPA”) which retained the prohibition against images of actual minors, 18 U.S.C. § 2256(8)(A), but also added three other prohibited categories of speech, two categories of which were at issue in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

The first additional category of prohibited speech was codified in federal law at 18 U.S.C. § 2256(8)(B). Section 2256(8)(B) prohibited “any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture,” that “is or appears to be, of a minor engaging in sexually explicit conduct.” The prohibition in section 2256(8)(B) did not depend upon how the image was produced and did not require that a child be harmed in the production process; however, Congress reasoned that such materials threaten children in other indirect ways where the harm flows from the content of the images not from the means of their production. Congressional Findings (3-4). Congress further identified another problem created by computer-generated images, which is that as imaging technology improves, it becomes more difficult to prove that a particular picture was produced using actual children, and virtual child pornography must be banned to ensure that defendants possessing child pornography using actual minors cannot evade prosecution. Congressional Finding (6)(A).

The second additional category of prohibited speech was Section 2256(8)(C) of the CPPA covered any visual depiction modified to appear that an actual minor was engaged in sexually explicit activity, which the Supreme Court described this provision as prohibiting a more “common and lower tech means of creating virtual images,” known as “computer morphing.” *Ashcroft*, 535 U.S. at 242. The Court noted that in lieu of creating original images, “morphing” allowed pornographers to “alter innocent pictures of real children so that the children appear to be engaged in sexual activity.” *Id.* Given that section 2256(8)(C) was not challenged in the *Ashcroft* case, the Court did not consider or address its constitutionality but did state that “[a]lthough morphed images may fall within the definition of virtual child pornography, they implicate the interests of real children and are in that sense closer to the [unprotected] images in *Ferber*. *Id.*

The third additional category of prohibited speech was Section 2256(8)(D) of the CPPA, which defined child pornography to include any sexually explicit image that was “advertised, promoted, presented, described, or distributed in such a manner that convey[ed] the impression” it depicted “a minor engaging in sexually explicit conduct.”

In *Ashcroft*, a California trade association for the adult-entertainment industry challenged sections 2256(8)(B) and (D) as being unconstitutionally overbroad. While the U.S. Supreme Court set out the “general principle [that] while the First Amendment bars the government from dictating what we see or read or speak and hear,” it did not embrace certain categories of speech “including defamation, incitement, obscenity and pornography produced with real children.” 535 U.S. at 245. Nonetheless, the Court in *Ashcroft* held that the “speech” criminalized in sections 2256(8)(B) and (D) of the CPPA did not fall into any of the specific exceptions to the First Amendment protections. Specifically, the Court found that Section 2256(8)(B) of the CPPA

violated First Amendment rights since it extended the federal prohibition against child pornography to include sexually explicit images that “appeared to” depict minors but were “produced without using any real children,” as such material could be created by using adults who only looked like minors or by using advanced computer imaging techniques to “create realistic images of children who do not exist.” *Ashcroft*, 535 U.S. at 240. The Court held that Section 2256(8)(B) of the CPPA “abridge[ed] the freedom to engage in a substantial amount of lawful speech” and was therefore overbroad and unconstitutional. *Id.* at 256.

In the course of its ruling, the U.S. Supreme Court also declared that the purported affirmative defense set out within the statute was “incomplete and insufficient,” as it only allowed distributors and not mere possessors of child pornography to be exonerated upon the showing that the materials in question were produced using only adults. *Id.* at 255. In making such declaration, the Court did leave open the possibility that a more complete affirmative defense could save a statute’s constitutionality, and by so doing implicitly accepted that some regulation of virtual pornography might be constitutional. *Ashcroft*, 535 U.S. at 259, J. Thomas concurring opinion. Justice Thomas’s seemingly prophetic concurrence set out that “technology may evolve to the point where it becomes impossible to enforce actual child pornography laws because the Government cannot prove that certain pornographic images are of real children” and in such an event, “the Government should not be foreclosed from enacting a regulation of virtual child pornography that contains an appropriate affirmative defense or some other narrowly drawn restriction.” *Id.* Justice Thomas continued by stating “if technological advances thwart prosecution of unlawful speech, the Government may well have a compelling interest in barring or otherwise regulating some narrow category of lawful speech in order to enforce” child pornography laws made through the abuse of real children. *Id.*

The *Ashcroft* decision was authored by Justice Kennedy, in which Justices Stevens, Souter, Ginsburg, and Breyer joined, with J. Thomas filing a concurring opinion, Justice O'Connor filed an opinion concurring in part and dissenting in part, and both J. Scalia and C.J. Rehnquist dissented. The O'Connor partial concurrence and partial dissent, acknowledges that the "appears to be of a minor" and "conveys the impression" that it contains pornographic images of minors, was overbroad when applied to the class of youthful appearing adult pornography, as those provisions were not narrowly tailored to meet strict scrutiny requirements, but she disagreed that the virtual child pornography restrictions were overbroad, as it meet strict scrutiny and was not unconstitutionally vague. *Id.* at 261-263. Justice O'Connor further emphasized that a content-based regulation that served a compelling state interest and which was narrowly tailored, but which still ensnared protected speech, could be challenged as overbroad but the challengers bear "the heavy burden of demonstrating that the regulation forbids a substantial amount of valuable or harmless speech." *Id.* at 265.

As both a former state legislator and state court judge, Justice O'Connor, even set out suggested changes to the statutory language, so that the language would be even more narrowly tailored to serve the undisputed compelling governmental interest, as she suggested that a better and more narrow interpretation of "appears to be...of" is "virtually indistinguishable from." *Id.* at 264. "Reading the statute only to bar images that are virtually indistinguishable from actual children would not only assure that the ban on virtual child pornography is narrowly tailored but would also assuage any fears that the "appears to be...of a minor" language is vague" and would greatly limit the risks of "discriminatory enforcement." *Id.* While challengers may argue that "virtually indistinguishable from" is also vague, because it is open to subjective interpretation, O'Connor emphasized that the U.S. Supreme Court has never required that a statute be

mathematically certain or meticulously specific. *Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972).

Following the issuance of the *Ashcroft* decision, Congress started crafting responsive legislation, the result of which was the PROTECT Act which defined child pornography to include, in addition to images of “real” children engaged in sexually explicit conduct (Sec. 2256(8)(A)), digital or computer-generated images that are “indistinguishable” from images of actual minors engaging in explicit conduct (Sec. 2256(8)(B)) and visual depictions that have been created or modified to appear as though an identifiable minor is engaged in sexually explicit conduct (Sec. 2256(8)(C)).

The definition of “morphed” child pornography as discussed in *Ashcroft* remained unchanged as between the CPPA and the PROTECT Act, however the PROTECT Act extended the affirmative defense that each person depicted in the alleged unlawful material “was an adult at the time the material was produced” to both distributors and mere possessors; however, said affirmative defense is specifically not available to those charged under Section 2256(8)(C) of the PROTECT Act. Prosecutions brought under the definition of child pornography contained in Section 2256(8)(C) generally charge the accused with having taken the innocent image of an actual child and “morphing” it into a sexually explicit depiction. *U.S. v. Hotaling*, 599 F. Supp. 2d 306, 311 (N.D. New York 2008). Under current law, which was not challenged or addressed in *Ashcroft*, **only one affirmative defense is available in a morphing prosecution: proof that only pictures of adults were used** (emphasis added). *Id.*

Following this reasoning, logic, and precedent, courts across these United States have consistently rejected arguments that materials, images, creations, etc, made by juxtaposing adult nude bodies with cut-outs of children’s faces were protected by the First Amendment, and courts

have consistently found that such material or images were “not the sort of virtual pornography” described in *Ashcroft* since these materials did involve real children. *Id.* citing *Cobb v. Coplan*, 2003 WL 22888857, at 7-8 (D.N.H. Dec. 8, 2003); *See U.S. v. Hotaling*, 634 F. 3d 725, 730 (2nd Cir. 2011); *See Doe v. Boland*, 698 F. 3d 877, 883-886 (6th Cir. 2012); *U.S. v. Mecham*, 950 F. 3d 257, 263-267 (5th Cir. 2020); *Brasse v. State*, 333 A. 3d 593, 607-608 (Md. App. 2025); *U.S. v. Anderson*, 759 F. 3d 891, 895 (8th Cir. 2014).

In the subject action, the Defendant has been charged in the subject indictment with ten counts (1-10) of Possession of Matter Portraying a Sex Performance by Minor over 12, under 18, 1st Offense, under KRS 531.335(3)(a), which specifically alleges that the Defendant “possessed or viewed a matter portraying a sexual performance by a minor with knowledge of contents, character, and that sexual performance is by a minor over 12 but under 18 years.” The only change to the statutory language of KRS 531.335(3)(a) as a result of the 2024 Act being challenged was an addition of “or computer-generated image of a minor person.”

As the constitutional validity of a prior version of this statute has been previously upheld by Kentucky courts, *see Dumas v. Commonwealth*, 2011 WL 2112560 (unreported Ky. 2011), the only potential constitutional consideration at issue for this court is whether the addition of “or computer-generated image of a minor person” makes the statute unconstitutional on its face or as-applied to the facts of this case. As argued by the Attorney General, it is entirely possible if not likely that the first ten counts (1-10) do not hinge upon the amended language “or computer-generated image of a minor person” if the evidence presented establishes that the first ten counts were created by manually cutting out the heads/faces of known minor(s) and physically imposing the minor heads/faces on the naked/sexually explicit bodies, creating what is effectively known as crude morphed child pornography. If the evidence established this type of proof at trial, then

the facial and as-applied constitutional challenge to KRS 531.335(3)(a) would be inapplicable and moot as a matter of law.

Assuming for argument's sake that the first ten counts are based on material that was created by a combination of a real and identifiable child's face and a computer-generated image of naked/sexually explicit body, then the Court overrules the request to find the amended statute unconstitutional on its face and as-applied as such a creation would be considered morphed child pornography under both state and federal law, just as described in Section 2256(8)(C) of the CPPA, which was explicitly not invalidated by the *Ashcroft* decision. As aptly explained by the First Circuit, "an image of an identifiable, real child involving sadistic conduct—even if manipulated to portray conduct that was not actually inflicted on that child – is still harmful, and the amount of emotional harm inflicted will likely correspond to the severity of the conduct depicted." *United States v. Hoey*, 508 F. 3d 687, 693 (1st Cir. 2007). "Assuming arguendo that the CPPA created doubt about whether it applied to morphed pornographic images of identifiable minors when no minors actually engaged in the sexual acts depicted, the PROTECT Act erased it [as] [i]t is evidence from the plain meaning of the PROTECT Act and its explicit legislative history that the alleged "innocence" of the picture is not a defense to Section 2256(8)(C) if an identifiable minor is depicted therein." *United States v. Hotaling*, 599 F. Supp. 2d 306, 318 (N.D. New York 2008). In addition, the Sixth Circuit Court of Appeals has also held that morphed pornographic images created using innocent pictures of real children are not protected by the First Amendment. *Doe v. Boland*, 698 F. 3d 877, 883-886 (6th Cir. 2012). The Sixth Circuit Court further noted that reputational and emotional harm and the personal intrusions inflicted on child victims of pornography, by stating "morphed images are of a piece, offering a difference in

degree in injury but not in kind.” *Id.* at 881. The Court concluded that morphed images are never necessary to achieve an artistic goal and harm the interests of identifiable minors. *Id.* at 883-884.

As the language of the challenged Kentucky statutes mirror or is at least in substantial compliance with the federal statutes and language of the PROTECT Act, this Court agrees with the reasoning and rationales of the federal courts interpreting analogous federal statutory language and associated fact patterns, and therefore denies the request to find KRS 531.335 and other related challenged statutes to be facially and as-applied unconstitutional, as morphed child-pornography created through a computer-generated process is at least one example of speech that is not required to be protected under neither the Kentucky or United States Constitutions.

The same rationale and reasoning would apply to the constitutional challenge to KRS 531.320(2b), under which the Defendant was indicted on 5 Counts (11-15) of Promoting Sex Performance by Minor Under 16 years of Age – specifically the indictment alleges that the Defendant promoted a sexual performance of minor knowing the character and content by producing, directing, or promoting a performance when the minor involved is less than sixteen (16) at the time the minor engaged in prohibited activity. As with KRS 531.335, the 2024 changes to KRS 531.320(2b) only added “or computer-generated image of a minor” following the word minor in line two from the previous version of the statute. KRS 531.010(3) was amended under the 2024 Act to define “computer-generated image” as “any visual depiction, including a photograph, film, video, or picture, where the depiction has been created, adapted, or modified by a computer to appear to be an identifiable person.” KRS 531.010(5) was amended under the 2024 Act to define “Identifiable person” as “a person who is recognizable by the person’s face, likeness, or other distinguishing characteristic.” The Defendant repeatedly argues that KRS 531.306, which was adopted as Sec. 14 of the 2024 Act, undoes these statutory

language requirements of a specific and identifiable person by providing that “[i]n any prosecution under KRS 531.300 to 531.370 where the offense involves matter or material portraying a computer-generated image of a minor, the Commonwealth shall not be required to prove the actual identity or age of the minor or that the minor actually exists.” The Defendant then concludes that the only way to give effect to both the definitions set out in KRS 531.010 and KRS 531.306 is to find that an “identified person” does not have to be an actual person. This Court, however, is unpersuaded by such fallacious conclusions and simply believes that KRS 531.306 was intended to address that with billions of children around the world (and the rest of us having been children at some point in our lives) it may sometimes be difficult to put a specific name, age, or identity to any one child, even one that may be recognizable in other respects. Lastly, given that the Commonwealth intends to introduce evidence of a known and identifiable person, KRS 531.306 should not even be applicable in the subject action and therefore any argument as to its unconstitutionality as-applied in this case should be moot herein to this specific defendant; therefore, this Court is going to exercise judicial restraint and decline to rule on the facial constitutionality of a statute that is not directly at issue before it, especially given the speculative nature of such a request in a case that has yet to introduce its first piece of formal evidence or proof.

In the instant case, while the evidence has yet to be formally introduced, a cursory review of the items in possession of the Commonwealth, gives this Court reason to believe that the proof will consist of a computer-generated video or computer simulation using either computer-generated bodies or pictures of adults or other minors in combination with the face of a known and identifiable minor, which would constitute morphed child pornography which was not at issue or declared unconstitutional in *Ashcroft*. This Court again agrees with the reasoning and

rationales of the federal courts interpreting analogous statutory language and associated fact patterns, finds KRS 531.320(2b) and related challenged statutes mirror or are in substantial compliance with the statutory language of the PROTECT Act; therefore, this Court denies the request to find KRS 531.320 (2b) and related challenged statutes to be facially and as-applied unconstitutional, as morphed child-pornography created through a computer-generated process is at least one example of unprotected speech under both the Kentucky and United States Constitutions.

Lastly, the Defendant has been charged in Count 16 with Knowingly Trafficking Child Sex Doll under KRS 531.366, which was added as a new section under the 2024 Act, and specifically charged that the defendant knowingly trafficked child sex doll, with presumed intent by having more than one child sex doll. KRS 531.366(2) specifically states “Any person who has in his or her possession more than one (1) child sex doll shall be rebuttably presumed to have that child sex doll in his or her possession with the intent to traffic it.” An additional new section of the 2024 Act and a potential lesser included offense of trafficking a child sex doll is KRS 531.365 (1) which sets out that “a person is guilty of possession of a child sex doll when he or she knowingly possesses a child sex doll.” While the Defendant has also facially challenged the constitutionality of KRS 531.367 and KRS 531.368 for importing a child sex doll and promoting the use of child sex doll, this Court does not have any reason to believe that there will be any evidence presented to support either offense in the subject action and this Court believes it would be improper to address the constitutionality of a statute that is not specifically before it. Even if this Court does possess the authority to make such a determination, this Court exercises its discretion and declines to address the constitutionality of statutes under which no charges have been levied against the defendant.

In addition, the Defendant asserts that the statutory definition of a child sex doll under KRS 531.010(1) is vague, that the prohibitions violate his rights of free speech and expression, and that the trafficking statute improperly shifts the burden of proof to the defendant. KRS 531.010(1) defines a “child sex doll” as “an anatomically correct or anatomically precise doll, mannequin, or robot that may consist of an entire body, pelvis, or any other body part, with features of, or with features that resemble, those of a minor and intended for use in sexual acts.” Thus to qualify as “child sex doll” under the statute there first (1) must be an anatomically correct or precise object in the form of a doll, mannequin or robot, which may consist of an entire body, the pelvis only, or any other body parts, second (2) said object must possess features of those of a minor or that resemble those of a minor, and third (3) said object must be intended for use in sexual acts. While anatomically correct or precise is not defined by the statute, such mathematical precision is not required and undefined terms are to be accorded their everyday meaning. *Wilfong v. Commonwealth*, 175 S.W. 3d 84, 96 (Ky. App. 2004). Various dictionaries define “anatomically correct” as “having body parts like those of actual people,” Merriam-Webster Dictionary, as “representing the body or a body part, especially a sex organ, in a physiologically accurate manner,” The American Heritage Dictionary, 5th Ed., and as “having representations of the sexual organs,” Dictionary.com. Regardless of the language set out by the various dictionaries, it would seem that an ordinary person would possess sufficient common knowledge to determine if an object is anatomically correct or precise along with deciding if such object possesses features of or that resemble those of a minor. It does not appear that the third element – intended for use in sexual acts – is disputed as both parties acknowledge the “dolls” were masturbatory tools and masturbation would be a sexual act.

The Defendant argues that KRS 531.366, and by extension KRS 531.365, are unconstitutionally vague on its/their face and as-applied specifically to Kenneth D. Moore, as he argues it/they fail(s) to provide fair notice and permits arbitrary enforcement. Both the United States Constitution and the Kentucky Constitution prohibit the enforcement of laws that are void for vagueness. A statute is void for vagueness and violates due process when it is “so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Commonwealth v. Curry*, 607 S.W. 3d 618, 622 (Ky. 2020); *Johnson v. United States*, 576 U.S. 591, 595 (2015). The court in *Curry* further stated that regardless of whether a statute could have been drafted more precisely, it may be upheld “so long as the law provides sufficient warning to persons about what conduct is prohibited.” 607 S.W. 3d at 622. A criminal statute must “define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited.” *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

While this Court has not thoroughly examined the purported evidence related to the child sex doll charges, the Court has, by agreement, consent, and at the request of both parties, viewed the objects in question. Whether these objects meet the statutory elements required of child sex dolls, is yet to be determined, but the Defendant’s repeated arguments about the nature and type of evidence goes to the sufficiency of the evidence, and the question as to whether these are child sex dolls is one of fact, to be determined by the evidence about which argument can be made to the jury. Further, the Defendant’s contention that “there is nothing to indicate the head, or rest of the body resemble a minor” is completely without merit, and a borderline sanctionable offense as a misrepresentation of fact to the tribunal, as one of the dolls (or doll heads at least) is clearly that of a minor (or made to resemble a minor) and this Judge is of the strong opinion that any and

every ordinary citizen of Union County, Kentucky would agree. Further, whether a doll or object has features of a minor or features that resemble a minor and whether that object is anatomically correct or precise are also questions of fact that ordinary citizens can decide based on their common knowledge of everyday life.

Regardless of the facts of the present case, the Defendant has challenged the child sex doll statutes on their face and alleges that these statutes should be held unconstitutional across the Commonwealth. While child sex dolls are a relatively new occurrence, Kentucky is not the first state to implement a prohibition, as at least 11 other states have banned child sex dolls, and the Tennessee legislature was the first to pass such a ban shortly after federal legislation failed to pass both chambers of Congress in or about 2018. Of the eleven or more states that now have laws banning child sex dolls, this Court is unaware that any of those state statutes in Arizona, Florida, Hawaii, Kentucky, Louisiana, North Carolina, South Dakota, Tennessee, Texas, Utah, or Wisconsin have been declared unconstitutional. *See United States v. Rocha*, 86 M.J. 399, 414 (2026). Of these states, state prosecutions in at least the states of Louisiana and Texas have included prosecutions for the possession of homemade child sex dolls, akin to the purported child sex dolls at issue in this case.

In addition, while reported cases involving child sex dolls is scant, on a nationwide basis only military cases outnumber Kentucky reported child sex doll cases. Unfortunately, there is not yet a reported case addressing the newly enacted child sex doll statutes, but one can glean information from the reported cases that child sex doll prohibitions were passed to combat the growing number of child sex dolls, including robotic, that possessed anatomically correct and heated genitals and emitted moaning sounds and were made out of silicon to resemble life-like children in physical appearance, which were being manufactured and transported into the United

States from China. The child sex dolls at issue in the reported Kentucky and military cases are not homemade but were silicon and extremely life-like in physical appearance and proportion to such an extent that military officers first believed the child sex dolls they were viewing in a bed was an actual child. *United States v. Rocha*, 86 M.J. 399 (2026).

Generally, in order to declare a statute unconstitutional on its face, a court must find that the law is unconstitutional in all its applications and ‘it is a well-established principle that [a] facial challenge to a legislative Act is the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.’ *Commonwealth v. Bredhold*, 599 S.W. 3d 409, 415-416 (Ky. 2020). Applying this well-established precedent, to these silicon, heated and anatomically correct human reproductions possessing both genitals and an anus, moan emitting, life-like child sex doll robots or child sex dolls manufactured in China, this Court will consider whether under these specific facts if the challenged child sex doll statutes would be valid. These targeted child sex dolls clearly met all the definitional requirements of KRS 531.010(1) as they are an anatomically correct or anatomically precise doll, mannequin, or robot, with features and appearance of a minor and anatomically correct, with the heated genitals and moaning sounds being indicative of its use in sexual acts. These commercial made child sex dolls or robots are clearly made and intended to resemble or appear to be a minor, with an anatomically correct body and parts including sexual organs, genitals, and anus, which are heated to simulate a real human, with a silicon body that feels like real skin, and which emit moaning sounds to sound like a human. Under these facts, it would appear that the Defendant’s arguments that the child sex doll statutes are vague fail completely, as what ordinary person has not been put on fair notice that possession (or more) of a child sex doll will subject them to felony level punishment and what reasonable person can argue

that any silicon made child-like in appearance, anatomically correct and heated genital, moan emitting child sex doll or robot, which they possess is anything but a child sex doll as defined under the challenged statutes.

Further, what if an individual taped or imposed in some manner, the picture or actual face of an identifiable child onto a child sex doll, making it similar to the morphed child pornography addressed above, surely such a child sex doll would also be unprotected in the same manner as the morphed child pornography and therefore illegal to possess. Taking it a step, further, what if the child sex doll's face and features were created based upon the picture of a real and identifiable minor child, and unsurprisingly such websites do in fact exist where such options can be requested, surely a child sex doll produced based upon the picture and using the features and face of an actual real child would be unprotected and therefore properly banned. While this last potential AI creation may lead to other questions, the point is simply that undisputably valid examples exist to uphold the validity of the child sex doll statutes on their face.

Under any of these examples set out above, arguments as to vagueness must fail under this fact scenario and given that these facts establish a viable set of circumstances under which the challenged act would be valid, this Court cannot declare the child sex doll statutes facially invalid. Further, while the sufficiency of the evidence can be challenged and argued to the jury at trial in this case, with the statutory passage of KRS 531.365 and KRS 531.366, Kenneth Moore was put on fair notice that possession (or more) -- of an anatomically correct or precise sex doll that resembled or had features of minor and that was intended for sexual use -- would subject him to felony level punishment and the court finds that the challenged child sex doll statutes provided sufficient warning to an ordinary person about what conduct was prohibited and hence as-applied

to Kenneth Moore the court finds that the challenged child sex doll statutes KRS 531.365 and KRS 531.366 are constitutionally valid and not vague.

Next, Moore argues that a possession of a child sex doll is a protected act of expression and entitled to First Amendment protections. This Court disagrees as possession of child sex dolls are not a form of protected speech or expression. Defendant acknowledges that a child sex doll or at least the purported child sex dolls items that he possessed were masturbatory tools, intended for use in conduct and not implicating speech, establishing that a child sex doll is a sexual device used for non-expressive conduct and not entitled to First Amendment protection. *See Adam & Eve Jonesboro, LLC v. Perrin*, 933 F. 3d 951, 957 (8th Cir. 2019); *compare Sewell v. Georgia*, 435 U.S. 982 (1978). In the event that a reviewing court disagrees with this Court's determination that possession of a child sex doll is not protected speech or expression, and any reviewing court believes that a fundamental and protected right in possessing a child sex doll is implicated, the Commonwealth can easily establish that prevention of child sex abuse is a compelling governmental interest, that these child sex doll statutes are narrowly tailored, and said statutes should easily survive any strict scrutiny analysis. Defendant may argue that the legislative branch failed to support the passage of the child sex doll laws with empirical data or substantive findings, but this Court believes that some laws are so clearly self-descriptive and plain, that the purpose of such self-descriptive laws can be rationally inferred from their passage, content, and plain meaning. Experts in child abuse detection use anatomically correct dolls to more effectively communicate with potentially abused children, but those same type dolls can be used by child predators to help normalize sex with adults, overcome fears of initial sexual contact and promote submissiveness by reducing resistance from the child. Surely, eliminating and illegalizing a tool that promotes or facilitates child sexual abuse serves a legitimate

government interest that would pass a strict scrutiny review. Therefore, the Court finds that the challenged child sex doll statutes do not infringe on the right to free speech or expression, but alternatively, if the First Amendment is triggered that such statutes are narrowly tailored to survive strict scrutiny.

Finally, the Defendant argues that KRS 531.366(2) impermissibly shifts the burden of proof to the defendant but this Court disagrees as a statutory presumption is never included in any instructions to the jury and simply serves as a guideline related to evidence which establishes a sufficient level of proof to submit the question to the jury for determination. Accordingly, the Court finds that KRS 531.366(2) does not improperly shift the burden of proof to the defendant.

Therefore, the Court overrules and denies the Defendant's facial and as-applied constitutional challenges to the child sex doll laws set out in KRS 531.010(1); KRS 531.365; and KRS 531.366. Further, the challenges to KRS 531.367 and KRS 531.368 are inapplicable to subject facts, no charges have been filed under either statute herein, and the Court finds such a request moot and overrules said request.

As to any and all other specifically challenged statutes herein, which have not been specifically addressed by this Court, including those that this Court has deemed moot or inapplicable to the facts of this case, this Court finds any and all remaining challenged statutes are not vague, nor are said statutes overbroad, but said statutes are narrowly tailored to accomplish a compelling governmental interest of preventing child abuse and child sexual exploitation and the Court finds that all such challenged statutes survive a strict scrutiny analysis under both the United States and Kentucky Constitutions. While the Court apologizes for the catch-all language, such a provision is necessary due to the fact that the Defendant has challenged 13 different statutes, many of which do not apply under the facts presently before the

Court. This Court remains a bit bewildered as to why the constitutionality of the entire act has been challenged in this criminal action when it appears that the majority of the anticipated facts and evidence do not hinge on the 2024 changes. Further, it appears clear that the first 15 total counts consist of morphed images/videos (manual or computer generated) which will very likely be deemed to be child pornography, with said “morphed” child pornography prohibitions being expressly permitted by more than approximately a quarter-century of U.S. Supreme Court precedent, both before and after *Ashcroft*. While the appellate branch of the Department of Public Advocacy may be eager to challenge the entire act or attack the constitutional validity of child pornography created solely through artificial intelligence or computer generation, the present case does not possess the facts upon which to levy such an across-the-board challenge and neither this Court nor any reviewing Court must address such questions as part of this action. This Court will leave it up to other cases involving more appropriate facts and other Courts to decide whether the state and federal governments in the United States, with the present-day technological advancements in artificial intelligence, and as prophetically warned by Justices Thomas, O’Connor, Scalia, and Rehnquist, have a compelling societal interest in regulating child pornography that is created solely through computer generated or artificial intelligence means. Given the historically harsh and negative treatment that *Ashcroft* has received from jurists and others across the land, it would appear that the writing is on the wall and that in time the *Ashcroft* decision will continue to be more and more narrowly construed until its effective precedence has been eroded completely, limiting its applicability only to the specific facts of the *Ashcroft* case itself.

While this Court is no constitutional scholar, and a proper constitutional and statutory analysis of 13 separate statutes would easily encompass 100 pages or more, the subject opinion

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While this Court is no constitutional scholar, and a proper constitutional and statutory analysis of 13 separate statutes would easily encompass 100 pages or more, the subject opinion of a mere 25 pages or so will have to suffice in a case that does not involve images or material

comprised solely of child-like or youthful looking adults, does not involve images that would be part of a motion picture business or industry, does not invoke creative thought indicative of Romeo and Juliet as cited by Justice Kennedy in *Ashcroft*, does not involve animated creations or cartoons, is not entirely computer or artificially generated, cannot be labeled as art of any kind and is most definitively -- not protected First Amendment speech -- unless you believe that the framers intended for free speech to encompass the ability to manipulate the innocent face and photograph of a real child so that she appears in a sexually explicit pose or sexual act (or even as a child sex doll), all-the-while uttering the words "cum on me to make my tits grow big" or "cum in my 13 year old pussy."

IT IS THEREFORE, AS PREVIOUSLY ORALLY (AND BY DOCKET ORDER) ORDERED BY THIS COURT AT PRETRIAL CONFERENCES ON SEPTEMBER 14 AND OCTOBER 12, HEREBY ORDERED AND ADJUDGED that the Defendant's Motion to declare the subject statutes unconstitutional is HEREBY OVERRULED; and this matter shall proceed to the scheduled jury trial on October 20, 2026, as the previously scheduled jury trial was vacated by agreement of the parties upon the filing of the subject motion a mere three or four days prior to the previously vacated jury trial date.

Entered this 20th day of October 2026.



DANIEL M. HEADY, JUDGE
UNION CIRCUIT COURT

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