No. 23A925

IN THE

Supreme Court Of The United States

FREE SPEECH COALITION, ET AL.,

Applicants,

v.

KEN PAXTON, ATTORNEY GENERAL, STATE OF TEXAS,

Respondent.

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit

REPLY IN SUPPORT OF APPLICATION FOR A STAY

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INTRODUCTION

Texas's opposition confirms how difficult it is to defend the Fifth Circuit's jarring departure from this Court's precedent. Texas waits until page 29 of its brief before mentioning *Ashcroft v. ACLU*, 542 U.S. 656 (2004). Even then, Texas attempts to obscure what the Fifth Circuit panel expressly acknowledged: this Court in *Ashcroft* applied strict scrutiny to a speech restriction materially indistinguishable from H.B. 1181's. Nevertheless, the Fifth Circuit applied rational-basis review by claiming that this Court's reasoning in *Ashcroft* contained "startling omissions" that freed the panel to adopt a fundamentally different standard. Appl. App. 18a-19a.

Texas fails to square that holding with the principle that "vertical *stare decisis*" must be "absolute" in "a hierarchical system with 'one supreme Court.'" *Ramos v. Louisiana*, 140 S. Ct. 1390, 1416 n.5 (2020) (Kavanaugh, J., concurring in part) (alteration in original) (citation omitted). That principle alone justifies granting certiorari, Sup. Ct. R. 10(c), and reversing the decision below. And an interim stay is equally warranted: because the Fifth Circuit's legal error deprives applicants of First Amendment rights, exposing them to severe penalties in enforcement actions already underway and creating acute risks to individuals' privacy, the evidence of irreparable harm is overwhelming. Appl. 25-26.

Texas devotes much of its response to an elaborate narrative under which applicants purportedly delayed seeking relief. In fact, applicants came to this Court promptly with a certiorari petition following the Fifth Circuit's resolution of the appeal and denial of a stay of the mandate—an approach that prejudiced no one and spared this Court from considering an unreasoned stay pending appeal and an

emergency application without full briefing. Texas also questions whether applicants are entitled to seek a stay rather than an injunction. The straightforward answer is that the Court can stay the judgment below to restore the preliminary injunction, but applicants have requested both forms of relief and satisfy either standard.

When it finally gets to the merits, Texas simply parrots the Fifth Circuit's overreading of *Ginsberg v. New York*, 390 U.S. 629 (1968)—an approach no other court has ever adopted and many have rejected. And while Texas finds ample space to condemn cherry-picked content from applicants' websites, it entirely ignores Judge Higginbotham's forceful admonition that the panel's decision "begs for resolution by" this Court, "conflicts with Supreme Court precedent and decisions of ... sister circuits," and warrants a stay given that applicants "face a risk of enforcement proceedings under the likely unconstitutional statute." Appl. App. 180a-181a.

Finally, Texas resists answering the certiorari petition in time to permit a decision before the summer recess. Contrary to the State's position, however, applicants are not seeking "[e]xpedited" action from Texas. Resp. 42. Applicants simply propose that the State respond on the default 30-day timeline, without waiving response or seeking extension. Given the First Amendment interests at stake and the extraordinary holding below, that is not too much to ask.

ARGUMENT

I. APPLICANTS SATISFY ANY ARGUABLY APPLICABLE STANDARD FOR RELIEF PENDING CONSIDERATION OF THEIR PETITION

As a threshold matter, Texas argues that this Court cannot stay the Fifth Circuit's judgment and should instead entertain only applicants' request for an

injunction pending review of the certiorari petition. Resp. 19-25. That contention is mistaken, but this Court ultimately need not resolve it, because applicants satisfy any arguably applicable standard for the limited relief they seek.

A. The core of Texas's argument appears to be that this Court cannot stay the Fifth Circuit's judgment because the court of appeals issued its mandate. Resp. 21. But that fact poses no obstacle to staying the panel's decision and thereby reinstating the district court's preliminary injunction. Texas does not dispute that this Court can grant certiorari to review the Fifth Circuit's judgment even though the mandate has issued. 28 U.S.C. § 1254(1). There is no reason why this Court cannot likewise exercise its ancillary power, *post*-mandate, to *stay* the Fifth Circuit's judgment pending certiorari review. *See, e.g.*, *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers) (staying Fifth Circuit judgments pending review of certiorari petition).

Texas also suggests that a stay of the judgment would somehow restore the stay of the preliminary injunction that the Fifth Circuit panel issued and subsequently vacated. Resp. 21. But that prior stay is not part of the Fifth Circuit's judgment, so staying the judgment would not affect it. *See, e.g.*, *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 31 n.5 (2008) (explaining a "stay ceases to be relevant" once a court "resolves the merits of the appeal" (citation omitted)).

B. In any event, Texas acknowledges that the Court can issue an injunction pending review of the certiorari petition. Resp. 19 (citing 28 U.S.C. § 1651); *see* Appl. 28-29 (same). While this Court has at times described the standard for such an

injunction as more stringent than the stay standard, *see* Resp. 22, both standards ultimately ask whether applicants have shown that they "are likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020) (granting injunction); *see, e.g.*, *Labrador v. Poe*, 144 S. Ct. 921, 929 n.2 (2024) (Kavanaugh, J., concurring) (noting that "[t]his Court has used different formulations of the factors for granting emergency relief," but "[a]ll formulations basically encompass" the same factors).

For the reasons explained in the application and elaborated further below, Applicants satisfy each of those factors—particularly the paramount factor of likelihood of prevailing on the merits—even under the arguably more demanding injunction standard. The Court can accordingly enter the relief that applicants request in the form of either a stay or an injunction.[1]

II. APPLICANTS ARE LIKELY TO PREVAIL ON THE MERITS BY OBTAINING REVIEW AND REVERSAL BY THIS COURT

This case is an exceptionally strong candidate for this Court's review and reversal, given that the divided panel decision expressly departs from this Court's controlling precedent, conflicts with the decision of every other circuit that has addressed the issue, and is manifestly wrong. *See* Appl. 15-25; Appl. App. 180a-181a

[1] The Court could also grant a stay and recall the Fifth Circuit's mandate, *see, e.g.*, *Calcutt v. FDIC*, 2022 WL 4546340, at *1 (Sept. 29, 2022) (recalling and staying Sixth Circuit's mandate "pending the … disposition of a petition for a writ of certiorari"), and dissolve any arguable remaining stay of the preliminary injunction.

(Higginbotham, J., dissenting). Texas offers no convincing response on any of those fronts, and Applicants clearly satisfy the most important factors for relief.

A. The Decision Below Conflicts With This Court's Precedent

This case presents the rare and noteworthy instance in which a court of appeals has brazenly departed from this Court's precedents because it claims to have a better understanding of the law. The Fifth Circuit panel acknowledged that, in *Ashcroft*, this Court applied strict scrutiny to a federal law (the Child Online Protection Act ("COPA")) substantively indistinguishable from Texas H.B. 1181. Appl. App. 19a. Yet the panel nevertheless concluded that it was free to apply only rational-basis review because, in its assessment, this Court's reasoning in *Ashcroft* "contains startling omissions." *Id.* Specifically, the panel opined that *Ginsberg* should have led the *Ashcroft* Court to apply rational-basis review instead of strict scrutiny. *Id.* The panel surmised that "the only way" to explain *Ashcroft*'s decision to apply strict scrutiny was that this Court concluded it "did not have to correct" the party defending COPA—the United States, represented by Solicitor General Theodore B. Olson—for failing to argue that the statute should be upheld under the rational-basis review supposedly required by *Ginsberg*. *Id.* at 19a-20a; *see also* App. 12. Texas subscribes to that theory, submitting that this Court applied strict scrutiny "without considering what level of scrutiny was appropriate." Resp. 29.

With respect, that is not sustainable. The applicability of strict scrutiny in *Ashcroft* was "self-evident" from the Court's application of that same standard in multiple, recent, on-point precedents assessing facially content-based regulations of similarly protected speech, including *United States v. Playboy Entertainment Group,*

Inc., 529 U.S. 803 (2000), *Reno v. ACLU*, 521 U.S. 844 (1997), and *Sable Communications v. FCC*, 492 U.S. 115 (1989). Appl. App. 79a (Higginbotham, J., dissenting); *see* Appl. 16-19 (discussing those precedents). Indeed, the *Ashcroft* Court stated that "[t]he closest precedent on the general point in our decision," 542 U.S. at 670, is *Playboy*, which explained in unmistakable terms that the "standard is strict scrutiny," 529 U.S. at 814.[2] Moreover, it is a first principle of free-speech jurisprudence that "content-based laws are subject to strict scrutiny." *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020) (plurality opinion) (citation omitted); *see, e.g.*, *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015); *United States v. Stevens*, 559 U.S. 460, 468 (2010).

The suggestion that *Ashcroft*'s application of strict scrutiny was based solely on the parties' presentation, *see* Resp. 29-30, finds no support. Not only did the Court's opinion apply strict scrutiny, *see Ashcroft*, 542 U.S. at 670, but so did Justice Breyer's dissent joined by Chief Justice Rehnquist and Justice O'Connor, *see id.* at 677 ("Like the Court, I would subject the Act to 'the most exacting scrutiny.'") (citation omitted). Justice Breyer's opinion also cited *Ginsberg*, without suggesting any conflict between that precedent and the application of strict scrutiny. *Id.* at 683. For his part, Justice Scalia dissented in *Ashcroft* on the ground that "[b]oth the Court and Justice Breyer err … in subjecting COPA to strict scrutiny." *Id.* at 676 (citation omitted). In short, the *Ashcroft* Court addressed the level of scrutiny through

[2] The Fifth Circuit acknowledged that "*Playboy* seems to have the clearest language supplying" strict scrutiny as the "standard of review." Appl. App. 23a (citing *Playboy*, 529 U.S. at 814). Texas does not cite Playboy in its 44-page response.

multiple opinions, with eight of the nine Justices applying strict scrutiny. The notion that the Court would have fundamentally transformed its standard of review if only one of the parties had asked is implausible, to say no more.[3]

Perhaps recognizing as much, Texas attempts to offer several alternative justifications for forestalling application of *Ashcroft* to H.B. 1181. First, Texas suggests that H.B. 1181 is distinguishable from COPA in various respects, including that H.B. 1181 imposes civil rather criminal penalties and affirmatively compels age-verification rather than prescribing it as a defense to a speech prohibition. Resp. 30-31. But not even the Fifth Circuit credited those purported distinctions, holding that, "despite Texas's protestations, H.B. 1181 is very similar to" COPA in all relevant respects. Appl. App. 18a. The Fifth Circuit's rejection of Texas's position was well-founded, as this Court has applied strict scrutiny to content-based civil and criminal speech restrictions alike and made clear that "content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." *Playboy*, 529 U.S. at 812.

The Fifth Circuit also declined to adopt Texas's purported distinction of *Ashcroft* based on evolving technology, which Texas suggests has reduced the burdens of online age verification. Resp. 31. And the district court expressly found that developments in technology have *heightened* the burden imposed by online age verification because the risks and concerns attending the transmission of personal

[3] Nor is it plausible that the United States—which vigorously defended COPA through two trips to this Court—was somehow derelict in failing to argue that the statute could be upheld under the lowest level of constitutional scrutiny. By all indications, the United States did not propose rational-basis review because it understood that precedent foreclosed it.

information over the Internet are even *greater* today than in the era of *Ashcroft*. Appl. App. 140a-143a. Likewise, neither the district court nor the Fifth Circuit accepted Texas's cursory assertion that H.B. 1181 should be analyzed more leniently under the First Amendment because it is a state law, Resp. 31—a claim wholly unsupported by this Court's precedents. *See, e.g.*, *NIFLA v. Becerra*, 585 U.S. 755, 766 (2018) (applying strict scrutiny to content-based state law); *Reed*, 576 U.S. at 171 (same).

Taking another tack, Texas asserts that rejecting its position denies meaning to—and indeed would purportedly amount to overruling—this Court's decision in *Ginsberg*, Resp. 27-28. That is misconceived. *Ginsberg* stands for the proposition that minors have lesser constitutional rights than adults to access sexually expressive speech. Appl. 16-17; Appl. App. 64a (Higginbotham, J., dissenting); *see Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 794 (2011) (same). The dispositive point, unrebutted by Texas, is that *Ginsberg* did not address—and has never been understood by this Court or any other circuit to address—the First Amendment rights of *adults*. To the contrary, the Court has held for decades that, when a law that seeks to shield minors from content deemed inappropriate for them also burdens the rights of adults to access protected speech, the law "can stand only if it satisfies strict scrutiny." *Playboy*, 529 U.S. at 812; *see Ashcroft*, 542 U.S. at 665-66; *Reno*, 521 U.S. at 874; *Sable*, 492 U.S. at 126; *see also* Appl. 17-19.

Texas insists that *Ginsberg* means states must have some way to enforce a prohibition on minors' access to sexual content. Resp. 31-32. This Court's subsequent precedents are fully consistent with that understanding; they teach that, if a state's

chosen method of protecting burdens the speech rights of adults, the law must survive strict scrutiny, as a narrowly tailored law that pursues that purpose can do. *See Ashcroft*, 542 U.S. at 672-73 ("[I]t is important to note that this opinion does not hold that Congress is incapable of enacting any regulation of the Internet designed to prevent minors from gaining access to harmful materials."); *see also id.* at 666-69 (discussing content-filtering as a less-restrictive and more-effective alternative); Appl. App. 144a, 147a-151a (district court discussing similar alternatives here).

In sum, there is no tension between *Ginsberg* and subsequent decisions requiring strict scrutiny of laws like H.B. 1181. The panel's contrary holding exemplifies a court of appeals' failure to follow controlling precedent—and warrants this Court's swift correction. *See, e.g.*, *Hutto v. Davis*, 454 U.S. 370, 375 (1982) (per curiam) ("Unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.").[4]

B. The Decision Below Creates A Circuit Conflict

This Court's review is also highly likely because applicants' petition presents a circuit conflict. Texas resists that conclusion, but the Fifth Circuit admitted it. The court acknowledged that the Third Circuit on remand from *Ashcroft* applied strict scrutiny to COPA, *see* Appl. App. 20a n.26 (citing *ACLU v. Mukasey*, 534 F.3d 181,

[4] Strict scrutiny also applies under this Court's precedent because H.B. 1181 embodies speaker-based discrimination, targeting the adult entertainment industry through a law gerrymandered to exempt many of the most prolific sources of pornography. Appl. 21-22. Not only does Texas fail to address that argument but it reinforces it by fronting a *Politico* article that touts Texas's success in "making the online pornography industry retreat." Resp. 1 n.2 (capitalization and style altered).

190 (3d Cir. 2008))—the very disposition that the Fifth Circuit concluded was foreclosed by *Ginsberg*'s supposed prescription of rational-basis review, *id.* at 18a-19a. That is a square circuit conflict warranting this Court's intervention.

The conflict between the decision below and *American Booksellers Foundation v. Dean*, 342 F.3d 96 (2d Cir. 2003), is similarly stark. *See* Appl. App. 181a n.2. As Texas acknowledges, the Vermont law at issue in *Dean* "was like COPA," Resp. 32, and the Second Circuit applied strict scrutiny to invalidate it, *Dean*, 342 F.3d at 101-02—in direct conflict with the Fifth Circuit's holding here, Appl. App. 19a-20a.

The Fourth and Tenth Circuits also applied strict scrutiny to indistinguishable laws, based on findings that content-based age-verification requirements would "unconstitutionally chill" or "heav[il]y burden" free speech." *PSINet, Inc. v. Chapman,* 362 F.3d 227, 237 (4th Cir. 2004); *ACLU v. Johnson,* 194 F.3d 1149, 1160 (10th Cir. 1999). Texas asserts that changing technology explains those conflicting results, but—as noted above—the district court found without contravention from the Fifth Circuit that changes in technology only make H.B. 1181's age-verification requirement more burdensome than its predecessors. *See* p. 7, *supra*. In any event, the Fifth Circuit grounded its divergent conclusion solely on its idiosyncratic misreading of *Ashcroft* and *Ginsberg*, not on any facts. *See* Appl. App. 180-181a & n.2 (Higginbotham, J., dissenting) (identifying the circuit conflict).

C. No Other Barriers Obstruct This Court's Review

Texas argues that the interlocutory posture cuts against granting certiorari because "additional *facts* about H.B. 1181 will develop, which may affect this Court's analysis." Resp. 35 (alteration in original). But the Fifth Circuit's error here was a

legal one—applying rational-basis review in violation of controlling Supreme Court precedent—and it was outcome-determinative. As the Fifth Circuit held, H.B. 1181 "easily surmounts plaintiffs' constitutional challenge" because the record already contains "far more than what is necessary" to uphold the law under rational-basis review. Appl. App. 30a. Moreover, this Court's seminal precedents in this area were decided on review of preliminary injunctions that similarly presented clean legal issues. *See Ashcroft*, 542 U.S. at 670-71; *Reno*, 521 U.S. at 864. And this Court routinely grants review to resolve other important First Amendment questions arising in an interlocutory posture. *See, e.g.*, *NetChoice, LLC v. Paxton*, 144 S. Ct. 477 (2023); *NIFLA*, 585 U.S. at 765; *Brown*, 564 U.S. at 790.

D. This Court Is Likely To Reverse The Decision Below

For the same reasons that this Court is likely to grant review, it is likely to reverse. Although a narrowly tailored law that is designed to protect minors but burdens adults no more than necessary could survive strict scrutiny, *see* pp. 8-9, *supra*, H.B. 1181 is not such a law. As the district court explained after making extensive factual findings, H.B. 1181 is both "severely underinclusive" and "overly restrictive" such that it cannot survive strict scrutiny. Appl. App. 177a. Texas's two-sentence effort at rebuttal, Resp. 24, signals that it recognizes as much.

Texas's passing assertion that applicants' challenge should fail because H.B. 1181 reaches content that is obscene even for adults, Resp. 37, also lacks merit. On its face, H.B. 1181 does not target obscenity for adults at all; it regulates websites where at least one-third of the content is "harmful to minors," without requiring that *any*, much less *all*, of the content is obscene for adults. Tex. Civ. Prac. & Rem. Code

§ 129B.002(a); *see, e.g.*, Appl. App. 124a (explaining that "the law covers virtually all salacious material," including "sexual, but non-pornographic, content"). In any event, Texas abandoned this argument in the Fifth Circuit. Asked whether "the State take[s] the position that some of [the content at issue] is obscene," counsel for Texas responded "H.B. 1181's position is that adults should still be able to access every bit of the materials."[5] That was a wise concession, as Texas separately criminalizes material that is obscene for adults. *See* Tex. Penal Code §§ 43.21-43.23. Thus, H.B. 1181's entire point is to regulate material that is deemed harmful for minors but constitutionally protected for adults. *See* Appl. App. 6a n.7.

III. THE EQUITIES SUPPORT TIME-LIMITED RELIEF, AND APPLICANTS DID NOT DELAY IN SEEKING STAY

As explained in the application and Judge Higginbotham's dissent, the equities strongly support relief pending this Court's consideration of the pending certiorari petition. Applicants face quintessential irreparable harm: deprivation of their First Amendment rights. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also, e.g., Labrador*, 144 S. Ct. at 929 (Kavanaugh, J. concurring). The harm to adult Texans is equally clear given factual findings that the risk of "disclosures, leaks, or hacks" of identifying information sent over the Internet, alongside H.B. 1181's potential to facilitate "state monitoring," will chill adults from accessing protected speech. Appl. App. 140a-143a. Indeed, "by verifying information through government identification, the law will allow the government to peer into the most intimate and personal aspects of people's

[5] Official Recording at 13:35-14:00, available at https://www.ca5.uscourts.gov/OralArgRecordings/23/23-50627_10-4-2023.mp3.

lives." *Id.* at 140a-141a. And those harms are not hypothetical; Texas is actively enforcing H.B. 1181's age-verification command, exposing applicants and others to potentially severe penalties, which has caused speakers to curtail their speech. *See* Resp. 36 & n. 11, 41 & n.12.

On the other side of the balance, applicants' requested relief would impose minimal if any harm on Texas. It would restore the status quo that existed when the district court entered its preliminary injunction—at which point the law had not taken effect. And it would require the State to refrain from enforcement only during the pendency of applicants' certiorari petition, which could be as short as two months given that the petition has been docketed and assigned a response date.[6] Texas makes little effort to identify any concrete harm that it will suffer from such a limited pause. Moreover, Texas fails to show any meaningful benefits that would result from interim enforcement of H.B. 1181, which, as the district court found, permits the same sexual content—in copious amounts—to be accessed by minors through readily available means (*e.g.*, social media and search engines) that the law designedly exempts. Appl. App. 128a-129a.

Texas instead devotes much of its response to alleging that applicants engaged in "Dilatory Conduct." Resp. 16-19. By Texas's telling, applicants sat idle for some six months, ever "since the Fifth Circuit issued an administrative stay … last *September* and a merits panel issued a stay pending appeal last *November*." Resp. 2.

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[6] In this way, this requested relief is meaningfully narrower than that sought in many recent stay applications, which preceded appellate briefing (not to mention resolution of the appeal and submission of a certiorari petition).

But the notion that applicants were "dilatory" throughout this period does not withstand scrutiny. To the contrary, applicants acted prudently, seeking to avoid burdening this Court with a premature request for relief complicated by the absence of lower-court reasoning or thorough briefing—and then coming to the Court promptly when appropriate. That is responsible litigation conduct, not undue delay.

Texas first faults applicants for not seeking relief during the first two months covered by the Fifth Circuit's September 2023 administrative stay. Resp. 2. But as Texas later notes, constructive engagement between counsel yielded agreement by Texas "not to enforce H.B. 1181 during the pendency of the administrative stay." Resp. 11. Moreover, as members of this Court have recently emphasized, there is "no jurisprudence of administrative stays," and this Court may understandably be reluctant "to get into the business" of reviewing such stays. *United States v. Texas*, 144 S. Ct. 797, 799 (2024) (Barrett, J., concurring).

In November 2023, the Fifth Circuit entered a summary order granting a stay pending appeal. According to Texas, that marked "[t]he normal time to seek emergency relief." Resp. 17. But Texas omits the Fifth Circuit's assurance that it would issue an "expedited opinion as soon as reasonably possible." Appl. App. 184a. Given that the Fifth Circuit had already set a *one-week* briefing schedule and heard argument *six days* later, *see* C.A. Dkt. # 69, 117, it was only reasonable to expect that similar expedition would soon yield a reasoned decision enabling informed review. Moreover, seeking emergency relief during that time would not only have required this Court to review an unreasoned stay order with no explanation of the *Nken v.*

Holder, 556 U.S. 418 (2009), factors, *cf. Texas*, 144 S. Ct. at 799 (Barrett, J., concurring), but would have required the Court to address the propriety of the stay as to H.B. 1181's compelled "health warnings"—which both the district court and the Fifth Circuit ultimately found were unconstitutional. Appl. App. 31a-45a.

No practical exigency warranting potential emergency relief emerged until February 28, 2024, when Texas filed its first enforcement action under H.B. 1181. Resp. 11. Applicants alerted the Fifth Circuit of that development within two business days, and the panel issued its opinion three days later. *Id.* Texas then told applicants that it might seek "additional review" of the panel's decision on the health "warnings issue"—presumably en banc review, which could trigger vacatur of the panel opinion and frustrate any request for relief in this Court. Resp. App. 5a. As soon as the rehearing window closed, applicants moved to stay the mandate and reinstate the preliminary injunction, which the panel denied on March 28, 2024. Appl. App. 180a. There was no delay by applicants at this stage, either.

That leaves Texas faulting applicants for "allowing a further two weeks (from March 28 to April 12) to pass before filing their application and certiorari petition in this Court." Resp. 14. But that was not undue delay, and Texas never identifies any prejudice. To the contrary, applicants have proceeded just as this Court should want would-be applicants to proceed: without unduly taxing this Court by requiring the consideration of unreasoned orders or raising what might be false alarms, while pairing stay requests with thorough certiorari briefing where feasible. Moreover, applicants are not seeking an emergency stay within hours or days, and Texas had a

reasonable period of 14 days to respond to the application. Far from undercutting applicants' stay request, the timeline preceding it demonstrates applicants' prudence and enables this Court to fully evaluate the strength of its request for relief.

IV. AT A MINIMUM, TEXAS SHOULD RESPOND TO THE CERTIORARI PETITION IN TIME FOR CONSIDERATION BEFORE THE SUMMER

Finally, the Court should order Texas to respond in time for the petition to be considered before the summer recess. This requires only that Texas respond on the *default* schedule, within 30 days—rather than waiving response or seeking extension. Sup. Ct. R. 15.3. Considering Texas's extreme expedition in the court of appeals (and its 44-page opposition here), that is not too much to ask in this exceptionally important First Amendment case.

CONCLUSION

This Court should stay the judgment or issue an injunction to the same effect, restoring the district court's preliminary injunction pending resolution of applicants' petition for a writ of certiorari. At a minimum or in parallel, this Court should direct Texas to respond to applicants' petition on a timetable that would allow the Court to vote on the petition before the summer recess.

April 29, 2024

Respectfully submitted,

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