No. 25A97

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

REPLY IN SUPPORT OF EMERGENCY APPLICATION OF NETCHOICE FOR IMMEDIATE TEMPORARY ADMINISTRATIVE RELIEF AND VACATUR OF FIFTH CIRCUIT'S STAY OF PRELIMINARY INJUNCTION

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INTRODUCTION

The Fifth Circuit's unexplained stay order threatens the First Amendment rights of millions of Mississippians who rely on "social media" as their "principal sources for . . . exploring the vast realms of human thought and knowledge" and engaging in protected expression. *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). It likewise threatens the rights of NetChoice members' covered websites to disseminate fully protected speech. Respondent cannot rehabilitate the Fifth Circuit's departure from the nationwide consensus of courts enjoining enforcement of laws similar to Mississippi House Bill 1126 (2024) ("Act"). *See* Appl.3-4. This Act's content-based parental-consent, age-verification, and monitoring-and-censorship provisions violate this Court's precedent, both old and new.

Respondent offers two unavailing arguments why the Fifth Circuit *might* have stayed the injunction. Both fail. First, the district court's injunction resolving NetChoice's *as-applied* First Amendment challenges did not violate the Fifth Circuit's *Fitch* mandate addressing NetChoice's distinct *facial* challenge. Second, Respondent's arguments fail on the merits. They side-step binding precedent such as *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786 (2011), and *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024). Instead, Respondent asserts that this Court's decision in *Free Speech Coalition, Inc. v. Paxton* justifies all manner of speech restrictions, notwithstanding *FSC*'s recognition that age-verification requirements "necessarily" burden access to speech. 145 S. Ct. 2291, 2310-11, 2315-16 (2025) ("*FSC*"). *FSC* dealt with a law targeting speech *unprotected* as to minors. *See* Appl.20-21, 25-26, 37. But this Act targets a staggering amount of speech fully protected for both adults and minors.

As the diverse coalition of nearly 30 amici demonstrates, the Act's speech restrictions present grave First Amendment harms restricting access to websites that "provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Packingham*, 582 U.S. at 107. This Court should therefore vacate the Fifth Circuit's unreasoned stay order.

I. This Court should maintain the status quo and an orderly appellate process by vacating the Fifth Circuit's unexplained order staying the district court's reasoned preliminary injunction of Mississippi House Bill 1126 (2024).

The Fifth Circuit's failure to explain its stay of the preliminary injunction in this case provides ample reason for this Court to vacate the Fifth Circuit's stay. *See* Appl.13-15; TechFreedom Br.7-8; TechNet Br.17. Respondent argues that this Court's precedent does not require explanation from the lower courts when they drastically alter the status quo and disrupt the orderly appellate process. Resp.35. But all Respondent can muster is one single-Justice order issued three decades before *Nken*, which clarified that litigants must receive "careful review and a meaningful decision" at the stay stage. *Nken v. Holder*, 556 U.S. 418, 427 (2009); *see* Resp.34 (citing *Coleman v. PACCAR Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers)).

II. The district court's injunction based on NetChoice's added *as-applied* challenges for nine identified websites did not violate the Fifth Circuit's prior appellate mandate, which did not reach the First Amendment merits and addressed only the *facial*-challenge standard.

Respondent fundamentally mischaracterizes both the Fifth Circuit's prior appellate mandate and what occurred on remand. The district court's current injunction was based on NetChoice's *as-applied* challenges for nine identified websites (which were added on remand) and does not defy the Fifth Circuit's mandate. The Fifth

Circuit's prior *Fitch* decision did not reach the First Amendment merits, and it addressed only the *facial*-challenge standard from this Court's *Moody* decision. *See* Appl.11-12. In fact, the Fifth Circuit's prior decision *could not possibly* have opined on any as-applied challenges for these nine identified websites, because only a facial challenge was pending in the case at that time. On remand, NetChoice amended its complaint to raise as-applied claims for these nine identified websites precisely so that courts could avoid having to analyze how the First Amendment applied to all sorts of other websites, like "DraftKings" and "Uber." App.51a. That approach heeded this Court's directions in *Moody*, which recognized as-applied claims about identified websites would face a different standard than a facial challenge. 603 U.S. at 718. Yet Respondent now wrongly collapses facial and as-applied challenges, precluding as-applied claims for identified websites altogether. This is exactly the opposite of what this Court's—and the Fifth Circuit's—precedents direct: Courts should resolve as-applied claims before considering broader facial challenges about a law's entire scope.

Nothing in *Fitch* prohibited NetChoice from amending its complaint to assert as-applied claims for these nine websites. Nor could *Fitch*'s facial-challenge discussion control any as-applied claims, because *Fitch* did not reach the First Amendment merits. *E.g.*, App.53a. Rather, after finding standing, *Fitch* focused solely on this Court's guidance about the facial-challenge standard in *Moody*. App.49a-52a.

The district court's injunction on remand complied with all of *Fitch*'s holdings. The district court enjoined enforcement against nine identified NetChoice-member websites, based on its conclusion that "the Act [is] unconstitutional *as applied to* certain of [NetChoice's] members." App.4a (emphasis added). The district court thus

expressly heeded this Court's (and the Fifth Circuit's) instructions to "refrain from" "reach[ing] the facial challenge" if a plaintiff can obtain full relief through its "narrower" as-applied claims. *E.g.*, App.36a (quoting *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 478 (1995)). This rule has existed for over a century. *E.g.*, *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring) (courts will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied" (quoting *Liverpool, N.Y. & Phila. Steamship Co. v. Comm'rs of Emigration*, 113 U.S. 33, 39 (1885))).

The district court therefore honored *Moody*'s recognition that as-applied claims entail a different analysis from facial challenges. 603 U.S. at 718. *As-applied* claims ask whether there is a First Amendment violation when a law is applied to identified regulated entities. *See id.* In contrast, a successful facial First Amendment challenge must examine "the law's coverage and its future enforcement," while demonstrating that the "law's unconstitutional applications substantially outweigh its constitutional ones." *Id.* at 723-24. By necessity, a facial challenge requires more information about the "kinds of websites and apps" covered by a law regulating the internet. *Id.* at 718. Contrarily, an as-applied challenge does not require courts to "determine a law's *full set* of applications" nor does it require courts to "evaluate which are constitutional and which are not, and compare the one to the other." *Id.* (emphasis added). Instead, the court must resolve only whether the law violates the First Amendment when applied to the identified covered entities, *e.g.*, particular websites.[1]

[1] Although a law's broader scope may be relevant to the First Amendment scrutiny analysis about tailoring and governmental interests, a precise weighing of

That is exactly what the district court properly did here. It identified nine NetChoice member websites covered by this law. *See* App.5a, 13a-14, 37a-38a. So the district court *did* "determine as a factual matter to whom the Act applies." *Contra* Resp.11 (cleaned up). Then, it concluded (consistent with this Court's precedent) that the Act unconstitutionally restricts access to fully protected speech whenever the Act's content-based requirements for age verification, parental consent, and monitoring and censorship apply. *See* App.17a-23a; *contra* Resp.12, 18-19 (contending the district court did not "determin[e] what those applications are" or what websites "must in fact do"). Finally, the district court concluded that such content-based restrictions and burdens on fully protected speech cannot satisfy even intermediate scrutiny. App.23a-33a.

Accordingly, *Fitch*'s mandate did not control the district court's decision in this "altered procedural posture" with added as-applied challenges. App.35a. To argue otherwise, Respondent incorrectly conflates what she calls "facial relief" with a finding of "facial invalidity." Resp.2-3, 9, 16-17. The district court's new injunction relying

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constitutional versus unconstitutional applications is not necessary to resolve as-applied challenges. *E.g.*, *United States v. Edge Broad. Co.*, 509 U.S. 418, 430 (1993).

Regardless, Respondent has never refuted that the Act regulates the nine identified websites at issue in these as-applied claims. Beyond that, the Act specifically targets websites that, among other things, "[a]llow[] a user to create or post content that can be viewed by other users of" the website. § 3(1)(c). In other words, there is no dispute among the parties here that the Act targets websites where users engage in protected expression and where such fully protected expression proliferates. *See* Appl.5, 8-9. As a result, there is no need for a nuanced analysis of different "kinds of websites" that might "fall on different sides of the constitutional line." *Moody*, 603 U.S. at 718, 726. As *Packingham* said, "[i]t is enough to assume that the law applies" and restricts access "to social networking sites." 582 U.S. at 106.

on NetChoice's as-applied claims in this case has a different legal basis, requiring a different analysis. The legal basis for the preliminary injunction here is NetChoice's likelihood of success on the claim that the Act's speech restrictions are unconstitutional as applied to nine identified covered websites. App.37a-38a. These as-applied claims meant that the district court did not need to apply the facial-challenge framework examining the law's entire coverage. In the Fifth Circuit's prior *Fitch* ruling, however, the legal basis for the injunction was the district court's holding that the "the Act is *facially* unconstitutional under the First Amendment." App.53a (emphasis added). The Fifth Circuit vacated that injunction, but only on the basis that the district court "understandably" could not have applied the *Moody*-informed facial-challenge analysis, given that it was issued the same day as *Moody*. App.50a-51a, 53a. Nothing in *Fitch* turned on the *scope* of relief or how many NetChoice members benefited from the injunction. And *Fitch* certainly did not rule that the district court *must* rule on the facial challenge before it could adjudicate any as-applied challenges.

Respondent erroneously collapses NetChoice's as-applied challenges into a facial challenge. That violates *Moody*, which explained the distinctions between as-applied and facial challenges. *E.g.*, 603 U.S. at 717-18, 723-24. Consequently, *Fitch*'s mandate could not possibly be understood to collapse these distinctions either, as *Fitch* ordered a redo of only the facial-challenge to comport with *Moody*. App.53a.

In sum, the district court's injunction at issue here complied with *Fitch*'s mandate.[2] Respondent's contrary supposition is no reason to deny this Application.

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[2] And even if the district court did defy the Fifth Circuit's mandate (which it did not), that is no barrier to this Court's review. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S.

III. The Act's speech restrictions are unconstitutional as applied to NetChoice's covered members.

NetChoice is likely to prevail on its claims that the Act's speech restrictions violate the First Amendment as applied to these nine specified websites. Appl.17-37.

A. The Act's content-based coverage definition renders the Act's speech restrictions content-based and subject to strict scrutiny.

The district court correctly held that the Act's speech restrictions trigger strict scrutiny because the Act's central coverage provisions (§ 2(a)-(b)) are content-based. App.17a-23a; Appl.35-37; FIRE Br.6-9; TechNet Br.7-10; CIR Br.11-15. "'Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if' they satisfy strict scrutiny." *FSC*, 145 S. Ct. at 2302 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). The Act's content-based "digital service" definition subjects all of the Act's speech regulations to strict scrutiny, because "content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (citation omitted).

Respondent ignores the multiple content-based exceptions to the Act's coverage for "[1] news, [2] sports, [3] commerce, [4] online video games," and "[5] career development opportunities." § 3(2)(c)-(d). Similarly, Respondent fails to address the host of lower court decisions concluding that similar exceptions render similar laws

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871, 881 n.1 (1990) (noting that an earlier court of appeals "panel's ruling does not, of course, bind [the Supreme] Court," even if the ruling "was the 'law of the case'" in the courts below). Tellingly, the only Supreme Court-level authority Respondent cites for her "mandate rule" argument is a decision concerning lower court disobedience of the *Supreme Court's own* orders, not circuit-level orders. Resp.16 (citing *Dep't of Homeland Sec. v. D.V.D.*, 2025 WL 1832186, at *1 (U.S. July 3, 2025)).

content-based. *See* Appl.36 (collecting cases). If anything, Respondent's brief repeatedly acknowledges the content-based "*purpose*" of the Act's speech restrictions, which also renders those restrictions content-based. *Reed*, 576 U.S. at 165 (emphasis added); *e.g.*, Resp.6-17, 27.

None of Respondent's other arguments are persuasive. First, Respondent claims that the Act's coverage does not turn on content, but rather protecting minors from predators online. Resp.24. However, this Court cannot ignore the Act's content-based distinctions because of the government's assertedly "benign motive [or] content-neutral justification." *Reed*, 576 U.S. at 165 (cleaned up). Whatever the State's purpose in exempting particular kinds of websites, the statutory criteria require companies, Respondent, and courts to evaluate the "subject matter" of the speech displayed on the website. *Id.* at 163 (citation omitted). Whenever a statute is content-based "on its face," the Court does not then examine the statute's purpose to override that content-based discrimination. *Id.*

Second, Respondent argues that, "[i]f a content-based coverage definition automatically triggered strict scrutiny, *FSC* would have applied strict scrutiny." Resp.24. That argument misreads *FSC*'s cabined analysis limited to coverage definitions relying on *obscene content unprotected as to minors*. *See FSC*, 145 S. Ct. at 2314-15 ("Because speech that is obscene to minors *is unprotected* . . . , [Texas's] content-based restriction does not require strict scrutiny." (emphasis added)); Appl.26. Here, by contrast, the Act restricts access to "fully protected speech," *FSC*, 145 S. Ct. at 2310—as cases like *Moody* and *Packingham* recognize. Nothing in *FSC* overruled this Court's longstanding precedent about content-based restrictions of *fully protected* speech. *See*

id. at 2302, 2309-10 (reaffirming *Reed*); TechNet Br.9.

Finally, Respondent erroneously relies on cases involving the secondary-effects doctrine or time-place-and-manner restrictions. *See* Resp.22-23, 25, 30-31 (citing *Ward v. Rock Against Racism*, 491 U.S. 781 (1989); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986)). Those doctrines do not apply here because the Act directly restricts access to speech based on the content of speech on covered websites.

This Court has never applied the secondary-effects doctrine beyond physical-zoning ordinances that *incidentally* affect speech. *E.g.*, *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 448 (2002) (Kennedy, J., concurring). And governments "may not regulate the secondary effects of speech by suppressing the speech itself." *Id.* at 445. Besides, this Court has held that restrictions on accessing online speech are not analogous to zoning ordinances regulating physical property. *Reno v. ACLU*, 521 U.S. 844, 867-68 (1997). So States cannot "cyberzon[e]" the internet by imposing "restriction[s] on speech." *Id.* at 868. In any event, this Act targets speech access and dissemination, not just its effects. As a result, the "lesser scrutiny afforded regulations targeting the secondary effects of crime or declining property values has no application to [1] content-based regulations [2] targeting the primary effects of protected speech." *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 815 (2000).

Similarly, Respondent wrongly relies on the content-neutral sound-amplification guideline in *Ward*. Resp.23, 25, 31 (citing *Ward*, 491 U.S. 781). This Act's restrictions are not mere time-place-and-manner regulations. Regardless, a "requirement" of such regulations is that they "be content neutral." *Ward*, 491 U.S. at 792. Here, they are not content-neutral, for the reasons explained above.

B. The Act directly restricts access to, and dissemination of, fully protected speech.

As explained in NetChoice's Application, the Act directly restricts access to and dissemination of a "staggering amount" of fully protected speech on the nine member websites at issue, namely "billions of posts or videos." *Moody*, 603 U.S. at 719, 734; Appl.18-35; Am. Booksellers Br.4-5. And the First Amendment protects both adults' and minors' "access" to these websites, free from governmental restraint. *Packingham*, 582 U.S. at 108; LGBT Tech Br.5-8. "[F]or fully protected speech, the distinction between bans and burdens makes no difference to the level of scrutiny." *FSC*, 145 S. Ct. at 2315 n.12. Thus it does not matter whether a governmental, speech-restricting mandate is "commercially reasonable" or if private entities arguably engage in voluntary decisions similar to the government's mandates. Appl.20, 25-26. Here, the Act imposes multiple kinds of restrictions on that protected access and dissemination.

Respondent erroneously argues that *FSC* somehow upended this Court's First Amendment jurisprudence. Resp.21-23. *FSC* turned on this Court's longstanding holding that States have the "traditional power to prevent minors from accessing speech that is *obscene from their perspective*." *FSC*, 145 S. Ct. at 2036 (emphasis added). Respondent incorrectly extrapolates that narrow holding to mean that the State's power to "bar people from sexually abusing, physically assaulting, selling drugs to, sextorting, or harassing minors" gives Mississippi the power to restrict minors' and adults' access to *fully protected* speech on covered websites. Resp.21-22.

Respondent stretches *FSC* beyond its narrow holding and unique context. *See* Appl.20-21, 26, 37; TechFreedom Br.4-6; FIRE Br.16-18; LGBT Tech Br.12-13; TechNet Br.9-10; Am. Booksellers Br.6; CIR Br.16-18. *FSC* did not hold that States may

restrict all access to fully protected online speech to protect minors from potential harm. *See Brown*, 564 U.S. at 794-95; *contra* Resp.21. As explained above and in NetChoice's Application, *see supra* p.8; Appl.21-22, 26; *FSC* was limited to pornography, which is "obscene to minors." 145 S. Ct. at 2309. *FSC* held that adults could lack the First Amendment right to avoid age verification to access speech "obscene to minors" (in contrast to fully protected speech for adults *and* minors), because this unique category "is unprotected to the extent the State seeks only to verify age." *Id.* In contrast, the Act here "direct[ly] target[s]" a staggering amount of "*fully protected speech*"—for minors and adults alike. *Id.* at 2310 (emphasis added). So this case raises quite distinct issues controlled by this Court's distinct precedent.

FSC did not overrule *Brown*'s holding that minors have the "right to speak or be spoken to," or that governments lack "the power to prevent children from hearing or saying anything *without their parents' prior consent*." *Brown*, 564 U.S. at 795 n.3. Rather, *FSC* cited *Brown* approvingly. 145 S. Ct. at 2308, 2310; Appl.20-21. And in *Brown*, this Court rejected California's parental-consent requirements, in part, because "speech about violence *is not obscene*." 564 U.S. at 793 (emphasis added). The Act's parental-consent requirement in § 4(2) directly infringes on that right, regardless of Mississippi's alleged purpose for imposing it. *Contra* Resp.18-21.

As for age verification, this Court held in *FSC* that "submitting to age verification is a burden on the exercise of" the "right to access speech" protected by the First Amendment. 145 S. Ct. at 2309; *see* Appl.24-27; TPA Br.7-15 (burdens imposed by age verification); CIR Br.7-10 (same). The Act here imposes age-verification in § 4(1) as a barrier for adults and minors accessing websites containing billions of posts of

fully protected speech that can be some users' "principal sources for knowing current events." *Packingham*, 582 U.S. at 107. It is therefore unlike the pornography websites at issue in *FSC* that were dedicated to disseminating large amounts of speech *unprotected* for minors. 145 S. Ct. at 2309.

Respondent does not even attempt to argue that the government may require online services to monitor for and censor vague categories of protected speech, as § 6's monitoring-and-censorship requirements do. Appl.28-35; TechNet Br.16-17. Instead, Respondent argues the Act just compels speech or requires improvement to websites' content moderation. Resp.27-29. In either case, the State would superintend the content on covered websites. And from that role, the State would be able to engage in the kind of "informal" governmental "coercion" that this Court has rejected. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

This Court's cases protecting access to fully protected speech also distinguish Respondent's inapposite comparison to laws regulating conduct in "tattoo parlors and bars." Resp.26. Laws imposing age verification or parental consent to obtain tattoos or enter a bar are fundamentally different from laws imposing the same restrictions to access the vast quantities of constitutionally protected speech online. The former regulate *conduct* involving health risks: injecting ink into the skin and consuming alcohol. *See NetChoice, LLC v. Griffin*, 2023 WL 5660155, at *16 (W.D. Ark. Aug. 31, 2023) (rejecting similar comparison to "entering a bar or a casino" as a "weak" "analogy" when enjoining a similar law). Here, the Act directly restricts access to fully protected speech on covered websites, which is no different than restricting minors' access to bookstores, newsstands, or the videogame stores in *Brown*. Without

satisfying strict scrutiny, a State cannot regulate access to "what for many are the principal sources for knowing current events, . . . and otherwise exploring the vast realms of human thought and knowledge." *Packingham*, 582 U.S. at 107.

C. The Act's speech restrictions fail even intermediate scrutiny—and certainly fail strict scrutiny.

Respondent does not attempt to argue that the Act satisfies strict scrutiny, and her arguments that the Act satisfies intermediate scrutiny are unpersuasive. *See* Appl.18-37, CIR Br.19-21; FIRE Br.10-16. As NetChoice's Application explained, the Act's speech restrictions are not "narrowly tailored to serve a significant governmental interest." *Packingham*, 582 U.S. at 105-06 (citation omitted); *see* Appl.21-24, 26-27, 36-37. The district court correctly engaged in this careful intermediate-scrutiny analysis, in contrast to the Fifth Circuit's unexplained order. App.30a-33a.

To start, the Act's restrictions on access to, and dissemination of, fully protected speech are not "unrelated to the suppression of free speech." *FSC*, 145 S. Ct. at 2317 (citation omitted); *see* CIR Br.19-20. The Act directly restricts access to the kinds of websites that this Court has said "allow[] users to gain access to information and communicate with one another about it on any subject." *Packingham*, 582 U.S. at 107.

The Act also "burden[s] substantially more speech than is necessary." *Id.* at 106 (citation omitted); *see* Am. Booksellers Br.7-11; FIRE Br.12-15. Nothing in Respondent's brief justifies the breadth of this Act or the massive amounts of fully protected speech it restricts. Applying intermediate scrutiny, this Court has held that States must "enact[] more specific laws than" restrictions on access to "[s]ocial media" to address online harms to minors, such as "narrowly tailored laws that prohibit a sex

offender from engaging in conduct that often presages a sexual crime, like contacting a minor." *Packingham*, 582 U.S. at 107. "Specific laws of that type must be the State's first resort." *Id.* And Mississippi already *has* such laws, including laws addressing the crime of sextortion that was the impetus for this Act. *See* Appl.33-34; SCP Br.5.

IV. The other factors favor vacatur.

Respondent does not contest that "[t]he loss of First Amendment freedoms . . . constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (citation omitted). That is especially true here, where compliance with the Act would restrict Mississippi users from accessing what, for some, are the "principal sources for . . . exploring the vast realms of human thought and knowledge." *Packingham*, 582 U.S. at 107; *see* Am. Booksellers Br.7-10. Nor does Respondent contest that "nonrecoverable" compliance costs independently qualify as irreparable harm. *Ohio v. EPA*, 603 U.S. 279, 292 (2024). The undisputed record evidence demonstrates the Act requires such nonrecoverable compliance costs. Appl.38-39; *see* TechNet Br.11-12. So Respondent's quibbles about their magnitude aside, Resp.38, these compliance costs nevertheless constitute irreparable harms.

NetChoice's members operating the nine identified covered websites should not have to litigate this case facing the constant unconstitutional dilemma between: (1) complying with an unconstitutional law and expending nonrecoverable compliance costs; or (2) risking lengthy, protracted, and expensive enforcement from the State. After all, Respondent would not disclaim enforcement even while NetChoice's Application is pending. Respondent has no answer to the fact that some NetChoice members have responded to precisely this dilemma by ceasing to serve

minors altogether. *See* App.257a. Respondent claims that this unconstitutional choice is not actually a problem because the Act has not resulted in other websites (who were not beneficiaries of either preliminary injunction) restricting adults' and minors' access to protected speech. Resp.5, 39. Yet Respondent provides no evidence that those other websites are complying with the Act or why those other websites are relevant to NetChoice's as-applied challenge here.

In light of that irreparable harm, the equities weigh strongly in NetChoice's favor. The State's goals cannot support an unconstitutional law. *See NFIB v. OSHA*, 595 U.S. 109, 120 (2022) (per curiam). Nor does an injunction prevent NetChoice's covered members (or non-covered members, or even anyone else) from taking "reasonable efforts that any responsible platform would already make." *Contra* Resp.38. NetChoice's covered members continue to do so. Appl.39-40. This injunction simply prevents Respondent from enforcing the Act's unconstitutional requirements against the nine covered NetChoice-member websites.

CONCLUSION

The Fifth Circuit's unexplained stay disrupts the orderly appellate process and allows Mississippi to enforce an unconstitutional law restricting the dissemination of, and access to, vast amounts of protected speech. Seven other federal courts have recognized these dangers and enjoined similar laws. This Court should restore the status quo by vacating the stay and allowing the district court's reasoned preliminary injunction to remain in effect while the Fifth Circuit conducts proper appellate review. This Court should grant the Application.

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Respectfully submitted.

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