No. _____

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

APPENDIX TO 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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Appendix 1

United States Court of Appeals for the Fifth Circuit

No. 25-51073

United States Court of Appeals
Fifth Circuit
FILED
June 4, 2026
Lyle W. Cayce
Clerk

STUDENTS ENGAGED IN ADVANCING TEXAS; M. F., *by and through next friend* VANESSA FERNANDEZ; Z. B., *by and through next friend* S.B.,

Plaintiffs—Appellees,

versus

KEN PAXTON, *in his official capacity as the Texas Attorney General*,

Defendant—Appellant,

CONSOLIDATED WITH

No. 26-50001

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,

Plaintiff—Appellee,

versus

KEN PAXTON, *in his official capacity as Attorney General of Texas*,

Defendant—Appellant.

No. 25-51073
c/w No. 26-50001

Appeals from the United States District Court
for the Western District of Texas
USDC No. 1:25-CV-1662
USDC No. 1:25-CV-1660

PUBLISHED ORDER

Before SMITH, HAYNES, and OLDHAM, *Circuit Judges*.

PER CURIAM:[*]

The Texas Legislature enacted Senate Bill 2420[1] ("SB2420"), the App Store Accountability Act, with bipartisan support to help parents direct and supervise children's downloads of apps and in-app purchases. The Act accomplishes those goals by requiring age verification; parental consent; and age rating and content display.

The district court issued universal preliminary injunctions against SB2420 after applying strict scrutiny. The State of Texas seeks a stay pending appeal. We grant the opposed motion because Texas has met its burden under *Nken v. Holder*.[2]

Texas has made a strong showing that it is likely to succeed on the

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[*] Judge Haynes concurs in the sentence of the order granting the stay pending appeal.

[1] 89th Leg., R.S., ch. 200, TEX. GEN. LAWS 385–90, codified at TEX. BUS. & COM. CODE ch. 121. Unless indicated otherwise, all statutory citations are to the Texas Business & Commerce Code. Chapter 121 citations are to SB2420.

[2] 556 U.S. 418, 434 (2009) ("[T]hose legal principles have been distilled into consideration of four factors: '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'") (citation omitted).

merits of its claim that the district court committed several reversible errors.

First, the district court likely erred in applying strict scrutiny to significant parts, if not all, of the Act. At most, SB2420 regulates speech that "proposes a commercial transaction,"[3] which is subject to intermediate scrutiny under *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) ("*Central Hudson*").[4] App store transactions are commercial in nature.[5] After all, users browsing an app store can see a catalog of applications, obtain additional information, and download or purchase an application. App listings propose commercial transactions, regardless of whether any monetary payment is made. In fact, the "payment" for apps that are purportedly "free" is access to user data and private information.

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[3] *See Bd. of Trs. v. Fox*, 492 U.S. 469, 482 (1989) (emphasis omitted); *e.g.*, TEX. BUS. & COM. CODE § 121.022(f)(1)(D) (requiring app stores to disclose "the nature of any collection, use, or distribution of personal data that would occur because of the software application or purchase"); *id.* § 121.025 (imposing duties that include "limiting the collection and processing of personal data to the minimum amount necessary" to accomplish enumerated tasks and "transmitting personal data using industry-standard encryption protocols that ensure data integrity and confidentiality"); *id.* § 121.026(a)(1) (noting that an app store violates the Act if it "enforces a contract or a provision of a terms of service agreement against a minor that the minor entered into or agreed to without consent under Section 121.022").

[4] *See also Fox*, 492 U.S. at 476–79 (noting that "government restrictions upon commercial speech may be no more broad or no more expansive than 'necessary' to serve its substantial interests"; "refrain[ing] from imposing a least-restrictive-means requirement" on commercial speech; and clarifying that "[i]n requiring that to be 'narrowly tailored' to serve an important or substantial state interest . . . we have not insisted that there be no conceivable alternative, but only that the regulation not 'burden substantially more speech than is necessary to further the government's legitimate interests'") (citing, *inter alia*, *Cent. Hudson*, 447 U.S. at 566).

[5] *See also Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 623 (1995) ("[C]ommercial speech [enjoys] a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, and is subject to modes of regulation that might be impermissible in the realm of noncommercial expression.") (citation and internal quotation marks omitted).

Any minor who downloads an app must accept its terms of service, including agreements about how the minor's data is used. Some terms require minors to waive the right to sue by agreeing to "arbitration pr[o]visions that no child can understand."[6] Detailed user data, including that of minors, is the life-blood of the app store monetization ecosystem. Because, at most,[7] intermediate scrutiny applies to this commercial speech, Texas need only establish a "reasonable fit" between its goal and corresponding restrictions without needing to satisfy "a least-restrictive-means requirement."[8]

Second, assuming *arguendo* that we should analyze SB2420 as commercial speech, Texas has likely shown that the SB2420 survives intermediate scrutiny because the Act "advances important governmental interests unrelated to the suppression of free speech and does not burden substantially

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[6] ROA.26-50001.225–26 ("[The terms of service contracts] give permission to the tech companies to follow the child around. And date stamping moment by moment, where the child is in longitude and latitude so that [companies] can monetize that data, target[ting] them with ads. And sometimes, predators find that information and harm happens. And if harm happens, . . . the child is not allowed to sue for the harm in federal court. [Users] waive[] that right through arbitration pr[o]visons that no child can understand.").

[7] SB2420 may not regulate speech at all, given that it does not target any substantive content but instead regulates commercial conduct with an incidental relationship to speech.

[8] *See Fox*, 492 U.S. at 480–81 ("Moreover, since the State bears the burden of justifying its restrictions, it must affirmatively establish the reasonable fit we require. By declining to impose, in addition, a least-restrictive-means requirement, we take account of the difficulty of establishing with precision the point at which restrictions become more extensive than their objective requires, and provide the Legislative and Executive Branches needed leeway in a field (commercial speech) 'traditionally subject to government regulation[.]' Far from eroding the essential protections of the First Amendment, we think this disposition strengthens them. 'To require a parity of constitutional protection for commercial and non-commercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech.'") (citations omitted).

more speech than necessary to further those interests."[9] Requiring age verification, parental consent, and app-related content ratings likely directly and materially advances Texas's substantial interest in protecting children's data, safety, and privacy in a digital world. Thus, there is likely a "reasonable fit" between SB2420's methods and goals allowing parents to direct and supervise children's downloads of apps and in-app purchases.[10] That some works protected by the First Amendment may be the object of app downloads or in-app purchases does not categorically exempt them from ordinary regulations governing commercial transactions. Otherwise, any company involved in proposing a commercial transaction could trigger strict scrutiny by incidentally including speech as part of the transaction.[11] Creatively repackaging content-neutral commercial regulations as content-specific ones proposes too general a level of analysis.[12]

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[9] *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 495–96 (quoting *Turner Broad. Sys., Inc. v. FCC*, 522 U.S. 180, 189 (1997)).

[10] *See* TEX. CONST. art. 1, § 37 ("[A] parent has the responsibility to nurture and protect the parent's child and the corresponding fundamental right to exercise care, custody, and control of the parent's child, including the right to make decisions concerning the child's upbringing."); *see Ginsberg v. New York*, 390 U.S. 629, 640 (1968) (discussing the strong interest the state has in protecting children); *see also Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (recognizing parents' "fundamental interest" to direct their children's upbringing).

[11] *See Bolger v. Young Drug Prods. Corp.*, 463 U.S. 60, 67–68 (1983) ("We have made clear that advertising which 'links a product to a current public debate' is not thereby entitled to the constitutional protection afforded noncommercial speech.") (quoting *Cent. Hudson*, 447 U.S. at 563 n.5; *see also Fox*, 492 U.S. at 474–75 ("Including these home economics elements no more converted AFS' presentations into educational speech, than opening sales presentations with a prayer or a Pledge of Allegiance would convert them into religious or political speech.").

[12] *See Fox*, 492 U.S. at 482 (noting the "importan[ce]" of "being clear about the difference between commercial and noncommercial speech"). We recognize that the converse may also be true, namely that an enterprising litigant may exploit the distinction between commercial and noncommercial speech to get a more favorable level of scrutiny.

Third, the district court likely improperly deemed two exceptions[13] to the parental-consent provisions to be "coverage definitions" that would affect the scope and application of all of SB2420's provisions.[14] SB2420's emergency-services exception is not likely content-based but, instead, focuses on why the service is needed, not what is being communicated. "[E]mergency calls serve the vital purpose of protecting the safety and welfare of Americans."[15] Section 121.022(h)(1) directly addresses data and privacy concerns by requiring that the emergency services app "limit[] data collection to information" that is "collected in compliance with" the Children's Online Privacy Protect Act ("COPPA")[16] and "necessary for the provision of emergency services."[17] Users do not need to create an account to access and use the emergency service app. *Id.* § 121.022(h)(1)(C). The emergency-services exception likely does not run afoul of constitutional

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In either circumstance, courts should rightly exercise caution when determining the appropriate level of scrutiny.

[13] The two standalone exceptions, for emergency services and apps provided by an entity that develops standardized tests for use in postsecondary education, are recited in and apply only to the parental-consent provisions in section 121.022. Neither exception is located in the "definitions" in section 121.002.

[14] The district court improperly inverted its analysis. *See Free Speech Coal.*, 606 U.S. at 498 ("[U]nder intermediate scrutiny, 'the First Amendment imposes no freestanding under inclusiveness limitation' and Texas 'need not address all aspects of a problem in one fell swoop.") (quoting *TikTok Inc. v. Garland*, 604 U.S. 56, 76 (2025)); *see also United States v. Edge Broad. Co.*, 509 U.S. 418, 434 (1993) (refusing to require the government to "make progress on every front before it can make progress on any front").

[15] *Am. Ass'n of Pol. Consultants Inc. v. FCC*, 923 F.3d 159, 171 (4th Cir. 2019), *aff'd sub nom. Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610 (2020) (distinguishing "a call made for emergency purposes" while severing and holding invalid problematic aspects of a robocall restriction and government-debt exception).

[16] 15 U.S.C. § 6501 *et seq.*

[17] TEX. BUS. & COM. CODE § 121.022(h)(1)(B).

concerns.

We need not conclusively resolve the question of the other exception for an app that "is operated by or in partnership with" a regulated nonprofit organization that "develops, sponsors, or administers [] standardized test[s]." That standalone exception, which focuses on the identity of the speaker, does not necessarily reflect a content preference,[18] but rather the reality that students often need to take tests "used for purposes of admission to or class placement in a postsecondary educational institution or a program within a postsecondary educational institution." TEX. BUS. & COM. CODE § 121.022(h)(2). The speaker-based distinction appears to be content-neutral, not content-based, in discriminating among ideas or viewpoints. And section 121.022(h)(2)(B) mitigates data-privacy concerns, requiring that the non-profit "is subject to" separate laws prohibiting certain uses of student information. *E.g.*, TEX. EDUC. CODE § 32.152. In any event, that limited standalone exception can be severed consistently with SB2420's strong severability provision and severability principles,[19] because

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[18] *Cf. Barr*, 591 U.S. at 619–20 ("[T]he fact that a distinction is speaker based does not automatically render the distinction content neutral. Indeed, the Court has held that laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference.") (citations and internal quotations omitted).

[19] We do not suggest that there are any problematic provisions of SB2420 and merely follow the law's unambiguous textual severability command. ROA.26-50001.388-89; *see Barr*, 591 U.S. at 629 ("The text of the severability clause squarely covers the unconstitutional government-debt exception and requires that we sever it."); *see*, *e.g.*, *Rose v. Doctors Hosp.*, 801 S.W.2d 841, 844–45 (Tex. 1990) (equivalent).

Insofar as there may be any unconstitutional application of SB2420, the district court failed to conduct a proper facial-invalidity analysis under *Moody v. NetChoice*, 603 U.S. 707 (2024). Plaintiffs who bring facial challenges must demonstrate that "the ratio of unlawful-to-lawful applications is . . . lopsided enough to justify the strong medicine of facial invalidation." *United States v. Hansen*, 599 U.S. 762, 784 (2023) (internal quotation omitted). Put another way, Plaintiffs must show that "the law's unconstitutional applica-

the remainder of SB2420 is "capable of functioning independently" and is "fully operative as a law."[20] The district court likely erred in failing faithfully to apply the severability clause.

Fourth, SB2420's terms are likely not unconstitutionally vague.[21] The district court likely erred in concluding that SB2420 does not provide meaningful guidance about how to determine an app's age rating. Section 121.022(f)(1) requires app stores to provide certain information in obtaining parental consent, referring to ratings and content in section 121.052 that are determined by the developer. Therefore, an app store cannot "knowingly misrepresent[]" age rating or content information under section 121.026(a)(2). Instead, SB2420 contemplates "good faith" reliance on information obtained from a developer, which is not liable for an incorrect age rating if it "uses widely adopted industry standards to determine the rating and specific content" and "applies those standards consistently and in good faith." TEX. BUS. & COM. CODE § 121.056(b).

The district court also likely erred in determining that the terms "new opportunities to make a purchase" and "material[] changes" in section 121.053(b) are unconstitutionally vague.[22] For one, "a change is significant

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tions substantially outweigh its constitutional ones" to prevail in "a facial suit [] based on the First Amendment." *Moody*, 603 U.S. at 723–24. It is highly unlikely that Plaintiffs have met this "rigorous standard." *See id.* at 723.

[20] *See Barr*, 591 U.S. at 628 (noting that "it is fairly unusual for the remainder of a law not to be operative").

[21] *See Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989) ("[P]erfect clarity and precise guidance have never been required even of regulations that restrict expressive activity."); *see also Grayned v. City of Rockford*, 408 U.S. 104, 110 (1972) ("Condemned to the use of words, we can never expect mathematical certainty in our language.").

[22] Section 121.053 requires developers to provide notice to app stores before making significant changes to an app's terms of service or privacy policy.

if it" "adds new monetization features," including "new opportunities to make a purchase." This phrase's plain and ordinary language outlines its straightforward meaning, and the phrase's additional context relates to the terms of service or privacy policy of the app. The other phrase describes that a change is significant if it "materially changes the functionality or user experience" of the app. TEX. BUS. & COM. CODE § 121.053(b)(4). And in the context of updates needed for informed parental consent, a "material[] change[]" is one that has the capacity to influence whether the parent allows a minor to continue to use an app. *Id.* § 121.022(g). Courts routinely interpret "material[] change[]" in other contexts, and its meaning is well established and easily understood. Regardless, any of these phrases can be severed because the rest of SB2420 is "capable of functioning independently" and "fully operative."[23] Even so, on a first pass, we observe no legitimate justification for enjoining enforcement of the entire Act.

Fifth, the district court's universal preliminary injunctions likely "fall[] outside the bounds of a federal court's equitable authority" in barring Texas from enforcing SB2420 against anyone. *See Trump v. CASA, Inc.*, 606 U.S. 831, 847 (2025). Though we express great skepticism that Plaintiffs are entitled to relief, any such relief, if warranted, would be an injunction limited to enforcement against the Students Engaged in Advancing Texas ("SEAT") plaintiffs and any identified members of the Computer & Communications Industry Association ("CCIA"). In any event, a blanket prohibition on SB2420's enforcement is likely inappropriate. *See id.*

Texas has also made a strong showing on the other stay factors. "When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Veasey*

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[23] *See Barr*, 591 U.S. at 628; *see also Rose*, 801 S.W.2d at 844–45.

v. Abbott, 870 F.3d 387, 391 (5th Cir. 2017) (per curiam) (citations omitted). The remaining factors—the balance of equities and public interest factors—merge where an injunction affects a State. *Nken*, 556 U.S. at 435. The interests of Texas and the public interest coincide. Texas has a substantial, if not compelling, interest in protecting children, and parents need to have the necessary information to make informed choices affecting their children's upbringing.[24]

The need to protect children is intensified in the digital world, where app stores have violated existing consumer protection and child privacy laws for years, despite a federal consent decree.[25] Absent SB2420, parents' ability to protect their children is imperiled because app stores have encouraged minors to download applications and make in-app purchases without giving parents accurate content information or obtaining their informed consent. Any purported burden on app stores and developers is minimal because SB2420 requires only "commercially reasonable" verification methods and allows developers to use "widely adopted industry standards" in determining age ratings and those related to corresponding content. The balance of equities and public interest are clearcut in Texas's favor.

IT IS ORDERED that the opposed motion for stay of the universal

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[24] *See* TEX. CONST. art 1, § 37; *Ginsberg* 390 U.S. at 640 (1968); *Yoder*, 406 U.S. at 232.

[25] *See*, *e.g.*, ROA.26-50001.845–85 (Amici Curiae Brief of the National Center on Sexual Exploitation and The Digital Childhood Institute); ROA.26-50001.849 ("The consequences are substantial. As documented in public reports, thousands of children have been sextorted, targeted with illegal drugs, contacted by traffickers, exposed to dangerous viral challenges, or encouraged toward self-harm by chatbots, often inside apps that app stores present as appropriate and safe for young teenagers.") (internal footnote citations omitted).

preliminary injunctions pending appeal is GRANTED.[26]

[26] This order supersedes this panel's order granting an administrative stay.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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June 04, 2026

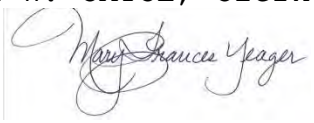
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-51073 Consolidated with No. 26-50001
Students v. Paxton
USDC No. 1:25-CV-1662
USDC No. 1:25-CV-1660

Enclosed is an order entered in these cases.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Mr. Zachary Berg
Mr. Harvey Grannis Brown Jr.
Mr. Joseph Carl Cecere Jr.
Mr. Philip Devlin
Mr. William C. Duncan
Ms. Abigail Everdell
Mr. David Morris Gossett
Mr. Liam Ross Harrell
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Mr. Edward Peter Percarpio
Mr. William Reid Pillifant
Ms. Laura Lee Prather
Ms. Catherine Lewis Robb
Mr. Adam Sieff
Mr. Jeffrey A. Stephens
Mr. Joel Thayer
Mr. Brian M. Willen
Ms. Haley B. Zoffer

Appendix **2**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

STUDENTS ENGAGED IN ADVANCING TEXAS, et al., Plaintiffs, v. KEN PAXTON, *in his official capacity as the Texas Attorney General*, Defendant.	§ § § § § § § § § § § § §	1:25-CV-1662-RP

ORDER

Before the Court is Plaintiffs Students Engaged in Advancing Texas ("SEAT"); M.F. by and through next friend, Vanessa Fernandez; and Z.B., by and through next friend, S.B.'s (collectively "Plaintiffs") Motion for Preliminary Injunction, (Dkt. 5). Defendant Ken Paxton, ("Paxton"), in his official capacity as the Texas Attorney General, filed a response, (Dkt. 28), to which Plaintiffs replied, (Dkt. 31). The Court held a hearing on December 16, 2025, which was consolidated with another case before this Court challenging the same law, *Computer & Communications Industry Association v. Paxton*, 1:25-cv-1660-RP (W. D. Tex.), by consent of all parties. (Dkt. 37). Having considered the briefing, the evidence, and the relevant law, the Court will grant the motion.

I. INTRODUCTION

These cases concern the Texas App Store Accountability Act, Senate Bill 2420 ("SB 2420" or "the Act"), Tex. Bus. & Com. Code § 121.001 et seq., which is scheduled to take effect on January 1, 2026. SB 2420 imposes age verification, parental verification, parental consent, and compelled speech on app stores and app developers. It restricts access to a vast universe of speech by requiring Texans to prove their age before downloading a mobile app or accessing paid content within those

apps and requires minors to obtain parental consent. The Act is akin to a law that would require every bookstore to verify the age of every customer at the door and, for minors, require parental consent before the child or teen could enter and again when they try to purchase a book. As set out below, the Court finds a likelihood that, when considered on the merits, SB 2420 violates the First Amendment.

While this Court finds that SB 2420 is likely unconstitutional, the Court recognizes the importance of ongoing efforts to better safeguard children when they are on their devices. Many parents, educators, researchers, and mental health professionals have raised the alarm that children are spending too much time on their phones, scrolling social media, or playing games that are often designed to encourage prolonged use, instead of interacting in real life, playing with siblings and friends, getting outside, working on schoolwork, or experiencing boredom.[1] These consequences are substantial, and the Court recognizes the broad support for protecting children when they use apps. But the means to achieve that end must be consistent with the First Amendment. However compelling the policy concerns, and however widespread the agreement that the issue must be addressed, the Court remains bound by the rule of law.

II. BACKGROUND

Texas already regulates children's access to content that lacks First Amendment protection. Since November 2023, House Bill 1181 has required commercial entities that "knowingly and intentionally publish[] or distribute[] material on an Internet website . . . more than one-third of which is sexual material harmful to minors" to "use reasonable age verification methods . . . to verify

[1] Though not made part of the record in this case, arguments about the negative health impacts of social media on youth were made in amicus briefs in a related case before this Court, *Computer & Communications Industry Association v. Paxton*, 1:25-cv-1660-RP (W.D. Tex.) (Amicus Brief by the Digital Child Institute, Dkt. 45, at 13; Amicus Brief by Bipartisan Technology Scholars, Dkt 57, at 9–17). When the Court asked for record evidence in support of these arguments at the hearing, Paxton pointed the Court to the amicus briefs (not to evidence Paxton produced on the record).

that an individual attempting to access the material is 18 years of age or older." Tex. Civ. Prac. & Rem. Code § 129B.002(a). The Supreme Court upheld the constitutionality of this provision in *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461 (2025).

Of note, this Court has enjoined House Bill 18 ("HB 18"), a law that regulates social media websites, in two other cases before it involving the same Plaintiffs: *SEAT v. Paxton*, 765 F. Supp. 3d 575 (W.D. Tex. 2025), and *CCIA v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024), appeals docketed, Nos. 24-50721, 25-50096 (5th Cir.). In those decisions, this Court found that portions of HB 18 violated the First Amendment because those provisions (1) restricted minors' access to only certain digital services providers based on their content, warranting strict scrutiny, (2) were not narrowly tailored to a compelling state interest, and (3) were appropriately invalidated facially. The Court will now turn to the background of this case and then examine Plaintiffs' constitutional challenge.

A. The Parties

Plaintiffs are Texas-based minors, who use apps, and SEAT, an organization whose members include minors, who allege that the Act violates their rights under the First and Fourteenth Amendments. (Compl., Dkt. 1, at 23−32). Plaintiff SEAT represents a coalition of Texas students—from middle school to college-age—who seek to increase youth participation in policymaking, including through connecting with coalition members through mobile apps like Instagram, Slack, GroupMe, and Signal. (Decl. of Hayden Cohen (hereinafter "Cohen Decl."), Dkt. 7, at 1−3). Plaintiff M.F. is 17 years old and uses apps and paid content to read the news, learn about internships, edit photographs, study for school, and prepare for debate team activities. (Decl. of M.F. (hereinafter "M.F. Decl."), Dkt. 9, at 1−3). M.F. uses a wide variety of apps covered by the Act including Instagram, YouTube, Pinterest, Reddit, TikTok, Khan Academy, Apple TV, and X, as well as Lightroom for photo editing, and Band and Remind for student clubs. (*See id.* at 2−5). Plaintiff Z.B. is 16 years old and a student journalist, who uses apps to socialize, follow the news, rent

movies, prepare for standardized tests, and publish original content. (Decl. of Z.B. (hereinafter "Z.B. Decl."), Dkt. 8, at 1−4). Z.B. uses apps covered by the Act such as Prime Video, Discord, the CNBC News App, as well as Instagram, Reddit, ChatGPT, Substack, and Citizen. (*See id.* at 1−6).

Paxton is the sole Defendant in this suit. He is the Attorney General of Texas, sued in his official capacity. (Compl., Dkt. 1, at 3). Paxton has authority to enforce SB 2420 because SB 2420 classifies violations as "deceptive trade practice[s]," which delegates enforcement authority to the Consumer Protection Division of the Attorney General's office. S.B. 2420 § 121.101; Tex. Bus. & Com. Code §§ 17.45(8), 17.46.

B. SB 2420

1. Coverage Definition

The Act governs "app stores" operating in Texas and "software application developers" offering apps to users in Texas through app stores. *See* Tex. Bus. & Com. Code §§ 121.002(2), 121.024, and 121.051. The Act defines "app stores" as any website, software, or other electronic service "that distributes software applications . . . to the user of a mobile device[.]" Tex. Bus. & Com. Code § 121.002(2). The Act also applies to "software application developers" who make software available to users in Texas "through an app store[.]" *Id.* § 121.051. It is not disputed that this definition includes apps providing a wide variety of information, content, and forms of expression protected by the First Amendment, such as Coursera, Spotify, YouTube, ESPN, Kindle, the Austin-American Statesman app, and the New York Times app, to name a small few.

The Act does not apply to predownloaded apps (such as Apple Music or iMessage on an iPhone). The Act also exempts applications that provide users "with direct access to emergency services," apps operated by or in partnership with "government entit[ies]" which do not require "the user to create an account," and apps "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).

2. Requirements

(a) Age Rating and Display

The Act imposes new duties on app developers and app stores to implement the State's prescribed age rating system and display this system to users. Developers must assign an age rating to every app and every feature available for in-app purchase based on four age categories:

- younger than 13 (child);
- at least 13 and younger than 16 (younger teenager);
- at least 16 and younger than 18 (older teenager); and
- at least 18 (adult).

S.B. 2420 §§ 121.052(a), 121.021(b). After an app developer has selected an age rating, the developer must provide app stores with their selected age rating and the "specific content or other elements that led to each rating[.]" § 121.052(b). App developers are subject to liability if they "knowingly misrepresent[] an age rating or reason for that rating." § 121.056(a)(2). App stores are then required to display the age rating assigned by the developer, and the specific content that led to the rating. §§ 121.023(a)–(b); 121.022(f)(1).

(b) Age Verification and Parental Consent

Before anyone in Texas may download apps from an app store, or paid content within an app, the store must 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 18, 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 are also required to use "a commercially reasonable

method" to verify that the prospective parent account in fact 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 requires parental consent before a minor "make[s] a purchase in or using" an app, *id.* § 121.022(d)(3). Consent requires providing the parent with the app's state-mandated "age rating," based on one of several 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 may not access the app or content. *Id.* App stores also must share consent information with app developers, *id.* § 121.024(1), who must prohibit 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), and are prohibited from granting "blanket consent to authorize multiple downloads or purchases[,]" *id.* § 121.026(a)(3).

(c) "Material Change" Notifications

The Act mandates 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). Parents must newly consent whenever the application's content ratings, "functionality," or "user experience" undergoes a "material[] change[]." *Id.* §§ 121.022(g), 121.053(b).

(d) Penalties

An app store that fails to enforce the State's restrictions may face penalties of up to $10,000 per violation under the Texas Deceptive Trade Practices Act. *Id.* §§ 17.01, 17.46.

3. Procedural History

Plaintiffs sued Paxton on October 16, 2025 and filed their motion for preliminary injunction on the same day. (Dkts. 1, 5). Paxton filed a response, (Dkt. 28), and Plaintiffs filed a reply in support, (Dkt. 31). The Court also considered an amicus brief filed by The Reporters Committee

for Freedom of the Press, Student Press Law Center, Advance Publications, Inc., The Associated Press, and The New York Times Company in support of Plaintiffs' motion for preliminary injunction. (Dkt. 35). The Court held a hearing on the motion for preliminary injunction on December 16, 2025, and heard arguments from both sides. (Minute Entry, Dkt. 37).

III. LEGAL STANDARD

A preliminary injunction is an extraordinary remedy requiring a movant to "unequivocally show the need for its issuance." *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1050–52 (5th Cir. 1997). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The party seeking injunctive relief carries the burden of persuasion on all four requirements. *PCI Transp. Inc. v. W. R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005).

IV. DISCUSSION

1. Plaintiffs Have Standing

Plaintiffs M.F., Z.B., and SEAT have standing to bring their claims against Paxton. Standing requires a plaintiff to show they have: "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Book People, Inc. v. Wong*, 91 F.4th 318, 328 (5th Cir. 2024). First, M.F. and Z.B. are Texas teens who respectively use and plan to continue to use apps and paid content to read news, edit photographs, study, and conduct research for school activities and to socialize, study, report stories, follow current events, and publish information about financial literacy and study skills to an audience of over 1 million teens. (M.F. Decl., Dkt. 9, at 1−3; Z.B. Decl., Dkt. 8, at 1−3). Second, M.F. and Z.B.'s ability to use apps would allegedly be curtailed or impeded by SB 2420. Finally, a

court order enjoining SB 2420 would likely redress their claimed injuries because app developers and app stores would not have to comply with SB 2420.

SEAT has associational standing. First, SEAT members are Texas teens who use mobile apps and allege SB 2420 will cause them injury. (Cohen Decl., Dkt. 7, at 1−3). Second, SEAT's challenge to SB 2420 is directly related to their purpose of increasing youth participation in policymaking in part through the use of apps. (*Id.*). Third, participation by SEAT's individual members is not necessary because their claims can be proven with evidence from representative members.

Having reviewed the briefs and supporting affidavits, the Court agrees that Plaintiffs have standing. While the Court finds standing exists, the Court notes that Paxton did not contest Plaintiffs' standing to bring suit. In fact, Paxton did not raise standing in his response brief to the motion for preliminary injunction and conceded at the hearing that Plaintiffs have standing to bring their challenge against SB 2420. Indeed, as Paxton noted at the hearing, Paxton did not file a motion to dismiss challenging standing of Plaintiffs and instead chose to file an answer. The Court will turn next to the merits of the motion for preliminary injunction.

2. Level of Scrutiny

The threshold question is what level of scrutiny applies to SB 2420. *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 637 (1994). A law cannot "single[] out specific subject matter for differential treatment," by using the "function or purpose" of speech as a stand-in for its content, without being subject to strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64, 169 (2015). "[L]aws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Id.* at 170. When the government favors some speakers over others for their content, the law must be subject to strict scrutiny. *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 619–21 (2020) (controlling plurality op.); *Reed*, 576 U.S. at 163 ("Government regulation of

speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.").

SB 2420's coverage definition supports a finding that it is content-based. SB 2420 excludes 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). As such, the challenged provisions' application "depend[s] entirely on the communicative content" a service provides. *Reed*, 576 U.S. at 164. For example, Plaintiffs would not face a barrier accessing an app from the College Board but would be unable to access an app from a newspaper. Because the Act "defin[es] regulated speech by particular subject matter" and "singles out specific subject matter for differential treatment," *id.* at 163, 169, it is subject to strict scrutiny. *See, e.g.*, *Barr*, 591 U.S. at 619–21 (law was content-based by virtue of its content-based coverage scheme). This Court similarly found that the coverage definition in HB 18 burdened speech based on its content and applied strict scrutiny as a result. *SEAT*, 765 F. Supp. 3d at 592–95; *CCIA*, 747 F. Supp. 3d at 1032.

Moreover, even if the coverage definition did not distinguish based on content, SB 2420 specifically sought to shield minors from certain speech the State deems objectionable or harmful (as Texas acknowledged at the hearing) which is a content-based justification and would still warrant strict scrutiny. *See Boos v. Barry*, 485 U.S. 312, 321 (1988) (considering a law content-based where it "regulate[d] speech due to its potential . . . impact"); *Ashcroft v. Am. C.L. Union*, 542 U.S. 656, 670 (2004) (strict scrutiny applies to laws "designed to protect minors from viewing harmful materials"). Materials from the legislative record further support the conclusion that the Act was passed for this reason. (*See* Ex. 5 to Declaration of Adam Sieff (hereinafter "Sieff Decl."), Dkt. 6-5, at 1 (committee report claims the Act addresses "growing concerns" that "pervasive[]" access to apps

harms "children and teens"); Ex. 7 to Sieff Decl., Dkt. 6-7 (bill author states the Act aims "to protect our children from inappropriate" and "dangerous content")).

Paxton argues that the targeted advertising requirements constitute a regulation on commercial speech, such that strict scrutiny does not apply. (Resp., Dkt. 28, at 17). "Commercial speech is speech 'that *proposes* a commercial transaction.'" *Serafine v. Branaman*, 810 F.3d 354, 365 (5th Cir. 2016) (quoting *N. Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, (1989)). The Act is not limited to commercial speech. And restrictions on what content can be bought and sold may be subject to strict scrutiny. *See Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 789 (2011) (law regulating sale or rental of violent video games subject to strict scrutiny). The Act does not limit its coverage to speech that proposes a commercial transaction. As described above, the Act covers a wide variety of speech, including consuming news, social media, and entertainment. And, if the legislature intended to cover only commercial speech, as Paxton suggests, it could have easily added clarifying language saying as much. "The best course, as always, is to stick with the ordinary meaning of the text that actually applies." *Corner Post, Inc. v. Bd. of Governors*, 603 U.S. 799, 817 (2024). SB 2420 makes no such distinction. Thus, SB 2420 is not a regulation on commercial speech; strict scrutiny applies.

Rather than apply strict scrutiny, Paxton suggested at the hearing that the Court could enjoin only the coverage definition, such that the law would be subject to intermediate scrutiny. This argument does not affect the Court's overall decision to enjoin the law because (1) the law is also content-based due to its focus on content harmful to minors, and (2) the law would not pass intermediate scrutiny, as described below. Paxton also noted at the hearing, however, that those exceptions were added as amendments, chosen by legislators as part of the overall balance that they struck with one another. To sever the coverage definition of the law alone would require this Court to rewrite the law and "to foresee which of many different possible ways the legislature might

respond to the constitutional objections we have found." *Randall v. Sorrell*, 548 U.S. 230, 262 (2006). The Court will decline to rewrite the statute by enjoining only its scope of coverage.

3. SB 2420 and Strict Scrutiny

Because strict scrutiny applies, Paxton must prove that SB 2420 is "the least restrictive means of achieving a compelling state interest." *Free Speech Coalition*, 606 U.S. at 484. Paxton has not proven this. First, it is far from clear that Texas has a compelling interest in preventing minors' access to every single category of speech restricted by SB 2420. State interests in protecting minors exist; for example, the State has a compelling interest in preventing minors from accessing information that facilitates child pornography or sexual abuse. *See Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) ("[T]here is a compelling interest in protecting the physical and psychological well-being of minors."). On the other hand, nothing suggests Texas's interest in preventing minors from accessing a wide variety of apps that foster protected speech (such as the Associated Press, the Wall Street Journal, Substack, or Sports Illustrated) is compelling. *See Brown*, 564 U.S. at 794 ("No doubt a State possesses legitimate power to protect children from harm, but that does not include a free-floating power to restrict the ideas to which children may be exposed.") (internal citation omitted). While SB 2420 may have some compelling applications, the categories of speech it restricts are so exceedingly overbroad that Paxton likely cannot show a compelling state interest.

Analogizing to tobacco or alcohol use, Paxton argues that Texas has an interest in regulating products and services "which pose health hazards, or which may be addictive" to minors. (Resp., Dkt. 28, at 13). However, Paxton does not cite evidence to substantiate the assertion that downloading an app of any kind without parental permission poses a health hazard to minors. That argument gestures toward Texas's interest in preventing social media addiction, but SB 2420's coverage sweeps far wider—all apps are restricted, beyond social media, as described above. So too, SB 2420 does not limit its scope to apps that use addictive algorithms designed to encourage

prolonged use, or apps that are responsible in particular for causing excessive screen time. As one example, SB 2420 restricts access to apps that seek to promote physical or mental health, such as mindfulness apps like Calm, fitness apps like Strava, or therapy providers like BetterHelp. Along those lines, Plaintiffs cite evidence that apps benefit young people and that minors' access to app-based content is not linked to mental-health problems. (Sieff Decl., Dkt. 6-30, at 22−23). Plaintiffs also attest that they use apps to advance their studies and civic engagement, as described above.

Even accepting that Texas has a compelling interest in requiring age-verification and parental permission to mitigate an overall mental- or physical-health effect of mobile phone app use—an interest which Texas has not offered evidence of at this stage—SB 2420 is not narrowly tailored to that interest. Rather, 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, [and] (2) educating children and parents on the importance of using such tools." *NetChoice, LLC v. Bonta*, No. 23-2969, 113 F.4th 1101, 1121 (9th Cir. Aug. 16, 2024); *see also, e.g.*, *SEAT*, 765 F. Supp. 3d at 696, 698−99; *CCIA*, 747 F. Supp. 3d at 1036−37. In this case, one less restrictive means than SB 2420 (as Paxton acknowledged at the hearing) would have been to narrowly target regulations toward apps that the State demonstrates have specific addictive qualities. To the state interest of preventing minors from accessing harmful material, Texas has existing laws requiring age-verification for digital services providers containing one-third or more sexual material harmful to minors. Tex. Civ. Prac. & Rem. Code § 129B.002(a). Paxton has not shown that methods employed by SB 2420—broadly restricting app downloads and content within apps, with few content-based exceptions—are necessary to prevent minors from accessing the subset of apps which contain harmful material. Because it restricts almost all apps and content within apps, SB 2420 does not employ "the least restrictive means" to stop minors from accessing harmful material.

See United States v. Playboy Ent. Grp., 529 U.S. 803, 813 (2000) (quoting *Sable Commc'ns of Cal., Inc.*, 492 U.S. at 126).

Also problematically, the law is under- and over-inclusive. That a law "is wildly underinclusive when judged against its asserted justification . . . is alone enough to defeat it." *Brown*, 564 U.S. at 802. The law is under-inclusive: SB 2420 specifically cuts teenagers off from wide swaths of the critical "democratic forum[] of the Internet" even though the same content offered via apps remains available to minors via pre-downloaded apps like Safari (or in stores). *Reno v. Am. C.L. Union*, 521 U.S. 844, 868 (1997). The law is also over-inclusive: its attempt to block children from accessing harmful content on select apps, Texas also prohibits minors from participating in the democratic exchange of views online by curtailing their access to all apps.

So too, Texas offers no evidence that even some or most of the apps covered cause mental- or physical-health detriments for youth. Paxton gestures generally to the impacts of social media on youth, (Resp., Dkt. 28, at 15), and calls the apps at issue a "health hazard," (*id.* at 13). At the hearing, Paxton suggested, too, that the interest underlying the law was mitigating the impact of excessive phone use and overall screen time, algorithmic targeting, and artificial intelligence on youth users of social media. But nothing in the record suggests, for instance, that teens suffer from mental health disorders due to using an app for their debate team preparation (as Plaintiff M.F. does), reading the news on CNBC (as Plaintiff Z.B. does) or the New York Times, or accessing e-books via Kindle, even though those apps are age-restricted and subject to parental override under the Act in the same way as social media. Because it bans minors from downloading apps and content from all apps, not, for example, a narrowly tailored subset of apps deemed harmful or addictive based on evidence, the law is more over- and under- inclusive than HB 18, which this Court previously enjoined. *SEAT*, 765 F. Supp. 3d at 597; *CCIA*, 747 F. Supp. 3d at 1036–37.

In sum, SB 2420 fails strict scrutiny. Even accepting that Texas could pass legislation to counter harmful effects of social media use on minors' mental or physical health, Paxton has not demonstrated that age-screening everyone in Texas and banning minors from accessing app store content without individualized parental consent is the least restrictive method to eliminate that harm. *Playboy*, 529 U.S. at 827.

While not at issue, the Court briefly addresses the Act's scrutiny under intermediate scrutiny. 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," (2) "will in fact" serve that interest in "a direct and material way," and the restriction on First Amendment freedoms is not greater than is "essential to the furtherance of that interest." *Turner Broad. Sys., Inc.*, 512 U.S. at 662–64 (citation omitted). On the current record, where Texas has not offered any evidence connecting the Act's goals to its methods, the Court finds that SB 2420 would fail intermediate scrutiny as well.

Finally, the Court finds that the provisions cannot be severed from one another. Texas laws cannot be severed if "all the provisions are connected in subject-matter, dependent on each other, operating together for the same purpose, or otherwise so connected in meaning that it cannot be presumed the legislature would have passed the one without the other." *Builder Recovery Servs., LLC v. Town of Westlake*, 650 S.W.3d 499, 507 (Tex. 2022) (cleaned up); *Villas v. City of Farmers Branch*, 726 F.3d 524, 537 (5th Cir. 2013) (holding that state law applies when determining whether a state statute is severable). That is the case here. For example, the parental-consent provisions could not operate without the age-verification requirements, and requiring age-verification without parental override would not achieve the Act's ends of limiting minors' access to apps. The Court finds the statute not severable.

4. Vagueness

In addition to their First Amendment challenge, Plaintiffs argue that provisions of SB 2420 are void for vagueness. (Mot. Prelim. Inj., Dkt. 5, at 26−27). "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). "A law is unconstitutionally vague if it (1) fails to provide those targeted by the statute a reasonable opportunity to know what conduct is prohibited, or (2) is so indefinite that it allows arbitrary and discriminatory enforcement." *McClelland v. Katy Indep. Sch. Dist.*, 63 F.4th 996, 1013 (5th Cir.), *cert. denied* 144 S. Ct. 348 (2023). "A regulation is void for vagueness when it is so unclear that people 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Id.* (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)). "The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982). The Supreme Court has "expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less

severe." *Id.* at 498–99. However, if "the law interferes with the right of free speech or of association, a more stringent vagueness test should apply." *Id.* at 499.

The Act requires app developers to provide notice of "any significant change to the terms of service or privacy policy." § 121.053(a). A change is significant if it:

1. changes the type or category of personal data collected, stored, or shared by the developer;

2. affects or changes the rating assigned to the software application under Section 121.052 or the content or elements that led to that rating;

3. adds new monetization features to the software application, including: (A) new opportunities to make a purchase in or using the software application; or (B) new advertisements in the software application; or

4. materially changes the functionality or user experience of the software application.

§ 121.053(b). Plaintiffs argue that the Act fails to define "material[] changes" and does not explain what aspects of an app relate to its "functionality or user experience." § 121.053(b). As the law stands, Paxton could seek to hold an app developer liable for violating this provision, for example, for each new song added to Apple Music or, as a less draconian example, when a new category of content is made available (e.g., when Spotify added podcasts alongside music). Both scenarios are plausible, so the argument goes.

The Court agrees that this provision is unconstitutionally vague. Without definitions and standards, the spectrum of interpretations is vast and could lead to selective or disparate enforcement. *See NetChoice v. Carr*, 789 F. Supp. 3d 1200, 1231 (N.D. Ga. 2025). The provision also likely incentivizes over-censorship, as app stores may broadly revoke access to avoid liability and steer "wide[] of the unlawful zone," which further threatens to restrain speech. *See Counterman v. Colorado*, 600 U.S. 66, 77−78 (2023) (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)). Without

proper guidance, the provision "interferes with the right of free speech" in a way that is constitutionally unacceptable and must be enjoined. *Vill. of Hoffman*, 455 U.S. at 499.

5. Facial Invalidity

As the next step in the analysis, this Court must determine whether the law is facially invalid. Even if SB 2420 is a content-based regulation and fails strict scrutiny, it does not follow as a matter of course that the law is facially invalid. In the First Amendment context, facial challenges can only succeed if litigants show that "a substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021) (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010)). So, a law regulating First Amendment activity may only be struck down in its entirety if its "unconstitutional applications substantially outweigh its constitutional ones." *Moody v. NetChoice, LLC*, 603 U.S. 707, 724 (2024).

Moody, including the majority opinion and all four concurrences, emphasized that courts should not treat facial challenges lightly, even in the First Amendment context. It clarified that courts should "address the full range of activities the laws cover and measure the constitutional against the unconstitutional applications." *Id.* That analysis requires a two-step process. First, courts must "assess the state laws' scope" and ask, "What activities, by what actors, do the laws prohibit or otherwise regulate?" *Id.* Second, a court must "decide which of the laws' applications violate the First Amendment, and to measure them against the rest." *Id.* at 725. Only after making these inquiries can a court determine if a law's "unconstitutional applications substantially outweigh its constitutional ones." *Id.* at 724. The test boils down to a comparison between the law's constitutional and unconstitutional applications. *See United States v. Edge Broad. Co.*, 509 U.S. 418, 430 (1993) ("[T]he validity of [a] regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interest in an individual case.") (quoting *Ward*, 491 U.S. at 801); *NetChoice, LLC v. Bonta*, No. 23-2969, 2024 WL 3838423, at

*8 (9th Cir. Aug. 16, 2024) (slip op.) (affirming facial challenge where strict scrutiny regulation "raises the same First Amendment issues" "in every application to a covered business"); *Stevens*, 559 U.S. at 473 n.3 (noting that overbroad law was facially invalid).

Here, the requirements exclusively target speech, only a small portion of which falls outside First Amendment coverage. For example, child pornography does not receive First Amendment protection. *See New York v. Ferber*, 458 U.S. 747, 765 (1982). But, the analysis of SB 2420's facial validity looks to its applications where it "actually authorizes or prohibits conduct," not applications that are already covered by other laws. *See City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015); *see also Spirit Aerosystems, Inc. v. Paxton*, 142 F.4th 278, 286–87 (5th Cir. 2025). Texas already restricts harmful online content for minors, requiring commercial entities publishing online content to monitor whether one-third or more of their content is sexual material harmful to minors and, if so, to age-verify users. *Free Speech Coalition, Inc.*, 606 U.S. at 461. Thus, only in the vast minority of applications would SB 2420 have a constitutional application to unprotected speech not addressed by other laws. Because SB 2420 is unconstitutional in the vast majority of its applications, it is properly facially enjoined.

6. Prior Restraints

Separate from their other arguments, Plaintiffs argue that the challenged restrictions are unconstitutional because they impose a "system of prior restraint." (Mot. Prelim. Inj., Dkt. 5, at 16–18). Finding the challenged provisions invalid under strict scrutiny, and finding the "material change" provision unconstitutionally vague, the Court need not reach the issue.

7. Remaining Preliminary Injunction Factors

Plaintiffs show that they will suffer irreparable injury in the absence of an injunction. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (quoting *Elrod v.*

Burns, 427 U.S. 347, 373 (1976)). Plaintiffs have submitted declarations attesting to their chilled speech because of SB 2420, which suffices to show irreparable harm. Plaintiffs describe how they cannot use a myriad of apps without parental permission, and how SB 2420 frustrates their speech.

The balance of equities and public interest follow likelihood of success. These last two factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). "[I]njunctions protecting First Amendment freedoms are always in the public interest." *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013) (internal citation omitted). Because the Court has found that Plaintiffs have shown a substantial likelihood of success on the merits of their First Amendment claims, the Court finds that an injunction is in the public interest. *See id.*; *see also, e.g., Book People, Inc.*, 91 F.4th at 341 ("Because Plaintiffs are likely to succeed on the merits of their First Amendment claim, the State and the public won't be injured by an injunction of a statute that likely violates the First Amendment.").

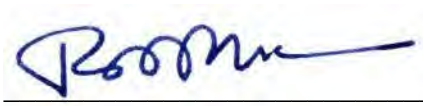
V. CONCLUSION

Plaintiffs have shown that SB 2420 is a content-based statute and is therefore subject to strict scrutiny. Plaintiffs have carried their burden to demonstrate that the law's restrictions on speech fail strict scrutiny and should be facially invalidated. Because Plaintiffs also show that the remaining equitable factors weigh in their favor, the Court preliminarily enjoins Paxton from enforcing those provisions.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Preliminary Injunction, (Dkt. 5), is **GRANTED**.

IT IS FURTHER ORDERED that Defendant Ken Paxton, in his official capacity as Attorney General of Texas, including his officers, officials, agents, employees, and any other persons or entities acting on his behalf, is preliminarily **ENJOINED** from taking any action to implement or enforce Tex. Bus. & Com. Code §§ 121.021, 121.022(a)-(b), 121.022(d)-(g), 121.024, 121.026(a)(3), 121.026(b), 121.053, 121.054, and 121.056(c).

SIGNED on December 23, 2025.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Appendix **3**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, Plaintiff, v. KEN PAXTON, *in his official capacity as the Texas Attorney General*, Defendant.	§ § § § § § § § § § §	1:25-CV-1660-RP

ORDER

Before the Court is Plaintiff Computer & Communications Industry Association's ("CCIA") Motion for Preliminary Injunction, (Dkt. 15). Defendant Ken Paxton ("Paxton") in his official capacity as the Texas Attorney General, filed a response, (Dkt. 17), to which CCIA replied, (Dkt. 20). The Court held a hearing on December 16, 2025, which was consolidated with another case before this Court challenging the same law, *Students Engaged in Advancing Texas et al v. Paxton*, 1:25-cv-1662 (W.D. Tex. 2025). (Minute Entry, Dkt. 64). Having considered the briefing, the evidence, and the relevant law, the Court will grant the motion.

I. INTRODUCTION

These cases concern the Texas App Store Accountability Act, Senate Bill 2420 ("SB 2420" or "the Act"), Tex. Bus. & Com. Code § 121.001 et seq., which is scheduled to take effect on January 1, 2026. SB 2420 imposes age verification, parental verification, parental consent, and compelled speech on app stores and app developers. It restricts access to a vast universe of speech by requiring Texans to prove their age before downloading a mobile app or accessing paid content within those apps and requires minors to obtain parental consent. The Act is akin to a law that would require every bookstore to verify the age of every customer at the door and, for minors, require parental

consent before the child or teen could enter and again when they try to purchase a book. As set out below, the Court finds a likelihood that, when considered on the merits, SB 2420 violates the First Amendment.

While this Court finds that SB 2420 is more likely than not unconstitutional, the Court recognizes the importance of ongoing efforts to better safeguard children when they are on their devices. Many parents, educators, researchers, and mental health professionals have sounded the alarm that children are spending too much time on their phones, scrolling social media, or playing games that are often designed to encourage prolonged use, instead of interacting in real life, playing with siblings and friends, getting outside, working on schoolwork, or experiencing boredom.[1] Second, an amicus curiae brief filed by Professor Meg Leta Jones and Joel Thayer pointed to children being exposed to content that can be harmful "and, in many cases, catastrophic: suicides following chatbot interactions, sexual exploitation on 'child-safe' platforms, algorithmic spirals into self-harm content, and gaming environments designed to mimic addictive gambling for minors." (Amicus Curiae Brief of Bipartisan Technology Scholars, Dkt. 57, at 6–7). Finally, children may be subjected to unlawful data-collection practices when apps collect sensitive data about them. (*See* Amici Curiae Brief of the National Center on Sexual Exploitation and the Digital Childhood Institute, Dkt. 45, at 6, 7, 14).[2] These consequences are substantial, and the Court recognizes the broad support for protecting children when they use apps. But the means to achieve that end must be consistent with the First Amendment. However compelling the policy concerns, and however

[1] According to the Surgeon General, up to 95% of youth ages 13–17 use social media apps, with more than a third using them "almost constantly." He warned that "there are ample indicators that social media can also have a profound risk of harm to the mental health and well being of children and adolescents." (Amicus Curiae Brief of Bipartisan Technology Scholars, Dkt. 57, at 8 (quoting U.S. Dep't of Health & Hum. Servs., *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* (2023)).

[2] At no point has Paxton cited these arguments as the State's interest and rationale for SB 2420. During the hearing, Paxton provided research findings about the impact of phones on children and teens but did not identify any of those impacts as the basis for the Act. The concerns discussed by the Court instead were offered in briefs filed by non-party amici.

widespread the agreement that the issue must be addressed, the Court remains bound by the rule of law.

II. BACKGROUND

Texas already regulates children's access to content that lacks First Amendment protection. Since November 2023, House Bill 1181 has required commercial entities that "knowingly and intentionally publish[] or distribute[] material on an Internet website . . . more than one-third of which is sexual material harmful to minors" to "use reasonable age verification methods . . . to verify that an individual attempting to access the material is 18 years of age or older." Tex. Civ. Prac. & Rem. Code § 129B.002(a). The Supreme Court upheld the constitutionality of this provision in *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461 (2025).

Of note, this Court has enjoined House Bill 18 ("HB 18"), a law that regulates social media websites, in two other cases before it involving the same plaintiffs: *SEAT v. Paxton*, 765 F. Supp. 3d 575 (W.D. Tex. 2025), and *CCIA v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024), appeals docketed, Nos. 24-50721, 25-50096 (5th Cir.). In those decisions, this Court found that portions of HB 18 violated the First Amendment because those provisions (1) restricted minors' access to only certain digital services providers based on their content, warranting strict scrutiny, (2) were not narrowly tailored to a compelling state interest, and (3) were appropriately invalidated facially.

The Court will now turn to the background of this case and then examine the constitutional challenge brought by CCIA.

A. The Parties

Plaintiff CCIA is a nonprofit organization that "promote[s] open markets, open systems, and open networks." (Compl., Dkt. 1, at 6). Its members include operators of app stores (like

Google, Apple, and Amazon) and developers of mobile apps (like YouTube, Audible, Apple TV, IMDB, and Goodreads), all of which are covered by the Act. (*Id.* at 2).

Paxton is the sole defendant in this suit. He is the Attorney General of Texas, sued in his official capacity. (Compl., Dkt. 1, at 6). Paxton has authority to enforce SB 2420 because SB 2420 classifies violations as "deceptive trade practice[s]," which delegates enforcement authority to the Consumer Protection Division of the Attorney General's office. S.B. 2420 § 121.101; Tex. Bus. & Com. Code §§ 17.45(8), 17.46.

B. SB 2420

1. Coverage Definition

The Act governs "app stores" operating in Texas and "software application developers" offering apps to users in Texas through app stores. *See* Tex. Bus. & Com. Code §§ 121.002(2), 121.024, and 121.051. The Act defines "app stores" as any website, software, or other electronic service "that distributes software applications … to the user of a mobile device[.]" Tex. Bus. & Com. Code § 121.002(2). The Act also applies to "software application developers" who make software available to users in Texas "through an app store[.]" *Id.* § 121.051. It is not disputed that this definition includes apps providing a wide variety of information, content, and forms of expression protected by the First Amendment, such as Coursera, Spotify, YouTube, ESPN, Kindle, the Austin-American Statesman app, and the New York Times app, to name a small few.

The Act does not apply to predownloaded apps (such as Apple Music or iMessage on an iPhone). The Act also exempts applications that provide users "with direct access to emergency services," apps operated by or in partnership with "government entit[ies]" which do not require "the user to create an account," and apps "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).

2. Requirements

(a) Age Rating and Display

App stores have voluntarily adopted policies to ascribe age ratings for apps based on their content. (Schruers Decl., Dkt. 15-1, at 19). Apple requires developers to complete a questionnaire about an app's content themes and sets an age rating using its own rating system. *Set an app age rating*, Apple, https://developer.apple.com/help/app-store-connect/manage-app-information/set-an-app-age-rating/ (last visited Dec. 18, 2025). Google age ratings are the responsibility of app developers and the International Age Rating Coalition. (Bye Decl., Dkt. 15-1, at 44). Amazon "assign[s] a summary maturity rating to your app" based on information provided by the developer and its own review. *App Submission FAQ*, Amazon.com, https://developer.amazon.com/docs/app-submission/faq-submission.html (last visited Dec. 18, 2025).

The Act imposes new duties on app developers and app stores to implement the State's prescribed age rating system and display this system to users. Developers must assign an age rating to every app and every feature available for in-app purchase based on four age categories:

- younger than 13 (child);
- at least 13 and younger than 16 (younger teenager);
- at least 16 and younger than 18 (older teenager); and
- at least 18 (adult).

S.B. 2420 §§ 121.052(a), 121.021(b). The Act provides no guidance to app developers about how to assign an age rating. After an app developer has selected an age rating, the developer must provide app stores with their selected age rating and the "specific content or other elements that led to each rating[.]" § 121.052(b). App developers are subject to liability if they "knowingly misrepresent[] an age rating or reason for that rating." § 121.056(a)(2). App stores are then required to display the age

rating assigned by the developer, and the specific content that led to the rating. §§ 121.023(a)–(b); 121.022(f)(1).

(b) Age Verification and Parental Consent

Before anyone in Texas may download apps from an app store, or paid content within an app, the store must 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 18, 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 are also required to use "a commercially reasonable method" to verify that the prospective parent account in fact 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 requires parental consent before a minor "make[s] a purchase in or using" an app, *id.* § 121.022(d)(3). Consent requires providing the parent with the app's state-mandated "age rating," based on one of several 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 may not access the app or content. *Id.* App stores also must share consent information with app developers, *id.* § 121.024(1), who must prohibit 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), and are prohibited from granting "blanket consent to authorize multiple downloads or purchases[,]" *id.* § 121.026(a)(3).

(c) "Material Change" Notifications

The Act mandates 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). Parents must newly consent whenever the application's

content ratings, "functionality," or "user experience" undergoes a "material[] change[]." *Id.* §§ 121.022(g), 121.053(b).

(d) Penalties

An app store that fails to enforce the State's restrictions may face penalties of up to $10,000 per violation under the Texas Deceptive Trade Practices Act. *Id.* §§ 17.01, 17.46.

3. Procedural History

CCIA sued Paxton on October 16, 2025, and, on the same day, filed a motion for leave to file a motion for preliminary injunction that exceeded page limits. (Dkts. 1, 7). The motion for preliminary injunction was docketed on October 23, 2025, (Dkt. 15), followed by Paxton's response, (Dkt. 17), and CCIA's reply in support, (Dkt. 20). The Court held a hearing on CCIA's motion for preliminary injunction on December 16, 2025, and heard arguments from both sides. (Minute Entry, Dkt. 64).

The Court also considered amici briefs from the following organizations:

- ACT The App Association in support of CCIA's motion for preliminary injunction, (Dkt. 43);
- National Retail Federation and Texas Retailers Association in support of CCIA's motion for preliminary injunction, (Dkt. 44);
- Digital Childhood Institute and National Center on Sexual Exploitation in opposition to CCIA's motion for preliminary injunction, (Dkt. 45);
- Chamber of Progress in support of CCIA's motion for preliminary injunction, (Dkt. 54);
- The Reporters Committee for Freedom of the Press, Student Press Law Center, Advance Publications, Inc., The Associated Press, The New York Times Company in support of CCIA's motion for preliminary injunction, (Dkt. 55)

- Digital Childhood Alliance in opposition to CCIA's motion for preliminary injunction, (Dkt. 56);
- Bipartisan Technology Scholars in opposition to CCIA's motion for preliminary injunction, (Dkt. 57); and
- Coalition for a Competitive Mobile Experience in opposition to CCIA's motion for preliminary injunction, (Dkt. 59).

The Court held a hearing on the motion for preliminary injunction on December 16, 2025, and heard arguments from both sides. (Minute Entry, Dkt. 64).

III. LEGAL STANDARD

A preliminary injunction is an extraordinary remedy requiring a movant to "unequivocally show the need for its issuance." *Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1050–52 (5th Cir. 1997). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The party seeking injunctive relief carries the burden of persuasion on all four requirements. *PCI Transp. Inc. v. W. R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005).

IV. DISCUSSION

1. CCIA Has Standing

CCIA has associational standing to bring their claims against Paxton. To demonstrate associational standing, CCIA must satisfy three elements: "(1) the association's members would independently meet the Article III standing requirements; (2) the interests the association seeks to protect are germane to the purpose of the organization; and (3) neither the claim asserted nor the relief requested requires participation of individual members." *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006). First, CCIA members have standing as "the object[s]" of SB 2420's

regulation and face substantial liability. *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025). Second, challenging SB 2420 is germane to CCIA's mission to "promote[] open markets, open systems, and open networks, and advocate[] for the interests of the world's leading providers of technology products and services[.]" (Schruers Decl., Dkt. 15-1, at 10, 30). Third, CCIA members' individual participation is unnecessary because, for example, the verification and consent requirements burden speech across all covered app stores in the same ways and their claims "can be proven by evidence from representative injured members." (*Id.* at 10−11, 30); *see, e.g., NetChoice v. Fitch*, 134 F.4th 799, 804 (5th Cir. 2025) (finding NetChoice had associational standing to challenge Mississippi law regulating its social-media members); *CCIA*, 747 F. Supp. 3d at 1029 (finding CCIA had associational standing to challenge similar Texas statute). Having satisfied the requirements of associational standing, CCIA has standing to raise its claims.

Having reviewed the briefs and supporting affidavits, the Court agrees that CCIA has standing. While the Court finds standing exists, the Court notes that Paxton did not contest CCIA's standing to bring suit. In fact, Paxton did not raise standing in his response brief to the motion for preliminary injunction and conceded at the hearing that CCIA has standing to bring its challenge against SB 2420. Indeed, as Paxton noted at the hearing, Paxton did not file a motion to dismiss challenging standing of CCIA and instead chose to file an answer. The Court will turn next to the merits of the motion for preliminary injunction.

2. Level of Scrutiny

The threshold question is what level of scrutiny applies to SB 2420. *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 637 (1994). A law cannot "single[] out specific subject matter for differential treatment," by using the "function or purpose" of speech as a stand-in for its content, without being subject to strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64, 169 (2015). "[L]aws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a

content preference." *Id.* at 170. When the government favors some speakers over others for their content, the law must be subject to strict scrutiny. *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 619–21 (2020) (controlling plurality op.); *Reed*, 576 U.S. at 163 ("Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.").

SB 2420's coverage definition supports a finding that it is content-based. SB 2420 excludes 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). As such, the challenged provisions' application "depend[s] entirely on the communicative content" a service provides. *Reed*, 576 U.S. at 164. For example, children would not face a barrier accessing an app from the College Board and would be unable to access an app from a newspaper. Because the Act "defin[es] regulated speech by particular subject matter" and "singles out specific subject matter for differential treatment," *id.* at 163, 169, it is subject to strict scrutiny. *See, e.g.*, *Barr*, 591 U.S. at 619−21 (law was content-based by virtue of its content-based coverage scheme). This Court similarly found that the coverage definition in HB 18 burdened speech based on its content and applied strict scrutiny as a result. *SEAT*, 765 F. Supp. 3d at 592−95; *CCIA*, 747 F. Supp. 3d at 1032.

Moreover, even if the coverage definition did not distinguish based on content, SB 2420 specifically sought to shield minors from certain speech the State deems objectionable or harmful (as Texas acknowledged at the hearing) which is a content-based justification and would still warrant strict scrutiny. *See Boos v. Barry*, 485 U.S. 312, 321 (1988) (considering a law content-based where it "regulate[d] speech due to its potential . . . impact"); *Ashcroft v. Am. C.L. Union*, 542 U.S. 656, 670 (2004) (strict scrutiny applies to laws "designed to protect minors from viewing harmful materials").

Paxton argues that the targeted advertising requirements constitute a regulation on commercial speech, such that strict scrutiny does not apply. (Resp., Dkt. 28, at 17). "Commercial speech is speech 'that *proposes* a commercial transaction.'" *Serafine v. Branaman*, 810 F.3d 354, 365 (5th Cir. 2016) (quoting *N. Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, (1989)). The Act is not limited to commercial speech. But, restrictions on what content can be bought and sold may be subject to strict scrutiny. *See Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 789 (2011) (law regulating sale or rental of violent video games subject to strict scrutiny). The Act does not limit its coverage to speech that proposes a commercial transaction. As described above, the Act covers a wide variety of speech, including consuming news, social media, and entertainment. And, if the legislature intended to cover only commercial speech, as Paxton suggests, it could have easily added clarifying language saying as much. "The best course, as always, is to stick with the ordinary meaning of the text that actually applies." *Corner Post, Inc. v. Bd. of Governors*, 603 U.S. 799, 817 (2024). SB 2420 makes no such distinction. Thus, SB 2420 is not a regulation on commercial speech; strict scrutiny applies.

Rather than apply strict scrutiny, the State suggested at the hearing that the Court could enjoin only the coverage definition, such that the law would be subject to intermediate scrutiny. This argument does not affect the Court's overall decision to enjoin the law because (1) the law is also content-based due to its focus on content harmful to minors, and (2) the law would not pass intermediate scrutiny, as described below. The State also noted at the hearing, however, that those exceptions were added as amendments, chosen by legislators as part of the overall balance that they struck with one another. To sever the coverage definition of the law alone would require this Court to rewrite the law and "to foresee which of many different possible ways the legislature might respond to the constitutional objections we have found." *Randall v. Sorrell*, 548 U.S. 230, 262 (2006). The Court will decline to rewrite the statute by enjoining only its scope of coverage.

3. SB 2420 and Strict Scrutiny

Because strict scrutiny applies, Paxton must prove that SB 2420 is "the least restrictive means of achieving a compelling state interest." *Free Speech Coalition*, 606 U.S. at 484. Paxton has not proven this. First, it is far from clear that Texas has a compelling interest in preventing minors' access to every single category of speech restricted by SB 2420. State interests in protecting minors exist; for example, a state has a compelling interest in preventing minors from accessing information that facilitates child pornography or sexual abuse. *See Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989) ("[T]here is a compelling interest in protecting the physical and psychological well-being of minors."). On the other hand, nothing suggests Texas's interest in preventing minors from accessing a wide variety of apps that foster protected speech (such as the Associated Press, the Wall Street Journal, Substack, or Sports Illustrated) is compelling. *See Brown*, 564 U.S. at 794 ("No doubt a State possesses legitimate power to protect children from harm, but that does not include a free-floating power to restrict the ideas to which children may be exposed.") (internal citation omitted). While SB 2420 may have some compelling applications, the categories of speech it restricts are so exceedingly overbroad that Paxton likely cannot show a compelling state interest.

Analogizing to tobacco or alcohol use, Paxton argues that Texas has an interest in regulating products and services "which pose health hazards, or which may be addictive" to minors. (Resp., Dkt. 17, at 13.) However, the State does not cite evidence to substantiate the assertion that downloading an app of any kind without parental permission poses a health hazard to minors. That argument gestures toward Texas's interest in preventing social media addiction, but SB 2420's coverage sweeps far wider—all apps are restricted, beyond social media, as described above. So too, SB 2420 does not limit its scope to apps that use addictive algorithms designed to encourage prolonged use, or apps that are responsible in particular for causing excessive screen time. As one

example, SB 2420 restricts access to apps that seek to promote physical or mental health, such as mindfulness apps like Calm, fitness apps like Strava, or therapy providers like BetterHelp.

Even accepting that Texas has a compelling interest in requiring age-verification and parental permission to mitigate an overall mental- or physical-health effect of mobile phone app use—an interest which Texas has not offered evidence of at this stage—SB 2420 is not narrowly tailored to that interest. Rather, 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, [and] (2) educating children and parents on the importance of using such tools." *NetChoice, LLC v. Bonta*, No. 23-2969, 113 F.4th 1101, 1121 (9th Cir. Aug. 16, 2024); *see also, e.g.*, *SEAT*, 765 F. Supp. 3d at 696, 698−99; *CCIA*, 747 F. Supp. 3d at 1036−37. In this case, one less restrictive means than SB 2420 (as the State acknowledged at the hearing) would have been to narrowly target regulations toward apps that the State demonstrates have specific addictive qualities. To the state interest of preventing minors from accessing harmful material, Texas has existing laws requiring age-verification for digital services providers containing one-third or more sexual material harmful to minors. Tex. Civ. Prac. & Rem. Code § 129B.002(a). Paxton has not shown that methods employed by SB 2420—broadly restricting app downloads and content within apps, with few content-based exceptions—are necessary to prevent minors from accessing the subset of apps which contain harmful material. Because it restricts almost all apps and content within apps, SB 2420 does not employ "the least restrictive means" to stop minors from accessing harmful material. *See United States v. Playboy Ent. Grp.*, 529 U.S. 803, 813 (2000) (quoting *Sable Commc'ns of Cal., Inc.*, 492 U.S. at 126).

Also problematically, the law is under- and over-inclusive. That a law "is wildly underinclusive when judged against its asserted justification . . . is alone enough to defeat it." *Brown*, 564 U.S. at 802. The law is under-inclusive: SB 2420 specifically cuts teenagers off from wide swaths

of the critical "democratic forum[] of the Internet" even though the same content offered via apps remains available to minors via pre-downloaded apps like Safari (or in stores). *Reno v. Am. C.L. Union*, 521 U.S. 844, 868 (1997). The law is also over-inclusive: its attempt to block children from accessing harmful content on select apps, Texas also prohibits minors from participating in the democratic exchange of views online by curtailing their access to all apps.

So too, Texas offers no evidence that even some or most of the apps covered cause mental- or physical-health detriments for youth. Paxton gestures generally to the impacts of social media on youth, (Resp., Dkt. 28, at 15), and calls the apps at issue a "health hazard," (*id.* at 13). At the hearing, Paxton suggested, too, that the interest underlying the law was mitigating the impact of excessive phone use and overall screen time, algorithmic targeting, and artificial intelligence on youth users of social media. But nothing in the record suggests, for instance, that teens suffer from mental health disorders from using a dictionary or weather app, even though those apps are age-restricted and subject to parental override under the Act in the same way as social media. Because it bans minors from downloading apps and content from all apps, not a narrowly tailored subset of apps deemed, for example, harmful or addictive based on evidence, the law is more over- and under- inclusive than HB 18, which this Court previously enjoined. *SEAT*, 765 F. Supp. 3d at 597; *CCIA*, 747 F. Supp. 3d at 1036−37.

In sum, SB 2420 fails strict scrutiny. Even accepting that Texas could pass legislation to counter harmful effects of social media use on minors' mental or physical health, Paxton has not demonstrated that age-screening everyone in Texas and banning minors from accessing app store content without individualized parental consent is the least restrictive method to eliminate that harm. *Playboy*, 529 U.S. at 827.

While not at issue, the Court briefly addresses the Act's scrutiny under intermediate scrutiny. 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," (2) "will in fact" serve that interest in "a direct and material way," and the restriction on First Amendment freedoms is not greater than is "essential to the furtherance of that interest." *Turner Broad. Sys., Inc.* , 512 U.S. at 662−64 (citation omitted). On the current record, where Texas has not offered any evidence connecting the Act's goals to its methods, the Court finds that SB 2420 would fail intermediate scrutiny as well.

Finally, the Court finds that the provisions cannot be severed from one another. Texas laws cannot be severed if "all the provisions are connected in subject-matter, dependent on each other, operating together for the same purpose, or otherwise so connected in meaning that it cannot be presumed the legislature would have passed the one without the other." *Builder Recovery Servs., LLC v. Town of Westlake*, 650 S.W.3d 499, 507 (Tex. 2022) (cleaned up); *Villas v. City of Farmers Branch*, 726 F.3d 524, 537 (5th Cir. 2013) (holding that state law applies when determining whether a state statute is severable). That is the case here. For example, the parental-consent provisions could not operate without the age-verification requirements, and requiring age-verification without parental override would not achieve the Act's ends of limiting minors' access to apps. The Court finds the statute not severable.

4. Vagueness

In addition to their First Amendment challenge, CCIA argues that provisions of SB 2420 are void for vagueness. (Mot. Prelim. Inj., Dkt. 15, at 50−51). "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). "A law is unconstitutionally vague if it (1) fails to provide those targeted by the statute a reasonable opportunity to know what conduct is prohibited, or (2) is so indefinite that it allows arbitrary and discriminatory enforcement." *McClelland v. Katy Indep. Sch. Dist.*, 63 F.4th 996, 1013 (5th Cir.), *cert.*

denied 144 S. Ct. 348 (2023). "A regulation is void for vagueness when it is so unclear that people 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Id.* (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)). "The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498 (1982). The Supreme Court has "expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe." *Id.* at 498–99. However, if "the law interferes with the right of free speech or of association, a more stringent vagueness test should apply." *Id.* at 499.

The Act holds app developers and app stores liable for knowingly misrepresenting an age rating but fails to provide meaningful guidance to developers and stores about what metrics should be used to determine the age rating of an app. SB 2420 is silent about what content is appropriate or inappropriate for each age category. Developers and stores could follow existing nongovernmental standards, yet following those standards may not be sufficient and could lead them to violate § 121.021(b). The portions of the Act that hold app developers and stores liable for getting age ratings wrong are impermissibly vague.

Similarly, the Act requires app developers to provide notice of "any significant change to the terms of service or privacy policy." § 121.053(a). A change is significant if it:

1. changes the type or category of personal data collected, stored, or shared by the developer;

2. affects or changes the rating assigned to the software application under Section 121.052 or the content or elements that led to that rating;

3. adds new monetization features to the software application, including: (A) new opportunities to make a purchase in or using the software application; or (B) new advertisements in the software application; or

4. materially changes the functionality or user experience of the software application.

§ 121.053(b). CCIA argues that the Act fails to define "material[] changes" and does not explain what constitutes a "new opportunit[y] to make a purchase." § 121.053(b). As the law stands, Paxton could seek to hold an app developer liable for violating this provision, for example, for each new song added to Apple Music or, as a less draconian example, when a new category of content is made available (e.g., when Spotify added podcasts alongside music). Both scenarios are plausible, so the argument goes.

The Court agrees that this provision is unconstitutionally vague. Without definitions and standards, the spectrum of interpretations is vast and could lead to selective or disparate enforcement. *See NetChoice v. Carr*, 789 F. Supp. 3d 1200, 1231 (N.D. Ga. 2025). The provision also likely incentivizes over-censorship, as app stores may broadly revoke access to avoid liability and steer "wide[] of the unlawful zone," which further threatens to restrain speech. *See Counterman v. Colorado*, 600 U.S. 66, 77–78 (2023) (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)). Without proper guidance, the provision "interferes with the right of free speech" in a way that is constitutionally unacceptable and must be enjoined. *Vill. of Hoffman*, 455 U.S. at 499.

5. Facial Invalidity

As the next step in the analysis, this Court must determine whether the law is facially invalid. Even if SB 2420 is a content-based regulation and fails strict scrutiny, it does not follow as a matter of course that the law is facially invalid. In the First Amendment context, facial challenges can only succeed if litigants show that "a substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021) (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010)). So, a law regulating First Amendment activity may only be struck down in its entirety if its "unconstitutional applications substantially outweigh its constitutional ones." *Moody v. NetChoice, LLC*, 603 U.S. 707, 724 (2024).

Moody, including the majority opinion and all four concurrences, emphasized that courts should not treat facial challenges lightly, even in the First Amendment context. It clarified that courts should "address the full range of activities the laws cover and measure the constitutional against the unconstitutional applications." *Id.* That analysis requires a two-step process. First, courts must "assess the state laws' scope" and ask, "What activities, by what actors, do the laws prohibit or otherwise regulate?" *Id.* Second, a court must "decide which of the laws' applications violate the First Amendment, and to measure them against the rest." *Id.* at 725. Only after making these inquiries can a court determine if a law's "unconstitutional applications substantially outweigh its constitutional ones." *Id.* at 724. The test boils down to a comparison between the law's constitutional and unconstitutional applications. *See United States v. Edge Broad. Co.*, 509 U.S. 418, 430 (1993) ("[T]he validity of [a] regulation depends on the relation it bears to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interest in an individual case.") (quoting *Ward*, 491 U.S. at 801); *NetChoice, LLC v. Bonta*, No. 23-2969, 2024 WL 3838423, at *8 (9th Cir. Aug. 16, 2024) (slip op.) (affirming facial challenge where strict scrutiny regulation "raises the same First Amendment issues" "in every application to a covered business"); *Stevens*, 559 U.S. at 473 n.3 (noting that overbroad law was facially invalid).

Here, the requirements exclusively target speech, only a small portion of which falls outside First Amendment coverage. For example, child pornography does not receive First Amendment protection. *See New York v. Ferber*, 458 U.S. 747, 765 (1982). But, the analysis of SB 2420's facial validity looks to its applications where it "actually authorizes or prohibits conduct," not applications that are already covered by other laws. *See City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015); *see also Spirit Aerosystems, Inc. v. Paxton*, 142 F.4th 278, 286–87 (5th Cir. 2025). Texas already restricts harmful online content for minors, requiring commercial entities publishing online content to monitor whether one-third or more of their content is sexual material harmful to minors and, if so, to age-

verify users. *Free Speech Coalition, Inc.*, 606 U.S. at 461. Thus, only in the vast minority of applications would SB 2420 have a constitutional application to unprotected speech not addressed by other laws. Because SB 2420 is unconstitutional in the vast majority of its applications, it is properly facially enjoined.

6. Remaining Preliminary Injunction Factors

CCIA shows that its members will suffer irreparable injury in the absence of an injunction. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). CCIA has submitted declarations attesting to their chilled speech because of SB 2420, which suffices to show irreparable harm. For example, Google explains that the Act's requirements may "deter app developers from appropriately updating their privacy policies or terms of service, making safety and functionality updates, design modifications, interface improvements, and new content offerings because each of these changes could require burdensome new disclosures and millions of minor users to again obtain parental consent." (Bye Decl., Dkt. 15-1, at 51).

The balance of equities and public interest follow likelihood of success. These last two factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). "[I]njunctions protecting First Amendment freedoms are always in the public interest." *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013) (internal citation omitted). Because the Court has found that CCIA has shown a substantial likelihood of success on the merits of their First Amendment claims, the Court finds that an injunction is in the public interest. *See id.*; *see also, e.g., Book People, Inc.*, 91 F.4th at 341 ("Because Plaintiffs are likely to succeed on the merits of their First Amendment claim, the State and the public won't be injured by an injunction of a statute that likely violates the First Amendment.").

V. CONCLUSION

CCIA has shown that SB 2420 is a content-based statute subject to strict scrutiny. CCIA has carried their burden to demonstrate that the law's restrictions on speech fail strict scrutiny and should be facially invalidated. Because CCIA also shows that the remaining equitable factors weigh in its favor, the Court preliminarily enjoins Paxton from enforcing those provisions.

Accordingly, **IT IS ORDERED** that CCIA's Motion for a Preliminary Injunction, (Dkt. 15), is **GRANTED**.

IT IS FURTHER ORDERED that Defendant Ken Paxton, in his official capacity as Attorney General of Texas, including his officers, officials, agents, employees, and any other persons or entities acting on his behalf, is preliminarily **ENJOINED** from taking any action to implement, enact, or enforce Texas S.B. 2420, codified at Tex. Bus. & Com. Code §§ 121.021, et seq.

SIGNED on December 23, 2025.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Appendix **4**

AN ACT

relating to the regulation of platforms for the sale and distribution of software applications for mobile devices.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 121 to read as follows:

CHAPTER 121. SOFTWARE APPLICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 121.001. SHORT TITLE. This chapter may be cited as the App Store Accountability Act.

Sec. 121.002. DEFINITIONS. In this chapter:

(1) "Age category" means information collected by the owner of an app store to designate a user based on the age categories described by Section 121.021(b).

(2) "App store" means a publicly available Internet website, software application, or other electronic service that distributes software applications from the owner or developer of a software application to the user of a mobile device.

(3) "Minor" means a child who is younger than 18 years of age who has not had the disabilities of minority removed for general purposes.

(4) "Mobile device" means a portable, wireless electronic device, including a tablet or smartphone, capable of transmitting, receiving, processing, and storing information wirelessly that runs an operating system designed to manage hardware resources and perform common services for software applications on handheld electronic devices.

(5) "Personal data" means any information, including sensitive data, that is linked or reasonably linkable to an identified or identifiable individual. The term includes pseudonymous data when the data is used by a person who processes or determines the purpose and means of processing the data in conjunction with additional information that reasonably links the data to an identified or identifiable individual. The term does not include deidentified data or publicly available information.

SUBCHAPTER B. DUTIES OF APP STORES

Sec. 121.021. DUTY TO VERIFY AGE OF USER; AGE CATEGORIES. (a) When an individual in this state creates an account with an app store, the owner of the app store shall use a commercially reasonable method of verification to verify the individual's age category under Subsection (b).

(b) The owner of an app store shall use the following age categories for assigning a designation:

(1) an individual who is younger than 13 years of age is considered a_"child";

(2) an individual who is at least 13 years of age but younger than 16 years of age is considered a "younger teenager";

(0) an individual who is at least 16 years of age but younger than 18 years of age is considered an "older teenager"; and

(3) an individual who is at least 18 years of age is considered an "adult."

Sec. 121.022. PARENTAL CONSENT REQUIRED. (a)If the owner of the app store determines under Section 121.021 that an individual is a minor who belongs to an age category that is not "adult," the

owner shall require that the minor's account be affiliated with a parent account belonging to the minor's parent or guardian.

(b) For an account to be affiliated with a minor's account as a parent account, the owner of an app store must use a commercially reasonable method to verify that the account belongs to an individual who:

(1) the owner of the app store has verified belongs to the age category of "adult" under Section 121.021; and

(2) has legal authority to make a decision on behalf of the minor with whose account the individual is seeking affiliation.

(c) A parent account may be affiliated with multiple minors' accounts.

(d) Except as provided by this section, the owner of an app store must obtain consent from the minor's parent or guardian through the parent account affiliated with the minor's account before allowing the minor to:

(1) download a software application;

(2) purchase a software application; or

(3) make a purchase in or using a software application.

(e) The owner of an app store must:

(1) obtain consent for each individual download or purchase sought by the minor; and

(2) notify the developer of each applicable software application if a minor's parent or guardian revokes consent through a parent account.

(f) To obtain consent from a minor's parent or guardian under Subsection (d), the owner of an app store may use any reasonable means to:

(1) disclose to the parent or guardian:

(A) the specific software application or purchase for which consent is sought;

(B) the rating under Section 121.052 assigned to the software application or purchase;

(C) the specific content or other elements that led to the rating assigned under Section 121.052;

(D) the nature of any collection, use, or distribution of personal data that would occur because of the software application or purchase; and

(E) any measures taken by the developer of the software application or purchase to protect the personal data of users;

(2) give the parent or guardian a clear choice to give or withhold consent for the download or purchase; and

(3) ensure that the consent is given:

(A) by the parent or guardian; and

(B) through the account affiliated with a minor's account under Subsection (a).

(g) If a software developer provides the owner of an app store with notice of a change under Section 121.053, the owner of the app store shall:

(1) notify any individual who has given consent under this section for a minor's use or purchase relating to a previous version of the changed software application; and

(2) obtain consent from the individual for the minor's continued use or purchase of the software application.

(h) The owner of an app store is not required to obtain consent from a minor's parent or guardian for:

(1) the download of a software application that:

(A) provides a user with direct access to emergency services, including:

(i) 9-1-1 emergency services;

(ii) a crisis hotline; or

(iii) an emergency assistance service that is legally available to a minor;

(B) limits data collection to information:

(i) collected in compliance with the Children's Online Privacy Protection Act of 1998 (15 U.S.C. Section 6501 et seq.); and

(ii) necessary for the provision of emergency services;

(C) allows a user to access and use the software application without requiring the user to create an account with the software application; and

(D) is operated by or in partnership with:

(i) a governmental entity;

(ii) a nonprofit organization; or

(iii) an authorized emergency service provider; or

(2) the purchase or download of a software application that is operated by or in partnership with a nonprofit organization that:

(A) develops, sponsors, or administers a standardized test used for purposes of admission to or class placement in a postsecondary educational institution or a program within a postsecondary educational institution; and

(B) is subject to Subchapter D, Chapter 32, Education Code.

Sec. 121.023. DISPLAY OF AGE RATING FOR SOFTWARE

APPLICATION. (a) If the owner of an app store that operates in this state has a mechanism for displaying an age rating or other content notice, the owner shall:

(1) make available to users an explanation of the mechanism; and

(2) display for each software application available for download and purchase on the app store the age rating and other content notice.

(b) If the owner of an app store that operates in this state does not have a mechanism for displaying an age rating or other content notice, the owner shall display for each software application available for download and purchase on the app store:

(1) the rating under Section 121.052 assigned to the software application; and

(2) the specific content or other elements that led to the rating assigned under Section 121.052.

(c) The information displayed under this section must be clear, accurate, and conspicuous.

Sec. 121.024. INFORMATION FOR SOFTWARE APPLICATION DEVELOPERS. The owner of an app store that operates in this state shall, using a commercially available method, allow the developer of a software application to access current information related to:

(1) the age category assigned to each user under Section 121.021(b); and

(2) whether consent has been obtained for each minor user under Section 121.022.

Sec. 121.025. PROTECTION OF PERSONAL DATA. The owner of an app store that operates in this state shall protect the personal data of users by:

(1) limiting the collection and processing of personal data to the minimum amount necessary for:

(A) verifying the age of an individual;

(B) obtaining consent under Section 121.022; and

(C) maintaining compliance records; and

(2) transmitting personal data using industry-standard encryption protocols that ensure data integrity and confidentiality.

Sec. 121.026. VIOLATION. (a) The owner of an app store that operates in this state violates this subchapter if the owner:

(1) enforces a contract or a provision of a terms of service agreement against a minor that the minor entered into or agreed to without consent under Section 121.022;

(2) knowingly misrepresents information disclosed under Section 121.022(f)(1);

(3) obtains a blanket consent to authorize multiple downloads or purchases; or

(4) shares or discloses personal data obtained for purposes of Section 121.021, except as required by Section 121.024 or other law.

(b) The owner of an app store is not liable for a violation of Section 121.021 or 121.022 if the owner of the app store:

(1) uses widely adopted industry standards to:

(A) verify the age of each user as required by Section 121.021; and

(B) obtain parental consent as required by Section 121.022; and

(2) applies those standards consistently and in good faith.

Sec. 121.027. CONSTRUCTION OF SUBCHAPTER. Nothing in this subchapter may be construed to:

(1) prevent the owner of an app store that operates in this state from taking reasonable measures to block, detect, or prevent the distribution of:

(A) obscene material, as that term is defined by Section 43.21, Penal Code; or

(B) other material that may be harmful to minors;

(2) require the owner of an app store that operates in this state to disclose a user's personal data to the developer of a software application except as provided by this subchapter;

(3) allow the owner of an app store that operates in this state to use a measure required by this chapter in a manner that is arbitrary, capricious, anticompetitive, or unlawful;

(4) block or filter spam;

(5) prevent criminal activity; or

(6) protect the security of an app store or software application.

SUBCHAPTER C. DUTIES OF SOFTWARE APPLICATION DEVELOPERS

Sec. 121.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the developer of a software application that the developer makes available to users in this state through an app store.

Sec. 121.052. DESIGNATION OF AGE RATING. (a)The developer of a software application shall assign to each software application and to each purchase

that can be made through the software application an age rating based on the age categories described by Section 121.021(b).

(b) The developer of a software application shall provide to each app store through which the developer makes the software application available:

(1) each rating assigned under Subsection (a); and

(2) the specific content or other elements that led to each rating provided under Subdivision (1).

Sec. 121.053. CHANGES TO SOFTWARE APPLICATIONS. (a) The developer of a software application shall provide notice to each app store through which the developer makes the software application available before making any significant change to the terms of service or privacy policy of the software application.

(b) For purposes of this section, a change is significant if it:

(1) changes the type or category of personal data collected, stored, or shared by the developer;

(2) affects or changes the rating assigned to the software application under Section 121.052 or the content or elements that led to that rating;

(3) adds new monetization features to the software application, including:

(A) new opportunities to make a purchase in or using the software application; or

(B) new advertisements in the software application; or

(4) materially changes the functionality or user experience of the software application.

Sec. 121.054. AGE VERIFICATION. (a)The developer of a software application shall create and implement a system to use information received under Section 121.024 to verify:

(1) for each user of the software application, the age category assigned to that user under Section 121.021(b); and

(2) for each minor user of the software application, whether consent has been obtained under Section 121.022.

(b) The developer of a software application shall use information received from the owner of an app store under Section 121.024 to perform the verification required by this section.

Sec. 121.055. USE OF PERSONAL DATA. (a)The developer of a software application may use personal data provided to the developer under Section 121.024 only to:

(1) enforce restrictions and protections on the software application related to age;

(2) ensure compliance with applicable laws and regulations; and

(3) implement safety-related features and default settings.

(b) The developer of a software application shall delete personal data provided by the owner of an app store under Section 121.024 on completion of the verification required by Section 121.054.

(c) Notwithstanding Subsection (a), nothing in this chapter relieves a social media platform from doing age verification as required by law.

Sec. 121.056. VIOLATION. (a) Except as provided by this section, the developer of a software application violates this subchapter if the developer:

(1) enforces a contract or a provision of a terms of service agreement against a minor that the minor entered into or agreed to without consent under Section 121.054;

(2) knowingly misrepresents an age rating or reason for that rating under Section 121.052; or

(3) shares or discloses the personal data of a user that was acquired under this subchapter.

(b) The developer of a software application is not liable for a violation of Section 121.052 if the software developer:

(1) uses widely adopted industry standards to determine the rating and specific content required by this section; and

(2) applies those standards consistently and in good faith.

(c) The developer of a software application is not liable for a violation of Section 121.054 if the software developer:

(1) relied in good faith on age category and consent information received from the owner of an app store; and

(2) otherwise complied with the requirements of this section.

SUBCHAPTER D. ENFORCEMENT

Sec. 121.101. DECEPTIVE TRADE PRACTICE. A violation of this chapter constitutes a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable under that subchapter.

Sec. 121.102. CUMULATIVE REMEDIES. The remedies provided by this chapter are not exclusive and are in addition to any other action or remedy provided by law.

SECTION 2. It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act to every person, group of persons, or circumstances, is severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected.

SECTION 3. This Act takes effect January 1, 2026.

_____ _____

President of the Senate Speaker of the House

I hereby certify that S.B. No. 2420 passed the Senate on April 16, 2025, by the following vote: Yeas 30, Nays 1; and that the Senate concurred in House amendments on May 14, 2025, by the following vote: Yeas 30, Nays 1.

_____

Secretary of the Senate

I hereby certify that S.B. No. 2420 passed the House, with amendments, on May 9, 2025, by the following vote: Yeas 120, Nays 9, three present not voting.

_____

Chief Clerk of the House

Approved:

_____

Date

_____

Governor

Appendix **5**

BUSINESS AND COMMERCE CODE

TITLE 11. PERSONAL IDENTITY INFORMATION

SUBTITLE C. CONSUMER DATA PROTECTION

CHAPTER 541. CONSUMER DATA PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 541.001. DEFINITIONS. In this chapter, unless a different meaning is required by the context:

(1) "Affiliate" means a legal entity that controls, is controlled by, or is under common control with another legal entity or shares common branding with another legal entity. For purposes of this subdivision, "control" or "controlled" means:

(A) the ownership of, or power to vote, more than 50 percent of the outstanding shares of any class of voting security of a company;

(B) the control in any manner over the election of a majority of the directors or of individuals exercising similar functions; or

(C) the power to exercise controlling influence over the management of a company.

(2) "Authenticate" means to verify through reasonable means that the consumer who is entitled to exercise the consumer's rights under Subchapter B is the same consumer exercising those consumer rights with respect to the personal data at issue.

(3) "Biometric data" means data generated by automatic measurements of an individual's biological characteristics. The term includes a fingerprint, voiceprint, eye retina or iris, or other unique biological pattern or characteristic that is used to identify a specific individual. The term does not include a physical or digital photograph or data generated from a physical or digital photograph, a video or audio recording or data generated from a video or audio recording, or information collected, used, or stored for health care treatment, payment, or operations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).

(4) "Business associate" has the meaning assigned to

the term by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).

(5) "Child" means an individual younger than 13 years of age.

(6) "Consent," when referring to a consumer, means a clear affirmative act signifying a consumer's freely given, specific, informed, and unambiguous agreement to process personal data relating to the consumer. The term includes a written statement, including a statement written by electronic means, or any other unambiguous affirmative action. The term does not include:

(A) acceptance of a general or broad terms of use or similar document that contains descriptions of personal data processing along with other, unrelated information;

(B) hovering over, muting, pausing, or closing a given piece of content; or

(C) agreement obtained through the use of dark patterns.

(7) "Consumer" means an individual who is a resident of this state acting only in an individual or household context. The term does not include an individual acting in a commercial or employment context.

(8) "Controller" means an individual or other person that, alone or jointly with others, determines the purpose and means of processing personal data.

(9) "Covered entity" has the meaning assigned to the term by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).

(10) "Dark pattern" means a user interface designed or manipulated with the effect of substantially subverting or impairing user autonomy, decision-making, or choice, and includes any practice the Federal Trade Commission refers to as a dark pattern.

(11) "Decision that produces a legal or similarly significant effect concerning a consumer" means a decision made by the controller that results in the provision or denial by the controller of:

(A) financial and lending services;

(B) housing, insurance, or health care services;

(C) education enrollment;

(D) employment opportunities;

(E) criminal justice; or

(F) access to basic necessities, such as food and water.

(12) "Deidentified data" means data that cannot reasonably be linked to an identified or identifiable individual, or a device linked to that individual.

(13) "Health care provider" has the meaning assigned to the term by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).

(14) "Health record" means any written, printed, or electronically recorded material maintained by a health care provider in the course of providing health care services to an individual that concerns the individual and the services provided. The term includes:

(A) the substance of any communication made by an individual to a health care provider in confidence during or in connection with the provision of health care services; or

(B) information otherwise acquired by the health care provider about an individual in confidence and in connection with health care services provided to the individual.

(15) "Identified or identifiable individual" means a consumer who can be readily identified, directly or indirectly.

(16) "Institution of higher education" means:

(A) an institution of higher education as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code.

(17) "Known child" means a child under circumstances where a controller has actual knowledge of, or wilfully disregards, the child's age.

(18) "Nonprofit organization" means:

(A) a corporation organized under Chapters 20 and 22, Business Organizations Code, and the provisions of Title 1,

Business Organizations Code, to the extent applicable to nonprofit corporations;

(B) an organization exempt from federal taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3), 501(c)(6), 501(c)(12), or 501(c)(19) of that code;

(C) a political organization; or

(D) an organization that:

(i) is exempt from federal taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(4) of that code; and

(ii) is described by Section 701.052(a), Insurance Code.

(19) "Personal data" means any information, including sensitive data, that is linked or reasonably linkable to an identified or identifiable individual. The term includes pseudonymous data when the data is used by a controller or processor in conjunction with additional information that reasonably links the data to an identified or identifiable individual. The term does not include deidentified data or publicly available information.

(20) "Political organization" means a party, committee, association, fund, or other organization, regardless of whether incorporated, that is organized and operated primarily for the purpose of influencing or attempting to influence:

(A) the selection, nomination, election, or appointment of an individual to a federal, state, or local public office or an office in a political organization, regardless of whether the individual is selected, nominated, elected, or appointed; or

(B) the election of a presidential/vice-presidential elector, regardless of whether the elector is selected, nominated, elected, or appointed.

(21) "Precise geolocation data" means information derived from technology, including global positioning system level latitude and longitude coordinates or other mechanisms, that directly identifies the specific location of an individual with

precision and accuracy within a radius of 1,750 feet. The term does not include the content of communications or any data generated by or connected to an advanced utility metering infrastructure system or to equipment for use by a utility.

(22) "Process" or "processing" means an operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion, or modification of personal data.

(23) "Processor" means a person that processes personal data on behalf of a controller.

(24) "Profiling" means any form of solely automated processing performed on personal data to evaluate, analyze, or predict personal aspects related to an identified or identifiable individual's economic situation, health, personal preferences, interests, reliability, behavior, location, or movements.

(25) "Protected health information" has the meaning assigned to the term by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).

(26) "Pseudonymous data" means any information that cannot be attributed to a specific individual without the use of additional information, provided that the additional information is kept separately and is subject to appropriate technical and organizational measures to ensure that the personal data is not attributed to an identified or identifiable individual.

(27) "Publicly available information" means information that is lawfully made available through government records, or information that a business has a reasonable basis to believe is lawfully made available to the general public through widely distributed media, by a consumer, or by a person to whom a consumer has disclosed the information, unless the consumer has restricted the information to a specific audience.

(28) "Sale of personal data" means the sharing, disclosing, or transferring of personal data for monetary or other valuable consideration by the controller to a third party. The term does not include:

(A) the disclosure of personal data to a

processor that processes the personal data on the controller's behalf;

(B) the disclosure of personal data to a third party for purposes of providing a product or service requested by the consumer;

(C) the disclosure or transfer of personal data to an affiliate of the controller;

(D) the disclosure of information that the consumer:

(i) intentionally made available to the general public through a mass media channel; and

(ii) did not restrict to a specific audience; or

(E) the disclosure or transfer of personal data to a third party as an asset that is part of a merger or acquisition.

(29) "Sensitive data" means a category of personal data. The term includes:

(A) personal data revealing racial or ethnic origin, religious beliefs, mental or physical health diagnosis, sexuality, or citizenship or immigration status;

(B) genetic or biometric data that is processed for the purpose of uniquely identifying an individual;

(C) personal data collected from a known child; or

(D) precise geolocation data.

(30) "State agency" means a department, commission, board, office, council, authority, or other agency in any branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

(31) "Targeted advertising" means displaying to a consumer an advertisement that is selected based on personal data obtained from that consumer's activities over time and across nonaffiliated websites or online applications to predict the consumer's preferences or interests. The term does not include:

(A) an advertisement that:

(i) is based on activities within a

controller's own websites or online applications;

(ii) is based on the context of a consumer's current search query, visit to a website, or online application; or

(iii) is directed to a consumer in response to the consumer's request for information or feedback; or

(B) the processing of personal data solely for measuring or reporting advertising performance, reach, or frequency.

(32) "Third party" means a person, other than the consumer, the controller, the processor, or an affiliate of the controller or processor.

(33) "Trade secret" means all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

(A) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a person that:

(1) conducts business in this state or produces a product or service consumed by residents of this state;

(2) processes or engages in the sale of personal data; and

(3) is not a small business as defined by the United States Small Business Administration, except to the extent that Section 541.107 applies to a person described by this subdivision.

(b) This chapter does not apply to:

(1) a state agency or a political subdivision of this state;

(2) a financial institution or data subject to Title V, Gramm-Leach-Bliley Act (15 U.S.C. Section 6801 et seq.);

(3) a covered entity or business associate governed by the privacy, security, and breach notification rules issued by the United States Department of Health and Human Services, 45 C.F.R. Parts 160 and 164, established under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), and the Health Information Technology for Economic and Clinical Health Act (Division A, Title XIII, and Division B, Title IV, Pub. L. No. 111-5);

(4) a nonprofit organization;

(5) an institution of higher education; or

(6) an electric utility, a power generation company, or a retail electric provider, as those terms are defined by Section 31.002, Utilities Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.003. CERTAIN INFORMATION EXEMPT FROM CHAPTER. The following information is exempt from this chapter:

(1) protected health information under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);

(2) health records;

(3) patient identifying information for purposes of 42 U.S.C. Section 290dd-2;

(4) identifiable private information:

(A) for purposes of the federal policy for the protection of human subjects under 45 C.F.R. Part 46;

(B) collected as part of human subjects research under the good clinical practice guidelines issued by The

International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) or of the protection of human subjects under 21 C.F.R. Parts 50 and 56; or

(C) that is personal data used or shared in research conducted in accordance with the requirements set forth in this chapter or other research conducted in accordance with applicable law;

(5) information and documents created for purposes of the Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.);

(6) patient safety work product for purposes of the Patient Safety and Quality Improvement Act of 2005 (42 U.S.C. Section 299b-21 et seq.);

(7) information derived from any of the health care-related information listed in this section that is deidentified in accordance with the requirements for deidentification under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);

(8) information originating from, and intermingled to be indistinguishable with, or information treated in the same manner as, information exempt under this section that is maintained by a covered entity or business associate as defined by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) or by a program or a qualified service organization as defined by 42 U.S.C. Section 290dd-2;

(9) information that is included in a limited data set as described by 45 C.F.R. Section 164.514(e), to the extent that the information is used, disclosed, and maintained in the manner specified by 45 C.F.R. Section 164.514(e);

(10) information collected or used only for public health activities and purposes as authorized by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);

(11) the collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode

of living by a consumer reporting agency or furnisher that provides information for use in a consumer report, and by a user of a consumer report, but only to the extent that the activity is regulated by and authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.);

(12) personal data collected, processed, sold, or disclosed in compliance with the Driver's Privacy Protection Act of 1994 (18 U.S.C. Section 2721 et seq.);

(13) personal data regulated by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g);

(14) personal data collected, processed, sold, or disclosed in compliance with the Farm Credit Act of 1971 (12 U.S.C. Section 2001 et seq.);

(15) data processed or maintained in the course of an individual applying to, being employed by, or acting as an agent or independent contractor of a controller, processor, or third party, to the extent that the data is collected and used within the context of that role;

(16) data processed or maintained as the emergency contact information of an individual under this chapter that is used for emergency contact purposes; or

(17) data that is processed or maintained and is necessary to retain to administer benefits for another individual that relates to an individual described by Subdivision (15) and used for the purposes of administering those benefits.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.004. INAPPLICABILITY OF CHAPTER. This chapter does not apply to the processing of personal data by a person in the course of a purely personal or household activity.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.005. EFFECT OF COMPLIANCE WITH PARENTAL CONSENT REQUIREMENTS UNDER CERTAIN FEDERAL LAW. A controller or processor that complies with the verifiable parental consent requirements of

the Children's Online Privacy Protection Act of 1998 (15 U.S.C. Section 6501 et seq.) with respect to data collected online is considered to be in compliance with any requirement to obtain parental consent under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

SUBCHAPTER B. CONSUMER'S RIGHTS

Sec. 541.051. CONSUMER'S PERSONAL DATA RIGHTS; REQUEST TO EXERCISE RIGHTS. (a) A consumer is entitled to exercise the consumer rights authorized by this section at any time by submitting a request to a controller specifying the consumer rights the consumer wishes to exercise. With respect to the processing of personal data belonging to a known child, a parent or legal guardian of the child may exercise the consumer rights on behalf of the child.

(b) A controller shall comply with an authenticated consumer request to exercise the right to:

(1) confirm whether a controller is processing the consumer's personal data and to access the personal data;

(2) correct inaccuracies in the consumer's personal data, taking into account the nature of the personal data and the purposes of the processing of the consumer's personal data;

(3) delete personal data provided by or obtained about the consumer;

(4) if the data is available in a digital format, obtain a copy of the consumer's personal data that the consumer previously provided to the controller in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another controller without hindrance; or

(5) opt out of the processing of the personal data for purposes of:

(A) targeted advertising;

(B) the sale of personal data; or

(C) profiling in furtherance of a decision that

produces a legal or similarly significant effect concerning the consumer.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.052. CONTROLLER RESPONSE TO CONSUMER REQUEST. (a) Except as otherwise provided by this chapter, a controller shall comply with a request submitted by a consumer to exercise the consumer's rights pursuant to Section 541.051 as provided by this section.

(b) A controller shall respond to the consumer request without undue delay, which may not be later than the 45th day after the date of receipt of the request. The controller may extend the response period once by an additional 45 days when reasonably necessary, taking into account the complexity and number of the consumer's requests, so long as the controller informs the consumer of the extension within the initial 45-day response period, together with the reason for the extension.

(c) If a controller declines to take action regarding the consumer's request, the controller shall inform the consumer without undue delay, which may not be later than the 45th day after the date of receipt of the request, of the justification for declining to take action and provide instructions on how to appeal the decision in accordance with Section 541.053.

(d) A controller shall provide information in response to a consumer request free of charge, at least twice annually per consumer. If a request from a consumer is manifestly unfounded, excessive, or repetitive, the controller may charge the consumer a reasonable fee to cover the administrative costs of complying with the request or may decline to act on the request. The controller bears the burden of demonstrating for purposes of this subsection that a request is manifestly unfounded, excessive, or repetitive.

(e) If a controller is unable to authenticate the request using commercially reasonable efforts, the controller is not required to comply with a consumer request submitted under Section 541.051 and may request that the consumer provide additional information reasonably necessary to authenticate the consumer and

the consumer's request.

(f) A controller that has obtained personal data about a consumer from a source other than the consumer is considered in compliance with a consumer's request to delete that personal data pursuant to Section 541.051(b)(3) by:

(1) retaining a record of the deletion request and the minimum data necessary for the purpose of ensuring the consumer's personal data remains deleted from the business's records and not using the retained data for any other purpose under this chapter; or

(2) opting the consumer out of the processing of that personal data for any purpose other than a purpose that is exempt under the provisions of this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.053. APPEAL. (a) A controller shall establish a process for a consumer to appeal the controller's refusal to take action on a request within a reasonable period of time after the consumer's receipt of the decision under Section 541.052(c).

(b) The appeal process must be conspicuously available and similar to the process for initiating action to exercise consumer rights by submitting a request under Section 541.051.

(c) A controller shall inform the consumer in writing of any action taken or not taken in response to an appeal under this section not later than the 60th day after the date of receipt of the appeal, including a written explanation of the reason or reasons for the decision.

(d) If the controller denies an appeal, the controller shall provide the consumer with the online mechanism described by Section 541.152 through which the consumer may contact the attorney general to submit a complaint.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.054. WAIVER OR LIMITATION OF CONSUMER RIGHTS PROHIBITED. Any provision of a contract or agreement that waives or limits in any way a consumer right described by Sections 541.051,

541.052, and 541.053 is contrary to public policy and is void and unenforceable.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.055. METHODS FOR SUBMITTING CONSUMER REQUESTS. (a) A controller shall establish two or more secure and reliable methods to enable consumers to submit a request to exercise their consumer rights under this chapter. The methods must take into account:

(1) the ways in which consumers normally interact with the controller;

(2) the necessity for secure and reliable communications of those requests; and

(3) the ability of the controller to authenticate the identity of the consumer making the request.

(b) A controller may not require a consumer to create a new account to exercise the consumer's rights under this subchapter but may require a consumer to use an existing account.

(c) Except as provided by Subsection (d), if the controller maintains an Internet website, the controller must provide a mechanism on the website for consumers to submit requests for information required to be disclosed under this chapter.

(d) A controller that operates exclusively online and has a direct relationship with a consumer from whom the controller collects personal information is only required to provide an e-mail address for the submission of requests described by Subsection (c).

(e) A consumer may designate another person to serve as the consumer's authorized agent and act on the consumer's behalf to opt out of the processing of the consumer's personal data under Sections 541.051(b)(5)(A) and (B). A consumer may designate an authorized agent using a technology, including a link to an Internet website, an Internet browser setting or extension, or a global setting on an electronic device, that allows the consumer to indicate the consumer's intent to opt out of the processing. A controller shall comply with an opt-out request received from an authorized agent under this subsection if the controller is able to

verify, with commercially reasonable effort, the identity of the consumer and the authorized agent's authority to act on the consumer's behalf. A controller is not required to comply with an opt-out request received from an authorized agent under this subsection if:

(1) the authorized agent does not communicate the request to the controller in a clear and unambiguous manner;

(2) the controller is not able to verify, with commercially reasonable effort, that the consumer is a resident of this state;

(3) the controller does not possess the ability to process the request; or

(4) the controller does not process similar or identical requests the controller receives from consumers for the purpose of complying with similar or identical laws or regulations of another state.

(f) A technology described by Subsection (e):

(1) may not unfairly disadvantage another controller;

(2) may not make use of a default setting, but must require the consumer to make an affirmative, freely given, and unambiguous choice to indicate the consumer's intent to opt out of any processing of a consumer's personal data; and

(3) must be consumer-friendly and easy to use by the average consumer.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

SUBCHAPTER C. CONTROLLER AND PROCESSOR DATA-RELATED DUTIES AND PROHIBITIONS

Sec. 541.101. CONTROLLER DUTIES; TRANSPARENCY. (a) A controller:

(1) shall limit the collection of personal data to what is adequate, relevant, and reasonably necessary in relation to the purposes for which that personal data is processed, as disclosed to the consumer; and

(2) for purposes of protecting the confidentiality,

integrity, and accessibility of personal data, shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices that are appropriate to the volume and nature of the personal data at issue.

(b) A controller may not:

(1) except as otherwise provided by this chapter, process personal data for a purpose that is neither reasonably necessary to nor compatible with the disclosed purpose for which the personal data is processed, as disclosed to the consumer, unless the controller obtains the consumer's consent;

(2) process personal data in violation of state and federal laws that prohibit unlawful discrimination against consumers;

(3) discriminate against a consumer for exercising any of the consumer rights contained in this chapter, including by denying goods or services, charging different prices or rates for goods or services, or providing a different level of quality of goods or services to the consumer; or

(4) process the sensitive data of a consumer without obtaining the consumer's consent, or, in the case of processing the sensitive data of a known child, without processing that data in accordance with the Children's Online Privacy Protection Act of 1998 (15 U.S.C. Section 6501 et seq.).

(c) Subsection (b)(3) may not be construed to require a controller to provide a product or service that requires the personal data of a consumer that the controller does not collect or maintain or to prohibit a controller from offering a different price, rate, level, quality, or selection of goods or services to a consumer, including offering goods or services for no fee, if the consumer has exercised the consumer's right to opt out under Section 541.051 or the offer is related to a consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.102. PRIVACY NOTICE. (a) A controller shall

provide consumers with a reasonably accessible and clear privacy notice that includes:

(1) the categories of personal data processed by the controller, including, if applicable, any sensitive data processed by the controller;

(2) the purpose for processing personal data;

(3) how consumers may exercise their consumer rights under Subchapter B, including the process by which a consumer may appeal a controller's decision with regard to the consumer's request;

(4) if applicable, the categories of personal data that the controller shares with third parties;

(5) if applicable, the categories of third parties with whom the controller shares personal data; and

(6) a description of the methods required under Section 541.055 through which consumers can submit requests to exercise their consumer rights under this chapter.

(b) If a controller engages in the sale of personal data that is sensitive data, the controller shall include the following notice:

"NOTICE: We may sell your sensitive personal data." The notice must be posted in the same location and in the same manner as the privacy notice described by Subsection (a).

(c) If a controller engages in the sale of personal data that is biometric data, the controller shall include the following notice:

"NOTICE: We may sell your biometric personal data." The notice must be posted in the same location and in the same manner as the privacy notice described by Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.103. SALE OF DATA TO THIRD PARTIES AND PROCESSING DATA FOR TARGETED ADVERTISING; DISCLOSURE. If a controller sells personal data to third parties or processes personal data for targeted advertising, the controller shall clearly and conspicuously disclose that process and the manner in which a

consumer may exercise the right to opt out of that process.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.104. DUTIES OF PROCESSOR. (a) A processor shall adhere to the instructions of a controller and shall assist the controller in meeting or complying with the controller's duties or requirements under this chapter, including:

(1) assisting the controller in responding to consumer rights requests submitted under Section 541.051 by using appropriate technical and organizational measures, as reasonably practicable, taking into account the nature of processing and the information available to the processor;

(2) assisting the controller with regard to complying with requirements relating to the security of processing personal data, and if applicable, the personal data collected, stored, and processed by an artificial intelligence system, as that term is defined by Section 551.001, and to the notification of a breach of security of the processor's system under Chapter 521, taking into account the nature of processing and the information available to the processor; and

(3) providing necessary information to enable the controller to conduct and document data protection assessments under Section 541.105.

(b) A contract between a controller and a processor shall govern the processor's data processing procedures with respect to processing performed on behalf of the controller. The contract must include:

(1) clear instructions for processing data;

(2) the nature and purpose of processing;

(3) the type of data subject to processing;

(4) the duration of processing;

(5) the rights and obligations of both parties; and

(6) a requirement that the processor shall:

(A) ensure that each person processing personal data is subject to a duty of confidentiality with respect to the data;

(B) at the controller's direction, delete or return all personal data to the controller as requested after the provision of the service is completed, unless retention of the personal data is required by law;

(C) make available to the controller, on reasonable request, all information in the processor's possession necessary to demonstrate the processor's compliance with the requirements of this chapter;

(D) allow, and cooperate with, reasonable assessments by the controller or the controller's designated assessor; and

(E) engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the requirements of the processor with respect to the personal data.

(c) Notwithstanding the requirement described by Subsection (b)(6)(D), a processor, in the alternative, may arrange for a qualified and independent assessor to conduct an assessment of the processor's policies and technical and organizational measures in support of the requirements under this chapter using an appropriate and accepted control standard or framework and assessment procedure. The processor shall provide a report of the assessment to the controller on request.

(d) This section may not be construed to relieve a controller or a processor from the liabilities imposed on the controller or processor by virtue of its role in the processing relationship as described by this chapter.

(e) A determination of whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends on the context in which personal data is to be processed. A processor that continues to adhere to a controller's instructions with respect to a specific processing of personal data remains in the role of a processor.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Amended by:

Acts 2025, 89th Leg., R.S., Ch. 1174 (H.B. 149), Sec. 3, eff. January 1, 2026.

Sec. 541.105. DATA PROTECTION ASSESSMENTS. (a) A controller shall conduct and document a data protection assessment of each of the following processing activities involving personal data:

(1) the processing of personal data for purposes of targeted advertising;

(2) the sale of personal data;

(3) the processing of personal data for purposes of profiling, if the profiling presents a reasonably foreseeable risk of:

(A) unfair or deceptive treatment of or unlawful disparate impact on consumers;

(B) financial, physical, or reputational injury to consumers;

(C) a physical or other intrusion on the solitude or seclusion, or the private affairs or concerns, of consumers, if the intrusion would be offensive to a reasonable person; or

(D) other substantial injury to consumers;

(4) the processing of sensitive data; and

(5) any processing activities involving personal data that present a heightened risk of harm to consumers.

(b) A data protection assessment conducted under Subsection (a) must:

(1) identify and weigh the direct or indirect benefits that may flow from the processing to the controller, the consumer, other stakeholders, and the public, against the potential risks to the rights of the consumer associated with that processing, as mitigated by safeguards that can be employed by the controller to reduce the risks; and

(2) factor into the assessment:

(A) the use of deidentified data;

(B) the reasonable expectations of consumers;

(C) the context of the processing; and

(D) the relationship between the controller and the consumer whose personal data will be processed.

(c) A controller shall make a data protection assessment

requested under Section 541.153(b) available to the attorney general pursuant to a civil investigative demand under Section 541.153.

(d) A data protection assessment is confidential and exempt from public inspection and copying under Chapter 552, Government Code. Disclosure of a data protection assessment in compliance with a request from the attorney general does not constitute a waiver of attorney-client privilege or work product protection with respect to the assessment and any information contained in the assessment.

(e) A single data protection assessment may address a comparable set of processing operations that include similar activities.

(f) A data protection assessment conducted by a controller for the purpose of compliance with other laws or regulations may constitute compliance with the requirements of this section if the assessment has a reasonably comparable scope and effect.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.106. DEIDENTIFIED OR PSEUDONYMOUS DATA. (a) A controller in possession of deidentified data shall:

(1) take reasonable measures to ensure that the data cannot be associated with an individual;

(2) publicly commit to maintaining and using deidentified data without attempting to reidentify the data; and

(3) contractually obligate any recipient of the deidentified data to comply with the provisions of this chapter.

(b) This chapter may not be construed to require a controller or processor to:

(1) reidentify deidentified data or pseudonymous data;

(2) maintain data in identifiable form or obtain, retain, or access any data or technology for the purpose of allowing the controller or processor to associate a consumer request with personal data; or

(3) comply with an authenticated consumer rights request under Section 541.051, if the controller:

(A) is not reasonably capable of associating the request with the personal data or it would be unreasonably burdensome for the controller to associate the request with the personal data;

(B) does not use the personal data to recognize or respond to the specific consumer who is the subject of the personal data or associate the personal data with other personal data about the same specific consumer; and

(C) does not sell the personal data to any third party or otherwise voluntarily disclose the personal data to any third party other than a processor, except as otherwise permitted by this section.

(c) The consumer rights under Sections 541.051(b)(1)-(4) and controller duties under Section 541.101 do not apply to pseudonymous data in cases in which the controller is able to demonstrate any information necessary to identify the consumer is kept separately and is subject to effective technical and organizational controls that prevent the controller from accessing the information.

(d) A controller that discloses pseudonymous data or deidentified data shall exercise reasonable oversight to monitor compliance with any contractual commitments to which the pseudonymous data or deidentified data is subject and shall take appropriate steps to address any breach of the contractual commitments.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.107. REQUIREMENTS FOR SMALL BUSINESSES. (a) A person described by Section 541.002(a)(3) may not engage in the sale of personal data that is sensitive data without receiving prior consent from the consumer.

(b) A person who violates this section is subject to the penalty under Section 541.155.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.151. ENFORCEMENT AUTHORITY EXCLUSIVE. The attorney general has exclusive authority to enforce this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.152. INTERNET WEBSITE AND COMPLAINT MECHANISM. The attorney general shall post on the attorney general's Internet website:

(1) information relating to:

(A) the responsibilities of a controller under Subchapters B and C;

(B) the responsibilities of a processor under Subchapter C; and

(C) a consumer's rights under Subchapter B; and

(2) an online mechanism through which a consumer may submit a complaint under this chapter to the attorney general.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.153. INVESTIGATIVE AUTHORITY. (a) If the attorney general has reasonable cause to believe that a person has engaged in or is engaging in a violation of this chapter, the attorney general may issue a civil investigative demand. The procedures established for the issuance of a civil investigative demand under Section 15.10 apply to the same extent and manner to the issuance of a civil investigative demand under this section.

(b) The attorney general may request, pursuant to a civil investigative demand issued under Subsection (a), that a controller disclose any data protection assessment that is relevant to an investigation conducted by the attorney general. The attorney general may evaluate the data protection assessment for compliance with the requirements set forth in Sections 541.101, 541.102, and 541.103.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.154. NOTICE OF VIOLATION OF CHAPTER; OPPORTUNITY TO CURE. Before bringing an action under Section 541.155, the attorney general shall notify a person in writing, not later than the 30th day before bringing the action, identifying the specific provisions of this chapter the attorney general alleges have been or are being violated. The attorney general may not bring an action against the person if:

(1) within the 30-day period, the person cures the identified violation; and

(2) the person provides the attorney general a written statement that the person:

(A) cured the alleged violation;

(B) notified the consumer that the consumer's privacy violation was addressed, if the consumer's contact information has been made available to the person;

(C) provided supportive documentation to show how the privacy violation was cured; and

(D) made changes to internal policies, if necessary, to ensure that no such further violations will occur.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.155. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter following the cure period described by Section 541.154 or who breaches a written statement provided to the attorney general under that section is liable for a civil penalty in an amount not to exceed $7,500 for each violation.

(b) The attorney general may bring an action in the name of this state to:

(1) recover a civil penalty under this section;

(2) restrain or enjoin the person from violating this chapter; or

(3) recover the civil penalty and seek injunctive relief.

(c) The attorney general may recover reasonable attorney's fees and other reasonable expenses incurred in investigating and

bringing an action under this section.

(d) The attorney general shall deposit a civil penalty collected under this section in accordance with Section 402.007, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.156. NO PRIVATE RIGHT OF ACTION. This chapter may not be construed as providing a basis for, or being subject to, a private right of action for a violation of this chapter or any other law.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

SUBCHAPTER E. CONSTRUCTION OF CHAPTER; EXEMPTIONS FOR CERTAIN USES OF CONSUMER PERSONAL DATA

Sec. 541.201. CONSTRUCTION OF CHAPTER. (a) This chapter may not be construed to restrict a controller's or processor's ability to:

(1) comply with federal, state, or local laws, rules, or regulations;

(2) comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by federal, state, local, or other governmental authorities;

(3) investigate, establish, exercise, prepare for, or defend legal claims;

(4) provide a product or service specifically requested by a consumer or the parent or guardian of a child, perform a contract to which the consumer is a party, including fulfilling the terms of a written warranty, or take steps at the request of the consumer before entering into a contract;

(5) take immediate steps to protect an interest that is essential for the life or physical safety of the consumer or of another individual and in which the processing cannot be manifestly based on another legal basis;

(6) prevent, detect, protect against, or respond to

security incidents, identity theft, fraud, harassment, malicious or deceptive activities, or any illegal activity;

(7) preserve the integrity or security of systems or investigate, report, or prosecute those responsible for breaches of system security;

(8) engage in public or peer-reviewed scientific or statistical research in the public interest that adheres to all other applicable ethics and privacy laws and is approved, monitored, and governed by an institutional review board or similar independent oversight entity that determines:

(A) if the deletion of the information is likely to provide substantial benefits that do not exclusively accrue to the controller;

(B) whether the expected benefits of the research outweigh the privacy risks; and

(C) if the controller has implemented reasonable safeguards to mitigate privacy risks associated with research, including any risks associated with reidentification; or

(9) assist another controller, processor, or third party with any of the requirements under this subsection.

(b) This chapter may not be construed to prevent a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under the laws of this state as part of a privileged communication.

(c) This chapter may not be construed as imposing a requirement on controllers and processors that adversely affects the rights or freedoms of any person, including the right of free speech.

(d) This chapter may not be construed as requiring a controller, processor, third party, or consumer to disclose a trade secret.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.202. COLLECTION, USE, OR RETENTION OF DATA FOR CERTAIN PURPOSES. (a) The requirements imposed on controllers and processors under this chapter may not restrict a controller's or

processor's ability to collect, use, or retain data to:

(1) conduct internal research to develop, improve, or repair products, services, or technology;

(2) effect a product recall;

(3) identify and repair technical errors that impair existing or intended functionality; or

(4) perform internal operations that:

(A) are reasonably aligned with the expectations of the consumer;

(B) are reasonably anticipated based on the consumer's existing relationship with the controller; or

(C) are otherwise compatible with processing data in furtherance of the provision of a product or service specifically requested by a consumer or the performance of a contract to which the consumer is a party.

(b) A requirement imposed on a controller or processor under this chapter does not apply if compliance with the requirement by the controller or processor, as applicable, would violate an evidentiary privilege under the laws of this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.203. DISCLOSURE OF PERSONAL DATA TO THIRD-PARTY CONTROLLER OR PROCESSOR. (a) A controller or processor that discloses personal data to a third-party controller or processor, in compliance with the requirements of this chapter, does not violate this chapter if the third-party controller or processor that receives and processes that personal data is in violation of this chapter, provided that, at the time of the data's disclosure, the disclosing controller or processor did not have actual knowledge that the recipient intended to commit a violation.

(b) A third-party controller or processor receiving personal data from a controller or processor in compliance with the requirements of this chapter does not violate this chapter for the transgressions of the controller or processor from which the third-party controller or processor receives the personal data.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff.

July 1, 2024.

Sec. 541.204. PROCESSING OF CERTAIN PERSONAL DATA BY CONTROLLER OR OTHER PERSON. (a) Personal data processed by a controller under this subchapter may not be processed for any purpose other than a purpose listed in this subchapter unless otherwise allowed by this chapter. Personal data processed by a controller under this subchapter may be processed to the extent that the processing of the data is:

(1) reasonably necessary and proportionate to the purposes listed in this subchapter; and

(2) adequate, relevant, and limited to what is necessary in relation to the specific purposes listed in this subchapter.

(b) Personal data collected, used, or retained under Section 541.202(a) must, where applicable, take into account the nature and purpose of such collection, use, or retention. The personal data described by this subsection is subject to reasonable administrative, technical, and physical measures to protect the confidentiality, integrity, and accessibility of the personal data and to reduce reasonably foreseeable risks of harm to consumers relating to the collection, use, or retention of personal data.

(c) A controller that processes personal data under an exemption in this subchapter bears the burden of demonstrating that the processing of the personal data qualifies for the exemption and complies with the requirements of Subsections (a) and (b).

(d) The processing of personal data by an entity for the purposes described by Section 541.201 does not solely make the entity a controller with respect to the processing of the data.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff. July 1, 2024.

Sec. 541.205. LOCAL PREEMPTION. This chapter supersedes and preempts any ordinance, resolution, rule, or other regulation adopted by a political subdivision regarding the processing of personal data by a controller or processor.

Added by Acts 2023, 88th Leg., R.S., Ch. 995 (H.B. 4), Sec. 2, eff.

July 1, 2024.

Appendix **6**

United States Code Annotated
Constitution of the United States
Annotated
Amendment I. Religion; Speech and the Press; Assembly; Petition

U.S.C.A. Const. Amend. I

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom of Speech and the Press; Peaceful Assembly; Petition for Redress of Grievances

Currentness

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const Amend. I--Establishment clause; Free Exercise clause>

<USCA Const Amend. I--Free Speech clause; Free Press clause>

<USCA Const Amend. I--Assembly clause; Petition clause>

U.S.C.A. Const. Amend. I, USCA CONST Amend. I
Current through P.L. 119-95. Some statute sections may be more current, see credits for details.

End of Document

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Appendix 7

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION	)	Docket No. A 25-CA-1660 RP
vs.	)	Austin, Texas
KEN PAXTON, ET AL	)	December 16, 2025
STUDENTS ENGAGED IN ADVANCING TEXAS, ET AL	)	Docket No. A 25-CA-1662 RP
vs.	)	Austin, Texas
KEN PAXTON, ET AL	)	December 16, 2025

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE ROBERT L. PITMAN

APPEARANCES:

For CCIA: Mr. Brian M. Willen
Wilson, Sonsini, Goodrich & Rosati
1301 Avenue Of The Americas, 40th Floor
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For SEAT: Mr. Adam Sieff
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For the Defendant: Mr. Zachary Berg
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Court Reporter: Ms. Lily Iva Reznik, CRR, RMR
501 West 5th Street, Suite 4153
Austin, Texas 78701

Proceedings reported by computerized stenography, transcript produced by computer-aided transcription.

10:00:38 THE CLERK: The Court calls the following cases
10:00:39 for preliminary injunction hearing: A-25-CV-1660,
10:00:45 Computer & Communications Industry Association vs. Ken
10:00:48 Paxton, and A-25-CV-1662, Students Engaged In Advancing
10:00:53 Texas and Others vs. Ken Paxton.
10:00:55 THE COURT: And for the plaintiffs?
10:01:00 MR. WILLEN: Good morning, your Honor.
10:01:01 Brian Willen for CCIA.
10:01:05 MR. SIEFF: Good morning, your Honor.
10:01:06 Adam Sieff for the Student plaintiffs, Students
10:01:08 Engaged In Advancing Texas.
10:01:12 THE COURT: Any other announcements for the
10:01:15 record? That's fine. And for the defendants.
10:01:19 MR. BERG: Zachary Berg from the Offices of the
10:01:22 Attorney General on behalf of defendant.
10:01:23 THE COURT: Mr. Berg, good morning.
10:01:25 We are here for a consolidated hearing on the
10:01:29 plaintiffs' motions for preliminary injunction in their
10:01:32 respective cases. My recollection is that we've allocated
10:01:36 30 minutes per side, that to be divided by agreement by
10:01:40 the plaintiffs. So how are we going to proceed then? Do
10:01:44 you have a plan?
10:01:46 MR. WILLEN: Good morning, your. Brian Willen.
10:01:48 I'm going to start and we've agreed with our
10:01:50 co-plaintiffs to divide their argument roughly, equally

10:01:53 between us.

10:01:53 THE COURT: Okay. And would you like to reserve

10:01:55 any time for a brief rebuttal?

10:01:58 MR. WILLEN: That will be great. Two minutes

10:02:00 maybe.

10:02:00 THE COURT: Okay. Very good. Would you like any

10:02:01 warnings from the clerk, time warning?

10:02:04 MR. WILLEN: Sure. That would be wonderful.

10:02:04 THE COURT: Maybe a five-minute warning?

10:02:05 MR. WILLEN: Perfect.

10:02:06 THE COURT: Okay. Great. So let's do a

10:02:08 five-minute warning. Allowing for two-minute rebuttal.

10:02:13 Okay. And does that sound reasonable to you?

10:02:17 MR. BERG: Yes, your Honor.

10:02:18 THE COURT: Okay. Very good. Well, I'm happy to

10:02:21 hear from you.

10:02:23 MR. WILLEN: Good morning, your Honor. Thank you

10:02:28 for your time. Brian Willen for the CCIA plaintiffs.

10:02:31 So what Texas seeks to do through S.B. 2420 is

10:02:35 unprecedented. The state would impose an onerous age

10:02:40 verification, parental consent, and compelled age-rating

10:02:45 regime across an entire universe of speech. That is the

10:02:47 world fostered by mobile apps and app stores. So if S.B.

10:02:52 2420 goes into effect, every person wanting to use Apple's

10:02:55 App Store, Google Play, or any other mobile app store

10:02:57 would be forced to surrender some of their privacy by
10:03:00 submitting official documents to the app store to have
10:03:05 their age formally verified. And then, for everybody
10:03:08 under 18, app stores will be categorically forbidden from
10:03:12 allowing them to download any mobile app, no matter how
10:03:15 innocuous or important, or make any in-app purchase
10:03:20 whether that's for political writings, educational
10:03:23 materials, religious texts, music, games, movies unless
10:03:28 their parent or guardian first gives express consent.
10:03:33 Blanket consent is expressly forbidden by the
10:03:38 statute. And on top of all of that, every app developer
10:03:41 will now have to assign a state-mandated age rating, not
10:03:44 just to the app but for every item that's available for
10:03:48 purchase within. That includes audio books,
10:03:51 subscriptions, songs, anything. This boa constrictor of a
10:03:55 statute violates the First Amendment several times over
10:03:58 and CCIA on behalf of its members who include leading app
10:04:03 stores and app developers, ask the Court to preliminarily
10:04:07 enjoin its enforcement.
10:04:07 So in my limited time this morning, I want to
10:04:09 explain first why S.B. 2420 burdens speech, why strict
10:04:16 scrutiny is required, and why the statute can't survive
10:04:19 any form of heightened scrutiny. First, I want to set the
10:04:22 stage just by giving a brief background on the mobile app
10:04:26 universe.

10:04:27 As documented in the declarations that we've
10:04:29 submitted, the briefs supporting our motion, mobile apps
10:04:33 and app stores provide access to a staggering array of
10:04:36 speech on nearly every subject imaginable. They're robust
10:04:41 media for political news, information, religious activity.
10:04:45 They provide messaging, e-mail. They're a rich source of
10:04:51 educational material and informational resources,
10:04:52 including for public libraries. And they, of course, they
10:04:55 give access to all manner of creative and artistic
10:04:59 expression whether that's through books, essays, and other
10:05:01 writings, podcasts, video, photography, music, games,
10:05:06 movies and television shows.
10:05:07 And app developers aren't just big companies but
10:05:11 include countless small businesses and individuals, as
10:05:14 well. And the app stores, they choose what apps are going
10:05:18 to be available on their services and make those apps
10:05:22 available for people to access and use. So this is really
10:05:27 the facilitation of speech and information on a grand
10:05:30 scale.
10:05:31 Now, of course, we recognize that speech can be
10:05:34 abused and that there are legitimate concerns about
10:05:38 protecting minors who use app stores and making sure that
10:05:41 they don't encounter inappropriate or harmful material and
10:05:44 that's something that our members take very seriously.
10:05:47 This is documented in the undisputed record, including the

10:05:50 declarations that we've submitted. So the leading app
10:05:53 stores all vet the apps that are on their platform. They
10:05:56 require age ratings for apps and app developers, provide
10:06:00 detailed descriptions of what the apps are, their privacy
10:06:04 policies, their security policies.
10:06:05 The app stores also have robust content
10:06:08 moderation policies for, among other things, child
10:06:11 endangerment and inappropriate content, including sexual
10:06:15 content. And of course, the app stores also offer
10:06:19 voluntary controls to parents that allow parents that wish
10:06:23 to do so to monitor and control how their children are
10:06:26 using the app stores, what apps they're downloading, et
10:06:28 cetera.
10:06:28 So --
10:06:29 THE COURT: Let me ask, is it your understanding
10:06:31 of the state's position that at least the partial
10:06:35 justification of this law has not to do so much with the
10:06:38 content of the apps but the so-called addictive nature of
10:06:44 those apps themselves, in other words, the effect on the
10:06:48 -- potential effects on mental health or well-being just
10:06:53 by the use of the apps, in particular, social media apps
10:06:57 and things like that? Is it your understanding that
10:07:00 that's a part of the justification that the state's
10:07:02 making?
10:07:02 MR. WILLEN: I believe -- and certainly if you

look at the record, legislative record, I believe that was a -- certainly a concern that was expressed by members of the legislature that supported the law. Now, of course, as we point out, that justification that the law is supported by the idea of protecting minors from content or services that are believed to be harmful or inappropriate to them is precisely why or one of the reasons why it's a content-based statute. Its justification is content-based and requires strict scrutiny.

It's also -- I would say that justification sort of highlights one of the really central kind of problems with this law which is the substantial overbreadth, a real mismatch between kind of what the state claims that it's doing or one of the things that the state claims justifies the law and the way that the law operates. Because even if that is the concern that motivated the law to be enacted, what it actually does by requiring age verification and parental control across the entirety of the app stores for every single app that's downloaded and for all content that's purchased within the apps is wildly overbroad, measured against the justification of there may be a small handful of apps or services that the state has concerns about whether from a -- from the standpoint of addictiveness or the standpoint of exposure to harmful or inappropriate content.

10:08:40 But just to make one more point, I don't think -- and you could certainly ask the state this question -- that there's a claim that the -- somehow the app stores themselves are addictive or that there's some problem with the interaction with minors and the app stores themselves. The concern is really, I think, about a certain narrow handful of apps that are available and the content at least seen by minors on those apps.

So let me just sort of go back to the things that the act actually does and explain some of our real problems from our First Amendment standpoint. So this act really has kind of three interlocking chokepoints or checkpoints on speech. The first is the age verification requirement. Now, we know from the Supreme Court's recent decision in the Free Speech Coalition case that age verification laws that gate access to speech and expression trigger First Amendment scrutiny. And here, in contrast to the narrow and targeted law there which used age verification really simply to wall off from minors a category of speech that they had no First Amendment right to access. That's pornographic speech or speech that's obscene to minors.

S.B. 2420 does something very different, right? It is using age verification to restrict access to speech and information that is fully constitutionally protected

10:10:22 for adults and minors and that makes it totally different
10:10:25 from that law. It also makes it totally different from
10:10:28 traditional age verification mandates of the sort that the
10:10:31 state invokes that regulate access to contraband, things
10:10:34 like guns, or tobacco, or alcohol.
10:10:38 So that means that the burdens on speech here are
10:10:42 not indirect, not incidental but they're direct. So
10:10:46 that's the first part. Then we have this parental
10:10:49 verification and parental consent obligation, which,
10:10:52 again, applies to every single app that's downloaded and
10:10:56 then, every piece of content speech information that's
10:10:59 purchased within any app.
10:11:02 So we know from the Supreme Court's decision in
10:11:05 the Brown case that laws require parents to consent before
10:11:11 their children can access speech, restrict speech and
10:11:18 trigger First Amendment protection. And in fact, if you
10:11:22 look at particularly footnote 2 of the Brown case, it
10:11:26 really anticipated the very kind of law that Texas has now
10:11:29 enacted. That is a law that, quote, prevents children
10:11:31 from hearing or saying anything without their parent's
10:11:34 prior consent, and the Supreme Court said that such laws
10:11:37 -- and this is a quote from footnote 2 -- must be
10:11:41 unconstitutional in the absence of any justification for
10:11:43 such control that would satisfy strict scrutiny.
10:11:48 So in saying that, Brown really rejected the very

10:11:51 argument that Texas makes here that these kinds of laws
10:11:53 simply empower parents or empower parental authority. In
10:11:58 fact, what the court said is that these laws impose
10:12:01 governmental authority subject only to a parental veto.
10:12:05 So what we have here, I think, clearly is a burden and a
10:12:09 direct regulation of speech, and then, that takes us to
10:12:11 the question of what level of scrutiny applies.
10:12:14 We think there's at least three reasons that
10:12:17 strict scrutiny is the right standard. The first I've
10:12:20 sort of already alluded to and that's the Supreme Court
10:12:22 decision in the Free Speech Coalition case. That case
10:12:25 applied intermediate scrutiny to a law that, as I've
10:12:29 mentioned, only required age verification for a category
10:12:33 of speech that minors had no constitutional right to
10:12:36 access. That was crucial to the court's decision. The
10:12:40 court's decision was premised on essentially an analogy to
10:12:44 traditional real-world age verification laws for
10:12:47 pornography, for guns, for tobacco, but that analogy cuts
10:12:53 exactly the opposite direction here.
10:12:54 We have no real-world analogy for a law that
10:12:57 would require age verification basically for the
10:13:00 equivalent of going into a library, or a bookstore, or a
10:13:03 shopping mall where libraries, bookstores, record stores,
10:13:07 video game shops, arcades are all present. So here,
10:13:11 because we're dealing with the wide range of speech that

10:13:16 minors have every right to access, the rule of law for FSC
10:13:23 commands, I think, strict scrutiny.
10:13:24 Now, secondly, as we've also talked about as your
10:13:27 Honor mentioned, the state's own justification for the law
10:13:31 protecting minors against harmful content found in a
10:13:35 handful of apps or addictive material found in a handful
10:13:39 of apps, that itself requires strict scrutiny. It's well
10:13:43 settled that even if the law were somehow thought to be
10:13:47 content neutral on its face, a content-based
10:13:50 justification, a justification looks at the alleged effect
10:13:53 of the speech that is encountered makes the law
10:13:58 content-based and requires strict scrutiny.
10:13:59 And then, the third point is that this law has
10:14:03 very clear content-based exceptions. So under S.B. 2420,
10:14:09 and this is Section 121.022(h), there are clear exceptions
10:14:16 for emergency services and for state-sanctioned test prep
10:14:21 materials. And it's well settled from the AAPC vs. Barr
10:14:27 case and others that these kinds of content-based
10:14:29 exceptions can render a law subject to strict scrutiny and
10:14:33 that's what we have here.
10:14:34 So under strict scrutiny, this law is plainly
10:14:39 unconstitutional. The state really doesn't even make any
10:14:42 effort to defend it. But even if you were to apply
10:14:45 intermediate scrutiny, you'd get to the same result. So
10:14:49 that standard has teeth. It's a real form of review that

10:14:53 the burden remains on the state to show that the law is,
10:14:55 quote, narrowly tailored to serve a significant state
10:14:58 interest. And here, we have a law that is at once wildly
10:15:03 overbroad and entirely under-inclusive.
10:15:08 So overbreadth, we've already talked a little bit
10:15:10 about, but there's really a complete mismatch in the
10:15:13 statute between the stated goals and the means chosen. So
10:15:19 concern about harmful content or harmful activity on a
10:15:23 handful of apps cannot justify requiring across-the-board
10:15:27 age verification and parental consent before any app is
10:15:32 downloaded and before any content is purchased on those
10:15:35 apps. So this is, you know, not an access control measure
10:15:41 that has focused on some particular kind of material that
10:15:46 the state is concerned about. This is a broad, broad sort
10:15:51 of prophylactic measure that, as I said, regulates access
10:15:56 to and limits the dissemination of speech across an entire
10:16:02 universe, an entire ecosystem of speech.
10:16:06 THE COURT: What do you do with the state's
10:16:08 argument that this is to be characterized as commercial
10:16:14 speech?
10:16:15 MR. WILLEN: Well, I think there are -- so
10:16:16 there's a couple of flavors, I guess, of that argument.
10:16:20 So I would say, first of all, with respect to just the
10:16:23 kind of commercial speech doctrines so, one, there's no
10:16:31 idea that this law is not regulating simply the

10:16:37 advertisement of material. This law is operating to
10:16:43 prohibit or to require parental consent for the free
10:16:48 download of many, many, many apps. And even where
10:16:52 material is purchased, I think it's very well settled that
10:16:55 speech and speech regulation doesn't become commercial
10:16:59 speech or commercial speech regulation merely because you
10:17:02 have a sale of material, right?
10:17:04 And I think the Brown case pretty clearly stands
10:17:07 for that proposition. Brown was a statute that involved
10:17:11 the regulation of the sale or rental of certain kinds of
10:17:15 video games and the Court didn't -- the Supreme Court
10:17:17 didn't say, well, sale or rental that that means it's
10:17:20 commercial. No, no, no. It said this is video games.
10:17:22 Video games are protected speech and imposing parental
10:17:28 consent, parental control requirements in that context
10:17:32 triggers full strict scrutiny.
10:17:35 You could also look at cases like 303 Creative,
10:17:39 many others that made clear that the fact that there's --
10:17:43 that money is potentially changing hands in the exchange
10:17:46 of speech and information isn't enough to make it speech
10:17:50 regulate -- commercial speech regulation. The other sort
10:17:54 of argument along these lines that the state makes is that
10:17:56 this is somehow just sort of a contracting law. Just a
10:17:59 law that regulates what sort of agreements minors can
10:18:03 enter into. And I think there's a number of problems with

10:18:06 that argument.

10:18:08 I mean, first of all, the statute on its face
10:18:12 requires all of the things that we've been talking about,
10:18:15 age verification, parental tethering, parental consent.
10:18:18 And it expressly makes a violation of the statute, a
10:18:22 violation of the deceptive trade practices law. So if the
10:18:26 state's position really is the only thing that this law
10:18:29 does is that it prohibits app stores or app developers
10:18:34 from affirmatively enforcing their contracts in some
10:18:37 situations, I think they enacted a statute that creates a
10:18:44 lot of uncertainty about that application and I think that
10:18:46 would be a somewhat surprising way to read the law.

10:18:49 THE COURT: I think it's your 15-minute mark.

10:18:52 MR. WILLEN: Oh, great. Perfect. I will grab --

10:18:53 THE COURT: You can take a minute to wrap up.

10:18:56 MR. WILLEN: Okay. I just want to say very
10:18:58 quickly, we didn't get to talk very much about the
10:19:01 compelled speech components of the law, but that is a
10:19:04 separate argument with respect to the age-rating
10:19:06 provisions, which we think is controlled by the Fifth
10:19:08 Circuit's decision in the Book People case. So unless the
10:19:11 Court has further questions, I will turn it over to my
10:19:13 co-counsel.

10:19:14 THE COURT: Thank you very much.

10:19:15 MR. WILLEN: Thank you very much, your Honor.

10:19:24 THE COURT: Mr. Sieff.

10:19:27 MR. SIEFF: Good morning, your Honor. Adam Sieff of Davis Wright Tremaine for the Student plaintiffs. Some of whom you could see are in the courtroom here today with us.

10:19:38 Texas says it wants to prevent kids from accessing objectionable material on the internet and so, it's presumptively banned them and restricted adults from downloading the New York Times, ESPN, the CNBC app, and every other possible kind of information that is disseminated through app stores' massive information libraries.

10:20:04 To access this now-restricted material, millions of Texans will be required to clear a series of state-imposed pre-conditions. Starts with age verification, but for minors like the Student plaintiffs, it also requires proof of parent identification and parental consent for each and every download they wish to make.

10:20:25 Whether or not a parent wants anything to do with those decisions or whether as in the case of Vanessa Fernandez, the mother of our Plaintiff M.F., they would rather provide blanket consent that the statute explicitly forbids. That pre-clearance and proxy censorship regime creates a system of prior restraint and one that the state

10:20:49 repeatedly and explicitly justifies on the basis of
10:20:54 content. Strict scrutiny, therefore, applies several
10:20:57 times over and the state does nothing, nothing to attempt
10:21:02 to satisfy that most demanding constitutional standard, or
10:21:06 even intermediate scrutiny which still requires the state
10:21:10 to come forward with evidence that its enactment is
10:21:14 narrowly tailored, restricts no more speech than
10:21:17 necessary, and is constitutionally justified.
10:21:19 Because as the state acknowledges, the only
10:21:23 possible constitutional applications of this regime are to
10:21:28 those instances where it just happens through its dragnet
10:21:31 to capture incidents of unprotected material. The law is
10:21:37 categorically overbroad on its face and the Court should
10:21:40 enjoin it so as to ensure that the students in this room
10:21:44 and our clients will continue to be able to engage in
10:21:48 political advocacy and organization, student journalism,
10:21:52 and to create and enjoy expressive materials on the
10:21:55 internet without government interference.
10:21:57 I'm happy to start anywhere, but I actually want
10:22:00 to start with the question you asked Mr. Willen if it's
10:22:04 all right with the Court.
10:22:05 THE COURT: Sure.
10:22:06 MR. SIEFF: You asked Mr. Willen whether he
10:22:08 thought that the state's justification in part concern
10:22:12 addiction. I actually don't think that's the state's

10:22:15 concern. The state's brief is quite explicit. The law
10:22:19 was passed to restrict access to objectionable, unsuitable
10:22:22 and what the state says might be potentially harmful
10:22:25 material. Might. Material that parents might find
10:22:28 harmful. That's a quite clearly content-based
10:22:33 justification. That's not a justification that we've seen
10:22:37 in some other cases where less than strict scrutiny is
10:22:40 applied, where the state's putative concern is with
10:22:45 content-neutral features or functions of an application.
10:22:48 Even assuming that's correct, that's not what the
10:22:51 state has done here. It's told us what it's doing. It's
10:22:54 trying to prevent access to material that it thinks is
10:22:58 objectionable. Now, there's no category of objectionable
10:23:04 speech which falls outside of the First Amendment's
10:23:07 protection. The First Amendment provides minors with
10:23:08 coequal First Amendment rights with the exception of
10:23:09 speech which is variably obscene as to them. This is
10:23:14 discussed in Brown and also in United States vs. Stevens
10:23:17 case which reviews the categories of speech which fall
10:23:20 outside the First Amendment's protection.
10:23:22 What the state cannot do is invent a new category
10:23:26 of objectionable or unsuitable material and restrict it.
10:23:30 It can restrict access to speech to a minor who don't have
10:23:32 right to access, but that's not what the state has done
10:23:34 here.

10:23:37 The second question you asked Mr. Willen that I'd
10:23:39 like to address is you asked what to make of the state's
10:23:42 commercial speech argument. I don't think that that's a
10:23:47 very compelling argument at all, your Honor. The fact
10:23:50 that these are commercial enterprises that provide access
10:23:54 to my clients' speech or any information to my clients
10:23:58 doesn't mean or dilute their right to access news,
10:24:02 commentary, reporting stock quotes like Z.B., the
10:24:07 plaintiff in this case, she's a student journalist and
10:24:10 she's interested in the stock market. She uses the CNBC
10:24:13 app. This case would require her -- would presumptively
10:24:16 ban her from accessing that app unless she talked to her
10:24:19 parent first.
10:24:20 That, in some way, invites the question about the
10:24:24 equities in this case and I think that the Student
10:24:26 plaintiffs are well positioned to provide some color why
10:24:31 an injunction is not just merited because this law is
10:24:34 clearly unconstitutional and, frankly, not even defended,
10:24:37 but because an injunction in this case is necessary to
10:24:39 avoid not just the censorship that this law would create
10:24:42 but the invasion into families' rights to decide how to
10:24:47 cultivate and educate their children and raise their
10:24:50 children.
10:24:50 This is important because the state ironically
10:24:53 says that's part of what it was trying to do here is

10:24:56 empower parents. But as Justice Scalia talked about in
10:25:00 the Brown case, you don't empower parents by making
10:25:04 choices for them -- by the state making choices for them
10:25:07 as the default. You empower parents by letting them make
10:25:11 decisions about how to raise children on their own.
10:25:13 So, for instance, in this case, we have a
10:25:15 declaration from Vanessa Fernandez, who's the mother of
10:25:19 M.F., one of the plaintiffs in our case, who says that she
10:25:22 has deliberately made choices about the types of material
10:25:25 she will allow her son to access in order to cultivate
10:25:29 independence and teach him to make and face the
10:25:32 consequences for his own decisions.
10:25:34 Those are choices that the state might disagree
10:25:37 with. They're choices that you and I might disagree with.
10:25:40 But neither Texas nor California nor anyone else is
10:25:44 allowed to superimpose its values and decisions on how a
10:25:47 parent decides to raise and cultivate values in their
10:25:52 family. That's just inconsistent with our constitutional
10:25:55 tradition.
10:25:55 THE COURT: Don't parents already sort of have a
10:25:58 significant level of control here because they have the
10:26:01 ability to make the contract that ultimate -- that
10:26:08 initially gives their children access to the phone, right?
10:26:10 I mean, do children have a -- because they can't contract
10:26:13 with a phone company, don't parents -- aren't they

10:26:18 necessarily involved at that point and don't they have
10:26:21 some control at that point over what their children are
10:26:26 doing? A parent who feels strongly enough can simply say
10:26:30 unless you follow my rules, I'm not going to get you a
10:26:34 phone contract.
10:26:36 MR. SIEFF: I think that's exactly right and
10:26:38 that's a less restrictive alternative to what the state
10:26:40 has enacted here. The parent could also take the phone
10:26:41 away at bedtime. The parent could also choose to use any
10:26:45 of the voluntary filters and content access tools that
10:26:48 exist. We've described them in our briefing, declarations
10:26:51 we've submitted -- I believe that the industry plaintiffs
10:26:52 have, as well -- that exist at both the app store level
10:26:55 and at the app developer level. Those are the types of
10:26:58 less restrictive alternatives under either strict or
10:27:01 intermediate scrutiny. And to be clear, we think that
10:27:03 strict scrutiny applies here. But those are the types of
10:27:05 alternatives that courts, including the Supreme Court,
10:27:08 have consistently recognized as being the appropriate
10:27:11 means of empowering parents. Not passing laws like this
10:27:15 which cast a dragnet over all speech, impose burdens on
10:27:19 adults, by the way, as well as minors and tell parents, in
10:27:23 Justice Scalia's words, what they ought to want as opposed
10:27:27 to letting them make decisions for themselves.
10:27:29 To build on what Mr. Willen was saying earlier, I

10:27:34 think one aspect of this law that is quite troubling is
10:27:41 the way in which it previously restrains speech before it
10:27:45 could be disseminated. When the state imposes
10:27:50 preconditions, state-imposed preconditions to access
10:27:53 speech, those barriers are prior restraints when there's
10:27:57 no opportunity to adjudicate whether the speech that's
10:28:01 being restricted is permissible or not.
10:28:06 That type of prior restraint is compounded, but
10:28:08 what you have here is a obligation on app stores and
10:28:11 developers essentially to act as the government's proxy
10:28:18 censures. They are forced to risk civil liability or
10:28:21 else, do the state's bidding and restrict access on its
10:28:25 behalf based on the concern that if they don't, if they
10:28:29 don't successfully preclude access to all the content that
10:28:33 it's going to require that the state says is
10:28:35 objectionable, they could face liability.
10:28:36 This is something that the Supreme Court
10:28:41 addressed in Interstate Circuit case which involved movie
10:28:44 theaters, or like the law here, movie theaters or film
10:28:48 exhibiters required to enforce content ratings or else,
10:28:54 face liability for enabling minors to access the material,
10:28:58 to view the material. This law does the same thing.
10:29:01 There's a content-rating requirement Mr. Willen talked
10:29:03 about. And then, these intermediaries are required to
10:29:09 restrict access to content on the basis of those ratings.

10:29:15 Put these two things together, preconditions, this system of intermediary liability and what you end up with is a system of prior restraint. So for that reason, too, not just the overt content-based justification, which I think is alone enough to apply strict scrutiny, and not just as Mr. Willen mentioned, the facial content-based distinctions that the app makes in terms of its coverage, but because it poses a prior restraint, that is a significant burden on speech. And I think it's important for the Court to consider analyzing this law as a prior restraint to apply strict scrutiny for that reason, too.

10:29:47 THE COURT: You've got five minutes.

10:29:51 MR. SIEFF: Maybe just a few comments on the application of strict or intermediate scrutiny here are warranted. I actually have a blank page in my outline because there's no evidence from the state for me to even address. But we put evidence in the record on this point. It's unrebutted that when a state says it's trying to -- let's say the state's interest here were, in fact, to protect children from harmful content online. When the state tries to do that, it has to come forward with evidence that shows that its solution is causally linked to preventing or addressing that problem. There's no evidence to that effect.

10:30:30 But the evidence the Court does have before it,

10:30:32 evidence from social psychologists and experts in other
10:30:37 cases that we were able to put into the record here that
10:30:40 I'd note for the record were before the Court in other
10:30:42 cases show that these types of laws do not, in fact,
10:30:46 address a real problem. The unmitigated access to the New
10:30:50 York Times is not a cause for any type of legitimate
10:30:55 government interest that could motivate restricting that
10:30:58 speech.

10:30:58 Similarly, we've put in evidence as I mentioned
10:31:02 before of narrow alternatives, ways in which the state
10:31:05 could have not just enforced or educated parents -- excuse
10:31:09 me, educated parents or encouraged parents to use these
10:31:12 voluntary tools, but could enforce existing criminal
10:31:16 statutes, for example; could enforce the law that was
10:31:19 upheld in the Free Speech Coalition case to prevent access
10:31:23 to this material.

10:31:24 And so, when the Court's doing its facial
10:31:27 analysis here and it's applying strict scrutiny across the
10:31:29 board, the Court should consider that the relevant
10:31:34 applications at stake are those to which this act creates
10:31:38 novel regulatory authority. So the first step in the
10:31:41 facial analysis we know from cases like City of Los
10:31:44 Angeles vs. Patel are to back out those applications which
10:31:47 the state already has power to do that aren't challenged
10:31:51 here and to look only at the novel applications of the

10:31:55 statute.

10:31:56 And so, even more clearly then when you focus on
10:31:59 that universe of applications, I can't even imagine, it's
10:32:06 an infinitesimal number of applications which are not
10:32:09 already prohibited by existing law that this law reaches
10:32:11 that would still be constitutional. The virtually all
10:32:16 applications of this statute as this court recognized are
10:32:20 -- in the H.B. 18 cases, prior CCIA and Students Engaged
10:32:26 In Advancing Texas cases, virtually all of the
10:32:29 applications are protected speech because the state can't
10:32:32 constitutionally justify, it doesn't try to
10:32:35 constitutionally justify any of those. The law under the
10:32:38 terms of the overbreadth standard, under the two-step
10:32:41 analysis of Moody that we addressed in our briefing is
10:32:43 overbroad on its face. The Court should enter the
10:32:47 injunction. And we've discussed why equity and the public
10:32:49 interest support that injunction in this case.
10:32:51 I'll reserve the balance of my time for rebuttal
10:32:54 at this point.
10:32:54 THE COURT: Thank you.
10:32:55 MR. SIEFF: Thank you, your Honor.
10:32:56 THE COURT: Mr. Berg.
10:33:09 MR. BERG: Thank you, your Honor.
10:33:17 S.B. 2420 helps prevent minors from accessing
10:33:20 addictive and harmful content without parental consent

much like we require age verification to purchase tobacco or visit pornographic websites. The act deals with contracts, not content. Specifically deals with the contracts between minors and app stores.

THE COURT: But you've just -- I mean, you just said -- the first part of that sentence was you said that it's about harmful content and then you -- I mean, let me just cut to the chase here. To the extent that there is content that there's speech that is outside of the First Amendment protection, can you address that last point that counsel made about existing statutes already prohibit or restrict material that is obscene, that is of that characterization.

What is the -- can you characterize the material that the state is talking about that's not captured by existing statutes that you think is of concern and that you're characterizing as harmful or dangerous to minors?

MR. BERG: Sure, your Honor. So I think primarily -- and this is where the parties agree, parents are the ultimate arbitrators and are ultimately responsible for their children and should be. The parties agree with that. We just took a different road to get there. As far as what's new, it's sort of a weird situation if we take the plaintiffs' word about what they're doing to provide support for parents, it's a very

10:34:58 limited bill, a very minimal burden, and if they're not
10:35:05 providing those options to parents, then it's a very
10:35:07 necessary bill that's not covered.
10:35:10 You got into a little bit with opposing counsel
10:35:15 on whether this was a narrowly targeted bill. They said
10:35:24 that H.B. 1181, that Free Speech Coalition bill --
10:35:28 pornography bill was narrowly targeted, which I appreciate
10:35:31 because no plaintiff said that at any point in that
10:35:33 litigation. Every plaintiff said that it was a massive
10:35:37 burden on First Amendment rights of adults. The Supreme
10:35:41 Court ultimately upheld that through intermediate
10:35:45 scrutiny.
10:35:46 I think ideally, as Solicitor General Sauer
10:35:52 talked about in the tariff argument recently, the best
10:35:56 application of this bill was if it doesn't get much use.
10:35:58 And plaintiffs doing what they're doing, providing support
10:36:03 to parents and parents are getting the support they need
10:36:05 and protecting their children from harm, the harm has been
10:36:10 well documented now from the widespread adaptation of the
10:36:15 smartphone, approximately 2007 to now. The mental health
10:36:24 outcomes clearly have deteriorated for children across the
10:36:30 country not just in Texas.
10:36:33 I would cite a few statistics. Between 2005 and
10:36:40 2017, major depressive episodes among 12-to-17-year-old
10:36:44 girls increased 52 percent. Hospital admissions for

10:36:47 self-harm tripled among 10-to-14-year-old girls, and among
10:36:51 the same group, suicide doubled. And things haven't
10:36:55 gotten better since 2017. According to the 2023 Youth
10:37:00 Risk Behavior Survey, 39.7 percent of high school students
10:37:04 experienced persistent feelings of sadness and
10:37:06 hopelessness, 28.5 percent experience poor mental health.
10:37:10 20.4 percent experience -- or seriously considered
10:37:14 attempting suicide. And most shockingly, 9.5 percent had
10:37:19 attempted suicide which is hard to believe. You'd almost
10:37:24 have to throw out the whole study. It just seems such a
10:37:28 shocking number.
10:37:29 THE COURT: Let me ask you this. Which of the
10:37:30 apps that are targeted by this legislation are causally
10:37:34 related to any of those outcomes?
10:37:36 MR. BERG: Sure. And the answer is many. There
10:37:42 is literature on social media websites such as TikTok that
10:37:50 algorithmically spiral users into self-harm content.
10:37:54 There's numerous instances of sexual exploitation or
10:37:59 grooming on child-safe platforms. Mobile gaming have
10:38:05 adopted the same scientific techniques used by casinos to
10:38:12 make children addicted to their smartphone and keep using
10:38:15 the app.
10:38:18 Texas definitely supports the parents in their
10:38:23 attempt to parent their children and they need it because
10:38:26 parents seem to be losing this battle. And I'm not saying

10:38:32 Texas is perfect and Texas has all the answers, but this
10:38:34 is not a problem that only Texas has noticed. Twelve to
10:38:38 15 states are working on some form of this bill or passed
10:38:43 this bill as varied as Texas. And California recently
10:38:48 passed a not too dissimilar version of this bill. So I
10:38:54 think red or blue, everyone can see that the outcomes for
10:38:57 children are not great. We're trying to find an answer to
10:39:01 that.
10:39:01 THE COURT: Sure. And I appreciate that. I
10:39:03 think that's a legitimate point. It's just the question
10:39:05 is whether or not this legislation has anything to do with
10:39:08 that. Tell me what's in the record with regard to the
10:39:13 evidence that the apps that are covered by this are to
10:39:21 blame for the bills that you've just identified. What's
10:39:24 in the record? Not just...
10:39:28 MR. BERG: Yes. Of course. And the amici flush
10:39:32 this out. The bipartisan technology scholars brief was
10:39:41 helpful on this as well as the amicus from the National
10:39:50 Center On Sexual Exploitation and Digital Childhood
10:39:53 Institute. But there's been a lot of studies. Jonathan
10:40:00 Haidt in popular culture has talked about this issue.
10:40:11 But I think largely, researchers have connected
10:40:17 these outcomes with the increasing usage of mobile phones.
10:40:24 The children and teens spend on average of
10:40:27 seven-and-a-half hours per day on screens. While on the

10:40:31 phone, teenagers spend 90 percent of the time on apps.
10:40:35 And the average teen receives approximately 240 app
10:40:40 notifications each day.
10:40:44 THE COURT: But there's a difference between
10:40:45 somebody spending six hours on their phone on TikTok and
10:40:50 somebody spending six hours on their phone researching for
10:40:56 a paper that they're writing in their history class,
10:41:00 right? Those are two different things. Was there an
10:41:03 intent by the state to say, okay, let's identify the apps
10:41:07 that actually present the kind of harms that we're trying
10:41:11 to get at?
10:41:12 In other words, if they used algorithms that are
10:41:16 predatory or abusive, if they use any of the -- if they
10:41:21 have any of the content that's obscene or otherwise that
10:41:24 frankly is covered already by other statutes, was there
10:41:28 any intent by the state to identify the characteristics of
10:41:34 the apps that are of concern to the state versus news apps
10:41:38 and stock apps and, you know, ancestry.com, whatever apps
10:41:45 that have -- to my mind present none of the dangers that
10:41:49 you're talking about.
10:41:51 MR. BERG: Excellent questions. Representative
10:41:58 Fairly who laid out the bill in the House and then in the
10:42:05 Senate, even though she's a rep, talked about why that
10:42:08 choice was and it seems that that choice was primarily for
10:42:13 legal reasons. Once you specifically target certain

10:42:17 content, you have a content-based restriction, you're in
10:42:20 strict scrutiny land and you're already in trouble.
10:42:24 So according to Representative Fairly, the
10:42:28 conscious decision was to make it not a content-based
10:42:32 restriction and instead to bolster the parents instead of
10:42:36 targeting specific types of apps that would push you into
10:42:44 strict scrutiny land.
10:42:44 THE COURT: But the problem you have there is
10:42:46 that the statute does exempt certain kinds of apps. Apps
10:42:50 that have to do with application for testing for college,
10:42:58 government apps, apps for emergency service. I mean, once
10:43:03 you do that, aren't you then in, as you call it, strict
10:43:06 scrutiny land, right? The statute actually does give
10:43:11 content-related exceptions.
10:43:14 MR. BERG: So when I read the bill, one of the
10:43:19 first things I thought to look out was what's up with
10:43:23 this, especially the emergency services seem like maybe
10:43:28 you could call them not content-based. The test prep one
10:43:33 stuck out to me. Those were all added as amendments.
10:43:41 Worst-case scenario, the statute has one of the stronger
10:43:45 severability sections you'll see if those need to be cut
10:43:49 to say that this is a clean, not content-based, purely
10:43:55 conduct-based law, then I would ask you to sever without
10:44:02 finding the whole statute --
10:44:02 THE COURT: But then, I would be doing something

10:44:03 that the legislature didn't do. The legislature passed a
10:44:06 content-based law. And so, what you're asking me to do is
10:44:09 save that by doing something that the legislature
10:44:12 explicitly didn't do and refused to do.
10:44:17 MR. BERG: I would say that the -- while the
10:44:22 legislature certainly voted for the whole bill, part of
10:44:26 that was the severability section which is extremely
10:44:31 strong, which it says if any application of any provision
10:44:37 of this app to any person, group of person, or
10:44:40 circumstances as found by a court to be invalid for any
10:44:43 reason, the remaining application of that provision to all
10:44:46 other persons and circumstances shall be severed and may
10:44:49 not be affected.
10:44:50 So I mean, that's pretty strong language just the
10:44:54 legislature who also voted that language saying if there's
10:44:57 an issue, if this is going to fail legal challenge, cut
10:45:03 it.
10:45:03 THE COURT: Okay.
10:45:16 MR. BERG: The Federal Trade Commission's 2014
10:45:20 consent decree on unlawful in-app purchases made by minors
10:45:25 imposed a binding federal obligation on Apple and Google
10:45:29 to provide effective notice and obtain verifiable parental
10:45:33 consent before billing children for digital goods. This
10:45:36 was issued after the FTC found that these platforms had
10:45:40 systematically charged minors without parental knowledge

10:45:43 or authorization.

10:45:45 Age verification is already built into the
10:45:50 structure, the burden on the plaintiffs to be very light.
10:45:55 In fact, Apple already has available for download the
10:45:59 declared app -- declared age range API, which appears to
10:46:04 put their app store in compliance with S.B. 2420. And
10:46:09 Google has announced that their new Play API will be live
10:46:14 for users in Texas on January 1, which would also put
10:46:19 Google Play Store in compliance with the law. So I think
10:46:24 that also goes to the burden in any scrutiny analysis.

10:46:33 We talked a little bit about Brown. The SEAT
10:46:41 plaintiffs rely on it a lot. Brown, it's a yellow-flag
10:46:58 case, it was mentioned this summer in Free Speech
10:47:02 Coalition three times. The strict scrutiny analysis in
10:47:06 Brown was mentioned before, the Supreme Court decided to
10:47:10 go to intermediate scrutiny. Also, I would point to
10:47:31 Erznoznik vs. City of Jacksonville. That's 422 U.S. at
10:47:36 212. It is well settled that a state or municipality can
10:47:41 adopt more stringent controls on communicative materials
10:47:45 available to youths than on those available to adults. As
10:47:50 we briefly talked about the Brown dealt with violent video
10:47:56 games which was a content-based restriction the Court
10:48:01 found.

10:48:02 Here, certainly the goal as the bill was laid out
10:48:07 and as it went through the legislature was that it would

10:48:09 be a -- not a content-based restriction and we were
10:48:16 talking the severability part. I'd like to talk a little
10:48:20 bit about scrutiny. If the content-neutral part can be
10:48:28 established, that would put us in intermediate scrutiny.
10:48:35 As we talk about, Free Speech Coalition provided for
10:48:38 intermediate scrutiny.
10:48:40 Also of note recently, the CCIA plaintiffs in a
10:48:45 suit in Florida versus the Attorney General Uthmeier, the
10:48:50 Eleventh Circuit put aside a stay of preliminary
10:48:53 injunction for Florida's H.B. 3 which required social
10:48:57 media platforms' addictive features to prohibit accounts
10:49:00 for those under 14 and require parental consent for those
10:49:03 ages 14 or 15 and allow parents to request a platform
10:49:09 delete a minor's account and all information and that the
10:49:11 platforms must comply.
10:49:14 THE COURT: But see what they did there? They
10:49:16 identified that characteristic about those apps, right?
10:49:21 MR. BERG: Uh-huh. Yeah. We've talked about
10:49:25 this, but yeah, you sort of -- you can -- and this was
10:49:31 certainly not a legal choice. It was a choice by the
10:49:33 legislature not to -- to try to avoid strict scrutiny
10:49:37 land. A lot of -- the one amendment that was rejected in
10:49:43 the House, the male representative who was putting that
10:49:48 forward was very pushing for -- pushing for it and
10:49:51 Representative Fairly said we can't do that. That will

10:49:54 get us in trouble with the First Amendment. It was very
10:49:56 clear that the legislature was trying to protect the bill
10:50:01 from being struck down.
10:50:07 I'd like to talk about the equities which my
10:50:14 friend on the other side talked about a bit. We already
10:50:25 talked a little bit about irreparable harm. The
10:50:30 plaintiffs, at least the CCIA plaintiffs have basically
10:50:32 complied with the law already. The SEAT plaintiffs have
10:50:39 slightly different concerns. But as the balance of
10:50:42 equities, public interest and use safety, and protection
10:50:46 of youths in their contracting is strong. That advances
10:50:51 that interest. Those interests about making the state a
10:50:55 content regulator subject to the caveats we already talked
10:50:59 about. This bill was passed with broad support in both
10:51:03 houses of the legislature. All but one senator voted for
10:51:07 the act and it was 120 versus nine in the House. People's
10:51:12 elected representatives think that S.B. 2420 is a good
10:51:16 idea for obvious reasons. The proliferation of
10:51:18 smartphones and apps have objectively reduced the mental
10:51:22 well-being of our children.
10:51:23 TPPF, Texas Public Policy Foundation, conducted a
10:51:27 poll of Texas parents and 80 percent were in support of
10:51:31 the bill. I'd site to Sable Communications California,
10:51:38 Inc. versus the FCC, the Supreme Court has recognized that
10:51:39 there's a compelling interest in protecting the physical

10:51:42 and psychological well-being of minors. Obviously was
10:51:47 reenforced this summer, Free Speech Coalition we talked
10:51:50 about a little bit. There, the Court emphasized with the
10:51:52 rise of the smartphone and instant streaming, many
10:51:55 adolescents can now access vast libraries of video content
10:51:59 both benign and obscene at almost any time and place with
10:52:03 an ease that would have been unimaginable at the time of
10:52:07 Reno and Ashcroft II. We've talked about the Eleventh
10:52:11 Circuit recently adopting intermediate scrutiny.
10:52:14 Also, public interest applies to third parties,
10:52:18 particularly children who will benefit from seeing S.B.
10:52:25 2420 going into effect and the better mental health
10:52:27 outcomes that hopefully will occur. I'm not a prophet,
10:52:34 but that's certainly the intent and I think --
10:52:36 THE COURT: Well but --
10:52:38 MR. BERG: -- as to the applied challenge.
10:52:39 THE COURT: Let's play that out. If that
10:52:41 happened, it would be because the parents declined to give
10:52:46 consent and so restricted their child's access to phone
10:52:53 content, right?
10:52:53 MR. BERG: Yes.
10:52:54 THE COURT: Which the parent can do now.
10:52:56 MR. BERG: Yes.
10:52:56 THE COURT: Because the parent pays the bills and
10:52:59 gives them the phone.

10:53:00 MR. BERG: Correct.

10:53:01 THE COURT: And can make the rules.

10:53:03 MR. BERG: Yes. And ideally, if that system was working, the numbers wouldn't be what we're seeing.

10:53:12 THE COURT: But that's the parent's prerogative. You say it's about the parents but the parents are letting that happen. So why don't you let the parents exercise the power they already have or not. This is -- to their point, this is the state doing it. This isn't the parent. This is the state doing it under the guise of giving parental control when parents already have the control. This is the state doing it.

10:53:33 MR. BERG: Well, ultimately is the parents doing it. The parents can say any app you want or you don't want. The state has no input on whether a parent approves that or not. I think one of the issues is the nonstandardization of protections across the various apps. So some apps, they'll have a rating and that will be what it is. But other ones, there is -- there's a --I was made aware of a -- it was represented as a bible app but there turned out to be pornography in it, which, I mean, can happen, I suppose.

10:54:14 But I mean, the protections vary, the ratings vary. Right now, it's very difficult for a parent to look at something -- okay, like New York Times, okay, New York

10:54:24 Times, probably fine. But what about some newer brand
10:54:29 that the parents don't really know what it is. The kids
10:54:34 say, oh, this is great. The more information that can be
10:54:39 provided to parents, the more uniformity of experience of
10:54:45 parents know that when I look at an app, it means this,
10:54:48 this and this, I think, supports parents making the
10:54:51 decision and whatever the student and parents ultimately
10:54:55 make, the state of Texas certainly supports that.
10:54:57 THE COURT: Mr. Berg, just before I forget,
10:55:01 what's the state's position with regard to standing for
10:55:04 all of these plaintiffs? Are you contesting standing on
10:55:08 any individual plaintiff or collective of plaintiffs?
10:55:13 MR. BERG: Well, we filed an answer instead of an
10:55:17 MCD. The CCIA standing seemed a little bit better than
10:55:24 the SEAT plaintiff standing. Certainly in discovery
10:55:28 getting into it's hard when personal information is
10:55:33 redacted. Respect privacy and obviously, a bill of
10:55:41 protecting children. We support protecting children as
10:55:44 best we can. So I'd say the SEAT standing is a little
10:55:50 less certain to us than the CCIA. We've litigated very
10:55:55 similar issues with CCIA, NetChoice and...
10:56:02 THE COURT: Okay. Thank you.
10:56:05 MR. BERG: I'd like to talk -- what's my time,
10:56:08 your Honor?
10:56:08 THE COURT: You have seven minutes.

10:56:11 MR. BERG: Okay. I'd like to touch on prior
10:56:14 restraints. This is not a prior restraint. A prior
10:56:18 restraint is type of censorship where the speech or
10:56:22 expression is stopped before it occurs. New York Times,
10:56:28 the U.S. or the government said you can't publish these
10:56:34 leaked government documents.
10:56:36 This is certainly distinguishable from a case
10:56:38 like Bantam Books vs. Sullivan, which is perhaps the
10:56:41 seminal prior restraint case where it says you can't sell
10:56:45 any of this to the general public. S.B. 2420 does not
10:56:50 prevent any sales. No app is banned from purchase.
10:56:56 Parents, of course, can monitor and limit the minor's app
10:57:02 usage. This is with their parental authority.
10:57:10 And courts have long recognized the parents'
10:57:13 fundamental right to direct the upbringing of their
10:57:17 children. Wisconsin vs. Yoder, which came up again in
10:57:21 Mahmoud this summer, still good law. And the Supreme
10:57:28 Court in Ginsburg and Free Speech Coalition has upheld
10:57:31 regulations that restrict speech as to minors but not to
10:57:33 adults. So just because minors are treated differently
10:57:41 under a statute doesn't mean that they're necessarily
10:57:44 having their First Amendment rights restrained.
10:57:47 THE COURT: I think something that hadn't gotten
10:57:49 a lot of attention is the fact that adults' rights are
10:57:52 affected, as well, right? I mean, I can't go look at the

10:57:56 New York Times without providing them some personal
10:57:59 information about me or, you know, pick another app,
10:58:03 right?
10:58:06 MR. BERG: So how the app goes and I guess this
10:58:11 is just a brief aside which also goes to the burden, this
10:58:14 would only -- under the statute, this only applies to new
10:58:18 users who don't currently have an app account. So very
10:58:21 small segment of the population, assuming all these fine
10:58:28 youngsters behind me have smartphones and their New York
10:58:31 Times app, they are not affected by S.B. 2420 at all.
10:58:34 So when a person does sign up for an app store,
10:58:42 they provide identification to the app and from that point
10:58:47 on, the app knows how old they are. So that's actually
10:58:50 how this works is part of the problem is that the app
10:58:56 stores have the information about how old the people are,
10:58:59 which doesn't really matter if you're 35 or 50, but if
10:59:04 you're 14 might matter and the problem is that that
10:59:08 information isn't getting to the apps. There's no
10:59:11 obligation to provide that to the apps. So even app
10:59:17 developers that are trying to do their level best, they
10:59:19 might inadvertently give content to a 14-year-old that's
10:59:26 inappropriate for them that might be appropriate for a
10:59:27 35-year-old or an 18-year-old. So that is actually part
10:59:31 of the issue. And yes, you do give that data and the app
10:59:36 store has that.

10:59:40 Yeah, this -- it's a very interesting case.
10:59:47 Somewhat complicated. We think it's better as an applied
10:59:51 challenge than as a facial challenge. Obviously, Moody
10:59:56 vs. NetChoice is the current controlling test for facial
10:59:59 challenges where you have to compare the constitutional
11:00:02 application with the nonconstitutional applications.
11:00:07 Plaintiffs haven't carried their burden to prove that they
11:00:10 succeed under Moody.
11:00:14 Kids 12 and under are already basically protected
11:00:18 in the same manner by COPPA, the federal statute,
11:00:20 Children's Online Privacy Protection Act. So certainly
11:00:24 kids 12 and under who have smartphones that are connected
11:00:29 to an app would be under ours, our side of the balance,
11:00:33 and we don't think that the plaintiffs have shown that the
11:00:37 majority of the cases are unconstitutional as applied.
11:00:42 And unless the Court has any other questions, I
11:00:46 yield the rest of my time. Thank you.
11:00:47 THE COURT: Thank you, Mr. Berg.
11:00:49 Brief rebuttal.
11:00:51 MR. WILLEN: Thank you, your Honor. I'll try to
11:00:53 keep this brief. I appreciate your time this morning.
11:00:55 I thought it was very telling that the -- and the
11:00:57 Court picked up on this that the first words out of my
11:00:59 friend's mouth were that the statute protects children or
11:01:02 it's meant to protect children against harmful content. I

11:01:05 1 think that gives away what we're dealing with here which
11:01:07 2 is a statute that is justified entirely by efforts to
11:01:11 3 protect against certain kinds of content. As case after
11:01:16 4 case has said, that alone renders the statute
11:01:20 5 content-based.
11:01:20 6 So it was interesting to hear him talk about the
11:01:23 7 sort of subterfuge that the legislature here seems to have
11:01:27 8 been endeavoring to create, which is to try to get around
11:01:31 9 the scrutiny that would apply to a content-based statute
11:01:34 10 by broadening the application of the statute to apply to
11:01:39 11 essentially all apps. But that just doesn't work, right?
11:01:42 12 I mean, beyond the exceptions that they put into the law
11:01:46 13 which are contrary to that goal, as the Court pointed out,
11:01:51 14 the fact remains that the point of the statute, the
11:01:54 15 justification of the statute is to target and go after and
11:01:59 16 protect children against certain kinds of content.
11:02:03 17 And -- so that puts us in strict scrutiny land
11:02:06 18 whether the state had the efforts to get around it or not.
11:02:11 19 And that is exactly the problem that I think the Court has
11:02:14 20 pointed out which is that we have a statute that has a
11:02:18 21 fundamental and almost complete mismatch between what it's
11:02:23 22 trying to do and the way in which it goes about doing it.
11:02:26 23 And if there's one thing that First Amendment
11:02:30 24 case law tells us -- and this is true whether you're
11:02:32 25 applying strict scrutiny or intermediate scrutiny is that

11:02:35 the thing that you're doing in First Amendment analysis is
11:02:37 trying to make sure that when legislatures enact laws that
11:02:41 touch on speech, they do so in a careful and targeted and
11:02:45 tailored way, and I think the argument that we heard this
11:02:49 morning basically concedes that the statute does the exact
11:02:52 opposite of that.
11:02:53 And I'll just point out very quickly since the
11:02:57 Eleventh Circuit decision was referenced, you know, we
11:03:00 have quibbled with that decision, but I think if you look
11:03:04 at that statute and that ruling, the whole justification
11:03:09 for it is that the legislature there did make an effort to
11:03:12 try to tailor what it was doing based on the problems that
11:03:16 it was trying to solve. So whether it did that in a way
11:03:19 that was constitutional is for that case to decide, but I
11:03:23 think the differences between that statute and this one
11:03:26 are very, very telling.
11:03:27 And I would just say very, very quickly with
11:03:30 respect to the record and the irreparable injury, so the
11:03:34 fact that because we have a law that unless the Court
11:03:37 takes action to enjoin it will go into effect on January
11:03:41 1st. Of course, our clients are making efforts to do what
11:03:44 they can to try to comply with it if that should happen.
11:03:48 That's not evidence that there's no irreparable harm.
11:03:52 That confirms the irreparable harm both in terms of the
11:03:55 speech injury but also in terms of the unrecoverable

11:03:57 compliance costs. And the Fifth Circuit's decision in
11:04:00 Book People talks exactly about that.
11:04:02 THE COURT: Thank you.
11:04:04 MR. WILLEN: Thank you very much for your time.
11:04:05 THE COURT: Thank you.
11:04:06 Very briefly.
11:04:07 MR. SIEFF: Thank you, your Honor. And
11:04:10 appreciate the time.
11:04:11 Very briefly, the Court mentioned standing, I
11:04:13 just wanted to quickly address that. This court addressed
11:04:16 these same plaintiffs' standing in the prior H.B. 18 case,
11:04:20 the state doesn't dispute that speakers and listeners have
11:04:23 standing to challenge restrictions on the intermediaries
11:04:26 they use to access and share expression. The same reason
11:04:30 that there's standing in that case, there's standing in
11:04:32 this one. The states did submit an answer and didn't
11:04:35 contest that principle or -- and hasn't put forward any
11:04:38 argument that denies its application in this case.
11:04:40 Second, the state mentioned that this law poses
11:04:43 very minimal burden on states is what the state said. I
11:04:47 think that misunderstands the burden. It's not just the
11:04:49 burden of having to field sort of an incessant chain of
11:04:54 requests to provide consent, although that is burdensome,
11:04:57 it's the invasion of the family. That is the burden.
11:04:59 That is the equitable injury and part of the reason why

11:05:02 the injunction is warranted.

11:05:04 The state says this isn't a prior restraint
11:05:06 because it doesn't restrict speech before it could occur.
11:05:08 That is literally what the statute does. The fact that
11:05:11 the speech takes place somewhere else or could take place
11:05:15 somewhere else doesn't diminish the fact that it's a prior
11:05:17 restraint. The Supreme Court addressed that in the case
11:05:19 about the musical Hair in Southeastern Promotions. We
11:05:23 cite that in our brief.

11:05:24 The state says this case is nothing like Bantam
11:05:26 Books, that it mischaracterizes Bantam Books. Bantam
11:05:29 Books was an informal prior restraint is the example of
11:05:32 when the state puts informal pressure on intermediaries to
11:05:35 censure. That's what I was discussing earlier. This
11:05:36 statute does that, too. It's not just a formal
11:05:38 preclearance. It puts informal pressure on intermediaries
11:05:42 to censure. For that reason, too, it's a prior restraint.

11:05:44 The state says that -- well, the state ran off a
11:05:47 number of statistics about risk to youths since 2017.
11:05:50 Does nothing -- there's nothing in the record tying that
11:05:52 to anything that this act does. And in fact, the only
11:05:55 evidence in the record attached to the Sieff declaration
11:05:58 at Exhibits 27 through 30, and I would direct the Court
11:06:02 specifically to Exhibit 30, paragraphs 10 through 44, is
11:06:07 an expert report reviewing, I think, what were the studies

11:06:10 -- the extra record studies that the state was referencing
11:06:14 in its monologue.
11:06:16 The state says that this could be -- that the
11:06:20 coverage definition could be severed. I'm not sure it can
11:06:23 be. Even if -- for the reasons the Court identified but
11:06:26 even if it could, the statute is subject to strict
11:06:30 scrutiny because it's explicitly content-based in its
11:06:33 justification and it's a prior restraint so that doesn't
11:06:34 get the state anywhere.
11:06:36 Two more. The state mentions Erznoznik case. It
11:06:40 quotes -- it provides the quote that precedes the very
11:06:44 next line quoted by Brown, which is that minors have
11:06:48 rights to access the vast range of speech subject to
11:06:51 narrow and well-defined circumstances. That's the key
11:06:54 point. That's what Brown picked up on. The state doesn't
11:06:57 mention that.
11:06:57 Finally, the Eleventh Circuit case, we agree with
11:07:00 Mr. Willen, it's distinguishable and it goes back to your
11:07:04 very first question. The justification offered in that
11:07:07 case was that the statute was designed to prevent the
11:07:09 impact of supposedly content-neutral features and
11:07:13 functions. And the Eleventh Circuit -- we also have
11:07:16 quibbles with it -- determined that that was a basis to
11:07:19 apply intermediate scrutiny. Agree with it or not, that's
11:07:23 just not the case here. Strict scrutiny applies. The

11:07:25 state's done nothing to meet it. The vast majority of all
11:07:28 the applications to speech at issue are unconstitutional.
11:07:32 The Court should enter an injunction, hold the statute
11:07:35 unconstitutional on its face and the challenged provisions
11:07:37 that we've identified. Thank you for your time. We
11:07:40 really appreciate it, your Honor.
11:07:41 THE COURT: Thank you very much. Thank you all
11:07:42 for your presentation today. They've been very helpful to
11:07:45 me. I understand that we have time sensitivity in this
11:07:49 case so we'll take this under advisement. We'll get to
11:07:51 work and just get back to you as soon as we can.
11:07:54 Anything else before we break?
11:07:57 MR. WILLEN: Nothing from CCIA, your Honor.
11:07:57 THE COURT: All right. Anything else from the
11:07:59 state?
11:07:59 MR. BERG: Nothing from the state, your Honor.
11:08:01 Thank you.
11:08:01 THE COURT: All right. Thank you. Thank you
11:08:02 very much and we're adjourned.
(Proceedings concluded.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter, Registered Merit Reporter, in my capacity as Official Court Reporter of the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 4th day of February, 2026.

Lily Iva Reznik

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