

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

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# In the Supreme Court of the United States

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, APPLICANT

v.

KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS.

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

## APPLICATION TO VACATE STAY PENDING APPEAL

DENO HIMONAS  
ELIZABETH W. SHARKEY  
*Wilson Sonsini  
Goodrich & Rosati, PC  
95 S. State Street, Suite 1000  
Salt Lake City, UT 84111  
(801) 401-8510*

ELIZABETH B. PRELOGAR  
EPHRAIM A. MCDOWELL  
JOSHUA REVESZ  
*Cooley LLP  
1299 Pennsylvania Ave., NW  
Washington, DC 20004  
(801) 401-8510*

BRIAN M. WILLEN  
*Counsel of Record*  
LAUREN GALLO WHITE  
EDWARD P. PERCARPIO  
*Wilson Sonsini  
Goodrich & Rosati, PC  
31 W. 52nd Street, 5th Floor  
New York, NY 10019  
(212) 999-5800  
bwillen@wsgr.com*

LAURA LEE PRATHER  
CATHERINE L. ROBB  
MICHAEL J. LAMBERT  
REID PILLIFANT  
*Haynes and Boone, LLP  
98 San Jacinto Blvd., Suite 1500  
Austin, TX 78701*

*Counsel For Applicant Computer & Communications Industry Association*

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**PARTIES TO THE PROCEEDING**

Applicant (Plaintiff-Appellee below) is Computer & Communications Industry Association (“CCIA”).

Respondent (Defendant-Appellant below) is Ken Paxton, in his official capacity as Attorney General of Texas.

## **RULE 29.6 CORPORATE DISCLOSURE STATEMENT**

CCIA is a trade association operating as a 501(c)(6) non-profit, non-stock corporation organized under the laws of Virginia. CCIA has no parent corporation and no publicly held corporation owns 10% or more of its stock.

## RELATED PROCEEDINGS

- United States District Court (W.D. Tex.):
  - *Computer & Communications Industry Association v. Paxton*, No. 1:25-cv-01660-RP (Dec. 23, 2025, Dkt. 65) (granting CCIA’s motion for preliminary injunction)
  - *Students Engaged In Advancing Texas v. Paxton*, No. 1:25-cv-01662-RP (Dec. 23, 2025, Dkt. 38) (granting SEAT’s motion for preliminary injunction)
- United States Court of Appeals (5th Cir.):
  - *Computer & Communications Industry Association v. Paxton*, No. 26-50001 (June 4, 2026) (staying preliminary injunction pending appeal).
  - *Students Engaged In Advancing Texas v. Paxton*, No. 25-51073 (June 4, 2026) (staying preliminary injunction pending appeal).

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

Pursuant to Supreme Court Rule 23 and 28 U.S.C. § 1651, Computer & Communications Industry Association (“CCIA”) respectfully requests an order vacating the Fifth Circuit’s stay of the district court’s preliminary injunction of Texas Senate Bill 2420—which imposes a sweeping and first of its kind age-verification and parental-consent mandate on the entire universe of mobile app stores and apps—pending the disposition of Respondent’s appeal to the Fifth Circuit and any review in this Court. CCIA also requests temporary administrative relief vacating the Fifth Circuit’s stay while the Court considers this Application.

**INTRODUCTION**

No State has ever required its citizens to prove their age before reading a newspaper, entering a bookstore, or even accessing the internet. Texas Senate Bill 2420 (“SB2420” or “the Act”) does exactly that—for every mobile app on every mobile phone. Under SB2420, before a Texan may download the *Wall Street Journal*—or even a weather app or calculator—he must first verify his age. And any Texan under 18 must link his account to a verified parent’s account (another verification hurdle) and obtain express parental consent for *any* app download or *any* in-app purchase—every audiobook, every movie, and so on—without any possibility of blanket consent. In doing so, the Act deputizes app stores to police both minors’ and adults’ threshold access to vast amounts of online speech—and then restrict minors’ access on an app-by-app

and download-by-download basis. In a dramatic change to the status quo before CCIA had a chance to submit its merits brief on appeal, a Fifth Circuit motions panel has allowed this law to take effect—with profound consequences for the protection of digital speech.

No brick-and-mortar analog to SB2420 is conceivable—let alone would survive constitutional scrutiny. Imagine a state law that required every business—every bookstore, movie theater, video rental store, record shop, symphony hall, arcade, newsstand, and so on—to verify the age of every patron at the door and then required parental consent before those under 18 could enter. Once inside, the parent would have to separately provide consent for every item the minor wished to buy, be it a book by Ernest Hemingway or J.K. Rowling, a Taylor Swift album, or a subscription to National Geographic. That law would be unconstitutional: This Court has already held that the First Amendment prohibits states from enacting such laws “to prevent children from hearing or saying anything without their parents’ prior consent.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 795 n.3 (2011).

In December 2025, shortly before SB2420 was scheduled to take effect, the U.S. District Court for the Western District of Texas held the statute unconstitutional and issued a preliminary injunction. The District Court explained that the law is content-based and burdens vast amounts of speech. It emphasized that Texas made no record to support its asserted interest in imposing age verification and parental consent requirements that will restrict

even benign and protected speech. And it determined that Texas provided no evidence to demonstrate that the law was appropriately tailored under any form of heightened First Amendment scrutiny.

Respondent waited nearly a month before asking the District Court to stay its injunction, which the court declined to do. Nevertheless, on May 28, before briefing on Respondent’s stay motion was complete, a motions panel of the Fifth Circuit administratively stayed the preliminary injunction. On June 4, with only Respondent and its amici having filed merits briefing, the same motions panel granted Respondent’s motion for a stay, issuing a novel ruling on the First Amendment questions presented. The motions panel’s hasty and erroneous order has upset the status quo by allowing the Act to be enforced for the first time, exposing app stores and millions of app developers to potential liability. That order is inflicting immediate ongoing harm on CCIA and its members. In finding that Texas was likely to succeed on the merits of its appeal, the Fifth Circuit sharply broke with bedrock First Amendment principles and precedent.<sup>1</sup>

*First*, the Fifth Circuit incorrectly found that SB2420 regulates only commercial speech. According to the panel majority, full First Amendment protection does not apply to the download of any mobile app or sale of in-app content because all apps are “commercial in nature.” App.4a. That radical conclusion—which would treat most online exchanges of expression or

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<sup>1</sup> Judge Haynes concurred only in the sentence of the order granting the stay.

information online as commercial speech—contravenes this Court’s settled precedent, which makes clear that “speech does not lose its First Amendment protection . . . even though it is carried in a form that is ‘sold’ for profit, and even though it may involve a solicitation to purchase or otherwise pay or contribute money.” *Va. Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 761–62 (1976). Under the Fifth Circuit’s view, states could invoke the commercial-speech doctrine to impose sweeping limits on movie theaters, art galleries, plays, bookstores, and newspapers—all of which offer speech in exchange for payment. This Court has repeatedly rejected that result. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023). Indeed, the motions panel’s conclusion is directly contrary to the Court’s decision in *Brown*, which applied strict scrutiny to a law that prohibited stores from *selling or renting* certain video games to minors. 564 U.S. at 792 n.1, 794.

*Second*, the Fifth Circuit erred in applying only intermediate scrutiny to a law whose stated aim is to protect minors from speech the State believes “harmful”—namely “social media” and “mobile gaming.” That conclusion disregards the fundamental principle that “[a] law can regulate the content of protected speech, and thereby trigger strict scrutiny, either on its face *or in its justification.*” *Free Speech Coal. v. Paxton*, 606 U.S. 461, 482 (2025) (emphasis added). The motions panel inexplicably ignored Texas’s concession in the District Court that the Act’s purpose was to protect children from what the State views as harmful content, including speech that is fully protected as to

minors. Indeed, that purpose is evident from the text of the law itself—which applies broadly to virtually all apps and in-app downloads, not merely unprotected content. The motions panel further erred in applying intermediate scrutiny because the Act is content-based on its face. Specifically, the parental-consent requirement for app downloads contains content-based exceptions for emergency services and educational testing apps. § 121.022(h).<sup>2</sup> These content-based exceptions should have triggered strict scrutiny. *Barr v. Am. Ass’n of Pol. Consultants*, 591 U.S. 610, 621 (2020) (controlling plurality op.).

*Third*, even if strict scrutiny were inapplicable, the law cannot satisfy any level of heightened scrutiny. The Act is vastly overbroad measured against any of its supposed justifications, as it imposes significant access restrictions on virtually all speech exchanged through mobile apps, without any effort to tailor the law to any kind of harmful activity or concerns about minors’ privacy. The Act’s striking breadth distinguishes it from the narrow age verification statute in *Free Speech Coalition*—which targeted only online content that is obscene (and thus constitutionally unprotected) as to minors. And generalized appeals to parental authority are not sufficient. This Court has held that minors “are entitled to a significant measure of First Amendment protection” and that States lack “power to prevent children from hearing or saying anything *without their parents’ prior consent.*” *Brown*, 564 U.S. at 794, 795 n.3. “Such laws do not enforce *parental* authority over children’s speech \*\*\*; they

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<sup>2</sup> References to “§” are to sections of the Texas Business and Commerce Code.

impose *governmental* authority, subject only to a parental veto,” and so violate the First Amendment. *Id.* at 795 n.3. The law here falls squarely into that category.

The harm to CCIA’s members is immediate and irreparable. With the Act in force and the Attorney General unwilling to stay enforcement, CCIA’s members must comply now or face liability. Yet compliance will severely burden the expressive interests of CCIA’s members that operate app stores and develop apps, along with the rights of millions of app users to access and consume speech. It will also impose enormous and unrecoverable compliance costs on CCIA’s members. App.118a-20a; App.139a-43a; App.149a-52a.

The Fifth Circuit’s glaring legal errors, coupled with the injuries they inflict, require vacatur. Texas, by contrast, faces no comparable harm; the Act has never been enforceable, the State delayed for months while the preliminary injunction was in force, and there are ample other measures in place to further the State’s asserted interest in protecting children from harmful content online. The Court should vacate the Fifth Circuit’s stay and preserve the district court’s injunction pending full merits review by the Fifth Circuit and, if necessary, by this Court.

## STATEMENT

### A. Factual Background

#### 1. CCIA’s app store and developer members create and facilitate vast amounts of protected speech.

CCIA is a trade organization whose members include popular mobile

app stores regulated by SB2420, including (1) Google Play; (2) the Apple App Store; and (3) the Amazon Appstore. App.103a-09a; App.125a.

CCIA's members<sup>3</sup> also include leading app developers who create and offer popular mobile apps for download in app stores, including email apps like Gmail, video-viewing and sharing apps like YouTube, e-book or audiobook apps like Kindle and Audible, and apps that allow users to communicate and obtain information on a wide variety of topics (e.g., IMDb, Goodreads, Twitch). App.103a-04a; App.106a, 108a, App.109a-10a. The Act regulates both CCIA's member app stores, § 121.002(2), and CCIA's member app developers, § 121.051. App.103a-10a; App.122a-23a.

Apps are to smartphones what websites are to computers: mediums for speech “as diverse as human thought.” *Reno v. ACLU*, 521 U.S. 844, 870 (1997) (citation omitted); App.111a-12 (discussing how Google Play and Apple App Store are used by billions of users in over 175 regions worldwide); App.127a-31a (discussing speech-facilitating apps in Google Play with billions of downloads). Mobile apps allow users to access, create, and exchange an enormous quantity of speech and protected expression: news and political material, religious material, scientific material, educational content, social media, personal writing, expressive media such as books, magazines, movies, television, short-form video, and music, as well as art, games, and much more. App.110a-11a; App.127a-28a.

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<sup>3</sup> <https://ccianet.org/about/members/>

As browsers do for websites, app stores make all this speech possible. They are curated publishing services where users find, review, and securely download the mobile apps that suit their interests. *See* App.127a; App.128a-30a. App stores provide a gateway for millions of developers to disseminate content to reach their audiences. App.130a-33a. In this way, app stores offer a “relatively unlimited, low-cost capacity for communication of all kinds” to users “engage[d] in a wide array of protected First Amendment activity on topics ‘as diverse as human thought.’” *Packingham v. N. Carolina*, 582 U.S. 98, 105 (2017) (quoting *Reno*, 521 U.S. at 870); *see also* App.131a-33a.

**2. CCIA members already provide ample protections for children, including parental controls and age ratings.**

Parents have many ways to control their children’s online experiences. CCIA’s member app stores provide various, voluntary tools that enable parents to control their children’s exposure to apps and content. For example, app stores offer controls that allow parents to lock their children’s screens for bedtime, block unwanted apps, filter accessible content by age category, and set up an approval process for purchases and downloads. *See* App.115a-16a; App.136a-37a.

CCIA’s member app stores and developers provide additional protections for apps primarily directed to users under the age of 13. The stores require that those apps contain only age-appropriate content, protect children’s data, and implement parental gates in order to link out of the app, request permissions, or make in-app purchases. App.114a-16a. App stores also

have adopted policies to ascribe age ratings for apps based on their content. App.112a-13a; App.116a; App.137a-38a; App.148a-49a. Many developers offer robust parental controls at the app level—including content filters, screen time limits, and supervised accounts—too. *See* App.116a; App.148a.

On top of these voluntary measures, other laws—such as the federal Children’s Online Privacy Protection Act (“COPPA”) and the Texas Data Privacy and Security Act (“TDPSA”)—impose additional disclosure, parental-consent, and data protection requirements on app stores and app developers that collect and process children’s personal data. 15 U.S.C. §§ 6501–6505.

### **B. Texas Senate Bill 2420**

SB2420 imposes a new and sweeping age-verification, parental-consent, and age-rating regime on mobile app stores, developers, and mobile app users.

*Scope.* SB2420 regulates (1) “[a]pp [s]tores,” defined as “publicly available . . . software application[s] . . . that distribute[] software applications from the owner or developer of an [app] to the user of a mobile device, § 121.002(2); and (2) “software application developers” defined as “developer[s] of [] software application[s] that the developer makes available to users in [Texas] through an app store,” § 121.051.

*Age verification.* Before any person—whether he is 13, 35, or 60—can create an account to access an app store, the app store must “use a commercially reasonable method of verification to verify the individual’s age category.” § 121.021(a).

*Parental identity verification, account tethering, and consent.* Users

determined to be under 18 must tether their account to a parent’s account, and app stores must verify the parent is an “adult” with legal decision-making authority over the minor. § 121.022. For all minor accounts, the app store must obtain consent from the parent every time the minor wants to download an app or make an in-app purchase. §§ 121.022, 121.026(a)(3). Thus, if an app store determines a user is 17 years old, the app store cannot allow that user to download a news, bible study, or audiobook app (for example) or make an in-app purchase until the 17-year old has linked his account to a verified parent’s and received parental consent—first to the app download, and then to the purchase. Additionally, whenever an app developer makes a “significant change” to its app, the app store must pause the minor’s access to the app until the parent renews their consent. §§ 121.022(g), 121.053.

The Act provides two content-based exceptions to the parental-consent requirement: (1) apps that “provide[] . . . direct access to emergency services” and meet additional criteria, and (2) nonprofit-affiliated apps that develop, sponsor, or administer standardized testing for post-secondary education. § 121.022(h).

*Age-rating and display.* App developers must also assign an age rating to their apps and every item available for in-app purchase, based on four age categories. §§ 121.052(a), 121.021(b). These categories do not overlap with commonly-used age categories, such as those already employed by the Apple App Store or Google Play Store. App.112a-13a. No additional guidance is

provided on how developers should make age-category determinations. App stores must then display the age ratings. § 121.023.

*Enforcement.* Any violation of SB2420 constitutes “a deceptive trade practice” under the Texas Deceptive Trade Practices Act enforceable by the State and the consumer protection division of the Texas Attorney General’s Office, in addition to “any other action or remedy provided by law.” §§ 121.101-102. Parents may also sue for violations of the Act and obtain injunctive relief, actual and punitive damages, and attorneys’ fees and costs. *Id.* Additionally, the Act forbids app stores and developers from: (1) enforcing “a contract or a provision of a terms of service agreement against a minor that the minor entered into or agreed to without consent”; (2) knowingly misrepresenting “information disclosed” to parents and guardians regarding apps and purchases; and (3) sharing or disclosing personal data obtained for purposes of verification or consent. §§ 121.026, 121.056.

## **C. Procedural History**

### **1. District Court Proceedings**

SB2420 was slated to go into effect on January 1, 2026. App.100a. On October 16, 2025, CCIA sued to enjoin SB2420’s enforcement under the First Amendment and simultaneously moved for a preliminary injunction.<sup>4</sup>

CCIA sought relief as to the provisions regulating app stores, noting that

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<sup>4</sup> On the same day, a coalition of Texan students from middle-school to college-age also sued to enjoin SB2420 under the First Amendment. *See Students Engaged in Advancing Texas (“SEAT”) v. Paxton*, No. 1:25-cv-01662 (W.D. Tex.).

CCIA’s app store members (Google, Apple, Amazon) constitute the universe of mobile app stores the legislature intended to regulate. App.228a; Declaration of Michael J. Lambert In Support of Plaintiff’s Preliminary Injunction Motion (“Lambert Decl.”), Ex. E-1 at 12:10-20; 15:23 to 16:1; 64:25 to 65:2, No. 1:25-cv-01660-RP, ECF No. 15-3 (W.D. Tex. Oct. 16, 2025). Texas did not contest the facial nature of that challenge in its opposition to CCIA’s preliminary injunction motion. *See generally* App.152a-81a. CCIA also brought an as-applied challenge on behalf of its member app stores and developers. App.228a.

On December 23, 2025, following a hearing, the district court preliminarily enjoined the State from enforcing the Act, concluding that CCIA was likely to succeed on the merits of its First Amendment claims. The court made several undisputed factual findings, including, as “Texas acknowledged at the hearing,” that “SB 2420 specifically sought to shield minors from certain speech the State deems objectionable or harmful.” App.26a. The court further explained that the record was devoid of “any evidence connecting the Act’s goals to its methods.” App.31a.

The district court then ruled that SB2420 triggered strict scrutiny for two independent reasons. First, the law’s exceptions for emergency services and educational testing apps were content-based. App.28a. Second, “even if the coverage definition did not distinguish based on content,” SB2420’s “content-based justification . . . would still warrant strict scrutiny.” *Id.* The court further held that SB2420 would not survive strict or even intermediate scrutiny

because it was overbroad, underinclusive, and because Texas failed to present any evidence that the law was narrowly tailored. App.28a-31a. The district court determined that the law was facially invalid because “only in the vast minority of applications would SB 2420 have a constitutional application to unprotected speech not addressed by other laws.” App.33a-35a.

## **2. Stay Proceedings**

Though Texas appealed the same day, it waited a full month after the preliminary injunction issued—and three weeks after the law would have taken effect—to seek a stay from the district court. The district court denied the motion, and Texas sought a stay from the Fifth Circuit, shortly before the State filed its merits brief in the Fifth Circuit. On May 28, 2026, before briefing on the stay was even complete, the Fifth Circuit granted an administrative stay, suddenly rendering the law enforceable for the first time. On June 4, 2026, after the State’s opening merits brief and supporting amicus brief had been filed, but before CCIA had filed its merits brief (which is due June 17), the Fifth Circuit granted Texas’s motion to stay the preliminary injunction pending appeal. App.11a-12a.

## **REASONS FOR GRANTING THE APPLICATION**

“The well-established principles” that guide the determination whether “to stay a judgment entered below are equally applicable when considering an application to vacate a stay.” *Certain Named & Unnamed Non-Citizen Children & Their Parents v. Texas*, 448 U.S. 1327, 1330 (1980) (Powell, J., in chambers). To obtain such relief, an applicant must show a likelihood of

success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Those requirements are satisfied here.

**I. There is more than a reasonable probability that the Court will grant certiorari.**

This Court is likely to grant review of any decision upholding the Act’s unprecedented restrictions on adults’ and minors’ access to the vast universe of fully protected speech available on mobile apps. Because the merits of Texas’s appeal remain pending in the Fifth Circuit, the question at this stage is whether there is “a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari” should the Fifth Circuit ultimately uphold the Act. *Hollingsworth*, 558 U.S. at 190.

That standard is met here. Any merits decision adhering to the Fifth Circuit’s stay order would both conflict with this Court’s precedents and split with the decisions of other courts of appeals on questions of surpassing and recurring national importance. Indeed, this Court has repeatedly granted review of First Amendment rulings even absent developed splits of authority. *E.g.*, *Harris v. Quinn*, 573 U.S. 616, 627 (2014) (granting certiorari not to resolve a split, but rather “[i]n light of the important First Amendment questions these laws raise”); *Snyder v. Phelps*, 562 U.S. 443, 451 (2011); *United States v. Stevens*, 559 U.S. 460, 467 (2010); Pet. For Writ of Certiorari, *Brown v. Ent. Merchs. Ass’n*, 2009 WL 1430036, at \*5 (U.S. May 19, 2009) (noting “lack of a split among the circuit courts”). Thus, even if there were no circuit conflict,

the critical importance of the First Amendment questions here would justify this Court’s review. That is especially true because numerous other states have followed suit and either enacted or are currently considering laws imposing similar obligations on app stores and app developers.

**A. The decision below conflicts with this Court’s holdings related to the commercial speech doctrine and the application of strict scrutiny.**

The motions panel decided “important federal question[s] in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). At the threshold, the panel treated as a mere commercial speech regulation a regime that conditions access to fully protected speech on universal age verification and individualized parental consent. It reasoned that all exchanges of apps and in-app content are “commercial transactions” “regardless of whether any monetary payment is made” because “the payment for apps that are purportedly ‘free’ is access to user data and private information.” App.4a. That ruling breaks from this Court’s settled precedent in multiple respects.

1. The panel’s application of commercial speech principles to a law that burdens access to fully protected speech cannot be squared with *Brown* or *Free Speech Coalition*. *Brown* applied strict scrutiny to a law that limited minors’ ability to purchase or rent certain video games. That ruling makes clear that the fact that protected speech is exchanged for payment (whether or money or anything else) does not allow the government to regulate those exchanges as mere commercial speech. 564 U.S. at 799. *Free Speech Coalition* applied intermediate scrutiny to an age-verification mandate because the law

regulated “only speech that is obscene to”—and therefore unprotected for—minors, while taking care to distinguish precisely these circumstances where the mandate directly burdens the right of minors and adults to access protected speech. 606 U.S. at 482–83. *See infra* Sections II.A, II.B.3.

2. The panel never engaged with the Act’s content-based justification—a justification clear from the legislative record and the Attorney General’s own concessions. Instead, it skipped directly to its (mistaken) conclusion that the Act regulates commercial speech. That analytical leap cannot be reconciled with *Free Speech Coalition*, 606 U.S. at 482, or *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163–64 (2015). *See infra* Section II.B.1.

3. Further, the panel’s central rationale for applying intermediate scrutiny—that SB2420 regulates only commercial speech because “[a]pp store transactions are commercial in nature,” App.4a—conflicts with numerous decisions of this Court, including most recently *303 Creative LLC v. Elenis*, 600 U.S. 570, 594 (2023), making clear that no lesser First Amendment protection is given to speech that is sold or exchanged for payment. *Va. Bd. of Pharmacy*, 425 U.S. at 761; *Ginzburg v. United States*, 383 U.S. 463, 474 (1968); *303 Creative*, 600 U.S. at 594; *Brown*, 564 U.S. at 794. By holding otherwise here, and thus expanding commercial speech far beyond this Court’s traditional limitations to solicitation and advertising, the Fifth Circuit’s approach opens the door to government regulation of any entity that earns a living from protected speech—including bookstores, art galleries, theaters, concert halls,

newsstands, website designers. *See infra* Section II.B.3.

4. Finally, the panel applied intermediate scrutiny to the parental consent requirement despite the clear content-based exceptions for apps that “single[] out specific subject matter for differential treatment.” *Reed*, 576 U.S. at 169, 171 (holding that strict scrutiny is required in such circumstances). The panel incorrectly held these carve-outs content-neutral because they are speaker- and function-based, failing to recognize that a regulation “cannot escape classification as facially content based simply by swapping an obvious subject-matter distinction for a ‘function or purpose’ proxy.” *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 74 (2022); *see also Reed*, 576 U.S. at 170; *Barr*, 591 U.S. at 619–20. *See infra* Section II.B.2.

**B. The decision below conflicts with decisions from numerous courts of appeals.**

The panel’s reasoning also “conflicts with the decision[s] of []other United States court[s] of appeals on the same important matter[s].” Sup. Ct. R. 10(a).

The panel’s holding that speech is “commercial” whenever there is an economic motive for disseminating it conflicts with decisions from other circuits. The Ninth Circuit, for example, asks whether a “mixed-content” publication, taken “as a whole,” is commercial—stressing that a speaker’s “economic motivation” is “insufficient by itself to turn the materials into commercial speech.” *Dex Media W., Inc. v. City of Seattle*, 696 F.3d 952, 957–58 (9th Cir. 2012) (citing *Riley v. Nat’l Fed’n of the Blind of N.C.*, 487 U.S. 781,

796 (1988)); *IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1122 (9th Cir. 2020) (citing *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 67 (1983)). Accordingly, in holding that compelling online platforms to disclose information about “harmful or potentially harmful content” accessible through their services was not commercial speech, the Ninth Circuit explained that the “mere fact that a business may earn revenue from its services is ‘insufficient by itself’ to render its opinions about those services ‘commercial.’” *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1119–20 (9th Cir. 2024) (“There should be no doubt that the speech children might encounter online while using covered businesses’ services is not mere commercial speech.”); accord *Anderson v. Hermosa Beach*, 621 F.3d 1051, 1062–63 (9th Cir. 2010) (holding that the “business of tattooing qualifies as purely expressive activity” and “is therefore entitled to full constitutional protection”).

Other circuits take similar approaches and reject the Fifth Circuit’s novel position here. See, e.g., *Billups v. City of Charleston*, 961 F.3d 673, 683 (4th Cir. 2020) (law barring unlicensed tour guides from giving paid tours was not commercial speech because the activity, “by its very nature, depends upon speech or expressive conduct.”); *Argello v. City of Lincoln*, 143 F.3d 1152, 1153 (8th Cir. 1998) (law barring the profession of fortunetelling was not commercial speech because “[t]he speech covered by the ordinance, for the most part, does not simply propose a commercial transaction. Rather, it is the transaction. The speech itself is what the ‘client’ is paying for.”); *Telescope Media Grp. v. Lucero*,

936 F. 3d 740, 751–52 (10th Cir. 2019) (full First Amendment protection for commercial videographer; explaining that it “does not make any difference that the Larsens are expressing their views through a for-profit enterprise”).

**C. This case is exceptionally important.**

The questions presented by the panel’s published order and by SB2420 are of surpassing and recurring national importance. SB2420 imposes age verification, parental consent, and compelled age-rating across the entire universe of mobile applications—perhaps the principal medium through which Americans now access and create speech. The panel’s blessing of SB2420’s speech-restrictive regime—and its rationale that the commercial speech doctrine applies to vast swaths of online expression—would authorize sweeping restrictions on access to the modern public square available through mobile apps. And the importance of this case is magnified by the waves of materially similar laws now in litigation in other States and other circuits,<sup>5</sup> many of which federal district courts have enjoined.<sup>6</sup> There is accordingly at least a reasonable probability that this Court would grant review.

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<sup>5</sup> Utah App Store Accountability Act, Utah Code §§ 13-76-101–13-76-404; Louisiana Online Protections for Minors, La. R.S. §§ 51:1771–51:1775; Alabama Act No. 2026-59, Ala. Code §§ 8-19K-1–8-19K-14.

<sup>6</sup> *NetChoice v. Murrill*, 812 F. Supp. 3d 594 (M.D. La. 2025); *NetChoice v. Griffin*, 812 F. Supp. 3d 905 (2025); *NetChoice v. Weiser*, 808 F. Supp. 3d 1223 (D. Colo. 2025); *NetChoice v. Carr*, 789 F. Supp. 3d 1200 (N.D. Ga. 2025); *NetChoice, LLC v. Yost*, 778 F. Supp. 3d 923 (S.D. Ohio 2025); *NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105 (D. Utah 2024); *Comput. & Commc’ns Indus. Ass’n v. Paxton*, 747 F. Supp. 3d 1011 (W.D. Tex. 2024); *NetChoice v. Griffin*, 2026 WL 1068565 (W.D. Ark. Apr. 20, 2026); *NetChoice v. Jones*, 2026 WL 561099 (E.D. Va. Feb. 27, 2026).

**II. The Fifth Circuit’s stay order is demonstrably wrong, and CCIA is likely to succeed on the merits of its claims.**

CCIA is likely to succeed on the merits. SB2420 burdens an unprecedented amount of protected, non-commercial speech. Because it is content-based in its justification and on its face, SB2420 triggers strict scrutiny. Yet SB2420 would fail even under intermediate scrutiny because it is wildly overbroad, underinclusive, and the government made no record to show that it was narrowly tailored to serve its purported interests.

**A. SB2420 burdens access to an unprecedented amount of protected speech.**

Neither Texas nor the Fifth Circuit contest that SB2420 burdens access to a wide array of constitutionally protected speech.

**1. App stores, developers, and mobile app users engage in constitutionally protected speech.**

“All manner of speech—from pictures, films, paintings, drawings, and engravings, to oral utterance and the printed word—qualify for the First Amendment’s protections; no less can hold true when it comes to speech . . . conveyed over the Internet.” *303 Creative*, 600 U.S. at 587 (citation omitted). This list is by no means exhaustive: the Court has also recognized that video games, social media, and simple information constitute protected speech. *Brown*, 564 U.S. at 790; *Moody v. NetChoice, LLC*, 603 U.S. 707, 728 (2024); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011). And “whatever the challenges of applying the Constitution to ever-advancing technology, ‘the basic principles of freedom of speech and the press, like the First Amendment’s

command, do not vary’ when a new and different medium for communication appears.” *Brown*, 564 U.S. at 790 (citation omitted).

The mobile apps developed by CCIA’s members embody protected expression in their own right and are conduits for an immense volume of protected speech created by others. *See supra* Statement A.1.; App.110a-12a. In doing so, they facilitate a “wide array of protected First Amendment activity on topics ‘as diverse as human thought.’” *Packingham*, 582 U.S. at 105; App.122a-23a; App. 147a-48a. The First Amendment likewise protects the rights of mobile app users to produce speech on apps (e.g., publishing a blog on Substack or a video on YouTube) and to access content through such apps. *Free Speech Coal.*, 606 U.S. at 482–83; *Brown*, 564 U.S. at 799.

In turn, app stores themselves have First Amendment rights as gateways through which a vast range of expression is published and disseminated, much as bookstores receive First Amendment protection for their distribution of books. This Court has long recognized that both “the creation and dissemination of information are speech.” *Sorrell*, 564 U.S. at 553; *accord Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (plurality op.) (“The right of freedom of speech and press . . . embraces the right to distribute literature”).

These protections equally apply to the dissemination of lawful speech to minors. “[M]inors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them.” *Brown*,

564 U.S. at 794 (cleaned up). “Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.” *Id.*

## **2. SB2420 burdens the speech rights of app stores, developers, and their users.**

The core of the Act—its interlocking series of age verification, parental identity verification, and parental consent requirements—burdens all manner of constitutionally protected speech. These mandates are very different from—and far more onerous than—the age-gate on pornographic websites that this Court addressed in *Free Speech Coalition*, 606 U.S. at 466. In contrast to that earlier Texas law, SB2420’s regime is not targeted at restricting a particular category of unprotected speech. Instead, the Act imposes a sweeping series of restrictions on nearly the full universe of speech available through mobile apps—including highly expressive speech that minors have every right to access.

*First*, the Act’s age-verification provision burdens access by *all* users to *all* speech within app stores by requiring them to verify their age before they can download *any* app. *Free Speech Coalition* makes clear that when someone has a constitutional right to access certain forms of speech, “submitting to age verification is a burden on the exercise of that right.” *Id.* at 483.

*Second*, the Act imposes further burdens on minors’ rights to access protected speech by requiring them to obtain parental consent before being

able to download an app or purchase any in-app content. *See Brown*, 564 U.S. at 795 n.3. Those requirements apply to virtually all apps and in-app content—regardless of whether the app provides news, religious material, or educational content. That burden is additionally imposed on parents, who must verify their relationship to their minor children (the Act does not specify how) and then individually approve every single app and in-app purchase to facilitate access to that speech. Notably, blanket approval is not permitted, even for 17-year-old voracious readers.

*Third*, minors’ access rights are further burdened through the provision requiring developers to notify app stores of so-called “significant changes,” as app stores must then effectively pause the minor’s already-approved access to speech until the parent renews consent. §§ 121.022(g), 121.053.

## **B. SB2420 triggers strict scrutiny.**

“A law can regulate the content of protected speech, and thereby trigger strict scrutiny, either on its face or in its justification.” *Free Speech Coal.*, 606 U.S. at 482 (quotation omitted). SB2420 does both.

### **1. SB2420 is not a commercial speech regulation.**

The Fifth Circuit’s primary reason for finding that “the district court likely erred in applying strict scrutiny” was because “[a]t most, SB2420 regulates speech that ‘proposes a commercial transaction,’ which is subject to intermediate scrutiny[.]” App.4a. The panel reasoned that “[a]pp store transactions are commercial in nature,” and even apps downloaded for free receive “payment” in the form of “access to user data and private information.”

*Id.*

The record contains no support for the motions panel’s key premise that all apps engage in commercial transactions or even profit off of access to “user data and private information.” Indeed, many apps are available for free and do *not* collect and profit off of user data: for example, the SCOTUSblog mobile app. But even if the premise were true, the panel’s approach fundamentally misunderstands and misapplies commercial-speech principles.

Commercial speech is a narrow category of speech that “does no more than propose a commercial transaction.” *United States v. United Foods*, 533 U.S. 405, 409 (2001); *Va. Bd. of Pharmacy*, 425 U.S. at 762. This Court has kept the definition narrow “lest speech deserving of greater constitutional protection be inadvertently suppressed.” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 579 (1980) (Stevens, J., concurring). It has therefore explained time and again that “speech does not lose its First Amendment protection . . . even though it is carried in a form that is ‘sold’ for profit, and even though it may involve a solicitation to purchase or otherwise pay or contribute money.” *Va. Pharmacy Bd.*, 425 U.S. at 761; *303 Creative*, 600 U.S. at 594; *Bd. Of Trustees of State of N.Y. v. Fox*, 492 U.S. 469, 482 (1989) (“Some of our most valued forms of fully protected speech are uttered for a profit”). These principles underlie “our cases involving everything from movie producers to book publishers to newspapers.” *303 Creative*, 600 U.S. at 594.

The motions panel’s ruling is directly contrary to *Brown*, which it did not even cite. There, this Court applied strict scrutiny to (and struck down) a law restricting the “sale or rental” of video games to minors, notwithstanding attempts to frame it as a regulation of a commercial transaction. *See* 564 U.S. at 792 n.1. *Brown* makes clear that laws restricting minors’ access to speech cannot be treated as commercial speech regulation merely because the material at issue is sold or exchanged for something of value.

The two cases the motions panel cited do not suggest otherwise, and if anything, they undermine the panel’s holding. *Fox* involved a regulation that banned “private commercial enterprises” from advertising their products on campus. 492 U.S. at 471–72. This Court found that as applied to “Tupperware Parties” (events aimed at selling plastic containers), the provision regulated commercial speech. At the same time, the Court reiterated that “[s]ome of our most valued forms of fully protected speech are uttered for a profit,” and remanded for consideration of the regulation’s application to what the Court characterized as *non-commercial* speech—including “tutoring, legal advice, and medical consultation provided (for a fee).” *Id.* at 470–72, 474–75, 481–82. *Fox* thus makes clear that the speech at issue here—disseminating mobile apps—cannot be treated as commercial simply because payment may be involved. *Florida Bar v. Went For It, Inc.* considered a law that prohibited personal injury lawyers from soliciting accident victims—a restriction of professional advertising that indisputably involved commercial speech. 515

U.S. 618, 620, 623–24 (1995). SB2420 is not aimed at advertising; it is aimed at the dissemination of apps that provide access to all manner of protected speech and information.

Nor was the Fifth Circuit correct to apply the commercial speech doctrine on the theory that “[o]therwise, any company involved in proposing a commercial transaction could trigger strict scrutiny by incidentally including speech as part of the transaction.” App.6a. That concern is entirely misplaced in this context, given the operation of app stores and mobile apps, which are vital conduits for the exchange of speech and information. This is not a case of smuggling speech into an unprotected commercial transaction; instead, the state seeks to use the fig leaf of regulating contracts and commerce to impose sweeping access-restrictions on core speech. Indeed, the slippery slope concern cuts the other way: condoning the Fifth Circuit’s view would permit states to invoke the commercial-speech doctrine to impose sweeping limits on movie theaters, art galleries, theaters, bookstores, newspapers—and any other entities that provide access to speech for some form of payment. *See City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 756 n.5 (1983) (“[T]he degree of First Amendment protection is not diminished merely because the newspaper or speech is sold rather than given away.”); *accord Spiritual Psychic Science Church v. City of Azusa*, 39 Cal.3d 501, 511 (1985) (“If we were to accept the City’s theory, a lecture for or against Marxism, abortion, nuclear power, or racial supremacy would be commercial speech if people paid an admission

charge to hear it, because the lecture would complete the transaction. Such a result would be unprecedented and untenable.”).

**2. The Act’s content-based justification alone triggers strict scrutiny.**

Even putting aside the Fifth Circuit’s misapplication of the commercial speech doctrine, the panel erred in failing to apply strict scrutiny. If a statute cannot be “justified without reference to the content of the regulated speech,” it is not content neutral. *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986). Thus, even if a “measure on its face appeared neutral as to content and speaker, its purpose to suppress speech and its unjustified burdens on expression would render it unconstitutional.” *Sorrell*, 564 U.S. at 566. That is the case here. In describing CCIA’s challenge to SB2420 as “[c]reatively repackaging content-neutral commercial regulations as content-specific ones,” App.6a, the motions panel ignored the Act’s explicitly content-based justification, even though it was well-documented in the record and admitted by the State before the district court.

The *very first sentence* of the sponsor’s statement of intent in the Senate Committee Report began by noting the “[g]rowing concerns regarding the rise of social media and its pervasiveness in the lives of children and teens.” Lambert Decl., Ex. E-2 at 1. Further supporting testimony at a Senate Committee Hearing stated “[m]obile applications have become a gateway to harm, exposing minors to *inappropriate content . . .*” *Id.*, Ex. E-1 at 42:19-21 (emphasis added). Because the law quite literally “cannot be justified without

reference to the content” of the speech the legislature intended to regulate, it must satisfy strict scrutiny. *Reed*, 576 U.S. at 164 (citation omitted).

The Attorney General has conceded the Act’s content-based justification. The State’s PI briefing explained the Act was passed to shield minors from “unsuitable” and “objectionable” “material.” App.172a; App.174a. Texas reiterated this point at the PI hearing. App.69a-70a (“S.B. 2420 helps prevent minors from accessing addictive and harmful content without parental consent much like we require age verification to purchase tobacco or visit pornographic websites.”). And when pressed, it elaborated on the specific types of content it had in mind, including “social media websites” and “[m]obile gaming.” App.72a. It is no wonder, then, that the district court found that “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.” App.26a.

That the Act’s core justification is content-based was made even clearer by the Attorney General’s press release, issued shortly after the motions panel’s administrative stay order, trumpeting the State’s ability to enforce SB2420 to “protect[] Texas children from . . . dangerous content” and empowering parents to “stop [their kids] from accessing harmful or inappropriate content.” Press Release, *Attorney General Ken Paxton Secures Major Victory Protecting Children Online by Requiring Age Verification and Parental Approval for Minors’ App Downloads* (June 1, 2026),

<https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-secures-major-victory-protecting-children-online-requiring-age>.

The Fifth Circuit erred in ignoring this content-based justification. Because SB2420 is justified by “the direct impact that speech has on its listeners,” strict scrutiny applies to the entire law. *Boos v. Barry*, 485 U.S. 312, 320–21 (1988); *U.S. v. Playboy Ent. Grp.*, 529 U.S. 803, 811–12 (2000); *Ashcroft v. ACLU*, 542 U.S. 656, 670 (2004). That alone required strict scrutiny.

### **3. The parental consent requirements are content-based on their face.**

The parental consent requirements—the core of the Act and the heart of CCIA’s challenge—are also content-based on their face. As the Fifth Circuit recognized, the Act exempts certain types of apps from the parental consent requirement, namely, apps providing emergency services and standardized testing. § 121.022(h); App.7a-8a. Thus, an app providing practice SAT exams or access to a crisis hotline would avoid the parental-consent burden while an app providing news would not. Exceptions such as these, which “single out specific subject matter for differential treatment” and “depend entirely on the sign’s communicative content,” trigger strict scrutiny. *Reed*, 576 U.S. at 156.

The panel found that the exceptions did not trigger strict scrutiny because they are speaker- or purpose-based, not content-based. App.7a-8a. While part of the exception focuses on types of speakers or functions of certain apps, that does not change the explicitly content-based conditions required to satisfy the exceptions. Adding a speaker-based component to a content-based

provision does not cure the problem. To the contrary, a law “favoring some speakers over others” “demand[s] strict scrutiny when the legislature’s speaker preference reflects a content preference.” *Reed*, 576 U.S. at 170; *accord Barr*, 591 U.S. at 619–21 (controlling plurality op.) (evaluating content- and speaker-based exception to robocall statute under strict scrutiny). Here, Texas exhibited a content preference for apps that provide access to emergency services and standardized tests. Strict scrutiny applies to such preferences.

The same logic undercuts the motions panel’s reasoning that the exception is “not likely content-based” because it “focuses on why the service is needed, not what is being communicated.” App.7a. “[A] regulation of speech cannot escape classification as facially content based simply by swapping an obvious subject-matter distinction for a ‘function or purpose’ proxy that achieves the same result.” *City of Austin*, 596 U.S. at 74. Just because emergency calls “protect[] the safety and welfare of Americans,” App.7a, does not excuse the fact that the legislature’s “speaker preference” for emergency service providers “reflects a content preference” for “9-1-1 emergency services,” “crisis hotline[s],” or “emergency assistance service[s].” § 121.021(h); *Barr*, 591 U.S. at 619–20. The panel’s justification goes at most to the *application* of scrutiny, not what level of heightened scrutiny is triggered in the first place.

The panel’s reliance on *Barr* directly cuts against it. *Barr* found that an exception to a robocall ban for government-debt collectors was content-based and applied strict scrutiny to the exception. In reaching that conclusion, the

Court recognized that “collecting government debt is no doubt a worthy goal[.]” 591 U.S. at 621. But that consideration—the focus on why the service was needed—was relevant only to whether the exception survived the appropriate level of scrutiny. And even then, the government “ha[d] not sufficiently justified the differentiation between government-debt collection speech and other important categories of robocall speech, such as political speech, charitable fundraising, issue advocacy, commercial advertising, and the like.” *Id.*

So too here. While providing people access to emergency services or educational testing services is “no doubt a worthy goal,” the State makes no effort to differentiate its exemption from services that provide other categories of speech, such as news, religious, or informational texts. The Fifth Circuit erred in failing to apply strict scrutiny due to these content-based lines.<sup>7</sup>

**C. SB2420’s age verification and parental consent requirements cannot withstand any form of heightened scrutiny.**

The Fifth Circuit also erred when it held that “Texas has likely shown that . . . SB2420 survives intermediate scrutiny” because it “does not burden

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<sup>7</sup> The Fifth Circuit’s conclusion that these provisions could have been severed is also irrelevant. The decision assumes that only these content-based exceptions to the parental consent provision might be found unconstitutional. App.8a-9a. But these are hardly the only constitutionally deficient provisions. Further, since the entire Act is subject to strict scrutiny due to its content-based justification, and it fails under that standard, severability is impossible. Likewise, the age-verification and parental-consent provisions separately fail under either form of scrutiny for reasons unrelated to the content-based exceptions. The Fifth Circuit’s severability analysis is therefore doubly irrelevant.

substantially more speech than necessary to further [the State’s] interests,” and that there was a “reasonable fit” between the Act’s means and ends. App.5a-6a. It is hard to conceive of a more overbroad and less narrowly-tailored law than SB2420. SB2420 would therefore fail even intermediate scrutiny—and would *a fortiori* fail strict scrutiny.

“[T]o survive intermediate scrutiny, a restriction on speech or expression must be narrowly tailored to serve a significant governmental interest.” *City of Austin*, 596 U.S. at 76 (citation and quotation marks omitted). The statute must be “narrowly tailored to serve a significant governmental interest” and must not “burden substantially more speech than necessary to further the government’s legitimate interests.” *Packingham*, 582 U.S. at 105–06 (citation omitted). “[B]y demanding a close fit between ends and means, the tailoring requirement prevents the government from too readily ‘sacrific[ing] speech for efficiency.’” *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (quoting *Riley*, 487 U.S. at 795). SB2420 fails that tailoring requirement because it substantially burdens protected expression without meaningfully advancing either of Texas’s asserted interests.

**Data Privacy.** SB2420 has almost nothing to do with Texas’s purported interest in “protecting children’s data, safety, and privacy.” App.6a. Only two ancillary provisions of the Act address data protection and privacy, and they exist only because the Act forces app stores to collect sensitive personal information to verify age and parental identity, and then to share it with all

manner of app developers. §§ 121.021, 121.022, 121.024. The core of the law—the requirement that minors obtain parental consent before accessing any app or app-based content—has nothing to do with data privacy.

In any event, any data-privacy interest is already served by far more tailored and less speech-burdening laws. For example, the TDPSA provides Texas residents with a suite of rights over their data, “establishes privacy protection safeguards,” and prohibits companies from “processing the data of a known child without first obtaining parental consent.” TDPSA, <https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint/consumer-privacy-rights/texas-data-privacy-and-security-act> (last accessed June 1, 2026); § 541.101(b)(4); *see also* 16 C.F.R. § 312.3 (federal regulations under COPPA prohibiting operators of websites and online services from “collecti[ng], us[ing], and/or disclos[ing] personal information from children” without parental consent).

Unlike the TDPSA or COPPA, SB2420 does not impose any new restrictions on how data about minors that app stores or developers collect in the course of their regular business can be used. It does not give minors or parents any new rights to control their use of their personal data. Nor is the Act tailored to businesses or other entities that process or sell personal data for commercial purposes. *Cf.* TDPSA § 541.002(a), COPPA, 15 U.S.C. § 6501(2)(A) (requiring covered websites and online services to operate “for commercial purposes”). Instead, the Act broadly requires (1) age verification as

a prerequisite to anyone creating any mobile app store account and (2) parental consent for all downloads of apps or in-app purchases by minors. If those obligations were actually intended to safeguard data privacy and security, they are paradigm examples of an overbroad restriction that burdens far more speech that is necessary. *McCullen*, 573 U.S. at 486.

***Parental Consent.*** The Fifth Circuit motions panel also suggested that SB2420 is meant to help parents supervise their children’s app downloads. App.2a. But there is no “historical warrant or compelling justification” for a law that “prevent[s] children from hearing or saying anything *without their parents’ prior consent.*” *Brown*, 564 U.S. at 795 n.3. Texas’s asserted interest in forcing parents to superintend minors’ choices is not “unrelated to the suppression of free speech.” *Free Speech Coal.*, 606 U.S. at 495-96.

Moreover, SB2420 is not tailored to any legitimate goal of enabling parental involvement in their children’s learning. Texas has acknowledged that “[a]pp stores . . . already provide tools that enable parents to limit what apps children are able to download or make purchases in.” *CCIA v. Paxton*, No. 26-50001, ECF No. 36 (Texas Mot. for Stay) at 20; *accord* App.112a-16a; App.136a (“Google already offers parents most of the controls the Act would make mandatory and takes additional measures to help ensure an age-appropriate experience with respect to Google Play apps.”).<sup>8</sup>

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<sup>8</sup> Further, Texas already has a law requiring age-verification and walling off minors from pornography websites. *See Free Speech Coal.*, 606 U.S. at 466. There is every reason to think that this provision applies to mobile apps as well, and even if it does not, Texas could enact such a targeted measure. But the goal of protecting minors

Texas has offered no evidence that there is a gap that needs to be filled, much less via a “solution” that is overbroad and burdensome on parents by requiring their constant consent and oversight. In *Brown*, this Court explained that the existing “voluntary rating system designed to inform consumers about the content of games . . . does much to ensure that minors cannot purchase seriously violent games on their own, and that parents who care about the matter can readily evaluate the games their children bring home.” 564 U.S. at 803. “Filling the remaining modest gap in concerned parents’ control can hardly be a compelling state interest.” *Id.* As in *Brown*, the State has presented no evidence that its *less robust* version of controls that app stores have already developed on a voluntary basis “meet[s] a substantial need of parents who wish to restrict their children’s access to [apps] but cannot do so.” *Id.*; *see id.* at 795 n.3 (distinguishing between “the power to *enforce* parental prohibitions” and the power to require parental consent).

Moreover, SB2420’s prohibition on blanket consent actually deprives parents of choice. §§ 121.022(e), 121.026(a)(3). App.143a-44a. With no justification, the State precludes app stores from allowing parents to pre-authorize app downloads or purchases and instead forces them to individually approve every single individual app download and purchase (and then to renew

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from unprotected pornography does not remotely justify the sweeping mandate of SB2420 to require age-verification and parental consent for all apps and in-app purchases, much less avoid a facial challenge to those mandates. That is the definition of an overbroad speech mandate, one that “burn[s] the house to roast the pig.” *Reno*, 521 U.S. at 882.

that consent on an ongoing basis), no matter how unobjectionable. This unnecessarily onerous requirement overrides the preferences of parents who trust their children, wish to let them make their own choices, or favor a different parenting philosophy. *See Brown*, 564 U.S. at 805 (violent video game ban “seriously overinclusive because it abridge[d] the First Amendment rights of young people whose parents . . . think violent video games are a harmless pastime”). As in *Brown*, Texas’s “purported aid to parental authority is vastly overinclusive . . . . While some of the legislation’s effect may indeed be in support of what some parents of the restricted children actually want, its entire effect is only in support of what the State thinks parents *ought* to want. This is not the narrow tailoring to ‘assisting parents’ that restriction of First Amendment rights requires.” *Id.* at 804.

Finally, the Fifth Circuit lacked *any* record evidence to support its finding that SB2420 is narrowly tailored to address its purported aims. Texas did not provide a single piece of evidence in this litigation to meet its “demanding” “burden of justification.” *United States v. Virginia*, 518 U.S. 515, 533 (1996); App.29a. Instead, the only evidence in the record demonstrates the law’s chilling effects, the immense compliance burdens on app stores and developers, and the availability of less restrictive alternatives. App.112a-16a; App.118a-22a; App.128a; App.136a-44a; App.148a-52a.

**D. The scope of the district court’s preliminary injunction was proper.**

In a few conclusory sentences, the Fifth Circuit stay panel suggested

that the district court’s preliminary injunction was contrary to both *Moody* and *Trump v. CASA, Inc.*, 606 U.S. 831, 847 (2025). But under these facts, the district court acted well within its authority to enjoin the law in its entirety.

This case does not present the facial-challenge problem discussed in *Moody* because CCIA only sought relief as to the provisions targeting mobile app stores, *of which its members comprise all of the legislature’s intended targets*. Lambert Decl., Ex. E-1 at 12:10-20; 15:23 to 16:1; 64:25 to 65:2. In fact, Texas never contested CCIA’s facial challenge in the PI briefing and has therefore forfeited such an argument on appeal. *See generally* App.154a-81a.

Nor did the panel identify any error in the district court’s careful *Moody* analysis. App.33a-35a. The district court conducted the appropriate two-step inquiry, first considering “[w]hat activities, *by what actors*, . . . the law[] prohibit[s] or otherwise regulate[s.]” *Moody*, 603 U.S. at 724 (emphasis added). As Texas acknowledged, CCIA’s members (and specifically Google and Apple) are “the primary, near exclusive, source of downloadable apps”—that is, app stores covered by SB2420. *See* App.161a. Those members thus make up the app store “actors” implicated by this law. The district court correctly engaged in an analysis of the obligations imposed on those app stores, which captured virtually all of the applications of SB2420’s app store provisions. App.21a-23a.

At step two, the district court then properly “decide[d] which of the laws’ applications violate the First Amendment” and “measure[ed] them against the rest,” considering “every covered platform,” i.e., *app stores*. *Moody*, 603 U.S. at

725. The verification and parental tethering requirements violate CCIA's and its members' (and their users') First Amendment rights from the moment of account creation. That is a unitary, across-the-board problem. As to parental consent, CCIA identified a vast sweep of applications where requiring such consent would burden core protected speech, and explained that the Act made no effort to tailor its requirements to any more targeted category of apps. Nor did the State make any effort to explain how app stores could possibly be required to identify which apps do and do not involve protected expression. Indeed, the State failed to even identify any category of apps for which parental consent would be constitutionally permissible and that is not otherwise regulated by existing Texas laws. Thus, the unconstitutional applications of SB2420 necessarily outweigh the constitutional applications.

For the same reasons, the preliminary injunction did not run afoul of CASA's prohibition of universal injunctions. Again, CCIA's members represent virtually the universe of app stores, and the obligations imposed on app developers by SB2420 depend on the app-store provisions. This is therefore a case where granting relief to CCIA's members is equivalent to blocking the law in its entirety.

**III. CCIA's covered app store and developer members and their users will suffer irreparable harm absent vacatur.**

CCIA's case for irreparable injury is ironclad. In requesting a preliminary injunction, CCIA demonstrated in detail how enforcement of the Act will inflict multiple forms of irreparable harm on Texas users, app stores,

and app developers, including not only deprivations of First Amendment rights (paradigmatic irreparable harm) but also unrecoverable compliance costs and burdens. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); App.118a-20a; App.139a-42a; App.149a-52a. Texas, by contrast, declined to put on any evidence of harm.

As a result of the Fifth Circuit’s rushed grant of a stay, CCIA and its members are for the first time subject to a new law that fundamentally alters the operation of app stores and apps. In addition to the First Amendment harms to which CCIA’s members and their users have been suddenly exposed, SB2420 imposes unrecoverable compliance costs on CCIA and its members. Vacatur of the Fifth Circuit’s stay is thus necessary to restore the status quo during the pendency of the State’s appeal.

#### **IV. The equities favor vacatur.**

The equities here are not close, and all of them favor vacatur. Because the State is the opposing party, the balance-of-equities and public-interest factors “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Start with Texas’s own conduct, which refutes the premise of the stay it sought. The premise of a stay is that “there is insufficient time to resolve the merits and irreparable harm may result from the delay.” *Id.* at 432. But Texas has acted as though neither are true. It appealed the preliminary injunction the day it issued, yet waited a full month (and three weeks past the Act’s effective date) even to ask the district court for a stay. The district court

correctly denied a stay, noting that the State’s “month-long delay” undermined its request. Having chosen delay over speed, Texas cannot credibly claim any urgent interest in enforcing the law.

On the other side of the ledger, the panel’s stay of the district court’s injunction inflicts immediate and irreparable harm. Before CCIA’s members may display and facilitate vast amounts of lawful content, they must now build and operate the Act’s verification-and-consent machinery or face liability, and users must clear state-mandated hurdles before they may access fully protected speech. *Supra* at Section II. These First Amendment injuries “unquestionably constitute[] irreparable injury,” *Roman Cath. Diocese of Brooklyn*, 592 U.S. at 19, and have been accruing since the stay took effect.

Texas, for its part, can point to only one harm: that it cannot enforce the Act. But the State has no legitimate interest in “enforcing a law that is likely constitutionally infirm.” *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010); *accord State v. Biden*, 10 F.4th 538, 560 (5th Cir. 2021); *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020).

## CONCLUSION

For the foregoing reasons, CCIA respectfully requests vacatur of the Fifth Circuit’s stay order.

Dated: June 10, 2026

Respectfully submitted,

DENO HIMONAS  
ELIZABETH W. SHARKEY  
*Wilson Sonsini  
Goodrich & Rosati, PC  
95 S. State Street, Suite 1000  
Salt Lake City, UT 84111  
(801) 401-8510*

ELIZABETH B. PRELOGAR  
EPHRAIM A. MCDOWELL  
JOSHUA REVESZ  
*Cooley LLP  
1299 Pennsylvania Ave., NW  
Washington, DC 20004  
(801) 401-8510*

/s/ BRIAN M. WILLEN  
BRIAN M. WILLEN  
*Counsel of Record*  
LAUREN GALLO WHITE  
EDWARD P. PERCARPIO  
*Wilson Sonsini  
Goodrich & Rosati, PC  
31 W. 52nd Street, 5th Floor  
New York, NY 10019  
(212) 999-5800  
bwillen@wsgr.com*

LAURA LEE PRATHER  
CATHERINE L. ROBB  
MICHAEL J. LAMBERT  
REID PILLIFANT  
*Haynes and Boone, LLP  
98 San Jacinto Blvd., Suite 1500  
Austin, Texas 78701*

*Counsel for Applicant CCIA*