Nos. 25A-1389, 25A-1390

In the Supreme Court of the United States

STUDENTS ENGAGED IN ADVANCING TEXAS, et al.,
Applicants,
v.
KEN PAXTON, ATTORNEY GENERAL OF TEXAS,
Respondent.

COMPUTER & COMMUNICATIONS INDUSTRY ASS'N.,
Applicant,
v.
KEN PAXTON, ATTORNEY GENERAL OF TEXAS,
Respondent.

On Applications to the Honorable Samuel A. Alito, Jr., Associate Justice and Circuit Justice for the Fifth Circuit

BRIEF OF *AMICI CURIAE* FLORIDA AND 26 OTHER STATES IN SUPPORT OF RESPONDENT'S OPPOSITION TO VACATE STAY

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June 23, 2026

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INTEREST OF AMICI CURIAE

Pursuant to Supreme Court Rule 37, the Attorney General of Florida, on behalf of the State of Florida and 26 other States, respectfully submits this brief as *amici curiae* in support of the respondent, the Attorney General of Texas.

Amici States have "a compelling interest in protecting the physical and psychological well-being of minors." *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). They likewise have a duty to protect the "liberty of parents and guardians to direct the upbringing and education of children under their control." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925).

Texas's SB2420 marries the best of these two traditions—serving to protect children by ensuring parents have greater visibility and control over which contracts their children enter into with app stores and developers. Many other states—ranging across the political and ideological spectrum—have enacted similar laws with similar hopes of protecting children from the clear harms from online and digital use. And almost every such state, including Florida, has had to defend against Petitioner Computer & Communications Industry Association's (CCIA) and its allies' nationwide crusade to block enforcement of these laws under the banner of the First Amendment. Amici States therefore have a vested interest in ensuring they have the ability to protect children and support parental rights.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Fifth Circuit properly recognized what States have long known: "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[.]" *Students Engaged in Advancing Texas v. Paxton*, No. 25-51073, 2026 WL 1615178, at *4 (5th Cir. June 4, 2026). Texas sought to address this need through SB2420—a law passed with overwhelming bipartisan support that ensured parental oversight and certain disclosures from app stores and app developers when attempting to bargain with minors.

SB2420's protections are important yet unremarkable. Unremarkable because this Court has long recognized a parent's right to guide a child's upbringing, which necessarily includes oversight of the materials to which their child is exposed. *See id.* ("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."). SB2420 is also unremarkable because, at bottom, it regulates the terms and conditions governing an app store or developer contracting with minors—a power that has always been within the States' domain. And finally, SB2420 is unremarkable because it is an instance of a State identifying and rectifying a clear need—the lack of sufficient protective capabilities coupled with the underuse of voluntary safeguards for children in this digital space.

The district court erred in concluding otherwise, and the Fifth Circuit was correct to stay that decision. This Court should deny Petitioners' request to vacate that stay.

ARGUMENT

I. SB2420 furthers the important interest of parents' rights.

Texas has repeatedly shown its commitment to parental rights. It recently amended its own Constitution to confirm that "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." Tex. Const. art 1, § 37. SB2420 helps make real this fundamental truth by ensuring that a minor's app store account is linked to a parent's account. *See* Tex. Bus. & Com. Code § 121.022.

That law fits comfortably within our nation's legal tradition. Courts have long acknowledged the importance of empowering parents to manage their children's care. Such rights are "perhaps the oldest of the fundamental liberty interests recognized" by this Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality opinion). Because children are unable "to make sound judgments concerning many decisions," the Court has understood our Constitution to incorporate "broad parental authority over minor children." *Parham v. J.R.*, 442 U.S. 584, 602–03 (1979). Accordingly, the Court has recognized a parent's right to direct their child's education, *see Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); *Pierce*, 268 U.S. at 534–35; religious upbringing, *see Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972); and the parent-child relationship, *see*

Stanley v. Illinois, 405 U.S. 645, 651 (1972).

History and tradition undergird those precedents. As early commentators recognized, children do not understand "how to govern themselves." 2 Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature* 202 (1735). Their "wants and weaknesses" thus "render it necessary that some person maintain them" until adulthood. 2 James Kent, *Commentaries on American Law* 190 (1873); 1 William Blackstone, *Commentaries on the Laws of England* 447 (1753); Pufendorf, *Whole Duty of Man* at 202; *see also Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 828–29 (2011) (Thomas, J., dissenting). Parents have traditionally been entrusted as "the most fit and proper person[s]" for that task. Kent, *American Law* at 190. And so, the common law equipped parents with equally robust parental rights. "[H]ousehold heads" were empowered to "speak for their dependents in dealings with the larger world," Toby L. Ditz, *Ownership and Obligation: Inheritance and Patriarchal Households in Connecticut*, 1750-1820, 47 Wm. & Mary Q. 235, 236 (1990), and parents enjoyed the "right . . . to govern their children's growth," *Brown*, 564 U.S. at 828 (Thomas, J., dissenting).

Medical and social-science literature only confirms the wisdom of our tradition. Longstanding research shows that children are unable to "deliberate maturely" towards their own best interests. Ferdinand Schoeman, *Parental Discretion and Children's Rights: Background and Implications for Medical-Decision-Making*, 10 J. Med. & Phil. 45, 46 (1985). As any parent knows, children often make poor decisions because they lack life experience. Medical science also tells us that children make

these poor decisions because a child's prefrontal cortex, the portion of the brain that deals with reasoning and long-term consequences, is underdeveloped.[1]

No surprise then, that history and tradition endorse parental control over any number of decisions made by children, including what content they may access. *See Free Speech Coal. v. Paxton*, 606 U.S. 461, 472 (2025) (considering "[h]istory, tradition, and precedent" in determining the scope of children's First Amendment rights). Children could not enlist in the military without parental consent. *Brown*, 564 U.S. at 833–34 (Thomas, J., dissenting). States "set age limits restricting marriage without parental consent." *Id.* at 834.

And children did not have access to the same speech as adults. "Parents controlled children's access to information, including books," *NRA v. Bondi*, 133 F.4th 1108, 1117 (11th Cir. 2025) (en banc), and States prohibited "[e]ntertaining . . . [c]hildren" without parental consent. Juries verdict agst Alice Thomas, Volume 29: Records of the Suffolk Cnty. Ct. 1671-1680 Part 1, pp. 82–83, available at https://tinyurl.com/3r8hw435; *see also* Book of the Gen. L. and Liberties of Mass. 27 (1672) (penalizing entertaining children "to the dishonour of God and grief of their parents"), available at https://tinyurl.com/yzmzeuks. The Founding generation also "targeted for special regulation works 'manifestly tending to the corruption of the morals of youth.'" *Free Speech Coal.*, 606 U.S. at 473 (quotation omitted).

[1] *See* Adele Diamond, *Normal Development of Prefrontal Cortex from Birth to Young Adulthood: Cognitive Functions, Anatomy, and Biochemistry, in Principles of Frontal Lobe Function* 466 (D. Stuss & R. Knight eds., 2002) (noting that the pre-frontal cortex takes "over two decades to reach full maturity"), https://tinyurl.com/4j5xvbpa.

This longstanding "power" to regulate "children's activities" is at its zenith for children of "tender years." *Prince v. Massachusetts*, 321 U.S. 158, 168–70 (1944). The State has a greater interest in protecting those children because they are more vulnerable to "emotional excitement and psychological or physical injury." *Id.* at 170; *see also Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683–84 (1986) (some "speech could well be seriously damaging to" young high-school students); *Mahmoud v. Taylor*, 606 U.S. 522, 555 & n.8 (2025) (similar). Young children also have narrower First Amendment interests because they "are at a stage in which learning how to develop relationships and behave in society is as or even more important than their forming particular views on controversial topics." *Walker-Serrano ex rel. Walker v. Leonard*, 325 F.3d 412, 417 (3d Cir. 2003); *see also C.S. ex rel. Stroub v. McCrumb*, 135 F.4th 1056, 1065–66 (6th Cir. 2025) (recognizing that the "immaturity" of "elementary-aged children" bears on the scope of their First Amendment interests); *Morgan v. Swanson*, 659 F.3d 359, 386–87 (5th Cir. 2011) (en banc) ("elementary students" are still learning "the most basic social and behavioral tasks").

SB2420 merely recognizes that parents have a right to supervise the sources and materials that are imposed on their children. That accords neatly with the history of Texas, this nation, and the broader Western legal tradition.

II. SB2420 regulates commercial transactions, not expression.

SB2420 requires app stores and developers to perform certain duties—including age verification, parental consent, and offer certain content ratings—before they can contract with children. That is commercial activity that has been regulated

since the Founding. *See NRA*, 133 F.4th at 1118; *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 499 (1996) (plurality) (distinguishing between "the State's power to regulate commercial transactions" and speech).

That restriction is a valid exercise of the State's police power. First Amendment scrutiny applies only if a law either "directly regulates protected expressive activity" or regulates non-expressive activity but "impose[s] a disproportionate burden upon" "First Amendment activities." *TikTok Inc. v. Garland*, 604 U.S. 56, 68 (2025) (per curiam); *Arcara v. Cloud Books*, 478 U.S. 697, 704 (1986). SB2420 does neither. It directly regulates commercial activity without "singling out" expression. *Arcara*, 478 U.S. at 704.

1. SB2420 clearly doesn't directly regulate expression. It requires app stores and app developers to comply with several regulations before they can attempt to contract with minors. That is not itself speech—it is a commercial transaction. *See 44 Liquormart*, 517 U.S. at 499; *Roberts v. U.S. Jaycees*, 468 U.S. 609, 634 (1984) (O'Connor, J., concurring in part and in the judgment) ("[T]he State is free to impose any rational regulation on the commercial transaction itself.").

Contracts have been subject to State regulation—and even prohibition when deemed against public policy—throughout United States history. *See Ogden v. Saunders*, 25 U.S. 213, 347 (1827) (Marshall, C.J., dissenting) ("The [State's] right to regulate contracts, to prescribe rules by which they shall be evidenced, to prohibit such as may be deemed mischievous, is unquestionable, and has been universally exercised."). Corporations have never had a right to enter a "contract which the laws

of th[e] community forbid, and the validity and effect of their contracts is what the existing laws give to them." *Id.* at 283 (opinion of Johnson, J.). That is especially true of contracts involving children, which have been heavily regulated and proscribed for centuries. *See* Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* 264–71 (2005).

Petitioners may prefer unregulated access to children to enter complex contracts as a condition of access, but the Free Speech Clause does not protect that preferred business model.

2. Nor does SB2420's regulation of commercial activity impose a "disproportionate burden upon" expression. *TikTok*, 604 U.S. at 68 (quoting *Arcara*, 478 U.S. at 703–04). It at most only "incidental[ly] burdens" speech. *Sorrell v. IMS Health*, 564 U.S. 552, 566–67 (2011) (heightened scrutiny applies to laws regulating commercial activity if their "purpose" ifs to "suppress speech"); *Ark. Times LP v. Univ. of Ark. Bd. of Trs.*, 37 F.4th 1386, 1394 (8th Cir. 2022) (en banc) (holding that heightened scrutiny did not apply because the law "target[ed] . . . unexpressive commercial choices," not speech); *see also Indigo Room v. City of Fort Myers*, 710 F.3d 1294, 1299–1300 (11th Cir. 2013).

Although this Court "has not articulated a clear framework for determining whether a regulation of non-expressive activity . . . disproportionately burdens" expression, it has identified some relevant factors. *TikTok*, 604 U.S. at 69. It matters whether the law's "focus" is preventing expression and whether there are "causal steps between the [law] and the alleged burden on protected speech." *See id.* If a

law's focus is unrelated to expression, and any burden on speech arises only if other events occur—such as a business choosing to engage in "unlawful conduct"—then the law is not "directed at" expression and does not trigger heightened scrutiny. *Arcara*, 478 U.S. at 707; *TikTok*, 604 U.S. at 67–69.

TikTok is illustrative. In *TikTok*, TikTok and some of its users challenged a federal statute that required TikTok to either divest U.S. operations from Chinese control or effectively cease operating in the U.S. 604 U.S. at 62. Although this Court ultimately did not decide whether the statute imposed a disproportionate burden on expression, it declined to endorse the D.C. Circuit's conclusion that it did because the statute was "different in kind from the regulations of non-expressive activity that [the Supreme Court] ha[s] subjected to First Amendment scrutiny." *Id.* at 69. The law's "focus" was TikTok's corporate ownership, not users' speech. *Id.* And because TikTok would be banned only if it failed to divest, the failure to divest was a "causal step[]" between the law and the alleged burden on speech. *Id.*

On the flip side, if a law regulating commercial activity on its face singles out speech and has the effect of burdening it with no intervening causal steps, it more likely imposes a disproportionate burden on expression. For example, in *Minneapolis Star & Trib. Co. v. Minnesota Comm'r of Revenue*, this Court held that a tax on the use of paper and ink that was crafted to apply to only certain newspapers triggered First Amendment scrutiny. *See* 460 U.S. 575, 592 (1983). Even though taxing paper and ink is not a direct regulation of expression, it was apparent that the regulation focused on expression. *Id.* at 585. The gerrymandered nature of the tax, which was

"without parallel in [Minnesota's] tax scheme," was not "justified by some special characteristic of the press" and was applied to certain newspapers just because they were newspapers. *Id.* at 582, 585.

SB2420, like the law in *TikTok*, does not disproportionately burden expression. First, its focus is not speech but platforms' use of contracts that children lack the capacity to understand and evaluate. So just like the law in *TikTok* "focus[ed]" on TikTok's corporate control by "a foreign government," 604 U.S. at 69, SB2420 focuses on particular business practices.

Second, there are "causal steps between [SB2420] and the alleged burden on protected speech." *Id.* The alleged burden here, as in *TikTok*, is that some users will not be able to speak and access speech on covered platforms. But in both cases, any limit on access results from the platforms' chosen business practices, not the law. Because the law in *TikTok* barred access only if TikTok chose not to divest from Chinese control, the failure to divest was a "causal step" between the law and the alleged burden on expression. *Id.* Similarly, a minor will be limited from downloading or purchasing an app under SB2420 only if app stores or apps fail to comply with its provisions or if a parent decides the app isn't in the child's best interest. Platforms are thus "punished" for their "nonexpressive *conduct*"—contracting with children for accounts—"not [their or their users'] speech." *Virginia v. Hicks*, 539 U.S. 113, 123 (2003).

All that makes SB2420 "different in kind from the regulations of non-expressive activity that [the Supreme Court] ha[s] subjected to First Amendment

scrutiny." *TikTok*, 604 U.S. at 69. The law is not "directed at" any expression. *Arcara*, 478 U.S. at 707. Instead, it is directed at a problem as old as time: Children, who "lack[] reason and judgment," being taken advantage of by sophisticated parties that seek to exploit them for financial gain. *NRA*, 133 F.4th at 1117.

III. SB2420 is necessary given the deficiencies in voluntary safeguards for apps.

Finally, petitioners claim that SB2420 is unnecessary because the voluntary controls already built into the system are sufficient, *see* CCIA Pet. 34–35; SEAT Pet. 26–27, or because SB2420 somehow undermines parental control, CCIA Pet. 35–36; SEAT Pet. 36. Those claims blink reality.

A survey last year by the Family Online Safety Institute noted "[p]arental controls are underutilized across each device tested." Family Online Safety Institute, *Connected and Protected: Insights from FOSI's 2025 Online Safety Survey* 1, (Spring 2025), *available at* https://perma.cc/X52M-WRTB. That should surprise no one; successful controls usually require implementation "on all the devices your kid uses," which "can seem overwhelming" to parents. Fed. Trade Comm'n, *How to Use Parental Controls to Keep Your Kid Safer Online* (April 2025), *available at* https://perma.cc/VZ5N-GGX8.

The lack of current controls is especially well-documented in the social media context. Platforms have long had parental controls, but they have made no dent in child addiction.[2] That is both because parents do not use them and because they are

[2] Dep. of Adam Alter, Ph.D. at 183:16–23, *CCIA v. Uthmeier*, No. 4:24-cv-438 (N.D. Fla. Jan. 23, 2025), ECF No. 63-3.

ineffective. Less than 1% of parents use Snapchat's controls, for example.[3] And parental controls are difficult to manage;[4] they do not address the features that make platforms addictive;[5] and platforms do not implement them with fidelity. *See* Fed. Trade Comm'n, *A Look Behind the Screens*, 2024 WL 4272104, at *9 (Sept. 1, 2024) (Facebook has "misled parents about their ability to control" their children's accounts).

Texas and other States have therefore passed laws that regulate platforms' harmful practices.[6] States and the federal government have a compelling interest in regulating platforms' practices given their undeniable role in the Nation's youth mental-health crisis. *See Ginsberg v. State of N. Y.*, 390 U.S. 629, 640 (1968) ("The State also has an independent interest in the well-being of its youth"); *Sable Commc'ns of Cal. v. FCC*, 492 U.S. 115, 126 (1989) (States have a "compelling interest in protecting the physical and psychological well-being of minors."); *CCIA v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *6 (11th Cir. Nov. 25, 2025) ("The State has a compelling interest in protecting minors in general, and it has demonstrated that they are particularly susceptible to the potentially addictive features built into

[3] *See* Response to Questions for the Record from Evan Spiegel, Snap Co-Founder & CEO, to Senate Judiciary Comm. at 1–2 (Feb. 28, 2024), https://tinyurl.com/55amwdfc.

[4] Decl. of Tony Allen ¶¶ 51–61, *CCIA v. Uthmeier*, No. 4:24-cv-438 (N.D. Fla. Jan. 9, 2025), ECF No. 51-3.

[5] Decl. of Adam Alter, Ph.D. ¶¶ 48–50, *CCIA v. Uthmeier*, No. 4:24-cv-438 (N.D. Fla. Jan. 13, 2025), ECF No. 51-2.

[6] *See, e.g.*, Ohio Rev. Code § 1349.09(B)(1) (limits on social-media platforms contracting with children); Miss. Code Ann. § 45-38-7 (same); Fla. Stat. § 501.1736 (regulating platforms' use of "addictive features"); N.Y. Gen. Bus. Law § 1501-1502 (limits on "addictive feeds" and push "notifications"); Cal. Civ. Code § 1798.99.31(b)(7) (limits on targeting children with deceptive practices); Del. Code Ann. tit. 6, § 1204C (limits on advertising to children); La. Stat. Ann. § 51:1753(2) (same).

some social media platforms."). This much makes clear that SB2420 helps—and does not override—parental control.

CONCLUSION

The Court should deny Petitioner's application to vacate the Fifth Circuit's stay.

Dated: June 23, 2026

Respectfully submitted,

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