No. 25A97

In the Supreme Court of the United States

NETCHOICE, LLC,

Applicant,

v.

LYNN FITCH, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF MISSISSIPPI,

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

ON APPLICATION TO VACATE STAY OF PRELIMINARY INJUNCTION ISSUED BY THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION, CENTER FOR DEMOCRACY AND TECHNOLOGY, CLAY CALVERT, ELECTRONIC FRONTIER FOUNDATION, NATIONAL COALITION AGAINST CENSORSHIP, STUDENT PRESS LAW CENTER, AND WOODHULL FREEDOM FOUNDATION IN SUPPORT OF APPLICANT

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INTEREST OF *AMICI CURIAE*[1]

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended individual rights through public advocacy, strategic litigation, and participation as *amicus curiae* filings in cases that implicate expressive rights under the First Amendment without regard to the speakers' views.

FIRE's work includes protecting expressive rights in the digital realm—ensuring that courts apply the First Amendment's protections consistently, regardless of the means used for expression, and that they prevent the subversion or diminution of expressive rights based on misunderstandings or fears about emerging technologies. *See, e.g.*, *NetChoice, LLC v. Bonta*, 113 F.4th 1101 (9th Cir. 2024), *preliminary injunction reaffirmed on remand*, 770 F. Supp. 3d 1164 (N.D. Cal. 2025); *Volokh v. James*, 656 F. Supp. 3d 431 (S.D.N.Y. 2023), *appeal argued*, No. 23-356 (2d Cir. Feb. 16, 2024); *see also* Brief of FIRE et al. as *Amici Curiae* in Support of Petitioners, *TikTok Inc. v. Garland*, No. 24-656 (U.S. argued Jan. 10, 2025); Brief of FIRE as *Amicus Curiae* in Support of Respondents, *Moody v. NetChoice, LLC*, No. 22-277 (U.S. argued Feb. 26, 2024). FIRE regularly acts to protect the First Amendment rights of adults and minors by challenging laws that restrict access to protected

[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or their counsel contributed money intended to fund preparing or submitting this brief.

speech online. *E.g.*, *Zoulek v. Hass*, No. 2:24-cv-00031-RJS-CMR (D. Utah); *Students Engaged in Advancing Texas v. Paxton*, 765 F. Supp. 3d 575 (W.D. Tex. 2025), *appeal docketed* No. 25-50096 (5th Cir. Feb. 11, 2025). FIRE has an interest in preserving the robust protection for freedom of expression secured by this Court's First Amendment jurisprudence. To guarantee the rights of speakers and audiences—both online and off—FIRE fights efforts to evade the exacting standards that safeguard our constitutional liberties.

The Center for Democracy and Technology (CDT) is a non-profit, public interest organization that for 30 years has worked to promote the constitutional and democratic values of free expression, privacy, equality, and individual liberty in the digital age.

Clay Calvert, professor of law emeritus at the University of Florida and nonresident senior fellow at the American Enterprise Institute, has published more than 150 scholarly articles on First Amendment issues affecting freedom of expression, including those at issue in this case.

The Electronic Frontier Foundation (EFF) is a nonprofit civil liberties organization with more than 30,000 active donors that has worked since 1990 to ensure that technology supports freedom, justice, and innovation for all people of the world. EFF is dedicated to protecting online users' free expression and privacy rights and has fought for both in courts and legislatures across the country. EFF has challenged laws that burden internet users' rights by requiring online services to

verify users' ages. *See, e.g.*, *ACLU v. Reno*, 929 F. Supp. 824, 825-27 (E.D. Pa. 1996) (serving as a plaintiff challenging the Communications Decency Act); *ACLU v. Reno*, 31 F. Supp. 2d 473, 480 n.3 (E.D. Pa. 1999) (serving as a plaintiff challenging the Child Online Protection Act).

The National Coalition Against Censorship (NCAC) is an alliance of more than 50 national non-profit literary, artistic, religious, educational, professional, labor, and civil liberties groups. The organization's purpose is to protect freedom of thought, inquiry, and expression and to oppose censorship in all its forms. NCAC engages in direct advocacy and education to support free expression rights of authors, readers, publishers, booksellers, teachers, librarians, artists, students, and others. The positions advocated in this brief do not necessarily reflect the views of NCAC's member organizations.

The Student Press Law Center (SPLC) is a national, non-profit, non-partisan organization established in 1974 that works to promote, support, and defend the press freedom and freedom of information rights of high school and college journalists. As the only national organization devoted exclusively to defending the legal rights of the school-sponsored and independent student press, SPLC collects information on student press cases nationwide and produces many resources on student press law, including its book, LAW OF THE STUDENT PRESS (4th ed.).

The Woodhull Freedom Foundation ("Woodhull") is a nonprofit organization that works to advance the recognition of sexual freedom, gender equality, and free

expression. The organization works to improve the well-being, rights, and autonomy of every individual through advocacy, education, and action. Woodhull's mission is focused on affirming sexual freedom as a fundamental human right. Woodhull is particularly focused on governmental attempts to censor or burden access to online speech, as sexually-themed expression is often a target of such efforts. Woodhull is concerned that if enforcement of the challenged law is not stayed, the First Amendment will be weakened, and the government will be permitted to engage in unlawful censorship of protected expression.

SUMMARY OF ARGUMENT

The First Amendment protects Americans of all ages, as this Court has consistently affirmed. The government must therefore meet a high bar when regulating minors' access to speech fully protected for them. But Mississippi enacted a law that restricts access to social media on the basis of age, imposing an impermissible bar for minors and a significant burden on adults seeking to engage with protected expression online.

Mississippi's H.B. 1126, the "Walker Montgomery Protecting Children Online Act," is the latest in a series of well-intentioned but fundamentally flawed efforts to protect minors from speech online. As with the Communications Decency Act (CDA) and the Child Online Protection Act (COPA) at the federal level, and numerous laws passed by various states, Mississippi fails to confront the First Amendment rule that "[e]ven where the protection of children is the object, the constitutional limits on

governmental action apply." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 804–05 (2011). As this Court recently reaffirmed, First Amendment principles do "not go on leave when social media are involved." *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2403 (2024). And Mississippi's law restricts access to speech fully protected for minors, not solely speech obscene as to minors. That important distinction means this Court's recent decision in *Free Speech Coalition v. Paxton*, 606 U.S. ---, 145 S. Ct. 2291 (2025), does not govern the required level of scrutiny warranted by the law.

Because the United States Court of Appeals for the Fifth Circuit stayed the district court's preliminary injunction, Mississippians must now contend with an unconstitutional restriction on their First Amendment rights. To avoid irreparable injury and to again make clear the First Amendment protects all Americans from government overreach and censorship, this Court should vacate the stay.

ARGUMENT

The First Amendment protects the creation, dissemination, and right to access ideas and expression. *Brown*, 564 U.S. at 792 & n.1; *see Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756–57 & 757 n.15 (1976). These protections apply without qualification to the internet, *Reno v. ACLU*, 521 U.S. 844, 852–53 (1997), including social media. *See Moody*, 144 S. Ct. at 2394. They also apply to minors, who "are entitled to a significant measure of First Amendment protection," and whose rights to engage in protected speech "cannot be suppressed solely to protect [them] from ideas or images that a legislative body thinks unsuitable for

them." *Brown*, 564 U.S. at 794–95 (citation omitted). And they prohibit the government from restricting adults' protected speech in the name of shielding children. *See United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000).

Mississippi has an undisputed interest in the well-being of its youth, but it must serve that interest within constitutional bounds. *Brown*, 564 U.S. at 804–05. "[E]ven where speech is indecent and enters the home, the objective of shielding children does not suffice to support a blanket ban if the protection can be accomplished by a less restrictive alternative." *Playboy,* 529 U.S. at 814. "Regardless of the strength of the government's interest in protecting children, the level of discourse … simply cannot be limited to that which would be suitable for a sandbox." *Reno*, 521 U.S. at 875 (cleaned up and citation omitted).

H.B. 1126 restricts the First Amendment rights of both the providers and users of social media platforms but fails to satisfy any level of constitutional review. This Court should accordingly vacate the Fifth Circuit's stay of the preliminary injunction against H.B. 1126's enforcement, so that Mississippians will continue to enjoy full exercise of their First Amendment rights during the pendency of this case.

I. Mississippi's Social Media Ban is a Content-Based Speech Restriction that Cannot Satisfy Strict Scrutiny.

A. H.B. 1126 is Content-Based.

H.B. 1126 violates basic First Amendment principles and erodes individuals' rights to participate in social discourse critical to a democratic republic. The law is content-based: It singles out digital service providers that offer social

communications and their users for regulation while excepting providers that offer news, sports, professional development, commercial communications, or content that they themselves generate or select. It requires age registration before anyone is permitted to open a social media account and thus impermissibly chills participation in online discussion sites and burdens the right to receive information. *See Reno*, 521 U.S. at 856; *see also Brown*, 564 U.S. at 804–05. And it requires service providers to identify "harmful" content based on fifteen specified speech categories and to take steps to limit minors' access to that information.

Such content-based social media regulations must satisfy strict scrutiny, as six other courts have recently confirmed.[2] In this case, the district court correctly held—twice—that H.B. 1126 is unlikely to withstand strict scrutiny because Mississippi cannot show the Act's speech restrictions are necessary or the least restrictive alternatives available to advance its asserted interest to protect children online. And its age verification requirements, which also fail strict scrutiny, impose excessive burdens on access to protected speech.

"Government regulation of speech is content based" and thus subject to strict scrutiny "if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). In this

[2] *NetChoice, LLC v. Bonta*, 113 F.4th 1101 (9th Cir. 2024), *preliminary injunction reaffirmed on remand*, 770 F. Supp. 3d 1164 (N.D. Cal. 2025); *NetChoice, LLC v. Carr*, No. 1:25-cv-2422-AT, 2025 WL 1768621 (N.D. Ga. June 26, 2025); *NetChoice, LLC v. Yost*, No. 2:24-cv-00047, 2025 WL 1137485 (S.D. Ohio Apr. 16, 2025); *NetChoice, LLC v. Griffin*, No. 5:23-CV-5105, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024); *Computer & Commc'ns Indus. Ass'n v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024).

regard, H.B. 1126 is content-based twice-over. It regulates digital service providers only if they provide specified types of online content, and it requires those providers to restrict speech accessible to minors in certain subject areas (such as information on self-harm, eating disorders, bullying, or harassment). As another court recently observed in enjoining a similar Texas law regulating social media, this "is as content based as it gets." *CCIA v. Paxton*, 747 F. Supp. 3d 1011, 1036 (W.D. Tex. 2024).

H.B. 1126 is content-based in the service providers it covers. The Act defines a "digital service provider" to mean any person who owns or operates a digital service (including any website, application, program, or software that collects or processes personal identifying information) with internet connectivity. H.B. 1126, § 2(b). However, the Act covers service providers only if they facilitate social interactions; allow users to create public, semi-public or private profiles; or allow users to post content that others can view, including by sharing information in chat rooms or on message boards, landing pages, video channels, or main feeds for sharing content. *Id.* § 3(1)(a)–(c).

The Act expressly exempts various other digital service providers based on the type of information they share on their digital services. For example, the Act does not apply to services that provide e-mail or direct messaging services. It exempts services that primarily provide access to news, sports, commerce, online video games, or content primarily generated or selected by the service provider, and that allow chat, comment or other interactive functionality that is incidental to the digital service.

And it does not cover services that primarily function to provide users with access to career development opportunities (*e.g.*, professional networking, job skills, learning certifications, job postings, or application services). *Id.* § 3(2)(b)–(d). The Act thus singles out the category of social communications for regulation while exempting providers of other categories of speech. *Id.* § 3(2)(c)(ii).

Beyond its definitional scope, H.B. 1126 imposes a wide variety of content-based speech restrictions for communications available to minors. It requires service providers to "prevent or mitigate" minors' exposure to "harmful material and other content" in fifteen broadly framed content categories.[3] This provision is content-based by definition, because it literally restricts speech "because of the topic discussed" and "particular subject matter" addressed. *Reed*, 576 U.S. at 163; *see Bonta*, 113 F.4th at 1119–21 (law requiring online businesses "to opine on and mitigate the risk that children are exposed to harmful content online" is subject to strict scrutiny).

This part of the Act "focuses *only* on the content of the speech and the direct impact that speech has on its" audience. *Playboy*, 529 U.S. at 811–12 (quoting *Boos v. Barry*, 485 U.S. 312, 321 (1988) (opinion of O'Connor, J.)). It regulates speech based on "its function or purpose," *Reed*, 576 U.S. at 163, and cannot be justified without reference to the asserted impact of the speech on its listeners. *Boos*, 485 U.S. at 321. This is "the essence of content-based regulation." *Playboy*, 529 U.S. at 811–12.

[3] These include self-harm, eating disorders, substance abuse, suicidal behaviors, stalking, physical violence, online bullying, harassment, "grooming," trafficking, child pornography, other sexual exploitation or abuse, incitement of violence, or "any other illegal activity." H.B. 1126, § 6.

B. H.B. 1126 Cannot Survive Strict Scrutiny.

A law subject to strict scrutiny is presumptively invalid unless the government shows it is necessary to achieve a compelling interest and uses the least restrictive means. *See Playboy*, 529 U.S. at 813. As Justice Scalia wrote for the Court in *Brown*, "[t]hat is a demanding standard. It is rare that a regulation restricting speech because of its content will ever be permissible." 564 U.S. at 799 (cleaned up); *see also Free Speech Coalition*, 145 S. Ct. at 2310 (strict scrutiny protects against government suppression of messages and ideas "if and only if, as a practical matter, it is fatal in fact absent truly extraordinary circumstances."). Under this standard, Mississippi must prove that H.B. 1126 is justified by a compelling state interest that it is narrowly drawn to serve. *Brown*, 564 U.S. at 799 (citing *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992)). The State must identify an "actual problem" in need of solving, and the "curtailment of free speech must be actually necessary to the solution." *Id.* Here, the State cannot satisfy either prong of the strict scrutiny analysis.

The State has made almost no effort to identify specific harms of social media that H.B. 1126 is designed to address. To be sure, it has asserted a generalized interest in protecting minors—which no one disputes—but it must provide more than speculation. *Playboy*, 529 U.S. at 820–22. The State must "show a direct causal link between [social digital services] and harm to minors." *Brown*, 564 U.S. at 799. It has not thus far, nor can it do so.

And even if Mississippi was able to demonstrate minors' access to social media is an "actual problem," as the district court correctly held, H.B. 1126 is not narrowly tailored and is both over- and underinclusive. *NetChoice, LLC v. Fitch*, No. 1:24-cv-170-HSO-BWR, 2025 WL 1709668, at *12 (S.D. Miss. June 18, 2025).

The Act is not the least restrictive means of addressing concerns about young peoples' use of social media. "If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *Playboy,* 529 U.S. at 813. In this regard, voluntary tools that enable parents to tailor use of social media to the needs of individual households are inherently less restrictive than blanket mandates by the State. *Id.* at 821–22; *Brown*, 564 U.S. at 803.

For online networks—and social media in particular—less restrictive alternatives include numerous existing technologies that permit parents to supervise and control their children's online activities. Those technologies include devices and software that allow parents to block access to specific websites, limit the amount of time children can spend on the internet, filter internet content to remove objectionable materials, and monitor children's online activities, such as logging which websites they visit.

On the record before it, the district court properly concluded the Attorney General could not meet her burden to prove such less-restrictive alternatives in the hands of parents would be insufficient to protect children from potential online harms. *Fitch*, 2025 WL 1709668, at *11 (holding NetChoice "carried its burden of

demonstrating that there are a number of supervisory technologies available for parents to monitor their children that the State could publicize.").

The Act is also both overinclusive and underinclusive. It requires everyone to comply with an age registration and verification regime irrespective of age or maturity, and it requires platforms to mitigate or eliminate minors' access to constitutionally protected speech. Yet at the same time, the Act's selective coverage leaves minors exposed to the same type of online communications that the State claims is harmful. Such underinclusiveness is "alone enough to defeat it." *Brown*, 564 U.S. at 802; *CCIA*, 747 F. Supp. 3d at 1037 (content exposure provisions underinclusive).

The age registration requirement is vastly overinclusive in that it will prevent numerous adults from creating social media accounts if they will not or cannot verify their age with a digital service provider. H.B. 1126, § 4(1); *see Fitch*, 2025 WL 1709668, at *11 ("the Act requires all users (both adults and minors) to verify their ages before creating an account to access a broad range of protected speech on a broad range of covered websites"). Adults without state-issued identification or who wish to remain anonymous, as is their right, are banned from participating in social digital service platforms. This violates the well-established rule that the government cannot "suppress[] a large amount of speech that adults have a constitutional right to receive and to address to one another" in order "to deny minors access to potentially harmful

speech." *Reno*, 521 U.S. at 874; *ACLU v. Mukasey*, 534 F.3d 181, 196 (3d Cir. 2008) (age verification requirement would deter access to protected speech).[4]

The age verification and content mitigation requirements are also overinclusive as they relate to minors in three ways. *First*, barring all those under 18 from having social media accounts unless they have parental consent is an obvious violation of minors' First Amendment rights. *Brown*, 564 U.S. at 795 n.3 (observing that the state could not criminalize admitting persons under 18 to a political rally or religious meeting without their parents' prior written consent).

Second, H.B. 1126 lumps all minors into a single group, treating toddlers the same as older teens on the cusp of adulthood, which is another obvious violation. *Reno*, 521 U.S. at 878 ("the strength of the Government's interest in protecting minors is not equally strong throughout the coverage of this broad statute" to the extent it applies equally to older teens and younger children); *Mukasey*, 534 F.3d at 205 ("[M]aterials that could have 'serious literary, artistic, political, or scientific value' for a 16-year-old would not necessarily have the same value for a three-year-old."). As the district court noted, requiring "all minors under the age of eighteen, regardless of

[4] The State insists H.B. 1126 "does not require age verification" because it only requires "commercially reasonable efforts," which it asserts, for some platforms, "may mean no more than asking someone's age." Appellant's Br. 35. However, noncompliance carries potential criminal penalties, so it is doubtful many services would willingly forgo age verification in hopes the Attorney General will agree with what the service considers "commercially reasonable." *See United States v. Stevens*, 559 U.S. 460, 480 (2010) ("We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly."). On the other hand, if compliance is essentially "voluntary," it is hard to see how the State can demonstrate the law will directly and materially address the asserted problem.

age and level of maturity, to secure parental consent to engage in protected speech activities on a broad range of covered websites … represents a one-size-fits-all approach to all children from birth to age 17 years and 364-days old." *Fitch*, 2025 WL 1709668, at *11.

Third, H.B. 1126 seeks to create "a wholly new category of content-based regulation that is permissible only for speech directed at children," something this Court has flatly rejected. *Brown*, 564 U.S. at 794. It has steadfastly resisted efforts to increase or expand the boundaries of unprotected categories as "startling and dangerous" and rejected any "freewheeling authority to declare new categories of speech outside the scope of the First Amendment." *Stevens*, 559 U.S. at 470, 472.

Mississippi may believe it has "a free-floating power to restrict the ideas to which children may be exposed," but this Court regularly holds otherwise. *Brown*, 564 U.S. at 794–95. H.B. 1126 requires service providers to "prevent or mitigate" minors' exposure to "harmful material and other content" in fifteen broadly framed content categories, only some of which even relate to illegal activity. For example, H.B. 1126, § 6 requires the "prevention" or "mitigation" of speech that relates to harassment, "grooming," trafficking, child pornography, other sexual exploitation or abuse, incitement of violence, or "any other illegal activity." And it is not confined to restricting *actual* illegal conduct, but speech *about* such conduct, something the First Amendment does not permit. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255

(2002) (argument that "protected speech may be banned as a means to ban unprotected speech … turns the First Amendment upside down").

The Act requires "mitigation" of speech about self-harm, eating disorders, substance abuse, suicidal behaviors, stalking, physical violence, and online bullying, *none* of which fall into any of the "relatively narrow and well-defined circumstances [where] government [may] bar public dissemination of protected materials to [minors]." *Brown*, 564 U.S. at 794 (citation omitted).

Finally, the Act is underinclusive because it expressly exempts numerous categories of online digital services that include means of social interaction. Its definition of covered services excludes news and entertainment websites that teenagers commonly use, such as Buzzfeed or Netflix. *See* Buzzfeed, Videos, https:/perma.cc/6JHM-H2M4. Likewise, a minor can open an account on a sports website and exchange social communications such as posts, comments, and direct messages unsupervised with other users there without age verification or parental consent, while the same child is prohibited from engaging in precisely the same conduct on a social media platform like Snapchat or Facebook.

Such exclusions render the Act "wildly underinclusive when judged against its asserted justification, which … is alone enough to defeat it." *Brown*, 564 U.S. at 802. "Underinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Id.* This flaw is a common feature of various state social media laws,

which is another reason courts have routinely enjoined these laws.[5] Here, the district court reached the same conclusion, which this Court should not allow to remain stayed. *Fitch*, 2025 WL 1709668, at *11–12.

This Court has recognized the First Amendment denies states the power "to prevent children from hearing or saying anything *without their parents' prior consent*." *Brown*, 564 U.S. at 795 n.3. (emphasis in original). Rather, "minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212–13 (1975). As the district court correctly found, a blunderbuss attack on speech is not one of those circumstances. *NetChoice, LLC v. Fitch*, 2025 WL 1709668, at *12 (S.D. Miss. June 18, 2025).

II. *Free Speech Coalition v. Paxton* Does Not Permit Barring Minors' Access to Expression the First Amendment Protects for Them.

This Court's recent decision in *Free Speech Coalition v. Paxton*, 145 S. Ct. 22910, provides no support for the Fifth Circuit's stay of injunctive relief. To the

[5] *See*, *e.g.*, *Yost*, 2025 WL 1137485, at *21 (law is "a breathtakingly blunt instrument for reducing social media's harm to children"); *Griffin*, 2025 WL 978607, at *11 ("[A]t least some exempt platforms are ones that adult sexual predators commonly use to communicate with children," such as "interactive gaming websites and platforms."); *CCIA*, 747 F. Supp. 3d at 1037 ("A teenager can read Peter Singer advocate for physician-assisted suicide in *Practical Ethics* on Google Books but cannot watch his lectures on YouTube or potentially even review the same book on Goodreads."); *Reyes*, 748 F. Supp. 3d at 1128 ("[T]he Act appears underinclusive when judged against the State's interests in protecting minors from harms associated with social media use.").

contrary, it confirms why the district court's order applying strict First Amendment scrutiny is correct.

FSC addressed a Texas law (HB 1181) which regulates only content that is obscene for minors. *FSC*, 145 S. Ct. at 2308–09 & n.7. That law requires age identification for access to websites that contain specified amounts of "sexual content … which is obscene from a child's perspective." 145 S. Ct. at 2299, 2304. The Court's holding in *FSC* has no application to Mississippi's H.B. 1126, which imposes more onerous access restrictions on a broader range of content—none of which the First Amendment allows the government to categorically restrict for minors.

Even where minors' access to sexually oriented speech may face legitimate restriction, this Court emphasized the strict limits of the exception in *FSC*. It held that content deemed "obscene as to minors" must be interpreted narrowly, and that the law at issue "only cover[ed] *explicit portrayals of nudity or sex acts* that predominantly appeal to the prurient interest, [and] cannot conceivably be read to cover, say, a PG–13- or R-rated movie." 145 S. Ct. at 2308-09 & n.7. It also confirmed the "obscene as to minors" category does not include "indecent" speech, and that restrictions on such speech must satisfy strict scrutiny. *Id.* at 2311–12 & n.9. The Court's citations of *Brown* (*id.* at 2308, 2310) reaffirm the rule that speech "neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." *Brown*, 564 U.S. at 795.

Far from supporting the Fifth Circuit's stay, *FSC* reinforced that the "'basic principles of freedom of speech … do not vary' when a new and different medium for communication appears," 145 S. Ct. at 2308 (quoting *Brown*, 564 U. S. at 790), that strict scrutiny "is the standard for reviewing the direct targeting of fully protected speech," *id.* at 2310, and that reviewing courts do not defer to a legislature's view of "competing psychological studies" when applying strict scrutiny to a law restricting minors' access to otherwise protected speech, *id.* at 2308 (quoting *Brown*, 564 U.S. at 799–800).

In short, *FSC* confirmed that content-based restrictions on access to protected speech—including incidental restrictions—must satisfy strict scrutiny unless they are narrowly focused on sexually explicit "obscene as to minors" material. Consequently, the district court order granting injunctive relief was correct, and the Fifth Circuit's stay should be vacated.

CONCLUSION

Mississippi's attempt to protect minors from social media may be well-intentioned but is fatally flawed. The idea that *some* types of social network use by *some* minors under certain conditions can adversely affect *some* segment of this cohort is no basis for imposing state restrictions on *all* social network use by *all* minors—just as the State does not (and cannot) keep all books under lock and key because some may be inappropriate for some children.

Such overreach typifies how lawmakers historically have sought to regulate new media forms in the name of protecting the young. Whether dime novels or "penny dreadfuls" in the nineteenth century, moving pictures in the early twentieth century, comic books in the 1950s, or video games at the dawn of the twenty-first century, the response to these successive moral panics has been largely the same: legislatures pass vague and broadly worded speech restrictions that infringe basic First Amendment rights. *See Brown*, 564 U.S. at 797–98. The principles forged in the cases cited throughout this brief constitute the core First Amendment rules that compel vacating the Fifth Circuit's stay.

July 25, 2025

Respectfully Submitted,

/s/ Robert Corn-Revere

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