

IN THE
Supreme Court of the United States

NETCHOICE,

Applicant,

v.

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

Respondent.

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

**AMICI CURIAE BRIEF OF THE LGBT TECHNOLOGY INSTITUTE,
THE TREVOR PROJECT, PFLAG INC., BAY AREA LAWYERS FOR
INDIVIDUAL FREEDOM, HACKING THE WORKFORCE, AND FIGHT
FOR THE FUTURE IN SUPPORT OF APPLICANT**

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STATEMENT OF IDENTITY AND INTEREST

Pursuant to Supreme Court Rule 37, the LGBT Technology Institute (“LGBT Tech”), The Trevor Project, PFLAG, Inc. (“PFLAG”), Bay Area Lawyers for Individual Freedom (“BALIF”), Hacking the Workforce, and Fight for the Future respectfully submit this brief as amici curiae in support of the Emergency Application (the “Application”) filed by NetChoice, LLC (“Applicant”).

LGBT Tech is a nonprofit organization dedicated to promoting technology adoption and advocacy within the lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ+”) community. LGBT Tech encourages the adoption and use of cutting-edge, new and emerging technologies by providing information, education, and strategic outreach. An important function of LGBT Tech is to advocate for policies that benefit the LGBTQ+ community. To that end, LGBT Tech files amici curiae, singularly or jointly, in cases such as this which raise issues of concern for the LGBTQ+ community. LGBT Tech has a significant interest in the outcome of this case and believes that LGBTQ+ individuals, including LGBTQ+ youth, should be able to engage in fully protected expression, free from governmental interference.¹ Specifically, LGBT Tech recognizes that online platforms are crucial for LGBTQ+ individuals, especially youth, to access vital information, community support, and resources that may not be available in their immediate physical environments.

The Trevor Project is the nation’s leading LGBTQ+ youth crisis intervention and suicide prevention organization. The Trevor Project offers the only nationwide accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ+ youth. These services are used by tens of thousands of youth each month. Through analyzing and evaluating data obtained from these services and national surveys, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, to issues affecting

¹ No party or counsel for a party in the pending case authored the proposed amici curiae brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than the amici, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief.

LGBTQ+ youth.

Founded in 1973, PFLAG is the first and largest organization dedicated to supporting, educating, and advocating for LGBTQ+ people, their parents and families, and allies. With nearly 350 chapters and more than 550,000 members and supporters nationwide, PFLAG envisions an equitable and inclusive world where every LGBTQ+ person is safe, celebrated, empowered, and loved. PFLAG's work includes ending bullying, discrimination, and harassment in educational settings by supporting teachers, administrators, and district leaders in providing inclusive, accurate, and honest education, because we know that when LGBTQ+ youth are supported in their schools and communities, they thrive.

Bay Area Lawyers for Individual Freedom is the nation's oldest and largest bar association of lesbian, gay, bisexual and transgender ("LGBTQI") persons, including hundreds of members in the San Francisco Bay Area. BALIF promotes the professional interests and social justice goals of its members and the legal interests of the LGBTQI community at large. For over 40 years, BALIF has actively participated in public policy debates concerning the rights of LGBTQI people and has authored and joined amicus efforts concerning matters of broad public importance.

Hacking the Workforce is dedicated to protecting the digital rights and privacy of all individuals, with a special emphasis on supporting LGBTQ+ communities. Hacking the Workforce's mission is to ensure that technology and law work in tandem to enhance, not erode, personal privacy. In the context of this case, the organization aims to advocate for the continued protection of online privacy and free speech, highlight the specific privacy concerns of the LGBTQ+ community, and work alongside legal professionals to influence decisions that uphold the rights of the LGBTQ+ community in the digital realm. Hacking the Workforce firmly believes that a diverse, inclusive, and privacy-conscious workforce is key to creating a society where everyone can feel safe and be their authentic selves online.

Fight for the Future is a digital rights organization composed of artists, engineers, activists, and technologists who recognize that tech policy issues have a disproportionate impact on communities of color, low income people, religious

minorities, political dissidents, LGBTQ+ people, and others who face systemic oppression.

Restrictions on fully protected expression online, as imposed by Mississippi House Bill 1126 (the “Act”), disproportionately harm LGBTQ+ individuals by limiting their ability to explore their identities, connect with peers, find affirming content, and express themselves, thereby undermining their well-being and access to essential lifelines. LGBT Tech, The Trevor Project, PFLAG Inc., BALIF, Hacking the Workforce, and Fight for the Future submit this amicus brief in favor of Applicant’s request that this Court grant temporary administrative relief, vacating the Fifth Circuit’s stay while this Court considers the Application, and then issue an order vacating the Fifth Circuit’s stay of the district court’s preliminary injunction of the Act, thus leaving the district court’s injunction in force pending an eventual disposition of this matter.

INTRODUCTION AND SUMMARY OF ARGUMENT

The LGBTQ+ community has a significant interest in the continued ability of all individuals to access and engage with fully protected speech and information online. LGBTQ+ individuals are early adopters of technology, use social media at higher rates than their non-LGBTQ+ peers, and often utilize technology to access affirming spaces, connect with others, and express themselves. If this Court upholds the Fifth Circuit's stay, millions of individuals, including countless LGBTQ+ individuals, will lose their ability to engage in protected speech online.

I. LGBTQ+ Individuals Have a Significant Interest in This Case

The LGBTQ+ community has endured a long history of discrimination and social stigma, facing challenges ranging from legal persecution to social ostracization. This painful history underscores the importance of protecting the privacy, safety, and free speech rights of LGBTQ+ individuals. Today, the internet and connected devices and services play a crucial role in fostering community, providing access to vital resources, and enabling self-expression for LGBTQ+ individuals. Online platforms, including social media sites, offer safe spaces for individuals, including youth, to connect with others who share their identities, access information about LGBTQ+ issues and resources, and explore their gender identity and sexual orientation in a supportive environment.²

Research consistently shows that LGBTQ+ individuals utilize the internet and social media more than their non-LGBTQ+ peers, with LGBT Tech polling finding that 96% of LGBTQ+ adults access digital spaces at least once each day.³ LGBTQ+ individuals, and especially transgender members of the community, are more likely

² See Leanna Lucero, *Safe Spaces in Online Places: Social Media and LGBTQ Youth*, 9 Multicultural Educ. Rev. 117, 118–19 (May 31, 2017), https://www.researchgate.net/profile/Leanna-Lucero/publication/316937430_Safe_spaces_in_online_places_social_media_and_LGBTQ_youth/links/5a9dce3faca272cd09c221ac/Safe-spaces-in-online-places-social-media-and-LGBTQ-youth.pdf.

³ See Kirby Phares & Rob Todaro, *ctrl+alt+lgbt: Digital Access, Usage, and Experiences of the LGBTQ+ Community*, LGBT Tech 4 (May 29, 2024), <https://www.lgbtttech.org/post/ctrl-alt-lgbt-lgbt-tech-releases-groundbreaking-survey-on-digital-lives-of-lgbtq-adults>.

to be honest about their identity or sexual orientation online when compared to physical spaces.⁴ Research further suggests that social media use may support the mental health and well-being of LGBTQ+ youths through peer connection, identity management, and social support.⁵

II. LGBTQ+ Individuals Have Rights that Have Been Recognized by This Court to Engage in Protected Speech Online

For many LGBTQ+ individuals, particularly youth, digital platforms are vital spaces for discovering identity, connecting with supportive communities, accessing crucial information and resources that may not be available in their immediate physical environments, and expressing themselves within their communities and the larger marketplace of ideas. Restricting this access through the Act’s content-based mandates that impose age verification requirements not only stifles free expression, but also disproportionately harms a marginalized population that relies on the internet for well-being and safety. If this Court upholds decisions that undermine digital freedoms, countless LGBTQ+ individuals stand to lose essential avenues for self-expression, community building, and vital support, jeopardizing their ability to thrive and undermining their long-recognized First Amendment rights.

A. First Amendment Rights Apply With Equal Force to the Internet and Social Media

The development of the internet and connected devices and services over the past several decades, and in particular the advent and proliferation of social media platforms, has not changed core First Amendment rights enjoyed by adults and minors alike.⁶ It has long been recognized by this Court, including before the advent of the internet, that “[a] fundamental principle of the First Amendment is that all

⁴ *Id.*

⁵ See Berger et al., *Social Media Use and Health and Well-Being of Lesbian, Gay, Bisexual, Transgender, and Queer Youth: Systematic Review*, J. of Med. Internet Rsch. (Sept. 21, 2022) at 1, <https://pmc.ncbi.nlm.nih.gov/articles/PMC9536523/>.

⁶ *Brown v. Ent. Merch. Ass’n*, 564 U.S. 786, 790 (2011) (“[T]he basic principles of freedom of speech . . . do not vary’ with a new and different communication medium.”).

persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more.”⁷ This includes not only a right under the First Amendment to have access to places where one can express their own ideas, but also to places where individuals can “receive information and ideas” from others.⁸

With the advancement of technologies, places to engage in protected First Amendment activities have been recognized to include far more than the analog realm where “a street or a park is a quintessential forum for the exercise of First Amendment rights.”⁹ Places where individuals can exercise their First Amendment rights have been recognized as encompassing “cyberspace—the ‘vast democratic forums of the internet’ in general,¹⁰ and social media in particular.”¹¹ Social media platforms have billions of users and offer a “relatively unlimited, low-cost capacity for communication of all kinds,”¹² and “users employ these websites to engage in a wide array of protected First Amendment activity on topics ‘as diverse as human thought.’”¹³

In *Reno v. ACLU*, the Court noted that “[t]hese websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard. They allow a person with an Internet connection to ‘become a town crier with a voice that resonates farther than it could from any soapbox.’”¹⁴ This Court has recognized time and again the vital role that the internet and social media platforms

⁷ *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017).

⁸ *Kleindienst v. Mandel*, 408 U.S. 753, 762–63 (1972) (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“This right to receive information and ideas, regardless of their social worth . . . is fundamental to our free society.”). See also *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (“The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.”).

⁹ *Packingham*, 582 U.S. at 104.

¹⁰ *Reno v. ACLU*, 521 U.S. 844, 868 (1997).

¹¹ *Packingham*, 582 U.S. at 1.

¹² *Id.* at 98 (citing *Reno*, 521 U.S. at 870).

¹³ *Id.* at 105 (citing *Reno*, 521 U.S. at 870). See also NBC News, *LGBTQ and Out on Social Media – but Nowhere Else* (Oct. 11, 2017), <https://www.nbcnews.com/feature/nbc-out/lgbtq-out-social-media-nowhere-else-n809796>.

¹⁴ *Packingham*, 582 U.S. at 107 (quoting *Reno*, 521 U.S. at 870).

provide in the dissemination of speech and the access to ideas that are historically protected by core First Amendment principles.

Just as importantly, First Amendment rights to express oneself and access information are enjoyed by both adults and minors. Minors are not stripped of their right to free expression simply because of their age.¹⁵ Minors are likewise not broadly susceptible to having their First Amendment right to access information taken away merely because a legislature deems certain ideas or products to be harmful.

As this Court recognized in *Brown v. Entertainment Merchants Ass'n*, “[m]inors 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.”¹⁶ “No doubt a State possesses legitimate power to protect children from harm, . . . but that does not include a free-floating power to restrict the ideas to which children may be exposed.”¹⁷ But “[s]peech that is 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,”¹⁸ and a legislature cannot create new categories of unprotected speech simply by weighing the value of a particular category against its social costs and then punishing it if it fails the test.¹⁹

And where the First Amendment protects anonymous speech,²⁰ as well as the right to anonymously receive information,²¹ it is unsurprising that the First Amendment also protects rights to anonymity on the internet, including on social

¹⁵ See *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 184 (2021) (recognizing First Amendment rights of a minor to engage in protected speech on social media platform outside of school).

¹⁶ *Brown*, 564 U.S. at 794 (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212–13 (1975)).

¹⁷ *Id.* (citations omitted).

¹⁸ *Id.*

¹⁹ *Id.* at 791 (finding California law restricting sale or rental of violent video games to minors violated their First Amendment rights).

²⁰ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995); *Talley v. California*, 362 U.S. 60, 64–65 (1960).

²¹ *Lamont v. Postmaster General*, 381 U.S. 301 (1965).

media platforms.²²

Free speech is a cornerstone of democracy, essential for the marketplace of ideas and the informed participation of citizens, as this Court has long recognized. In *Palko v. Connecticut*,²³ this Court referred to free expression as “the matrix, the indispensable condition, of nearly every other form of freedom.”²⁴ In *Citizens United v. FEC*, it recognized that “[s]peech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people.” These are but a few of the countless statements by this Court made throughout its history to characterize the immense gravity of protecting rights to express oneself and access information. And none of this changes simply because the medium for expression or the channel for accessing information is through modern technology, or merely because the focal point of a law purports to be the regulation of minors.

B. First Amendment Rights to Free Expression and Access to Information On the Internet Are Uniquely and Significantly Important to LGBTQ+ Individuals

It is axiomatic in 2025 to say that First Amendment protections apply with equal force to LGBTQ+ individuals, as this Court has long held that individuals are not deprived of Constitutional rights on the basis of intimate choices defining personal identity and beliefs, including sexuality.

Going back to *Griswold v. Connecticut*²⁵ in 1965 and *Eisenstadt v. Baird*²⁶ in 1972, this Court has recognized the privacy rights of individuals to be free from

²² *Buckley v. Am. Const. L. Found.*, 525 U.S. 182, 200 (1999); *Reno*, 521 U.S. at 870 (finding there is “no basis for qualifying the level of First Amendment scrutiny that should be applied” to online speech); *Brown*, 564 U.S. at 790; *ACLU v. Gonzales*, 478 F. Supp. 2d 775, 806 (E.D. Pa. 2007) (finding lack of anonymity will chill users’ ability to engage with “sensitive, personal, controversial, or stigmatized content”); *PSINet, Inc. v. Chapman*, 362 F.3d 227, 236 (4th Cir. 2004) (finding without anonymity, “the stigma associated with the content of [certain] sites may deter adults from visiting them”).

²³ See *Palko v. Connecticut*, 302 U.S. 319, 327 (1937).

²⁴ See *Citizens United v. FEC*, 558 U.S. 310, 339 (2010).

²⁵ See *Griswold v. Connecticut*, 381 U.S. 479, 483–84 (1965).

²⁶ See *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

unwarranted government intrusion into their personal, intimate relationships.²⁷ This Court in *Lawrence v. Texas*,²⁸ *U.S. v. Windsor*,²⁹ and *Obergefell v. Hodges*³⁰ has gone on in the context of the Fourteenth Amendment to reiterate that “moral and sexual choices,” in particular those of same-sex couples, are likewise protected by the Constitution. “[F]undamental liberties protected by [the Constitution] extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs.”³¹ As this Court stated in *Lawrence*, “[f]reedom extends beyond spatial bounds. Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct.”³²

The same should hold true for First Amendment rights—there is no reason to find that they cease to apply, or that they can be carved back to any degree, on the basis of someone’s sexuality and gender identity.³³ And these rights are particularly important to protect for the LGBTQ+ community.

For the LGBTQ+ community, online platforms are crucial avenues for expression, information, and community building, even serving as lifelines where offline support may be absent. As this Court has recognized, some transgender individuals experience dysphoria, and that “[l]eft untreated, gender dysphoria may result in severe physical and psychological harms.”³⁴ Relatedly, according to The Trevor Project’s 2024 National Survey on LGBTQ+ Youth Mental Health, 39% of LGBTQ+ young people seriously considered attempting suicide in the past year—

²⁷ *Id.*

²⁸ *See Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

²⁹ *See U.S. v. Windsor*, 570 U.S. 744 (2013).

³⁰ *See Obergefell v. Hodges*, 576 U.S. 644 (2015).

³¹ *See Obergefell*, 576 U.S. at 10.

³² *See Lawrence*, 539 U.S. at 562.

³³ *McVeigh v. Cohen*, 983 F. Supp. 215, 220 (D.D.C. 1998) (finding that suggestions of sexual orientation in a private, anonymous email account did not give the Navy sufficient reason to investigate Officer McVeigh’s sexuality).

³⁴ *U.S. v. Skrametti*, 145 S. Ct. 1816 (2025).

including 46% of transgender and nonbinary young people.³⁵ These concerns are prevalent in Mississippi, in 2023, according to that same survey:³⁶

- 37% of LGBTQ+ young people in Mississippi seriously considered suicide, including 41% of transgender and nonbinary young people.
- 24% of LGBTQ+ young people in Mississippi were physically threatened or harmed based on their sexual orientation or gender identity.
- 63% of LGBTQ+ young people in Mississippi experienced discrimination based on their sexual orientation or gender identity.
- 84% of LGBTQ+ young people in Mississippi report experiencing “low or moderate support” from family.

These statistics do not indicate that social media is the cause of LGBTQ+ youth’s suffering. Rather, for youth who desperately need community and connection, and who may already be experiencing profound loneliness and isolation, restricting social media access offers no relief; instead it only further compounds their burdens. This is happening in parallel to the loss of important resources that are intended to address those very risks to the health and well-being of LGBTQ+ individuals, with the 988 Suicide & Crisis Lifeline’s LGBTQ Youth Specialized Services program being recently discontinued.³⁷ That program previously enabled LGBTQ+ individuals under 25 to speak with a counselor trained in LGBTQ+ issues.

Digital platforms serve an important role in connecting LGBTQ+ individuals to critical resources and supportive communities, and they are growing in importance, including by filling gaps left by the loss of programs like the 988 Suicide & Crisis Lifeline’s LGBTQ Youth Specialized Services. The suppression of online

³⁵ Nath et al., *2024 U.S. National Survey on the Mental Health of LGBTQ+ Young People*, The Trevor Project 2 (2024), https://www.thetrevorproject.org/survey-2024/assets/static/TTP_2024_National_Survey.pdf.

³⁶ *Id.*

³⁷ Press Release, The Trevor Project, Closed: Trump Admin Officially Shuts Down the 988 Suicide & Crisis Lifeline’s LGBTQ+ Youth Specialized Services (July 17, 2025), <https://www.thetrevorproject.org/blog/closed-trump-admin-officially-shuts-down-the-988-suicide-crisis-lifelines-lgbtq-youth-specialized-services/>.

speech disproportionately harms LGBTQ+ individuals by limiting their exposure to diverse perspectives and critical information, including mental health resources, safe sex practices, gender affirming care, and legal aid. Such restrictions can lead to increased isolation and vulnerability for a community that already faces significant discrimination and animus.³⁸ Upholding decisions that permit broad governmental interference with online expression would not only undermine the fundamental rights of countless LGBTQ+ individuals but also impede the progress of a community that relies heavily on digital communication for its continued advocacy, education, and collective empowerment.

Digital spaces enable LGBTQ+ individuals, particularly youth, to explore their identities, access vital resources, connect with affirming peers, and advocate for their rights in environments that can offer a degree of anonymity and safety. If we want to protect the health and well-being of children, we should focus on ensuring continued access to important resources and channels for expression, not applying a blunt instrument, in this case the Act, to improperly restrict access to vital sources of information and support.

III. Stringent Age Verification Measures Pose Significant Privacy Concerns

The Act requires that platforms create “commercially reasonable efforts to verify”³⁹ the ages of individuals creating an account with the platform, and then garner “express consent from a parent or guardian” before allowing a “known minor” to access content.⁴⁰ The Act defines a “known minor” as an unemancipated child under the age of eighteen who a platform knows to be a minor.⁴¹ The Act identifies six specific “acceptable methods of obtaining express consent of a parent or guardian” and permits “[a]ny other commercially reasonable method of obtaining consent in

³⁸ Brief for The Mattachine Society of Washington, D.C., as Amicus Curiae in Support of Petitioners, *Obergefell v. Hodges*, Docket No. 14-556 (U.S. 2015).

³⁹ Miss. H.B. 1126, § 4(1).

⁴⁰ *Id.* at § 4(2)

⁴¹ *Id.* at § 2(d).

light of available technology.”⁴² These age verification and parental consent requirements condition a minor’s access to protected speech on both verifying their age and obtaining consent from a parent or guardian.

A. The Act Would Significantly Infringe the Ability of LGBTQ+ Minors to Freely Express Themselves and Access Important Information

The Act prohibits minors from accessing social media platforms unless their parents or legal guardians provide consent. This requirement alone violates well-established First Amendment rights of minors, including those in the LGBTQ+ community.

Minors in the LGBTQ+ community regularly turn to digital platforms to exercise their rights to express themselves, engage with the broader community, and receive information that is important to them. Those channels for expression and accessing information will be foreclosed by the Act for minors whose parents do not consent. And even for minors whose parents may provide consent, the Act imposes a significant hurdle between the minors and their ability to access mainstream communication channels to engage in expressive conduct.⁴³ There can be no reasonable dispute that these outcomes will hinder minors from, for example, searching for videos including discussion by reputable medical providers on mental health issues of importance to LGBTQ+ individuals.⁴⁴

This is a far cry from the circumstances in *Free Speech Coalition, Inc. v.*

⁴² *Id.* at § 4(2).

⁴³ See *NetChoice, LLC v. Yost*, 2025 WL 1137485, at *24 (S.D. Ohio Apr. 16, 2025) (finding in issuing a preliminary injunction against an age verification law that “[t]he Act impedes minors’ ability to engage in and access speech by requiring covered websites to obtain parental consent before allowing any unemancipated child under the age of sixteen to register or create an account on their website. That means minors’ ability to contribute or access ‘a wide array of protected First Amendment activity on any number of diverse topics,’ will be contingent on securing parental consent—an impermissible curtailment of their First Amendment rights.”); *NetChoice, LLC v. Griffin*, 2025 WL 978607, at *13 (D. Ark. Aug. 31, 2023) (same, in finding that “Act 689 obviously burdens minors’ First Amendment Rights”).

⁴⁴ See, e.g., Mayo Clinic, *Why It’s Important to Help Kids Who Identify as LGBTQ and May Be Struggling* (June 8, 2023), <https://www.youtube.com/watch?v=4YxiGVkCguI>.

Paxton,⁴⁵ where this Court upheld an age verification law from Texas that targeted unprotected speech, namely content that is obscene to minors.⁴⁶ The type of speech at-issue in *Free Speech Coalition, Inc.* was determined by this Court to be unprotected, where minors “have no First Amendment right to access speech that is obscene.”⁴⁷ The Act, by contrast, is of broad applicability. It is premised on the Mississippi legislature’s belief that *some* content that *could be* accessible through social media platforms *may* be harmful to minors. But the Act does not direct its provisions to narrowly restrict access to a particular type of content so as to shield minors from it. The Act sweeps entire channels for communication—perhaps some of the most prevalent methods of communication in today’s age—into its scope and imposes obstacles against minors’ access to what are entirely protected channels for expression and accessing information.

Not only does this wall off minors from vast swaths of valuable information that are accessible via social media platforms falling within the Act’s scope (which unto itself is improper), but the law also does nothing to prevent minors from accessing whatever types of content the legislature may believe are harmful via other platforms that are not included in the Act’s scope—for example, obscene content that a third party may post on a platform that is primarily dedicated to content about sports.

If allowed to stand, the end result of the Act will be a profound impact on minors within the LGBTQ+ community, who either cannot access mainstream communication channels at all and will thus be isolated from the information that those channels contain, or who must undertake efforts to unlock access to those channels and risk their information being widely and readily available to others—posing significant privacy and security consequences.

⁴⁵ See *Free Speech Coalition, Inc. v. Paxton*, 145 S. Ct. 2291 (2025).

⁴⁶ See *id.* at 2309; see also *Brief for Chamber of Progress et al.*, as Amicus Curiae in Support of Applicant, *NetChoice v. Paxton*, Docket No. 22-555 (U.S. 2015).

⁴⁷ See *Free Speech Coalition, Inc.*, 145 S. Ct. at 2309.

B. The Act Would Significantly Hamper the Ability of LGBTQ+ Individuals to Access Affirming Content Privately

The Act does not suggest a technological means of verifying user ages. That is a problem that has long confounded experts in the content space due to difficulties associated with age assurance measures, for example, how to verify the age of someone who does not have documentation showing that they are 18 years old or over.⁴⁸

There are numerous scenarios where an age verification requirement would result in someone age 18 or older being unable to satisfy the requirement and thus be denied access to a social media platform. These individuals include those who: (1) have no government issued identification; (2) have concerns producing documentation with personally identifying information to a platform provider; (3) are in a coercive or abusive relationship with someone who controls their documents to prevent escape; or (4) are suspicious or fearful of law enforcement interactions with platform providers. This is not to mention the many homeless LGBTQ+ youth or new adults who do not have parents or guardians, or who may have failed to obtain identifying documentation when fleeing or being thrown from their homes.⁴⁹

Restricting access to these platforms through age verification mandates or other similar censorship directly infringes the First Amendment rights of all individuals. It would exclude swaths of individuals who are 18 years old or older, but who cannot demonstrate their age in a manner that would enable them to access these significant channels used for expression worldwide. It would chill the speech of others, by discouraging them from even trying to access the platforms out of, for example, concern with sharing documentation that contains sensitive information with platforms. Far from a narrow approach, this would stifle the ability of a large

⁴⁸ Bailey Sanchez et al., *Unpacking Age Assurance: Technologies and Tradeoffs*, Future of Privacy Forum (June 26, 2023), <https://fpf.org/blog/new-fpf-infographic-analyzes-age-assurance-technology-privacy-tradeoffs/>.

⁴⁹ LGBTQ+ youth experience homelessness at a rate 120% higher than their peers. Morton et al., *Prevalence and Correlates of Youth Homelessness in the United States*, 62 J. Adolescent Health 14, 18 (2018).

number of individuals to engage in protected speech and find support and community.

When it comes to ensuring individual privacy, this Court has long adhered to the principle “right to be let alone.”⁵⁰ Restricting the ability of minors, especially members of the LGBTQ+ community, to access online platforms inherently restricts their freedom to express themselves and to access information, and therefore their ability to participate in democracy as informed citizens. That suppression of online speech disproportionately harms LGBTQ+ individuals by limiting their exposure to diverse perspectives and critical information, including mental health resources, safe sex practices, gender affirming care, and legal aid. Such restrictions can lead to increased isolation and vulnerability for a community already facing significant discrimination and animus.

This Court recently addressed issues of identity and access to information in *U.S. v. Skrametti*⁵¹ and *Mahmoud v. Taylor*;⁵² however, this Court in those cases did not address issues associated with access to online platforms, which are more akin to those explored in *Paxton*.⁵³ In short, there is no reason for this Court to allow the Act to stand, with the knowledge that it creates an unfair and undue burden on speech and the ability of individuals, including youth, to access resources and information at their own direction.

Upholding decisions that permit broad governmental interference with online expression would undermine the fundamental rights of countless LGBTQ+ individuals and impede the progress of a community that heavily relies on digital communication for its continued advocacy, education, and collective empowerment. Without access to resources that can help individuals, including youth, understand their complex feelings and physical changes, LGBTQ+ individuals are apt to experience loneliness and isolation, consistent with the results reflected in The Trevor Project’s National Survey on LGBTQ+ Youth Mental Health discussed

⁵⁰ See Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890).

⁵¹ *U.S. v. Skrametti*, 145 S. Ct. 1816 (2025).

⁵² *Mahmoud v. Taylor*, 145 S. Ct. 2332 (2025).

⁵³ See *Free Speech Coalition, Inc.*, 145 S. Ct. at 14.

above.⁵⁴ If we want to save children’s lives, we should focus on ensuring their access to life-saving resources and not on applying a blunt instrument, in this case the Act, to a matter as delicate as the lives and wellbeing of our nation’s youth.

C. The Act Undermines the Right to Speak Anonymously

The Act would require minors and the adults providing consent—parents or guardians—to provide personally identifying information. That would not only undermine the rights of those individuals to speak anonymously on the internet, it would also chill speech by discouraging participation by those who would otherwise, if allowed to remain anonymous, engage with others in the marketplace of ideas.

Research shows that many LGBTQ+ individuals choose to express themselves anonymously on social media platforms out of concern about persecution, violence, or judgment were they to identify themselves.⁵⁵ For LGBTQ+ individuals, for example, living in unsupportive households, in states that criminalize same-sex behaviors or gender expression, or in countries that penalize individuals on the basis of their sexual orientation or gender identity—the ability to access and engage in private communications can be life-saving.⁵⁶ The importance of protecting private and anonymous speech is paramount.

Today, within the United States, ten states explicitly define “sex” in state laws to discriminate against transgender individuals; 27 states still allow conversion therapy for minors (attempting to treat and “correct” the sexual orientation or gender identity of LGBTQ+ individuals); 30 states still allow gay or trans “panic” to be used as a defense in court; 24 states and territories either ban or make it a felony to offer medication or surgical care to transgender youth; and 17 states do not recognize hate

⁵⁴ Nath et al., *supra* note 35.

⁵⁵ See Sydney Allen, *Queering the Internet: Anonymous Online Spaces for LGBTQ+ People*, Global Voices (Feb. 7, 2023), <https://globalvoices.org/2023/02/07/queering-the-internet-anonymous-online-spaces-for-lgbtq-people/>.

⁵⁶ Jeffrey M. Jones, *LGBTQ+ Identification in U.S. Now at 7.6%*, Gallup (Mar. 13, 2024) <https://news.gallup.com/poll/611864/lgbtqidentification.aspx>.

crimes based on sexual orientation and gender identity.⁵⁷

The very existence of these laws make clear that circumstances exist where LGBTQ+ individuals, including minors, may need to shield—or at least feel the need to shield—their identities when engaging in expressive activity online. For example, LGBTQ+ minors may want to speak out against states that do not recognize hate crimes based on sexual orientation or gender identity or against legislation that disproportionately impacts the LGBTQ+ community (clearly social and political issues) but do not want to subject themselves or their families to harassment and persecution that may be levied against them in response. Simply debating legislation around LGBTQ+ issues should not result in hate crimes, threats of violence, and cyberbullying directed towards those speaking against proposed legislation, including LGBTQ+ youths. But that is an unfortunate and very real occurrence, reflected in a 2023 poll by The Trevor Project revealing that “an overwhelming majority of LGBTQ youth have been negatively impacted by recent debates and laws around anti-LGBTQ policies and that many have also experienced victimization as a result.”⁵⁸

These are serious issues that are directly impacting the ability of LGBTQ+ individuals to exercise their First Amendment rights, including on issues of social and political importance. The ability to speak anonymously—which has long been recognized and protected under the First Amendment—should foster broad discussion and debate on these issues, and the Act should not be allowed to curtail participation in that debate by threatening to strip people of the same ability to speak anonymously that is broadly available to others.

IV. Conclusion

The Act does not achieve the aim of keeping children—all children—safe online. Rather, the Act chills free speech, forces the unmasking of anonymous

⁵⁷ Shae Gardner, *Beyond the Binary: LGBTQ+ Rights in the Digital Landscape*, LGBT Tech (Jan. 2025), https://www.lgbttech.org/_files/ugd/4e5b96_c804f63254ea45c5aee434864773d884.pdf.

⁵⁸ Trevor News, *New Poll Emphasizes Negative Impacts of Anti-LGBTQ Policies on LGBTQ Youth*, The Trevor Project (Jan. 19, 2023), <https://www.thetrevorproject.org/blog/new-poll-emphasizes-negative-impacts-of-anti-lgbtq-policies-on-lgbtq-youth/>.

speakers, impedes privacy, and limits the access of all individuals, including LGBTQ+ youth, to access information they need in order to thrive, on and offline.

Although all individuals face risks posed by the Fifth Circuit's stay in this case, the LGBTQ+ community serves as a primary example of a community that would be severely impacted by a lapse in privacy and free speech protections. As constitutional and privacy scholar Professor Scott Skinner-Thompson explains, "even assuming that privacy violations were evenly distributed across society (they are not), any such intrusion disproportionately impacts members of marginalized communities who are unable to absorb the social costs that flow from a privacy violation or vindicate the privacy loss in courts."⁵⁹

We respectfully ask the Court to grant Applicant's requests for (1) temporary administrative relief, vacating the Fifth Circuit's stay while the Court considers this Application, and (2) an order vacating the Fifth Circuit's stay of the district court's preliminary injunction of the Act which creates content-based barriers to accessing fully protected speech online, thus leaving the district court's injunction in force pending this Court's eventual disposition of any petition for writ of certiorari from this Fifth Circuit appeal.

Respectfully submitted.

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⁵⁹ Daniel Solove, *Privacy at the Margins: An Interview with Scott Skinner-Thompson on Privacy and Marginalized Groups*, TeachPrivacy (Feb. 24, 2021), <https://teachprivacy.com/privacy-at-the-margins-an-interview-with-scott-skinner-thompson-on-privacy-and-marginalized-groups/>.