

No. \_\_\_\_\_

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IN THE  
Supreme Court of the United States

STUDENTS ENGAGED IN ADVANCING TEXAS, ET AL.,  
*Applicants,*

v.

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS THE TEXAS ATTORNEY GENERAL,  
*Respondent.*

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

**EMERGENCY APPLICATION  
OF STUDENTS ENGAGED IN ADVANCING TEXAS, ET AL.,  
FOR VACATUR OF THE FIFTH CIRCUIT'S STAY OF PRELIMINARY INJUNCTION**

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## **PARTIES AND RULE 29.6 STATEMENT**

Applicants are:

Students Engaged in Advancing Texas (SEAT), a Texas nonprofit corporation with IRS 501(c)(3) tax status. SEAT's mission is to mobilize young people around educational advocacy and increase youth visibility in policymaking. SEAT has no parent corporation, and no publicly held corporation owns 10% or more of its stock;

M.F., a minor resident of Texas, through his next friend, Vanessa Hernandez;  
and

Z.B., a minor resident of Texas, through her next friend, S.B.

Respondent is Ken Paxton, in his official capacity as Texas Attorney General.

## **LIST OF RELATED PROCEEDINGS**

*Students Engaged in Advancing Texas v. Paxton*, No. 1:25-cv-1662-RP (W.D. Tex. Dec. 23, 2025) (order granting preliminary injunction)

*Computer & Communications Industry Association v. Paxton*, No. 1:25-cv-01660-RP (W.D. Tex. Dec. 23, 2025) (order granting preliminary injunction)

*Students Engaged in Advancing Texas v. Paxton*, No. 25-51073 (5th Cir. June 4, 2026) (order staying preliminary injunction pending appeal)

*Computer & Communications Industry Association v. Paxton*, No. 26-50001 (5th Cir. June 4, 2026) (order staying preliminary injunction pending appeal)

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**TO THE HONORABLE SAMUEL A. ALITO, JR.,  
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED  
STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:**

Applicants respectfully request emergency relief to maintain the status quo ante, which permits minors (and adults) in Texas to access protected speech without government restrictions. Applicants request an order vacating the Fifth Circuit’s stay of the district court’s order preliminarily enjoining SB 2420, allowing the district court’s injunction to take effect pending this Court’s eventual resolution of this case on a petition for writ of certiorari from the Fifth Circuit.

**INTRODUCTION**

The Texas App Store Accountability Act (SB 2420) restricts all Texans, and presumptively bans Texas youth, from accessing speech protected by the First Amendment. Officials responsible for drafting, enforcing, and now defending SB 2420 have made no secret that the law exists “to stop” Texas youth “from accessing harmful or inappropriate content.”<sup>1</sup> Applicants in this case—a coalition of students who use mobile apps to teach other kids how to get involved in policymaking, and two teens who use apps to study, create art, and report for their student newspaper—secured an order preliminarily enjoining the law’s enforcement, averting irreparable deprivations of their First Amendment rights. But the Fifth Circuit abruptly upended the status quo when it took the extraordinary step of staying the injunction while it reviews that order. This Court should vacate the Fifth Circuit’s stay.

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<sup>1</sup> *Attorney General Ken Paxton Secures Major Victory Protecting Children Online by Requiring Age Verification and Parental Approval for Minors’ App Downloads* (June 1, 2026), <https://perma.cc/5D9V-2DBT>.

There is a significant possibility that the Court will grant certiorari. In the past three years alone, nearly forty states have introduced or passed legislation designed to stop kids from seeing “inappropriate” or “harmful” content. Recognizing that the government has no “free-floating power to restrict the ideas to which children may be exposed,” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011), the lower federal courts have largely held that these laws violate the First Amendment. But they have not done so uniformly, and courts have applied varying levels of scrutiny after reaching different conclusions as to whether and what kind of speech is regulated. Lower courts, litigants, and legislators need this Court’s guidance on this critical constitutional question.

The Fifth Circuit’s errors illustrate why this Court’s intervention is necessary. The court of appeals held that the challenged provisions regulate only commercial speech and survive intermediate scrutiny because app stores provide access to app-based media and information in exchange for money or the monetization of users’ data. But speech distributed by apps is not “commercial speech” merely because it is provided in exchange for consideration (monetary or otherwise). The Fifth Circuit’s contrary view would unravel this Court’s longstanding jurisprudence establishing that the dissemination of information and ideas is protected even if it “takes place under commercial auspices.” *Smith v. People of the State of Cal.*, 361 U.S. 147, 149–50 (1959). It would render virtually the entire internet—not to mention the distribution of every book, newspaper, magazine, movie, or record album—“commercial speech” the government could more readily ban, restrict, edit, or compel.

That is clearly wrong. The Act regulates access to undisputedly protected non-commercial content, including news and educational resources. Because it does so on the basis of content, strict scrutiny applies.

The challenged provisions cannot survive strict scrutiny—or even intermediate scrutiny. The legislative record, briefing, and a press release issued following the Fifth Circuit’s decision all confirm the Act is designed to protect children from “accessing harmful or inappropriate content,” protected or not. *Supra* note 1. That is not a valid government interest, much less a compelling one: other than adult content that Texas already regulates, speech “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 (cleaned up). The Fifth Circuit’s focus on helping parents, moreover, conflicts with this Court’s strong doubts that restricting how intermediaries “convey[] protected speech to children *just in case* their parents disapprove” is ever a “proper governmental means of aiding parental authority.” *Id.* at 802. And even if it were, the Act’s one-size-fits-all approach would *undermine* parents, like M.F.’s mother, who believe government-ordered surveillance hampers her children’s development and interferes with her discretion. Far from empowering them, the Act imposes “what the State thinks parents *ought* to want.” *Id.* at 804.

Recognizing the Act’s serious constitutional infirmities, the district court correctly enjoined the State from enforcing the challenged SB 2420 provisions. Because virtually all of the applications of these challenged provisions restrict protected speech without justification, their unconstitutional sweep is substantial,

warranting facial relief. Moreover, a statewide injunction was necessary to provide complete relief to the individual user Applicants.

Finally, the remaining preliminary injunction factors weigh heavily in Applicants' favor. Every day the law is enforced, Applicants are denied their basic rights to organize, advocate, express ideas, and discover new perspectives through the most important medium for human communication. The loss of these First Amendment rights for any period of time is undisputedly an irreparable injury. Equity and the public interest support relief because protecting First Amendment rights—and parents' rights to supervise their children as they see fit, not as the government tells them they should—is always in the public interest.

### **OPINION BELOW**

The district court's order is available at 814 F. Supp. 3d 769 and reproduced at App.14a–34a. The Fifth Circuit's stay order is unreported and reproduced at App.1a–13a.

### **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. §§ 1254(1), 1651, and 2101(f), and Supreme Court Rule 23.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS**

Pertinent constitutional and statutory provisions are reprinted at App.56a–101a.

### **STATEMENT OF THE CASE**

#### **I. Factual Background**

States nationwide have enacted laws that regulate adults' and minors' access

to online speech. Several laws have targeted apps and app stores—central fora for creating, disseminating, and accessing ideas and expression. For young people especially, mobile phones and apps are a principal medium for political advocacy, education, community, and creative expression. *Students Engaged in Advancing Texas, et al. v. Paxton* (“SEAT”), No. 1:25-cv-1662 (W.D. Tex. Oct. 16, 2025), Dkt. Nos. 6-1, 6-2, 6-3, 6-4; 7 ¶¶ 5–9; 8 ¶¶ 3–11; 9 ¶¶ 3–11. Many apps provide training grounds for citizenship. *SEAT* Dkt. Nos. 6-4; 7 ¶¶ 6, 8–9, 11–12; 9 ¶ 8. Others offer an essential medium for young people to send and receive messages. *SEAT* Dkt. Nos. 7 ¶¶ 4–9, 11–17; 9 ¶¶ 4–5. And some apps enable youth to find purpose and community. *SEAT* Dkt. Nos. 6-17; 8 ¶ 19.

App stores, mobile devices, and apps already give parents tools to monitor and tailor their children’s online experiences. *See SEAT* Dkt. Nos. 6-14 ¶ 22, 6-15 ¶ 8, 6-16 ¶ 13. App stores can require parental consent for some or all app downloads, device makers permit parents to manage children’s use of apps, *see id.*, and apps enable parents to control access to social media and other accounts, *SEAT* Dkt. Nos. 6-24, 6-25. With these tools, families are equipped to guide their children’s app usage. *See SEAT* Dkt. Nos. 6-26–29 (scientific research); 8 ¶¶ 15, 17; 10 ¶¶ 3–4.

Texas also already regulates minors’ access to content that lacks First Amendment protection. Since September 2023, HB 1181 has required age verification on websites where more than one-third of the content is sexual material harmful to minors. Tex. Civ. Prac. & Rem. Code § 129B.002(a). While this Court upheld that law, it made clear that online age-screening requirements are *always* subject to First

Amendment scrutiny because they “necessarily” burden the “right to access speech.” *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 495 (2025).

## II. Texas Senate Bill 2420 (2025)

Texas passed SB 2420 in response to concerns that children could access “stuff we don’t want our kids to see,” including “addictive and harmful content.” H.J. of Tex., 89th Leg., R.S. 3577–78 (May 8, 2025) (Reps. Bryant and Fairly), <https://perma.cc/D96L-UP95>. The Act imposes sweeping regulations on mobile app stores, defined as any website, software, or other electronic service “that distributes software applications” to mobile device users, Tex. Bus. & Com. Code § 121.002(2), and on “software application developers” that offer software to users in Texas “through an app store,” *id.* § 121.051.

The Act prohibits minors from downloading any apps or paid content within apps without parental consent. *Id.* §§ 121.021–.022. It applies only to apps users download to their mobile devices and to paid in-app purchases, not to pre-installed apps, software available through web browsers, or apps on non-mobile devices like televisions. It also exempts apps that provide users “direct access to emergency services” and those “operated by or in partnership with a nonprofit” that “develops, sponsors, or administers a standardized test used for” admission to or placement “in a postsecondary educational institution.” *Id.* § 121.022(h). These exceptions leave test-prep apps published by nonprofit test administrators—like College Board’s Bluebook app or ACT Online Prep—unregulated, yet impose compliance obligations on other test-prep nonprofits, like the Khan Academy app.

***Age-verification and parent-identification mandates.*** Before anyone in

Texas may download apps from an app store or access paid content within an app, the Act requires the store to use “a commercially reasonable method” to “verify the individual’s age category.” *Id.* § 121.021(a). If the store determines that the user is under eighteen, it must deny her access to the content until she “affiliate[s] with a parent account belonging to [her] parent or guardian.” *Id.* § 121.022(a).

To that end, app store owners must use “a commercially reasonable method” to verify that the prospective parent account belongs to an adult with “legal authority to make a decision on behalf of the minor.” *Id.* §§ 121.021(a), 121.022(b)(1)–(2). The Act does not specify what information suffices to prove legal parental authority.

***Parental-consent mandate.*** Each time teenagers seek to download an app or buy content within an already-downloaded app, they must “obtain consent” from their verified parent. *Id.* § 121.022(d)(1)–(3). That consent process requires disclosing to the parent the app’s state-mandated “age rating,” based on one of several state-defined “age categories,” as well as the “content or other elements” underlying the rating. *Id.* §§ 121.022(f)(1)(A)–(E), 121.052. Teens who cannot obtain consent are banned from accessing the app or content. *Id.* § 121.022. App stores also must share this consent information with app developers, *id.* § 121.024(1), who in turn must bar teens from accessing their apps or paid content absent consent, *id.* § 121.054.

Parents must separately consent to “each individual download or purchase sought by the minor.” *Id.* § 121.022(e)(1). They are prohibited from granting “blanket consent to authorize multiple downloads or purchases.” *Id.* § 121.026(a)(3). App stores must seek consent anew whenever there is a “material[] change[]” to the application’s

content ratings, “functionality,” or “user experience.” *Id.* §§ 121.022(g), 121.053(b).

### III. Procedural History

On October 16, 2025, Applicants sued to enjoin SB 2420. The Act threatens Applicants’ core expressive activity: SEAT uses apps to foster visibility and engagement in policymaking, including by disseminating information about proposed legislation, promoting events, and training middle- and high-school youth on civil engagement. *SEAT* Dkt. No. 7 ¶¶ 1–3, 6, 11–12. M.F. uses apps to follow news and current events, discover music, build photography skills, and prepare for debate team and other school activities. *SEAT* Dkt. No. 9 ¶¶ 1–11. Z.B. uses apps to conduct reporting for her school paper, share community updates and news stories with classmates, create and share educational content about personal finance with other teens, and study for tests and college entrance exams. *SEAT* Dkt. No. 8 ¶¶ 1–11.

The Complaint challenged the Act’s age-verification and parent-identification mandates, Tex. Bus. & Com. Code §§ 121.021, 121.022(a)–(b), 121.024(1), 121.026(b)(1)(A), 121.054(a)(1), and its parental-consent requirements, *id.* §§ 121.022(d)–(g), 121.024(2), 121.026(a)(3), 121.026(b)(1)(B), 121.053, 121.054(a)(2), 121.056(c), on the grounds that the Act restricts protected speech in violation of Applicants’ First Amendment rights and is unconstitutionally vague. *See generally SEAT* Compl. Applicants sought declaratory and injunctive relief barring Texas from enforcing those provisions on their face, or to the extent applied to certain categories of apps. *SEAT* Compl. ¶ 97a–d.

CCIA filed a complaint challenging the Act on behalf of its app store and developer members the same day. That suit challenged the same provisions, as well

as the Act’s requirements that developers assign and display age ratings to apps and each purchase available within an app. In addition to the First Amendment and vagueness arguments similar to those asserted by SEAT, CCIA argued the Act unconstitutionally burdens interstate commerce.

The district court entered a preliminary injunction on December 23, 2025. App.14a–34a. As to the SEAT Applicants, it found that SB 2420’s parental consent and age-verification requirements were content-based and subject to strict scrutiny because the record—and the State’s own admissions in the litigation—showed they were intended to “shield minors from certain speech the State deems objectionable or harmful.” App.23a–24a. It also found that the challenged provisions were content-based and subject to strict scrutiny for another independent reason: the Act’s coverage definition exempts certain categories of mobile apps depending on their subject matter, causing the challenged provisions to burden speech based “entirely on the communicative content a service provides.” App.23a (cleaned up).

The district court held that the challenged provisions failed strict scrutiny. It concluded that Texas could not show a compelling interest in preventing minors’ access to every category of speech the Act restricts, and that blanket age-verification and parental consent requirements on all apps—rather than a subset that distribute unprotected speech—were neither narrowly tailored nor the least restrictive means to achieve any legitimate interest in preventing harm to minors. App.25a–28a. The court further held that, even if intermediate scrutiny applied, the challenged provisions would still fail because “Texas has not offered any evidence connecting the

Act’s goals to its methods.” App.28a. It also held that the “materially changes” provision in § 121.053(b) is impermissibly vague. App.29a–31a.

Applying the two-step First Amendment overbreadth standard affirmed in *Moody v. NetChoice, LLC*, 603 U.S. 707, 724–25 (2024), the court held that the challenged provisions were facially invalid. It compared the challenged provisions’ “constitutional and unconstitutional applications,” and found that because the provisions “exclusively target speech, only a small portion of which falls outside First Amendment coverage,” and because the provisions’ applications to protected speech could not be justified, the vast majority of the challenged provisions’ applications were unconstitutional. App.31a–32a. Since under Texas law the facially invalid challenged provisions could not be severed from the Act’s remaining interdependent parts, the district court enjoined the Act as a whole. App.28a. It issued a similar order in CCIA’s case. App.36a–55a.

The State appealed both decisions, and the appeals were consolidated. Although the Act was slated to take effect nine days after the district court’s decision, Texas waited a month before moving to stay the preliminary injunctions pending appeal. The district court denied the State’s motion on May 6, 2026. Texas then sought the same relief from the Fifth Circuit. The court of appeals administratively stayed the preliminary injunction on May 28, 2026, and granted the State’s motion on June 4, 2026. The court concluded that Texas would likely prove the district court committed reversible error because SB 2420 “at most” regulates commercial speech, warranting intermediate scrutiny, and the law survived such scrutiny because it

advanced a “substantial interest in protecting children’s data, safety, and privacy in a digital world.” App.5a–6a.

Immediately after, Apple and Google—which would have faced penalties of up to \$10,000 per violation under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code § 17.46—announced plans to require age verification and signal sharing in Texas. Apple and Google comprise nearly all of the app store market.

### **REASONS FOR GRANTING THE APPLICATION**

This Court should grant the Application, vacate the Fifth Circuit’s order staying the district court’s preliminary injunction pending appeal, and restore the status quo protecting Texas minors’ access to constitutionally protected content and their parents’ authority to make different content decisions for their families.

Vacatur is warranted where there is a “significant possibility” that the Court will ultimately grant certiorari and reverse, and an applicant has demonstrated it will suffer irreparable harm absent relief. *Am. Trucking Ass’ns, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J.); *see also Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers) (identifying the likelihood “that four Members of the Court will consider the issue sufficiently meritorious to grant certiorari” as a “threshold consideration”). That is the case here.

#### **I. The Court Is Likely To Grant Certiorari If The Fifth Circuit Upholds The Act’s Challenged Provisions.**

##### **A. This Case Involves A Novel And Important Constitutional Question Under The First Amendment.**

If the Fifth Circuit upholds the challenged provisions, certiorari is likely, as this case presents an important question of federal law that this Court should settle.

In particular, whether a state may enact an age-verification, parent-identification, and parental-consent regime to restrict minors and adults from accessing large amounts of *fully protected* online speech—ostensibly to protect minors from purportedly harmful speech—raises important First Amendment questions that warrant this Court’s review.

The First Amendment questions implicated by this case do not affect Texans alone. Far from it. A majority of states have now adopted age-verification laws or age-based restrictions for accessing protected speech. *See, e.g.*, Dreamwidth Studios, Social Media Bill Tracker (last visited June 10, 2026), <https://perma.cc/PZ8D-6EXU> (identifying twenty-six states that have enacted age verification laws). Many other states have considered or are considering such legislation. *Id.* (identifying ninety-one proposed, enacted, or failed bills in thirty-eight states). This case is one of more than a dozen challenges to the constitutionality of such laws. Given their nationwide significance, the First Amendment questions this case raises “should be[] settled by this Court.” Sup. Ct. R. 10(c); *see also Glus v. Brooklyn E. Dist. Terminal*, 359 U.S. 231, 232 (1959) (granting certiorari to address questions that are “important and recurring”). And given the gravity of the issue, that would be true regardless of the presence or absence of a circuit split. *See, e.g., Harris v. Quinn*, 573 U.S. 616, 627 (2014) (granting certiorari “[i]n light of the important First Amendment questions these laws raise”); *Snyder v. Phelps*, 562 U.S. 443, 451 (2011) (noting that the Court granted certiorari but not addressing any split among the circuits); *United States v. Stevens*, 559 U.S. 460, 468 (2010) (same); Pet. for Writ of Certiorari at 5, *Brown v.*

*Ent. Merchs. Ass'n*, 564 U.S. 786 (2011) (No. 08-1448), 2009 WL 1430036, at \*5 (noting “lack of a split among the circuit courts”).

That is particularly true because the Fifth Circuit’s approach conflicts with this Court’s decisions in *Brown v. Entertainment Merchants Association*, 564 U.S. 786 and *Free Speech Coalition*, 606 U.S. 461, as well as *Moody*, 603 U.S. at 716, *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017), and *Reno v. ACLU*, 521 U.S. 844, 868 (1997). The Fifth Circuit held that, if SB 2420 regulates speech at all, it regulates commercial speech and is therefore subject to intermediate scrutiny under *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980). App.4a. But cases like *Moody*, *Packingham*, and *Reno* recognize that restrictions on access to online speech are regulations of *non-commercial* speech, and *Brown* reaffirmed that restrictions on minors’ access to fully protected speech are subject to strict scrutiny. “[M]inors are entitled to a significant measure of First Amendment protection.” *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212 (1975). Thus, “[e]ven where the protection of children is the object, the constitutional limits on governmental action apply.” *Brown*, 564 U.S. at 804–05. “[O]nly in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to [children].” *Erznoznik*, 422 U.S. at 213. Protected speech “cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable.” *Id.* at 213–14.

Just last year, in *Free Speech Coalition v. Paxton*, the Court considered another Texas law, HB 1181, which requires pornographic websites to verify that their users

are adults. 606 U.S. at 465. The Court upheld the age verification law as “a constitutionally permissible exercise” of the “State’s authority to prevent children from accessing sexually explicit content,” *id.* at 466, but only because it was limited to speech “obscene to minors” that receives no First Amendment protection, *id.* at 482. The Court treated the speech at issue as non-commercial, even though the law applied to “commercial websites.” *Id.* at 466. And it recognized that, when it comes to accessing protected, non-obscene speech, “submitting to age verification is a burden,” as to which strict scrutiny would apply. *Id.* at 483, 492.

SB 2420’s effect on protected speech, by contrast, is not “incidental.” *Id.* at 492. By applying intermediate scrutiny to a law directly restricting minors’ access to non-obscene speech, the Fifth Circuit’s order defies this Court’s precedent. Certiorari will be warranted if the Fifth Circuit upholds the challenged provisions.

### **B. The Fifth Circuit’s Interlocutory Order Is Inconsistent With Decisions In The Lower Courts.**

Certiorari will also be warranted if the Fifth Circuit lets the challenged provisions stand because its decision conflicts with the decisions of numerous lower courts. Plaintiffs seeking to protect their First Amendment rights have challenged many laws restricting access to platforms, applications, or online content absent parental consent,<sup>2</sup> and most of those challenges have been successful. The Fifth

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<sup>2</sup> See *Comput. & Commc’ns Indus. Ass’n v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024), *appeal filed* (5th Cir. Sept. 13, 2024); *Students Engaged in Advancing Texas v. Paxton* (“*SEAT I*”), 765 F. Supp. 3d 575 (W.D. Tex. 2025), *appeal filed* (5th Cir. Feb. 11, 2025); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024), *appeal filed* (10th Cir. Oct. 11, 2024); *NetChoice v. Murrill*, 812 F. Supp. 3d 594 (M.D. La. 2025); *NetChoice, LLC v. Griffin* (“*Griffin I*”), 2025 WL 978607 (W.D. Ark. Mar. 31, 2025);

Circuit departed from the weight of authority when it stayed the district court's injunction, applied intermediate scrutiny, and concluded that the law was likely constitutional. Compare App.4a–6a with, e.g., *Carr*, 789 F. Supp. 3d at 1223, 1234 (applying strict scrutiny, preliminarily enjoining Georgia law); *Yost*, 778 F. Supp. 3d at 955–57, 959 (same, Ohio law); *Griffin*, 2025 WL 978607, at \*10, 17 (applying strict scrutiny and permanently enjoining Arkansas law). It is likely that, by the time the Fifth Circuit issues its merits decision, at least one of the Fourth, Sixth, Tenth, and Eleventh Circuits will have affirmed a decision applying strict scrutiny and enjoining an age-based, parental-consent restriction, creating a clear circuit split as to the standard of review and the constitutionality of such restrictions.

These divisions have already begun to arise. In *Computer & Communications Industry Association v. Uthmeier*, the Eleventh Circuit confronted a Florida law restricting minors' access to certain social media platforms in considering an application for a stay of a preliminary injunction. 2025 WL 3458571, at \*1. Unlike the Fifth Circuit, the Eleventh Circuit recognized that a parental-consent law restricting minors' access to apps implicates expressive and not merely commercial

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*NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923 (S.D. Ohio 2025), *appeal filed* (6th Cir. May 13, 2025); *NetChoice v. Carr*, 789 F. Supp. 3d 1200 (N.D. Ga. 2025), *appeal filed* (11th Cir. July 16, 2025); *NetChoice, LLC v. Fitch*, 787 F. Supp. 3d 262, 268 (S.D. Miss. 2025), *stayed pending appeal*, 2025 WL 2078435 (5th Cir. July 17, 2025); *Comput. & Commc'ns Indus. Ass'n v. Uthmeier*, --- F. Supp. 3d ---, 2025 WL 1570007 (N.D. Fla. June 3, 2025), *stayed pending appeal*, 2025 WL 3458571 (11th Cir. Nov. 25, 2025); *NetChoice, LLC v. Bonta*, 770 F. Supp. 3d 1164 (N.D. Cal. 2025), *aff'd in part, vacated in part*, 170 F.4th 744 (9th Cir. 2026); *NetChoice v. Jones*, 2026 WL 561099 (E.D. Va. Feb. 27, 2026), *appeal filed* (4th Cir. Mar. 6, 2026); *NetChoice v. Griffin*, --- F. Supp. 3d ---, 2026 WL 1068565 (W.D. Ark. Apr. 20, 2026).

speech. *Id.* at \*3–4. Although it ultimately applied intermediate scrutiny and entered an order staying the preliminary injunction, it did so only because it held (for reasons that would not apply to SB 2420) that the Florida law was content-neutral. *Id.* at \*3–4, 10. Adding to the confusion, while the Fifth and Eleventh Circuits have indicated that laws of this sort survive intermediate scrutiny, other courts have held that age-based restrictions fail even under that more relaxed standard. *See Murrill*, 812 F. Supp. 3d at 648–52 (finding the Louisiana law fails under either strict or intermediate scrutiny and permanently enjoining the law); *Uthmeier*, 2025 WL 1570007, at \*14–19 (holding that the Florida law fails intermediate scrutiny); *see also Comp. & Commc’ns Indus. Ass’n*, 2025 WL 3458571, at \*13–14 (Rosenbaum, J., dissenting) (concluding the Florida law is content-based and would fail intermediate scrutiny in any event). Further divisions are likely imminent.

This case would be an excellent vehicle to resolve this confusion, as there are no disputes as to threshold issues of standing, ripeness, or mootness. Especially in light of the national significance of the questions this case poses, certiorari is likely if the Fifth Circuit ultimately upholds the challenged provisions of SB 2420.

## **II. Applicants Are Likely To Succeed On The Merits.**

This Court would also likely reverse any decision permitting Texas to enforce SB 2420. The Fifth Circuit concluded that the challenged provisions regulate, at most, commercial speech. App.4a. But strict scrutiny applies for several reasons. And the State cannot satisfy that (or any other) First Amendment standard.

**A. The Fifth Circuit Erred In Holding That The Act Regulates At Most Commercial Speech Subject To Intermediate Scrutiny.**

The district court correctly held that the Act’s blanket restraint on the dissemination of *all kinds of information*—including news, commentary, advocacy, entertainment, and everything in between—regulates *non-commercial* speech. App.22a–25a. The Fifth Circuit’s application of intermediate scrutiny on the basis that some apps are paid and others monetize data defies this Court’s repeated admonitions that profit motive alone does not transform fully protected speech into commercial speech.

Commercial speech is speech that “does *no more than* propose a commercial transaction.” *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983) (emphasis added, cleaned up). As this Court recently reaffirmed, the fact that a speaker distributes “her speech for pay” and “with an expectation of compensation” makes no difference. *303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023); *see Smith*, 361 U.S. at 150 (First Amendment protected bookstore’s distribution of books).

The Fifth Circuit’s suggestion that SB 2420 may regulate only “commercial conduct,” App.5a n.7, in the form of “[a]pp store transactions,” App.4.a, is even farther from the mark. The right to receive protected speech “would be largely ineffective if it did not include the right to engage in financial transactions that are the incidents of its exercise.” *McConnell v. FEC*, 540 U.S. 93, 251–52 (2003) (Scalia, J., dissenting in part). The Fifth Circuit’s theory would strip First Amendment protections from newspapers and bookstores because sales of newspapers and books are governed by commercial terms. *See 303 Creative*, 600 U.S. at 594, 600. And it would dilute

Applicants’ rights to access these expressive works simply because they are obtained through commercial transactions. *See Brown*, 564 U.S. at 792 n.1 (buying or renting video games is non-commercial speech)

*Brown* is dispositive. Although the State argues that the dissemination of apps is unlike selling or renting video games in *Brown* because the price of accessing apps is “data,” *Students Engaged in Advancing Texas v. Paxton* (“SEAT App.”), No. 25-51073 (5th Cir. Dec. 31, 2025), Dkt. No. 33 at 9, selling or renting video games also requires providing personal data. *See* 18 U.S.C. § 2710 (regulating disclosure of personal information by video game retailers). Even if it did not, the fact that “compensation” for content may take the form of something other than money does not make it commercial speech or conduct. *303 Creative*, 600 U.S. at 594. The data exchanged for access to app store content is no different, even if it is monetized. Restricting the terms upon which non-commercial speech may be monetized regulates non-commercial speech—not conduct or commercial speech. *See Simon & Schuster, Inc. v. N.Y. Crime Victims Bd.*, 502 U.S. 105, 108, 115–18 (1991).

The Fifth Circuit’s only asserted basis for applying intermediate rather than strict scrutiny is therefore wrong and unlikely to stand.

#### **B. The State Has Not Satisfied The First Amendment.**

It is the State’s burden to prove that the challenged provisions of SB 2420 are constitutional. *See United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 816 (2000). Strict scrutiny applies for several independent reasons, and the State—which has presented no evidence “connecting the Act’s goals to its methods,” App.28a—cannot satisfy that or any other First Amendment standard.

## 1. Strict Scrutiny Is The Appropriate Standard.

Strict scrutiny applies because the challenged provisions are justified only by reference to the content of the regulated speech. “A law can regulate the content of protected speech, and thereby trigger strict scrutiny, either ‘on its face’ or in its justification.” *Free Speech Coal.*, 606 U.S. at 482 (citation omitted). The latter category includes laws that are justified by “the direct impact that speech has on its listeners.” *Boos v. Barry*, 485 U.S. 312, 321 (1988); *accord Playboy*, 529 U.S. at 811–12. The district court correctly held that the challenged provisions are content-based under this test because “SB 2420 specifically sought to shield minors from certain speech the State deems objectionable or harmful.” App.23a–24a.

The Act’s overall premise—that minors like M.F. and Z.B. must be shielded from fully protected but supposedly inappropriate information—is focused on content. *See Ashcroft v. ACLU*, 542 U.S. 656, 670 (2004) (strict scrutiny applies to laws “designed to protect minors from viewing harmful materials”) (citing *Playboy*, 529 U.S. at 811–14). And Texas indisputably passed the Act for this reason. *See SEAT* Dkt. No. 6-5 (committee report claims the Act addresses “[g]rowing concerns” that “pervasive[]” access to apps harms “children and teens”); Dkt. No. 6-7 (bill author states the Act aims “to protect our children from inappropriate” and “dangerous content”); Dkt. Nos. 6-6, 6-10 (witnesses and supporters praised the Act for “[c]racking down” on teens’ “expos[ure]” to “inappropriate content” and “harmful material”).

The State’s admissions in this litigation confirm that overt content

justification. The State conceded in its briefing that the Act exists to shield minors from protected but supposedly “unsuitable,” “objectionable,” or potentially “harmful” information, *SEAT* Dkt. No. 28 at 19, 20, 21, 24–25; and admitted at the preliminary injunction hearing that the challenged provisions seek to “prevent minors from accessing addictive and harmful content without parental consent,” referencing social media websites and mobile gaming. App.125a:24–25, 127a:15–22. The district court found this record “support[s] the conclusion” that the Act is content-based, App.23a–24a, and that finding of government purpose is subject to deference, *see Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 687 (2021).

Recognizing the constitutional defects of its content-based justification, Texas told the Fifth Circuit that the Act was primarily justified by a desire to prevent minors from “entering contracts with app stores and developers without parental consent.” *SEAT* App. Dkt. No. 33 at 7–8. But the *first words* in the legislative history the State cites confirm *the reason* it wants to regulate those contracts is because “[r]ight now, minors can easily access addictive and harmful content without parental consent.” H.J. of Tex., 89th Leg., R.S. 3577 (Rep. Fairly). The ensuing debate focused on stopping the dissemination of “stuff we don’t want our kids to see.” *Id.* at 3578–83 (discussing how to prevent kids from accessing “age inappropriate” materials). No one *uttered* the word “contract,” much less articulated a concern for regulating them. *Id.* at 3577–90. The Act avowedly targets content, and targeting app store transactions is simply a way of restricting it.

Even if eliminating unsupervised contracts—or even unsupervised online

service contracts governing data collection and use—*were* the State’s actual justification, that would not spare the Act from strict scrutiny. Once the government announces a constitutionally impermissible basis for regulation, it can avoid the presumption of invalidity only if it can show that it “would have reached that same decision” absent the improper motive. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). It is not plausible that a legislature concerned *solely* with protecting minors from supposedly exploitative online services contracts would have passed a law applicable *only when* minors seek access to speech. That is particularly so given that Texas already gives parents a veto by permitting them to have their children disaffirm *any* of their contracts, *PAK Foods Houston, LLC v. Garcia*, 433 S.W.3d 171, 176–77 (Tex. App. 2014), and comprehensively regulates how online services may enter agreements to collect, use, sell, share, or otherwise monetize minors’ data, including by requiring parental consent, Tex. Bus. & Com. Code §§ 541.001(17), 541.001(29)(C), 541.005, 541.051(a), 541.101(b)(4), 541.105(a)(4). If Texas believed any aspect of its existing contract or data privacy laws were inadequate to prevent the exploitation of minors’ personal data through online agreements, it would have amended *those* laws. It admittedly passed SB 2420 because its real aim was to “stop” children “from accessing harmful or inappropriate content.” *Supra* note 1.

Additionally, the Act’s arbitrary, content-based exemptions—excluding apps operated by nonprofits that provide “direct access to emergency services,” “standardized test[s],” or support applications for “admission to” or placement “in a

postsecondary educational institution,” Tex. Bus. & Com. Code § 121.022(h)—mean the challenged provisions are content-based *on their face* because their application “depend[s] entirely on the communicative content” a service provides. *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015). M.F. and Z.B. face no barriers accessing the College Board’s app, but they need parental approval to play *Fortnite*, watch videos on the YouTube app, or stream music on Spotify. Even if studying for the SAT is for many Americans more useful and rewarding than playing video games, binge-watching videos, or streaming music, “these cultural and intellectual differences are not constitutional ones.” *Brown*, 564 U.S. at 796 n.4. Speech is not protected just because it passes a government “test that weighs the value of a particular category of speech against its social costs.” *Id.* at 792 (cleaned up). Apps providing purportedly mindless entertainment “are no less forms of speech than *The Divine Comedy*, and restrictions upon them must survive strict scrutiny.” *Id.* at 796 n.4.

Because the Act thus “defin[es] regulated speech by particular subject matter” and “singles out specific subject matter for differential treatment,” *Reed*, 576 U.S. at 163, 169, its every application triggers strict scrutiny, *see Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 591 U.S. 610, 619–21 (2020) (plurality opinion).

Finally, strict scrutiny also applies because the challenged provisions create a presumptively unconstitutional system of prior restraint. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67, 70–71 (1963). The Act’s overall age-verification, content-classification, and preclearance regime imposes a prior restraint by requiring app stores and developers to classify protected speech into suitable “age categories,” Tex.

Bus. & Com. Code § 121.021, and restrict how that content is disseminated. *See Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676, 678–88 (1968); *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 556 n.8 (1975). Each set of challenged provisions also independently constitutes a prior restraint. The age-verification and parent-identification mandates compel users—teens and adults—to document their age and parental authority “as a condition of engaging in protected activity.” *Minneapolis Star & Trib. Co. v. Minn. Comm’r of Rev.*, 460 U.S. 575, 586 n.9 (1983). And the parental-consent mandate adds another layer of prior restraint by establishing a state-backed “parental veto” over the information a teenager may access. *Brown*, 564 U.S. at 795 n.3. As in *Brown*, the Act’s preclearance requirement unlawfully burdens the protected speech of both teens and those (like SEAT) who wish to speak with them.

## **2. The Challenged Provisions Fail Any Level Of First Amendment Scrutiny.**

“Strict scrutiny is unforgiving.” *Free Speech Coal.*, 606 U.S. at 484. 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. *Playboy*, 529 U.S. at 813, 817. The district court correctly held that the State failed to carry its burden under this test, or even under intermediate scrutiny.

### **a. The Challenged Provisions Are Not Necessary To Achieve Any Real Compelling Interest.**

Texas has not shown that either of the Act’s asserted justifications present real compelling interests, much less that the challenged regulations’ suppression of speech is necessary to accomplish those interests. *Brown*, 564 U.S. at 799.

***Harmful materials justification.*** The State suggests it has an interest in

“protecting children from harmful materials.” *SEAT* App. Dkt. No. 33 at 10. But that interest is valid only to the extent the State restricts access to speech minors have *no* right to receive. *Brown*, 564 U.S. at 799. “[C]orrect[ing] the mix” of fully protected speech teens may access is an impermissible basis to restrict speech. *Moody*, 603 U.S. at 740. As to *unprotected* content, the State has proffered no evidence showing that minors’ access to it is an “actual problem in need of solving.” *Id.* (cleaned up). Texas *already* has a law—upheld in *Free Speech Coalition*—that requires online services to screen minors from accessing such content. Tex. Civ. Prac. & Rem. Code § 129B.002(a). Given that regulation, “it is hard to imagine” how the Act is necessary. *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 752 (2011).

Even if limiting kids’ access to protected but objectionable content were constitutional (it is not), the State has not even established that interest. The record shows “no consistent or measurable associations” between minors’ wellbeing and access to app-based media, *SEAT* Dkt. No. 6-26 at 29–30, and “no evidence establishing a cause-and-effect relationship,” *SEAT* Dkt. Nos. 6-30 ¶¶ 10–32, 34–40; 6-27; 6-29; 6-31. In fact, unrebutted evidence shows that restricting teens’ access to app-store content will, for many, do more harm than good. *See SEAT* Dkt. Nos. 9 ¶ 18; 8 ¶¶ 5, 7–8, 18–19; 6-30 ¶¶ 39–44. At any rate, strict scrutiny requires “more than anecdote and supposition.” *Playboy*, 529 U.S. at 822. The State needed to present “record evidence” that showed a purported problem was real. *FEC v. Cruz*, 596 U.S. 289, 307 (2022) (cleaned up). It presented nothing at all.

***Parental authority justification.*** The State also claims the Act helps

parents oversee their children’s online activities. *SEAT* App. Dkt. No. 33 at 1, 9–11. That may be compelling in the abstract, but *Brown* rejected the notion that it “is a proper governmental means of aiding parental authority” to “punish[] third parties for conveying protected speech to children *just in case* their parents disapprove.” 564 U.S. at 802. Parental-consent requirements do not further an interest “in aid of parental authority.” *Id.* They “impose governmental authority, subject only to a parental veto.” *Id.* at 795 n.3. Even if it were appropriate to construct a regime predicated on parental preference and consent, the Act in fact *defies* that interest as it not only overrides parents by making the State’s choices the default, *id.*, but forbids even willing parents from providing “blanket consent,” Tex. Bus. & Com. Code § 121.026(a)(3).

Texas presented no evidence showing that parents required the State’s assistance, much less in this form. In fact, the only record evidence shows the opposite. Some parents (like M.F.’s) would trust their children to access any apps available to them. *SEAT* Dkt. No. 10 ¶¶ 5, 7–9. Others might give blanket access to certain trusted app publishers with content and data practices they support. Still others may prefer to approve only news and sports apps where kids can learn about the midterm elections or watch Spurs highlights. Forcing parents to surveil their children and provide repeated consent on the State’s terms burdens young people’s rights to access content their parents deem harmless, *Brown*, 564 U.S. at 805, and undermines parents’ ability to manage their families, *SEAT* Dkt. No. 10 ¶¶ 5–6, 10.

In any event, as to either justification, the Act’s underinclusivity “raise[s]

serious doubts about whether the [State] is in fact pursuing the interest it invokes.” *Brown*, 564 U.S. at 802 (citing cases). As in *Brown*, the Act focuses on a subset of media—non-native mobile apps disseminated through app stores, and paid content within apps—but excludes native apps, free content within apps, paid content available online but not in mobile apps, and content available through physical media. It also exempts services that primarily provide access to educational content or emergency services. Tex. Bus. & Com. Code § 121.022(h)(1), (2). The same flaw pervades the State’s newly asserted contract interest. Minors accept the same contractual terms without parental consent whether they access speech through a web-based browser or an app, yet the Act regulates only one of those channels. That the Act leaves significant influences bearing on the State’s putative interest unregulated suggests that is not its interest at all.

**b. The Challenged Provisions Are Not Narrowly Tailored.**

Even if the State had shown it has compelling interests, it has not shown that the challenged provisions are the “least restrictive” means to serve those interests. App.28a (citing *Playboy*, 529 U.S. at 827).

The district court recognized that Texas “could have easily employed less restrictive means to accomplish its protective goals, such as by (1) incentivizing companies to offer voluntary content filters or application blockers, or (2) educating children and parents on the importance of using such tools.” App.26a (quoting *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1121 (9th Cir. 2024)). The State admits that app stores and developers already provide such tools “to help parents direct and

supervise children’s downloads of apps and in-app purchases.” *SEAT* App. Dkt. No. 33 at 1. And Applicants’ families use them. *See SEAT* Dkt. No. 10 ¶ 4. The State was required to *prove* that these “alternative[s] will be ineffective to achieve its goals.” *Playboy*, 529 U.S. at 816.

For the first time on appeal, Texas argued the Act burdens no more speech than necessary because “all apps require acceptance of terms of service and data collection practices” that, it claims, parents should have opportunities to review. *SEAT* App. Dkt. No. 33 at 11. But the challenged provisions are not limited to regulating contracts, commercial terms, or data practices—practices Texas already regulates. *See* Tex. Bus. & Com. Code § 541.001 *et seq.* If this were the State’s concern, it could have amended this regulation without adding new speech regulations.

**c. The Challenged Provisions Fail Even Intermediate Scrutiny**

The district court independently found that the challenged provisions could not survive intermediate scrutiny because Texas “has not offered any evidence connecting the Act[] to its methods.” App.28a. That holding was correct, and the Fifth Circuit erred in holding otherwise.

A speech restriction can survive intermediate scrutiny only if the government proves the law (1) serves a “real” and “not merely conjectural” government interest “unrelated to the suppression of free expression” and (2) “will in fact” serve that interest in “a direct and material way” (3) that is narrowly tailored to suppress no more speech “than is essential to the furtherance of that interest.” *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662–64 (1994) (cleaned up). Each of these

requirements must be established with direct evidence. *See Edenfield v. Fane*, 507 U.S. 761, 770–71 (1993).

***No evidence the challenged provisions achieve a state interest.*** For all the reasons set forth above, the State has not shown the Act serves a real interest unrelated to suppressing expression. To the contrary, the State’s primary asserted interest—preventing kids from accessing certain types of content—is directly “related to the suppression of free expression,” and thus impermissible. *Moody*, 603 U.S. at 740. And the State has no evidence that the law advances either this (impermissible) interest or its claimed interest in protecting children from agreeing to predatory contract provisions. Instead, Texas argues that intermediate scrutiny does not require specific evidence. *SEAT* App. Dkt. No. 33 at 10. That is wrong. Even intermediate scrutiny requires “reasonable factual findings supported by evidence.” *TikTok Inc. v. Garland*, 604 U.S. 56, 78 (2025) (cleaned up).

Equally fatal is the Act’s arbitrary exemption of similar or even identical media depending on whether an app is native to a device or not. While intermediate scrutiny does not impose a “freestanding underinclusiveness limitation,” *SEAT* App. Dkt. No. 33 at 12 (quoting *Free Speech Coal.*, 606 U.S. at 498), a law cannot advance the government’s interests if it “undermine[s] and counteract[s]” its goals, *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 489 (1995), or “is so pierced by exemptions and inconsistencies” that it permits the very evils it purports to prevent, *Greater New Orleans Broad. Ass’n v. United States*, 527 U.S. 173, 190 (1999). Applicants’ testimony and scientific evidence—ignored by the Fifth Circuit—show that restricting access to

apps and paid content will, for many, cause harm. App.26a (citing *SEAT* Dkt. No. 6-30 at 22–23). And unlike in *Free Speech Coalition*, Texas has no “reasonable basis for excluding” native apps or paid content available outside of apps. 606 U.S. at 498.

***No evidence of narrow tailoring.*** Even when a regulation advances a substantial government interest, “the government still ‘may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.’” *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (citing *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989)). The Act violates that rule by indiscriminately restricting access to all information published through app stores, including protected speech. For the reasons explained above, *supra* § II.B.2.a, the State cannot show that burdening all speech available through app stores is necessary to regulate the content of contracts or otherwise protect minors.

The State likewise never explains why the “less restrictive alternatives” identified above, *supra* § II.B.2.b, would not accomplish its interest. *See McCullen*, 573 U.S. at 490–96 (buffer zone statute burdened more speech than necessary when state failed to consider narrower laws adopted by other jurisdictions, or enforcing its existing laws). That failure is fatal. Texas was required to show “that it seriously undertook to address the problem with less intrusive tools readily available to it,” and that it “considered different methods that other jurisdictions have found effective.” *Id.* at 494. It has not.

### **3. Facial Relief Is Proper.**

First Amendment facial challenges are subject to a “less demanding” standard to “provide breathing room for free expression.” *Moody*, 603 U.S. at 723 (cleaned up).

A speech regulation is facially invalid if “a substantial number of [its] applications are unconstitutional, judged in relation to [its] plainly legitimate sweep.” *Id.* (cleaned up). Courts first determine a challenged law’s “full range” of applications—i.e., whether it regulates speech in some, most, or all cases. *Id.* at 726. They next decide which speech applications “violate the First Amendment,” and compare the constitutional and unconstitutional applications. *Id.* at 725. When the pertinent facts “are the same across the board” and the substantial effect of a law is to regulate protected speech without justification, the law is facially invalid. *Ams. for Prosperity*, 594 U.S. at 618–19.

Here, at the first step, *every* application of the challenged provisions “necessarily” burdens Texans’ “right to access speech” by placing the media and information contained in apps behind an age-gate. *Free Speech Coal.*, 606 U.S. at 495. App stores indisputably provide access to “a wide array of protected First Amendment activity.” *Packingham*, 582 U.S. at 105. At the second step, while a narrow subset of the content available on apps (like obscenity) may be unprotected, this Court has repeatedly rejected speech regulations that “torch a large segment” of protected speech to filter out potential unprotected materials. *Reno*, 521 U.S. at 882 (citing *Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115, 127 (1989)). This kind of prophylactic, blanket speech regulation “turns the First Amendment upside down.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255 (2002).

That prohibition applies with particular force here because many if not most of the Act’s incidental constitutional applications are irrelevant. A range of Texas

laws—from the age verification provisions of Tex. Civ. Prac. & Rem. Code § 129B.002(a), to the data privacy protections of Tex. Bus. & Com. Code § 541.001 *et seq.*, to longstanding prohibitions on obscenity, Tex. Crim. Code § 43.24, alcohol, Tex. Alc. Bev. Code § 106.03, and tobacco, Tex. Health & Safety Code § 161.082, among others—*already* prohibit providing unprotected content and illegal commodities to minors online, and app stores from exploiting their personal data without parental consent. *See City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015) (facial challenges concern applications not authorized by other laws).

The Fifth Circuit also appeared to credit the State’s argument—raised for the first time on appeal—that a reviewing court must consider the possibility that the Act *also* restricts access to apps that convey no speech. App.7a–8a n.19. This does not immunize the Act from facial invalidation. It is common sense that a law restricting how an “electronic service ... distributes software applications,” Tex. Bus. & Com. Code § 121.002(2), principally restricts the dissemination of information protected by the First Amendment. *See Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 570 (2011) (disseminating information is speech); *e.g.*, *Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 449 (2d Cir. 2001) (distributing decryption software was speech even if restriction was justified). That is *why* the State targeted them. *See* H.J. of Tex., 89th Leg., R.S. 3581–83 (explaining that targeting app stores is a means to force “over a million applications” purveying potentially objectionable material to verify age). The Court is “not required to exhibit a naiveté from which ordinary citizens are free.” *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019) (cleaned up).

*Moody* itself is not to the contrary. The facial challenge there involved the scope of online platforms’ right to moderate the third-party content that others posted to their platforms, so the platforms were required to show that each of the services covered by the challenged laws actually engaged in such editorial activity. 603 U.S. at 725–26. There is no serious question here, by contrast, that distributing and accessing apps is predominantly—if not entirely—protected First Amendment activity.

The evidence supports this conclusion. The Apple App Store, for example, distributes approximately 2,370,808 apps. See Similarweb, *iOS Apple App Store Statistics and Trends 2026* (last visited June 10, 2026), <https://perma.cc/5F2K-YHSB>. Of those, about **54.9%** alone involve games, news, music, books, entertainment, sports, education, social media, health or fitness instructions, travel information and reviews, photography, lifestyle, and reference apps like Wikipedia. See Ash Turner, *How Many Apps Are on the App Store*, BankMyCell (updated Jan. 5, 2025), <https://perma.cc/TJ5R-YKNC>. That figure excludes categories like “Business,” “Navigation,” and “Food and Drink” that include First Amendment protected apps like LinkedIn, Google Maps, and the *New York Times* Cooking and Epicurious recipe apps. *Id.*

Any doubt as to the propriety of facial relief could be allayed by simply modifying the injunction to provide facial relief from the challenged provisions “at least to the extent they are applied to restrict access to” the listed categories of apps provided in Applicants’ alternative Prayer for Relief. *SEAT* Dkt. No. 1 ¶¶ 97a, 97d.

The Court has the power to modify the “breadth of the remedy” available, *Citizens United v. FEC*, 558 U.S. 310, 331 (2010), including to order facial relief to the extent a law has certain unconstitutional applications. *See John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010) (explaining authority to provide facial relief limited to a subset of a law’s applications). This Court exercised that authority in *Americans for Prosperity*, 594 U.S. at 617–18, as well as in *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503–07 (1985) and *United States v. Grace*, 461 U.S. 171, 175, 183–84 (1983). It may do so here.<sup>3</sup>

### C. The Injunction’s Scope Is Proper.

The Fifth Circuit’s conclusion that *Trump v. CASA*, 606 U.S. 831 (2025) prohibits the district court’s injunction is also wrong. That decision is irrelevant because it involved the equitable authority conferred by the Judiciary Act of 1789, not the remedial authority the district court exercised under 42 U.S.C. § 1983. Nothing in *CASA* purported to construe § 1983, a Reconstruction statute that makes state actors liable in equity for violations of federal rights. *See CASA*, 606 U.S. at 841 n.4; *see also id.* at 868–69 (Kavanaugh, J., concurring).

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<sup>3</sup> The Act’s “material change” provision—which requires that app stores revoke minors’ access to an application whenever its content rating, “functionality,” or “user experience” undergoes a “material[] change[],” Tex. Bus. & Com. Code §§ 121.022(g), 121.053(b)—is also unconstitutionally vague. *See App.29a–31a*. The provision does not define what changes are “material,” nor what aspects of an app relate to its “functionality or user experience.” The State’s contention, adopted by the Fifth Circuit, that material changes are changes with “the capacity to influence” a parent’s decision to allow “a minor to continue to use an app,” App.10a, only introduces *more* ambiguity. Developers and app stores, which cannot know what considerations may influence some parent, will “steer far wider of the unlawful zone” and “restrict[] their conduct to that which is unquestionably safe” by broadly revoking access. *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964) (citation omitted).

Even if *CASA*'s complete relief to plaintiffs before the court standard applied, the district court's injunction satisfies it. An injunction as to just Applicants would defeat itself: app stores need to *identify* which of their users are Applicants to allow them to bypass the State's restrictions, imposing the exact gating measure Applicants sued to enjoin. *See Free Speech Coal.*, 606 U.S. at 495 (such screening "necessarily" burdens the "right to access speech"). Because there is "no way to peel off just the portion" of the challenged provisions that applies to Applicants without exposing them to the constitutional injuries the injunction exists to prevent, an indivisible remedy is necessary for the same reason an injunction against a neighborhood nuisance necessarily benefits non-plaintiff neighbors. *CASA*, 606 U.S. at 851–82 (cleaned up).

This is especially true given the nature of the speech interests at stake. Applicants have a constitutional right to engage in protected speech *with other speakers* unencumbered by unjustified government intervention. *See Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756–57 (1976); *Lamont v. Postmaster Gen.*, 381 U.S. 301, 305–07 (1965). To afford relief that secures that right, other speakers and the platforms they use—app stores, apps, and other users—must be protected as well.

### **III. SEAT Applicants Will Suffer Irreparable Harm Absent Vacatur.**

The Fifth Circuit's stay permits a sweeping speech restriction to take effect immediately, depriving millions of Texas youth of access to fora for constitutionally protected expression while this litigation proceeds. It is well-settled that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably

constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.); accord *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020). Each day SB 2420 is in force, minors are denied access to news, educational content, and platforms for creative expression. These lost opportunities for speech, learning, and participation in public discourse cannot be restored after appellate review.

Applicants are among the many suffering these irreparable harms. SEAT represents a coalition of students who seek to increase youth participation in policymaking. In the lead-up to the midterm elections, SEAT members cannot wait to engage in political advocacy and outreach until their parents approve their downloads (if they do so at all) or until they age out of the requirements. Likewise, Plaintiffs M.F., a high school student on the debate team, and Z.B., a student journalist and content creator with an audience of over 1 million teens, need to be able to follow the news, conduct research, and publish content online *now* and *in real time*—not after waiting however long for their parents to consent, and certainly not until after they turn eighteen or when final judgment is eventually entered in this case. Vacating the Fifth Circuit’s stay and restoring the district court’s injunction is necessary to prevent an ongoing, irreparable deprivation of these freedoms.

#### **IV. The Balance of Equities And The Public Interest Favor Vacatur To Protect Parental Autonomy And Texans’ Free Speech Interests.**

When the government is “the opposing party,” consideration of the balance of equities and the public interest “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Unless this Court vacates the Fifth Circuit’s stay, SEAT members and teens like M.F. and Z.B. will suffer immediate First Amendment harms. On the other side of the

ledger, Texas has no legitimate interest in the enforcement of an unconstitutional law. *See Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (enjoining enforcement of law burdening First Amendment rights “is both equitable and in the public interest”). Vacating the stay would thus “preserv[e] the status quo” that existed before Texas’s unconstitutional speech restrictions became effective. *San Diegans for Mt. Soledad Nat’l War Mem’l v. Paulson*, 548 U.S. 1301, 1304 (2006) (Kennedy, J., in chambers).

Just as critical, vacatur would restore to Texas parents *their authority* to make decisions about the types of media and information each of their children should be permitted to view and the level of monitoring they will provide. Parents’ discretion over “the care, custody, and control of their children” constitutes “perhaps the oldest of the fundamental liberty interests recognized” by our Constitution. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Texas pays lip service to this liberty and supplants it with its own judgment of what “parents ought to want.” *Brown*, 564 U.S. at 804. Vacatur is necessary to restore the balance the Constitution strikes.

## CONCLUSION

The Court should vacate the Fifth Circuit’s interlocutory order staying the district court’s injunction.

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