

No. 25A1390

IN THE
Supreme Court of the United States

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,
Applicant,

v.

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

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

**AMICI CURIAE BRIEF OF THE NATIONAL RETAIL FEDERATION AND THE TEXAS
RETAILERS ASSOCIATION IN SUPPORT OF APPLICANT**

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STATEMENT OF IDENTITY AND INTEREST

Pursuant to Supreme Court Rule 37, the National Retail Federation (“NRF”) and The Texas Retailers Association (“TRA”) respectfully submit this brief as amici curiae in the Emergency Application (the “Application”) filed by the Computer & Communications Industry Association (“CCIA”).¹

NRF is the world’s largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers from the United States and more than 45 countries. NRF empowers the industry that powers the economy. Retailers represent the nation’s largest private sector employer, contributing \$5.3 trillion to the annual GDP and supporting more than one in four U.S. jobs—for 55 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating and communicating the powerful impact retail has on local communities and global economies.

TRA is an association of global, national, state, and local retail businesses dedicated to improving the lives of the consumers who power the Texas economic engine. TRA supports industry through government advocacy and educational programs.

Amici regularly submit filings in cases raising significant legal issues for the retail community. Amici submit this brief to inform the Court of the myriad harms that the Texas App Store Accountability Act, Tex. Bus. & Com. Code §§ 121.001 et seq., (“SB 2420” or the “Act”), would have on all app developers, including NRF and TRA members that provide apps and sell commercial items through those platforms.

¹ No party or counsel for a party in the pending case authored the proposed amici curiae brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than the amici, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Act imposes serious restrictions on many app developers who allow Texas residents to use their apps to make purchases. By not defining the term “purchases,” the Act can be read to sweep in everyday goods sold through apps, such as books, movies, and clothing. And within that scope—and under the Act’s many requirements applicable to apps themselves—the Act could subject retailers to a host of content-based regulations, ranging from restricting their abilities to sell famous literature to minors, to forcing retailers to devise and publish opinions on which goods and apps are appropriate for which ages.

Retailers are key players in the chain of distribution of goods containing protected speech. They have a significant interest in the continued ability of all individuals to access and engage with fully protected speech and information via smartphone apps. If this Court upholds the Fifth Circuit’s stay, the effect will be to restrict the ability of retailers to disseminate protected materials within the marketplace of ideas, and to contract the spectrum of available knowledge for minors.

I. Smartphone Apps and the Act’s Restrictions

A. Retailers and Minors Alike Widely Use Retail Apps to Distribute, Search for, and Purchase Goods

Smartphone apps are an integral part of everyday life.² With nearly seven (7) billion smartphones worldwide, and the proliferation of mobile networks and high-speed internet, apps enable businesses to engage with customers in important ways, including by bypassing browser limitations and offering immediate communication.³

² Andrew Buck, *Mobile Apps vs Mobile Websites (Why 90% of Mobile Time is Spent in Apps)*, MobiLoud, Feb. 20, 2026, <https://www.mobiloud.com/blog/mobile-apps-vs-mobile-websites> (over 90% of mobile time is spent in apps and not browsers); *see also* *20 Mobile App Statistics To Know In 2026*, MindSea, Apr. 9, 2026, <https://mindsea.com/blog/app-stats/>.

³ *The 10 Benefits of Mobile Apps for Your Business*, Adobe for Business, May 26, 2023, <https://business.adobe.com/blog/basics/benefits-of-mobile-apps>.

In the retail context, the portion of consumers who use apps to browse for and purchase goods is significant. According to some sources: globally 59% of e-commerce sales come from mobile devices; 85% of mobile shoppers prefer apps; 50% of U.S. online consumers regularly use retail apps to browse and purchase, and have more than four shopping apps; and, 15% of consumers use mobile shopping apps daily.⁴

The same app-based browsing and shopping habits hold true for minors.⁵ According to some studies, even more than a decade ago 78% of teens (ages 12-17) had a cell phone and 23% of teens had a tablet computer.⁶ 82% owned at least one of these mobile devices, and even as of 2013 58% had downloaded an app.⁷ It should come as no surprise that minors under the age of 18, just like their adult counterparts, are heavy users of retail apps to browse and make purchases for themselves and their families.⁸

This reliance on apps is the same for retailers, who design and deploy apps to meet customer demands. Retail apps, among other things, enable a more frictionless purchase process for customers seeking to acquire goods. Apps also, even before a transaction is consummated, enable a degree of personalization for customers that is not available via shopping in-store, or via mobile and desktop websites.⁹ That personalization is something that an overwhelming majority of retail customers

⁴ *Mobile eCommerce Statistics*, CapitalOne Shopping, Mar. 29, 2026, <https://capitaloneshopping.com/research/mobile-ecommerce-statistics/>.

⁵ Mary Madden, Amanda Lenhart, Sandra Cortesi & Urs Gasser, *Teens and Mobile App Privacy*, The Pew Research Center, Aug. 22, 2013, https://www.pewresearch.org/internet/2013/08/22/main-findings-3/?utm_source=chatgpt.com.

⁶ *Id.*

⁷ *Id.*

⁸ Abha Bhattarai, *Kids are shopping online more. Here's how brands are courting them*, L.A. Times, Aug. 13, 2018, <https://www.latimes.com/business/la-fi-online-shopping-kids-20180813-story.html>; see also Jasmine Wu, *Five Apps You've Never Heard of That Teens Are Using to Shop*, CNBC, Aug. 6, 2019, <https://www.cnbc.com/2019/08/06/five-apps-youve-never-heard-of-that-teens-are-using-to-shop.html>.

⁹ Harald J. van Heerde, Isaac M. Dinner & Scott A. Neslin, *Engaging the unengaged customer: The Value of a retailer mobile app*, 36 Int'l J. of Rsch. in Mktg. 420, 422 (2019).

expect, i.e., for apps to not only enable them to search seamlessly for products or categories they know about, but also to recommend to them related or complimentary products that the customers may otherwise not know about.¹⁰

The import of mobile app technology in today’s world is undeniable, and these statistics, among others, show that impact is felt equally in the retail space, with consumers leaning heavily into apps to browse and purchase a wide variety of goods. Just as crucially, shopping can often be a form of self-expression.¹¹ According to one study, for example, “Gen Z consumers view shopping not just as a transaction but as a statement of their personal values and beliefs (e.g., sustainability). In the US, 71 percent of Gen Z consumers say fashion is their main means of expressing personality, far higher than consumers overall (59%).”¹²

B. The Act Restrains Texas Minors From Downloading Certain Apps and Making Any Purchases Via Apps Without Parental Consent

The Act erects two sets of gates between minors and information that may be available to them via certain types of apps. At the first gate, the Act prevents minors in the State of Texas from downloading any *covered* app without parental consent.¹³ The Act requires app store owners to enforce the first gate.

The Act singles out and exempts from this prohibition certain categories of

¹⁰ Tim Juravich, Courtney Sherman, Patrick Parfrey & Nathan Hale, *Mastering mobile: Innovative strategies to engage and retain your customers*, Deloitte Digital, Nov. 26, 2024, <https://www.deloittedigital.com/us/en/insights/perspective/mobile-app-best-practices.html>; *see also* Amerity, *The Data is In: Here’s What Retail Customers Want from Personalization*, Feb. 19, 2026, <https://amperity.com/blog/what-retail-customers-want-from-personalization> (finding 83% of Americans “want a personalized experience with tailored offers and recommendations based on previous shopping habits.”).

¹¹ M. Joseph Sirgy et al., *Self-Expressiveness In Shopping*, 30 J. of Retailing and Consumer Servs. 292, 292-93 (2016).

¹² Sara Lavi and Ryan Poole, *How Gen Z Is Shaping Apparel Merchandising—and What Retailers Can Do About It*, BRG, Apr. 2, 2026, <https://www.thinkbrg.com/insights/publications/how-gen-z-is-shaping-apparel-merchandising-and-what-retailers-can-do-about-it/>.

¹³ Tex. Bus. & Com. Code § 121.022(d)(1).

apps used for communicating about two specific types of subject matter.¹⁴ Under the Act's carve outs, a minor *without parental consent* can permissibly download apps *if* the apps are either: operated by or in partnership with nonprofit, governmental, or authorized emergency services, and provide direct access to emergency services such as 9-1-1 or crisis hotlines;¹⁵ or, offered by, or in partnership with, nonprofit organizations involved in developing, sponsoring, or administering standardized placement tests for postsecondary admissions or placement purposes.¹⁶

To illustrate this restriction in operation, the Act's first gate would prevent a minor without parental consent from downloading an app designed to deliver curated news. But that same minor without parental consent would seemingly be able to download the "BigFuture School" app from the College Board, a nonprofit organization that administers the SATs and AP program.¹⁷ That app states it can be used for exchanging messages with nonprofit colleges, scholarship providers, and government agencies about "education programs looking for students."¹⁸

The Act's second gate applies to all apps that facilitate purchases. The Act in this regard seemingly prevents a minor from making any purchase via *any* app without parental consent.¹⁹ The Act requires both app store owners and app developers to enforce this second gate, and to block potential purchases of goods via apps when those purchases are not approved by a minor's parent. This second gate could prevent a minor with a retail app on her or his smartphone from using that app to purchase Homer's *The Odyssey* or an article of expressive clothing.²⁰

¹⁴ Tex. Bus. & Com. Code §§ 121.022(h)(1)-(2).

¹⁵ Tex. Bus. & Com. Code § 121.022(h)(1).

¹⁶ Tex. Bus. & Com. Code § 121.022(h)(2).

¹⁷ THE COLLEGE BOARD, *BigFuture School*, Ver. 2.7.0 (May 21, 2026), <https://apps.apple.com/us/app/bigfuture-school/id6462904878>.

¹⁸ BigFuture Home Page, <https://bigfuture.collegeboard.org/bigfuture-school> (last visited June 11, 2026).

¹⁹ Tex. Bus. & Com. Code § 121.022(d)-(e).

²⁰ Tex. Bus. & Com. Code §§ 121.055(a)(1)-(2), 121.056.

II. The Act Is A Content-Based Regulation That Suppresses Protected Speech

The First Amendment, applicable to States through the Fourteenth Amendment, prohibits laws “abridging the freedom of speech.”²¹ “Freedom of speech and freedom of the press . . . are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action.”²² The Court’s precedents “have focused ‘not only on the role of the First Amendment in fostering individual self-expression but also on its role in affording the public access to discussion, debate, and the dissemination of information and ideas.’”²³

Indeed, as the Court has recognized, “the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.”²⁴ The First Amendment protects the ability of people to disseminate information, including, for example, publishers and distributors of books,²⁵ and protects the ability of people to “receive information and ideas.”²⁶ In this context, it is “the creation and dissemination of information [that] are speech for First Amendment purposes.”²⁷

The right to receive information is “an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution, in two senses. First, the right to receive ideas follows ineluctably from the *sender’s* First Amendment right to send them: ‘The right of freedom of speech and press . . .

²¹ U.S. Const., amend I; *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 707 (1931).

²² *Lovell v. City of Griffin*, 303 U.S. 444, 450 (1938).

²³ *Bd. of Ed., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 866 (1982) (citing *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978)).

²⁴ *Bellotti*, 435 U.S. at 783.

²⁵ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68 (1963) (holding a Rhode Island law designed to combat juvenile delinquency, where it provided administrative procedures to “directly and designedly stop[] the circulation of publications in many parts of Rhode Island,” violated the First Amendment.).

²⁶ *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1974) (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)).

²⁷ *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011) (citing *Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001) (“if the acts of ‘disclosing’ and ‘publishing’ information do not constitute speech, it is hard to imagine what does fall within that category, as distinct from the category of expressive conduct.”)).

embraces the right to distribute literature, and necessarily protects the right to receive it.”²⁸ Second, and “[m]ore importantly, the right to receive ideas is a necessary predicate to the *recipient’s* meaningful exercise of his own speech, press, and political freedom.”²⁹ “The citizen is entitled to seek out or reject certain ideas or influences without Government interference or control.”³⁰ “The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.”³¹

For these reasons, “the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge.”³² The Court has stated:

The Constitution exists precisely so that opinions and judgments, including esthetic and moral judgments about art and literature, can be formed, tested, and expressed. What the Constitution says is that these judgments are for the individual to make, not for the Government to decree, even with the mandate or approval of a majority. Technology expands the capacity to choose; and it denies the potential of this revolution if we assume the Government is best positioned to make these choices for us.³³

These principles apply with equal force to minors—whether as speakers or recipients of information. As the Court has recognized, there is no “free-floating power to restrict the ideas to which children may be exposed,” nor is there a power to “prevent children from hearing or saying anything *without their parents’ prior consent.*”³⁴ “[M]inors are entitled to a significant measure of First Amendment

²⁸ *Pico*, 457 U.S. at 867 (citing *Martin v. Struthers*, 319 U.S. 141, 143 (1943)).

²⁹ *Id.* at 868 (“[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society. . .”).

³⁰ *U.S. v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000).

³¹ *Lamont v. Postmaster Gen.*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring).

³² *Pico*, 457 U.S. at 866 (quoting *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965)).

³³ *Playboy Ent. Grp., Inc.*, 529 U.S. at 818.

³⁴ *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 795 n.3 (2011) (“Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to

protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them.”³⁵

A. The Act Is a Content-Based Regulation

A law is content-based if it “applies to particular speech because of the topic discussed or the idea or message expressed.”³⁶ Determining whether a law is content-based “requires a court to consider whether a regulation of speech ‘on its face’ draws distinctions based on the message a speaker conveys.”³⁷ “Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.”³⁸ The Court’s precedent also recognizes that:

[A] separate and additional category of laws that, though facially content neutral, will be considered content-based regulations of speech: laws that cannot be ‘justified without reference to the content of the regulated speech,’ or that were adopted by the government ‘because of disagreement with the message [the speech] conveys’. Those laws, like those that are content based on their face, must also satisfy strict scrutiny.³⁹

Here, the Act’s exemptions render it a content-based regulation that is subject to strict scrutiny under each category described above. *First*, the Act on its face singles out for differential treatment specific speech based on subject matter. The Act prevents minors from downloading any app without parental consent, *except* categories of apps that enable communication about emergencies, or about scholastic standardized testing and placement in postsecondary institutions. Minors can readily

protect the young from ideas or images that a legislative body thinks unsuitable for them.”) (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 213-14 (1975)).

³⁵ *Id.* at 794.

³⁶ *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 163-64 (citation omitted).

download such apps, and use them to freely send and receive speech on those topics.

The Act in this regard is designed to “allow speech on a subject the government favors”—educational and emergency matters—, while imposing restrictions, and in some cases proscribing, speech “on other disfavored subjects,”⁴⁰ such as news reporting on current events or the availability of retail items like movies and video games. That is the epitome of a content-based regulation.

Second, the Act’s function and purpose is to shield minors from objectionable material. The Court has recognized that such laws, even when the government has a compelling interest, are content-based restrictions that cannot be constitutionally applied to restrict speech that does not actually harm children.⁴¹

In this matter, the State acknowledged to the District Court that the Act seeks to shield minors from speech that the State deems objectionable.⁴² The Act has also been described by its authors as “protect[ing] the children of Texas” by “requiring app stores to gain consent from parents” before children can use and make purchases through apps.⁴³ This bears out in the Act itself, which indicates that the State finds speech via nonprofit organizations or governmental entities about emergencies and scholastic standardized testing/placement in postsecondary institutions to be unobjectionable and safe for minors. The Act places no barrier between minors in the State of Texas and information that they may receive via those types of apps, which minors are free to download and use. The Act at the same time restricts ideas that children may be exposed to through other apps.⁴⁴ That is a content-based regulation.

Third, even if the Act were not a facially content-based regulation (it is), it still

⁴⁰ *Barr v. Am. Ass’n of Pol. Consultants, Inc.*, 591 U.S. 610, 650 (2020) (Gorsuch, J., concurring in part and dissenting in part).

⁴¹ *Ashcroft v. ACLU*, 542 U.S. 656, 670 (2004); *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 250-54 (2002).

⁴² Order Granting Prelim. Inj. at 10, *Computer & Commc’ns Indus. Ass’n v. Paxton*, No. 1:25-cv-01660-RP (W.D. Tex. Dec. 23, 2025), ECF No. 65.

⁴³ Senate Research Center, *Bill Analysis for Tex. S.B. 2420*, Texas Legislature Online (Sept. 1, 2025), <https://capitol.texas.gov/tlodocs/89R/analysis/pdf/SB02420I.pdf>.

⁴⁴ *Brown*, 564 U.S. at 794.

cannot be justified without reference to the content of the regulated speech. Exempting from the parental consent requirement for downloading an app the two categories of apps described above makes sense only if the State does not want to interfere with minors being able to access information about emergencies and related to standardized educational testing. This becomes particularly clear in the context of the exemption for apps directly enabling 9-1-1 calls. 9-1-1 is solely for purposes of reporting emergencies. It follows that, if the Act exempts from certain of its requirements apps that enable direct connections to 9-1-1, the substance of the communications via that app are necessarily anticipated to be about emergencies.

That conclusion finds further support when examining specific apps. For example, the Act’s exemptions would seemingly apply to the “PulsePoint Respond” app, offered by the nonprofit PulsePoint Foundation.⁴⁵ That app enables direct connections to 9-1-1, and alerts users of “nearby” emergencies and “other events that may impact you and your family, such as wildfires . . .” and to “monitor live dispatch radio traffic . . .”⁴⁶ I.e., it enables a broad array of speech on emergency issues.

Put simply, the Act makes it easier for minors in the State of Texas to download apps that, based on how the Act characterizes apps eligible for exemption, will necessarily disseminate speech about specific subject matters that the State favors over other categories of speech. Simultaneously, the Act erects barriers making it more difficult, or even preventing, minors from accessing other types of information. That is a clear case of a content-based regulation, subject to strict scrutiny. And to find otherwise would “exact[] an extraordinary cost.”⁴⁷ It would weaken free speech protections for minors in Texas by cutting off those without parental consent from broad swaths information, and in many cases forms of self-expression, that are widely available to others via a technology (i.e., apps) completely woven into everyday life.⁴⁸

⁴⁵ PULSEPOINT FOUNDATION, *PulsePoint Respond*, Ver. 26.4.5328 (Apr. 7, 2026), <https://apps.apple.com/us/app/pulsepoint-respond/id500772134>.

⁴⁶ *Id.*

⁴⁷ *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 817 (2000).

⁴⁸ Buck, *supra* note 2; MindSea, *supra* note 2.

B. The Act Improperly Restricts the Rights of Retailers to Distribute and of Minors In Texas to Access Constitutionally Protected Materials

As a content-based regulation, the Act's transgressions against the First Amendment come into clear view when considering two sets of facts. First, retailers offer for sale via their apps millions or even tens of millions of stock keeping units ("SKUs"), many of which, such as books and video games, contain Constitutionally protected content. Second, the Act's gates could necessarily restrict the "spectrum of available knowledge"⁴⁹ for minors by conditioning access to those materials, and others, on parental consent, be it to access an app in the first instance⁵⁰ or to purchase a good containing Constitutionally protected materials.⁵¹

To illustrate, envision that a minor in Texas wants to access a widely-available retailer's app to explore what new book releases are available that discuss significant world events or cutting-edge technological developments. This is a crucial part of free speech, as being aware of the universe of available information helps inform opinions, dissent, and making democratic choices based on the facts and perspectives that exist. But the Act's first gate inhibits, or even outright prevents, that. Without parental consent, the minor could not download the retailer's app. The minor could not use what is otherwise widely-available to large swaths of the rest of the population to inform herself or himself of the universe of information and ideas that may exist, thereby stifling the minor's development and informed participation in society.

Separately, even if that minor had a retail app on her or his smartphone, the minor could be prevented from purchasing goods containing protected speech. The minor without parental consent could be prevented from purchasing books for school, or a poster with political slogans that the minor wants to express herself or himself. The minor could be cutoff from using an effective and preferred way of engaging in deeper investigation and learning about a topic of interest.

⁴⁹ *Pico*, 457 U.S. at 866 (quoting *Griswold*, 381 U.S. at 482).

⁵⁰ Tex. Bus. & Com. Code § 121.022(d)(1).

⁵¹ Tex. Bus. & Com. Code § 121.022(d)(3).

To be clear, the Act is not a law that regulates obscenity.⁵² As to retailers, there is a broad spectrum of goods offered for sale via retail apps that contain Constitutionally protected messages that are otherwise widely available to the general public and part of everyday life. Books, movies, videogames, and expressive clothing are examples. Many retailers offer millions, or even tens of millions, of SKUs for sale via their apps. The Act’s restrictions would impact and restrict access to a tremendous amount of retail goods containing protected materials and/or that facilitate self-expression and the exchange of ideas. There is simply no lawful basis for this restriction of “ideas to which children may be exposed” and prevention of “children from hearing or saying anything *without their parents’ prior consent.*”⁵³

C. The Act Is Not a Commercial Regulation; Strict Scrutiny Still Applies

First Amendment protections do not cease to apply in the realm of information disseminated via retail apps simply because the goods containing Constitutionally protected speech are offered for sale. The Court rejected such a premise in *Smith v. California*, where it recognized that:

[I]t also requires no elaboration that the free publication and dissemination of books and other forms of the printed word furnish very familiar applications of these constitutionally protected freedoms. It is of course no matter that the dissemination takes place under commercial auspices. Certainly a retail bookseller plays a most significant role in the process of the distribution of books.⁵⁴

The Court has consistently reached a similar conclusion in matters involving the sale of products containing protected speech, without recasting the issue as one of commercial speech merely because the good is being sold.⁵⁵

⁵² Cf. *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 481-82 (2025)(addressing law regulating access to obscene content for minors).

⁵³ *Brown*, 564 U.S. at 795 n.3 (“Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.”) (quoting *Erznoznik*, 422 U.S. at 213-14).

⁵⁴ 361 U.S. 147, 150 (1959).

⁵⁵ See *Bantam Books*, 372 U.S. at 68; *Va. Pharmacy Bd. v. Va. Consumer Council*, 425 U.S. 748, 761 (1976) (“Speech likewise is protected even though it is carried in a form that is ‘sold’ for profit, and

Here, the issue with the Act is not that it regulates what retailers can say in advertising books, video games, and other expressive materials. The Act does not do that. The very core of the Act is intended and operates to “directly and designedly stop[] the circulation”⁵⁶ of apps to, and the purchase of materials through apps by, minors in Texas. That infringes core speech protections, and the Act should not be recast into a regulation of purely commercial speech because some proposed sales are contemplated downstream in the chain of distribution.

At the very most, even assuming *arguendo* that there is an element of commercial speech present here, that aspect is “inextricably intertwined with otherwise fully protected speech.”⁵⁷ The point at which any commercial speech ends, and the distribution of protected materials begins, is indeterminable. Neither the Act’s contours nor the realities of the circumstances enable the “parcel[ing] out the speech, applying one test to one phrase and another test to another phrase. Such an endeavor would be both artificial and impractical.”⁵⁸ Under these circumstances, “we apply our test for fully protected expression.”⁵⁹

The inescapable conclusion is that the Act’s two gates restrict access to far more than commercial speech. They impact the chain of distribution, and the supply and consumption of goods containing protected speech. Full free speech protections must apply here, where the Act plainly infringes free expression rights via the rights to distribute and access protected materials.

III. The Act Further Violates the First Amendment By Compelling Speech

The First Amendment generally prohibits the government from compelling

even though it may involve a solicitation to purchase or otherwise pay or contribute money.” (collecting cases); *Bigelow v. Virginia*, 421 U.S. 809, 818 (1975) (“The existence of ‘commercial activity, in itself, is no justification for narrowing the protection of expression secured by the First Amendment.’”) (citations omitted).

⁵⁶ *Bantam Books*, 372 U.S. at 68.

⁵⁷ *Riley v. Nat’l Fed. of the Blind of North Carolina, Inc.*, 487 U.S. 781, 796 (1988).

⁵⁸ *Id.*

⁵⁹ *Id.*

individuals to speak or endorse a message with which they disagree.⁶⁰ The Court has held that freedom of speech includes both the right to speak and the right to refrain from speaking.⁶¹ In cases like *West Virginia State Board of Education v. Barnette* and *Wooley v. Maynard*, the Court invalidated requirements that individuals affirm ideological messages.⁶² When a law compels speech based on its content or forces affirmation of a viewpoint, it is typically treated as a content-based regulation and must satisfy strict scrutiny.

Here, the Act compels speech by covered retailers. Section 121.052 requires developers of an app to assign to each software app *and to each purchase that can be made through the app* an age rating based on the age categories in the Act.⁶³ Then, app developers must disclose the specific content or elements that led to their choice for each rating.⁶⁴ The breadth of that requirement is staggering. It would force retailers to *make decisions and publish them*—without any guidance in the Act—as to which items are appropriately purchased without parental consent by someone who: is a “child” (under 13); a “younger teenager” (13 to 15); an “older teenager” (16 to 17); or an “adult” (18 and older).⁶⁵

Such a retailer would be required to opine on the appropriate age for someone without parental consent to purchase, for example: a copy of *The Catcher in the Rye* or *To Kill a Mockingbird*; a t-shirt with political messaging or expressions signaling membership in a group; a bumper sticker with religious slogans. These are issues that most, if not all, retailers will *not* decide or publish if left to their own volition.

These are sensitive debates often left to families to decide for themselves, as evidenced by the fact that many retailers have never chosen to impose such restrictions. But the Act seeks to override that judgment. It seeks to dictate the

⁶⁰ *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023).

⁶¹ *Id.* at 589-90.

⁶² *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Wooley v. Maynard*, 430 U.S. 705 (1977).

⁶³ Tex. Bus. & Com. Code § 121.052(a).

⁶⁴ Tex. Bus. & Com. Code §§ 121.052(b)(1)-(b)(2)

⁶⁵ Senate Research Center, *supra* note 43; Tex. Bus. & Com. Code §§ 121.021(a)-(b).

content of a covered retailer’s speech by compelling them to decide and declare who can purchase which goods via their apps without parental consent, thus altering the marketplace of ideas. That again renders the Act a content-based law, requiring that it be subject to strict scrutiny.⁶⁶

The law is not saved because the speech would be made in connection with a potential commercial transaction. As the Court has found, it is simply unconstitutional to force a person, including retailers, to speak when they would prefer to remain silent, or to force them to include other ideas in their speech they would prefer not to include.⁶⁷ Requiring retailers to opine whether and how certain categories of goods should be age-gated makes the Act no different.

IV. The Act Cannot Satisfy Strict Scrutiny

The Act fails strict scrutiny. Rather than targeting a narrow category of unprotected material, it indiscriminately restricts access to apps distributing books, films, news, educational content, and political expression—precisely the speech the First Amendment most fervently protects. Texas has made no serious attempt to demonstrate a compelling interest in suppressing each category of expression the Act sweeps in, because no such interest exists.⁶⁸ The Act’s tailoring defects are equally fatal. The Act leaves untouched many websites and preinstalled applications that minors can use to access the same content and products, exposing the Act’s purported child-protection rationale to be pretextual.⁶⁹ Texas made no effort to include readily available industry alternatives in the Act—parental controls, content filters, educational initiatives—that could serve the State’s goals without suppressing

⁶⁶ *Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. at 795 (“Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech.”); see also *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974) (holding that dictating what publications must print is no different than stating what they must not print and a statute compelling newspaper to print an editorial reply “exact[s] a penalty on the basis of the content of a newspaper”).

⁶⁷ *303 Creative LLC*, 600 U.S. at 586.

⁶⁸ Order Granting Prelim. Inj. at 13, *Computer & Commc’ns Indus. Ass’n v. Paxton*, No. 1:25-cv-01660-RP (W.D. Tex. Dec. 23, 2025), ECF No. 65.

⁶⁹ *Brown*, 564 U.S. at 802–05.

protected speech.⁷⁰ The Act is the very type of blunt instrument this Court has categorically rejected: a sweeping censorship regime dressed in the language of child safety, unsupported by evidence and untethered from constitutional limits.

V. The Act Is Unconstitutionally Vague Under the Fourteenth Amendment

The Due Process Clause prohibits laws that fail to provide “fair notice of conduct that is forbidden or required”⁷¹ or are “so standardless that they invite arbitrary enforcement.”⁷² These requirements serve two related constitutional purposes: ensuring that regulated parties can understand what the law demands before liability attaches and preventing government officials from exercising unguided enforcement discretion.⁷³

The Court has repeatedly emphasized that vagueness concerns are especially acute where a statute burdens protected expression.⁷⁴ When speech is implicated, vague laws are particularly dangerous because speakers will “steer far wider of the unlawful zone” than necessary to avoid liability.⁷⁵ For that reason, courts demand greater precision when a law regulates speech or the dissemination of protected content.⁷⁶ The Court has further explained that when speech is regulated, the government must provide “objective, workable standards” capable of guiding both enforcement officials and regulated parties.⁷⁷

The Act fails both aspects. It does not provide fair notice of what the law requires, nor supply objective standards for constraining enforcement discretion.

⁷⁰ Order Granting Prelim. Inj. at 13, *Computer & Commc'ns Indus. Ass'n v. Paxton*, No. 1:25-cv-01660-RP (W.D. Tex. Dec. 23, 2025), ECF No. 65.

⁷¹ *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

⁷² *Johnson v. United States*, 576 U.S. 591, 596 (2015).

⁷³ *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

⁷⁴ *NAACP v. Button*, 371 U.S. 415, 432 (1963) (“[S]tandards of permissible statutory vagueness are strict in the area of free expression.”)

⁷⁵ *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964).

⁷⁶ See *Reno v. ACLU*, 521 U.S. 844, 871-72 (1997); *Book People, Inc. v. Wong*, 91 F.4th 318, 338 (5th Cir. 2024).

⁷⁷ *Minnesota Voters Alliance v. Mansky*, 585 U.S. 1, 21 (2018).

A. The Act’s Reliance on Undefined “Industry Standards” Illustrates the Lack of Fair Notice

The Fifth Circuit’s stay order rejected vagueness concerns in part because developers are purportedly shielded from liability when they “use widely adopted industry standards to determine the rating and specific content” and apply those standards “consistently and in good faith.”⁷⁸ Yet neither the statute nor the stay order identify what “widely adopted industry standards” actually are.

The Act points regulated entities toward an unspecified body of standards while providing no governing framework, no designated ratings authority, no methodology, and no mechanism for resolving conflicting classifications. It does not specify whether compliance may be based on, for example, Entertainment Software Rating Board ratings, Common Sense Media recommendations, platform-specific standards, retailer-developed criteria, or some other framework entirely or in combination with others. It does not explain what degree of industry adoption is sufficient. It does not identify who determines whether a standard is “widely adopted.” Nor does it explain how regulated parties should proceed when different rating systems produce different results.

Those omissions are significant for retailers. Unlike video games or motion pictures, many products sold through retail apps—including books, apparel, educational materials, political merchandise, religious products, household goods, and countless other items—have never been subject to any generally accepted age-classification framework. Indeed, the record below does not identify a single qualifying standard applicable to retailers and the products they sell.

That is telling. If no one has, or no one can, identify with specificity the universe of standards that purportedly provide the necessary guidance, regulated parties cannot reasonably be expected to identify them before liability attaches. Due

⁷⁸ *Students Engaged in Advancing Texas v. Paxton*, No. 25-51073 , slip op. at 8 (5th Cir. June 4, 2026) (per curiam) (quoting Tex. Bus. & Com. Code § 121.056(b)) (staying preliminary injunction pending appeal).

process does not permit the government to impose legal obligations by reference to an undefined body of standards that regulated entities must discover for themselves.⁷⁹

The constitutional problem is not merely that different standards may exist. It is that the statute never specifies which standards govern, whether multiple standards must be consulted, what happens when standards conflict, or how compliance will ultimately be judged. The result is precisely the kind of uncertainty that the void-for-vagueness doctrine exists to prevent.

B. The Act Provides No Objective Criteria for Determining When New Obligations Are Triggered

The Act suffers from the same defect with respect to ongoing compliance obligations. The Fifth Circuit concluded that phrases such as “new opportunities to make a purchase” and “materially changes the functionality or user experience” have ordinary meanings and that courts routinely interpret materiality standards in other contexts.⁸⁰ But the relevant constitutional question is not whether judges can assign meaning to those phrases through litigation. The question is whether regulated parties can determine *in advance* when their conduct will trigger legal obligations.⁸¹

Modern retail apps are updated constantly. Retailers routinely modify recommendation systems, search functionality, payment methods, subscription offerings, privacy disclosures, user interfaces, advertising features, inventory displays, promotional tools, and customer-service functions. Yet the Act provides no objective benchmark by which a retailer can determine whether any particular update “materially changes” an app’s functionality or user experience.

The phrase “new opportunities to make a purchase” presents the same problem. Retailers continuously add products, promotions, discounts, subscriptions, rewards programs, payment methods, and purchasing pathways. The statute

⁷⁹ See *Fox Television Stations*, 567 U.S. at 253; *Grayned*, 408 U.S. at 108-09.

⁸⁰ *Students Engaged in Advancing Texas*, slip op. at 9 (quoting Tex. Bus. & Com. Code § 121.053(b)(4)).

⁸¹ See *Fox Television Stations*, 567 U.S. at 253.

provides no guidance regarding which of those commonplace changes qualify as “new opportunities to make a purchase” and therefore trigger additional obligations.

As a result, regulated entities are left to speculate about where the statutory line lies and face liability if a regulator later concludes that a different judgment should have been made. That is the opposite of fair notice.

C. The Act Invites Arbitrary Enforcement and Self-Censorship

Because the Act provides no meaningful guidance regarding the standards governing age ratings, content classifications, or app updates, enforcement officials retain broad discretion to determine after the fact whether a retailer selected the “correct” methodology, applied an appropriate standard, or properly classified a particular product. The Court has repeatedly warned that such open-ended discretion is incompatible with due process.⁸² In *Minnesota Voters Alliance v. Mansky*, the Court invalidated a speech restriction because election officials lacked “objective, workable standards” for determining what speech was prohibited.⁸³ The same defect is present here. The Act leaves retailers, app developers, and enforcement officials without any objective framework for determining what constitutes a qualifying “industry standard,” how age ratings should be assigned, or when application updates trigger new statutory obligations. As in *Mansky*, the absence of administrable standards leaves critical compliance determinations to ad hoc judgments made after the fact. And because the Act regulates the distribution of protected content and expressive products, the consequences are especially severe.⁸⁴

The predictable result is overcompliance. Faced with uncertain standards and potential liability, retailers will classify products more restrictively, delay app updates, limit access to lawful content, or remove products altogether rather than

⁸² *Id.*; *Grayned*, 408 U.S. at 108-09; *Mansky*, 585 at 21-23; *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992); *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 757-59 (1988).

⁸³ 585 U.S. at 21-22.

⁸⁴ *See Button*, 371 U.S. at 432-33; *Reno*, 521 U.S. at 871-73; *Book People*, 91 F.4th at 336-38.

risk enforcement.⁸⁵ The Court has repeatedly recognized that such self-censorship is one of the principal harms the vagueness doctrine is designed to prevent.⁸⁶

The Constitution requires more than assurances that regulated parties may act in “good faith” or rely on unidentified “industry standards.” It requires objective standards that permit ordinary businesses to understand their legal obligations before liability attaches. Because the Act provides neither fair notice nor meaningful constraints on enforcement discretion, it is void for vagueness.

VI. The Universal Injunction Was Proper Because The Act Causes Immediate and Irreparable Harm to Retailers

A. The Act Inflicts, and Continues to Inflict, Immediate Operational and Financial Harm on Retailers

The Act is already inflicting immediate and irreparable harm on retailers providing apps to users in Texas. As explained above, to comply with the Act’s vague requirements to the extent they may apply to retail goods, covered retailers must rapidly reengineer their apps, purchase flows, and internal compliance systems to identify users’ “age categor[ies],” process parental-consent signals, and assign age ratings to both apps and purchases made through them.⁸⁷ For many retailers, that undertaking reaches across millions, or tens of millions, of SKUs, and the effort required to individually rate each item and provide the “specific content or other elements that led to each rating” is extraordinarily time-consuming and expensive, posing serious burdens on businesses of every size, especially those without the resources to build bespoke compliance programs overnight.⁸⁸ This burden is only compounded by the Act’s vagueness. The law provides no workable standards for how retailers are supposed to assign age ratings across countless categories of goods, no

⁸⁵ Order Granting Prelim. Inj. at 17, *Computer & Commc'ns Indus. Ass'n v. Paxton*, No. 1:25-cv-01660-RP (W.D. Tex. Dec. 23, 2025), ECF No. 65.

⁸⁶ *Reno*, 521 U.S. at 871-73; *Button*, 371 U.S. at 433.

⁸⁷ See Tex. Bus. & Com. Code §§ 121.021(b), 121.022(d), 121.052(a).

⁸⁸ *Id.* §§ 121.022(f)(1)(C), 121.023(b)(2), 121.052(b)(2).

clear answer as to how retailers should handle general use items such as groceries, and no certainty about how retailers should proceed when app-store information is delayed, incomplete, or conflicts with information retailers have on hand.

Those uncertainties are not theoretical. As CCIA explained, the Act, which is now in effect, imposes a “sweeping and first of its kind age-verification and parental-consent mandate” and the Fifth Circuit has “upset the status quo by allowing the Act to be enforced for the first time.”⁸⁹ Without relief, retailers will be compelled to devote countless personnel, engineering, legal, financial, and operational resources to building systems designed to reach a goal they cannot reliably identify in advance. That massive compliance burden will only serve to directly undermine retailers’ ability to do what makes them successful—respond quickly to consumer demand—and the disruption will soon be felt by users as well.

For example, the Act’s parental-consent regime requires app stores and retailers to determine whether a user is a minor and, if so, to obtain consent for “each individual download or purchase sought by the minor” before allowing the minor to “download a software application,” “purchase a software application,” or “make a purchase in or using a software application.”⁹⁰ That regime is likely to require retailers to build and deploy software that interacts with app-store interfaces before allowing transactions to proceed, even though the Act leaves unresolved critical questions about what retailers must do when those interfaces fail to provide usable information.⁹¹

Even the most seamless implementation will introduce friction into the purchase process; and in retail, purchase delays become purchase abandonments. Users will face interrupted transactions, delayed access to goods, confusion about whether lawful purchases can proceed, and the loss of the convenience and immediacy

⁸⁹ Pl.’s Appl. to Vacate Stay Pending Appeal at 3, https://ccianet.org/wp-content/uploads/securepdfs/2026/06/2026-06-10_LITIG_CCIA-v.-Paxton_SCOTUS-App-to-Vacate-Stay.pdf.

⁹⁰ Tex. Bus. & Com. Code §§ 121.022(d), 121.022 (e)(1).

⁹¹ See *id.* §§ 121.024(1)-(2), 121.054(a)-(b).

that app-based commerce is designed to provide. For retailers, once those resources are spent, those customer relationships are disrupted, and those transactions are abandoned. The resulting injuries cannot be unwound after the fact.

B. The Act Also Imposes Immediate Burdens on Minors and Their Parents While Subjecting Retailers to Arbitrary Compliance Risks

The Act also threatens immediate and irreparable injury to users and parents, and has negative impacts on existing legislation. The natural consequence of the Act is that minors will be blocked from lawful purchases, adults will encounter delays or denials while retailers attempt to confirm age-category information, and parents will be required to navigate new consent demands and transaction barriers for ordinary purchases made through retail apps.

The Act inserts friction and confusion into commonplace family transactions, including purchases that may be time-sensitive, routine, or difficult to categorize under the Act's vague standards. The uncertainty is especially acute because the Act's key requirements remain vague even after taking effect. Retailers still lack clear answers about what information they must use, whether and when they may rely on information already in their possession, how to treat existing users for whom app stores may not provide age-verification data, and how to rate goods for mixed or context-dependent audiences. Those unresolved questions translate into not only problems for retailers, but also real burdens for parents who may be unable to predict when consent is required, what purchases children will be permitted to make, or why a particular transaction has been delayed or blocked.

The Act's parental-consent regime guarantees disruption to ordinary family purchasing. By requiring repeated parental consent for each individual purchase and by introducing uncertainty about when and how transactions may proceed, the Act replaces routine, parent-approved independence with state-imposed friction. Once an account is affiliated with a parent account, the Act requires consent for "each individual download or purchase sought by the minor," and if the developer later

provides notice of a change under Section 121.053, the app store must “obtain consent” again for the minor’s “continued use or purchase” of the application.⁹²

Instead of allowing minors to make routine purchases through approved apps undergoing routine updates, parents may be forced to re consent repeatedly to transactions that would otherwise proceed seamlessly, especially onerous in instances where a parent has already given their child approval to spend a certain amount or use a pre-loaded gift card. These are precisely the types of escalating burdens requiring intervention now, before retailers and families expend substantial time, money, and resources in efforts to comply with a law whose requirements remain entirely uncertain in critical respects.

These burdens are especially harmful because teenagers in Texas use retail apps not merely for convenience, but to exercise ordinary independence in everyday life. Older teenagers often use retail apps to buy gas, purchase school supplies, order routine household items, and make other purchases with their own money.⁹³ These transactions help teenagers learn how to budget, prioritize needs, and manage funds with a measure of autonomy appropriate to their age. It burdens teenagers’ ability to engage in commonplace economic decision-making and to develop the habits of responsibility that come with managing their own spending.⁹⁴

Additionally, the Act creates tension with existing privacy frameworks. Federal law, including the Children’s Online Privacy Protection Act (“COPPA”), generally encourages businesses to minimize the minors’ data. The Act points in the opposite direction, forcing retailers to collect and process age information entities otherwise would have no reason to obtain, potentially triggering additional compliance obligations under COPPA and similar laws. That compelled data collection is itself costly and disruptive, and it also burdens users and parents by

⁹² *Id.* §§ 121.022(e)(1), 121.022(g)(2).

⁹³ Tex. Lab. Code §§ 51.011-.012 (in Texas, minors 14 and older can hold a job, with minors under 14 able to work in certain conditions).

⁹⁴ *Id.*

requiring the disclosure and processing of sensitive information that retailers otherwise would not seek. Entities that have historically not been subject to COPPA's requirements will now be forced to not only potentially violate the federal law but hold themselves as covered entities under its remit.

The Act's notice requirements create still more friction. App developers must notify app stores before making any "significant change" to an app's terms of service or privacy policy, including changes that "add[] new monetization features" or "materially change[] the functionality or user experience of the software application."⁹⁵ Given that retailers regularly update privacy disclosures and app features to reflect evolving practices, as they should, that ambiguity invites a ceaseless cycle of notices that will create confusion rather than clarity. This constant notification cycle easily conflicts with the Texas Data Privacy and Security Act's requirement that privacy notices be reasonably accessible and clear, not to mention that law's data minimization requirement which, similar to COPPA, asks that data from purchase information to minor's data, which is categorized as sensitive, only be collected when "adequate, relevant, and reasonably necessary in relation to the purposes for which the data is processed, as disclosed to the consumer."⁹⁶

As CCIA has correctly stated, the Act is already "inflicting immediate ongoing harm" and imposing "enormous and unrecoverable compliance costs." This is done via a law that leaves regulated parties to guess at what compliance requires, while simultaneously compelling sensitive data collection and inserting constant friction into everyday family purchases and practices. The universal injunction was appropriate and necessary under these circumstances.

VII. Conclusion

For the foregoing reasons, the Court should uphold CCIA's Application to Vacate the Stay Pending Appeal entered by the Fifth Circuit and restore the

⁹⁵ Tex. Bus. & Com. Code §§ 121.053(a), (b)(3)-(4).

⁹⁶ Tex. Data Privacy and Security Act § 541.

universal injunction against enforcement of the Act. The Act imposes unconstitutional content-based restrictions, compels speech, and leaves retailers and users subject to vague and unworkable obligations that inflict immediate and irreparable harm. The Application should therefore be granted.

Respectfully submitted.

DATED: June 19, 2026

MCDERMOTT WILL & SCHULTE LLP

/s/ J. Jonathan Hawk

/s/ Katelyn N. Ringrose

/s/ Tyler Henry

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