No. 25A1390

In the Supreme Court of the United States

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, APPLICANT

v.

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

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

REPLY IN SUPPORT OF APPLICATION TO VACATE STAY PENDING APPEAL

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INTRODUCTION

The Texas law challenged here is a full-scale, first-of-its-kind assault on the First Amendment. Under SB2420, Texas minors cannot use their mobile phones to download apps that give them access to news, religious material, and entertainment without parental consent. Likewise, Texas minors cannot make in-app purchases of audiobooks, movies, television episodes, and other paradigmatic forms of protected expression. As this Court held in *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786 (2011), prohibitions like these defy the Constitution: States lack the power "to prevent children from hearing or saying anything without their parents' prior consent," and so "punishing third parties for conveying protected speech to children just in case their parents disapprove of that speech" is not "a proper governmental means of aiding parental authority." *Id.* at 795 n.3, 802 (emphases omitted).

Texas's opposition strains mightily to obscure the effects of SB2420. The State does not contest that its law restricts minors from accessing "e-books." Opp. 1. But rather than defend that indefensible choice, Texas rests its opposition on the idea that banning a minor from accessing protected speech is a permissible regulation of "a commercial transaction"—or, "at most, commercial speech." *Id.* (citation omitted). Thus, in Texas's telling, the Court was wrong in *Brown* to analyze a restriction on minors' purchase of videogames under ordinary First Amendment scrutiny—the Court should simply have held that the videogame purchases were commercial transactions that did not trigger First Amendment concerns.

The Fifth Circuit erred in accepting that contorted argument, and this Court should vacate the stay order allowing Texas to enforce SB2420. Beyond Texas's commercial-speech error, there is no other basis to defend the Fifth Circuit's flawed stay ruling. Texas is not likely to successfully defend its law's age-verification and parental-consent requirements under strict or even intermediate scrutiny; indeed, Texas apparently has no response to either this Court's controlling precedent or to the arguments made in CCIA's application. Nor is Texas likely to succeed in its forfeited argument based on *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), given that SB2420 is categorically unconstitutional as to every app store to which its requirements could be applied.

The remaining factors likewise favor immediate relief. This case is plainly suitable for the Court's plenary review: The Court has granted review in cases involving free speech online twice in recent Terms, and there is every reason to think this case would turn those cases into a trilogy. Finally, the equities counsel strongly in favor of this Court's immediate intervention. Every day that SB2420 remains in effect, it abridges the free-speech rights of app stores, app developers, and app users. And given Texas's lackadaisical defense of its law, there is no reason for SB2420 to impose those burdens while the district court's preliminary injunction is on appeal.

REASONS FOR GRANTING THE APPLICATION

I. CCIA is likely to succeed on the merits.

A. SB2420 triggers strict scrutiny because it is content-based and regulates far more than commercial speech.

SB2420 is a content-based regulation of speech that triggers strict scrutiny for two reasons. First, the law is designed to suppress speech that the State views as inappropriate for minors. Second, the law contains expressly content-based exceptions. Seeking to avoid strict scrutiny, Texas principally asserts that SB2420 regulates only commercial speech. That assertion is profoundly wrong—and profoundly dangerous. Embracing that theory would allow States to regulate much of the internet—and all manner of expressive products created for profit—as commercial speech subject to reduced First Amendment protections. That is not the law.

1. a. SB2420 is content-based because its purpose is to suppress certain categories of supposedly harmful speech. "A law can regulate the content of protected speech, and thereby trigger strict scrutiny," based on an impermissible "justification." *Free Speech Coal. v. Paxton*, 606 U.S. 461, 482 (2025) (citation omitted). Indeed, even if a law "on its face appear[s] neutral as to content and speaker," it is "unconstitutional" if "its purpose [is] to suppress speech." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011). That is the case here. As CCIA's application explains (at 27-28), the legislative history and official government statements about SB2420 leave no doubt that the law "specifically [seeks] to shield minors from certain speech the State deems objectionable or harmful." App.26a.

Texas contends (at 22) that "legislative intent" is irrelevant to whether SB2420's aim is to suppress speech. But as just explained, this Court's precedents have consistently looked to whether a speech-suppressive "purpose" underlies the law. *Sorrell*, 564 U.S. at 566; *see, e.g.*, *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 580 (1983) (asking whether there was "impermissible or censorial motive on the part of the legislature"). Texas's reliance on the "secondary effects" framework from *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), is misplaced. *Id.* at 47; *see* Opp. 23. That framework does not apply where, as here, the law "applies broadly to the entire universe of cyberspace," and its "purpose . . . is to protect children from the primary effects of" certain speech, "rather than any 'secondary' effect of such speech." *Reno v. ACLU*, 521 U.S. 844, 868 (1997); *see Boos v. Barry*, 485 U.S. 312, 321 (1988) ("Regulations that focus on the direct impact of speech on its audience" are not properly analyzed under *Renton*). In short, the State may not "burden free expression" based on the view "that disfavored speech has adverse effects." *Sorrell*, 564 U.S. at 577.

Texas claims (at 23) that the "scope and operation" of the law weigh against application of "strict scrutiny." Just the opposite: SB2420's "blanket restriction" on vast swaths of protected expression only confirms that strict scrutiny is the proper standard. *Reno*, 521 U.S. at 868. Indeed, this Court has "voiced particular concern" about laws restricting "an entire medium of expression." *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994); *see id.* (citing cases). Although such laws may appear "evenhanded[]," Opp. 24, "the danger they pose to the freedom of speech is readily

apparent—by eliminating a common means of speaking, such measures can suppress too much speech," *City of Ladue*, 512 U.S. at 55. SB2420 poses precisely that danger.

b. In addition, SB2420 "regulate[s] the content of protected speech . . . 'on its face'" because it contains content-based exceptions. *Free Speech Coal.*, 606 U.S. at 482 (citation omitted). As Texas recognizes (at 27), the Act exempts certain types of apps from the parental-consent requirement—namely, apps providing emergency services and standardized testing. § 121.022(h). So while a minor would need to obtain parental consent before downloading a news app—or virtually any other app—he would not need such consent before downloading an app providing SAT exams or access to a crisis hotline. Because SB2420's exceptions "single[] out specific subject matter for differential treatment," they trigger strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 164, 169 (2015).

Texas errs in contending (at 28) that SB2420's exceptions "are not content-based." The State first insists (*id.*) that the standardized-testing exception "concerns the speaker, not the content of speech." But the exception is *both* speaker-based and content-based. Standardized testing is a "specific subject matter," so exempting apps focusing on that subject is a "content based" legislative action. *Reed*, 576 U.S. at 169. And even if the standardized-testing exception can also be viewed as speaker-based, "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 658 (1994). Here, the exemption for standardized-testing

apps reflects a clear legislative preference for standardized-testing content over other content.

Texas fares no better in arguing (at 27) that the "emergency-services exception" is not content-based because such "applications provide a particular function." Again, that exception evinces the State's preference for certain speakers (emergency-service providers) and certain content ("9-1-1 emergency services," "crisis hotline[s]," or "emergency assistance service[s]," § 121.022(h)(1)(A)(i)-(iii)). The fact that the exempted apps also serve a particular function is immaterial. As this Court has recognized, "a regulation of speech cannot escape classification as facially content-based simply by swapping an obvious subject-matter distinction for a 'function or purpose' proxy that achieves the same result." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 74 (2022). Music apps serve the function of playing music, and news apps serve the function of providing news—but if SB2420 exempted music and news apps from its strictures, those exemptions would undoubtedly be content-based. So too here.

Texas also claims (at 29) that standardized-testing and emergency-services apps are not "favored" over other apps. That is wrong. A minor need not obtain parental consent to download the exempted apps—meaning that those apps can disseminate their content to minors more easily than other apps. Accordingly, the exempted apps (and their content) "are given more favorable treatment" than all other apps—which is "a paradigmatic example of content-based discrimination." *Reed*, 576 U.S. at 169.

Texas has no cogent response to *Barr v. American Ass'n of Political Consultants, Inc.*, 591 U.S. 610 (2020). *See* Opp. 29. There, the plurality held that a "law favor[ing] speech made for collecting government debt over political and other speech" was "a content-based restriction on speech." *Barr*, 591 U.S. at 619. The same logic applies to SB2420's preference for standardized-testing and emergency-services speech over other speech. Texas's suggestion (at 29) that the emergency-services exception could "survive[] strict scrutiny" ignores that the State bears the burden of establishing that the exception is narrowly tailored to a compelling interest—which it has not even attempted to meet.

Finally, "severability principles" do not advance Texas's position. Opp. 30. Even if the standardized-testing and emergency-services exceptions were severable, the "content-based" nature of those exceptions would still render the "law" "subject to strict scrutiny." *Barr*, 591 U.S. at 621 (quoting *Reed*, 576 U.S. at 165). And the law cannot survive strict scrutiny (or any form of heightened scrutiny), as explained below.

2. SB2420 does not regulate mere commercial speech. This Court has repeatedly recognized that full First Amendment protections "extend[] to all persons engaged in expressive conduct, including those who seek profit." *303 Creative LLC v. Elenis*, 600 U.S. 570, 600 (2023). Commercial-speech doctrine applies only to expression that "does no more than propose a commercial transaction." *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001). Here, SB2420 targets expression that does far more than propose a commercial transaction: It applies to the downloading

of virtually *any* app (including free ones) and virtually *any* content within an app (including e-books or newspaper articles). The speech at issue thus looks nothing like the type of speech this Court has deemed commercial in nature. *See, e.g.*, *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623 (1995) ("lawyer advertising"); *Board of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 472 (1989) ("demonstrating and offering products for sale"). As *amici* explain, the Fifth Circuit's flawed commercial-speech holding is illustrated by "replacing the word 'app' with 'book' in the panel's analysis: . . . 'users browsing [a book] store can see a catalog of [books], obtain additional information, and download or purchase [a book].'" Br. of Amici Curiae NetChoice et al. 18 (quoting App.4a). No one would think that a law regulating bookstores and book sales targets commercial speech merely because customers pay for books, *see Smith v. California*, 361 U.S. 147, 150 (1959)—and the same logic should apply to app stores and in-app content sales.

Texas offers no persuasive defense of the Fifth Circuit's commercial-speech ruling. Texas asserts (at 20) that SB2420 "regulates commercial transactions" because app users "must agree to contractual terms and conditions on important issues such as data privacy." But that is a misdirection: Unlike Texas's actual data-privacy statute, *see* Appl. 33, SB2420 does not regulate app stores' privacy protections or collection and use of personal data (other than with respect to new categories of age-verification data that the Act itself brings into existence, *see* §§ 121.025; 121.026(a)(1), (3); 121.055; 121.056(a)(1), (3)). Instead, SB2420 requires age verification for *all* app-store account creation (a prerequisite for accessing the speech

that app stores disseminate)—regardless of the app stores' "contractual terms" or "data privacy" practices. Opp. 20. And the Act requires parental consent for downloading *all* apps and purchasing *all* in-app content—no matter whether and how apps use minors' personal data.

Indeed, Texas's argument would threaten to transform almost all expression on the internet into commercial speech. To operate effectively, online services must necessarily collect certain data (*e.g.*, about the user's IP address) and use certain data (*e.g.*, about the user's language preferences). *See* Br. of Amici Curiae NetChoice et al. 19. Likewise, "[m]any websites . . . authorize a user's access only upon his agreement to follow specified terms of service." *Van Buren v. United States*, 593 U.S. 374, 394 (2021). Yet in Texas's (and the Fifth Circuit's) view, any website or app that combines those common features—data collection, use, and terms of service—would automatically become commercial speech subject to broad state regulation. That view is untenable: If directly paying money for books does not transform transactions into commercial speech, indirectly "paying" with "data" does not either.

Texas's analogies are misconceived. Laws "deny[ing] drivers' licenses to children under sixteen," "usury laws," and "regulat[ions of] . . . shopping mall[s]" target *conduct*, not speech. Opp. 20-21. And it is well established that the "regulation of conduct" generally "does not violate the First Amendment," even if it "incidentally affects expression." *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc.*, 547 U.S. 47, 70 (2006). Here, by contrast, SB2420 targets expression by directly imposing threshold burdens on the distribution of and access to speech on apps. It thus resembles a law

requiring age verification before a person may enter a bookstore and parental consent before a minor may purchase a book. And it resembles the law in *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786 (2011), which "prohibit[ed] the sale or rental of 'violent video games' to minors," absent parental consent. *Id.* at 789. Such laws do not regulate commercial speech—indeed, in *Brown*, the dissenting Justices did not even hint at a commercial-speech argument.

Texas also insists (at 21-22) that because parents may decide to "disallow[] a child from having *any* access to a mobile device," the State itself may bar "children's access to specific software applications" without parental consent. But the First Amendment "constrains governmental actors and protects private actors." *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019). Thus, the First Amendment has nothing to say about a parent's voluntary decision to prevent her child from using apps, or about use of parental-control tools that speech platforms voluntarily provide. But "it does not follow that the state has the power to prevent children from hearing or saying anything *without their parents' prior consent*." *Brown*, 564 U.S. at 795 n.3; *see id.* (emphasizing that the First Amendment bars laws that "impose *governmental* authority, subject only to a parental veto").

Finally, even if SB2420 sweeps in some commercial speech, the result would be the same. Speech loses "its commercial character when it is inextricably intertwined with otherwise fully protected speech." *Riley v. Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 796 (1988). Indeed, "much of the material in ordinary newspapers is commercial speech," and yet newspapers receive full First Amendment

protection. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 (1993). Thus, whether apps involve "commercial transactions" and "contractual terms" is immaterial. Opp. 21. Even accepting that premise, apps also facilitate a "wide array of protected First Amendment activity on topics 'as diverse as human thought.'" *Packingham v. North Carolina*, 582 U.S. 98, 105 (2017) (citation omitted). "[T]aken as a whole," the expression regulated by SB2420 cannot be reduced to commercial speech. *Riley*, 487 U.S. at 796.

B. The Act's requirements fail strict or even intermediate scrutiny.

Texas will not likely succeed in arguing that SB2420 passes any form of heightened scrutiny. The State does not even attempt to argue that SB2420 satisfies strict scrutiny. And its intermediate-scrutiny arguments misstate the government's burden, ignore on-point analysis from this Court's decision in *Brown*, and fail to engage with CCIA's arguments.

1. As the State acknowledges (at 26), Texas created no record and proffered no "evidence" in support of SB2420. And under both strict and intermediate scrutiny, Texas bears the burden of showing that its law is sufficiently related to a weighty state interest. *United States v. Virginia*, 518 U.S. 515, 533 (1996); *see* Appl. 36. With no record evidence, Texas cannot carry that burden. While Texas responds (at 26) by citing *Turner Broadcasting System*, that case backfires on the State: There, the Court initially rejected the government's intermediate-scrutiny arguments because of a "paucity of evidence" and other "deficienc[ies] in th[e] record." 512 U.S. at 667-68 (plurality opinion).

2. Beyond that basic evidentiary deficiency, Texas is wrong (at 25) that SB2420 furthers any "important interest in advancing parental consent." Again, *Brown*'s holding that a state generally lacks "the power to prevent children from hearing or saying anything *without their parents' prior consent*" is dispositive. 564 U.S. at 795 n.3; *see supra* at 10-11. And "leaving that aside, [Texas] cannot show that the Act's restrictions meet a substantial need of parents who wish to restrict their children's access to [apps] but cannot do so," particularly given the utter lack of record evidence on Texas's side. *Brown*, 564 U.S. at 803. Texas therefore cannot overcome *Brown*—which is no doubt why Texas's *amici* rely on the dissenting opinions in *Brown* but ignore the Court's holding. *See* Br. of Amicus Curiae Inst. for Family Studies 16-19 (citing *Brown*, 564 U.S. at 822-23 (Thomas, J., dissenting); and *id.* at 851 (Breyer, J., dissenting)).

Texas's parental-consent justification fails for a second reason, too: SB2420's "entire effect is only in support of what the State thinks parents *ought* to want," regardless of what they *do* want (and regardless of the ample parental-control tools already available to them). *Brown*, 564 U.S. at 804. The Act does not permit parents to opt out of its parental-approval regime—or even to give blanket consent to a seventeen-year-old's app downloads or in-app purchases. Instead, all Texas parents must approve every download or purchase individually, regardless of how much they trust their teens. As one *amicus* puts it, "no matter what each parent believes about the degree of autonomy that is best for each child, the State of Texas requires that the parents constantly look over their children's shoulders." Br. of Amicus Curiae

Patriot Voices 3. "Rather than vindicate parental authority, SB 2420 hampers it." *Id.*; *see* SEAT Appl. 25 (similar).

3. Finally, Texas's opposition provides no basis to conclude that SB2420 is tailored to advance Texas's interest in "protecting children's data, safety, and privacy." Opp. 27. As CCIA's application noted, those interests are thoroughly addressed by other federal and state statutes—like the Texas Data Privacy and Security Act and the Children's Online Privacy Protection Act—that do not prevent minors from accessing protected speech. Appl. 32-34. Texas says nothing whatsoever about that argument, confirming that it cannot satisfy any form of heightened scrutiny.

C. The facial relief in this case satisfies *Moody*.

Texas's opposition leans heavily on the claim that "the district court did not follow the standard for facial challenges set forth in *Moody*." Opp. 14. That argument is both forfeited and wrong.

1. To start, Texas does not contest that it failed to raise its *Moody* objection in the district court and so has failed to preserve it on appeal. *See* Appl. 37 (citing Texas's opposition to preliminary-injunction motion, App.154a-181a, which does not mention *Moody*). That forfeiture matters: As this Court emphasized just last month, courts "rely on the parties to frame the issues for decision and decide only the questions presented" in the parties' briefing. *Margolin v. Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026) (per curiam) (internal quotation marks and citation omitted). Thus, while Texas has the temerity to complain (at 14) that the district court "turned to *Moody* in a brief, one-paragraph analysis," that choice stems

from Texas's own failure to raise the issue. This Court should not reward Texas's decision to defend its law on grounds that it "never asserted" in the district court. *Margolin*, 146 S. Ct. at 1288 (citation omitted).

2. But even excusing Texas's forfeiture, this case differs from *Moody*. The risk of "facial challenges" is that they might "prevent[] duly enacted laws from being implemented in constitutional ways." *Moody*, 603 U.S. at 723 (citation omitted). Thus, *Moody* holds that courts hearing facial challenges must "determine a law's full set of applications" rather than cherry-picking exemplars. *Id.* at 718. Here, there is no constitutional way of implementing SB2420 against *any* app store—and so every regulated entity would succeed in an as-applied challenge to the law.

Despite its lengthy discussion of the case, *see* Opp. 15-20, Texas barely engages with the two-step analysis that *Moody* prescribes. As *Moody* explained, the "first step in the proper facial analysis" is to ask: "[w]hat activities, by what actors, do the laws prohibit or otherwise regulate?" 603 U.S. at 724. In *Moody*, that question was difficult given the ambiguity about which "platform[s] or function[s]" were actually covered by the law and were engaged in protected expression. *Id.* at 725. But here, the question is easy: The law regulates app stores by requiring them to verify users' ages and to obtain parental consent for any use of the app store, including at the moment of sign-up. *See* §§ 121.021-.022. Texas has no answer to this basic point: It does not dispute that CCIA's members (including Google, Apple, and Amazon) are the "near exclusive[] source of downloadable apps." App.161a; *see* Opp. 18. And it does not dispute that those members engage in protected expression in curating their app

stores. *See* Appl. 21. Thus, unlike in *Moody*, there is no uncertainty about "what the law covers" and whether the covered entities engage in protected speech. 603 U.S. at 725 (alterations and citation omitted).

The "next order of business"—deciding "which of the law's applications violate the First Amendment"—is also straightforward. *Moody*, 603 U.S. at 725. Texas does not contest that every app store offers access to a vast range of protected expression—including news, entertainment, education, and religion. Because Texas has no valid interest in restricting minors' access to that expression, SB2420's age-verification and parental-consent provisions are invalid in their application to each app store—that is, invalid as to "every covered platform" to which they could conceivably be applied. *Id.* That across-the-board invalidity is the hallmark of a successful facial challenge. *See United States v. Salerno*, 481 U.S. 739, 745 (1987).

It does not matter that app stores contain "utility applications" like "calculators or appliance controls" that, according to Texas, are not protected speech. Opp. 17. A physical-world analogy refutes Texas's argument: If Texas required minors to obtain parental consent before entering any bookstore, that law would be facially unconstitutional under *Brown* and the cases that precede it. *Brown*, 564 U.S. at 794; *see, e.g.*, *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212 (1975). And the analysis would not change just because nearly every bookstore sells some goods—bookmarks, stationery, wrapping paper, and so on—that are not "communicative." Opp. 17. Texas chose to impose SB2420's onerous parental-consent and age-

verification demands at the app store level and so must live with the legal consequences of that choice.

Put differently, Texas's arguments rest on a misunderstanding of how an as-applied challenge to SB2420 would work. If Google or Apple or Amazon sued to challenge the law as applied to their specific app store, the challenge would succeed: SB2420 restricts the free-speech rights of each app store (as well as app developers, minors, and adults who must undergo age verification). *See* Appl. 21. And even if Texas persuaded a court that only the dissemination of "communicative applications" is protected, Opp. 17, that argument would go at most to the scope of injunctive relief and not to its availability. All of that is a far cry from *Moody*, where the Court could not determine which as-applied challenges would succeed and which would fail.

Moreover, it would be improper to craft an injunction limited to the dissemination of expressive applications. App stores cannot constitutionally be required to determine—on pain of civil penalties and punitive damages—which of millions of apps provide access to protected speech and which do not. *See Reno*, 521 U.S. at 883-84 ("Nor, given the vast array of plaintiffs, the range of their expressive activities, and the vagueness of the statute, would it be practicable to limit our holding to a judicially defined set of specific applications."). If it wishes to regulate in this space, Texas must shoulder the burden of drafting a constitutional law—it cannot turn app stores into app-by-app gatekeepers of protected speech.

The bottom line is that SB2420 imposes onerous age-verification and parental-consent requirements that are not constitutional as applied to any app store. SB2420

thus does not present *Moody*'s central concern. There is no ambiguity about "which of the law's applications are constitutionally permissible and which are not." 603 U.S. at 744. And there is no need to further "evaluate the full scope of the law's coverage" prior to invalidating SB2420. *Id.* Accordingly, even if the *Moody* argument had not been forfeited on appeal, Texas is not likely to succeed in pressing it.

D. The scope of the injunction is proper.

Nor is Texas likely to succeed on its half-hearted argument (at 31) that the district court's preliminary injunction is improperly "universal." Again, Texas does not contest that it failed to preserve that argument in district court. *See* App.154a-181a (not citing *Trump v. CASA, Inc.*, 606 U.S. 831 (2025)). So again, Texas cannot demonstrate a likelihood of success on its forfeited objection.

Even setting forfeiture aside, Texas's argument is irrelevant to the case at hand. As Texas acknowledges (at 31), "broad" relief is required if CCIA prevails: Every major app store is run by a CCIA member, and so a CCIA-specific injunction fully protects the universe of app stores. Therefore—and particularly given Texas's decision not to litigate the scope of relief below—the proper remedy is for this Court to vacate the Fifth Circuit's stay in its entirety, permitting the district court to consider any properly presented motion to narrow its injunction. Alternatively, should this Court wish to vacate the Fifth Circuit's stay only as to app stores run by CCIA's members, CCIA has no objection—there would be no practical difference between that relief and wholesale vacatur.

II. This Court would likely grant certiorari.

There is at least a "reasonable probability" that this Court would grant review if the Fifth Circuit adheres to its stay panel's analysis. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

1. As Texas acknowledges (at 10), the "First Amendment issues" in this case are "important." That importance is magnified given that SB2420 has spurred a wave of copycat legislation. *See* Appl. 19 & n.5. This Court regularly grants review of significant First Amendment questions, even in the absence of circuit splits—as, for example, in *Brown*. And in the Court's last three Terms, it has taken up two cases asking how traditional First Amendment principles apply to state efforts "to regulate online entities." *Moody*, 603 U.S. at 716; *see Free Speech Coal.*, 606 U.S. at 465. Particularly given States' ongoing efforts to pass new sweeping laws regulating online expression, this Court is likely to continue that trend by granting review here.

2. Certiorari is all the more appropriate because the Fifth Circuit's commercial-speech analysis is an outlier throughout the courts of appeals. As CCIA's application demonstrated, Appl. 17-19, other appellate tribunals properly recognize that speech does not lose its protected character just because it is sold for profit. *See, e.g.*, *Dex Media W., Inc. v. City of Seattle*, 696 F.3d 952, 957-58 (9th Cir. 2012). Despite recounting the facts of those cases at length (at 11-13), Texas does not explain how the stay panel's decision is consistent with those rulings. *See supra* at 7-11.

The Sixth Circuit's opinion last week in *NetChoice, LLC v. Yost*, 2026 WL 1758907 (6th Cir. June 18, 2026), confirms that certiorari is likely. The court of appeals confronted a challenge to an Ohio law that requires parental consent for

minors younger than 16 to sign up for a content-based subset of social-media sites. *Id.* at *3 (opinion of Clay, J.). There, as here, the State's Attorney General "defend[ed]" the law "as a legitimate exercise of the state's prerogative to regulate contracting with minors." *Id.* at *1. But none of the Sixth Circuit judges on the panel accepted that argument: Judge Clay's opinion upholds the law under strict scrutiny *id.* at *13; Judge Batchelder's concurrence in the judgment addressed only *Moody*, *id.* at *19; and Judge Ritz's dissent would have invalidated the law under strict scrutiny, *id.* at *34. That range of approaches—none of which tracks the stay panel's conclusion in this case—sharpens the need for this Court's further review in this area.

3. Finally, Texas is wrong to contend (at 10) that "this case will likely present a poor vehicle" because "the district court failed to hold Plaintiffs" to the *Moody* standard. As already explained, the district court's injunction fully complied with *Moody*, even though Texas forfeited the *Moody* issue. Similarly, Texas's argument (at 13) that the "Fifth Circuit's decision is fully consistent" with *Brown* and *Free Speech Coalition* cannot be reconciled with those cases, for the reasons discussed above.

III. The equitable factors favor immediate relief.

Texas's equitable arguments repeat the flaws in its merits analysis. It is settled that any "loss of First Amendment freedoms" causes irreparable harm, *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam) (citation omitted), and, conversely, that the State has no interest in enforcing an unconstitutional law, *see id.* at 19-20. Texas never contends otherwise: Its equitable arguments all rest on the notion (at 33-34) that the Act "likely complies with the First

Amendment." Because that claim is incorrect, Texas's equitable arguments fail—even before considering the significant operational and monetary burdens that SB2420 imposes on app stores and app developers. *See* Appl. 39.

Finally, Texas's litigation conduct underscores that the equities are lopsided. SB2420 was scheduled to become effective on January 1, 2026. *See* App.100a. But Texas waited an entire month before seeking to stay the district court's injunction, meaning that the Act became effective for the first time on May 28. *See* App.40a (emphasizing "Paxton's month-long delay in requesting an emergency stay"). "[E]quity aids the vigilant and not those who slumber on their rights." *Kansas v. Colorado*, 514 U.S. 673, 687 (1995) (citation omitted). In light of Texas's failure to act with diligence in defense of its law, the Fifth Circuit erred by allowing SB2420 to take effect while this case makes its way through the appellate process.

CONCLUSION

This Court should vacate the Fifth Circuit's stay order.

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Respectfully submitted,

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