

IN THE
SUPREME COURT OF THE UNITED STATES

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, APPLICANT,

v.

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

AND

STUDENTS ENGAGED IN ADVANCING TEXAS, ET AL., APPLICANTS,

v.

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

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

**BRIEF FOR SOFTWARE & INFORMATION INDUSTRY ASSOCIATION,
TECHNET, AND ENGINE ADVOCACY AS AMICI CURIAE IN SUPPORT OF
APPLICATIONS OF COMPUTER & COMMUNICATIONS INDUSTRY
ASSOCIATION AND STUDENTS ENGAGED IN ADVANCING TEXAS TO
VACATE STAY PENDING APPEAL**

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TABLE OF CONTENTS

	PAGE
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	4
ARGUMENT	5
I. This Court Should Vacate the Stay.....	5
A. Neither the Stay nor the Statute Serve the Interests of Minors or Their Parents.....	5
B. Allowing the Stay to Stand Will Impose Expressive and Economic Costs on Developers, App Stores, and Consumers Alike That Are Unnecessary and Unrecoverable	7
C. The “Significant Change” Requirement Underscores the Problems with the Statute.....	14
D. SB 2420 Has Implications Well Beyond the Particular Statute or State.....	15
II. Allowing The Stay to Remain in Place Will Cause Irreparable Injury	18
CONCLUSION.....	21

TABLE OF AUTHORITIES

Page(s)

Cases

Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.,
594 U.S. 758 (2021) 18

Brown v. Ent. Merchs. Ass’n,
564 U.S. 786 (2011) 7, 19, 20

Elrod v. Burns,
427 U.S. 347 (1976) 18

Free Speech Coal. Inc. v. Paxton,
606 U.S. 461 (2025) 11, 19

Moody v. NetChoice, LLC,
603 U.S. 707 (2024) 4

Nat’l Inst. of Family & Life Advoc. v. Becerra,
585 U.S. 755 (2018) 13

NetChoice, LLC v. Fitch,
No. 25A97 (U.S. Aug. 14, 2025) 19

Reno v. ACLU,
521 U.S. 844 (1997) 11

Roman Catholic Diocese v. Cuomo,
592 U.S. 14 (2020) 18

Sable Commc’ns of Cal., Inc. v. FCC,
492 U.S. 115 (1989) 5

Thunder Basin Coal Co. v. Reich,
510 U.S. 200 (1994) 18

Veasey v. Abbott,
870 F.3d 387 (5th Cir. 2017) 6

Statutes and Codes

Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506..... 16, 19

Texas App Store Accountability Act, SB 2420, Tex. Bus. & Com. Code §§
121.001 *et seq.*.....2, 3, 5, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 20

Texas Business and Commerce Code

Section 121.021..... 15

Section 121.021(a) 8, 11

Section 121.021(b) 9

Section 121.021(b)(1-4)..... 12

Section 121.022..... 8, 15

Section 121.022(b)(2) 11

Section 121.022(e)(1) 7

Section 121.022(f)(1)..... 9

Section 121.022(g) 8, 9, 14, 15

Section 121.022(h)(1)(B)..... 16

Section 121.023..... 9

Section 121.023(a) 9

Section 121.023(b) 9

Section 121.024..... 8

Section 121.026(2) 9

Section 121.026(3) 9

Section 121.026(a)(3) 7, 8, 15

Section 121.051..... 7

Section 121.052(a) 9, 13

Section 121.052(b)(2) 9, 13

Section 121.053..... 8, 9, 14, 15

Section 121.053(b) 9, 14

Section 121.054..... 10

Section 121.055..... 10

Section 121.056(a)(2) 9, 13

Section 121.101..... 13

Section 121.102..... 13

Texas Data Privacy and Security Act, Tex. Bus. & Com. Code §§ 541.001 *et*
seq...... 19

Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.41–17.63 13

Rules and Regulations

Supreme Court Rules
Rule 37.6 1

Other Authorities

Apple App Store, <https://www.apple.com/app-store/> (last visited June 17, 2026)..... 4

How Google Play works, Google Play, <https://google.play/howplayworks/> (last visited June 17, 2026) 4

INTEREST OF *AMICI CURIAE*¹

The Software & Information Industry Association (“SIIA”) is the principal trade association for those in the business of information. SIIA’s membership includes nearly 400 software companies, platforms, data and analytics firms, and digital publishers that serve nearly every segment of society, including business, education, government, healthcare, and consumers. SIIA’s members provide the critical data, content, and information that drive the global economy, inform financial networks, and connect learners and educators. For more than 50 years, SIIA has promoted a healthy environment for its members to create, disseminate, and use information, and has protected their right to use software as a tool for doing so.

TechNet is a national, bipartisan network of technology CEOs and senior executives advocating a targeted policy agenda at the federal and state levels. It is a non-profit organization committed to a digitally interconnected society in which all people benefit from technology and the opportunities for speech that are afforded by a safe and open internet. Its membership spans more than 100 diverse companies ranging from startups to the world’s largest technology companies. Those companies employ more than five million employees and serve countless customers across information technology, artificial intelligence, social media, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet has a strong interest in protecting the expressive freedom and due process

¹ No party or counsel for a party authored this brief in whole or in part, and no one other than amici, their members, or their counsel funded the preparation or submission of this brief. *See* Sup. Ct. R. 37.6.

rights of digital service providers and their users and in encouraging rational, harmonized regulatory frameworks that promote child safety, privacy, and innovation, rather than an unworkable patchwork of conflicting federal and state laws.

Engine Advocacy (“Engine”) is a non-profit technology policy, research, and advocacy organization dedicated to bridging the gap between startups and policymakers. Engine works with government officials and thousands of high-technology, growth-oriented startups nationwide to support innovation and entrepreneurship through research, policy analysis, and advocacy. Its community includes small-and medium-sized companies that offer a wide range of services—including those distributed via app stores—to vast and varied communities of users, including in Texas.

Absent this Court’s protection of the status quo, SB 2420 will upend how amici’s members and the startups *amici* work with nationwide exercise this right. Many offer products on app stores, which allow companies both big and small to connect with consumers and make apps available to them. Others offer the app stores that facilitate access to content. But whether app developers or app store providers, those companies now find themselves caught between incurring heavy and unrecoverable costs to comply with patently unconstitutional obligations, or facing enforcement actions with all of the attendant expenses, risk, and uncertainty. None of that is necessary. Rather than needlessly consign creators and companies to that unfair choice, this Court should vacate the Fifth Circuit’s stay and allow the district

court's thoughtful and well-reasoned opinion to remain in effect while the appeal is adjudicated on the merits.

Amici submit this brief not to repeat the legal arguments of applicants Computer & Communications Industry Association (“CCIA”) and Students Engaged in Advancing Texas (“SEAT”) (with which it wholeheartedly agrees), but to provide its perspective on why this Court should consider those arguments now and grant relief. Letting the stay of the district court’s preliminary injunction stand will have potentially devastating practical effects on companies like *amici*’s members or the startups *amici* work with. The costs of unnecessary compliance are onerous for large companies, but existential for smaller ones. Separately and independently, the profound and irreversible First Amendment injuries to developers and users alike accumulate every moment SB 2420 has legal force. Those economic and expressive injuries are concrete, accrue daily, and lie beyond any court’s power to repair. They include expenses and restrictions on expression as massive catalogs are rated under a standardless mandate, significant updates and improvements deterred, digital classrooms interrupted, and readers of every age turned away at the gate. And all of that flows from an appellate decision that treats vast quantities of fully protected speech as commercial speech in a way that weakens core constitutional protections, conflicts with this Court’s precedent, and ignores the State’s admitted content-based justification.

The consequences of vacating the stay, by contrast, are minimal. Doing so would restore the status quo for a finite period, pending orderly appellate review.

That does not leave the State powerless to address any perceived problems: to the contrary, it can regulate in the interim through the targeted, constitutional instruments it already possesses. But it has no valid interest in regulating through the sweeping, unconstitutional law at issue here. Because, taking into account all the practical considerations, the balance of the equities and the public interest swing decisively in CCIA’s and SEAT’s favor, this Court should vacate the stay.

INTRODUCTION AND SUMMARY OF ARGUMENT

Today, consumers have access to millions of applications of every sort, ranging from the simple to the complex.² Applications, like social media platforms, “structure how we relate to family and friends, as well as to businesses, civic organizations, and governments.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024). They are the primary means by which people do anything on a smartphone or tablet. In particular, people use apps to engage in and consume vast quantities of protected expression: reading the news or e-books, playing games, listening to music, debating current events, learning a language, connecting with online communities, and more. Accordingly (and unsurprisingly), consumers make billions of downloads to their smartphones and other devices every day.³

² *The apps you love. From a place you can trust.*, APPLE APP STORE, <https://www.apple.com/app-store/> (last visited June 17, 2026) (“Nearly 2M apps available worldwide.”); *How Google Play works*, GOOGLE PLAY, <https://google.play/howplayworks/> (last visited June 17, 2026) (“Google Play is a global digital content store that makes it easy for more than 2.5 billion monthly users across 190+ markets worldwide to discover millions of high-quality apps, games, books, and more.”).

³ *The apps you love. From a place you can trust.*, *supra* n.2 (“More than 5B apps distributed each day.”); *How Google Play works*, *supra* n.2 (“150B+ [d]ownloads on Google Play in the last year [as of November 2024.]”).

Many of those downloads occur through app stores, which organize a vast digital marketplace by letting content creators and consumers find one another. Individuals of all ages use app stores to find and download software applications serving a huge variety of functions and published by a wide range of entities, including many of *amici*'s members and the startups *amici* work with. From creators' standpoint, app stores are a primary way to distribute their products to the consumer public. App stores also help equalize access to the digital marketplace by shouldering the challenges of distribution that might otherwise bar smaller developers from participating.

The Texas App Store Accountability Act, Senate Bill 2420 ("SB 2420" or "the Act"), Tex. Bus. & Com. Code § 121.001, *et seq.*, would fundamentally alter how that marketplace functions, unconstitutionally burdening app stores, developers of all sizes and kinds, and users of all ages. Faced with that statute, the district court correctly enjoined its enforcement. That order is on appeal, but the Fifth Circuit's decision to stay that injunction in the middle of briefing means that (at least for now) Texas can seek to enforce a statute that should never have been allowed to take effect. This Court should not let that decision stand.

ARGUMENT

I. This Court Should Vacate the Stay

A. **Neither the Stay nor the Statute Serve the Interests of Minors or Their Parents**

No one disputes the interest from which Texas begins. The State's interest "in protecting the physical and psychological well-being of minors" is weighty, *Sable*

Commc'ns of Cal., Inc. v. FCC, 492 U.S. 115, 126 (1989), and *amici's* members and the startups *amici* work with—many of whom build educational tools for young people—share it as a matter of conviction as well as law. But the question remains whether this stay, of this injunction, against this statute, even serves that end during the months this appeal will take. It does not. And the panel's contrary holding rests on a proposition that proves far too much.

The panel reasoned that “[w]hen a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws.” CCIA App.10a–11a (quoting *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (*per curiam*)). If that maxim alone could carry the day, courts would be compelled in the government's favor in every case in which a statute is enjoined. Equity weighs competing injuries in their particulars; it does not award the contest to the party that can describe its injury at the highest level of generality.

Weighed in those particulars, the stay affirmatively disserves the interest in protecting children that Texas invokes. The Act does not preselect for harmful content; it gates everything—and so it locks Texas minors out of the very resources a child-protective State should wish them to have. The district court named some: “mindfulness apps like Calm, fitness apps like Strava, or therapy providers like BetterHelp.” SEAT App.26a, 48a. To these add school courseware, library and audiobook applications, homework helpers, news services, language-learning applications, and study tools—daily instruments of adolescent learning, each now behind a verification-and-consent wall, and each subject to suspension upon any

“significant change.” A State’s “legitimate power to protect children from harm ... does not include a free-floating power to restrict the ideas to which children may be exposed,” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011), and a stay that effectuates such a sweeping restriction statewide, in real time, while its constitutionality remains highly doubtful and *sub judice*, is not a stay that serves the public interest.

Nor does the stay vindicate parents: in critical respects, it overrides them. The Act forbids parents who trust their seventeen-year-old from granting blanket consent, §§ 121.022(e)(1), 121.026(a)(3), substituting what parents actually want with “what the State thinks parents *ought* to want,” *Brown*, 564 U.S. at 804, even as the tools parents actually use today—supervised accounts, content filters, screen-time limits, and purchase approvals—remain freely available without any statute whatsoever, CCIA App.115a–16a; CCIA App.136a–38a. Texas itself acknowledged as much below. CCIA App.178a (quoting the State’s concession that app stores “already provide tools that enable parents to limit what apps children are able to download or make purchases in”).

B. Allowing the Stay to Stand Will Impose Expressive and Economic Costs on Developers, App Stores, and Consumers Alike That Are Unnecessary and Unrecoverable

Texas SB 2420 imposes sweeping obligations on both app stores and developers that publish their applications through an app store. Tex. Bus. & Com. Code § 121.051. Those obligations are complex and burdensome on their face, but even more extraordinary upon a closer analysis of the steps app stores and developers would need to take as a practical matter to comply. Those effects do not stop with app stores

and developers. The Act also impacts consumers, whose access to apps that convey a vast amount of protected speech now hinges on their willingness to provide proof of age, and, if they are underage, on their parents' willingness to consent, sometimes over and over again, to access even the most unobjectionable content. Those impacts are immediate, unnecessary if, as it should be, the Act is struck down, and unrecoverable. The impact of SB 2420's obligations is not just the difficulty—or in some cases impossibility—of compliance; the urgent problem is the barrier these obligations create to accessing and disseminating expressive, creative, and informative content.

Specifically, SB 2420 requires app stores to: (1) implement commercially reasonable age verification for every individual user, whether minor or adult, § 121.021(a); (2) if the user is under 18, tether that user's account to a parent's after verifying the account holder "has legal authority to make a decision on behalf of the minor," § 121.022; (3) obtain parental consent for each individual download or purchase before allowing a minor to download, purchase, or make purchases in or using an app, even if the content of the app or purchase is obviously suitable for everyone, §§ 121.022, 121.026(a)(3); (4) transfer a user's personal data to app developers for age verification and parental consent, § 121.024; (5) notify parents of "significant" changes and obtain consent for continued use, §§ 121.022(g), 121.053; and (6) display for every potential app and purchase the age rating assigned by developers and the specific content that led to the rating—information that also must be provided to parents every time consent to download is requested.

§§ 121.023(a)–(b), 121.022(f)(1). App stores are subject to substantial liability if, in the eyes of the State, they “knowingly misrepresent” information given to parents to obtain consent or even if they “obtain[] a blanket consent to authorize multiple downloads or purchases.” § 121.026(2), (3).

The Act imposes similarly broad obligations on app developers. All developers must assign and publish an age rating for every one of their applications and every possible in-app purchase, using the bespoke age categories established by the statute: child (under 13 years old), younger teenager (13 to 15 years old), older teenager (16 to 17 years old), and adult (18 years old and up). §§ 121.052(a), 121.021(b), 121.023. The Act, notably, provides no guidance to developers about how to assign those ratings. After a 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)(2). And just as the Act imposes substantial potential liability on app stores, it does the same for app developers if the State concludes that they “knowingly misrepresent[] an age rating or reason for that rating.” § 121.056(a)(2).

Developers’ obligations don’t end there. Any time a developer makes a “significant change” to its application,⁴ it must announce as much, and then the app store must seek parental consent anew. §§ 121.022(g), 121.053. Developers must also create and implement a system to use information received from the app store to

⁴ This means any change that (i) changes the type of personal data collected, stored, or shared by the developer; (ii) changes an assigned age rating or the contents/elements that led to it; (iii) adds new monetization features to the app (including new ways to make a purchase in/through the app or new ads in the app), or (iv) materially changes the app's functionality or user experience. § 121.053(b).

verify (1) the age category assigned by the app store to a particular user for every single user of that app, regardless of age; and (2) whether parental consent has been obtained from the app store for every minor user of the app. § 121.054. They also have to ensure that that information is used only to enforce age-related restrictions and protections, ensure legal and regulatory compliance, and implement safety-related features and default settings, and they must delete the information upon completion of the required verification.⁵ § 121.055.

As a practical matter, these are onerous, technologically complex, and resource-intensive obligations for any company, regardless of size. That makes them difficult for large companies, but virtually impossible for smaller companies—particularly when required to build out an entirely new system for compliance based on legislative language that lacks any operational details, and worse yet when forced to do so without warning or grace period.

Complicating matters even further, these requirements are less than clear, so companies have to guess what will satisfy the statute. And if they guess wrong, they face substantial liability. To list just some of what a company may have to do (unnecessarily, if the law is ultimately struck down as it should be), consider this:

To start, app stores' engineering teams must design, build, and maintain an entirely new system to verify user ages, tether minor user accounts to their parents after verifying the parents' authority, and then seek permission from the parents for

⁵ Under SB 2420, developers have to come up with a way to demonstrate that age gates and consent checks were successfully done without retaining the underlying personal data that proves that they did so—no easy task.

not just every download and purchase, but also every “significant change” to any application a user already has. They must also build systems to transmit age category and parental consent signals to app developers, both foreign and domestic, in a usable format. All of this will be technically challenging and labor-intensive, requiring extensive coordination app stores and between app stores and their stakeholders as the companies develop conventions for every step in this process.

Those obligations have implications for users as well as the app stores themselves. Before any Texan—“whether he is 13, 35, or 60,” CCIA App. to Vacate Stay at 9—may create an app-store account at all, the store must verify his age, § 121.021(a). This Court has elsewhere explained that where a person holds the right to access speech, “submitting to age verification is a burden on the exercise of that right,” *Free Speech Coal.*, 606 U.S. at 483, and that the State’s interest in shielding minors “does not justify an unnecessarily broad suppression of speech addressed to adults,” *Reno v. ACLU*, 521 U.S. 844, 875 (1997). As this Court has also explained, “the Government may not “reduc[e] the adult population ... to ... only what is fit for children.” *Reno v. ACLU*, 521 U.S. 844, 875 (1997).

Moreover, while not clear, by requiring app stores to verify that a putative parent “has legal authority to make a decision on behalf of the minor,” the expansive and vague Section 121.022(b)(2) could be read to require the collection of birth certificates, court documents outlining custodial relationships, or other personal and privacy-invasive information. The legislation forces Texans to disclose personal

information both to access information online themselves and to allow their children to do so.

Now turn to developers. Their engineering teams need to consider implementing secure interfaces to take in, account for, and then take appropriate steps to delete age category and parental consent signals. For example, software developers will need to create and implement a system to verify users but won't be able to do that until they know how each app store is going to build out its own system. That will dramatically impact smaller businesses that may not have teams of engineers to build out robust systems. (Indeed, some apps are developed by individuals, who themselves are sometimes minors.)

This process would be tremendously burdensome even for new apps, but developers will also have to audit existing apps and features—including apps that remain in the stores years after active development ceased—to determine appropriate statutory age categories, based on no statutorily articulated metrics. They then have to figure out how to provide that information, as well as the reasons for it, to every app store that makes their app available. And SB 2420 does not permit developers simply to rest on the rating systems the industry has actually adopted. It compels them to rate their offerings under four age categories of Texas's own devising: "child," "younger teenager," "older teenager," and "adult," § 121.021(b)(1-4), categories that do not overlap with those already used by the major app stores, CCIA App.112a–13a. Nor does the mandate stop at the threshold of the app: a developer must also assign one of Texas's ratings not only to every application, but to every item

that may be purchased in or through it, no matter how numerous or anodyne. § 121.052(a).

For *amici*'s digital publishers—education-technology companies, courseware and audiobook providers, financial-information services, specialty and B2B publishers—whose catalogs are their speech, SB 2420 compels a standardless characterization of every expressive work they offer, backed by civil penalties of up to \$10,000 per violation under the Texas Deceptive Trade Practices Act. SEAT App.42a; §§ 121.101–.102. The statute supplies no guidance for mapping a novel, a lecture series, or a news archive onto Texas's categories, and the developer who guesses wrong—even the online bookstore that may have to rate *tens of millions* of e-books—faces the State's consumer-protection apparatus.

The Act also requires the developer to disclose the “specific content or other elements that led to” each rating, § 121.052(b)(2), on pain of liability if the State later concludes the developer “knowingly misrepresent[ed] an age rating or reason for that rating,” § 121.056(a)(2). That is compelled speech of a paradigmatic kind: the State conscripts the developer to speak about its own expressive works, in terms the State defines, under threat of enforcement if the State disagrees with the characterization. *Cf. Nat'l Inst. of Family & Life Advoc. v. Becerra*, 585 U.S. 755, 766 (2018) (laws that “alter[] the content of [a speaker's] speech” are content-based and presumptively unconstitutional). And, again, none of this is necessary, if, as it should be, the Act is struck down. But all of it combines to erect serious barriers to accessing and disseminating expressive content to individuals of all ages.

C. The “Significant Change” Requirement Underscores the Problems with the Statute

The “significant change” requirement illustrates the unconstitutional costs SB 2420 imposes—costs that *amici*’s members and the startups *amici* work with cannot recover even if and when the Act is struck down. To comply with that requirement, developers have to figure out how to flag “significant changes” to determine whether they trigger notice to the app stores and mandatory renewal of parental consent. And whenever an application’s data practices or rating-relevant content changes, new monetization features are added, or its “functionality or user experience” “materially changes” (whatever that means), § 121.053(b), the app store must pause each minor’s access until his or her parent consents anew, §§ 121.022(g), 121.053. For publications whose defining trait is that they change—a news application updated hourly; a courseware platform releasing new units across a semester; a reference service expanding its database—the statute makes improvement itself a potential triggering event.

The district court asked, without answer from Texas, whether each new song added to a streaming catalog, or a service’s addition of a new category of content (e.g., when Spotify added podcasts alongside music) requires fresh notice and renewed consent. CCIA App.51a–52a. The record confirms what such a regime threatens: 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

change “could require burdensome new disclosures and millions of minor users to again obtain parental consent.” CCIA App.35a.

That burden falls with particular force on education. Consider a Texas classroom this fall, absent relief from this Court. Before students under eighteen may open the digital courseware their teacher has assigned, they must be age-verified by the app store, tethered to a verified parent account, and individually authorized—and authorized again for each in-app module or workbook, because the Act forbids parents from granting blanket consent. §§ 121.021, 121.022, 121.026(a)(3). When the publisher releases its second-semester update, students’ access may pause until every busy parent in the class receives and eventually (we hope) approves another request for consent. §§ 121.022(g), 121.053. Meanwhile, the Act exempts nonprofit standardized-testing applications: as the district court observed, a Texas teenager “would not face a barrier accessing an app from the College Board” yet “would be unable to access an app from a newspaper.” CCIA App.26a. CCIA and SEAT have addressed the constitutional defect in that hierarchy, but the equitable point is even simpler: Each interrupted lesson, each abandoned assignment, each student steered from the learning tool to nothing at all, is an injury that no later judgment can repair.

D. SB 2420 Has Implications Well Beyond the Particular Statute or State

Finally, SB 2420’s impact is not cabined to its obligations and is not necessarily limited to Texas, and so its burdens should not be evaluated in isolation.

First, the Act may also trigger additional obligations under other laws, compounding the burden here. For example, a developer’s or app store’s efforts to

satisfy this law may trigger additional compliance obligations under state privacy laws, and thus additional costs that also may prove to be unnecessary.⁶

Second, lifting the stay may both reduce speech and make the online marketplace less safe, less efficient, and less diverse. SB 2420's burdens fall on every individual application developer, whether a national newspaper, a small nonprofit, or even an individual. A developer's only alternatives to expensive, technically difficult, and potentially unnecessary compliance would be to risk enforcement or cease participation in app stores altogether and require users to download its applications through its website, a solution that would not only carry economic and expressive costs, but would also have the perverse effect of reducing protections currently available to users. Larger companies may be able to do this, but smaller ones (or individual developers) may simply not be able to market their applications effectively or indeed at all.

App stores are popular with both users and publishers because they are convenient and centralized, offer vetting mechanisms for apps, and provide a wide variety of features that allow users to find the content they want—and not what they don't. For instance, app stores generally remove listed applications that are found to

⁶ Separately, the imperfect overlap between SB 2420 and the Children's Online Privacy Protection Act ("COPPA") means that parents may have to go through multiple steps all for their children to access a single app. On the one hand, COPPA requires *software developers* to provide direct notice and obtain verifiable parental consent to collect information from children under the age of 13. On the other, SB 2420 requires *app stores* to obtain parental consent for a minor to download an app. Because this consent, however, does not satisfy the federal COPPA consent requirements, this essentially sets up a duplicative process that places the burden on parents to provide consent twice—once to the developer and once to an app store. While Section 121.022(h)(1)(B) exempts an app store from obtaining parental consent to download an app if data collection is collected in compliance with COPPA, it also limits this dispensation to situations that are necessary for the provision of emergency services.

contain malware or obscene content. They allow users to leave reviews that others can read and rely on to decide which apps to download. And they provide a wide variety of features, including age ratings and parental controls, intended specifically to prevent inappropriate content from being inadvertently disclosed to minors. Impairing the functionality of app stores threatens all those advantages.

Third, the impact of the Act's additional obligations—ones which dwarf existing voluntary programs—will not just be felt in Texas. Crucially, app stores are *not* geographically limited: the app store that a Texas user logs into, and the app listings the user sees there, are largely the same ones that a user in Delaware, Oregon, or Michigan sees. Thus, while SB 2420 was passed by Texas and can theoretically only be enforced there, many of the changes required by SB 2420 would be effectively universal. While geographic carveouts might in theory be technologically feasible, users and their devices move, and they often use technologies like virtual private networks to disguise their locations. And even if geographic carveouts could be reliably implemented, there would be limited benefit in doing so. The costs and technological hurdles of implementing SB 2420's rating system just become even more substantial if the system varies based on a user's location.⁷

⁷ The impact is likely national for another reason: The statute forces developers to take public positions, including on the application's age-appropriateness, what content they relied on in making that determination, and whether any changes are "significant." Even if these statements were only visible to Texas users, those statements, and all their potential implications for the applications' consumer branding, would inevitably be a matter of public record, accessible to users everywhere forever thereafter. And that in turn exposes companies to potential litigation risk if a regulator or private plaintiff takes issue with their compelled speech.

II. Allowing The Stay to Remain in Place Will Cause Irreparable Injury

Developers, app stores, and individuals will suffer irreparable injury absent relief from this Court, and no countervailing State interest comes close to balancing the scales here.

First, as longstanding precedent of this Court makes clear, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14, 19 (2020) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

Second, even if this were not the case, if Texas is permitted to fully enforce SB 2420, even during the relatively brief window while the appeal is pending before a merits panel, thousands of regulated entities (at least) will suffer harms that cannot be undone. “[N]onrecoverable compliance costs” suffice to constitute irreparable harm for a regulated entity. *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 220–21 (1994) (Scalia, J., concurring in part and concurring the judgment). In the likely event that CCIA and SEAT succeed on the merits and SB 2420 is held unconstitutional, app stores and publishers have no obvious way to recover the costs they incurred in the meantime in constructing, implementing, and maintaining unnecessary and unconstitutional age verification systems, tethering systems, parental consent systems, ratings systems, and “significant change” assessment, notification, and re-consent systems. *Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 594 U.S. 758, 765 (2021). That means that application of SB 2420, even for a relatively brief period of time, would work additional irreparable injury on app stores and developers alike.

Third, the public’s interest lies in having questions of constitutional magnitude resolved in due course on complete merits briefing, with both sides heard, rather than effectively resolved through a preliminary order.⁸ Texas does not stand powerless to protect minors during the pendency of the appeal. Its targeted age-verification statute for material obscene to minors—sustained by this Court in *Free Speech Coal. Inc. v. Paxton*, 606 U.S. 461 (2025)—remains fully enforceable, as do the Texas Data Privacy and Security Act and the federal Children’s Online Privacy Protection Act, both of which govern the collection and use of children’s data. Vacatur, in short, costs Texas nothing because the State still has powerful tools to protect children online.

Moreover, Texas’s interests must be weighed against the fact that, like the video game industry, the app store industry “has in place” its own “voluntary rating system[s]” (which vary only slightly between, say, Google and Apple) and app stores “prominently display information” about the applications’ appropriateness to any user browsing them. *Brown*, 564 U.S. at 803. As with video games, app stores’ protective features give parents tools to “readily evaluate” the products and prevent children from downloading those the parents deem inappropriate. *Id.* All these features allow the user to download new applications with more peace of mind than would be possible through direct download from the publisher’s website, where there

⁸ Nothing in *NetChoice, LLC v. Fitch*, No. 25A97 (U.S. Aug. 14, 2025), counsels otherwise. Unlike that case, this one involves a statute spanning every application, every store, and every Texan; a record replete with uncontroverted evidence of present, operating harm; and a State whose litigation conduct blatantly disclaims the urgency its stay asserts. Moreover, the public interest here extends well beyond Texas. The panel’s published order will be the template for defending materially similar statutes already enacted in Utah, Louisiana, and Alabama, *see* C.A.App.19 & n.5, and the copycat bills advancing elsewhere; its first-pass rationale—that the dissemination of expressive works becomes commercial speech whenever something of value changes hands—will be pressed wherever speech is sold.

is no guarantee that any of the same safeguards would be present. These features also undercut the State’s claimed rationale and urgency. *Brown*, 564 U.S. at 803 (holding that where private solutions, albeit incomplete, exist, “[f]illing the remaining modest gap in concerned parents’ control can hardly be a compelling state interest”).

Fourth, vacating the stay would simply restore the previous status quo. SB 2420 was enjoined on December 23, 2025, nine days before it would first have taken effect. Non-enforcement was thus the only condition the statute had ever known (and it remained so for more than five months) until a motions panel, by an administrative stay entered before stay briefing had closed and a published order issued before the appellees’ merits brief came due, rendered the law enforceable for the first time, with no grace period for compliance. Whatever its formal label, an order that converts a never-operative statute into operating law in the middle of an appeal, on the strength of one side’s merits briefing, does not preserve the *status quo* but rather asks the appellees, their members, and the public to absorb new constitutional injuries while the court of appeals deliberates.

Finally, the Fifth Circuit concluded that “[a]ny 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.” CCIA App.11a. From that premise, the panel pronounced the balance of equities and the public interest “clearcut in Texas’s favor.” *Id.* But that does not take into account the interests arrayed on the other side: the app stores and the millions of developers,

including many of *amici*'s members, who must build and operate the Act's machinery now or face liability; the minors cut off from lawful—indeed, constitutionally protected—speech; the parents conscripted into a consent bureaucracy many of them never sought and from which none can opt out; and the adult Texans who must now verify their age merely to open an app-store account at all. The Constitution as well as fundamental principles of equity require that this Court consider the other side of the ledger and vacate the stay.

CONCLUSION

Amici respectfully request that the Court grant the applications.

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