

## APPENDIX

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# Appendix 1

United States Court of Appeals  
for the Fifth Circuit

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No. 25-51073

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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

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No. 26-50001

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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

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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

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PUBLISHED ORDER

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

PER CURIAM:\*

The Texas Legislature enacted Senate Bill 2420<sup>1</sup> (“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*.<sup>2</sup>

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.

<sup>1</sup> 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.

<sup>2</sup> 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).

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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,”<sup>3</sup> 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*”).<sup>4</sup> App store transactions are commercial in nature.<sup>5</sup> 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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<sup>3</sup> 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”).

<sup>4</sup> 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).

<sup>5</sup> 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).

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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.”<sup>6</sup> Detailed user data, including that of minors, is the lifeblood of the app store monetization ecosystem. Because, at most,<sup>7</sup> 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.”<sup>8</sup>

*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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<sup>6</sup> 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]visions that no child can understand.”).

<sup>7</sup> 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.

<sup>8</sup> *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).

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more speech than necessary to further those interests.”<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> Creatively repackaging content-neutral commercial regulations as content-specific ones proposes too general a level of analysis.<sup>12</sup>

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<sup>9</sup> *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)).

<sup>10</sup> 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).

<sup>11</sup> 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.”)).

<sup>12</sup> 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.

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*Third*, the district court likely improperly deemed two exceptions<sup>13</sup> to the parental-consent provisions to be “coverage definitions” that would affect the scope and application of all of SB2420’s provisions.<sup>14</sup> 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.”<sup>15</sup> 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”)<sup>16</sup> and “necessary for the provision of emergency services.”<sup>17</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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 free-standing 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”).

<sup>15</sup> *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).

<sup>16</sup> 15 U.S.C. § 6501 *et seq.*

<sup>17</sup> TEX. BUS. & COM. CODE § 121.022(h)(1)(B).

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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,<sup>18</sup> 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,<sup>19</sup> because

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<sup>18</sup> *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).

<sup>19</sup> 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-

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the remainder of SB2420 is “capable of functioning independently” and is “fully operative as a law.”<sup>20</sup> The district court likely erred in failing faithfully to apply the severability clause.

*Fourth*, SB2420’s terms are likely not unconstitutionally vague.<sup>21</sup> 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.<sup>22</sup> 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.

<sup>20</sup> *See Barr*, 591 U.S. at 628 (noting that “it is fairly unusual for the remainder of a law not to be operative”).

<sup>21</sup> *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.”).

<sup>22</sup> 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.

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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.”<sup>23</sup> 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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<sup>23</sup> *See Barr*, 591 U.S. at 628; *see also Rose*, 801 S.W.2d at 844–45.

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*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.<sup>24</sup>

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.<sup>25</sup> 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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<sup>24</sup> See TEX. CONST. art 1, § 37; *Ginsberg* 390 U.S. at 640 (1968); *Yoder*, 406 U.S. at 232.

<sup>25</sup> 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).

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preliminary injunctions pending appeal is GRANTED.<sup>26</sup>

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<sup>26</sup> This order supersedes this panel's order granting an administrative stay.

# Appendix 2

United States Court of Appeals  
for the Fifth Circuit

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No. 25-51073

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United States Court of Appeals  
Fifth Circuit

**FILED**

May 28, 2026

Lyle W. Cayce  
Clerk

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

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UNPUBLISHED ORDER

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

PER CURIAM:

This administrative panel has under advisement the appellant's motion to stay the district court's universal preliminary injunctions pending appeal. That motion is in the briefing stage; the appellant's reply in support of the motion is due June 2, 2026.

Pending a ruling on the motion for stay pending appeal, IT IS ORDERED that the preliminary injunctions are temporarily and administratively STAYED.

# Appendix 3



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.<sup>1</sup> 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).<sup>2</sup> 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

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<sup>1</sup> 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))).

<sup>2</sup> 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 *CCLA 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); *CCLA*, 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; *CCLA*, 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; *CCLA*, 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; *CCLA*, 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]njunctive relief 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.



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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

# Appendix 4

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.

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1:25-CV-1660-RP

**ORDER**

Before the Court is Defendant Ken Paxton’s (“Paxton”) Opposed Motion to Stay Preliminary Injunction Pending Appeal.<sup>1</sup> (Dkt. 69). Plaintiff Computer & Communications Industry Association (“CCIA”) filed a response in opposition, (Dkt. 73), and Paxton filed a reply in support of his motion, (Dkt. 74). Having reviewed the parties’ briefing, the facts, and relevant law, the Court will deny Paxton’s motion.

**I. BACKGROUND**

On December 23, 2025, this Court preliminary enjoined Paxton from enforcing the Texas App Store Accountability Act, Senate Bill 2420, Tex. Bus. & Com. Code § 121.001 et seq. (“SB 2420” or the “Act”). (PI Order, Dkt. 65). 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. In its

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<sup>1</sup> The motion was originally filed on CM/ECF as unopposed, (Dkt. 68), and Paxton refiled the motion to change the designation from unopposed to opposed, (Dkt. 69). The Court will moot the misfiled motion. Additionally, Paxton later filed a motion to expedite the Court’s ruling on its motion to stay. (Dkt. 75). In light of the Court’s Order today, the Court will moot Paxton’s request for expedited review.

preliminary injunction order, the Court found that CCIA has associational standing to bring its claims against Paxton, (*id.* at 8–9), and that, applying strict scrutiny, SB 2420 is likely unconstitutional, (*id.* at 9–19). After the Court preliminarily enjoined the Act, Paxton filed an interlocutory appeal to the Fifth Circuit Court of Appeals, challenging this Court’s ruling. (Dkt. 66).

After filing his interlocutory appeal, Paxton filed his motion to stay the preliminary injunction during the pendency of his interlocutory appeal. (Dkt. 69). In his motion to stay, Paxton argues that the State is likely to succeed on the merits because (1) SB 2420 does not “ban[] any material nor prevent[] any person . . . from using any app;” (2) SB 2420 does not directly implicate free speech rights under the First Amendment; (3) SB 2420 is not a content-based restriction on speech; and (4) intermediate scrutiny applies. (*Id.* at 3–5). Paxton additionally contends that the State and the public interest are irreparably harmed by the injunction, (*id.* at 5–6), and CCIA will not be irreparably harmed without an injunction, (*id.* at 6–7).

## II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 23(f), “[a]n appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.” Fed. R. Civ. P. 23(f). A court considers four factors in deciding whether to grant a stay pending appeal: “(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.” *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410 (5th Cir. 2013) (quoting *Nken v. Holder*, 556 U.S. 418, 425–26 (2009)).

## III. DISCUSSION

Applying the *Nken* factors, the Court finds that all four factors weigh in favor of denying the stay. First, Paxton has not made a strong showing that he will succeed on the merits. In less than two

pages of briefing, Paxton makes the same arguments regarding the constitutionality of SB 2420 that the Court rejected in its order granting the preliminary injunction. (Stay Mtn., Dkt. 69, at 3–5).

Paxton continues to claim that SB 2420 is not a content-based restriction on speech and “cover[s] all apps regardless of their content.” (*Id.* at 4). To the contrary, SB 2420’s coverage definition excludes certain apps from restrictions like emergency services apps and standardized test apps, showing that the Act singles out specific subject matter for preferential treatment and is not content neutral. (PI Order, Dkt. 65, at 10). Plus, at the preliminary injunction hearing, the Court observed that the State repeatedly described the Act as having a content-based purpose of “preventing minors from accessing addictive and harmful content.” (Minute Entry for PI hearing, Dkt.64). Finally, despite Paxton’s concessions about the Act’s content-based purpose, Paxton still argues that intermediate scrutiny applies. (Stay Mtn., Dkt. 69, at 4). While the Court concluded that strict scrutiny applies, (PI Order, Dkt. 65, at 9–11), the Court also found that SB 2420 would fail intermediate scrutiny because the State offered no evidence connecting the Act’s goals to its methods, (*id.* at 14–15). In any event, Paxton does not explain how SB 2420 would survive intermediate scrutiny, much less make a strong showing of success on this argument. On the first *Nken* factor, Paxton’s reliance on arguments that the Court rejected at the preliminary injunction stage does not display a strong likelihood of success.

To the second factor, Paxton makes no showing that the State faces irreparable injury—even setting aside Paxton’s month-long delay in requesting an emergency stay. Paxton argues that the injunction causes irreparable harm because “S.B. 2420 impacts truthful commercial representations, valid contract formation, and parental authorization in the purchase of apps,” topics which fall under Texas’s police powers. (Stay Mot., Dkt. 69, at 5). But Paxton cites no authority to support the notion that Texas’ inability to enforce SB 2420 while the lawsuit proceeds constitutes irreparable injury to Texas.

To the third factor, any potential harm to the State is outweighed by the harm that would be suffered by CCIA if the Act were not preliminarily enjoined. At risk are CCIA's constitutional rights to "display and facilitate vast amounts of lawful content and core protected content" and "access lawful content," (Resp., Dkt. 73, at 10), as well as CCIA members' costs of complying with the new law. Relying on a news article, Paxton asserts that SB 2420 "will not impact the app stores" because Google "has acknowledged that two similar laws have been passed in other states" and that, if and when they go into effect, Google will have to comply with those similar laws. (Stay Mtn., Dkt. 69, at 7). The assumptions Paxton makes from the article are contradicted by evidence already in the record that compliance would be costly and burdensome. (*See, e.g.*, Schruers Decl., Dkt. 15-1, at 25–27; Bye Decl., Dkt. 15-1, at 46–50). Beyond that, CCIA members' future efforts to comply with other states' similar laws does not diminish the harm arising from CCIA members having to comply at present with a Texas law that is likely unconstitutional. In other words, the article shows possible additional burdens placed on CCIA members by other laws not at issue in this case, not the absence of a burden from SB 2420 on CCIA members in Texas.

Fourth, the public interest favors denial. Keeping an unconstitutional law enjoined is "always in the public interest." *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 539 (5th Cir. 2013). That is especially true for "injunctions protecting First Amendment freedoms." *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 298 (5th Cir. 2012). Paxton counters that the State wants to give parents tools to protect their children online, which is in the public interest, but Texas has other ways it could advance that interest. For example, Texas can enforce its existing laws; this Court recognized, "Texas has existing laws requiring age-verification for digital services providers containing one-third or more sexual material harmful to minors." (PI Order, Dkt. 65, at 18–19). Texas is also free to regulate this area by passing laws and regulations that comply with the First

Amendment. In sum, Paxton fails to show that its interest in immediately enforcing SB 2420 overrides the public interest in protecting the constitutional right to free speech.

In conclusion, all four factors weigh against a stay. Therefore, the Court will deny Paxton's request for a stay pending appeal and maintain the status quo.

#### IV. CONCLUSION

For these reasons, **IT IS ORDERED** that Paxton's Opposed Motion to Stay Preliminary Injunction Pending Appeal, (Dkt. 69), is **DENIED**.

**IT IS FURTHER ORDERED** that Paxton's Unopposed Motion to Stay Preliminary Injunction Pending Appeal, (Dkt. 68), is **MOOT**.

**IT IS FINALLY ORDERED** that Paxton's Motion for Expedited Ruling, (Dkt. 75), is **MOOT**.

**SIGNED** on May 6, 2026.



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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

# Appendix 5

# CONSTITUTION ANNOTATED

Analysis and Interpretation of the U.S. Constitution

## Constitution of the United States

### First Amendment

First Amendment Explained

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.

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# Appendix 6

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

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

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

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE ROBERT L. PITMAN

APPEARANCES:

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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 1 THE CLERK: The Court calls the following cases  
10:00:39 2 for preliminary injunction hearing: A-25-CV-1660,  
10:00:45 3 Computer & Communications Industry Association vs. Ken  
10:00:48 4 Paxton, and A-25-CV-1662, Students Engaged In Advancing  
10:00:53 5 Texas and Others vs. Ken Paxton.

10:00:55 6 THE COURT: And for the plaintiffs?

10:01:00 7 MR. WILLEN: Good morning, your Honor.

10:01:01 8 Brian Willen for CCIA.

10:01:05 9 MR. SIEFF: Good morning, your Honor.

10:01:06 10 Adam Sieff for the Student plaintiffs, Students  
10:01:08 11 Engaged In Advancing Texas.

10:01:12 12 THE COURT: Any other announcements for the  
10:01:15 13 record? That's fine. And for the defendants.

10:01:19 14 MR. BERG: Zachary Berg from the Offices of the  
10:01:22 15 Attorney General on behalf of defendant.

10:01:23 16 THE COURT: Mr. Berg, good morning.

10:01:25 17 We are here for a consolidated hearing on the  
10:01:29 18 plaintiffs' motions for preliminary injunction in their  
10:01:32 19 respective cases. My recollection is that we've allocated  
10:01:36 20 30 minutes per side, that to be divided by agreement by  
10:01:40 21 the plaintiffs. So how are we going to proceed then? Do  
10:01:44 22 you have a plan?

10:01:46 23 MR. WILLEN: Good morning, your. Brian Willen.

10:01:48 24 I'm going to start and we've agreed with our  
10:01:50 25 co-plaintiffs to divide their argument roughly, equally

10:01:53 1 between us.

10:01:53 2 THE COURT: Okay. And would you like to reserve  
10:01:55 3 any time for a brief rebuttal?

10:01:58 4 MR. WILLEN: That will be great. Two minutes  
10:02:00 5 maybe.

10:02:00 6 THE COURT: Okay. Very good. Would you like any  
10:02:01 7 warnings from the clerk, time warning?

10:02:04 8 MR. WILLEN: Sure. That would be wonderful.

10:02:04 9 THE COURT: Maybe a five-minute warning?

10:02:05 10 MR. WILLEN: Perfect.

10:02:06 11 THE COURT: Okay. Great. So let's do a  
10:02:08 12 five-minute warning. Allowing for two-minute rebuttal.  
10:02:13 13 Okay. And does that sound reasonable to you?

10:02:17 14 MR. BERG: Yes, your Honor.

10:02:18 15 THE COURT: Okay. Very good. Well, I'm happy to  
10:02:21 16 hear from you.

10:02:23 17 MR. WILLEN: Good morning, your Honor. Thank you  
10:02:28 18 for your time. Brian Willen for the CCIA plaintiffs.

10:02:31 19 So what Texas seeks to do through S.B. 2420 is  
10:02:35 20 unprecedented. The state would impose an onerous age  
10:02:40 21 verification, parental consent, and compelled age-rating  
10:02:45 22 regime across an entire universe of speech. That is the  
10:02:47 23 world fostered by mobile apps and app stores. So if S.B.  
10:02:52 24 2420 goes into effect, every person wanting to use Apple's  
10:02:55 25 App Store, Google Play, or any other mobile app store

10:02:57 1 would be forced to surrender some of their privacy by  
10:03:00 2 submitting official documents to the app store to have  
10:03:05 3 their age formally verified. And then, for everybody  
10:03:08 4 under 18, app stores will be categorically forbidden from  
10:03:12 5 allowing them to download any mobile app, no matter how  
10:03:15 6 innocuous or important, or make any in-app purchase  
10:03:20 7 whether that's for political writings, educational  
10:03:23 8 materials, religious texts, music, games, movies unless  
10:03:28 9 their parent or guardian first gives express consent.

10:03:33 10 Blanket consent is expressly forbidden by the  
10:03:38 11 statute. And on top of all of that, every app developer  
10:03:41 12 will now have to assign a state-mandated age rating, not  
10:03:44 13 just to the app but for every item that's available for  
10:03:48 14 purchase within. That includes audio books,  
10:03:51 15 subscriptions, songs, anything. This boa constrictor of a  
10:03:55 16 statute violates the First Amendment several times over  
10:03:58 17 and CCIA on behalf of its members who include leading app  
10:04:03 18 stores and app developers, ask the Court to preliminarily  
10:04:07 19 enjoin its enforcement.

10:04:07 20 So in my limited time this morning, I want to  
10:04:09 21 explain first why S.B. 2420 burdens speech, why strict  
10:04:16 22 scrutiny is required, and why the statute can't survive  
10:04:19 23 any form of heightened scrutiny. First, I want to set the  
10:04:22 24 stage just by giving a brief background on the mobile app  
10:04:26 25 universe.

10:04:27 1 As documented in the declarations that we've  
10:04:29 2 submitted, the briefs supporting our motion, mobile apps  
10:04:33 3 and app stores provide access to a staggering array of  
10:04:36 4 speech on nearly every subject imaginable. They're robust  
10:04:41 5 media for political news, information, religious activity.  
10:04:45 6 They provide messaging, e-mail. They're a rich source of  
10:04:51 7 educational material and informational resources,  
10:04:52 8 including for public libraries. And they, of course, they  
10:04:55 9 give access to all manner of creative and artistic  
10:04:59 10 expression whether that's through books, essays, and other  
10:05:01 11 writings, podcasts, video, photography, music, games,  
10:05:06 12 movies and television shows.

10:05:07 13 And app developers aren't just big companies but  
10:05:11 14 include countless small businesses and individuals, as  
10:05:14 15 well. And the app stores, they choose what apps are going  
10:05:18 16 to be available on their services and make those apps  
10:05:22 17 available for people to access and use. So this is really  
10:05:27 18 the facilitation of speech and information on a grand  
10:05:30 19 scale.

10:05:31 20 Now, of course, we recognize that speech can be  
10:05:34 21 abused and that there are legitimate concerns about  
10:05:38 22 protecting minors who use app stores and making sure that  
10:05:41 23 they don't encounter inappropriate or harmful material and  
10:05:44 24 that's something that our members take very seriously.  
10:05:47 25 This is documented in the undisputed record, including the

10:05:50 1 declarations that we've submitted. So the leading app  
10:05:53 2 stores all vet the apps that are on their platform. They  
10:05:56 3 require age ratings for apps and app developers, provide  
10:06:00 4 detailed descriptions of what the apps are, their privacy  
10:06:04 5 policies, their security policies.

10:06:05 6 The app stores also have robust content  
10:06:08 7 moderation policies for, among other things, child  
10:06:11 8 endangerment and inappropriate content, including sexual  
10:06:15 9 content. And of course, the app stores also offer  
10:06:19 10 voluntary controls to parents that allow parents that wish  
10:06:23 11 to do so to monitor and control how their children are  
10:06:26 12 using the app stores, what apps they're downloading, et  
10:06:28 13 cetera.

10:06:28 14 So --

10:06:29 15 THE COURT: Let me ask, is it your understanding  
10:06:31 16 of the state's position that at least the partial  
10:06:35 17 justification of this law has not to do so much with the  
10:06:38 18 content of the apps but the so-called addictive nature of  
10:06:44 19 those apps themselves, in other words, the effect on the  
10:06:48 20 -- potential effects on mental health or well-being just  
10:06:53 21 by the use of the apps, in particular, social media apps  
10:06:57 22 and things like that? Is it your understanding that  
10:07:00 23 that's a part of the justification that the state's  
10:07:02 24 making?

10:07:02 25 MR. WILLEN: I believe -- and certainly if you

10:07:05 1 look at the record, legislative record, I believe that was  
10:07:07 2 a -- certainly a concern that was expressed by members of  
10:07:12 3 the legislature that supported the law. Now, of course,  
10:07:15 4 as we point out, that justification that the law is  
10:07:20 5 supported by the idea of protecting minors from content or  
10:07:24 6 services that are believed to be harmful or inappropriate  
10:07:27 7 to them is precisely why or one of the reasons why it's a  
10:07:31 8 content-based statute. Its justification is content-based  
10:07:35 9 and requires strict scrutiny.

10:07:39 10 It's also -- I would say that justification sort  
10:07:43 11 of highlights one of the really central kind of problems  
10:07:46 12 with this law which is the substantial overbreadth, a real  
10:07:51 13 mismatch between kind of what the state claims that it's  
10:07:55 14 doing or one of the things that the state claims justifies  
10:07:58 15 the law and the way that the law operates. Because even  
10:08:01 16 if that is the concern that motivated the law to be  
10:08:05 17 enacted, what it actually does by requiring age  
10:08:11 18 verification and parental control across the entirety of  
10:08:14 19 the app stores for every single app that's downloaded and  
10:08:17 20 for all content that's purchased within the apps is wildly  
10:08:21 21 overbroad, measured against the justification of there may  
10:08:26 22 be a small handful of apps or services that the state has  
10:08:31 23 concerns about whether from a -- from the standpoint of  
10:08:34 24 addictiveness or the standpoint of exposure to harmful or  
10:08:39 25 inappropriate content.

10:08:40 1 But just to make one more point, I don't think --  
10:08:46 2 and you could certainly ask the state this question --  
10:08:48 3 that there's a claim that the -- somehow the app stores  
10:08:52 4 themselves are addictive or that there's some problem with  
10:08:55 5 the interaction with minors and the app stores themselves.  
10:09:01 6 The concern is really, I think, about a certain narrow  
10:09:05 7 handful of apps that are available and the content at  
10:09:11 8 least seen by minors on those apps.

10:09:13 9 So let me just sort of go back to the things that  
10:09:23 10 the act actually does and explain some of our real  
10:09:28 11 problems from our First Amendment standpoint. So this act  
10:09:32 12 really has kind of three interlocking chokepoints or  
10:09:36 13 checkpoints on speech. The first is the age verification  
10:09:40 14 requirement. Now, we know from the Supreme Court's recent  
10:09:43 15 decision in the Free Speech Coalition case that age  
10:09:46 16 verification laws that gate access to speech and  
10:09:51 17 expression trigger First Amendment scrutiny. And here, in  
10:09:54 18 contrast to the narrow and targeted law there which used  
10:09:59 19 age verification really simply to wall off from minors a  
10:10:04 20 category of speech that they had no First Amendment right  
10:10:07 21 to access. That's pornographic speech or speech that's  
10:10:10 22 obscene to minors.

10:10:11 23 S.B. 2420 does something very different, right?  
10:10:15 24 It is using age verification to restrict access to speech  
10:10:18 25 and information that is fully constitutionally protected

10:10:22 1 for adults and minors and that makes it totally different  
10:10:25 2 from that law. It also makes it totally different from  
10:10:28 3 traditional age verification mandates of the sort that the  
10:10:31 4 state invokes that regulate access to contraband, things  
10:10:34 5 like guns, or tobacco, or alcohol.

10:10:38 6 So that means that the burdens on speech here are  
10:10:42 7 not indirect, not incidental but they're direct. So  
10:10:46 8 that's the first part. Then we have this parental  
10:10:49 9 verification and parental consent obligation, which,  
10:10:52 10 again, applies to every single app that's downloaded and  
10:10:56 11 then, every piece of content speech information that's  
10:10:59 12 purchased within any app.

10:11:02 13 So we know from the Supreme Court's decision in  
10:11:05 14 the Brown case that laws require parents to consent before  
10:11:11 15 their children can access speech, restrict speech and  
10:11:18 16 trigger First Amendment protection. And in fact, if you  
10:11:22 17 look at particularly footnote 2 of the Brown case, it  
10:11:26 18 really anticipated the very kind of law that Texas has now  
10:11:29 19 enacted. That is a law that, quote, prevents children  
10:11:31 20 from hearing or saying anything without their parent's  
10:11:34 21 prior consent, and the Supreme Court said that such laws  
10:11:37 22 -- and this is a quote from footnote 2 -- must be  
10:11:41 23 unconstitutional in the absence of any justification for  
10:11:43 24 such control that would satisfy strict scrutiny.

10:11:48 25 So in saying that, Brown really rejected the very

10:11:51 1 argument that Texas makes here that these kinds of laws  
10:11:53 2 simply empower parents or empower parental authority. In  
10:11:58 3 fact, what the court said is that these laws impose  
10:12:01 4 governmental authority subject only to a parental veto.  
10:12:05 5 So what we have here, I think, clearly is a burden and a  
10:12:09 6 direct regulation of speech, and then, that takes us to  
10:12:11 7 the question of what level of scrutiny applies.

10:12:14 8 We think there's at least three reasons that  
10:12:17 9 strict scrutiny is the right standard. The first I've  
10:12:20 10 sort of already alluded to and that's the Supreme Court  
10:12:22 11 decision in the Free Speech Coalition case. That case  
10:12:25 12 applied intermediate scrutiny to a law that, as I've  
10:12:29 13 mentioned, only required age verification for a category  
10:12:33 14 of speech that minors had no constitutional right to  
10:12:36 15 access. That was crucial to the court's decision. The  
10:12:40 16 court's decision was premised on essentially an analogy to  
10:12:44 17 traditional real-world age verification laws for  
10:12:47 18 pornography, for guns, for tobacco, but that analogy cuts  
10:12:53 19 exactly the opposite direction here.

10:12:54 20 We have no real-world analogy for a law that  
10:12:57 21 would require age verification basically for the  
10:13:00 22 equivalent of going into a library, or a bookstore, or a  
10:13:03 23 shopping mall where libraries, bookstores, record stores,  
10:13:07 24 video game shops, arcades are all present. So here,  
10:13:11 25 because we're dealing with the wide range of speech that

10:13:16 1 minors have every right to access, the rule of law for FSC  
10:13:23 2 commands, I think, strict scrutiny.

10:13:24 3 Now, secondly, as we've also talked about as your  
10:13:27 4 Honor mentioned, the state's own justification for the law  
10:13:31 5 protecting minors against harmful content found in a  
10:13:35 6 handful of apps or addictive material found in a handful  
10:13:39 7 of apps, that itself requires strict scrutiny. It's well  
10:13:43 8 settled that even if the law were somehow thought to be  
10:13:47 9 content neutral on its face, a content-based  
10:13:50 10 justification, a justification looks at the alleged effect  
10:13:53 11 of the speech that is encountered makes the law  
10:13:58 12 content-based and requires strict scrutiny.

10:13:59 13 And then, the third point is that this law has  
10:14:03 14 very clear content-based exceptions. So under S.B. 2420,  
10:14:09 15 and this is Section 121.022(h), there are clear exceptions  
10:14:16 16 for emergency services and for state-sanctioned test prep  
10:14:21 17 materials. And it's well settled from the AAPC vs. Barr  
10:14:27 18 case and others that these kinds of content-based  
10:14:29 19 exceptions can render a law subject to strict scrutiny and  
10:14:33 20 that's what we have here.

10:14:34 21 So under strict scrutiny, this law is plainly  
10:14:39 22 unconstitutional. The state really doesn't even make any  
10:14:42 23 effort to defend it. But even if you were to apply  
10:14:45 24 intermediate scrutiny, you'd get to the same result. So  
10:14:49 25 that standard has teeth. It's a real form of review that

10:14:53 1 the burden remains on the state to show that the law is,  
10:14:55 2 quote, narrowly tailored to serve a significant state  
10:14:58 3 interest. And here, we have a law that is at once wildly  
10:15:03 4 overbroad and entirely under-inclusive.

10:15:08 5 So overbreadth, we've already talked a little bit  
10:15:10 6 about, but there's really a complete mismatch in the  
10:15:13 7 statute between the stated goals and the means chosen. So  
10:15:19 8 concern about harmful content or harmful activity on a  
10:15:23 9 handful of apps cannot justify requiring across-the-board  
10:15:27 10 age verification and parental consent before any app is  
10:15:32 11 downloaded and before any content is purchased on those  
10:15:35 12 apps. So this is, you know, not an access control measure  
10:15:41 13 that has focused on some particular kind of material that  
10:15:46 14 the state is concerned about. This is a broad, broad sort  
10:15:51 15 of prophylactic measure that, as I said, regulates access  
10:15:56 16 to and limits the dissemination of speech across an entire  
10:16:02 17 universe, an entire ecosystem of speech.

10:16:06 18 THE COURT: What do you do with the state's  
10:16:08 19 argument that this is to be characterized as commercial  
10:16:14 20 speech?

10:16:15 21 MR. WILLEN: Well, I think there are -- so  
10:16:16 22 there's a couple of flavors, I guess, of that argument.  
10:16:20 23 So I would say, first of all, with respect to just the  
10:16:23 24 kind of commercial speech doctrines so, one, there's no  
10:16:31 25 idea that this law is not regulating simply the

10:16:37 1 advertisement of material. This law is operating to  
10:16:43 2 prohibit or to require parental consent for the free  
10:16:48 3 download of many, many, many apps. And even where  
10:16:52 4 material is purchased, I think it's very well settled that  
10:16:55 5 speech and speech regulation doesn't become commercial  
10:16:59 6 speech or commercial speech regulation merely because you  
10:17:02 7 have a sale of material, right?

10:17:04 8           And I think the Brown case pretty clearly stands  
10:17:07 9 for that proposition. Brown was a statute that involved  
10:17:11 10 the regulation of the sale or rental of certain kinds of  
10:17:15 11 video games and the Court didn't -- the Supreme Court  
10:17:17 12 didn't say, well, sale or rental that that means it's  
10:17:20 13 commercial. No, no, no. It said this is video games.  
10:17:22 14 Video games are protected speech and imposing parental  
10:17:28 15 consent, parental control requirements in that context  
10:17:32 16 triggers full strict scrutiny.

10:17:35 17           You could also look at cases like 303 Creative,  
10:17:39 18 many others that made clear that the fact that there's --  
10:17:43 19 that money is potentially changing hands in the exchange  
10:17:46 20 of speech and information isn't enough to make it speech  
10:17:50 21 regulate -- commercial speech regulation. The other sort  
10:17:54 22 of argument along these lines that the state makes is that  
10:17:56 23 this is somehow just sort of a contracting law. Just a  
10:17:59 24 law that regulates what sort of agreements minors can  
10:18:03 25 enter into. And I think there's a number of problems with

10:18:06 1 that argument.

10:18:08 2 I mean, first of all, the statute on its face  
10:18:12 3 requires all of the things that we've been talking about,  
10:18:15 4 age verification, parental tethering, parental consent.  
10:18:18 5 And it expressly makes a violation of the statute, a  
10:18:22 6 violation of the deceptive trade practices law. So if the  
10:18:26 7 state's position really is the only thing that this law  
10:18:29 8 does is that it prohibits app stores or app developers  
10:18:34 9 from affirmatively enforcing their contracts in some  
10:18:37 10 situations, I think they enacted a statute that creates a  
10:18:44 11 lot of uncertainty about that application and I think that  
10:18:46 12 would be a somewhat surprising way to read the law.

10:18:49 13 THE COURT: I think it's your 15-minute mark.

10:18:52 14 MR. WILLEN: Oh, great. Perfect. I will grab --

10:18:53 15 THE COURT: You can take a minute to wrap up.

10:18:56 16 MR. WILLEN: Okay. I just want to say very  
10:18:58 17 quickly, we didn't get to talk very much about the  
10:19:01 18 compelled speech components of the law, but that is a  
10:19:04 19 separate argument with respect to the age-rating  
10:19:06 20 provisions, which we think is controlled by the Fifth  
10:19:08 21 Circuit's decision in the Book People case. So unless the  
10:19:11 22 Court has further questions, I will turn it over to my  
10:19:13 23 co-counsel.

10:19:14 24 THE COURT: Thank you very much.

10:19:15 25 MR. WILLEN: Thank you very much, your Honor.

10:19:24 1 THE COURT: Mr. Sieff.

10:19:27 2 MR. SIEFF: Good morning, your Honor. Adam Sieff  
10:19:29 3 of Davis Wright Tremaine for the Student plaintiffs. Some  
10:19:33 4 of whom you could see are in the courtroom here today with  
10:19:35 5 us.

10:19:38 6 Texas says it wants to prevent kids from  
10:19:42 7 accessing objectionable material on the internet and so,  
10:19:45 8 it's presumptively banned them and restricted adults from  
10:19:50 9 downloading the New York Times, ESPN, the CNBC app, and  
10:19:55 10 every other possible kind of information that is  
10:19:58 11 disseminated through app stores' massive information  
10:20:01 12 libraries.

10:20:04 13 To access this now-restricted material, millions  
10:20:07 14 of Texans will be required to clear a series of  
10:20:11 15 state-imposed pre-conditions. Starts with age  
10:20:14 16 verification, but for minors like the Student plaintiffs,  
10:20:17 17 it also requires proof of parent identification and  
10:20:22 18 parental consent for each and every download they wish to  
10:20:25 19 make.

10:20:25 20 Whether or not a parent wants anything to do with  
10:20:28 21 those decisions or whether as in the case of Vanessa  
10:20:34 22 Fernandez, the mother of our Plaintiff M.F., they would  
10:20:37 23 rather provide blanket consent that the statute explicitly  
10:20:40 24 forbids. That pre-clearance and proxy censorship regime  
10:20:44 25 creates a system of prior restraint and one that the state

10:20:49 1 repeatedly and explicitly justifies on the basis of  
10:20:54 2 content. Strict scrutiny, therefore, applies several  
10:20:57 3 times over and the state does nothing, nothing to attempt  
10:21:02 4 to satisfy that most demanding constitutional standard, or  
10:21:06 5 even intermediate scrutiny which still requires the state  
10:21:10 6 to come forward with evidence that its enactment is  
10:21:14 7 narrowly tailored, restricts no more speech than  
10:21:17 8 necessary, and is constitutionally justified.

10:21:19 9           Because as the state acknowledges, the only  
10:21:23 10 possible constitutional applications of this regime are to  
10:21:28 11 those instances where it just happens through its dragnet  
10:21:31 12 to capture incidents of unprotected material. The law is  
10:21:37 13 categorically overbroad on its face and the Court should  
10:21:40 14 enjoin it so as to ensure that the students in this room  
10:21:44 15 and our clients will continue to be able to engage in  
10:21:48 16 political advocacy and organization, student journalism,  
10:21:52 17 and to create and enjoy expressive materials on the  
10:21:55 18 internet without government interference.

10:21:57 19           I'm happy to start anywhere, but I actually want  
10:22:00 20 to start with the question you asked Mr. Willen if it's  
10:22:04 21 all right with the Court.

10:22:05 22           THE COURT: Sure.

10:22:06 23           MR. SIEFF: You asked Mr. Willen whether he  
10:22:08 24 thought that the state's justification in part concern  
10:22:12 25 addiction. I actually don't think that's the state's

10:22:15 1 concern. The state's brief is quite explicit. The law  
10:22:19 2 was passed to restrict access to objectionable, unsuitable  
10:22:22 3 and what the state says might be potentially harmful  
10:22:25 4 material. Might. Material that parents might find  
10:22:28 5 harmful. That's a quite clearly content-based  
10:22:33 6 justification. That's not a justification that we've seen  
10:22:37 7 in some other cases where less than strict scrutiny is  
10:22:40 8 applied, where the state's putative concern is with  
10:22:45 9 content-neutral features or functions of an application.

10:22:48 10 Even assuming that's correct, that's not what the  
10:22:51 11 state has done here. It's told us what it's doing. It's  
10:22:54 12 trying to prevent access to material that it thinks is  
10:22:58 13 objectionable. Now, there's no category of objectionable  
10:23:04 14 speech which falls outside of the First Amendment's  
10:23:07 15 protection. The First Amendment provides minors with  
10:23:08 16 coequal First Amendment rights with the exception of  
10:23:09 17 speech which is variably obscene as to them. This is  
10:23:14 18 discussed in *Brown* and also in United States vs. Stevens  
10:23:17 19 case which reviews the categories of speech which fall  
10:23:20 20 outside the First Amendment's protection.

10:23:22 21 What the state cannot do is invent a new category  
10:23:26 22 of objectionable or unsuitable material and restrict it.  
10:23:30 23 It can restrict access to speech to a minor who don't have  
10:23:32 24 right to access, but that's not what the state has done  
10:23:34 25 here.

10:23:37 1 The second question you asked Mr. Willen that I'd  
10:23:39 2 like to address is you asked what to make of the state's  
10:23:42 3 commercial speech argument. I don't think that that's a  
10:23:47 4 very compelling argument at all, your Honor. The fact  
10:23:50 5 that these are commercial enterprises that provide access  
10:23:54 6 to my clients' speech or any information to my clients  
10:23:58 7 doesn't mean or dilute their right to access news,  
10:24:02 8 commentary, reporting stock quotes like Z.B., the  
10:24:07 9 plaintiff in this case, she's a student journalist and  
10:24:10 10 she's interested in the stock market. She uses the CNBC  
10:24:13 11 app. This case would require her -- would presumptively  
10:24:16 12 ban her from accessing that app unless she talked to her  
10:24:19 13 parent first.

10:24:20 14 That, in some way, invites the question about the  
10:24:24 15 equities in this case and I think that the Student  
10:24:26 16 plaintiffs are well positioned to provide some color why  
10:24:31 17 an injunction is not just merited because this law is  
10:24:34 18 clearly unconstitutional and, frankly, not even defended,  
10:24:37 19 but because an injunction in this case is necessary to  
10:24:39 20 avoid not just the censorship that this law would create  
10:24:42 21 but the invasion into families' rights to decide how to  
10:24:47 22 cultivate and educate their children and raise their  
10:24:50 23 children.

10:24:50 24 This is important because the state ironically  
10:24:53 25 says that's part of what it was trying to do here is

10:24:56 1 empower parents. But as Justice Scalia talked about in  
10:25:00 2 the Brown case, you don't empower parents by making  
10:25:04 3 choices for them -- by the state making choices for them  
10:25:07 4 as the default. You empower parents by letting them make  
10:25:11 5 decisions about how to raise children on their own.

10:25:13 6 So, for instance, in this case, we have a  
10:25:15 7 declaration from Vanessa Fernandez, who's the mother of  
10:25:19 8 M.F., one of the plaintiffs in our case, who says that she  
10:25:22 9 has deliberately made choices about the types of material  
10:25:25 10 she will allow her son to access in order to cultivate  
10:25:29 11 independence and teach him to make and face the  
10:25:32 12 consequences for his own decisions.

10:25:34 13 Those are choices that the state might disagree  
10:25:37 14 with. They're choices that you and I might disagree with.  
10:25:40 15 But neither Texas nor California nor anyone else is  
10:25:44 16 allowed to superimpose its values and decisions on how a  
10:25:47 17 parent decides to raise and cultivate values in their  
10:25:52 18 family. That's just inconsistent with our constitutional  
10:25:55 19 tradition.

10:25:55 20 THE COURT: Don't parents already sort of have a  
10:25:58 21 significant level of control here because they have the  
10:26:01 22 ability to make the contract that ultimate -- that  
10:26:08 23 initially gives their children access to the phone, right?  
10:26:10 24 I mean, do children have a -- because they can't contract  
10:26:13 25 with a phone company, don't parents -- aren't they

10:26:18 1 necessarily involved at that point and don't they have  
10:26:21 2 some control at that point over what their children are  
10:26:26 3 doing? A parent who feels strongly enough can simply say  
10:26:30 4 unless you follow my rules, I'm not going to get you a  
10:26:34 5 phone contract.

10:26:36 6 MR. SIEFF: I think that's exactly right and  
10:26:38 7 that's a less restrictive alternative to what the state  
10:26:40 8 has enacted here. The parent could also take the phone  
10:26:41 9 away at bedtime. The parent could also choose to use any  
10:26:45 10 of the voluntary filters and content access tools that  
10:26:48 11 exist. We've described them in our briefing, declarations  
10:26:51 12 we've submitted -- I believe that the industry plaintiffs  
10:26:52 13 have, as well -- that exist at both the app store level  
10:26:55 14 and at the app developer level. Those are the types of  
10:26:58 15 less restrictive alternatives under either strict or  
10:27:01 16 intermediate scrutiny. And to be clear, we think that  
10:27:03 17 strict scrutiny applies here. But those are the types of  
10:27:05 18 alternatives that courts, including the Supreme Court,  
10:27:08 19 have consistently recognized as being the appropriate  
10:27:11 20 means of empowering parents. Not passing laws like this  
10:27:15 21 which cast a dragnet over all speech, impose burdens on  
10:27:19 22 adults, by the way, as well as minors and tell parents, in  
10:27:23 23 Justice Scalia's words, what they ought to want as opposed  
10:27:27 24 to letting them make decisions for themselves.

10:27:29 25 To build on what Mr. Willen was saying earlier, I

10:27:34 1 think one aspect of this law that is quite troubling is  
10:27:41 2 the way in which it previously restrains speech before it  
10:27:45 3 could be disseminated. When the state imposes  
10:27:50 4 preconditions, state-imposed preconditions to access  
10:27:53 5 speech, those barriers are prior restraints when there's  
10:27:57 6 no opportunity to adjudicate whether the speech that's  
10:28:01 7 being restricted is permissible or not.

10:28:06 8 That type of prior restraint is compounded, but  
10:28:08 9 what you have here is a obligation on app stores and  
10:28:11 10 developers essentially to act as the government's proxy  
10:28:18 11 censures. They are forced to risk civil liability or  
10:28:21 12 else, do the state's bidding and restrict access on its  
10:28:25 13 behalf based on the concern that if they don't, if they  
10:28:29 14 don't successfully preclude access to all the content that  
10:28:33 15 it's going to require that the state says is  
10:28:35 16 objectionable, they could face liability.

10:28:36 17 This is something that the Supreme Court  
10:28:41 18 addressed in Interstate Circuit case which involved movie  
10:28:44 19 theaters, or like the law here, movie theaters or film  
10:28:48 20 exhibitors required to enforce content ratings or else,  
10:28:54 21 face liability for enabling minors to access the material,  
10:28:58 22 to view the material. This law does the same thing.  
10:29:01 23 There's a content-rating requirement Mr. Willen talked  
10:29:03 24 about. And then, these intermediaries are required to  
10:29:09 25 restrict access to content on the basis of those ratings.

10:29:15 1 Put these two things together, preconditions,  
10:29:18 2 this system of intermediary liability and what you end up  
10:29:21 3 with is a system of prior restraint. So for that reason,  
10:29:24 4 too, not just the overt content-based justification, which  
10:29:27 5 I think is alone enough to apply strict scrutiny, and not  
10:29:30 6 just as Mr. Willen mentioned, the facial content-based  
10:29:33 7 distinctions that the app makes in terms of its coverage,  
10:29:36 8 but because it poses a prior restraint, that is a  
10:29:39 9 significant burden on speech. And I think it's important  
10:29:42 10 for the Court to consider analyzing this law as a prior  
10:29:44 11 restraint to apply strict scrutiny for that reason, too.

10:29:47 12 THE COURT: You've got five minutes.

10:29:51 13 MR. SIEFF: Maybe just a few comments on the  
10:29:53 14 application of strict or intermediate scrutiny here are  
10:29:57 15 warranted. I actually have a blank page in my outline  
10:30:00 16 because there's no evidence from the state for me to even  
10:30:02 17 address. But we put evidence in the record on this point.  
10:30:04 18 It's un rebutted that when a state says it's trying to --  
10:30:10 19 let's say the state's interest here were, in fact, to  
10:30:12 20 protect children from harmful content online. When the  
10:30:17 21 state tries to do that, it has to come forward with  
10:30:19 22 evidence that shows that its solution is causally linked  
10:30:24 23 to preventing or addressing that problem. There's no  
10:30:28 24 evidence to that effect.

10:30:30 25 But the evidence the Court does have before it,

10:30:32 1 evidence from social psychologists and experts in other  
10:30:37 2 cases that we were able to put into the record here that  
10:30:40 3 I'd note for the record were before the Court in other  
10:30:42 4 cases show that these types of laws do not, in fact,  
10:30:46 5 address a real problem. The unmitigated access to the New  
10:30:50 6 York Times is not a cause for any type of legitimate  
10:30:55 7 government interest that could motivate restricting that  
10:30:58 8 speech.

10:30:58 9           Similarly, we've put in evidence as I mentioned  
10:31:02 10 before of narrow alternatives, ways in which the state  
10:31:05 11 could have not just enforced or educated parents -- excuse  
10:31:09 12 me, educated parents or encouraged parents to use these  
10:31:12 13 voluntary tools, but could enforce existing criminal  
10:31:16 14 statutes, for example; could enforce the law that was  
10:31:19 15 upheld in the Free Speech Coalition case to prevent access  
10:31:23 16 to this material.

10:31:24 17           And so, when the Court's doing its facial  
10:31:27 18 analysis here and it's applying strict scrutiny across the  
10:31:29 19 board, the Court should consider that the relevant  
10:31:34 20 applications at stake are those to which this act creates  
10:31:38 21 novel regulatory authority. So the first step in the  
10:31:41 22 facial analysis we know from cases like City of Los  
10:31:44 23 Angeles vs. Patel are to back out those applications which  
10:31:47 24 the state already has power to do that aren't challenged  
10:31:51 25 here and to look only at the novel applications of the

10:31:55 1 statute.

10:31:56 2           And so, even more clearly than when you focus on  
10:31:59 3 that universe of applications, I can't even imagine, it's  
10:32:06 4 an infinitesimal number of applications which are not  
10:32:09 5 already prohibited by existing law that this law reaches  
10:32:11 6 that would still be constitutional. The virtually all  
10:32:16 7 applications of this statute as this court recognized are  
10:32:20 8 -- in the H.B. 18 cases, prior CCIA and Students Engaged  
10:32:26 9 In Advancing Texas cases, virtually all of the  
10:32:29 10 applications are protected speech because the state can't  
10:32:32 11 constitutionally justify, it doesn't try to  
10:32:35 12 constitutionally justify any of those. The law under the  
10:32:38 13 terms of the overbreadth standard, under the two-step  
10:32:41 14 analysis of Moody that we addressed in our briefing is  
10:32:43 15 overbroad on its face. The Court should enter the  
10:32:47 16 injunction. And we've discussed why equity and the public  
10:32:49 17 interest support that injunction in this case.

10:32:51 18           I'll reserve the balance of my time for rebuttal  
10:32:54 19 at this point.

10:32:54 20           THE COURT: Thank you.

10:32:55 21           MR. SIEFF: Thank you, your Honor.

10:32:56 22           THE COURT: Mr. Berg.

10:33:09 23           MR. BERG: Thank you, your Honor.

10:33:17 24           S.B. 2420 helps prevent minors from accessing  
10:33:20 25 addictive and harmful content without parental consent

10:33:22 1 much like we require age verification to purchase tobacco  
10:33:26 2 or visit pornographic websites. The act deals with  
10:33:30 3 contracts, not content. Specifically deals with the  
10:33:32 4 contracts between minors and app stores.

10:33:34 5 THE COURT: But you've just -- I mean, you just  
10:33:36 6 said -- the first part of that sentence was you said that  
10:33:39 7 it's about harmful content and then you -- I mean, let me  
10:33:44 8 just cut to the chase here. To the extent that there is  
10:33:51 9 content that there's speech that is outside of the First  
10:33:56 10 Amendment protection, can you address that last point that  
10:33:59 11 counsel made about existing statutes already prohibit or  
10:34:08 12 restrict material that is obscene, that is of that  
10:34:13 13 characterization.

10:34:14 14 What is the -- can you characterize the material  
10:34:17 15 that the state is talking about that's not captured by  
10:34:20 16 existing statutes that you think is of concern and that  
10:34:26 17 you're characterizing as harmful or dangerous to minors?

10:34:29 18 MR. BERG: Sure, your Honor. So I think  
10:34:33 19 primarily -- and this is where the parties agree, parents  
10:34:37 20 are the ultimate arbitrators and are ultimately  
10:34:39 21 responsible for their children and should be. The parties  
10:34:42 22 agree with that. We just took a different road to get  
10:34:44 23 there. As far as what's new, it's sort of a weird  
10:34:52 24 situation if we take the plaintiffs' word about what  
10:34:54 25 they're doing to provide support for parents, it's a very

10:34:58 1 limited bill, a very minimal burden, and if they're not  
10:35:05 2 providing those options to parents, then it's a very  
10:35:07 3 necessary bill that's not covered.

10:35:10 4           You got into a little bit with opposing counsel  
10:35:15 5 on whether this was a narrowly targeted bill. They said  
10:35:24 6 that H.B. 1181, that Free Speech Coalition bill --  
10:35:28 7 pornography bill was narrowly targeted, which I appreciate  
10:35:31 8 because no plaintiff said that at any point in that  
10:35:33 9 litigation. Every plaintiff said that it was a massive  
10:35:37 10 burden on First Amendment rights of adults. The Supreme  
10:35:41 11 Court ultimately upheld that through intermediate  
10:35:45 12 scrutiny.

10:35:46 13           I think ideally, as Solicitor General Sauer  
10:35:52 14 talked about in the tariff argument recently, the best  
10:35:56 15 application of this bill was if it doesn't get much use.  
10:35:58 16 And plaintiffs doing what they're doing, providing support  
10:36:03 17 to parents and parents are getting the support they need  
10:36:05 18 and protecting their children from harm, the harm has been  
10:36:10 19 well documented now from the widespread adaptation of the  
10:36:15 20 smartphone, approximately 2007 to now. The mental health  
10:36:24 21 outcomes clearly have deteriorated for children across the  
10:36:30 22 country not just in Texas.

10:36:33 23           I would cite a few statistics. Between 2005 and  
10:36:40 24 2017, major depressive episodes among 12-to-17-year-old  
10:36:44 25 girls increased 52 percent. Hospital admissions for

10:36:47 1 self-harm tripled among 10-to-14-year-old girls, and among  
10:36:51 2 the same group, suicide doubled. And things haven't  
10:36:55 3 gotten better since 2017. According to the 2023 Youth  
10:37:00 4 Risk Behavior Survey, 39.7 percent of high school students  
10:37:04 5 experienced persistent feelings of sadness and  
10:37:06 6 hopelessness, 28.5 percent experience poor mental health.  
10:37:10 7 20.4 percent experience -- or seriously considered  
10:37:14 8 attempting suicide. And most shockingly, 9.5 percent had  
10:37:19 9 attempted suicide which is hard to believe. You'd almost  
10:37:24 10 have to throw out the whole study. It just seems such a  
10:37:28 11 shocking number.

10:37:29 12 THE COURT: Let me ask you this. Which of the  
10:37:30 13 apps that are targeted by this legislation are causally  
10:37:34 14 related to any of those outcomes?

10:37:36 15 MR. BERG: Sure. And the answer is many. There  
10:37:42 16 is literature on social media websites such as TikTok that  
10:37:50 17 algorithmically spiral users into self-harm content.  
10:37:54 18 There's numerous instances of sexual exploitation or  
10:37:59 19 grooming on child-safe platforms. Mobile gaming have  
10:38:05 20 adopted the same scientific techniques used by casinos to  
10:38:12 21 make children addicted to their smartphone and keep using  
10:38:15 22 the app.

10:38:18 23 Texas definitely supports the parents in their  
10:38:23 24 attempt to parent their children and they need it because  
10:38:26 25 parents seem to be losing this battle. And I'm not saying

10:38:32 1 Texas is perfect and Texas has all the answers, but this  
10:38:34 2 is not a problem that only Texas has noticed. Twelve to  
10:38:38 3 15 states are working on some form of this bill or passed  
10:38:43 4 this bill as varied as Texas. And California recently  
10:38:48 5 passed a not too dissimilar version of this bill. So I  
10:38:54 6 think red or blue, everyone can see that the outcomes for  
10:38:57 7 children are not great. We're trying to find an answer to  
10:39:01 8 that.

10:39:01 9 THE COURT: Sure. And I appreciate that. I  
10:39:03 10 think that's a legitimate point. It's just the question  
10:39:05 11 is whether or not this legislation has anything to do with  
10:39:08 12 that. Tell me what's in the record with regard to the  
10:39:13 13 evidence that the apps that are covered by this are to  
10:39:21 14 blame for the bills that you've just identified. What's  
10:39:24 15 in the record? Not just...

10:39:28 16 MR. BERG: Yes. Of course. And the amici flush  
10:39:32 17 this out. The bipartisan technology scholars brief was  
10:39:41 18 helpful on this as well as the amicus from the National  
10:39:50 19 Center On Sexual Exploitation and Digital Childhood  
10:39:53 20 Institute. But there's been a lot of studies. Jonathan  
10:40:00 21 Haidt in popular culture has talked about this issue.

10:40:11 22 But I think largely, researchers have connected  
10:40:17 23 these outcomes with the increasing usage of mobile phones.  
10:40:24 24 The children and teens spend on average of  
10:40:27 25 seven-and-a-half hours per day on screens. While on the

10:40:31 1 phone, teenagers spend 90 percent of the time on apps.

10:40:35 2 And the average teen receives approximately 240 app

10:40:40 3 notifications each day.

10:40:44 4 THE COURT: But there's a difference between

10:40:45 5 somebody spending six hours on their phone on TikTok and

10:40:50 6 somebody spending six hours on their phone researching for

10:40:56 7 a paper that they're writing in their history class,

10:41:00 8 right? Those are two different things. Was there an

10:41:03 9 intent by the state to say, okay, let's identify the apps

10:41:07 10 that actually present the kind of harms that we're trying

10:41:11 11 to get at?

10:41:12 12 In other words, if they used algorithms that are

10:41:16 13 predatory or abusive, if they use any of the -- if they

10:41:21 14 have any of the content that's obscene or otherwise that

10:41:24 15 frankly is covered already by other statutes, was there

10:41:28 16 any intent by the state to identify the characteristics of

10:41:34 17 the apps that are of concern to the state versus news apps

10:41:38 18 and stock apps and, you know, ancestry.com, whatever apps

10:41:45 19 that have -- to my mind present none of the dangers that

10:41:49 20 you're talking about.

10:41:51 21 MR. BERG: Excellent questions. Representative

10:41:58 22 Fairly who laid out the bill in the House and then in the

10:42:05 23 Senate, even though she's a rep, talked about why that

10:42:08 24 choice was and it seems that that choice was primarily for

10:42:13 25 legal reasons. Once you specifically target certain

10:42:17 1 content, you have a content-based restriction, you're in  
10:42:20 2 strict scrutiny land and you're already in trouble.

10:42:24 3 So according to Representative Fairly, the  
10:42:28 4 conscious decision was to make it not a content-based  
10:42:32 5 restriction and instead to bolster the parents instead of  
10:42:36 6 targeting specific types of apps that would push you into  
10:42:44 7 strict scrutiny land.

10:42:44 8 THE COURT: But the problem you have there is  
10:42:46 9 that the statute does exempt certain kinds of apps. Apps  
10:42:50 10 that have to do with application for testing for college,  
10:42:58 11 government apps, apps for emergency service. I mean, once  
10:43:03 12 you do that, aren't you then in, as you call it, strict  
10:43:06 13 scrutiny land, right? The statute actually does give  
10:43:11 14 content-related exceptions.

10:43:14 15 MR. BERG: So when I read the bill, one of the  
10:43:19 16 first things I thought to look out was what's up with  
10:43:23 17 this, especially the emergency services seem like maybe  
10:43:28 18 you could call them not content-based. The test prep one  
10:43:33 19 stuck out to me. Those were all added as amendments.  
10:43:41 20 Worst-case scenario, the statute has one of the stronger  
10:43:45 21 severability sections you'll see if those need to be cut  
10:43:49 22 to say that this is a clean, not content-based, purely  
10:43:55 23 conduct-based law, then I would ask you to sever without  
10:44:02 24 finding the whole statute --

10:44:02 25 THE COURT: But then, I would be doing something

10:44:03 1 that the legislature didn't do. The legislature passed a  
10:44:06 2 content-based law. And so, what you're asking me to do is  
10:44:09 3 save that by doing something that the legislature  
10:44:12 4 explicitly didn't do and refused to do.

10:44:17 5 MR. BERG: I would say that the -- while the  
10:44:22 6 legislature certainly voted for the whole bill, part of  
10:44:26 7 that was the severability section which is extremely  
10:44:31 8 strong, which it says if any application of any provision  
10:44:37 9 of this app to any person, group of person, or  
10:44:40 10 circumstances as found by a court to be invalid for any  
10:44:43 11 reason, the remaining application of that provision to all  
10:44:46 12 other persons and circumstances shall be severed and may  
10:44:49 13 not be affected.

10:44:50 14 So I mean, that's pretty strong language just the  
10:44:54 15 legislature who also voted that language saying if there's  
10:44:57 16 an issue, if this is going to fail legal challenge, cut  
10:45:03 17 it.

10:45:03 18 THE COURT: Okay.

10:45:16 19 MR. BERG: The Federal Trade Commission's 2014  
10:45:20 20 consent decree on unlawful in-app purchases made by minors  
10:45:25 21 imposed a binding federal obligation on Apple and Google  
10:45:29 22 to provide effective notice and obtain verifiable parental  
10:45:33 23 consent before billing children for digital goods. This  
10:45:36 24 was issued after the FTC found that these platforms had  
10:45:40 25 systematically charged minors without parental knowledge

10:45:43 1 or authorization.

10:45:45 2 Age verification is already built into the  
10:45:50 3 structure, the burden on the plaintiffs to be very light.  
10:45:55 4 In fact, Apple already has available for download the  
10:45:59 5 declared app -- declared age range API, which appears to  
10:46:04 6 put their app store in compliance with S.B. 2420. And  
10:46:09 7 Google has announced that their new Play API will be live  
10:46:14 8 for users in Texas on January 1, which would also put  
10:46:19 9 Google Play Store in compliance with the law. So I think  
10:46:24 10 that also goes to the burden in any scrutiny analysis.

10:46:33 11 We talked a little bit about Brown. The SEAT  
10:46:41 12 plaintiffs rely on it a lot. Brown, it's a yellow-flag  
10:46:58 13 case, it was mentioned this summer in Free Speech  
10:47:02 14 Coalition three times. The strict scrutiny analysis in  
10:47:06 15 Brown was mentioned before, the Supreme Court decided to  
10:47:10 16 go to intermediate scrutiny. Also, I would point to  
10:47:31 17 Erznoznik vs. City of Jacksonville. That's 422 U.S. at  
10:47:36 18 212. It is well settled that a state or municipality can  
10:47:41 19 adopt more stringent controls on communicative materials  
10:47:45 20 available to youths than on those available to adults. As  
10:47:50 21 we briefly talked about the Brown dealt with violent video  
10:47:56 22 games which was a content-based restriction the Court  
10:48:01 23 found.

10:48:02 24 Here, certainly the goal as the bill was laid out  
10:48:07 25 and as it went through the legislature was that it would

10:48:09 1 be a -- not a content-based restriction and we were  
10:48:16 2 talking the severability part. I'd like to talk a little  
10:48:20 3 bit about scrutiny. If the content-neutral part can be  
10:48:28 4 established, that would put us in intermediate scrutiny.  
10:48:35 5 As we talk about, Free Speech Coalition provided for  
10:48:38 6 intermediate scrutiny.

10:48:40 7 Also of note recently, the CCIA plaintiffs in a  
10:48:45 8 suit in Florida versus the Attorney General Uthmeier, the  
10:48:50 9 Eleventh Circuit put aside a stay of preliminary  
10:48:53 10 injunction for Florida's H.B. 3 which required social  
10:48:57 11 media platforms' addictive features to prohibit accounts  
10:49:00 12 for those under 14 and require parental consent for those  
10:49:03 13 ages 14 or 15 and allow parents to request a platform  
10:49:09 14 delete a minor's account and all information and that the  
10:49:11 15 platforms must comply.

10:49:14 16 THE COURT: But see what they did there? They  
10:49:16 17 identified that characteristic about those apps, right?

10:49:21 18 MR. BERG: Uh-huh. Yeah. We've talked about  
10:49:25 19 this, but yeah, you sort of -- you can -- and this was  
10:49:31 20 certainly not a legal choice. It was a choice by the  
10:49:33 21 legislature not to -- to try to avoid strict scrutiny  
10:49:37 22 land. A lot of -- the one amendment that was rejected in  
10:49:43 23 the House, the male representative who was putting that  
10:49:48 24 forward was very pushing for -- pushing for it and  
10:49:51 25 Representative Fairly said we can't do that. That will

10:49:54 1 get us in trouble with the First Amendment. It was very  
10:49:56 2 clear that the legislature was trying to protect the bill  
10:50:01 3 from being struck down.

10:50:07 4 I'd like to talk about the equities which my  
10:50:14 5 friend on the other side talked about a bit. We already  
10:50:25 6 talked a little bit about irreparable harm. The  
10:50:30 7 plaintiffs, at least the CCIA plaintiffs have basically  
10:50:32 8 complied with the law already. The SEAT plaintiffs have  
10:50:39 9 slightly different concerns. But as the balance of  
10:50:42 10 equities, public interest and use safety, and protection  
10:50:46 11 of youths in their contracting is strong. That advances  
10:50:51 12 that interest. Those interests about making the state a  
10:50:55 13 content regulator subject to the caveats we already talked  
10:50:59 14 about. This bill was passed with broad support in both  
10:51:03 15 houses of the legislature. All but one senator voted for  
10:51:07 16 the act and it was 120 versus nine in the House. People's  
10:51:12 17 elected representatives think that S.B. 2420 is a good  
10:51:16 18 idea for obvious reasons. The proliferation of  
10:51:18 19 smartphones and apps have objectively reduced the mental  
10:51:22 20 well-being of our children.

10:51:23 21 TPPF, Texas Public Policy Foundation, conducted a  
10:51:27 22 poll of Texas parents and 80 percent were in support of  
10:51:31 23 the bill. I'd site to Sable Communications California,  
10:51:38 24 Inc. versus the FCC, the Supreme Court has recognized that  
10:51:39 25 there's a compelling interest in protecting the physical

10:51:42 1 and psychological well-being of minors. Obviously was  
10:51:47 2 reenforced this summer, Free Speech Coalition we talked  
10:51:50 3 about a little bit. There, the Court emphasized with the  
10:51:52 4 rise of the smartphone and instant streaming, many  
10:51:55 5 adolescents can now access vast libraries of video content  
10:51:59 6 both benign and obscene at almost any time and place with  
10:52:03 7 an ease that would have been unimaginable at the time of  
10:52:07 8 Reno and Ashcroft II. We've talked about the Eleventh  
10:52:11 9 Circuit recently adopting intermediate scrutiny.

10:52:14 10 Also, public interest applies to third parties,  
10:52:18 11 particularly children who will benefit from seeing S.B.  
10:52:25 12 2420 going into effect and the better mental health  
10:52:27 13 outcomes that hopefully will occur. I'm not a prophet,  
10:52:34 14 but that's certainly the intent and I think --

10:52:36 15 THE COURT: Well but --

10:52:38 16 MR. BERG: -- as to the applied challenge.

10:52:39 17 THE COURT: Let's play that out. If that  
10:52:41 18 happened, it would be because the parents declined to give  
10:52:46 19 consent and so restricted their child's access to phone  
10:52:53 20 content, right?

10:52:53 21 MR. BERG: Yes.

10:52:54 22 THE COURT: Which the parent can do now.

10:52:56 23 MR. BERG: Yes.

10:52:56 24 THE COURT: Because the parent pays the bills and  
10:52:59 25 gives them the phone.

10:53:00 1 MR. BERG: Correct.

10:53:01 2 THE COURT: And can make the rules.

10:53:03 3 MR. BERG: Yes. And ideally, if that system was  
10:53:09 4 working, the numbers wouldn't be what we're seeing.

10:53:12 5 THE COURT: But that's the parent's prerogative.  
10:53:13 6 You say it's about the parents but the parents are letting  
10:53:16 7 that happen. So why don't you let the parents exercise  
10:53:18 8 the power they already have or not. This is -- to their  
10:53:21 9 point, this is the state doing it. This isn't the parent.  
10:53:23 10 This is the state doing it under the guise of giving  
10:53:28 11 parental control when parents already have the control.  
10:53:30 12 This is the state doing it.

10:53:33 13 MR. BERG: Well, ultimately is the parents doing  
10:53:35 14 it. The parents can say any app you want or you don't  
10:53:39 15 want. The state has no input on whether a parent approves  
10:53:42 16 that or not. I think one of the issues is the  
10:53:47 17 nonstandardization of protections across the various apps.  
10:53:52 18 So some apps, they'll have a rating and that will be what  
10:53:56 19 it is. But other ones, there is -- there's a -- I was made  
10:54:02 20 aware of a -- it was represented as a bible app but there  
10:54:08 21 turned out to be pornography in it, which, I mean, can  
10:54:14 22 happen, I suppose.

10:54:14 23 But I mean, the protections vary, the ratings  
10:54:17 24 vary. Right now, it's very difficult for a parent to look  
10:54:20 25 at something -- okay, like New York Times, okay, New York

10:54:24 1 Times, probably fine. But what about some newer brand  
10:54:29 2 that the parents don't really know what it is. The kids  
10:54:34 3 say, oh, this is great. The more information that can be  
10:54:39 4 provided to parents, the more uniformity of experience of  
10:54:45 5 parents know that when I look at an app, it means this,  
10:54:48 6 this and this, I think, supports parents making the  
10:54:51 7 decision and whatever the student and parents ultimately  
10:54:55 8 make, the state of Texas certainly supports that.

10:54:57 9 THE COURT: Mr. Berg, just before I forget,  
10:55:01 10 what's the state's position with regard to standing for  
10:55:04 11 all of these plaintiffs? Are you contesting standing on  
10:55:08 12 any individual plaintiff or collective of plaintiffs?

10:55:13 13 MR. BERG: Well, we filed an answer instead of an  
10:55:17 14 MCD. The CCIA standing seemed a little bit better than  
10:55:24 15 the SEAT plaintiff standing. Certainly in discovery  
10:55:28 16 getting into it's hard when personal information is  
10:55:33 17 redacted. Respect privacy and obviously, a bill of  
10:55:41 18 protecting children. We support protecting children as  
10:55:44 19 best we can. So I'd say the SEAT standing is a little  
10:55:50 20 less certain to us than the CCIA. We've litigated very  
10:55:55 21 similar issues with CCIA, NetChoice and...

10:56:02 22 THE COURT: Okay. Thank you.

10:56:05 23 MR. BERG: I'd like to talk -- what's my time,  
10:56:08 24 your Honor?

10:56:08 25 THE COURT: You have seven minutes.

10:56:11 1 MR. BERG: Okay. I'd like to touch on prior  
10:56:14 2 restraints. This is not a prior restraint. A prior  
10:56:18 3 restraint is type of censorship where the speech or  
10:56:22 4 expression is stopped before it occurs. New York Times,  
10:56:28 5 the U.S. or the government said you can't publish these  
10:56:34 6 leaked government documents.

10:56:36 7 This is certainly distinguishable from a case  
10:56:38 8 like Bantam Books vs. Sullivan, which is perhaps the  
10:56:41 9 seminal prior restraint case where it says you can't sell  
10:56:45 10 any of this to the general public. S.B. 2420 does not  
10:56:50 11 prevent any sales. No app is banned from purchase.  
10:56:56 12 Parents, of course, can monitor and limit the minor's app  
10:57:02 13 usage. This is with their parental authority.

10:57:10 14 And courts have long recognized the parents'  
10:57:13 15 fundamental right to direct the upbringing of their  
10:57:17 16 children. Wisconsin vs. Yoder, which came up again in  
10:57:21 17 Mahmoud this summer, still good law. And the Supreme  
10:57:28 18 Court in Ginsburg and Free Speech Coalition has upheld  
10:57:31 19 regulations that restrict speech as to minors but not to  
10:57:33 20 adults. So just because minors are treated differently  
10:57:41 21 under a statute doesn't mean that they're necessarily  
10:57:44 22 having their First Amendment rights restrained.

10:57:47 23 THE COURT: I think something that hadn't gotten  
10:57:49 24 a lot of attention is the fact that adults' rights are  
10:57:52 25 affected, as well, right? I mean, I can't go look at the

10:57:56 1 New York Times without providing them some personal  
10:57:59 2 information about me or, you know, pick another app,  
10:58:03 3 right?

10:58:06 4 MR. BERG: So how the app goes and I guess this  
10:58:11 5 is just a brief aside which also goes to the burden, this  
10:58:14 6 would only -- under the statute, this only applies to new  
10:58:18 7 users who don't currently have an app account. So very  
10:58:21 8 small segment of the population, assuming all these fine  
10:58:28 9 youngsters behind me have smartphones and their New York  
10:58:31 10 Times app, they are not affected by S.B. 2420 at all.

10:58:34 11 So when a person does sign up for an app store,  
10:58:42 12 they provide identification to the app and from that point  
10:58:47 13 on, the app knows how old they are. So that's actually  
10:58:50 14 how this works is part of the problem is that the app  
10:58:56 15 stores have the information about how old the people are,  
10:58:59 16 which doesn't really matter if you're 35 or 50, but if  
10:59:04 17 you're 14 might matter and the problem is that that  
10:59:08 18 information isn't getting to the apps. There's no  
10:59:11 19 obligation to provide that to the apps. So even app  
10:59:17 20 developers that are trying to do their level best, they  
10:59:19 21 might inadvertently give content to a 14-year-old that's  
10:59:26 22 inappropriate for them that might be appropriate for a  
10:59:27 23 35-year-old or an 18-year-old. So that is actually part  
10:59:31 24 of the issue. And yes, you do give that data and the app  
10:59:36 25 store has that.

10:59:40 1           Yeah, this -- it's a very interesting case.  
10:59:47 2 Somewhat complicated. We think it's better as an applied  
10:59:51 3 challenge than as a facial challenge. Obviously, Moody  
10:59:56 4 vs. NetChoice is the current controlling test for facial  
10:59:59 5 challenges where you have to compare the constitutional  
11:00:02 6 application with the nonconstitutional applications.  
11:00:07 7 Plaintiffs haven't carried their burden to prove that they  
11:00:10 8 succeed under Moody.

11:00:14 9           Kids 12 and under are already basically protected  
11:00:18 10 in the same manner by COPPA, the federal statute,  
11:00:20 11 Children's Online Privacy Protection Act. So certainly  
11:00:24 12 kids 12 and under who have smartphones that are connected  
11:00:29 13 to an app would be under ours, our side of the balance,  
11:00:33 14 and we don't think that the plaintiffs have shown that the  
11:00:37 15 majority of the cases are unconstitutional as applied.

11:00:42 16           And unless the Court has any other questions, I  
11:00:46 17 yield the rest of my time. Thank you.

11:00:47 18           THE COURT: Thank you, Mr. Berg.

11:00:49 19           Brief rebuttal.

11:00:51 20           MR. WILLEN: Thank you, your Honor. I'll try to  
11:00:53 21 keep this brief. I appreciate your time this morning.

11:00:55 22           I thought it was very telling that the -- and the  
11:00:57 23 Court picked up on this that the first words out of my  
11:00:59 24 friend's mouth were that the statute protects children or  
11:01:02 25 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 1 the thing that you're doing in First Amendment analysis is  
11:02:37 2 trying to make sure that when legislatures enact laws that  
11:02:41 3 touch on speech, they do so in a careful and targeted and  
11:02:45 4 tailored way, and I think the argument that we heard this  
11:02:49 5 morning basically concedes that the statute does the exact  
11:02:52 6 opposite of that.

11:02:53 7           And I'll just point out very quickly since the  
11:02:57 8 Eleventh Circuit decision was referenced, you know, we  
11:03:00 9 have quibbled with that decision, but I think if you look  
11:03:04 10 at that statute and that ruling, the whole justification  
11:03:09 11 for it is that the legislature there did make an effort to  
11:03:12 12 try to tailor what it was doing based on the problems that  
11:03:16 13 it was trying to solve. So whether it did that in a way  
11:03:19 14 that was constitutional is for that case to decide, but I  
11:03:23 15 think the differences between that statute and this one  
11:03:26 16 are very, very telling.

11:03:27 17           And I would just say very, very quickly with  
11:03:30 18 respect to the record and the irreparable injury, so the  
11:03:34 19 fact that because we have a law that unless the Court  
11:03:37 20 takes action to enjoin it will go into effect on January  
11:03:41 21 1st. Of course, our clients are making efforts to do what  
11:03:44 22 they can to try to comply with it if that should happen.  
11:03:48 23 That's not evidence that there's no irreparable harm.  
11:03:52 24 That confirms the irreparable harm both in terms of the  
11:03:55 25 speech injury but also in terms of the unrecoverable

11:03:57 1 compliance costs. And the Fifth Circuit's decision in

11:04:00 2 Book People talks exactly about that.

11:04:02 3 THE COURT: Thank you.

11:04:04 4 MR. WILLEN: Thank you very much for your time.

11:04:05 5 THE COURT: Thank you.

11:04:06 6 Very briefly.

11:04:07 7 MR. SIEFF: Thank you, your Honor. And

11:04:10 8 appreciate the time.

11:04:11 9 Very briefly, the Court mentioned standing, I  
11:04:13 10 just wanted to quickly address that. This court addressed  
11:04:16 11 these same plaintiffs' standing in the prior H.B. 18 case,  
11:04:20 12 the state doesn't dispute that speakers and listeners have  
11:04:23 13 standing to challenge restrictions on the intermediaries  
11:04:26 14 they use to access and share expression. The same reason  
11:04:30 15 that there's standing in that case, there's standing in  
11:04:32 16 this one. The states did submit an answer and didn't  
11:04:35 17 contest that principle or -- and hasn't put forward any  
11:04:38 18 argument that denies its application in this case.

11:04:40 19 Second, the state mentioned that this law poses  
11:04:43 20 very minimal burden on states is what the state said. I  
11:04:47 21 think that misunderstands the burden. It's not just the  
11:04:49 22 burden of having to field sort of an incessant chain of  
11:04:54 23 requests to provide consent, although that is burdensome,  
11:04:57 24 it's the invasion of the family. That is the burden.  
11:04:59 25 That is the equitable injury and part of the reason why

11:05:02 1 the injunction is warranted.

11:05:04 2 The state says this isn't a prior restraint  
11:05:06 3 because it doesn't restrict speech before it could occur.  
11:05:08 4 That is literally what the statute does. The fact that  
11:05:11 5 the speech takes place somewhere else or could take place  
11:05:15 6 somewhere else doesn't diminish the fact that it's a prior  
11:05:17 7 restraint. The Supreme Court addressed that in the case  
11:05:19 8 about the musical Hair in Southeastern Promotions. We  
11:05:23 9 cite that in our brief.

11:05:24 10 The state says this case is nothing like Bantam  
11:05:26 11 Books, that it mischaracterizes Bantam Books. Bantam  
11:05:29 12 Books was an informal prior restraint is the example of  
11:05:32 13 when the state puts informal pressure on intermediaries to  
11:05:35 14 censure. That's what I was discussing earlier. This  
11:05:36 15 statute does that, too. It's not just a formal  
11:05:38 16 preclearance. It puts informal pressure on intermediaries  
11:05:42 17 to censure. For that reason, too, it's a prior restraint.

11:05:44 18 The state says that -- well, the state ran off a  
11:05:47 19 number of statistics about risk to youths since 2017.  
11:05:50 20 Does nothing -- there's nothing in the record tying that  
11:05:52 21 to anything that this act does. And in fact, the only  
11:05:55 22 evidence in the record attached to the Sieff declaration  
11:05:58 23 at Exhibits 27 through 30, and I would direct the Court  
11:06:02 24 specifically to Exhibit 30, paragraphs 10 through 44, is  
11:06:07 25 an expert report reviewing, I think, what were the studies

11:06:10 1 -- the extra record studies that the state was referencing  
11:06:14 2 in its monologue.

11:06:16 3           The state says that this could be -- that the  
11:06:20 4 coverage definition could be severed. I'm not sure it can  
11:06:23 5 be. Even if -- for the reasons the Court identified but  
11:06:26 6 even if it could, the statute is subject to strict  
11:06:30 7 scrutiny because it's explicitly content-based in its  
11:06:33 8 justification and it's a prior restraint so that doesn't  
11:06:34 9 get the state anywhere.

11:06:36 10           Two more. The state mentions *Erznoznik* case. It  
11:06:40 11 quotes -- it provides the quote that precedes the very  
11:06:44 12 next line quoted by *Brown*, which is that minors have  
11:06:48 13 rights to access the vast range of speech subject to  
11:06:51 14 narrow and well-defined circumstances. That's the key  
11:06:54 15 point. That's what *Brown* picked up on. The state doesn't  
11:06:57 16 mention that.

11:06:57 17           Finally, the Eleventh Circuit case, we agree with  
11:07:00 18 Mr. Willen, it's distinguishable and it goes back to your  
11:07:04 19 very first question. The justification offered in that  
11:07:07 20 case was that the statute was designed to prevent the  
11:07:09 21 impact of supposedly content-neutral features and  
11:07:13 22 functions. And the Eleventh Circuit -- we also have  
11:07:16 23 quibbles with it -- determined that that was a basis to  
11:07:19 24 apply intermediate scrutiny. Agree with it or not, that's  
11:07:23 25 just not the case here. Strict scrutiny applies. The

11:07:25 1 state's done nothing to meet it. The vast majority of all  
11:07:28 2 the applications to speech at issue are unconstitutional.  
11:07:32 3 The Court should enter an injunction, hold the statute  
11:07:35 4 unconstitutional on its face and the challenged provisions  
11:07:37 5 that we've identified. Thank you for your time. We  
11:07:40 6 really appreciate it, your Honor.

11:07:41 7 THE COURT: Thank you very much. Thank you all  
11:07:42 8 for your presentation today. They've been very helpful to  
11:07:45 9 me. I understand that we have time sensitivity in this  
11:07:49 10 case so we'll take this under advisement. We'll get to  
11:07:51 11 work and just get back to you as soon as we can.

11:07:54 12 Anything else before we break?

11:07:57 13 MR. WILLEN: Nothing from CCIA, your Honor.

11:07:57 14 THE COURT: All right. Anything else from the  
11:07:59 15 state?

11:07:59 16 MR. BERG: Nothing from the state, your Honor.

11:08:01 17 Thank you.

11:08:01 18 THE COURT: All right. Thank you. Thank you  
11:08:02 19 very much and we're adjourned.

20 (Proceedings concluded.)

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UNITED STATES DISTRICT COURT )  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Certified Realtime Reporter,  
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# Appendix 7

# **EXHIBIT A**

## 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";

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

(4) 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

# **EXHIBIT B**

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

COMPUTER & COMMUNICATIONS  
INDUSTRY ASSOCIATION,

*Plaintiff,*

v.

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

*Defendant.*

Civil Action No. 1:25-cv-01660

**DECLARATION OF MATTHEW  
SCHRUERS IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

I, Matthew Schruers, declare as follows:

1. I am the President & CEO of the Computer & Communications Industry Association (CCIA). I have worked at the organization for 20 years. Upon joining CCIA, I focused on legal, legislative, and policy matters, later taking on the roles of Chief Operating Officer and President and CEO. In each of these capacities, I have worked closely and communicated often with CCIA members regarding how public policy proposals affect their businesses, operations, and relationships with their users. Through my experience, I have also gained familiarity with how such proposals affect all manner of websites, applications, and other

digital services.<sup>1</sup>

2. I submit this declaration in support of Plaintiff’s Motion for Preliminary Injunction. I am over the age of 18 and am competent to make the statements herein. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, could and would competently testify to them.

**I. About CCIA and CCIA’s Affected Members**

3. CCIA is an international, not-for-profit membership association representing a broad cross-section of companies in the computer, Internet, information technology, and telecommunications industries. For more than fifty years, CCIA has promoted open markets, open systems, and open networks, and advocated for the interests of the world’s leading providers of technology products and services before governments and the courts.<sup>2</sup>

4. CCIA’s members include computer and communications companies, equipment manufacturers, software developers, service providers, re-sellers, integrators, and financial service companies.<sup>3</sup>

5. Several of CCIA’s members operate “app stores” and/or function as “developers” of software applications as those terms are used by Texas Senate Bill No. 2420, 89th Leg. (Tex. 2025) (“S.B. 2420”) including, at a minimum: (1) Google, which owns and operates the Google Play Store and has developed various mobile apps such as Google Search, YouTube, Gmail, and

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<sup>1</sup> This Declaration will refer to all digital services—including app stores and mobile applications—as “services” unless necessary to distinguish among different kinds of digital services.

<sup>2</sup> CCIA, Home, <https://ccianet.org/> [<https://perma.cc/T9EQ-5GC3>].

<sup>3</sup> Currently, CCIA’s members include: Amazon, Apple, Cloudflare, Coupang, Deliveroo, eBay, EchoStar, Google, Intel, Intuit, Meta, Nord Security, Opera, Pinterest, Shopify, Texas.net, Uber, Viagogo, Waymo, and Zebra.

Google Maps; (2) Amazon, which owns and operates the Amazon Appstore and has developed various mobile apps such as Audible, IMDb, and Goodreads; and (3) Apple, which owns and operates the Apple App Store.

6. S.B. 2420 defines “app store” to mean 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.” *Id.* § 121.002(2).

7. S.B. 2420 defines a “mobile device” to mean “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.” *Id.* § 121.002(4).

8. Based on my experience in the industry, my review of the declaration submitted by Matthew Bye on behalf of Google, and information publicly available about how the Google Play Store’s services operate, it is my understanding that Google owns and operates the Google Play Store, that the Google Play Store meets the criteria to constitute an “app store” under S.B. 2420, § 121.002(2), (4), and that Google is thus “the owner of the app store,” *id.* § 121.021(a).

9. The Google Play Store is “publicly available,” Tex. Bus. & Com. Code § 121.002(2), as it is available to any individual in the United States who obtains a Google Account, subject to certain age restrictions.<sup>4</sup>

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<sup>4</sup> Google Play Terms of Service (July 1, 2024), [https://play.google.com/intl/en-US\\_us/about/play-terms/](https://play.google.com/intl/en-US_us/about/play-terms/) (last visited Oct. 14, 2025) (on file with Google).

10. The Google Play Store is an “Internet website, software application, or other electronic service,” Tex. Bus. & Com. Code § 121.002(2), as it is available in the form of an Internet website,<sup>5</sup> and as an “app [that] comes pre-installed on Android devices that support Google Play.”<sup>6</sup>

11. The Google Play Store “distributes software applications from the owner or developer of a software application[,]” Tex. Bus. & Com. Code § 121.002(2), as Google enters agreements with “Developers,” meaning “[a]ny person or company who provides Products for distribution through Google Play in accordance with the terms of [the Google Play Developer Distribution] Agreement.”<sup>7</sup>

12. The Google Play Store “distributes software applications . . . to the user of a mobile device,” Tex. Bus. & Com. Code § 121.002(2), (4), as Google Play Store users “may use Google Play to browse, locate, view, stream, or download Content for [their] mobile, computer, tv, watch, or other supported device (“**Device**”),” where “Content” is defined as “apps (including Android Instant Apps), system services, games, movies, books, magazines, or other digital content or services” available through Google Play.<sup>8</sup>

13. It is my understanding that the Google Play Store has users who are under 18 years of age who are in Texas.

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<sup>5</sup> Google Play, <https://play.google.com/store/games> (last visited Oct. 14, 2025) (on file with Google).

<sup>6</sup> Find the Google Play Store App, <https://support.google.com/googleplay/answer/190860> (last visited Oct. 14, 2025) (on file with Google).

<sup>7</sup> Google Play Developer Distribute Agreement (effective as of Sept. 15, 2025), <https://play.google/developer-distribution-agreement.html> (last visited Oct. 14, 2025) (on file with Google).

<sup>8</sup> See supra note 4 (emphasis in original).

14. Google is also the “owner” or “developer of a software application that the developer makes available to users in [Texas] through an app store.” Tex. Bus. & Com. Code §§ 121.002(2); 121.051. Among other software applications, Google is the developer of Google Search,<sup>9</sup> Gmail,<sup>10</sup> YouTube,<sup>11</sup> and Google Maps.<sup>12</sup> These are software applications available for download on mobile devices such as phones or tablets through the Google Play Store.

15. Based on my experience in the industry and on information publicly available about how the Amazon Appstore’s services operate, it is my understanding that Amazon owns and operates the Amazon Appstore, that the Amazon Appstore meets the criteria to constitute an “app store” under S.B. 2420 § 121.002(2), (4), and that Amazon is thus “the owner of the app store,” *id.* § 121.021(a).

16. The Amazon Appstore is “publicly available,” Tex. Bus. & Com. Code § 121.002(2), as it is available in over 200 countries and territories,<sup>13</sup> and customers from the

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<sup>9</sup> Google, Google Play Store, [https://play.google.com/store/apps/details?id=com.google.android.googlequicksearchbox&hl=en\\_US](https://play.google.com/store/apps/details?id=com.google.android.googlequicksearchbox&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>10</sup> Gmail, Google Play Store, [https://play.google.com/store/apps/details?id=com.google.android.gm&hl=en\\_US](https://play.google.com/store/apps/details?id=com.google.android.gm&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>11</sup> YouTube, Google Play Store, [https://play.google.com/store/apps/details?id=com.google.android.youtube&hl=en\\_US](https://play.google.com/store/apps/details?id=com.google.android.youtube&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>12</sup> Google Maps, Google Play Store, [https://play.google.com/store/apps/details?id=com.google.android.apps.maps&hl=en\\_US](https://play.google.com/store/apps/details?id=com.google.android.apps.maps&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>13</sup> About the Amazon Appstore, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GP96AU3MQ58FMV8U> (last visited Oct. 14, 2025) (on file with Amazon.com).

United States are eligible to shop for apps from the Amazon Appstore on Amazon.com.<sup>14</sup>

17. The Amazon Appstore is an “Internet website, software application, or other electronic service,” Tex. Bus. & Com. Code § 121.002(2), as it is available in the form of an Internet website<sup>15</sup> and as software available on Amazon’s Fire Tablet devices.<sup>16</sup>

18. The Amazon Appstore “distributes software applications from the owner or developer of a software application[,]” Tex. Bus. & Com. Code § 121.002(2), as developers or owners of apps “can distribute [their] apps and games on Amazon Fire devices” and can “submit [their] app, digital software, or video game to Amazon” using the Amazon Developer Console.<sup>17</sup>

19. Finally, the Amazon Appstore “distributes software applications . . . to the user of a mobile device,” Tex. Bus. & Com. Code § 121.002(2), (4), as users can “browse for apps and download them to compatible devices” including Fire Tablet mobile devices.<sup>18</sup>

20. It is my understanding that the Amazon Appstore has users who are under 18 years of age who are in Texas.

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<sup>14</sup> Countries & Territories Eligible to Shop for Apps on Amazon.com, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GSXRFWKVKXYMK8GS> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>15</sup> Amazon Appstore Home, <https://www.amazon.com/mobile-apps/b/?ie=UTF8&node=2350149011> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>16</sup> Install an App on Your Fire Tablet, <https://www.amazon.com/gp/help/customer/display.html?nodeId=G89P5HPD7RQFPB2A> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>17</sup> App Submission FAQ, Amazon Appstore General Questions, <https://developer.amazon.com/docs/app-submission/faq-submission.html> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>18</sup> About the Amazon Appstore, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GP96AU3MQ58FMV8U> (last visited Oct. 14, 2025) (on file with Amazon.com).

21. Amazon is the “owner” or “developer of a software application that the developer makes available to users in [Texas] through an app store.” Tex. Bus. & Com. Code §§ 121.002(2); 121.051. Those software applications Amazon owns or develops include Kindle,<sup>19</sup> Audible,<sup>20</sup> IMDb,<sup>21</sup> and Goodreads.<sup>22</sup>

22. Finally, based on my experience in the industry and on information publicly available about how the Apple App Store’s services operate, it is my understanding that Apple owns and operates the App Store, that the App Store meets the criteria to constitute an “app store” under S.B. 2420, § 121.002(2), (4), and that Apple is thus “the owner of the app store,” *id.* § 121.021(a).

23. Apple’s App Store is “publicly available,” Tex. Bus. & Com. Code § 121.002(2), as it is available to users with an internet connection and an Apple Account.<sup>23</sup> The App Store is available to individuals across the United States.<sup>24</sup>

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<sup>19</sup> Kindle for Android, Amazon.com Appstore, <https://www.amazon.com/Amazon-com-Kindle-for-Android/dp/B004DLPXAO> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>20</sup> Audible, Inc., Amazon.com Appstore, <https://www.amazon.com/Audible-Audiobooks-Podcasts-for-Android/dp/B004GJ6BY0> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>21</sup> IMDb Mobile, LLC, Amazon.com Appstore, <https://www.amazon.com/IMDb-Mobile-LLC-Movies-TV/dp/B004GISARW> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>22</sup> Goodreads, Amazon.com Appstore, <https://www.amazon.com/Goodreads/dp/B005AKD836> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>23</sup> Get apps in the App Store on iPhone, <https://support.apple.com/guide/iphone/get-apps-iphc90580097/18.0/ios/18.0> (last visited Oct. 14, 2025) (on file with Apple).

<sup>24</sup> Availability of Apple Media Services, <https://support.apple.com/en-us/118205> (last visited Oct. 14, 2025) (on file with Apple).

24. Apple’s App Store is an “Internet website, software application, or other electronic service,” Tex. Bus. & Com. Code § 121.002(2), as it is available in the form of an app on, for example, iPhones and iPads.<sup>25</sup>

25. Apple’s App Store “distributes software applications from the owner or developer of a software application[,]” Tex. Bus. & Com. Code § 121.002(2), as developers or owners of apps can use the App Store to “easily deliver apps to hundreds of millions of people around the world on their iPhone, iPad, Mac, Apple TV, Apple Watch, and Apple Vision Pro.”<sup>26</sup>

26. Apple’s App Store “distributes software applications . . . to the user of a mobile device,” Tex. Bus. & Com. Code § 121.002(2), (4), as an App Store user can “[b]rowse through the Today, Games, Apps, or Arcade tabs to find apps [he or she] like[s]” or search for specific content and download and/or purchase apps onto his or her iPhone or iPad.<sup>27</sup>

27. It is my understanding that the Apple App Store has users who are under 18 years of age who are in Texas.

28. These three S.B. 2420-covered members who operate app stores enable billions of users around the world to create and share content using their services, whether to facilitate work, study, prayer, socialization, commerce, or communication. These companies also moderate and curate what is displayed on their services as a vital part of their operations. They disseminate

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<sup>25</sup> See *id.*; see also Get apps in the App Store on iPad, <https://support.apple.com/guide/ipad/get-apps-ipad9b4cea76/18.0/ipados/18.0> (last visited Oct. 14, 2025) (on file with Apple).

<sup>26</sup> Apple Developer, App Store, <https://developer.apple.com/distribute/> (last visited Oct. 14, 2025) (on file with Apple).

<sup>27</sup> Download apps on your iPhone or iPad, <https://support.apple.com/en-us/102590> (last visited Oct. 14, 2025) (on file with Apple).

a massive and constantly expanding amount of content in order to provide valuable products and tools for their users.

## II. Valuable and Protected Speech on CCIA Members' Digital Services

29. The content on CCIA members' digital services comes from all over the world and is incredibly diverse. The services enable and provide a forum for the height of human thought and creativity: material that runs the gamut from being culturally significant, informative, educational, or politically engaging to funny and entertaining. These services are critical gateways for accessing and disseminating protected speech and expression, and millions of individuals use these services daily to engage in speech.

30. CCIA members' services offer access to a wide array of highly valuable speech and viewpoints, and adults and minors alike benefit from access to these services. For example, member services host apps that allow users to download ebooks from their local library;<sup>28</sup> access and learn about the collection of the Metropolitan Museum of Art;<sup>29</sup> take online courses through Coursera or Khan Academy;<sup>30</sup> paint pictures using the apps like Sketchbook app;<sup>31</sup> publish or read essays on virtually any topic via apps like their own written material on Substack or

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<sup>28</sup> E.g., Libby, the Library App, [https://play.google.com/store/apps/details?id=com.overdrive.mobile.android.libby&hl=en\\_US](https://play.google.com/store/apps/details?id=com.overdrive.mobile.android.libby&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>29</sup> TheMET, <https://play.google.com/store/apps/details?id=com.museumtech.themetaudioguide> (last visited Oct. 14, 2025) (on file with Google).

<sup>30</sup> Coursera, [https://play.google.com/store/apps/details?id=org.coursera.android&hl=en\\_US](https://play.google.com/store/apps/details?id=org.coursera.android&hl=en_US) (last visited Oct. 14, 2025) (on file with Google); Khan Academy, [https://play.google.com/store/apps/details?id=org.khanacademy.android&hl=en\\_US](https://play.google.com/store/apps/details?id=org.khanacademy.android&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>31</sup> Sketchbook, [https://play.google.com/store/apps/details?id=com.adsk.sketchbook&hl=en\\_US](https://play.google.com/store/apps/details?id=com.adsk.sketchbook&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

Reddit;<sup>32</sup> track politics on Politico;<sup>33</sup> read the news on the New York Times or Wall Street Journal;<sup>34</sup> download and read or listen to nearly a lifetime's supply of books via apps like Goodreads, Kindle, and Audible;<sup>35</sup> share photos and videos with family and friends through Flickr;<sup>36</sup> play crossword puzzles or other games on apps like Crossword Explorer, SudokuMagic, or Chess.com;<sup>37</sup> access and store recipes on apps like Paprika or NYT Cooking;<sup>38</sup> listen to the world's collection of music on Spotify, Amazon Music, or Tidal;<sup>39</sup> find new indie bands on Bandcamp;<sup>40</sup> and watch movies or television shows or movies on Netflix, Tubi, or YouTube.<sup>41</sup>

31. Millions of Americans, and billions of people worldwide, use at least one of CCIA members' digital services. Google Play, for example, explains that it enables “more than 2.5 billion monthly users across 190+ markets worldwide to discover millions of high-quality

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<sup>32</sup> Substack, [https://play.google.com/store/apps/details?id=com.substack.app&hl=en\\_US](https://play.google.com/store/apps/details?id=com.substack.app&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>33</sup> Politico, [https://play.google.com/store/apps/details?id=com.politico.android&hl=en\\_US](https://play.google.com/store/apps/details?id=com.politico.android&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>34</sup> NYTimes, [https://play.google.com/store/apps/details?id=com.nytimes.android&hl=en\\_US](https://play.google.com/store/apps/details?id=com.nytimes.android&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>35</sup> E.g., Goodreads, [https://play.google.com/store/apps/details?id=com.goodreads&hl=en\\_US](https://play.google.com/store/apps/details?id=com.goodreads&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>36</sup> Flickr, [https://play.google.com/store/apps/details?id=com.flickr.android&hl=en\\_US](https://play.google.com/store/apps/details?id=com.flickr.android&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>37</sup> E.g., Chess.com, [https://play.google.com/store/apps/details?id=com.chess&hl=en\\_US](https://play.google.com/store/apps/details?id=com.chess&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>38</sup> E.g., Paprika Recipe Manager 3, [https://play.google.com/store/apps/details?id=com.hindsightlabs.paprika.android.v3&hl=en\\_US](https://play.google.com/store/apps/details?id=com.hindsightlabs.paprika.android.v3&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>39</sup> E.g., Spotify, [https://play.google.com/store/apps/details?id=com.spotify.music&hl=en\\_US](https://play.google.com/store/apps/details?id=com.spotify.music&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>40</sup> Bandcamp, [https://play.google.com/store/apps/details?id=com.bandcamp.android&hl=en\\_US](https://play.google.com/store/apps/details?id=com.bandcamp.android&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

<sup>41</sup> E.g., Netflix, [https://play.google.com/store/apps/details?id=com.netflix.mediaclient&hl=en\\_US](https://play.google.com/store/apps/details?id=com.netflix.mediaclient&hl=en_US) (last visited Oct. 14, 2025) (on file with Google).

apps, games, books, and more.”<sup>42</sup> Apple’s App Store connects developers “to over 1.5 billion devices in 175 regions.”<sup>43</sup>

32. Accordingly, CCIA’s members offer their users the opportunity to (1) maintain connections with friends and family and create new connections, (2) express themselves and their creative works, (3) stay informed about current events and engage in their own political and social speech on the day’s issues, (4) learn from others, whether through expressly educational content or through the ability for cross-cultural exchange, and (5) find high-quality and engaging expression.

### **III. CCIA Members Offer Parents Many Voluntary Ways to Monitor Their Minor Children’s Internet Use.**

33. CCIA holds a firm conviction that children are entitled to a higher level of security and privacy in their online experiences. But not only do parents already have widely available tools to monitor and control their children’s online behavior, CCIA’s members are already actively engaged in various initiatives to integrate new, robust, and protective design features into their digital services.

34. For example, CCIA members that operate app stores engage in content rating for all or almost all of their apps. These processes vary across app stores, but typically involve a form of collaborative content analysis and rating to determine and display an app’s age appropriateness. For Apple, apps published in the U.S. App Store are rated 4+, 9+, 13+, 16+, and

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<sup>42</sup> How Google Play Works, <https://play.google/howplayworks/> (last visited Oct. 14, 2025) (on file with Google).

<sup>43</sup> Apple, Developing for the App Store, <https://www.apple.com/app-store/developing-for-the-app-store/> (last visited Oct. 14, 2025) (on file with Apple).

18+.<sup>44</sup> Amazon uses its own rating system, which is 0-12, 13-15, 16-17, and 18+.<sup>45</sup> Google, in contrast, uses the ESRB rating system—0-9, 10+, 13+, 17+, and 18+.<sup>46</sup>

35. In addition to rating content for age appropriateness, all of CCIA’s app store members engage in content filtering and will ban apps that do not comport with app stores’ content policies. Apple, for instance, will reject apps that contain “objectionable content,” defined as content that is “offensive, insensitive, upsetting, intended to disgust, in exceptionally poor taste, or just plain creepy.”<sup>47</sup> The Google Play Store will “prohibit[] content” that “contain[s] or promote[s] sexual content or profanity,” “hate speech,” “violence” or “violent extremism.”<sup>48</sup> The Play Store also bans content that facilitates bullying or dangerous products, or content that “capitalize[s] on or [is] insensitive towards” certain “sensitive event(s)” such as natural disasters, civil emergencies, deaths, “or other tragic events.”<sup>49</sup> The Amazon Appstore will “reject[] or suppress[]” apps which contain content that would not be considered

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<sup>44</sup> See Apple, Apple Expands Tools to Help Parents Protect Kids and Teens Online (June 11, 2025), <https://www.apple.com/newsroom/2025/06/apple-expands-tools-to-help-parents-protect-kids-and-teens-online> (last visited Oct. 14, 2025) (on file with Apple).

<sup>45</sup> See Moses Roth, Navigating App Submission and Compliance with Confidence (Feb. 25, 2025), <https://developer.amazon.com/apps-and-games/blogs/2025/02/navigating-app-submission-and-compliance> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>46</sup> See Google, Apps & Games Content Ratings on Google Play, <https://support.google.com/googleplay/answer/6209544> (last visited Oct. 14, 2025) (on file with Google).

<sup>47</sup> Apple, App Review Guidelines (rev. June 9, 2025), <https://developer.apple.com/app-store/review/guidelines/#safety> (last visited Oct. 14, 2025) (on file with Apple).

<sup>48</sup> Google, Inappropriate Content, <https://support.google.com/googleplay/android-developer/answer/9878810> (last visited Oct. 14, 2025) (on file with Google).

<sup>49</sup> *Id.*

“family-friendly.”<sup>50</sup> Examples of “restricted content” include “sexually explicit content,” “hateful or harassing content,” “inaccurate or misleading medical advice,” “illegal, reckless, dangerous, or harmful content,” “insensitivity towards a sensitive event,” or violence and violent extremism.<sup>51</sup>

36. All of CCIA’s app store members use their content rating systems to flag and impose additional restrictions on apps directed towards younger audiences. Before such an app may be published in the Google Play Store, Google requires that the app comply with its Google Play Families Policies.<sup>52</sup> Under these policies, apps will be suspended or removed unless they contain only “content” that is “appropriate for children” and impose additional data privacy safeguards to minimize the disclosure of children’s personal information.<sup>53</sup> Additionally, “social apps” targeted at children “must also provide a method for adults to manage social features for child users, including, but not limited to, enabling/disabling the social feature or selecting different levels of functionality.”<sup>54</sup> Similarly, Apple tags child-directed apps and sorts them into a “Kids Category.”<sup>55</sup> Those apps also must contain only age-appropriate content, provide additional protections over the use and disclosure of children’s data, and implement “parental

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<sup>50</sup> Amazon, Amazon Appstore Content Policy, <https://developer.amazon.com/docs/policy-center/understanding-content-policy.html> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>51</sup> Amazon, Restricted Content Policy, <https://developer.amazon.com/docs/policy-center/restricted-content.html> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>52</sup> Google, Google Play Families Policies, <https://support.google.com/googleplay/android-developer/answer/9893335> (last visited Oct. 14, 2025) (on file with Google).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Apple, Building Apps for Kids, <https://developer.apple.com/kids/#:~:text=The%20Kids%20Category,in%20order%20to%20be%20displayed> (last visited Oct. 14, 2025) (on file with Apple).

gates to moderate a child’s ability to perform certain actions” “such as buying In-App Purchases without permission, or following link outs . . .”<sup>56</sup> Likewise, Amazon requires all “child-directed apps” to contain “age-appropriate content,” “comply with all applicable laws, including the Children’s Online Privacy Protection Act,” block all advertising, and only collect limited categories of personal data.<sup>57</sup>

37. On top of these *ex ante* requirements, CCIA’s app store members provide additional voluntary tools for parents to control their children’s exposure to apps and content. The Google Play Store allows parents to set up controls on their children’s accounts.<sup>58</sup> These controls allow parents to, for example, restrict apps and games on an Android device by choosing categories of content allowed for download or purchase; lock their child’s screen during certain hours such as bedtime; approve all purchases and new apps that the child wants to download, and more.<sup>59</sup> The Apple App Store similarly allows parents to set age-related restrictions for content; prevent their children from installing or deleting apps or making in-app purchases in apps; restrict app downloads and games; and manage their child’s privacy settings.<sup>60</sup> Additionally, Amazon’s Appstore Parent Dashboard allows parents to monitor the apps their

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<sup>56</sup> *Id.*

<sup>57</sup> Amazon, Child-Directed App (COPPA) Policy (last updated Jun. 01, 2020), <https://developer.amazon.com/docs/policy-center/privacy-children.html#sdks-in-apps-for-children> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>58</sup> Google, How to Set Up Parental Controls on Google Play, <https://support.google.com/googleplay/answer/1075738> (last visited Oct. 14, 2025) (on file with Google).

<sup>59</sup> *Id.*

<sup>60</sup> Apple, Use Parental Controls on Your Child’s iPhone or iPad, <https://support.apple.com/en-us/105121> (last visited Oct. 14, 2025) (on file with Apple).

children are interacting with, set daily limits or restrict their children’s use at certain times of day, and restrict access to certain content.<sup>61</sup>

38. In addition to the parental controls at the app store level, several of CCIA’s members, acting as developers of software applications, have been leading the effort to implement parental control tools within their applications to individually tailor younger users’ online use to the content and services that are suited to their unique lived experience and developmental needs.<sup>62</sup>

#### **IV. Provisions of S.B. 2420 Relevant to this Challenge**

39. S.B. 2420 requires an app store owner to use a commercially reasonable method to verify an individual’s “age category,” as defined by the law, when that individual creates an account with the app store. Tex. Bus. & Com. Code § 121.021. If the app store owner determines the individual is a minor, it must require that the minor’s account be affiliated with a parent or guardian’s account, verify the identity of the purported parent or guardian, use “reasonable means” to obtain parental consent, and make certain required disclosures before allowing the minor to download or purchase an app or make a purchase in or using an app. *Id.* § 121.022(a),

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<sup>61</sup> Amazon, Amazon Parent Dashboard, <https://www.amazon.com/parentdashboard/intro> (last visited Oct. 14, 2025) (on file with Amazon.com).

<sup>62</sup> *E.g.*, Audible, With Kids Profiles, Parents Can Now Easily Share Their Love of Stories, (Sept. 17, 2024), <https://www.audible.com/about/newsroom/with-kids-profiles-parents-can-now-easily-share-their-love-of-stories> (last visited Oct. 14, 2025) (on file with Amazon.com); YouTube, Important info for parents about YouTube Kids, <https://support.google.com/youtubekids/answer/6130561> (last visited Oct. 14, 2025) (on file with Google); YouTube, Set up a teen supervised experience, <https://support.google.com/youtube/answer/15252891> (last visited Oct. 14, 2025) (on file with Google); Amazon, What Is Amazon Kids?, <https://www.amazon.com/gp/help/customer/display.html?nodeId=202119910> (last visited Oct. 14, 2025) (on file with Amazon.com); Teen safety on Pinterest, <https://help.pinterest.com/en/article/teen-safety-options> (last visited Oct. 14, 2025) (on file with Pinterest).

(b), (d), (f). The app store owner is also required to notify the app developer if a parent or guardian revokes consent, *id.* § 121.022(e), display an age rating for every app, along with the basis of that rating, *id.* § 121.023(a)–(b), allow app developers to access the information the app store has collected about users’ age categories and parental consent statuses, *id.* § 121.024, and comply with certain requirements to protect users’ personal data, *id.* § 121.025.

40. Further, under S.B. 2420 app developers are required to “create and implement a system to use” age verification and consent-related information provided by the app store “to verify” every user’s age category and—if the user is a minor—whether consent has been obtained. *Id.* § 121.054. It also requires app developers to notify app store owners before making any “significant change” to their apps’ terms of service or privacy policies, at which point app store owners must notify parents and obtain consent for minors’ continued use of the app. *Id.* §§ 121.053, 121.022(g). Developers must also implement a system to assign age ratings, based on the four age categories required by Texas under S.B. 2420, to every app and every in-app purchase, and provide each app store with the rating and the content or elements that led to each rating. *Id.* § 121.052.

41. S.B. 2420 holds app stores and developers liable for “enforc[ing] a contract or a provision of a terms of service agreement against a minor that the minor entered into or agreed to without consent;” “knowingly misrepresent[ing]” information related to the age rating or the parental disclosures required by the law; “shar[ing] or disclos[ing] personal data” obtained or acquired pursuant to S.B. 2420, except for as required by the law, and, for app store owners, “obtain[ing] a blanket consent to authorize multiple downloads or purchases.” *Id.* §§ 121.026(a), 121.056.

42. Violations of S.B. 2420 are designated “deceptive trade practice,” and accordingly enforcement authority has been vested in the consumer protection division of the Texas Attorney General. *Id.* §§ 121.101, 121.102; *see also* Tex. Bus. & Com. Code §§ 17.60–17.63 (granting consumer protection division of the Texas Attorney General power to enforce violations of deceptive acts or practices).

#### **V. The Impact of S.B. 2420 on CCIA Members and Their Users**

43. Based on my experiences working with CCIA’s members and in the digital services industry generally, S.B. 2420’s restrictions will require app stores, in practice, to implement complex and costly age verification, parental consent, and parental verification procedures.

44. To comply with S.B. 2420’s age verification requirements, CCIA’s covered members will need to assess the age of existing account holders and implement procedures to determine the age of future account holders when they create app store accounts. Tex. Bus. & Com. Code § 121.021(a). Covered members will then need to sort account holders into specific “age categories” designated by S.B. 2420, *id.* § 121.021(b), preventing some covered members from employing the age categorizations that those members have determined to be most appropriate for purposes of curating content on their digital services.

45. To do so, members will spend large, unrecoverable sums up front to develop the proper capabilities.<sup>63</sup> Despite the fact that S.B. 2420 calls for the use of “commercially

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<sup>63</sup> *See Engine, More Than Just a Number: How Determining User Age Impacts Startups* (Feb. 2024), <https://www.engine.is/news/category/engine-releases-additional-resources-on-startups-and-age-verification> (last visited Oct. 14, 2025) (estimating costs of building an in-house age verification functionality at \$2 million; further estimating the cost of integrating a third-party age verification service at \$50,000 plus \$1.50 per instance of verification). Based on these numbers, the cost of

reasonable” methods, *id.* § 121.021(a), there is currently no standard practice for online age verification.<sup>64</sup> Popular options typically involve document review (e.g., presenting government ID) and/or visual inspection (e.g., estimating age based on biometric scans of a user’s face).<sup>65</sup> Yet each method “fall[s] on a spectrum of ‘dangerous in one way’ to ‘dangerous in a different way’” because “every solution has serious privacy, accuracy, or security problems.”<sup>66</sup> For example, “[h]ighly accurate age assurance methods may depend on collection of new personal data such as facial imagery or government-issued ID,” introducing potential privacy concerns.<sup>67</sup> Each method also stands to block out users who, for example, lack identification or the required camera equipment,<sup>68</sup> and chill privacy-minded users who do not wish to subject their faces to biometric examination<sup>69</sup> at a time when some age assurance vendors have failed to handle individuals’

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age verification could amount to tens or hundreds of millions of dollars for CCIA’s large app store members.

<sup>64</sup> Eric Goldman, *The “Segregate-and-Suppress” Approach to Regulating Child Safety Online*, 28 Stanford Tech. L. Rev. 173, 183 (2025) (observing that “there is no ‘preferred’ or ‘ideal’ way to do online age authentication”).

<sup>65</sup> *Id.* at 183-85.

<sup>66</sup> Letter from Hayley Tsukayama, Assoc. Dir. of Legis. Activism, Elec. Frontier Found. (E.F.F.), to Leticia James, N.Y. Att’y Gen., at 7 (Sept. 30, 2024) regarding Advanced Notice of Proposed Rulemaking pursuant to New York General Business Law section 1500 et seq., [<https://perma.cc/7ECN-8Q8M>]. See also Shoshanna Weissmann, *The Fundamental Problems with Social Media Age Verification Legislation*, R Street (May 16, 2023), <https://www.rstreet.org/commentary/the-fundamental-problems-with-social-media-age-verification-on-legislation/> (last visited Oct. 14, 2025) (discussing the detrimental effects of age verification on privacy, security, and protected First Amendment right).

<sup>67</sup> Digital Trust & Safety Partnership, *Age Assurance: Guiding Principles and Best Practices*, at 10 (Sept. 2023), [https://dtspartnership.org/wp-content/uploads/2023/09/DTSP\\_Age-Assurance-Best-Practices.pdf](https://dtspartnership.org/wp-content/uploads/2023/09/DTSP_Age-Assurance-Best-Practices.pdf) (last visited Oct. 14, 2025).

<sup>68</sup> See *PSInet, Inc. v. Chapman*, 362 F.3d 227, 237 (4th Cir. 2004) (noting that making the presentation of government ID a prerequisite to accessing online content acts as “a complete block to adults who wish to access adult material [online] but do not” have the necessary documents; see also *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 99 (2d Cir. 2003).

<sup>69</sup> Sarah Forland, *Exploring Privacy-Preserving Age Verification: A Close Look at Zero-Knowledge Proofs*, New America (July 17, 2025) (“[S]ubjecting people to unwarranted age

private data with sufficient care.<sup>70</sup> And to ensure the process continues to work effectively, members will need to engage in additional ongoing expenditures that maintain those capabilities. These costs cannot be recouped and are extremely burdensome on members.

46. Similarly, S.B. 2420's parental consent requirement will force CCIA's members to implement mandatory parental-verification procedures and will require CCIA members to set up a process by which a minor's account can be linked to the minor's parent or guardian's account. Tex. Bus. & Com. Code § 121.022(a), (b). There is no accepted, effective, proportionate method of authenticating the parental or guardian status of an individual purporting to give consent for a minor user,<sup>71</sup> making it exceptionally difficult to remotely verify the existence of a relationship between two accounts as Texas requires. This is particularly so in instances where, for example, parents or legal guardians do not have the same last name as the children in question, or where a parent is not located in Texas. Further, S.B. 2420's parental consent requirements fail to provide app stores with guidance for handling non-paradigmatic parent-child relationships such as, for example, where the parents or legal guardians of a child are separated and may disagree about the desired online activity for their child, or where the child is in foster care.<sup>72</sup> These requirements thus create uncertainty for app stores and demand additional significant upfront and ongoing investments to implement.

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verification can create a chilling effect on online activity, while also imposing greater personal data-sharing requirements on everyone.”).

<sup>70</sup> See J. Kelley, Electronic Frontier Foundation, *Hack of Age Verification Company Shows Privacy Danger of Social Media Laws* (June 26, 2024), <https://www.eff.org/deeplinks/2024/06/hack-age-verification-company-shows-privacy-danger-social-media-laws> (last visited Oct. 14, 2025).

<sup>71</sup> See Goldman, *supra* note 64.

<sup>72</sup> *Id.*

47. These costs will be felt by developer members as well as app store members, as S.B. 2420 requires developers to “create and implement a system” to verify, “for each user of the software application,” the age category and, “for each minor user of the software application,” parental consent obtained by the app store. Tex. Bus. & Com. Code § 121.054. The Act’s imposition of new age rating categories—and liability for knowing misrepresentations thereof—requires developers to incur additional costs in reevaluating their content to re-rate the age appropriateness of their apps. The age rating categories prescribed by S.B. 2420 do not align with the age rating categories currently imposed by the Apple App Store and Google Play Store, thus requiring developer members to reevaluate their content according to S.B. 2420’s new metrics and designate an S.B. 2420-appropriate age rating anew. This misalignment will also impose additional burdens and costs on those app stores, as the statute diverges from their own judgment about how to most appropriately classify the age-appropriateness of applications, and they will be required to determine how to integrate the new age rating system into their existing age rating and display infrastructures. These costs compound the irreparable burden S.B. 2420 will place on CCIA’s members, just for the members to attempt to comply with its restrictions.

48. Based on my years of experience and advocacy and my interactions with staff of app developers (including CCIA’s members), I believe that S.B. 2420 will also impose prohibitive costs on smaller app developers that are not CCIA members. Those apps and developers may be smaller as measured in users, volume of content, number of employees, or annual revenue—or all four. What will be difficult for CCIA members will be ruinous for many more app developers. The requirements imposed by S.B. 2420 on app developers may be cost- and resource-prohibitive for smaller apps. Because all app developers must “create and implement” a system for age category and parental consent verification, and re-categorize the

age appropriateness of their apps to align with Texas’s preferred groupings, some developers may be forced to entirely shut down their apps rather than shoulder these additional burdens.

49. In addition, S.B. 2420 burdens the First Amendment rights of CCIA members who curate, disseminate, and create speech.

50. By imposing restrictions on who may access covered members’ services, including by subjecting all adult mobile app users to age verification procedures, requiring that any minor’s account be affiliated with a parent account belonging to the minor’s parent or guardian, and requiring parental consent before a minor can download or purchase a software application, S.B. 2420 directly abridges members’ ability to curate and disseminate information to their users.

51. S.B. 2420 also compels covered members to speak, by requiring app developers to determine, and app stores to endorse and disclose, an age rating in order to obtain parental consent for the minor to download or purchase an app, or make in-app purchases. Tex. Bus. & Com. Code §§ 121.022(f); 121.023; 121.052.

52. Finally, CCIA’s members provide vibrant communities for users to engage in vitally important forms of free expression, and S.B. 2420 will burden or eliminate their ability to engage in these various types of speech.

53. By blocking any minor, *i.e.*, any individual *under the age of 18*, from accessing “app store[s]” unless the minor’s account is affiliated with a parent account belonging to the minor’s parent or guardian and requiring that minors obtain the consent of a parent or guardian before downloading or purchasing a software application or making a purchase in a software

application, Texas Bus. & Com. Code § 121.022(a), (d), S.B. 2420 restricts minors from accessing applications where they can engage in First Amendment activity.

54. In addition, S.B. 2420's requirement that covered members verify the age of all users before deciding whether to let them create an account with an app store, *id.* § 121.021(a), would also burden the speech of adults.

55. In short, if S.B. 2420 is not enjoined and is enforced against CCIA's members, CCIA's mission to promote open markets, open systems, and open networks would be directly, substantially, and irreparably harmed. Likewise, CCIA's covered members, as well as their users (both minor and adult account holders alike), will suffer irreparable harm.

I declare under penalty of perjury under the laws of the United States pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed on this 14th day of October, 2025, in Washington, DC.

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Matthew Schruers

# EXHIBIT C

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

COMPUTER & COMMUNICATIONS  
INDUSTRY ASSOCIATION,

*Plaintiff,*

v.

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

*Defendant.*

Civil Action No. 1:25-cv-01660

**DECLARATION OF MATTHEW BYE IN SUPPORT OF  
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

I, Matthew Bye, declare as follows:

1. I am the Managing Director of Android Ecosystem Strategy, which includes strategy for the Google Play store.

2. Google Play meets the definition of an “App Store” regulated under the Texas App Store Accountability Act, S.B. 2420 (2025) (the “Act”). Google Play is “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.” Tex. Bus. & Com. Code § 121.001(2).

3. People in Texas use Google Play.

4. Google is a member of the Computer & Communications Industry Association.

5. I submit this declaration in support of Plaintiff’s Motion for a Preliminary Injunction. I am over the age of 18 and am competent to make the statements herein. I have personal knowledge of the facts set forth in this declaration and, if called and sworn as a witness, could and would competently testify to them.

## I. Google Play Overview

6. Google Play is a global digital distribution platform that allows businesses to distribute—and users to find, install, and manage—software applications (“apps”) and other digital content. Google Play facilitates access for billions of users worldwide—and millions of users in America—to discover millions of high-quality apps, games, books, movies, and other digital content configured for the Android ecosystem. In the context of apps and games, Google Play does this by connecting app publishers with app users and offering an array of services, tools, and features for both. (App publishers are sometimes referred to here as “developers” in line with how the Act refers to them.)

7. On the publisher side, Google Play provides numerous tools and services to help build, test, launch, and improve apps. We also help publishers by offering educational materials on best practices for designing safer, more secure, and more privacy-protective user experiences.<sup>1</sup> We conduct pre-publication security checks of all apps before they are made available to users. We provide built-in software to continuously screen for malware that could compromise the security of user devices and the Google Play ecosystem. We provide publishers with tools to run experiments and beta test their apps, upload and launch their apps, retrieve information about app quality, optimize their listings, automate permissions, manage subscriptions, utilize AI-powered features, and respond to customer reviews. In addition, our data analytics tools help developers understand how their apps are being discovered by users and what features and content are most useful.<sup>2</sup>

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<sup>1</sup> See, e.g., Google Play Academy, Build Privacy-Friendly Apps (Oct. 18, 2021), <https://perma.cc/B9K7-4XFH>.

<sup>2</sup> See, e.g., Google Play, Developer Reporting API, <https://perma.cc/B2DT-8GKJ>; Google Play, Statistics, <https://perma.cc/HU7R-6KB4>.

8. On the user side, we bring together a vast offering of apps, movies, shows, books, and games so they are easily accessible for users; we organize those offerings so users can easily browse and navigate them; and we help protect users from malware, unsafe privacy and security practices, low quality apps, and abusive content and practices. Users also receive automatic updates—including critical security updates—through Google Play for apps they have already downloaded and apps pre-installed on their Android devices. Google Play thereby enables users to enjoy and focus on content and the app experience rather than needing to navigate technical and security concerns (such as malware risks) that might otherwise be associated with digital content sourced from millions of different developers.

9. App stores like Google Play offer services that facilitate the creation of and access to significant amounts of speech. Although developers can choose to offer their apps in other ways (such as permitting them to be “side-loaded” from a separate website maintained by the publisher), many developers prefer to focus on creating new services and features rather than maintaining a separate website and running their own security checks. Many developers therefore choose not to offer their apps to the public outside of an app store. In addition, some users prefer to download apps and offerings through Google Play (or another app store) knowing the apps have been subject to standardized policies and controls. Google Play controls are only applicable to offerings accessed through Google Play.

## **II. Google Play Facilitates Access to Vast Amounts of Protected Speech and Information**

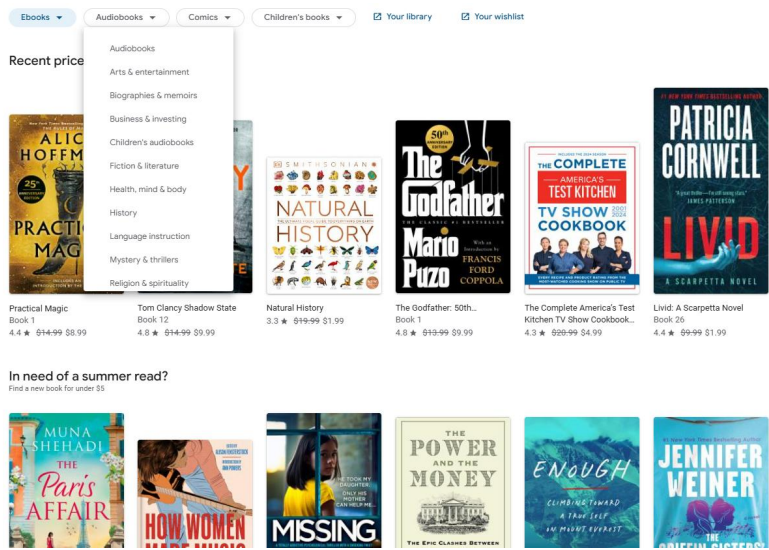
10. *Users’ expressive activities.* Google Play acts as a gateway where users can view, download, and otherwise engage with expressive, communicative, and informational digital content and services. These include substantial amounts of core speech, including books, movies, TV, games, and millions of expressive, communicative, and informational apps dedicated to

(among other things) education, communication, entertainment, knowledge sharing, informational analysis, gaming, social media, research, and more. Google Play also facilitates a significant amount of valuable commercial speech.

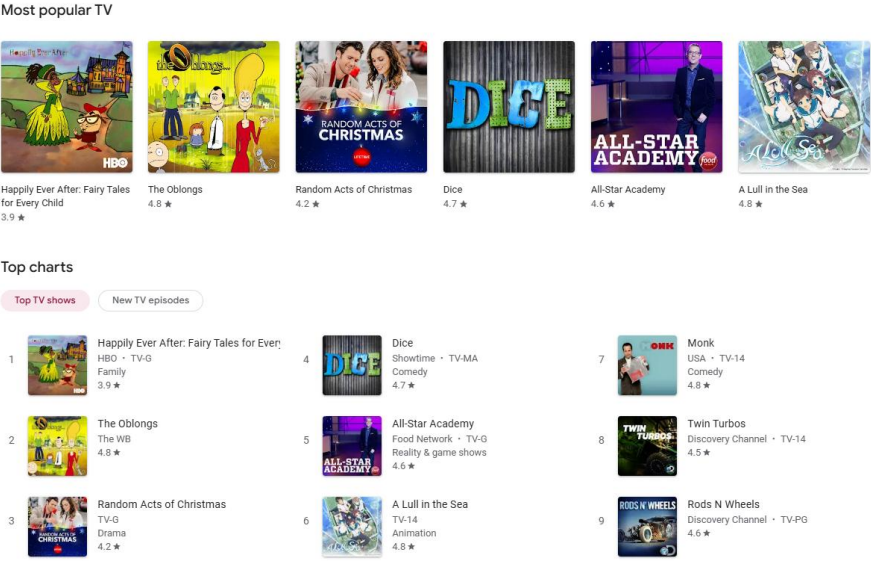
11. To download apps, books, games, movies and other offerings from Google Play, and to receive automatic updates for previously downloaded apps, users must have a Google Account, be signed into that account, and agree to Google Play's Terms of Service. If a user is known to be under the age of 13, they cannot create their own Google Account; instead, their parents must create a supervised Google Account on their behalf and manage those accounts through Family Link. Children age 13 or older can create their own Google Accounts and choose to have their parents help supervise their Google Accounts. Generally, users are not required to verify their identities or provide a governmental ID to have a Google Account, and many users do not wish to disclose this type of sensitive information to Google.

12. When minors and their parents visit Google Play, they can browse among high level menu topics consisting of Games, Apps, Movies & TV, Books, and Kids content.

13. For example, in Google Play's Books section, content is organized by medium (*e.g.*, audio books and ebooks) and topical categories, such as Arts & entertainment, Biographies & memoirs, Business & investing, Fiction & literature, and more. Users can also create wishlists and a personalized library with different "shelves" for different genres. Below is an image a user might see when browsing Books.



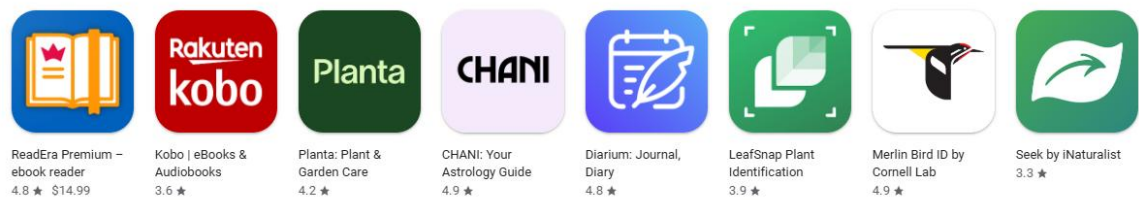
14. The Movies & TV section of the store allows users to browse among movies and television shows to buy or rent. Again, Google Play categorizes this content to help users browse these materials, such as “New,” “Top selling,” and “Top charts” titles. Below is an image a user might see in this section of the store.



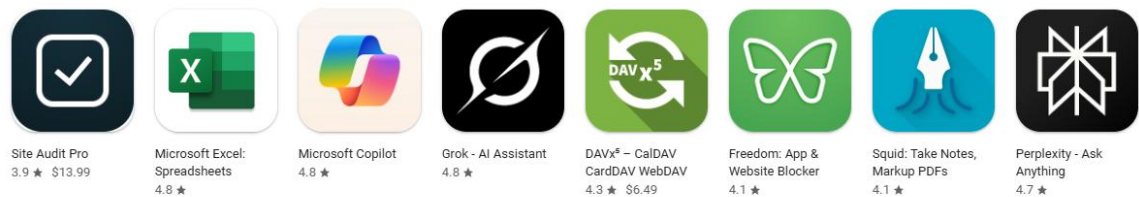
15. The Apps section of the store similarly includes features to help users browse and search across a vast spectrum of apps. For example, users can sort apps across topical categories,

such as Communication (e.g., VoIP apps, video messengers, and spam blockers), Productivity (e.g., notetaking apps, Microsoft Excel and Copilot), Books & reference (e.g., wildlife tracking apps, diary apps, plant and garden care, library apps, and planners and journals), Business tools (e.g., voice notes, Concur, Slack, scheduling apps, and business card apps), and Art & design (e.g., sketchbooks, photo editors, and drawing tutorials). We also offer curated categories and categories that might be of interest to users, such as “top free,” and “top paid” apps. Below is an image reflecting what a user might see in the Google Play desktop user interface when searching apps configured for a phone.

Books & reference



Productivity



Communication



16. Google Play features countless apps that facilitate communication, learning, and expression across billions of users. To name just a few, WhatsApp Messenger has been

downloaded more than 10 billion times; Instagram has been downloaded more than 5 billion times; Netflix and TikTok have each been downloaded more than 1 billion times; ChatGPT has been downloaded more than 500 million times; and Hulu, Kindle, Audible, and Threads have each been downloaded more than 100 million times. The news apps ABC News, Associated Press, BBC, CBS, CNN, Fox News, Fox Business News, NBC News, NYTimes, and WSJ have collectively been downloaded roughly 100 million times.

17. *Publishers.* All of these expressive offerings are made possible by a vibrant community of publishers, developers, and content creators (referred to collectively here as publishers). These include publishers of religious material (such as Bible Chat and Al Quran), practical instruction (such as Bilt and CDL Prep & Practice Test Genie), political opinion (such as Allsides and Sandbox), scientific research (such as PubMed and Medscape), educational content (such as Duolingo and Khan Academy), social media (such as X and Snapchat), blogging and writing tools (such as Substack and Medium), book and library apps (such as Libby), magazines (such as The New Yorker and Vogue), video streaming (such as Prime Video), television (such as Fubo and Tubi), short-form video (such as YouTube), music (such as Spotify and Amazon Music), poetry (such as Daily Poetry and Poetizer), photography (such as Lightroom and VSCO), art (such as Etsy and Behance), culture (such as Pinterest and Tumblr), and informational tools (such as calculators, rulers, compasses, and navigation apps).

18. Although some developers who offer apps in Google Play are large corporate entities, more than half of such developers are individuals, small businesses, non-profits, and new and emerging creators attracted by Google Play's broad suite of developer tools and low burdens to access. Government agencies also offer a number of apps that facilitate access to a wide range

of public informational tools, services, and resources. The following are just a few of the content-rich apps offered by these developers:

- a. **National Park Service App** is the official app for all 420+ national parks. The app provides interactive maps, tours of park places, on-the-ground accessibility information, and more to help users make the most of their visit to national parks.
- b. **Music Volume EQ** is an app developed by Dub Studio Productions, a family music business that gives people control over the music on their phone with an equalizer, bass booster, and 3D virtualizer to simulate different acoustic environments.
- c. **Forest Stay Focused** is an app that helps people take a break from their smartphones and focus on other activities.
- d. **Atom: Meditation for Beginners** is a meditation app that helps users build a meditation practice with guided meditations, breathing exercises, and gratitude techniques.
- e. **Ridely** is an online voice and training app for the equestrian community that provides personalized training programs, a library of videos and articles, ride logging functionality, and connection with a broader community of equestrians.
- f. **Yorescape** recreates historical cities and civilizations digitally for users to explore the ruins of ancient Egypt, Greece, Italy, Lebanon, and Mexico. The app eventually hopes to cover sites around the world.
- g. **SHI: Language Games** is an app developed by anthropologists that uses interactive games and recorded voices to teach native Alaskan dialects.
- h. **Voloco** is an app that helps aspiring singers, rappers and content creators to perfect their sound and achieve near-studio quality vocals using just their phone.

- i. **Tarjimly** is a free translation app used by doctors, aid workers, and NGOs worldwide in work to support refugee communities and facilitate the provision of emergency services.
- j. **Be My Eyes** uses AI to provide detailed visual descriptions of videos and photos to assist the millions of visually impaired people worldwide by giving them back a sense of independence and a connection to the world around them.
- k. **Yuka** is an app that scans product labels to reveal their ingredients and health impact.
- l. **Peanut** is an app designed for moms to connect, make friends, find support, and build community through all stages of motherhood.

19. Google Play facilitates the development and distribution of these and millions of other apps that act as platforms for communication, expression, education, knowledge, and creativity. Google Play also connects the developers who create those offerings to a global audience and allows developers to learn from the feedback of that global audience to improve and refine their expressive offerings. By facilitating this expression, and connecting users to informational and expressive tools that have been vetted for security, Google Play serves as a vital conduit of information, knowledge, communication and expression.

20. This is true for youth, just as it is for adults. Through educational apps, online libraries, news platforms, and social networks, youth can access real-time information about current events, explore academic subjects beyond their school curricula, connect with peers globally, and develop digital literacy skills essential for future success.

### **III. Privacy, Safety, and Security Are the Pillars of Google Play's Service**

21. Google Play provides a point of access to this vibrant ecosystem accompanied by thoughtfully-designed safeguards and digital literacy tools to help families critically evaluate information sources and privacy implications and navigate online spaces safely.

22. We run more than 10,000 security checks on every app offered in our store.<sup>3</sup> These checks happen before an app is available in the store and before an app is updated. Our built-in malware protection, Google Play Protect, also checks both apps and devices for harmful behavior. It runs a safety check on apps from Google Play before they are downloaded, checks user devices for potentially harmful apps and malware from other sources, warns users of potentially harmful apps, deactivates and removes certain apps, and prevents installation of certain apps from unverified sources. Google Play Protect scans more than 200 billion Android apps per day.<sup>4</sup>

23. App publishers must declare how they collect and handle user data for the apps they publish on Google Play and provide details about how they protect this data through security practices like encryption. This includes data collected and handled through any third-party libraries or software developer kits used in the apps. Google Play publishes this information in the Data Safety section of each Google Play listing, providing users with transparency into how each app collects, shares and protects their data before they install the app. And by reviewing these data safety reports, which are prepared and presented in a way that makes the information useful and intuitive, users can make more informed decisions about the apps they choose to download and use.<sup>5</sup>

24. Google Play users have control over what data Google Play uses to generate their search results and recommendations within the store. For example, users can tell Google Play not

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<sup>3</sup> Suzanne Frey, *6 Ways Google Play Helps Keep You Safe*, Google Keyword (May 6, 2025), <https://perma.cc/6WVM-T45A>.

<sup>4</sup> Google Play Help, *Use Google Play Protect to Help Keep Your Apps Safe & Your Data Private*, <https://perma.cc/6B8V-ZXK3>.

<sup>5</sup> Google Play Console Help, *Understanding Google Play's App Account Deletion Requirements*, <https://perma.cc/H9UK-C8CF>.

to use data associated with a particular app for personalization within the store.<sup>6</sup> Our data deletion policy also empowers users with greater clarity and control over their data.

25. For in-app purchases made through Google Play Billing, Play's secure billing system, Google Play ensures users can securely purchase digital content and subscriptions. Personally identifiable information like credit card details stays between the user and Google. It is securely stored and is not shared with app publishers.

26. For an extra level of security, users can also require purchase verification for purchases made through Google Play Billing, which ensures that each purchase made on Google Play through a user's account is first authenticated with a password or biometrics.

27. Google Play also utilizes a number of controls to combat potentially harmful content that does not belong in the Google Play community. We remove apps that, for example, are found to promote violence, endanger children, or allow users to impersonate others. We likewise prohibit apps that are deceptive, malicious, or intended to abuse personal data. We also work to reduce low-quality apps, such as those that do not load properly or provide little value to users, thereby undermining trust in Google Play offerings. As new market risks and technology evolve, we continue to invest in machine-learning detection, enhanced app review processes, and our Google Play Developer Program Policies to stop apps with abusive or malicious content before anyone can install them.<sup>7</sup>

28. For apps in select Google Play categories, we also offer badges that appear on the app description page and signal an extra layer of validation and to help users find safer and more

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<sup>6</sup> Suzanne Frey, *6 Ways Google Play Helps Keep You Safe*, Google Keyword (May 6, 2025), <https://perma.cc/6WVM-T45A>.

<sup>7</sup> Google Safety Center, *How We Help Keep Google Play Safe for Users and Developers*, <https://perma.cc/ZZ8Z-P7H2>.

high-quality experiences. For instance, our “Government” badge assists users in identifying official government apps—such as the Internal Revenue Service’s IRS2GO app and the U.S. Department of Veterans Affairs’ Health and Benefits app.

29. Google Play has specific policies to protect, and programs to support, our youngest users. The Google Play Families Policies apply to apps for which the target audience is children under the age of consent and require those apps to meet heightened requirements, including app content that is accessible to, and appropriate for, such children. Apps in the Google Play Families program also are eligible for inclusion in the Teacher Approved Program, through which teachers and education specialists recommend high-quality apps for kids on Google Play. Teachers and education specialists rate the apps using a globally-relevant framework that considers things like design, enrichment, and appropriateness. Apps that rate highly enough to make it into the Teacher Approved program are gathered on the Kids tab on Play, making it easy for parents and families to find high-quality kids content. And as discussed further below, for supervised minor accounts, Family Link permits parents to restrict access to specific apps.

#### **IV. Google Play Offers Parental Controls and Family Friendly Features**

30. Google Play is committed to empowering parents and families to make individual choices with technology and helping them create healthy, positive digital habits. This includes supporting age-appropriate experiences with the apps, games, books, and other content offered in the Google Play store. To this end, 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.

31. Parents of children under the age of 13 are required to use Family Link to create and monitor a Google Account of any child under the applicable age of consent in their region, 13 in Texas. Family Link is a parental control infrastructure that allows parents to manage and

supervise their children's Google Account and use of managed devices. For supervised children, Family Link requires parents to approve app downloads and purchases made through Google Play and sets default content filters that prevent access to content rated above the default rating. Family Link also provides tools for parents to, among other things, understand how children are spending time on managed devices, set app-specific screen time limits, block apps or websites, and manage privacy settings and permissions.<sup>8</sup> Family Link's controls apply across Google Play's suite of offerings, including apps, games, movies, TV, and books.<sup>9</sup>

32. Families can also choose to use Family Link to supervise the Google Accounts and devices of teens who are above, as relevant in Texas, 13 years old. Google Play also enables users of all ages to set default content filters on their device.

33. To help parents in making informed choices about whether or not their child should download specific apps and games, Google Play requires each app and game developer to obtain an age rating for the content of their offerings and indicate whether children are the target audience and if so, which age groups. Content ratings on Google Play are provided by the International Age Rating Coalition (IARC) and are designed to help publishers communicate locally relevant content ratings to users. Regional IARC authorities maintain guidelines used to determine the maturity level of the content in an app and any ads that appear. Ratings are based on a number of factors, including sexual content, violence, drugs, gambling, and profane language. We do not allow apps

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<sup>8</sup> Google For Families Help, Purchase Approvals on Google Play, <https://perma.cc/3QE3-TKV6>; Google Guidebooks, Manage Your Child's Google Play Apps, <https://perma.cc/T73Q-LKYT>; Madhur Chadha, *A New Way for Families to Make Purchases on Google Play*, Google Keyword (Dec. 20, 2022), <https://perma.cc/CF73-7C8J>; Google for Families Help, Use a Family Payment Method on Google Play, <https://perma.cc/W28C-ED3S>.

<sup>9</sup> Google For Families Help, How to Set Up Parental Controls on Google Play, <https://perma.cc/K34B-M78S>.

without a content rating on Google Play.<sup>10</sup> If children are the target audience for an app, the Google Play Families Policies apply and impose additional restrictions on the app or game.<sup>11</sup>

34. Google Play also enables publishers to indicate that their app is not intended for users under the age of 18 and that they do not want their app to be available for such users. We recently began implementing age assurance technology designed to recognize users in the United States who are under 18 so we can provide automatic safeguards and enhanced protections. Among other protections, Google blocks users identified in our systems as under the age of 18 from downloading apps restricted to adults. This is done without sharing data with developers.<sup>12</sup>

35. Google Play further requires developers to provide their Terms of Service and Privacy Policy, which are available to supervising parents in the Family Link app approval flow, so that they can review critical documentation about the app, including any age restrictions, data privacy practices or other elements that may be important to their decision.

36. As noted above, Google Play also offers features to help parents find family-friendly content. In the Kids section of the store, parents can find teacher-approved apps and games rated for different age categories (such as 0-5, 6-8, and 9-12). Parents and minors can also identify this content through the “Teacher approved” badge, which signifies apps that have been reviewed and rated highly by teachers across various dimensions, such as language, vocabulary, user interface, appropriateness of visuals and content, and features that spur creativity and learning.<sup>13</sup>

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<sup>10</sup> Google Play Console Help, Content Ratings, <https://perma.cc/5TSX-KCKB>.

<sup>11</sup> Google Play Console Help, Google Play Families Policies, <https://perma.cc/89ZY-H42F>.

<sup>12</sup> Mindy Brooks, *Ensuring a Safer Online Experience for U.S. Kids and Teens*, Google Keyword (Jul. 30, 2025), <https://perma.cc/5CV6-QQ4R>.

<sup>13</sup> Google Play, Build Teacher Approved Apps, <https://perma.cc/3C5W-G5WR>.

We also explain why the app received the badge, for example, whether it is good for learning, is thoughtfully designed for children, spurs creativity and imagination, and so forth.

37. To help parents navigate the parental features and controls available for Google Play, we provide a parental guide, accessible through our Google Help pages. The Guide allows parents to explore a range of topics and obtain step-by-step instructions about, for example, how to supervise child accounts, restrictions on advertising, controls to restrict mature content, setting screen limits, and using password protection to prevent accidental purchases.

## **V. Compliance Challenges**

38. I understand the Act provides that, starting January 1, 2026, app stores must “verify” the “age category” of users who create new accounts with Google Play; link each new account of a minor to an account belonging to a verified parent or guardian; obtain parental approval for each app download and purchase made by such a minor; send age signals to each app publisher; and display age ratings and explanations for each offering listed in the store. Although Google already offers parents many of these features, the Act’s mandatory nature imposes significant burdens for both Google Play and users. In particular, the mandatory age verification, parental tethering, and parental-approval requirements, combined with the requirement to send age signals to millions of app publishers without user or parental consent, create substantial compliance challenges, intrude on users’ privacy, and block both minors and adults from accessing speech in or facilitated by the Google Play store.

39. *Age verification (§ 121.021)*. The Act requires Google Play to “use a commercially reasonable method of verification to identify” the age category of a user when they first create an account with Google Play. The age categories include: child (under 13), younger teenager (13-15), older teenager (16-17), and adult (18 and over). The Act does not specify what amounts to a “commercially reasonable method.” Currently, there is no technically feasible and reliable way to

verify the ages or age categories of online users at account creation without processing personally identifiable information (PII) (such as government issued identification or biometric data) that many users do not want to share. All age-verification methods result in excluding some members of the population, such as those who do not have government IDs or whose facial geometry does not reliably indicate their age. As we have said, age verification “require[s] more data collection and use” from users, which can impede users’ “access to important information and services.” Google, Legislative Framework to Protect Children and Teens Online at 2, <https://perma.cc/8U7Z-HSSV> (“Google, Legislative Framework”). In other words, verifying users’ age categories will require us to collect more privacy-intrusive data from our users and impede users’ ability to use Google Play anonymously.

40. Similarly, the Act’s requirements for parental tethering and consent apply to users who qualify as a “minor,” a defined term that means a child younger than 18 years of age “who has not had the disabilities of minority removed for general purposes.” Determining whether a minor is emancipated would require the minor to provide sensitive legal documents to Google and Google to review such documentation. If this process fails at any step, the minor would have no parent or guardian to approve app downloads and could be cut off from downloading apps altogether.

41. *Parental tethering* (§ 121.022). For new users who have been identified as a minor, the Act requires Google Play to use a “commercially reasonable” method to affiliate the minor’s account with the account of a verified adult parent or guardian. But the Act does not specify what would constitute a commercially reasonable method to conduct such affiliation. Given the delicate, legally-defined, and sometimes changing nature of family relationships and guardianship, Google Play does not have the ability to verify the parent-child relationship between users without

requesting sensitive legal documents from users such as birth certificates, adoption papers, family court orders, and custody agreements. Further, developing systems to verify custodial arrangements as reflected through these documents would require a large upfront and ongoing investment of resources to, among other things, evaluate identity, verify documentation, make updates to reflect changing custodial relationships, and address inter-family disputes. Navigating these issues is outside the appropriate scope of a digital distribution platform such as Google Play, particularly given the significant potential risks to users' privacy.

42. *Parental consent for downloads, "significant changes," and purchases (§§ 121.022, 121.023).* Once users have verified their ages and affiliated their accounts with a parental account, the Act requires Google Play to obtain parental approval for every single app downloaded from the store. Google Play must do the same for every purchase made through every app downloaded that utilizes Google Play Billing, including books, articles, videos, online tutorials, educational content, and more. Further, the Act requires Google Play to obtain parental approval for minors' use of an app *anew* (despite already obtaining consent at initial download) each time a developer alerts Google Play that it has made a so-called "significant change" to the app's terms of service or privacy policy. The Act defines a "change" as "significant" if it among other things, (i) changes the type of personal data collected, stored or shared (even more protective changes), (ii) affects or changes the app's age rating or "contents or elements that led to that rating," (iii) adds new monetization features or advertisements, or (iv) materially changes the "functionality" or "user experience" of the app.

43. Although Google Play already offers parental-approval capability for supervised accounts, these obligations will exponentially expand the number of users covered by the

requirement and the number of approvals that must be obtained (including for apps that parents have already approved where the developer notifies Google Play of a “significant change”).

44. Compliance with the notification provisions will negatively affect users’ experiences, both parents and minors. Implementing such systems would significantly restrict, if not block entirely, access to information and services online. As we have said, legislatively mandating parental approval “could unnecessarily preclude some teens from accessing the basic benefits of the online world and have unintended effects on vulnerable youth.” Google, Legislative Framework at 2. Among other reasons, this is because some teens may have parents who are incapacitated, abusive, not proficient in English, not technologically savvy, or simply not available to respond to numerous requests per day (leading either to a complete cut off or delay in access).

45. *Sharing age signals with publishers (§ 121.024)*. Finally, Google Play must send signals of the age category of each minor user to the publisher of each app downloaded. Google Play must do so regardless of the developers’ ability to use or need for such information and without consideration of whether the user or parent has affirmatively consented to such sharing. Such mandatory sharing of personal data across millions of apps and developers—each with varying levels of digital security and sophistication—further undermines anonymous speech and imperils the data security of all Google Play users, increasing risks of breaches and misuse.

46. At a time when governments, citizens, and private entities share a goal in minimizing data collection and data sharing, the Act would vastly expand not only the collection of sensitive data but the universe of entities with whom it is shared. The Act requires Google Play to share this data with app publishers even if their apps do not have any content that could be considered inappropriate for children. Moreover, many app publishers are small businesses and sole proprietors who might not have the means to meet the Act’s data security and encryption

standards and do not want the responsibility of storing this sensitive information. This forced sharing of sensitive data puts developers in the difficult position of managing sensitive data without clear rules and safeguards. That burden could shut some publishers out of the Google Play store altogether, regardless of whether their apps should be age-restricted.

#### **VI. The Act Impedes Access to Google Play Offerings**

47. The age-verification process could discourage users from accessing the apps and offerings in Google Play. That is particularly true for users who may seek out information on sensitive or controversial topics. Other users may simply be unable to verify their age because they lack an acceptable form of ID or other reliable proof of age. These users—both adults and minors—could be shut out of the app store ecosystem altogether. Similarly, some minor users may be able to prove their ages but encounter difficulties proving their relationship with a parent, perhaps one who has a different last name. Other parents may simply not want to bother with the hassle of linking their accounts to a child’s account—or they might not want a Google Play account themselves. These minors too could be effectively shut out of the app store ecosystem until they turn 18.

48. The Act’s mandatory parental-consent requirements for minors to download app store offerings, make app store purchases, and continue to use those offerings after any “significant change” imposes yet a further obstacle to accessing protected speech. Parents cannot opt out of these requirements or provide blanket authorization, so they will have to manage parental-consent requirements every time their minor child chooses to download an app, book, or game. Parents may elect to forgo the complicated process or be unable to provide immediate consent—such as because they are sleeping, working, traveling, or without their phone. The minor children of these parents will need to either wait for consent (perhaps hours or days), search out the same content from decentralized and less secure sources, or forego accessing the speech altogether. These rigid

requirements—applying across all app content, from educational to social—undermine family autonomy and ignore varying maturity levels, especially in older teens. So this restriction “could unnecessarily preclude some teens from accessing the basic benefits of the online world and have unintended effects on vulnerable youth.” Google, Legislative Framework at 2.

49. On the publisher side, the “significant” change requirements could 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. This could result in users missing critical security or safety updates that are typically bundled with additional updates, thereby negatively impacting the overall Google Play experience for both users and developers.

50. Overall, the speech burdens imposed by the Act are vast. Many users will simply be less likely to use app stores at all, undermining app stores’ role as a vibrant forum for speech and the safety, security and privacy benefits they create for users, publishers, and the entire ecosystem. Likewise, some publishers will choose not to list their apps in the app store at all in light of the new compliance obligations that will apply to them and burden access for their users.

51. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Executed on October 15, 2025, in San Francisco, CA.

Signed by:  
  
9F793F69AEE1493...  
Matthew Bye

# Appendix 8

# EXHIBIT D

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

|                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>COMPUTER &amp; COMMUNICATIONS INDUSTRY<br/>ASSOCIATION</p> <p><i>Plaintiff,</i></p> <p>v.</p> <p>KEN PAXTON, in his official capacity as Attorney<br/>General of Texas,</p> <p><i>Defendant.</i></p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Civil Action No. \_\_\_\_\_

**DECLARATION OF JEREMY  
STRAUSER**

**DECLARATION OF JEREMY STRAUSER**

1. My name is Jeremy Strauser. I am Head of Product, Apps and Engagement at Audible. I am responsible for Audible's iOS, Android, and related app experiences. My day-to-day responsibilities include: directing the product specifications, design, and development of Audible apps including product features and capabilities such as listening, content discovery/collection, and in-app purchasing.

**BACKGROUND ABOUT AUDIBLE**

2. Audible is a leading producer and provider of audio storytelling. Audible believes that stories are transformative and seeks via its offering to inspire the imagination of all its users. With its innovative approach, Audible has driven a revolution in audio entertainment.
3. Through the Audible app, users can access a million-plus audiobooks, podcasts, and other audio content. Users can listen to educational works like Carl Sagan's *Cosmos*, biographical works such as Ron Chernow's biography of Alexander Hamilton, and classic works of literature like *Moby Dick*. There's also a category of children's audiobooks, where children can listen to tens of thousands of age-appropriate stories such as *The Wind in the Willows*, *Charlotte's Web*, *The Phantom Tollbooth*, *Matilda*, *Tuck Everlasting* and *The Little House in the Big Woods*.
4. Some titles are available to listen to for free on Audible; most titles, however, are offered for purchase within the app. A portion of Audible's revenue is generated via in-app purchases.



5. Audible is a wholly owned subsidiary of Amazon, which is a member of the Computer & Communications Industry Association (CCIA).
6. Audible operates throughout the world, including in Texas. It offers Kids Profiles (as explained below) in that state. Therefore it is reasonable to conclude that its Texas users include both adults and minors. The Audible app is available on the major app stores, including the Amazon Appstore, the Google Play Store, and the Apple App Store, including on mobile devices (both mobile phones and tablets).
7. In addition to offering audio programming created by others, Audible creates and produces original audio content. Working with some of the world's greatest creators, Audible produces original audio storytelling, as well as podcasts, to bring new ideas and voices to millions of listeners around the globe. Popular examples of Audible original productions include adaptations of David Copperfield, The Little Mermaid and Pride and Prejudice, along with Impact Winter.

#### **AUDIBLE'S EFFORTS TO PROTECT YOUNG LISTENERS**

8. As a part of Audible's service, Audible offers the ability to create a Kids Profile for parents and guardians concerned about controlling content selections for younger listeners. This is not required by Texas law. Parents or guardians can create a Kids Profile in the Audible app and add audiobooks and podcast episodes to their library for their children. Audible believes that parents and guardians should be able to choose to what extent to use those controls, based on their parenting philosophies, relationships with their children, the audio content at issue, and other factors.
9. The Kids Profile includes certain restrictions. For example, some titles are restricted from sharing, such as certain audiobooks with mature content and podcasts with ads. Titles available in a Kids Profile must be affirmatively shared by the parent or guardian account holder. Purchases cannot currently be made from a Kids Profile.
10. In addition, Audible complies with requirements imposed by app stores based on the app stores' content, rating, safety, and user-protection policies. For example, the app stores review Audible's content and test its features and functionalities to ensure the app complies with the app stores' policies in a sandboxed environment before the app is listed on the app stores.

#### **AGE VERIFICATION, PARENTAL CONSENT, AND AGE RATINGS**

11. I understand that Texas has passed the App Store Accountability Act and that this law imposes new and burdensome requirements on Audible. Audible is committed to offering the best experience for our customers, including features enabling parents and guardians to add titles to a Kids Profile created by them for their children. The State's new law requires Audible to undertake additional work to comply with the requirements, which



Audible believes is unnecessary in light of existing laws and Audible's proactive efforts to protect its young listeners, in part by providing parents with tools to control their children's access to content on the Audible app through the Kids Profile feature. I understand that the law applies to Audible as a "developer of a software application that the developer makes available to users in [Texas] through an app store" Tex. Bus. & Com. Code § 121.051. The Audible service can be downloaded through app stores on mobile devices. *Id.* § 121.021.

### *Age Verification and Parental Consent*

12. Texas' new law requires that app developers "shall create and implement a system to use [age verification] information received" from the app store to "verify" the age category of a user and - if a minor - whether parental consent has been obtained to download the app itself or in-app content. Tex. Bus. & Com. Code § 121.054(a). Audible will incur material costs building and implementing a new "system" to comply with the law, when Audible already has a system in place to safeguard young listeners using Audible with their parents' or guardians' permission.
13. The new law prohibits users of all ages from accessing the Audible app to listen to audio content unless the user first passes the app stores' age verification and parental consent test.
14. Audible is also concerned that these new age-verification controls will inhibit access to valuable content, including its own original works and educational content. Teen reading is already in decline, and audiobooks are a practical and popular on-ramp to spark interest and engagement in reading.
15. Restricting minors from an entire medium for consuming literature and other scholarly works will also decrease user engagement with the Audible app and downloads of in-app content.
16. Audible's Kids Profiles feature already puts control over content available to their children in the hands of parents and guardians. This new law introduces unnecessary additional friction into the listening experience. And a parent can no longer decide the appropriate level of supervision for their teen's engagement with Audible content, since the age-verification and parental consent processes are mandated.
17. To comply with this new law, Audible must undertake multiple new workstreams at material unanticipated cost, including: updating technology to ingest age signals; implementing verification and parental consent processes; designing, developing, and rolling out these functionalities on the version of Audible's app available within each app store; and mitigating an anticipated loss in engagement and revenue from the mobile Audible app due to the new barriers users will face in accessing Audible's service and downloading audiobooks onto their phones and tablets.



18. Audible’s mobile apps are designed specifically to optimize the user experience on mobile devices (smart phones and tablets). But apart from its mobile apps, Audible can be accessed through multiple other means. For example, Audible has a version of its app that is available on surfaces other than mobile devices, such as smart (internet-enabled) TVs, and operates a website, audible.com, that provides access to browse, purchase, and listen to our content on nearly any up-to-date internet browser. Because the new law’s requirements are costly and burdensome, Audible does not currently intend to expand the new law’s requirements on its non-mobile-app versions of the app.

### *Age Rating*

19. The new law requires Audible, as a software developer, to assign an age rating to its app and to each in-app purchase based on four categories: children under 13; younger teenagers 13-15; older teenagers 16-17; and adults 18 and older. *See* Tex. Bus. & Com. Code §§ 121.052(a), 121.021(b).
20. The new law specifically requires software developers to “assign to each software application and to each purchase that can be made through [Audible] an age rating” based on the law’s age categories. Tex. Bus. & Com. Code § 121.052(a). Developers must provide app stores with their content ratings and the “specific content or other elements that led to each rating.” § 121.052(b). The new law, therefore, can be read to require Audible to assign and explain specific, content-based age ratings to all manner of content.
21. The new law does not provide any objective criteria, or any further guidance, for how to ascribe age ratings.
22. Determining the age-appropriateness of content is highly subjective and may vary based on cultural, regional, and individual family values. Audible has historically held the view that its customers are in the best position to determine what is or is not appropriate for listeners of different ages. Requiring Audible to take a different approach to its relationship with its customers and opine on the age-appropriateness of literature, among other content, would create a significant burden for Audible as it would change the very structure of those important relationships that are foundational to Audible’s business.
23. Indeed, in the audiobook industry, there are no centralized, governing guidelines in place to age-rate content.
24. Audible does not currently assign age ratings to content. Introducing a state-mandated content rating system for a million-plus titles, most of which are created by third parties, will be extremely complicated and costly. To do so, Audible would need to stand up, manage and monitor an age rating system and build out a comprehensive metadata catalog. Given fragmentation of laws, Audible will likely need to maintain multiple data sets to accommodate different standards depending on state or country.



25. Determining age ratings may also involve other parties like the myriad content creators and providers who supply audio content to Audible to determine the age-appropriateness of audio titles, further complicating the age-rating process.
26. Additionally, keeping content ratings current would be impracticable as new content is continually added to Audible's catalogue offerings. The administrative burden would be enormous, particularly given that content ratings are so subjective.
27. Further, it is infeasible for Audible to implement age ratings for each of its million-plus audio titles on a state-by-state basis, when state standards could easily differ. For example, Texas may agree with Audible's decision to list a particular title as appropriate only for adults over 18, whereas Louisiana may disagree and believe the title is appropriate for "older teenagers." *Compare* Tex. Bus. & Com. Code §§ 121.052(a), 121.021(b) *with* La. Rev. Stat. § 51:1771(1).
28. Imposing barriers to literary and educational content based on age also threatens to undermine how young adult users (i.e., teenagers) can access information and learn about the world. Moreover, rigid age categories cannot account for the natural variation in maturity among teens, making such ratings simultaneously over-inclusive and under-inclusive.
29. Potential conflicts could also arise if Audible and content providers disagree on how a particular title should be rated which could negatively impact Audible's business relationships with its providers.
30. There is also a real risk that the same title could be assigned different ratings by different apps, which could result in users having access to a particular title in one app but not the other, which could have a substantial business impact on Audible.
31. But for the Act, Audible would not review and assign age ratings to content.

#### *Terms of Service Updates*

32. The new law also creates other unexpected burdens for Audible relating to updating its terms of service (TOS), which may not be easily accomplished. Specifically, Audible must notify App Stores "before making any significant change" to Audible's "terms of service or privacy policy." Tex. Bus. & Com. Code § 121.053(a). Significant changes that would trigger such notice and cause a potential change to Audible's TOS include "new monetization features"; "new opportunities to make a purchase in or using the software application"; "new advertisements in the software application;" and "material [] changes [to] the functionality or user experience of the software application." *Id.* § 121.053(b).
33. Because audiobooks are continually added by Audible for purchase, the new law could be interpreted to require Audible to update its TOS more frequently than would be



reasonable as well as require Audible to continually notify app stores about these changes. These requirements would impose ongoing, costly, and time-consuming compliance costs to implement. Further, both Apple and Google offer services in the spoken word segment: Google has YouTube, and both Apple and Google sell audiobooks. These competitors also run the app stores, who now have the authority to approve or disapprove of Audible's changes in terms of service, including new monetization features, raising the risk of competitive harm to the market for apps, thereby harming consumers, but also Audible and any other app developers, including but not only other audiobook developers, who compete with the app stores for products those stores themselves also offer to consumers.

Dated: October 15, 2025

Signed by:  
*Jeremy Strauser*  
51AF0AA92D3E4AC...

**JEREMY STRAUSER**



# Appendix 9

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

COMPUTER & COMMUNICATIONS  
INDUSTRY ASSOCIATION,

PLAINTIFF,

v.

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

DEFENDANT.

CASE No. 1:25-CV-01660-RP

**KEN PAXTON'S MEMORANDUM RESPONSE IN OPPOSITION TO  
PLAINTIFF COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION'S MOTION  
FOR PRELIMINARY INJUNCTION**

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## INTRODUCTION

The digital ecosystem flows through two companies—Apple and Google—whose tools allow for the ages of app store users to be identified. S.B. 2420 builds on these tools to allow parents maximum transparency to direct and supervise their children’s purchases of apps.

Apple’s App Store and Google’s Play Store are the primary, near exclusive, source of downloadable apps. Implementing age verification at the app store level, where these companies already have Device ID logins, improves the safety of Texas children without the use of personal identifying information such as facial scans or biometric markers. Apple and Google already use a system of age limits for their products. Both companies are also subject to consent decrees with the Federal Trade Commission (FTC) requiring them to obtain express, informed consent of in-app purchases.<sup>1</sup> S.B. 2420 extends these existing validation protocols to app downloads. The app stores maintain users’ personal data, which they will use to verify for application developers the user’s age category and whether parental consent has been obtained. User data is thus further protected by having a limited number of app stores verify the user’s data, instead of the countless application developers collecting user data or using third-party verifiers. S.B. 2420 also requires app store providers to safeguard users’ age data,<sup>2</sup> adding a further layer of protection.

Computer & Communications Industry Association’s (“CCIA”) contention that they are entitled to preliminary injunction is without merit. CCIA incorrectly claims that much of what is covered by S.B. 2420 is speech. S.B. 2420 regulates conduct, not content, and applies to all

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<sup>1</sup> Federal Trade Commission, *Press Release: FTC Approves Final Order in Case About Google Billing Kids’ In-App Charges Without Parental Consent* (Dec. 5, 2014), [ftc.gov/news-events/news/press-releases/2014/12/ftc-approves-final-order-case-about-google-billing-kids-app-charges-without-parental-consent](https://www.ftc.gov/news-events/news/press-releases/2014/12/ftc-approves-final-order-case-about-google-billing-kids-app-charges-without-parental-consent) [perma.cc/Q76S-TN5W]; Federal Trade Commission, *Press Release: FTC Approves Final Order in Case About Apple, Inc. Charging for Kids’ In-App Purchases Without Parental Consent* (Mar. 27, 2014), [ftc.gov/news-events/news/press-releases/2014/03/ftc-approves-final-ordercase-about-apple-inc-charging-kids-app-purchases-without-parental-consent](https://www.ftc.gov/news-events/news/press-releases/2014/03/ftc-approves-final-ordercase-about-apple-inc-charging-kids-app-purchases-without-parental-consent) [perma.cc/C8ZQ-HQAY].

<sup>2</sup> Tex. Bus. & Comm. Code § 121.025.

contracts minors may wish to enter on an app store. The Act does not “single out any topic or subject matter for differential treatment.”<sup>3</sup> Further, CCIA cannot satisfy the preliminary injunction factors. CCIA’s request for preliminary injunction should therefore be denied.

#### STATEMENT OF THE CASE

S.B. 2420, the App Store Accountability Act, Tex. Bus. & Com. Code § 121.001 *et seq.*, was signed by Governor Greg Abbott on May 27, 2025.<sup>4</sup> The Act was passed with broad bipartisan support—all but one Senator voted for the Act<sup>5</sup> and it received 120 Yeas against Nine Nays in the House.<sup>6</sup> This Act takes effect January 1, 2026. S.B. 2420 “requires parental approval and establishes age-verification standards for app stores. It restores parental empowerment.”<sup>7</sup>

S.B. 2420 applies age verification standards that exist in brick-and-mortar stores to the digital world. Texas Representative Caroline Fairly, a co-sponsor of the Act, remarked on the House floor that S.B. 2420 contains “really two key elements I want to address in this bill. The first one is contractual agreements. When parents and kids download apps, they are entering into a contractual agreement—essentially giving over their data to Big Tech, who then sells it online. The other part of this bill that’s really important is transparency. Parents deserve to have access to the information about the apps that their kids are downloading.”<sup>8</sup>

The Act requires the owners of app stores to “use a commercially reasonable method of verification” to identify an individual’s age. Tex. Bus. & Com. Code § 121.021(a). The accounts of minor children are linked to their parent’s or guardian’s account. Tex. Bus. & Com. Code

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<sup>3</sup> *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 71 (2022).

<sup>4</sup> S.J. of Tex. 89th Leg., R.S. 2888 (2025).

<sup>5</sup> S.J. of Tex. 89th Leg., R.S. 1326 (2025).

<sup>6</sup> H.J. of Tex. 89th Leg. R.S. 3721 (2025).

<sup>7</sup> H.J. of Tex. 89th Leg., R.S. 3578 (2025).

<sup>8</sup> *Id.*

§ 121.022. When the child wishes to download a new app, their “parent gets a notification, which then has the new age ratings . . . . And then the parent decides and can respond yes or no if they want their kid to download this app.”<sup>9</sup>

If an app store owner has a mechanism for displaying an age rating or other content notice, its owners shall “make available to users an explanation of the mechanism and display for each software application available for download and purchase on the app store the age rating and other content notice.” Tex. Bus. & Com. Code § 121.023(a). If the app store owner does not have a mechanism for displaying an age rating or other content, they shall display the rating assigned to the software application under Sec. 121.052 and the content or other elements that led to the assigned rating. Tex. Bus. & Com. Code § 121.023(b).

S.B. 2420 only applies to app purchases by minors in Texas.<sup>10</sup> App store owners violate the Act if they enforce a contract against a minor without parental consent, knowingly misrepresent to parents information regarding the app their child wishes to download, or improperly share a user’s personal data obtained for purposes of the Act.

#### STANDARD

The District Court has discretionary power to issue a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure. Injunctive relief however “is an extraordinary and drastic remedy, and should only be granted when the movant has clearly carried the burden of persuasion.” *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (citing *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985) (internal quotation omitted). Absent

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<sup>9</sup> *Id.* at 3585.

<sup>10</sup> *Id.* at 3587; Tex. Bus. & Com. Code § 121.024.

extenuating circumstances, no District Court should issue a preliminary injunction unless one is necessary to protect a plaintiff from irreparable injury or to preserve the court's power to render a meaningful decision after a trial on the merits. *Mayo Found. for Med. Educ. & Research v. BP Am. Prod. Co.*, 447 F. Supp. 3d 522, 527–28 (N.D. Tex. 2020).

The District Court should grant preliminary injunctions only when the plaintiff establishes the following: “(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury outweighs any harm that may result from the injunction to the non-movant; and (4) that the injunction will not undermine the public interest.” *Valley v. Rapides Parish School Bd.*, 118 F.3d 1047, 1051 (5th Cir. 1997) (citing *Roho Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990)). Though the balance of equities and public interest factors merge when a government is the opposing party, *Nken v. Holder*, 556 U.S. 418, 435 (2009), these four factors are nonetheless conjunctive—a plaintiff must carry its burden as to all four factors before a preliminary injunction may be considered, *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987).

#### SUMMARY OF ARGUMENT

This Court should not grant Plaintiff's request for preliminary injunction because Plaintiff can carry none of the four factors required for such relief.

*First*, Plaintiff is unlikely to succeed on the merits: S.B. 2420 is not vague, does not compel speech, or otherwise violate the First Amendment. *Second*, Plaintiff can show no irreparable harm that would be prevented by a preliminary injunction. The Apple and Google app stores already issue age ratings of the various apps they carry. The Act only requires app stores owners to use existing tools to provide more transparency to parents and protect children's safety. *Third*, Plaintiff

cannot satisfy the merged balance of equities and public interest factors. S.B. 2420 affirms the rights of parents to care for and make decisions for their children and maximizes the ability of parents to do that by requiring app stores to provide parents with information about apps that children may wish to download.

## ARGUMENT

### **I. CCIA IS UNLIKELY TO PREVAIL ON THE MERITS OF ITS FIRST AMENDMENT AND VAGUENESS CLAIMS.**

CCIA is unlikely to prevail on the merits of its First Amendment claims against S.B. 2420, on the basis that S.B. 2420’s various requirements for age verification, parental linking and consent, and the issuance of accurate age ratings of apps are unconstitutional.

#### **A. S.B. 2420’s Age Verification, Account Linking, and Parental Consent Requirements Do Not Violate the First Amendment.**

##### **1. The Age Verification Requirement Does Not Violate the First Amendment.**

Many of Americans’ most important civil rights are restricted to minors. Voting, the foundation of American democracy, is limited to those who have attained the age of eighteen, both at the federal and state level. U.S. CONST. Amend. XXVI; Tex. Elec. Code § 11.002(a). In Texas, the right to marry is restricted to those who reach the age of eighteen, with only limited exceptions.<sup>11</sup> Texas also makes it an offense to sell, rent, or even give a person under 18 years of age a firearm—and notably, in a fashion that mirrors S.B. 2420’s parental consent requirement— unless the minor’s parent or guardian has given written permission for the sale or effective consent for the transfer.<sup>12</sup>

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<sup>11</sup> Tex. Fam. Code § 2.003(a) (“A person under 18 years of age may not marry unless the person has been granted by this state or another state a court order removing the disabilities of minority.”).

<sup>12</sup> Tex. Penal Code § 46.06(a)(2) (regarding minors and firearms); (c) (requiring parental consent regarding firearms and minors).

Many products and services, particularly those which pose health hazards, or which may be addictive, are subject to age-based regulations, not all of which are based around the general age of majority. Generally, in Texas, the age of majority is 18 years of age.<sup>13</sup> However, some products are deemed so dangerous that the age of majority to be able to legally purchase or consume the product has been raised above the general age of majority. For example, Texas prohibits the sale of alcoholic beverages to “minors” under 21 years of age.<sup>14</sup> Likewise, Texas prohibits the sale of cigarettes, e-cigarettes, and tobacco products to “minors” under 21 years of age.<sup>15</sup> Sellers of both products are required to disclose the risks those products pose.<sup>16</sup> Surely, companies trying to sell these products would also rather not advertise product risks, yet, society recognizes the dangers of these products as significant enough to compel disclosures of the dangers.

These restrictions can constitutionally apply even to products which constitute First Amendment protected speech. Restrictions on minor access to content obscene as to minors, including when paired with a requirement of age verification, have been upheld by the Supreme Court more than once. *See Ginsberg v. New York*, 390 U.S. 629 (1968) (upholding a New York law prohibiting the sale of sexual content obscene to minors); *see also Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 499 (2025) (hereinafter “*Free Speech II*”) (upholding a Texas law requiring age verification from internet companies). In sum, states already impose a variety of age restrictions and disclosure requirements. S.B. 2420’s requirements are not categorically different.

**a. Texas Has a Strong Interest in Protecting Children.**

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<sup>13</sup> Tex. Civ. Prac. & Rem. Code §129.001.

<sup>14</sup> Tex. Alco. Bev. Code § 106.01–03.

<sup>15</sup> Tex. Health & Safety Code §161.082(a).

<sup>16</sup> *See* Tex. Health & Safety Code §161.084 (requiring health warning signs for tobacco sellers); 16 Tex. Admin. Code § 31.4 (requiring health warning signs for alcohol sellers).

Age verification with respect to varied types of media, specifically including online content, has been accepted as reasonable and constitutional. *Free Speech II* at 480, 481 (2025).<sup>17</sup> The well-being of its children is of course a subject within the State's constitutional power to regulate, with the state having a well understood strong interest in protecting children. *Id.* at 640; *see also* S.J. Res. 34, 89th Leg., Reg Sess. (Tex. 2025).<sup>18</sup> The well-being of its children is of course a subject within the State's constitutional power to regulate, with the state having a well understood strong interest in protecting children. *Ginsberg*, 390 U.S. at 640. Because of this interest in protecting children, “[i]t is well settled that a State or municipality can adopt more stringent controls on communicative materials available to youths than on those available to adults.” *E.g., Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212 (1975); *Ginsberg*, 390 U.S. at 641.

**b. Age Verification Requirement, Parental Consent, and Parental Account Linking Are Content Neutral, Not Content Based.**

As the Supreme Court has acknowledged, “deciding whether a particular regulation is content-based or content-neutral is not always a simple task.” *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 642 (1994) . To determine whether a statute is content neutral, the principal inquiry in speech cases generally—and in time, place, or manner cases in particular—is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The government’s purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others. *American Library Ass’n v. Reno*, 33 F.3rd 78, 84 (D.C.

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<sup>17</sup> That case dealt with another Texas statute requiring age verification for the protection of minors, allowing—as here—a vendor to use a “commercially reasonable method” to do so. *Id.*

<sup>18</sup> Added as an amendment to the Texas constitution: “To enshrine truths that are deeply rooted in this nation's history and traditions, the people of Texas hereby affirm 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.”

Circuit 1994). Government regulation of expressive activity is content neutral so long as it is “justified without reference to the content of the regulated speech.” *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771, (1976) (citations omitted)).

The Act in this case gives parents authority to supervise their children’s usage of applications social media usage but does not grant the state of Texas authority to either monitor an application or deny any person—minor or adult—from using one. That decision is properly left up to the parent. *See generally Ginsberg*, 390 U.S. at 640.

The age verification process does not therefore create a First Amendment issue. These sections don’t regulate Plaintiff’s members’ content moderation, so they don’t implicate their First Amendment speech rights. While a parent can limit a minor’s app usage with the Act’s authority; it would not be the State doing the restricting. *See Sorrell v. IMS Health, Inc.* 564 U.S. 552, 573 (2011) (“[P]rivate decision making can avoid governmental partiality and thus insulate privacy measures from First Amendment challenge.”); *Zbaraz v. Madigan*, 572 F.3d 370, 388 (7th Cir. 2009). To the extent this is even a First Amendment restriction, it is justifiable under any level of scrutiny. Plaintiffs’ real complaint is about the cost of compliance; they couch it in First Amendment terms because they are aware that they are not exempt from ordinary business regulations simply because First Amendment activity occurs on their platforms. *See Sorrell*, 564 U.S. at 567. Moreover, Google and Apple already require age verification to access their app stores, do allow parental approval, and rate and group their apps into age categories already—any alleged burden to them would be *de minimis*.

The Supreme Court has also held that when “speech” and “nonspeech” elements are

combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. *United States v. O'Brien*, 391 U.S. 367 (1968). As an example, the law analyzed in *Renton* by the Supreme Court treated “adult” theaters differently from others in where they could operate. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47 (1986). Despite this, the law—which had the purpose of preventing crime—a secondary effect—was not directly aimed at the content of the films shown. *Id.*; see also *Reno*, 33 F.3d at 85.

In this case, the Act’s purpose is specifically to protect minors and to provide parents with the information and means to do so. The Act should therefore be properly analyzed as content neutral. *Boos v. Barry*, 485 U.S. 312, 320 (1988); *O'Brien*, 391 U.S. at 377; see also *Free Speech Coalition, Inc. v. AG of the United States*, 677 F.3d 519, 530 (3rd Cir. 2012). Content-neutral laws “are subject to an intermediate level of scrutiny because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue.” *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 642 (1994) (citation omitted). Under that standard, a law will survive review “if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests.” *Turner Broadcasting System, Inc. v. FCC*, 520 U. S. 180, 189 (1997) (*Turner II*) (citing *O'Brien*, 391 U.S., at 377).

**c. Even Assuming Arguendo Age Verification and Parental Approval/Linking Could Be Considered Content Based, H.B. 2420 Is Still Constitutional under Intermediate Review.**

First, certain types of material have historically had no First Amendment Protection. *Free Speech II*, 606 U.S. at 471. These types of expression—such as “obscenity, defamation, fraud, incitement, and speech integral to criminal conduct”—have been understood to fall outside the

scope of the First Amendment. *United States v. Stevens*, 559 U. S. 460, 468 (2010) (citations omitted). States generally may prohibit speech of this kind without “rais[ing] any Constitutional problem.” *Chaplinsky v. New Hampshire*, 315 U. S. 568, 571-572 (1942). Such prohibitions are subject only to rational-basis review, the minimum constitutional standard that all legislation must satisfy. *See District of Columbia v. Heller*, 554 U. S. 570, 628, n. 27 (2008). Any application with such material would fall into this category; states have the right to prevent the provision of obscene materials to children. *Free Speech II*, 606 U.S. at 472, 474 (citing *Ginsburg*, 390 U.S. at 637-38).

Second, the Act itself requires age verification to be done by owners of an “app store.” Tex. Bus. & Com. Code § 121.021. These stores are commercial enterprises and generate income from app purchases and from advertising based on persons coming to their virtual store to make purchases. The stores are commercial enterprises and at most, the Act could be seen as incidentally affecting commercial speech. *see generally NetChoice, Inc. v. Paxton*, 49 F.4th 439, 485-88 (5th Cir. 2022). Commercial speech receives lesser First Amendment protection than “core” speech, such as political expression. *Central Hudson Gas & Elec. Corp. v. Public Service Comm’n of New York*, 447 U.S. 557, 562-63 (1980); *see also United States v. Benson*, 561 F.3d 718, 725 (7th Cir. 2009). Even where directly regulated—and not just incidentally burdened, as here—restrictions on commercial speech are only entitled to intermediate scrutiny. *See, e.g., Florida Bar v. Went for It*, 515 U.S. 618, 624 (1995).

For a similar Texas law, H.B. 1181, the Supreme Court recently determined that an age-verification requirement for websites with sexual content was appropriate under intermediate scrutiny. *Free Speech II*, 606 U.S. at 483.

[A]dults have no First Amendment right to avoid age verification, and the statute can readily be understood as an effort to restrict minors’ access. Any burden

experienced by adults is therefore only incidental to the statute's regulation of activity that is not protected by the First Amendment. That fact makes intermediate scrutiny the appropriate standard under our precedents.

*Id.* (citing *Boy Scouts of America v. Dale*, 530 U. S. 640, 659 (2000)). Although the strength of Texas' interest and the lack of any real burdens on speech would allow Texas to pass a strict scrutiny analysis, any burden imposed by age verification is only incidental and does not justify strict scrutiny. *Id.* "Strict scrutiny therefore cannot apply to laws, such as in-person age-verification requirements, which are traditional, widespread, and not thought to raise a significant First Amendment issue." *Id.* at 485.<sup>19</sup>

## **2. S.B. 2420's Parent Account Linking Requirement Does Not Violate the First Amendment.**

If a user is found to be under 18, app stores must then link the minor's account with an account belonging to a parent or guardian. Tex. Bus. & Com. Code § 122.022. Plaintiff admits that Apple, Google, and Amazon already provide protections for any app directed at children. This includes allowing parents to lock screens, block apps, and filter by the already existing age categories (that closely match the ones used by Texas within H.B. 2420). Plaintiff has failed to show that linking a parental account to a minor's is a burden or otherwise violates the Constitution. As shown above, even adults do not have a First Amendment right to avoid verifying their age. *Free Speech II*, 606 U.S. at 483. And the statute can readily be understood as an effort to protect minors. Any burden experienced by adults is therefore only incidental to the statute's regulation of activity that is not protected by the First Amendment.

### **a. Parental Control Is a Fundamental Value and Right.**

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<sup>19</sup> Texas is therefore not required to adopt the least restrictive means of advancing its interests to pass scrutiny. *Ward*, 491 U. S. at 800. It is sufficient that verifying age by government identification and transactional data is a legitimate legislative choice that does not impose excessive burdens on users. *Free Speech II*, 606 U.S. at 498.

Just this week, Texas voters “enshrine[d]” the following “truths that are deeply rooted in this nation’s history and traditions,” into the Texas Constitution: “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.” S.J. Res. 34, 89th Leg., Reg Sess. (Tex. 2025).<sup>20</sup>

The courts have long recognized a parent’s fundamental right to direct the upbringing of their children. *See Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Farrington v. Tokushige*, 273 U.S. 284, 298 (1927); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925). The Act in this case forwards both the state’s interest in protecting children from objectionable material, while also empowering parents to practically use their authority in determining how to raise their child.

As pointed out above, the state is not banning any material nor preventing any person—whether parent or child—from receiving an app. The law merely provides parents with information that they can use to protect their children from objectionable material. This is precisely the type of decision that should normally be left up to the parents. *See generally Ginsberg*, 390 U.S. at 640. Moreover, because the parental approval portion of the Act don’t regulate Plaintiffs’ members’ content moderation, so they do not directly implicate their First Amendment speech rights. While a parent can limit a minor’s app usage with the Act’s authority; it would not be the State doing the restricting. *See Sorrell v. IMS Health, Inc.* 564 U.S. at 573.

Nor does the decision in *Brown* require the Act to pass strict scrutiny, although the strength of the state’s interest and the lack of any real burden would allow it to pass such a test. *See*

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<sup>20</sup> *See also* Ayden Runnels & Carla Astulddillo, *All 17 Texas Constitutional Amendments Pass*, The Texas Tribune, <https://www.texastribune.org/2025/11/04/texas-constitution-amendments-propositions/> (Nov. 5, 2025, 2:55 PM) (showing voting results regarding the 2025 proposed amendments to the Texas Constitution).

*NetChoice v. Bonta*, 761 F. Supp. 3d 1202, 1216 (N.D. Calif. 2024) (citing *Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 799-804 (2011)). The *Bonta* court recognized that previous decisions were driven by the technology at the time and that the rapid pace of development could easily make past factual determinations—such as the burden of age verification—inapplicable. *See generally Bonta*, 761 F. Supp. at 1209, 1216-17.

Indeed, “the Supreme Court has expressly declined to hold that governments are ‘incapable of enacting any regulation of the Internet designed to prevent minors from gaining access to harmful materials.’” *Id.* at 1216 (quoting *Ashcroft v. ACLU*, 542 U.S. 656, 672 (2004)). Further, the Supreme Court has upheld regulations that restricted speech as to minors but not to adults. *See, e.g., Ginsberg*, 390 at 629. And in 2025, the court analyzed age-related restrictions on internet use using the intermediate scrutiny standard. *Free Speech II*, 606 U.S. at 499.

**i. The Term “Material[] Change[]” Is Not Unconstitutionally Vague**

Plaintiff has challenged Tex. Bus. & Comm. Code §§ 121.022 and 121.053, alleging that its requirement that a developer notify a supervising adult when an application “materially changes” the functionality or user experience of the software application is unreasonably vague. This contention fails to take the phrase “material[] change[]” in context. Tex. Bus. & Comm. Code § 121.053(b)(4). Within Section 121.053, H.B. 2024 requires the developer of a software application to provide notice when making any “significant change” to the terms of service or privacy policy of the software. *Id.* at 121.053(a). These “significant changes” are listed: (1) the type of personal data collected, stored, or shared; (2) changes the age rating assigned to it; (3) adds new monetization; or (4) “materially changes the functionality or user experience. . . .” *Id.*

The phrase “material change” to the application—merely one category of the significant

changes under the Act’s language—must be read in tandem with the other listed significant changes in subsection 121.053(b); the specific items named by the Act provide guidance for how a “material change” is to be judged. Added to this is that the change must be “material” in light of the goals of the Act itself: protecting minors from unsuitable material.

When evaluating the vagueness of a statute, an undefined word or phrase does not render a statute void when a court can ascertain the term’s meaning by reading it in context. *See Boos*, 485 U.S. at 332. From the other listed “significant” changes and the stated goals of the Act, a reasonable person can determine whether a change to an application is material or not.

An ordinance is void for vagueness only if a person of ordinary intelligence “cannot reasonably interpret what is prohibited.” *In re: Tenn. Pub. Indecency Statute, Nos. 96-6512, 96-6573, 97-5924, 97-5938*, 1999 U.S. App. LEXIS 535, 1999 WL 55276 at \*4 (Jan. 13, 1999) (citing *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). “[I]t must be kept in mind that for a statute to be vague it must contain ‘terms so vague that men of common intelligence must necessarily guess at its common meaning.’” *Id.* (quoting *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1929)). This is simply not the case here. “[P]erfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.” *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). “[W]hen the meaning of a word or phrase is commonly understood, a statute’s failure to define the term will not render the statute void for vagueness. The statute need not define with mathematical precision the conduct forbidden.” *In re: Tenn.*, 1999 WL 55276 at \*4. (internal citations omitted).

Judicial precedent is also relevant in construing the words of a statute in a vagueness challenge. *E.g.*, *Grayned*, 408 at 110; *National Advertising*, 912 F.2d at 411. The term “material

change” is used by courts in various contexts as a reasonably clear measure in numerous contexts without the need for a specific definition. See *Pavatt v. Carpenter*, 928 F.3d 906, 932 (10th Cir. 2019) (“material change in the law”); *Alaimalo v. United States*, 645 F.3d 1042, 1047-48 (9th Cir. 2011) (same); *Harrison v. Ollison*, 519 F.3d 952, 960 (9th Cir. 2008) (same); *United States v. Symington*, 195 F.3d 1080, 1090 (9th Cir. 1999) (using “material change in financial condition” without definition). The concept of a material change is well established, easily understood, and not vague.

**B. S.B. 2420’s Age Rating Requirements Do Not Violate the First Amendment.**

Texas is not alone in its use of state power require warnings or disclosures about potentially dangerous products. Consider the state of California’s ubiquitous warnings added by Proposition 65, which require businesses to label all products with warnings about chemicals known to the state of California to cause cancer or reproductive toxicity. Cal. Health & Safety Code, § 25249.6. Likewise, Texas, through S.B. 2420, seeks to enable parents to protect their children from Apps that the parents might find to be harmful to their children, by requiring app stores to provide standardized categorical age ratings of the various apps found therein.

**1. S.B. 2420’s Requirement that App Stores Display Accurate Age Ratings Of Apps Does Not Unconstitutionally Compel Speech.**

The age rating display requirement is not, properly understood, a content-based burden, because S.B. 2420’s requirement applies to all apps regardless of their content.

**a. S.B. 2420’s Age Rating Requirements Regulate Commercial Speech And Are Not Unconstitutionally Vague.**

The age ratings provided by S.B. 2420 are an attempt to match one of many industry standards for age rating systems. Texas S.B. 2420 defines four age categories for app store users: child (under 13), younger teenager (13–15), older teenager (16–17), and adult (18 or older). This law requires app stores to verify user ages and obtain parental consent for minors (users under 18)

before they can access or purchase apps and in-app content. See Tex. Bus. & Comm. Code § 121.021(b). The Google Play store currently uses the rating categories established by the Entertainment Software Rating Board, ESRB, in North and South America.<sup>21</sup> And the ESRB ratings are based upon the estimated suitability of various content for age brackets, namely “Everyone 10+,” Teen, “Mature,” and “Adults Only,” which declare content “generally suitable” for those ages 10, 13, 17, and 18 and up, respectively.<sup>22</sup> Yet, where other countries or regions require differently, Google Play provides different arrays of ratings.<sup>23</sup> The Apple App Store, on the other hand, uses its own rating system for most regions.<sup>24</sup> Apple’s age rating system uses the age ranges of 4+, 9+, 13+, 16+, and 18+.<sup>25</sup> Notably, the latter three categories line up precisely with the brackets set forth in S.B. 2420. Google errs on the side of caution, too: any apps which do not have a content rating are not shown in the Play Store app for minor accounts subject to parental controls until such apps receive a rating. All of this suggests that app stores are in fact quite comfortable with making judgments regarding the appropriateness of content for minors of various ages, and with complying with the strictures of a variety of jurisdictions.

The Act’s provisions generally distinguish between minors (all users under 18 years of age) and adults. Plaintiff complains that they are not provided sufficient guidance on the listed categories. However, this is a complete non-issue under the statute and places no risk on any application developer. To obtain consent from a minor’s parent or guardian under Subsection (d),

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<sup>21</sup> Apps & Games content ratings on Google Play, Google Play Help, <https://support.google.com/googleplay/answer/6209544?hl=en#zippy=%2Cnorth-south-america>.

<sup>22</sup> *See Ratings Guide*, ESRB, <https://www.esrb.org/ratings-guide/>.

<sup>23</sup> This includes schemes which have age brackets of 3/7/12/16/18 (Used by both the Pan European Game Information and the International Age Rating Coalition), 6/12/16/18 (Germany), 10/12/14/16/18 (Brazil), 12/15/19 (Games in Korea), and 3/7/12/16/19 (other-than-games in South Korea).

<sup>24</sup> *App Ratings Values and Definitions*, Apple Store Connect Help, <https://developer.apple.com/help/app-store-connect/reference/age-ratings-values-and-definitions/> (explaining ratings, except for Australia, Brazil, and Korea).

<sup>25</sup> *Id.*

the owner of an app store may use any reasonable means to disclose to a parent or guardian the software at issue, the age rating the app is assigned, and—most importantly—“**the specific content or other elements that led to the rating assigned**” under Section 121.052. Tex. Bus. & Comm. Code § 121.021(f) (emphasis added). The app store must then ensure that the consent is given by the parent. *Id.* at § 121021(f)(3).

Put simply, Section 121.021(f) states that the parent should be notified not only of the age rating that the application developer has assigned to the application, but also those factors that led to the categorization applied to it. If the parent disagrees with the developer’s age category—no matter how reasonable—then the parent makes his or her decision based on the factors listed by the developer, and not on the age category selected by it. The developer is therefore not placed at any risk or disadvantage under the Act for the use of the age categories as a mere labeling tool.

**b. At A Minimum, 2420’s Age Rating Requirement For Apps with Obscenity As To Minors Must Survive.**

At a minimum, the age rating requirement of whether an app is appropriate for an audience over 18 must survive, insofar as the content within the app rated 18+ is so rated due to the presence of content which would be obscene as to minors. *See Free Speech II* at 466 (“The power to require age verification is within a State’s authority to prevent children from accessing sexually explicit content.”). Here, the standards for obscenity as to minors are inarguably clearest, and so apps which are ostensibly rated “ages 12 plus” but allow users to choose between “normal, spicy, or triple X spicy modes” for “sexual conversations” are not forthrightly disclosing the age appropriateness of their app with regard to content obscene as to minors.<sup>26</sup>

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<sup>26</sup> Texas State Senate Affairs Committee Hearing on S.B. 2420, March 31, 2025, ECF No. 7-8. at 26.

## **II. THE REMAINING FACTORS DO NOT FAVOR A PRELIMINARY INJUNCTION.**

### **A. Plaintiffs Cannot Show Irreparable Injury.**

The projected harms caused to plaintiff by the enactment of S.B. 2420 are vastly overstated. The Apple and Google app stores already issue age ratings of the various apps they carry. They already display those issued ratings. The App stores verify the ages of their users, and provide tools which enable parents to limit what apps children are able to download or make purchases in. And Plaintiffs acknowledge as much. As such, very little burden is placed on plaintiffs to meet the requirements for app stores under S.B. 2420.

### **B. The Balance of the Equities and the Public Interest also favor the enforcement of S.B. 2024.**

As noted above, Texas has approved a new amendment to its constitution “enshrining” the long understood right and responsibility of a parent “to nurture and protect the parent’s child,” including the right to “make decisions regarding the child’s upbringing.” S.J. Res. 34, 89th Leg., Reg Sess. (Tex. 2025). S.B. 2420 ensures that parents are put in a position to make those decisions regarding their children’s use of applications on mobile devices. Far from taking away parental decision making, S.B. 2420 maximizes it by requiring app stores to provide parents with information about apps that children may wish to download, and requiring those app stores to give parents the ability to say “yes” or “no” with consistent standards across app stores to enable parents to do so such that they are fully informed in their decisions.

Given that the people of Texas overwhelmingly voted to enshrine parental rights even more firmly in the Texas Constitution just earlier this week, it is plain that the public has an interest in ensuring that the app stores will enable Texas parents to consistently make informed decisions about the mobile device use of their children.

**III. THE AGE VERIFICATION, PARENTAL VERIFICATION, PARENTAL CONSENT, AND AGE RATING PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND FROM S.B. 2420 AS A WHOLE.**

As referenced by Plaintiff, the Act contains an express severance clause.<sup>27</sup> When the Legislature includes an express severability clause in the relevant statute, the inquiry is straightforward. Absent extraordinary circumstances, the Court should adhere to the text of the severability clause. *Barr v. Am. Ass’n of Political Consultants*, 591 U.S. 624 (2020). That is because a severability clause leaves no doubt about what the enacting Congress wanted if one provision of the law were later declared unconstitutional. *Id.* A severability clause indicates “that Congress did not intend the validity of the statute in question to depend on the validity of the constitutionally offensive provision.” *Id.* (quoting *Alaska Airlines, Inc. v. Brock*, 480 U. S. 678, 686 (1987)).

The courts presume that an unconstitutional provision in a law is severable from the remainder of the law or statute, creating a “strong presumption” in favor of severability. *Id.* “Generally speaking, when confronting a constitutional flaw in a statute, we [the Supreme Court] try to limit the solution to the problem, severing any problematic portions while leaving the remainder intact.” *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 508 (2010) (internal quotation marks omitted, material in brackets added); *see also Regan v. Time, Inc.*, 468 U. S. 641, 652–653 (1984) (plurality).

Plaintiff states, in conclusory fashion, that the statute cannot be executed in accordance with legislative intent. Defendant incorporates its arguments regarding age verification, parental

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<sup>27</sup> “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.” Tex. Bus. & Comm. Code § 121.101(2).

verification, parental consent, and age ratings that show the attacked measures are constitutional. Each of those items, even if modified by the Court or eliminated from the Act, would not doom the entire law. For example, as referenced above, Texas S.B. 2420 defines four age categories for app store users. *See* Tex. Bus. & Comm. Code § 121.021(b). The most legally significant of those categories is the “18 or older” age rating under the Act, which separates minors from adults. While the other categories are created, the information that is supplied to a supervising adult for any minor’s account includes not just the age category from the developer, but also “the specific content or other elements” that led to the rating assigned by it. *Id.* at § 121.021(f)(1)(C). The various ratings within the category of “minor” may be a useful shorthand to help inform the supervising adult, but it is the underlying criteria (language, violence, sexual content) relayed to the adult that allows parent to make a decision regarding consent. The Act could survive if the age ratings were severed.

### **Conclusion**

Defendant respectfully requests that this Court deny Plaintiff’s request for a preliminary injunction.

Date: November 7, 2025

Respectfully submitted.

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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on November 7, 2025 and that all counsel of record were served by CM/ECF.

/s/ Zachary W. Berg  
**ZACHARY W. BERG**

# Appendix 10

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

COMPUTER & COMMUNICATIONS  
INDUSTRY ASSOCIATION,

*Plaintiff,*

v.

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

*Defendant.*

Civil Action No. 1:25-cv-1660

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

The Computer & Communications Industry Association (“CCIA”) brings this civil action against Defendant for declaratory and injunctive relief and alleges as follows:

**INTRODUCTION**

1. The Texas App Store Accountability Act, Tex. Bus. & Com. Code §§ 121.001 *et seq.*, (“S.B. 2420” or the “Act”) (Ex. A), imposes a broad censorship regime on the entire universe of mobile apps. In a misguided attempt to protect minors, Texas has decided to require proof of age before anyone with a smartphone or tablet can download an app. Anyone under 18 must obtain parental consent for every app and in-app purchase they try to download—from ebooks to email to entertainment. At the same time, Texas seeks to compel app developers to rate the age-appropriateness of their own apps and the millions of pieces of content available for in-app purchase according to Texas’ vague and unworkable set of age categories.

2. Our Constitution forbids this. None of our laws require businesses to “card” people before they can enter bookstores and shopping malls. The First Amendment prohibits such oppressive laws as much in cyberspace as it does in the physical world. *Packingham v. North*

*Carolina*, 582 U.S. 98, 104 (2017). The Act is both fatally overbroad and underinclusive to achieve its limited ends. It is also unnecessary: app stores and app developers already provide parents with tools to help them control what their children can access on their mobile devices. The Act's predominant effect is therefore to *remove* parental choice by imposing a one-size-fits-all, paternalistic restriction on the many millions of app store offerings (including books, movies, and games) and app store users, regardless of age and user preference.

3. CCIA is a leading trade organization representing internet, technology, and communications companies. CCIA's 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 covered by the Act. CCIA members' app stores curate and publish apps that distribute and facilitate the exchange of vast amounts of protected speech for both minors and adults, along with countless, life-enhancing tools and access to the world's knowledge, all through a mobile device. And CCIA members' apps collectively offer services for users to read, view, and create speech and information. The Act would prohibit all mobile app stores and app developers from disseminating all but a very select few apps without first complying with onerous age-verification, parental-verification, and parental-consent restrictions that burden the speech rights of the app stores, app developers, and their users.

4. These verification and consent mandates are the core features of the Act and impose burdens on accessing speech on mobile apps at three key chokepoints: (1) at account creation, (2) prior to downloading an app, and (3) on an ongoing basis for in-app purchases and when an app significantly changes its policies.

- a. *First*, all users who wish to access apps on a mobile app store must submit to a burdensome and privacy-invasive age-verification process designed to sort users

into one of several age-based categories. If a user cannot sufficiently demonstrate they are over 18 years old, the user must link their account to that of a parent or guardian, but only after the parent or guardian can prove both that they are over 18 and also that they have “legal authority” to make decisions on behalf of the minor user. Tex. Bus. & Com. Code § 121.022(a), (b).<sup>1</sup>

- b. *Second*, any user determined to be a minor is forbidden from downloading any mobile app—including mobile newspapers, biblical study apps, the vast majority of educational apps, messaging apps, or games—without first obtaining parental consent for that download, subject to two content-based exceptions. Those exceptions from the parental-consent requirement allow downloads only of (1) apps operated by certain government or nonprofit entities that provide access to emergency services (e.g., a crisis hotline); and (2) apps operated by nonprofits that develop, sponsor, or administer postsecondary educational testing. § 121.022(d), (h).
- c. *Third*, a verified parent must affirmatively consent to *all* purchases within each app (including books, music, TV shows, movies, games, and concert tickets), each of the minor’s subsequent downloads of any mobile apps, as well as vaguely defined “significant changes” to apps. §§ 121.022(d), (g), 121.053(a), (b).

5. These requirements have vast and troubling implications on protected speech. Under S.B. 2420, if a 14-year-old wants to download the Libby app to borrow an e-book from the Austin Public Library, she would first have to establish her own age; then she’d have to tether her account to a parent’s, who would then need to establish their identity and relationship to the minor

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<sup>1</sup> References to “§” are to sections of the Texas Business and Commerce Code.

and provide consent; finally, she'd have to wait for the parent to provide consent for the app. Similarly, a 17-year-old who wants to purchase a new book to read on his Kindle app would need to jump through all the same hoops and then ask a parent to review and approve his choice first. The same is true for apps like ESPN, Wikipedia, Spotify, Audible, Substack, Duolingo, Goodreads, Bible Project, Atheism Pocket Debater, TED, Bandcamp, Khan Academy Kids, and on and on. Even worse, minors who do not have a parent or legal guardian able to provide consent under the Act will be entirely shut out of mobile app stores and the thousands of speech-enabling apps and the speech and information apps provide. Even minors who can successfully link a verified parent account are burdened when their parents are (understandably) too busy to approve each request as it is made.

6. The law is not tailored to its goal of shielding children from accessing speech that they do not have a First Amendment right to access. Instead, Texas has walled off virtually all mobile apps behind a series of verification and consent gates. Indeed, S.B. 2420 does nothing to exempt apps that facilitate core political or educational speech; creative or artistic expression; religious instruction and information; or the exchange of ideas, information, and culture. Texas has “burn[ed] the house to roast the pig.” *Butler v. Michigan*, 352 U.S. 380, 383 (1957).

7. These provisions impermissibly burden app stores and developers in exercising their rights to distribute speech; they burden adults in their right to access and create speech; and they burden the rights of minors to access and create speech without parental approval. For these reasons, the Act is subject to and fails strict scrutiny. But even if the court were to apply intermediate scrutiny, the Act could not withstand constitutional muster, because it is not at all tailored to serve the State’s purported interest in protecting minors online.

8. The Act's verification and consent provisions are fatally overbroad and restrict both adults' and minors' access to core protected speech disseminated through apps like the NYTimes app, Bible Project, and Audible.

9. The Act's verification and consent provisions are also woefully underinclusive. They target only apps available on mobile devices but do nothing to prevent minors from accessing the same exact content, pursuant to the same terms of service, on a web browser, desktop computer, smart TV, or from offline sources. The sole effect of the law is to make speech more fragmented and burden its distribution.

10. The verification and consent provisions are far from the least restrictive alternative to achieve the State's goal, given that app stores already provide tools to allow parents to restrict what their children access on their devices, and many apps already include verification and consent tools tailored to particular services offered through those apps. Moreover, Texas already has a law designed to prevent minors from accessing online content that is obscene as to minors, *see* H.B. 1181, Tex. Civ. Prac. & Rem. Code Ann § 129B.001 – .004 (West 2025), which is a less restrictive alternative to the sweeping S.B. 2420. *Cf. Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 499 (2025).

11. In concert with the verification and consent requirements, the Act's age-rating and display provisions impermissibly compel app developers to opine as to the appropriate age rating of their content and share that rating with app stores, who then must display the rating for users. The age-rating and display requirements subject both app developers and app stores to liability for duties that are standardless, unclear, and undercut existing rating frameworks that already provide an industry standard for app ratings. These provisions are independently unconstitutional and cannot survive any form of heightened scrutiny.

12. The Act also violates the Commerce Clause by excessively burdening interstate commerce in relation to the purported local benefit conferred on the State of Texas.

13. The Court should declare S.B. 2420 facially unlawful and enjoin its enforcement as to CCIA's app store and developer members.

### **PARTIES**

14. Plaintiff CCIA is an international, non-profit entity organized under Section 501(c)(6) of the Internal Revenue Code incorporated in the Commonwealth of Virginia. For more than 50 years, CCIA has promoted open markets, open systems, and open networks.

15. Based on S.B. 2420's definitions, the Act regulates and significantly burdens CCIA's members both in their capacity as app store owners and app developers, including: (1) Google, which owns and/or operates the Google Play Store, Google Search, Gmail, and Google Maps, among others; (2) Amazon, which owns and/or operates the Amazon Appstore, Audible, IMDb, and Goodreads, among others; and (3) Apple, which owns and/or operates the Apple App Store, Apple TV, Apple News, and Apple Music, among others. Google, Apple, and Amazon own and operate "app store[s]," defined as "publicly available . . . software applications . . . that distribute[] software applications from the owner or developer of a software application to the user of a mobile device." *See* S.B. 2420 §§ 121.002(2), 121.021. They are also "developer[s] of . . . software application[s] that [they] make[] available to users in [Texas] through an app store." § 121.051. Numerous other CCIA members develop mobile apps that are regulated by the Act.

16. Defendant Ken Paxton, the Texas Attorney General, is a resident of Texas and is sued in his official capacity. By classifying violations of S.B. 2420 as "deceptive trade practice[s]," the Act 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 (West 2025).

## STANDING

17. CCIA has standing to challenge S.B. 2420 on multiple grounds.

18. CCIA has associational standing because (1) some of CCIA’s members have standing, as those members are “the object” of S.B. 2420’s regulation and face substantial liability, *Texas v. EEOC*, 933 F.3d 433, 446 (5th Cir. 2019), *Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121, 2134 (2025); (2) challenging S.B. 2420 is germane to CCIA’s mission; and (3) CCIA members’ individual participation is unnecessary in this purely legal challenge. *NetChoice v. Fitch*, 134 F.4th 799, 804 (5th Cir. 2025); *see also CCIA v. Paxton*, 747 F. Supp. 3d 1011, 1029 (W.D. Tex. 2024) (finding CCIA had associational standing to assert claims challenging a similar Texas statute), *appeal filed*, No. 24-50721 (5th Cir. Sep. 13, 2024), and *appeal filed sub nom, Students Engaged in Advancing Tex. v. Paxton*, No. 25-50096 (5th Cir. Feb. 11, 2025).

19. *First*, CCIA “has standing to bring a pre-enforcement facial challenge against [S.B. 2420]” because “the law is aimed directly at” CCIA’s app store and developer members, “who, if their interpretation of the statute is correct, will have to take significant and costly compliance measures” to implement S.B. 2420’s onerous requirements across their technologies. *Fitch*, 134 F.4th at 804 (citation omitted). CCIA members operate app stores and develop apps, and in both capacities they engage in activity “affected with a constitutional interest.” *Book People, Inc. v. Wong*, 91 F.4th 318, 329-330 & n.49 (5th Cir. 2024) (“*Book People II*”).

20. *Second*, in challenging S.B. 2420, CCIA “seeks to vindicate interests germane to its purpose.” *Fitch*, 134 F.4th at 804. S.B. 2420 imposes unconstitutional restrictions on CCIA members’ ability to speak and facilitate speech through mobile apps. Those constraints directly confront 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.

21. *Third*, CCIA’s members do not need to participate in this suit as parties because “no claim asserted nor relief requested requires the participation of each member.” *Id.* at 805. For example, because the verification and consent requirements affect all covered app stores equally, their claims “can be proven by evidence from representative injured members” like Google, as is the case here. *Id.* (quoting *Ass’n of Am. Physicians & Surgeons, Inc. v. Texas Med. Bd.*, 627 F.3d 547, 552 (5th Cir. 2010)).

22. CCIA, through its app-store and app-developer members, also has prudential standing to assert the First Amendment rights of its members’ users—both current and prospective (including, for app stores, the app developers who list apps within the stores). “[I]n First Amendment facial challenges, federal courts relax the prudential limitations and allow yet-unharmed litigants to attack potentially overbroad statutes to prevent the statute from chilling the First Amendment rights of other parties not before the court.” *Fitch*, 134 F.4th at 806 (finding NetChoice satisfied the prudential standing requirement). S.B. 2420’s violation of users’ First Amendment rights adversely affects CCIA members who are both app stores and app developers.

### **JURISDICTION & VENUE**

23. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a). This Court has authority to grant legal and equitable relief under 42 U.S.C. §§ 1983 and 1988, injunctive relief under 28 U.S.C. § 1651 and *Ex parte Young*, 209 U.S. 123 (1908), and declaratory relief under 28 U.S.C. § 2201(a).

24. This Court has personal jurisdiction over Defendant, because the Texas Attorney General resides in and/or conducts a substantial portion of his official business in Austin, Texas. Venue is proper in this district under 28 U.S.C. § 1391(b) because the only Defendant resides, and the events giving rise to this civil action occurred, in Austin, Texas.

### **BACKGROUND & FACTUAL ALLEGATIONS**

25. **App Stores Are a Vibrant Forum for Speech.** App stores are digital content stores that allow users to search for, browse, discover, download, and purchase mobile apps and other content. In providing this service, app stores publish and facilitate secure, privacy-protective access to vast quantities of expressive content in every digital media format; they directly facilitate some of the largest and most egalitarian fora for speech and creativity among developers and users.

26. Apps themselves embody, create, and curate diverse fora for speech and interaction. The Internet is the predominant forum for speech, *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017), and apps facilitate that forum on mobile devices. Mobile phones, and their capacity to provide access to the speech forums of the internet through mobile applications, have become a leading vehicle for accessing the Internet, particularly among younger generations. In short, people use apps “to engage in a wide array of protected First Amendment activity on topics as diverse as human thought.” *Id.* at 105 (discussing social media users and websites). And app stores stand at the threshold of access to those apps.

27. App stores embody such diverse fora for speech largely because barriers to entry are kept low. Most apps are run by small businesses, and many are run by individual developers. For instance, Apple has noted that 90% of all developers in its App Store are “small developers.”<sup>2</sup> Thus, apps carry out the internet’s promise of “relatively unlimited, low-cost capacity for communication of all kinds.” *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997).

28. Apps embody expressive software design choices, and their operation and maintenance constitute speech acts. As an additional layer of expressive activity and speech, the

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<sup>2</sup> *Small developers on the App Store grew revenue by 71 percent over the past two years*, Apple (May 11, 2023), <https://www.apple.com/newsroom/2023/05/small-developers-on-the-app-store-grew-revenue-by-71-percent-from-2020-2022/>.

vast majority of the most-downloaded apps in member app stores either offer or facilitate free expression.<sup>3</sup>

29. Examples of the vast array of apps that provide access to and fora for fully protected speech and information include:

- a. **Substack**, which allows individual writers to develop a readership and monetize their writing;
- b. **Khan Academy**, which provides educational content to assist people in learning a wide range of subjects;
- c. **YouVersion Bible App**, which allows people to read or listen to the Bible and share passages and comments with friends in their network;
- d. **InstaRabbi**, which allows Jews from across the world to ask Torah or Halachic questions and get quick answers in accordance with Orthodox Jewish observance;
- e. **Spotify**, which allows people to listen to music, podcasts, and audiobooks and share playlists with others;
- f. **NYTimes** and **WSJ Print Edition**, which provide journalism, just as they do in their print newspapers;
- g. **The Texas Longhorns app**, which lets fans of the UT Austin football team follow game coverage and news, and view exclusive content;
- h. **BusyKid**, an app that teaches kids financial literacy and independence when they earn money for completing chores;

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<sup>3</sup> See, e.g., *Top Charts*, Google Play, [https://play.google.com/store/apps?hl=en\\_US](https://play.google.com/store/apps?hl=en_US) (last visited Oct. 14, 2025); *Top Charts - Top Free Apps*, Apple App Store, <https://apps.apple.com/us/charts/iphone/top-free-apps/36> (last visited Oct. 14, 2025); *Best Sellers in Apps & Games - Top 100 Free*, Amazon Appstore, [https://www.amazon.com/gp/bestsellers/mobile-apps/ref=zg\\_bs?ie=UTF8&tf=1](https://www.amazon.com/gp/bestsellers/mobile-apps/ref=zg_bs?ie=UTF8&tf=1) (last visited Oct. 14, 2025).

- i. **Tankee**, a gaming and videosharing service that curates family-friendly content and helps parents ensure that their kids are not watching adult-oriented videos;
- j. **Waffle Smash**, a game originally designed to help kids with cerebral palsy develop their hand-eye coordination and dexterity;
- k. **StoryPlace**, an online community that allows writers to share original stories;
- l. **Smart Kidz Club**, an educational service that helps foster kids' love of reading and math;
- m. **Sudoku Master!**, which allows people to choose among tens of thousands of Sudoku puzzles to play.

30. CCIA's members own and operate dozens of speech-facilitating and speech-creating apps, including Apple TV, YouTube, Goodreads, Audible, and IMDb. These apps, and numerous others, provide users with access to a vast array of protected speech, including books, movies, videos, music, reviews, and factual information, as well as the ability to create and share their own speech in various forms.

31. Apps improve the user interface of websites on phones and tablets. But users can often access the same material available in a mobile app via other means, including web browsers and non-mobile apps. For example, a user can stream music on Spotify or read essays on Substack through their mobile apps but can also access the same content through their websites via web browser on mobile devices (or computers). Likewise, Amazon Prime Video and YouTube are available through their respective mobile apps, but also through their respective websites (primevideo.com and youtube.com) or through non-mobile apps that can be downloaded on a Smart TV. The Act's impact is thus to make accessing speech and information more difficult and disjointed.

32. **App Stores and Apps Already Have Policies and Voluntary Tools to Help Protect Minors from Inappropriate Speech.** It is through app stores that mobile device users download the vast majority of apps. App stores curate and review the apps they offer for download, both prior to and after publication, to provide quality controls and additional services for users. For example, all CCIA’s app store members require app developers to submit to a rigorous pre-publication review process, wherein the app store will evaluate the app’s content, check the security of the app, and test its functionalities in an isolated environment. Part of this process involves rating the app’s content to determine its age-appropriateness.

33. Every app store, on information and belief, engages in age-rating, but each app store has a different age-rating system and different age categories. These processes and categories differ from the new age rating requirements imposed by the Act. The Google Play Store, for example, uses a separate rating authority, the International Age Rating Coalition (“IARC”), which screens the app and assigns a rating based on Entertainment Software Rating Board (“ESRB”) guidelines.<sup>4</sup> Apple’s App Store similarly requires age rating for “parental controls”<sup>5</sup> and uses categories 4+, 9+, 13+, 16+, and 18+.<sup>6</sup> The Apple App Store employs even more granular age-rating categories for apps designated in its “Kids Category,” placing apps in one of three age bands based on its primary audience: “5 and under, 6 to 8, or 9 to 11.”<sup>7</sup>

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<sup>4</sup> *Requirements related to content ratings for apps, games, and the ads served on both*, Google Play, <https://support.google.com/googleplay/android-developer/answer/9859655> (last visited Oct. 14, 2025)

<sup>5</sup> *Age ratings values and definitions*, Apple, <https://developer.apple.com/help/app-store-connect/reference/age-ratings-values-and-definitions/> (last visited Oct. 14, 2025)

<sup>6</sup> *Id.*

<sup>7</sup> *Design safe and age-appropriate experiences for your apps and games*, Apple, <https://developer.apple.com/kids/> (last visited Oct. 14, 2025)..

34. CCIA's app store members also review apps in accordance with their content policies and block or remove from their stores those that are harmful, low quality, unsafe, or otherwise inconsistent with their content policies.

35. For apps directed towards younger audiences, CCIA's app store members also impose and enforce different and stricter content policies. Those apps generally must contain only age-appropriate content, implement parental consent gates for purchasing opportunities, and protect against disclosure of children's personal information, among other requirements.

36. CCIA's app store members also provide ongoing monitoring and enforcement of their published content policies. Member app stores monitor apps for compliance both pre-publication and post-publication, and will suspend, reject, or bar apps that do not abide by their policies.

37. On top of these app store monitoring and oversight activities, CCIA's app store members also provide voluntary tools for parents to control their children's exposure to apps and the content they contain. The Google Play Store allows parents to set up controls on their children's accounts.<sup>8</sup> These controls allow parents to, for example, restrict apps and games on an Android device by choosing categories of content allowed for download or purchase; lock their child's screen during certain hours such as bedtime; approve all purchases and new apps that the child wants to download; and more.<sup>9</sup> The Apple App Store similarly allows parents to set age-related restrictions for content, prevent their children from installing apps and making in-app purchases in apps, prevent children from deleting parental-monitoring apps, restrict app downloads and

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<sup>8</sup> *How to Set Up Parental Controls on Google Play*, Google Play, <https://support.google.com/googleplay/answer/1075738?hl=en> (last visited Oct. 14, 2025)

<sup>9</sup> *Id.*

games, and manage their child’s privacy settings.<sup>10</sup> Additionally, Amazon’s Parent Dashboard allows parents to monitor the apps their children are interacting with, set daily limits or restrict their children’s use at certain times of day, and restrict access to content that parents might find inappropriate for their child.<sup>11</sup> These parental controls are popular: The Google Family Link app has over 100 million downloads in the Google Play Store alone, and the Amazon Parent Dashboard has over 500 thousand downloads in the Google Play Store.

38. By crafting, publishing, and enforcing content policies and providing tools to allow parents to limit access to app content, app stores actively engage in expressive activities, selecting which apps to publish, to whom, when, and how. This expressive conduct is protected by the First Amendment. *Moody v. NetChoice*, 603 U.S. 707, 731 (2024).

39. Implementing age verification, parental-identity verification, parental tethering, and parental consent requires significant and unrecoverable resources—even for large app stores. And for the numerous small developers in particular, the costs of complying with S.B. 2420’s requirements, paired with the threat of liability for failure to comply properly, might disincentivize those small developers from publishing speech through app stores. These costs are particularly unreasonable given that parents already have widely available tools to monitor and control what their children access online. Notably, all of CCIA’s member app stores already permit parents to monitor content, restrict downloads, and disable in-app purchases.

#### TEXAS S.B. 2420: RELEVANT PROVISIONS

40. **Age Verification, Parental Tethering, and Legal Authority Verification to Enable Parental Consent (“Account Restrictions”).** Under the Act, whenever an individual

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<sup>10</sup> *Use Parental Controls on Your Child’s iPhone or iPad*, Apple, <https://support.apple.com/en-us/105121> (last visited Aug. 6, 2025).

<sup>11</sup> *Amazon Parent Dashboard*, Amazon.com, <https://www.amazon.com/parentdashboard/intro> (last visited Oct. 14, 2025).

creates an account with an app store on a mobile device (such as a smartphone or tablet), the app store must “use a commercially reasonable method of verification to verify the individual’s age category.” § 121.021(a). Individuals are divided into four age categories, including those: 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”). § 121.021(b).

41. If the user is determined to be under 18, the Act requires that the minor user tether their account to an account belonging to a parent or guardian. § 121.022. To be affiliated as a parent account, the app store must use “a commercially reasonable method” to verify that the account belongs to an “adult” who “has legal authority to make a decision on behalf of the minor whose account . . . is seeking affiliation.” *Id.*

42. App stores must then allow developers to access current age and parental consent information, § 121.024, and app developers must use this information to verify the age category assigned to each user and, for minors, whether parental consent has been obtained, § 121.054. After using this information as required by the Act, developers must ensure the data is securely deleted. § 121.055(b).

43. The Act does not provide any guidance on how to verify age or determine whether an adult has such legal authority over the minor to be affiliated.

44. The “commercially reasonable” requirement in the age and legal authority provisions do not alter which app stores or apps the Act covers. Nor does it alleviate the unconstitutional burdens. Rather, it only creates uncertainty for app stores without serving any purported governmental interests.

45. Nor does the “commercially reasonable” requirement diminish the chilling effect that these verification requirements impose on users’ access to protected speech.

46. **Parental-Consent Requirement for Each App Downloaded and Its Two Content-Based Exceptions (“Download Restrictions”).** In addition to age verification, app stores must obtain consent from the parent account each time a minor seeks to download or purchase an app—*except for* apps that (1) are operated by or in partnership with a government entity, nonprofit, or authorized emergency service provider and provide direct access to emergency services, and which meet certain data collection and technical requirements; and (2) apps operated by or in partnership with a nonprofit that is subject to Chapter 32, subchapter D of the Education Code, and develops, sponsors, or administers standardized tests for postsecondary education. § 121.022(h).

47. **Ongoing Parental-Consent Requirement for In-App Purchases and Significant Changes to App Terms (“Purchase and Renewed Access Restrictions”).** App stores must obtain consent from the parent account on an ongoing basis every time a minor wants to make an in-app purchase. § 121.022(h). Further, S.B. 2420 also requires app developers to provide notice to app stores before making any so-called “significant change[s]” to the app’s terms of service or privacy policy, § 121.053(a), vaguely defined as a change that, for example, affects or changes the age rating assigned to the app or the content or elements that led to that rating, § 121.053(b)(2). When such a change is made, S.B. 2420 requires app stores to notify any individual who gave consent for a minor’s use or purchase relating to a previous version of the changed app and to obtain renewed consent for minors’ continued use or purchase of the app. §§ 121.053, 121.022(g).

48. **Age Rating and Display Requirements.** The Act also compels app developers and app stores to engage in subjective and potentially controversial speech. Both groups are forced to implement an elaborate, vaguely-defined age-rating system and to display age ratings to users.

Developers are required to assign age ratings, based on four age categories, to every single app and to “each purchase that can be made through” the app, and to provide each app store with those ratings and the content or elements that led to each rating. *Id.* § 121.052(a)-(b). App stores are then compelled to display the age rating assigned by the developer, and the specific content that led to the rating.<sup>12</sup> *Id.* § 121.023. While there are no concrete or objective criteria defining the age-rating categories or how they should be applied, the age ratings themselves must be displayed in a “clear, accurate, and conspicuous” manner. *Id.* Both developers and app stores may be held liable for “knowingly misrepresent[ing]” the age rating assigned to an app or purchase. §§ 121.026; 121.056.

#### **EFFECTS OF S.B. 2420’S VERIFICATION AND CONSENT REQUIREMENTS**

49. The verification and consent requirements violate app stores’, developers’, and users’ First Amendment rights to publish, disseminate, provide access to, and curate protected speech. Apps themselves—including, for example, books, movies, and games—are expressive, embodying expressive design decisions and providing access to a wealth of speech, information, ideas, and expression. App stores enjoy First Amendment protection both when they disseminate and make available speech, *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 557 (2011), and when they “present[] a curated compilation of speech originally created by others.” *Moody*, 603 U.S. at 728.

50. The verification and consent requirements impose direct burdens on app stores’ freedom to disseminate protected speech. *First*, they insert a barrier between speech disseminated through the app stores and the users entitled to receive that speech—blocking many users entirely. Unless and until a user either proves they are at least 18 years old, or a verified parent or guardian

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<sup>12</sup> If the app store already has a mechanism for displaying an age rating or content notice, it must display the age rating or content notice and provide an explanation for the mechanism. § 121.023. However, in order to obtain parental consent, and in situations where the app store does not have a mechanism in place, the app store must disclose to the parent the age rating required under S.B. 2420. § 121.022(f)(1).

takes affirmative steps to permit their child to access apps for download or purchase, the Act prohibits app stores from disseminating protected speech to those users. *Second*, by exempting two categories of apps from the parental-consent requirement, Texas forces app stores to give certain government-approved apps preferential treatment based on who the speaker is and the content of their speech.

51. The verification and consent requirements similarly burden the First Amendment rights of app developers, by imposing a “parental veto” between users’ ability to access, download, and purchase developers’ speech. *See Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 795 n.3 (2011). For example, a 14-year-old cannot purchase the audiobook version of *To Kill a Mockingbird* from Audible until her parent or guardian approves the purchase. If her parent or guardian is too busy or refuses to approve the request, or cannot adequately prove legal authority, the minor would be blocked entirely from listening to the Pulitzer Prize-winning novel.

52. The verification and consent requirements also burden users of mobile apps. Both app stores and app developers can assert the First Amendment rights of their users. *See, e.g., Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973); *Fitch*, 134 F.4th at 807. Although the Act is purportedly about protecting children, age verification burdens the rights and interests of *all* app store users, including adults. Everyone who creates an account—essentially everyone with a mobile phone—is required to have their age verified and to submit sensitive, personal documentation or biometric information before they will be allowed to access protected speech.

53. Age verification burdens users’ ability to speak and access speech. Verification methods that ask users to upload a government-issued ID, such as a driver’s license or passport, or input credit card information will, at best, deter users, many of whom do not wish to disclose this type of sensitive information to app stores, from accessing the tremendous amount of

expressive and informational offerings within the app stores and from engaging in the protected speech and knowledge-seeking they facilitate. At worst, these methods will carve out substantial segments of the population from being able to comply at all. For instance, about 15 million adult U.S. citizens do not have a driver's license, while about 2.6 million do not have any form of government-issued photo ID.<sup>13</sup> Further, the Federal Reserve reports that, in 2023, approximately 18% of adults in the United States did not have a credit card.<sup>14</sup> Additionally, “[c]hildren generally don’t have government IDs and often can’t obtain them” before reaching a certain age, depending on the state.<sup>15</sup>

54. Mandated verification also prioritizes the State’s goals and subordinates users’ privacy preferences. Currently, there is no technically feasible and reliable way to verify the ages or age categories of online users at account creation without processing personally identifiable information that many do not want to share. All age-verification methods also risk excluding some members of the population, e.g., those without government IDs. Ultimately, age verification requires app stores to collect more privacy-intrusive data from their users and impedes users’ ability to use mobile app stores and apps anonymously.

55. These privacy concerns are only amplified by the all-encompassing nature of S.B. 2420’s verification requirements. Indeed, S.B. 2420 imposes far greater privacy invasions than a

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<sup>13</sup> Jillian Andres Rothschild et al., *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge*, Univ. Md. Ctr. for Democracy & Civic Engagement, at 2 (Jan. 2024), <https://cdce.umd.edu/sites/cdce.umd.edu/files/pubs/Voter%20ID%202023%20survey%20Key%20Results%20Jan%202024%20%281%29.pdf>.

<sup>14</sup> Report on the Economic Well-Being of U.S. Households in 2023, U.S. Federal Reserve (May 2024), [www.federalreserve.gov/publications/files/2023-report-economic-well-being-us-households-202405.pdf](http://www.federalreserve.gov/publications/files/2023-report-economic-well-being-us-households-202405.pdf) (last visited Oct. 14, 2025).

<sup>15</sup> Shoshana Weissmann, *Kids Don’t Have IDs and Age-Estimation Tech Is Frequently Very Wrong*, Techdirt (May 23, 2025, 11:02 AM), <https://www.techdirt.com/2025/05/23/kids-dont-have-ids-and-age-estimation-tech-is-frequently-very-wrong/>.

traditional age verification law, because it also requires parents to submit proof of legal authority over their children.

56. But the crux of the Act—and the reason for imposing a universal age-verification requirement in the first place—is the requirement that any time a minor wants to download or purchase almost any mobile app, make any in-app purchase, or continue to use an app after its terms of use or privacy policy have been “significantly” changed, they must first obtain verified parental consent. This means that minors are effectively prohibited from accessing protected speech unless and until their parent or legal guardian can be verified by the app stores and then, on an app-by-app and purchase-by-purchase basis, grant access. This requirement will impose real frictions on minors’ abilities to access content, even where their parents would not otherwise object.

57. Beyond the direct burdens on users’ access to speech and personal privacy interests, the verification and consent requirements of S.B. 2420 also impose immense practical and financial burdens on app stores, which in turn further burden their developers and users in accessing and participating in the stores. For instance, app stores must allow developers to access a user’s age category and consent status in order to perform their own verification. That requires app stores to expose millions of users’ age signals to millions of developers regardless of whether a user or parent has consented to that sharing. § 121.024. Developers are then required to ensure that data received from app stores during this process is securely deleted after verification. § 121.055(b). These burdens, plus the privacy infringements inherent to verification and the frictions imposed by the constant need to provide consent, will ultimately decrease the diversity and the totality of speech available to all people, particularly minors—but also adults.

58. Parental identity verification poses additional practical hurdles that will bar large swathes of developers from disseminating and users from accessing speech. S.B. 2420 provides no guidance on how app stores should verify that an “adult” seeking affiliation with a minor’s account is a parent or legal guardian. Parents often have different last names than their children and may have a different address; most children do not have government IDs; parents who are estranged from each other may have opposing views about what their children can and cannot have access to; children who have had the disabilities of minority removed for general purposes may be unable or unwilling to provide documentation establishing their emancipated status; and children in foster care or who are orphaned may not have a legal guardian who is able or willing to link their mobile device to the child’s account. Nor does the Act appear to consider the complexities that could arise where, for example, a parent and child have mobile phones or tablets with different operating systems and, as a result, different app stores.

59. Minors who are unable to link their device with a parent or guardian will be effectively barred from one of the most important and ubiquitous modern forums for accessing and engaging in protected speech. And even minors who are successful in linking their account with a parent or guardian will still be significantly burdened in exercising their First Amendment rights because they will be forced to wait for parental consent in order to purchase individual publications or other expressive content to read, listen to, or watch.

60. These added difficulties are entirely superfluous to—and in fact undermine—any interest that Texas may have in empowering parents. The Act legally mandates conduct that app stores and many individual app developers *already* undertake, namely, providing parental controls that allow parents to monitor and control what their children can access on their devices. Again, by *legally requiring* parental consent—even for parents who prefer to give their children autonomy

and even for minors on the brink of adulthood—the Act imposes the State’s authority over the children of Texas, not their parents’.

61. The friction caused by the need to obtain consent for every app download, purchase, in-app purchase, or “significant change” to an app’s privacy policy or terms of service will be endlessly frustrating for parents and their children alike. Under the Act, app stores are prohibited from allowing parents to provide “blanket consent” for their children to download or purchase apps, or make in-app purchases. § 121.026. In other words, if families would rather remove the Act’s state-imposed friction to approve every single download, or even every single download within a selection of specific apps, the Act takes that choice away from parents. This is yet another indication that the law does not advance its purported goal of putting parents back in the “driver’s seat”<sup>16</sup> of what their kids have access to online—rather, it imposes the State’s control over what Texas children may access, “subject only to a parental veto.” *NetChoice, LLC v. Griffin*, No. 5:23-CV-5105, 2025 WL 978607, at \*10 (W.D. Ark. Mar. 31, 2025) (emphasis added) (cleaned up) (quoting *Brown*, 564 U.S. at 795 n.3, 804), *appeal filed*, No. 25-1889 (May 2, 2025). The constant inundation with consent requests also runs the risk that parents will stop paying attention to them and simply approve the request, further undermining the purpose of the Act. Moreover, these requirements will disincentivize developers from making appropriate updates to their privacy policies and terms of use and risk triggering the Act’s renewed parental consent obligation.

62. S.B. 2420’s failure to accommodate or account for existing and robust parental controls, and its unnecessary prohibition on parental choice to give their children blanket consent, underscores the Act’s overbreadth and lack of narrow tailoring. By contrast, a law that allowed parents to make use of the extensive tools already available or provided for consent on an app-

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<sup>16</sup> Texas Public Policy Foundation, Sen. Angela Paxton, *SB 2420 The App Store Accountability Act*, Facebook, <https://www.facebook.com/reel/2108453532978972> (last visited Oct. 24, 2025).

wide or age-category-wide basis (as many parental controls currently do) would ensure a more tailored and appropriate fit between means and ends. These two far less restrictive alternatives would allow parents to decide for themselves how to oversee their children’s online activity, and would allow app developers the discretion to tailor their requirements according to the rigor called for by the unique content of the app.

### **EFFECTS OF S.B. 2420’S AGE-RATING AND DISPLAY REQUIREMENTS**

63. The Act’s age-rating requirement impermissibly compels app developers to create and publish opinions about the content of their apps and any third-party content offered for purchase within their apps. Similarly, the age-rating display requirement compels app stores to publish controversial third-party opinions about the content of the apps they disseminate. Both provisions infringe on app developers’ and app stores’ right to free expression and “offend[] the First Amendment.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 586-87 (2023).

64. The Act requires both app stores and developers to identify users’ ages within four categories: child, younger teenager, teenager, and adult. § 121.021(b). The gradations between child and younger teenager, younger teenager and teenager, and teenager and adult require relatively high degrees of specificity, and the success of the Act is in large part dependent on accurate categorization (within the State’s judgment of accuracy), because it also forces developers to rate their apps and all in-app purchases along those four arbitrary age buckets. § 121.052. These do not track the age buckets used by many leading app stores.

65. Both developers and app stores may be liable under the Act for knowingly misrepresenting the age rating of a given app or in-app purchase, even though the Act provides no criteria for determining, for example, what type of app would be appropriate for a group of “children” versus “young teens.” *See* §§ 121.026, 121.054.

66. Age ratings in similar contexts are notoriously subjective, imperfect, and open to different interpretations. *See Book People II*, 91 F.4th at 325.

67. S.B. 2420's age-rating and display requirements will encourage app developers to self-censor, as they will be incentivized to appeal to the largest possible audience and thus to avoid ratings that may discourage users from downloading (or consenting to their children downloading) the app. It will deter developers from making "significant changes" to the terms of service or privacy policy when those alterations would affect the app's age rating and thus trigger the requirements to notify app stores and obtain renewed consent. Finally, for apps that host third-party content, developers may be more inclined to engage in content-moderation practices designed to facilitate particular, pre-determined age ratings, as opposed to the app's independent editorial judgment about its own content guidelines.

#### CLAIMS

68. CCIA lodges the following claims:
- a. **Counts I and II:** constitutional challenges to the verification and consent requirements and their associated violation provisions, brought facially with respect to the provisions affecting app stores, and as applied to CCIA's app store and developer members;
  - b. **Counts III and IV:** constitutional challenges to the age-rating and display requirements and associated violation provisions brought facially and as applied to CCIA members in their capacities as app developers and app stores, respectively;
  - c. **Count V:** a vagueness challenge to the age-rating and display requirements and associated violation provisions;
  - d. **Count VI:** a vagueness challenge to the notice of significant changes provision;
  - e. **Count VII:** a commerce clause challenge as to S.B. 2420 as a whole; and

f. **Counts VIII & IX:** requests for equitable and declaratory relief related to the above claims.

69. For First Amendment claims, the facial challenge standard asks whether “a substantial number of [S.B. 2420’s] applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Moody*, 603 U.S. at 723 (citation omitted). S.B. 2420 has *no* constitutional applications to app stores and developers. The Act’s main verification and consent provisions, “in every application to a covered [app store], raise the same First Amendment issues,” so the Court “need not ‘speculate about “hypothetical” or “imaginary” cases.’” *X Corp. v. Bonta*, 116 F.4th 888, 899 (9th Cir. 2024) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)). S.B. 2420’s indiscriminate barriers to access and compelled speech mandates impose burdens that fall uniformly across all app stores and developers whose speech can no longer be freely accessed, and who are forced to engage in and communicate the State’s speech.

70. For CCIA’s First and Fourteenth Amendment vagueness claims, a facial vagueness challenge is proper because “there is no reason to believe one [app developer] is better suited than another to understand [the Act’s] vague terms.” *CCIA v. Paxton*, 747 F. Supp. 3d at 1031.

71. Each First and Fourteenth Amendment challenge raises the rights of both CCIA members and those who use or could prospectively use CCIA members’ app stores or apps.

**COUNT I**  
**42 U.S.C. § 1983; Ex Parte Young**  
**VIOLATION OF THE FIRST AMENDMENT, AS INCORPORATED AGAINST THE**  
**STATES THROUGH THE FOURTEENTH AMENDMENT**  
**(App Stores: Verification and consent requirements, Tex. Bus. & Com. Code §§ 121.021,**  
**121.022, 121.026(a)(1), 121.026(a)(3))**

72. CCIA incorporates all prior paragraphs as if fully set forth herein.

73. **S.B. 2420 Burdens the Dissemination, Curation, and Access to Protected Speech.** The Act’s main provisions—which require app stores to first verify the age of every single user before they will be permitted access to their services, and then to force any minor user to tether their account to a verified parent or guardian and obtain consent before permitting a minor to download or purchase almost any app from their service—burden app stores’, app developers’, and users’ rights to free expression under the First Amendment. Because the Act functions as a barrier to both adults’ and minors’ access to protected speech and singles out certain content and speakers for exclusion from the verification and consent requirements, S.B. 2420 triggers and fails strict scrutiny.

74. Countless apps available on CCIA members’ services provide constitutionally protected speech to both adults and minors, as well as opportunities for app users to create and disseminate their own pure speech. App stores disseminate this speech, publishing a huge variety of software apps for users to browse and securely download and helping to facilitate access to the speech and other expressive content within or through those apps. In addition, app stores present a curated compilation of speech originally created by others. S.B. 2420’s verification and consent requirements unequivocally regulate and burden speech, age-gating the primary gateway to the internet on mobile devices. That is—unless the individual first passes the app store’s age-verification and, if the user is a minor, the parental-identity verification, parental-tethering, and parental-consent requirements imposed by the Act.

75. For people who don’t have documentation necessary to age verify, such as an ID or credit card, they are blocked entirely from receiving and producing speech on every app. Verification requirements also create risks of exposing users’ sensitive personal information, and

chill speech by depriving users of anonymity they would otherwise be entitled to in connection with the many apps that permit a logged-out experience.

76. Minors must jump through further onerous hoops imposed by the Act. First, a parent account must be linked to the minor account and somehow verify that the parent has “legal authority” over that minor. § 121.022(b)(2). Then, of course, the parent must decide whether to authorize the minor’s download of the app. Finally, on an ongoing basis, parents must give further consent every time a minor wants to purchase any item through the app (for example, an audiobook purchased through Audible), § 121.022(h), and every time the app makes a so-called “significant change” to its terms of service or privacy policy, § 121.053(a). This burdens minors’ speech by depriving them of their ability to speak and access speech without express parental consent. *Brown*, 564 U.S. at 804–05 (First Amendment principles apply “[e]ven where the protection of children is the object[.]”).

77. **S.B. 2420’s Verification and Consent Regime is Content-Based and Operates as a Prior Restraint, Triggering Strict Scrutiny.** The Act’s verification and consent regime singles out apps with certain content, that are disseminated by certain speakers, for preferential treatment. § 121.022(h) (exempting apps that provide “emergency services” and apps disseminated by nonprofits that develop, sponsor, or administer standardized tests).

78. S.B. 2420 also operates as a prior restraint on speech by forcing private actors to interpose and enforce the State’s access gates on all manner of protected speech. Such restraints burden speech on every level of the app environment, including: (1) all would-be app users’ access to protected speech; (2) minors’ ability to produce and receive protected speech; (3) developers’ ability to create and distribute protected speech; and (4) app stores’ ability to curate and publish protected speech to all audiences.

79. S.B. 2420 impermissibly enlists app stores to carry out a vast censorship scheme on behalf of the State. *First*, app stores are forced to verify the age of every single user via invasive age verification procedures before allowing adults 18 and older access to a vast array of protected speech or, for minor, requiring minor users to tether their accounts to a “verif[ied]” parental account. *Second*, the Act forces app stores to deny access to minors under 18, “subject only to a parental veto,” *Brown*, 564 U.S. at 795 n.3, by requiring parental consent before a minor may download any app. *Third*, app stores are forced to deny access without parental consent whenever a minor wants to make an in-app purchase or after a developer makes a “significant change” to the app. Such restrictions will deter adults and minors alike from accessing apps they otherwise would.

80. In widening S.B. 2420’s aperture to swallow up so much speech, the State’s targeting of protected speech is not merely incidental—it is direct.

81. **The Verification and Consent Requirements Fail Any Form of Heightened Scrutiny.** Each of these types of effects—content-based exceptions, prior restraints, and broad impacts on speech—subjects the Act to strict scrutiny. But Texas could not satisfy its burden even under intermediate scrutiny because the Act is overbroad in capturing nearly every app within an app store; it fails to account for less restrictive alternatives such as existing voluntary parental tools and more targeted laws such as Texas H.B. 1181, 88th Leg., Reg. Sess. (Sep. 1, 2023); and it is underinclusive by failing to impose any gates around web-based or non-mobile analogs. The Act makes no attempt to exempt apps that are irrelevant to the State’s cognizable interest, as evidenced by its prohibition on parents deciding to provide blanket consent to their children.

82. **The Verification and Consent Requirements Are Overbroad.** S.B. 2420 imposes verification and consent as gates that bar access to every single app within an app store, including the vast swaths of protected speech disseminated through apps dedicated to publishing

news, fostering creativity, encouraging religious exploration, and providing entertainment and educational resources.

83. The statute makes no attempt whatsoever to link the state’s purported interest in protecting minors to the sweeping parental control mandates it imposes.

84. The State’s prohibition of blanket parental consent underscores the tailoring problem and unnecessarily burdens parents. As written, S.B. 2420 requires app stores and parents to wade through several layers of consent on an app-by-app, and purchase-by-purchase basis. It is unclear how depriving parents of the opportunity to provide consent on an individual or blanket basis somehow furthers the government’s legitimate interest in enabling parental control. *Packingham*, 582 U.S. at 106 (content-neutral regulations must not “burden substantially more speech than is necessary to further the government’s legitimate interests.”). Rather, the State’s approach strips parents of choices that would afford them *more* control over how to implement a workable regime for protecting their children online, such as allow-listing a given app or app store, or granting blanket consent to all apps with a given age rating.

85. **There Are Less Restrictive Alternatives to the Verification and Consent Requirements.** Insofar as the State’s purported interest is in providing parental control, the State entirely disregards the pre-existing and far less-restrictive alternatives that function to achieve the same ends.

86. All major app stores provide more robust parental control offerings than S.B. 2420 requires, should parents decide that it is best for them to employ. The Amazon Appstore’s Parental Controls feature enables parents to monitor and require parental consent for their children’s in-app

purchases and to restrict which apps their children have access to.<sup>17</sup> The Google Play Store offers parents the same functionality through its Family Link feature,<sup>18</sup> as does the Apple App Store through Screen Time.<sup>19</sup>

87. All of CCIA’s member app stores enforce content policy guidelines to ensure that content is age appropriate, and to enable parents to filter their children’s exposure to apps and content based on the content rating or tagged content categories. Apple, for instance, allows parents to block music, videos, or podcasts that contain explicit content and to prevent books, movies, TV shows, and apps with specific content ratings.<sup>20</sup> Google Play also allows parents to “choose the highest [content] rating you want to allow for rental, purchase, or playback” of apps, games, movies, and TV shows.<sup>21</sup> The Amazon Appstore will “reject[] or suppress[]” apps that contain content that would not be considered “family-friendly.”<sup>22</sup>

88. Individual apps also apply and enforce their own content guidelines, as well as provide tools for parents to restrict the content their children may access, and are able to tailor their respective restrictions and other protective tools to the unique content and features available through their services.<sup>23</sup>

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<sup>17</sup> *Set Parental Controls for In-App Purchases*, Amazon.com, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GB8P5MQSYFYHPCQ5> (last visited Oct. 14, 2025).

<sup>18</sup> *How To Set Up Parental Controls on Google Play*, Google, <https://support.google.com/googleplay/answer/1075738?hl=en> (last visited Oct. 14, 2025).

<sup>19</sup> *Use Parental Controls on Your Child’s iPhone or iPad*, Apple, <https://support.apple.com/en-us/105121> (last visited Oct. 14, 2025).

<sup>20</sup> *Id.*

<sup>21</sup> *How To Set Up Parental Controls on Google Play*, Google, <https://support.google.com/googleplay/answer/1075738?hl=en> (last visited Oct. 14, 2025).

<sup>22</sup> *Amazon Appstore Content Policy*, Amazon.com, <https://developer.amazon.com/docs/policy-center/understanding-content-policy.html> Amazon Appstore Content Policy (last visited Oct. 14, 2025)..

<sup>23</sup> *See, e.g., Supervised experiences for pre-teens – Understand your choices as a family*, YouTube, <https://support.google.com/youtube/answer/10315420> (last visited Oct. 14, 2025);

89. Instead of empowering parents to use these tools where they believe them appropriate for their families, the State now seeks to force parents to use the controls that app stores have developed on a voluntary basis, and subject *all* app store users to an invasive identity verification process.

90. That app stores are *prohibited* from accepting blanket parental consent further belies the State’s purported goal to return decision-making for children’s online safety back to their parents. Under S.B. 2420, the State forces every parent to review and approve every app download and every in-app transaction for every app available (except the limited content-based exceptions discussed above).

91. Texas also has at least one existing law that is targeted to preventing minors from accessing obscenity online. *See* H.B. 1181; *Free Speech Coal.*, 606 U.S. at 466 (holding that “H.B. 1181 is a constitutionally permissible exercise of [the State’s] authority” “to prevent children from accessing sexually explicit content.”). In light of this robust preexisting ecosystem of regulations and voluntary protective features, S.B. 2420 goes far beyond any asserted state interest in protecting minors online.

92. **The Act Is Also Underinclusive.** In addition to its overbreadth issues, S.B. 2420 is underinclusive. The Act targets only apps and app stores on “mobile device[s],” § 121.002(4), and does nothing whatsoever to prevent minors from accessing the exact same content via a web browser or non-mobile app—or in a brick and mortar location.

93. Many, if not most, mobile apps have an identical web-based analogue for their content also accessible on mobile devices. Minors can therefore entirely skirt the verification and consent regime and access the content the State seeks to gatekeep from any web browser on their

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*Parental Controls on Netflix*, Netflix, <https://help.netflix.com/en/node/264> (last visited Oct. 14, 2025).

phone or other device. Moreover, many mobile apps, such as YouTube, Hulu, or Prime Video, have identical counterparts on Smart TVs—non-mobile devices that the Act also does not regulate.

94. By overregulating mobile apps while ignoring similar or identical content available via web browsers, Smart TV apps, and other media, S.B. 2420 simultaneously imposes tremendous burdens on speech while failing to serve its own purported state interests.

## COUNT II

### 42 U.S.C. § 1983; Ex Parte Young

#### VIOLATION OF THE FIRST AMENDMENT, AS INCORPORATED AGAINST THE STATES THROUGH THE FOURTEENTH AMENDMENT

#### (App Developers: Verification and consent requirements, Tex. Bus. & Com. Code §§ 121.021, 121.022, 121.054, 121.026(a)(1), 121.026(a)(3), 121.056(a)(1))

95. CCIA incorporates all prior paragraphs as though fully set forth herein.

96. **The Verification and Consent Requirements Burden Speech Rights of App Developers.** CCIA members also develop and offer mobile apps that facilitate access to speech, disseminate speech, curate and compile speech, and produce speech themselves, including news, art, photographs, books, music, video, games.

97. These apps apply and enforce their own content and policy guidelines and, in some cases, offer curated experiences for younger or more sensitive audiences.

98. Mobile apps facilitate and “engage in a wide array of protected First Amendment activity on topics as diverse as human thought.” *Packingham*, 582 U.S. at 105 (quotation omitted). Those activities involve “publish[ing],” *Reno*, 521 U.S. at 853; “disseminat[ing],” *303 Creative*, 600 U.S. at 594; “creating, distributing, [and] consuming,” *Brown*, 564 U.S. at 792 n.1; and “compiling and curating” protected speech. *Moody*, 603 U.S. at 731.

99. S.B. 2420’s verification and consent regime places a series of interdependent access gates between these apps and their users, creating barriers and in some cases full blocks to users’ ability to access and download apps.

100. Further, S.B. 2420 creates additional burdens on app developers to independently ensure that the unconstitutional gates are up and functioning. It does so by creating a separate duty on app developers to expend resources to “create and implement a system” to use the age category and parental consent information obtained by the app store to “verify (1) for each user . . . the age category assigned to that user . . . and (2) for each minor user of the software application, whether consent has been obtained . . . .” § 121.054(a). This creates yet another burden on CCIA member developers because they must first expend resources to create this system and ensure that it is in place before permitting their users to access their apps and content (including every in-app purchase), lest they face liability for violating this duty under Section 121.056.

101. **The Verification, Consent, and Developer-Verification Requirements Trigger Strict Scrutiny.** As discussed with respect to Count I, the verification and consent regime triggers strict scrutiny in at least two ways: (1) it is content based; and (2) it constitutes a prior restraint on speech. Further, the developer-verification provision (§ 121.054) conscripts CCIA member developers into policing the app stores’ compliance with the law, and presumably cutting off access to their own content if the verification and consent regime is not functioning properly at the app store level.

102. **The Verification, Consent, and Developer-Verification Requirements Are Not Narrowly Tailored.** In subjecting all mobile apps—except its two content-based carve-outs—to S.B. 2420’s verification, consent, and developer-verification requirements, the Act sweeps in huge swaths of protected speech, rather than creating a narrowly tailored solution as the First Amendment demands.

103. The Act also disregards clear less restrictive alternatives and existing parental controls at both the app store and app level that provide the exact functionalities the law requires,

and more. There is no reason for the Act to prevent parents from providing blanket consent to certain forms of protected speech such as audiobooks, music, videos, games, or even apps writ large that meet certain age-rating criteria (e.g., age 4+). But because the law explicitly prevents that functionality, *see* § 121.026(a)(3), parental approval will be required for a minor—even a 17-year-old—to listen to *The Cat in the Hat*, and then again if the minor wants to listen to *Where the Wild Things Are*. That is both burdensome and unnecessary.

104. The verification and consent provisions are also wildly underinclusive. For example, they heavily burden a person’s ability to browse audiobooks on a mobile app (such as Audible) but do nothing to restrict their access to the same content on a website (like Audible.com).

**COUNT III**

**42 U.S.C. § 1983; Ex Parte Young**

**VIOLATION OF THE FIRST AMENDMENT, AS INCORPORATED AGAINST THE STATES THROUGH THE FOURTEENTH AMENDMENT  
(App Developers: Age-rating requirements, Tex. Bus. & Com. Code §§ 121.052, 121.053, 121.056(a)(2))**

105. CCIA incorporates all prior paragraphs as though fully set forth herein.

106. The Act requires app developers, including CCIA members, to assign each app *and each in-app purchase* (e.g., every audiobook on Audible) an age rating based on four categories. The Act does not provide any objective criteria for determining whether an app or in-app purchase falls into a given age category—nor could it. The Act also requires app developers to inform app stores any time they change the age category of an app or the “content or elements that led to that rating.” § 121.053. Developers may be held liable for knowingly misrepresenting an age rating. § 121.056.

107. The age-rating requirement compels CCIA members as app developers to engage in speech that they do not and would not otherwise make on two levels: ratings of apps, and ratings of in-app downloads.

108. At the level of app stores, while CCIA’s app store members implement their own content-ratings at the app level, S.B. 2420 requires that the Act’s content ratings, and no others, must be used for procuring parental consent for every app download and in-app purchase. § 121.022(f)(1)(B)-(C). As a result, to survive the parental consent gate that blocks all minors’ abilities to download their apps, developers must re-rate their own apps (and everything on some of them) according to S.B. 2420’s prescribed age categories.

109. At the level of apps and app developers, apps that have in-app purchases must age-rate each and every one of those in-app purchases pursuant to Section 121.052(a). That forces apps to assign content-based age ratings to all manner of third-party content. An app that allows users to purchase or rent books, for example, would seemingly be required to assign individual age ratings to every single book available for sale—a monumental burden and one that serves to deter developers from making protected speech available for purchase.

110. The age-rating requirement burdens app developers’ protected speech four times over. *First*, it imposes a content-based burden on speech by “[m]andating speech that a speaker would not otherwise make[.]” *Riley v. Nat’l Fed’n of Blind of N. Carolina, Inc.*, 487 U.S. 781, 795 (1988). *Second*, the age-rating requirement “deputizes covered businesses into serving as censors for the State.” *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1118 (9th Cir. 2024) (citing *Interstate Cir., Inc. v. City of Dallas*, 390 U.S. 676, 678, 684 (1968)). *Third*, the age-rating requirement imposes yet another burden on developers ability to make their speech available, because their apps will never survive the parental consent barrier unless the app discloses a content rating pursuant to the Act’s age categories. *Finally*, and relatedly, the age-rating requirement forces app developers to forego their existing rating regimes in favor of S.B. 2420’s, thereby infringing upon their editorial and curatorial rights, and infringing on a developer’s editorial discretion to *refrain*

from creating and providing content ratings. Through S.B. 2420, Texas seeks to overwrite the existing content rating systems used by apps that disseminate third-party speech (e.g., YouTube,<sup>24</sup> Prime Video) with its own state-mandated rating system.

111. **The Age-Rating Requirement Is Subject to Strict Scrutiny.** Content-based regulations of non-commercial speech must satisfy strict scrutiny. The speech at issue is not commercial speech because it is not “related solely to the economic interests of the speaker and its audience,” *Book People II*, 91 F.4th at 339 (citation omitted), and it “does [] more than propose a commercial transaction.” *United States v. United Foods*, 533 U.S. 405, 409 (2001).

112. *Second*, even a regulation compelling commercial speech receives “*at minimum*, intermediate scrutiny,” and only where it “compels commercial enterprises to disclose purely factual and uncontroversial information about their services” may it receive anything less. *Free Speech Coal., Inc. v. Paxton*, 95 F.4th 263, 281, 283 (5th Cir. 2024) (emphasis in original), *aff’d*, 606 U.S. 461 (2025). But S.B. 2420’s compelled age-rating requirement far exceeds the “purely factual” disclosures required by *Zauderer. Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 651 (1985). Further, S.B. 2420 requires CCIA developer members to undergo a subjective analysis and determine—based on the content—which age category their app, and any in-app purchase, falls within. That task is highly subjective, and arguably impossible, for mobile apps that host a wide array of third-party content for all age groups and that allow in-app purchases of speech such as books, music, television shows, and games. *See, e.g., Book People II*, 91 F.4th at 340 (holding that state-mandated content ratings for books are “neither factual nor uncontroversial”).

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<sup>24</sup> YouTube applies content rating labels to paid content. Those ratings are Strong Language (L), Nudity (N), Sexual Situations (S), Violence/Disturbing (V), Drug use (D), Flashing Lights (F). *YouTube content rating*, YouTube, <https://support.google.com/youtube/answer/146399?hl=en> (last visited Oct. 14, 2025).

113. *Third*, the age-rating and display requirement is also unduly burdensome, *Nat'l Inst. of Fam. & Life Advoc. v. Becerra*, 585 U.S. 755, 776 (2018), because app stores and developers must categorize each app and each in-app purchase into one of four arbitrary age categories, and are held liable for their knowing misrepresentation. Not only will this take considerable time and resources to accomplish, but the Act fails to provide any criteria for making this determination. Moreover, existing industry standards, such as the ESRB guidelines, are at odds with the Act's age categories.

114. **The Age-Rating Provisions Fail Under Any Level of Scrutiny.** The age-rating requirement is overbroad and not narrowly tailored. It encompasses nearly every app and in-app purchase regardless of whether it engages in pure speech such as numerous CCIA members' apps, or unprotected speech, *see Free Speech Coalition*, 606 U.S. at 477; regardless of whether the app hosts a wealth of third-party speech that would render the age rating meaningless or impossibly burdensome; and regardless of whether the app pertains to activities far afield from the state's purported interests.

115. The Act also fails to recognize—and directly conflicts with—existing age-rating standards. As discussed, all app stores have elaborate content rating systems, and the vast majority of the age categories do not line up with S.B. 2420's. And, in addition to app-level content ratings, some apps—including CCIA member apps—use their own content rating systems for content published within their apps. The State has no place, and no interest, in overwriting a long-standing system of content ratings with its impermissibly vague and wholly untested age categories.

116. The age-rating requirement also fosters self-censorship by app developers who will want to (1) achieve the lowest possible age rating to avoid discouraging users from downloading their apps and appeal to the largest possible audience; (2) refrain from making certain changes to

their apps that would trigger a change in the age rating and thus the need to notify app stores; and (3) for apps that host third-party content, engage in content-moderation practices designed to achieve the pre-determined age rating.

117. Accordingly, the age-rating requirement impermissibly and unnecessarily compels speech. Both alone and in tandem with the verification and consent regime, it violates the First Amendment and CCIA members' First Amendment rights.

**COUNT IV**

**42 U.S.C. § 1983; Ex Parte Young**

**VIOLATION OF THE FIRST AMENDMENT, AS INCORPORATED AGAINST THE STATES THROUGH THE FOURTEENTH AMENDMENT**

**(App Stores: Age-rating display requirement, Tex. Bus. & Com. Code §§ 121.022(f)(1), 121.026(a)(2))**

118. CCIA incorporates all prior paragraphs as though fully set forth herein.

119. The Act requires app stores to display age ratings for every app available for purchase or download in their stores, § 121.023, and requires disclosing *the Act's* required age ratings in particular as a precondition to procuring parental consent for app downloads and in-app purchases, § 121.022(f) (requiring app stores to disclose “the rating *under Section 121.052* assigned to the software application or purchase,” along with “the specific content or other elements that led to the rating *assigned under Section 121.052*” (emphases added)). Additionally, if an app store does not already have an age-rating display mechanism, it must create such a mechanism and display *the Act's* age rating along with a description of the specific content or elements that led to the rating. § 121.023(b).

120. The Act further subjects app stores to liability for “knowingly misrepresent[ing]” the age rating or content elements that led to the rating. § 121.026(a)(2).

121. **The Age-Rating Display Requirement Is Compelled Speech Subject to Strict Scrutiny.** Were it not for S.B. 2420, CCIA's app store members *would not* display S.B. 2420's

arbitrary age ratings in any context. Nor do they—on information and belief—have processes to display an age rating in the manner required by the Act for every in-app purchase or whenever developers make a significant change to their terms of service. Yet now they must create such mechanisms and display the Act’s age ratings lest they render every parental consent defective.

122. As with app developers, forcing app stores to display an age rating that they otherwise would not display and that they do not themselves necessarily condone is a content-based compulsion of speech. Because the speech that S.B. 2420 requires app stores to endorse—i.e., opinions about the age appropriateness of content—is neither factual nor uncontroversial, it is non-commercial and therefore subject to strict scrutiny. *See Free Speech Coal.*, 95 F.4th at 279; *Book People II*, 91 F.4th at 340. Further, in forcing app stores to subordinate their existing and robust age-rating regimes in favor of S.B. 2420’s, the display provision also infringes upon App Stores’ editorial and curatorial rights. *Moody*, 603 U.S. at 728.

123. **The Display Requirement Fails Under Any Form of Heightened Scrutiny.** The display requirement’s lack of narrow tailoring and overbreadth is immediately apparent in its direct conflict with app stores’ existing age-rating structures.

124. Not only is S.B. 2420’s age-display requirement content-based compelled speech, but it is also wholly unnecessary because app stores already display age ratings for apps. There is no need for a mandate where age-rating is already done on a voluntary basis, and pursuant to age categories even more granular and informative for parents than those required under the Act. Thus, S.B. 2420’s mandated display of its arbitrary and broader age-rating categories would *reduce* the information that parents receive about the age appropriateness of a given app from the status quo. The Act’s rigid mandate also highlights clear less restrictive alternatives, which would, at minimum, include permitting those app stores to continue to use their systems in all contexts, or

require use of Texas' rating only for content it cares about. The age-rating display requirement stands to upend their existing and widely used age-rating infrastructure.

125. The presence of these existing structures also highlights a clear less restrictive alternative: a law that permitted app stores to use their existing age ratings *in all contexts* in lieu of S.B. 2420's rigid and directionless regime. Such an alternative would not hamper the state's purported goal of providing parents with visibility into apps' age-appropriateness, and it would avoid burdensome compliance costs, issues of unconstitutional vagueness (discussed *infra* Count V), and encroachment on protected editorial rights.

**COUNT V**

**42 U.S.C. § 1983; Ex Parte Young**

**VOID FOR VAGUENESS UNDER THE FIRST AND FOURTEENTH AMENDMENTS**

**(App Developers: Age-rating and display requirements, Tex. Bus. & Com. Code §§  
121.022(f)(1), 121.023, 121.026(a)(2), 121.052, 121.053, 121.056(a)(2))**

126. CCIA incorporates all prior paragraphs as though fully set forth herein.

127. The Act's age-rating and display requirements are unconstitutionally vague, and that vagueness will chill the publication and dissemination of protected speech.

128. "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). Despite this, S.B. 2420 requires app developers to assign age ratings to every app and every in-app purchase, and holds app developers (and app stores) liable for knowingly misrepresenting an age rating. Yet the Act provides *no guidance* for developers on how to set age ratings in compliance with the law beyond creating age categories that clash with other standards. *See* § 121.021(b).

129. This amorphous standard also raises concerns about disparate enforcement, especially given that Texas has made clear that it is concerned about protecting minors from certain types of content over others.

130. This lack of guidance, combined with the imposition of liability, threatens to undermine the age-rating and display system. Because the rating system forces the app to determine its age rating on an app-wide basis with the exception of in-app purchases, § 121.052(a), apps will be strongly incentivized to rate their apps according to the most mature content available for purchase. The perverse result is that an audiobook app with over 64,000 children’s titles<sup>25</sup> may be rated for adults aged 18 and older. And this principle applies to any app that distributes content without in-app purchases, such as Netflix, Hulu, and the like. (Query how a news app, which often discusses or portrays violent or gruesome content, fits in.)

131. Thus, without clear guidance, apps will not know what content they should censor, and they will likely err on the side of over-censoring, thus chilling protected speech. The incentives in favor of over-censorship will also affect the accuracy of information disclosed for parental consent, and may lead parents to deny access to apps that would otherwise be appropriate for children due to an over-inflated age rating.

132. Under the Act, developers are not liable if they “use[] widely adopted industry standards to determine the rating and specific content” and “appl[y] those standards consistently and in good faith.” § 121.056(b). But this purported safe harbor for app developers does not ameliorate the unconstitutional vagueness of the age-rating provision because the Act does not define which “industry standards” might apply. Not only that, as discussed *supra* ¶ 33, the existing, voluntary age-rating standards for apps directly conflict with the age categories mandated by S.B.

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<sup>25</sup> *Children’s Audiobooks*, Audible, <https://www.audible.com/cat/Childrens-Audiobooks-Audiobooks/18572091011> (last visited Oct. 14, 2025).

2420. Thus, if app developers were to rely on “industry standards” for assigning age ratings, they would necessarily violate the prescribed age categories.

**COUNT VI**

**42 U.S.C. § 1983; Ex Parte Young**

**VOID FOR VAGUENESS UNDER THE FIRST AND FOURTEENTH AMENDMENTS  
(App Developers: Notice of significant changes requirement, Tex. Bus. & Com. Code  
§ 121.053**

133. CCIA incorporates all prior paragraphs as though fully set forth herein.

134. The Act further requires developers to notify app stores “before making any significant change to the [app’s] terms of service or privacy policy[.]” § 121.053(a). A change is significant if it alters the “category of personal data” processed by the app, “affects or changes the [app’s age] rating,” adds “new monetization features” such as “new opportunities to make a purchase in or using the [app]” and “new advertisements in the [app].” § 121.053(b). Notice must also be given before the app “materially changes the functionality or user experience of the software application.” *Id.*

135. These triggers are wide-ranging and unclear. The Act does not define what a “material change” might include. Nor does it explain whether a “new opportunit[y] to make a purchase” covers a category of goods or requires notice for each new song, book, movie, or item added to a repository like Apple Music, Audible, or Prime Video. Similarly, the ads presented in apps constantly change—so does each new ad trigger a notice requirement? The Act’s lack of guidance on these points and others means that developers will not have “a reasonable opportunity to know what is prohibited, so that [they] may act accordingly.” *Book People, Inc. v. Wong*, 692 F. Supp. 3d 660, 695 (W.D. Tex. 2023) (quoting *Roark & Hardee LP v. City of Austin*, 522 F.3d 548, 551 (5th Cir. 2008)), *vacated and aff’d in part on other grounds*, 91 F.4th 318, *reh’g denied*, 98 F.4th 657 (5th Cir. 2024)

136. The law can thus be construed to require near-constant notifications from developers to app stores to parents. And because each notification requires app stores to revoke a minor's access to the app while the app store refreshes parental consent, § 121.022(g), this provision threatens to impose severe restraints on developers' and users' speech.

137. This lack of guidance presents opportunities for arbitrary or selective enforcement, incentivizes over-censorship, and utterly fails to satisfy the heightened notice standards required of laws that "interfere[] with the right of free speech." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982).

138. Unless declared invalid and enjoined, Tex. Bus. & Com. Code § 121.053 will for this additional reason unlawfully deprive app developers of their First Amendment and Due Process rights, causing them to suffer irreparable injuries.

**COUNT VII**  
**42 U.S.C. § 1983; Ex Parte Young**  
**VIOLATION OF THE COMMERCE CLAUSE OF THE UNITED STATES**  
**CONSTITUTION**

139. CCIA incorporates all prior paragraphs as though fully set forth herein.

140. S.B. 2420 violates the Commerce Clause under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) and its progeny because it imposes an unreasonable and undue burden on interstate commerce that is clearly excessive in relation to any local benefit conferred on the State of Texas. It is also likely to subject businesses to inconsistent state regulations.

141. S.B. 2420 burdens interstate commerce by deterring online service providers from offering services available across state lines, or else limiting the types of services available within and across the United States. This is because app stores and the apps they publish are accessible globally, and whether a covered business wishes to avoid Texas's regulations or comply with them,

doing so inherently requires both app stores and developers to degrade or withdraw their services for all users in all states.

142. S.B. 2420 also burdens interstate commerce by forcing app stores to comply with an inconsistent patchwork of state rules. For example, S.B. 2420 will in practice require covered businesses to adopt verification tools that might violate other states' conflicting privacy laws (such as biometric privacy laws). Similarly, the Act will require app developers to rate their apps, and all content available for purchase through those apps, in line with the age categories provided by S.B. 2420, without regard to any different or conflicting age ratings app developers have adopted or might be required to adopt in other states.

143. The Texas Legislature has not identified any local interest sufficient to justify these onerous impositions on interstate commerce. And to the extent that it purports to protect minors, its protections are wholly ineffective because minors can access the same content that exists on apps from their website counterparts. Therefore, even if Texas's interest was deemed sufficiently local, S.B. 2420's drastic impositions on interstate and online commerce far outweigh what little the Act does to further that purpose.

144. S.B. 2420 also violates the Commerce Clause because it regulates extraterritorially in violation of *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989). For the same reasons that S.B. 2420 burdens interstate commerce by depressing or degrading the output and quality of apps available nationwide, S.B. 2420 necessarily has the practical and per se unconstitutional effect of regulating commercial and speech-related activities that occur wholly outside Texas, such as by causing an app developer based in California to withhold a product or service to users in Florida due to the costs imposed by the Texas statute.

145. Unless declared invalid and enjoined, S.B. 2420 will operate to unconstitutionally burden interstate commerce in violation of the Commerce Clause.

**COUNT VIII**  
**Ex Parte Young**  
**EQUITABLE RELIEF**

146. CCIA incorporates all prior paragraphs as though fully set forth herein.

147. S.B. 2420, including the challenged provisions, violates federal law both facially and as-applied, and deprives CCIA, its members, and its members' users of enforceable rights guaranteed by federal law. Federal courts have the power to enjoin unlawful actions by state officials. *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 326-27 (2015).

148. This Court can and should exercise its equitable power to enter an injunction precluding Defendant from enforcing S.B. 2420 against CCIA's members.

**COUNT IX**  
**DECLARATORY RELIEF**

149. CCIA incorporates all prior paragraphs as though fully set forth herein.

150. Tex. Bus. & Com. Code §§ 121.021, 121.022, 121.023, 121.026(a)(1)-(3), 121.052, 121.053, 121.054, and 121.056(a)(1)-(2) violate the First Amendment of the Constitution and the Due Process Clause and thereby deprive CCIA, its members, and its members' users of enforceable rights.

151. With exceptions not relevant here, in any "case of actual controversy within [their] jurisdiction," federal courts have the power to "declare the rights and other legal relations of any interested party seeking such declaration[.]" 28 U.S.C. § 2201(a).

152. This Court can and should exercise its equitable power to enter a declaration that the challenged provisions of S.B. 2420 are unconstitutional and otherwise unlawful, both facially and as-applied.

**PRAYER FOR RELIEF**

CCIA respectfully requests an order and judgment:

- A. Declaring that Tex. Bus. & Com. Code §§ 121.021, 121.022, 121.023, 121.026(a)(1)-(3), 121.052, 121.053, 121.054, and 121.056(a)(1)-(2) are unlawful;
- B. Declaring that Tex. Bus. & Com. Code §§ 121.021, 121.022, 121.052, 121.053, and 121.054 facially violate the First Amendment to the U.S. Constitution;
- C. Declaring that Tex. Bus. & Com. Code §§ 121.021, 121.022, 121.052, 121.053, and 121.054 violate the First Amendment to the U.S. Constitution as applied to CCIA's members;
- D. Declaring that Tex. Bus. & Com. Code §§ 121.023, 121.022(f)(1)(B)-(C), 121.052, 121.053 are void for vagueness, both facially and as-applied;
- E. Declaring that the entire Act is preempted by the Commerce Clause;
- F. Enjoining Defendant and his agents, employees, and all persons acting under his direction or control from taking any action to enforce the challenged portions of S.B. 2420 against CCIA's members;
- G. Entering judgment in favor of CCIA;
- H. Awarding CCIA its attorneys' fees and costs incurred in bringing this action, including attorneys' fees and costs under 42 U.S.C. § 1988(b) for successful 42 U.S.C. § 1983 claims against state officials; and
- I. Awarding CCIA all other such relief as the Court deems just and proper.

Respectfully submitted,

Dated: October 16, 2025

/s/ Catherine L. Robb

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