

In the United States Court of Appeals for the Fifth Circuit

STUDENTS ENGAGED IN ADVANCING TEXAS; M. F., BY AND THROUGH NEXT FRIEND VANESSA FERNANDEZ; Z. B., BY AND THROUGH NEXT FRIEND S.B.,
Plaintiffs-Appellees.

v.

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

Defendant-Appellant.

consolidated with

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,
Plaintiffs-Appellees.

v.

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

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division
Case No. 1:20-cv-00323-LY

**UNOPPOSED MOTION OF LOUISIANA FAMILY FOUNDATION, ALABAMA
POLICY INSTITUTE, AND DIGITAL CHILDHOOD ALLIANCE TO FILE AMICI
CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLANT AND REVERSAL**

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Amici curiae Louisiana Family Forum, the Alabama Policy Institute, and the Digital Childhood Alliance Childhood Alliance respectfully ask for leave to file an amicus brief in support of the defendant-appellant.

All of the amici testified in favor of app-store accountability legislation (Louisiana Family Forum in Louisiana; Alabama Policy Institute in Alabama; and Digital Childhood Alliance in Texas, Louisiana, and Alabama). Louisiana and Alabama passed app-store legislation similar to Texas’s S.B. 2420, the App Store Accountability Act (“ASAA”). This Court’s rulings on the constitutionality of ASAA will likely affect their state’s legislation. Amici and their allied members have a strong interest in ensuring that when companies invite children to download or use apps, they do so under the same consumer protection and contract principles that already apply in the physical marketplace.

Our proposed amicus brief is attached. We have conferred with all parties and they have consented to our filing of this amicus.

CONCLUSION

The motion for leave to file an amicus should be granted.

Respectfully submitted.

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Dated: May 26, 2026

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CERTIFICATE OF CONFERENCE

We have conferred with counsel for the parties and they are unopposed to the filing of our proposed amicus brief.

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CERTIFICATE OF SERVICE

I certify that on May 26, 2026, this document was electronically filed with the clerk of the court for the U.S. Court of Appeals for the Fifth Circuit and served through CM/ECF upon all counsel of record in this case.

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CERTIFICATE OF COMPLIANCE

with type-volume limitation, typeface requirements,
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1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 164 words.
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Dated: May 26, 2026

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CERTIFICATE OF ELECTRONIC COMPLIANCE

Counsel also certifies that on May 26, 2026, this brief was transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, through the court's CM/ECF document filing system, <https://ecf.ca5.uscourts.gov>

Counsel further certifies that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of VirusTotal and is free of viruses.

/s/ Jonathan F. Mitchell
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Case Nos. 25-51073 & 26-50001

In the United States Court of Appeals for the Fifth Circuit

STUDENTS ENGAGED IN ADVANCING TEXAS; M. F., BY AND THROUGH NEXT FRIEND VANESSA FERNANDEZ; Z. B., BY AND THROUGH NEXT FRIEND S.B.,
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Case No. 1:20-cv-00323-LY

**BRIEF OF LOUISIANA FAMILY FOUNDATION, ALABAMA POLICY
INSTITUTE, AND DIGITAL CHILDHOOD ALLIANCE AS AMICI CURIAE IN
SUPPORT OF DEFENDANT-APPELLANT AND REVERSAL**

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CERTIFICATE OF INTERESTED PERSONS

Counsel of record certifies that the following persons and entities, in addition to those already listed in the parties' briefs, have an interest in the outcome of this case:

Louisiana Family Forum
Alabama Policy Institute
Digital Childhood Alliance Childhood Alliance

All of these entities are all 501(c) non-profit organizations and do not have parent corporations. No publicly traded corporation has an ownership interest of any kind in the amici.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE

Amicus curiae Louisiana Family Forum’s mission is to persuasively present timeless truths affecting the family through research, communication, and networking. Amicus curiae Alabama Policy Institute promotes principles of free markets, limited government, and strong families. Amicus curiae Digital Childhood Alliance (“DCA”) works with over 150 allied organizations to protect children in the online environment.¹

All of the amici testified in favor of app-store accountability legislation (Louisiana Family Forum in Louisiana; Alabama Policy Institute in Alabama; and Digital Childhood Alliance in Texas, Louisiana, and Alabama). Louisiana and Alabama passed app-store legislation similar to Texas’s S.B. 2420, the App Store Accountability Act (“ASAA”). This Court’s rulings on the constitutionality of ASAA will likely affect their state’s legislation. Amici and their allied members have a strong interest in ensuring that when companies invite children to download or use apps, they do so under the same consumer protection and contract principles that already apply in the physical marketplace.

STATEMENT OF COMPLIANCE WITH RULE 29

All parties have consented to the filing of this brief. No counsel for a party authored any part of this brief. And no one other than the amici curiae, their members, or their counsel financed the preparation or submission of this brief.

1. DCA submitted an amicus brief in the trial court, and the brief and exhibits are attached as Exhibit A.

SUMMARY OF ARGUMENT

On May 27, 2025, Texas's governor signed ASAA, a bipartisan law designed to protect children from exploitive tech company contracts and practices. ASAA took effect on January 1, 2026.

CCIA and the SEAT plaintiffs waited until October 16, 2025, before filing their coordinated complaints challenging the facial constitutionality of the Act. Their delay gave the trial court only ten weeks to review the complaints and preliminary-injunction motions, Texas's response briefing, hold oral arguments, and draft a decision before the effective date. The plaintiffs' joint strategy to press the trial court worked, as the court could not hold evidentiary hearings to map the Act's constitutional and unconstitutional evaluations, learn that current technology makes the age-verification parts of the Act nonburdensome, and evaluate the magnitude of harm to children without the Act.

There are three main errors that led the district court to declare ASAA unconstitutional on its face:

- applying a strict scrutiny analysis even though ASAA is not a content-based law;
- offering a content-based law as superior under First Amendment jurisprudence to ASAA's content-neutral approach; and
- ignoring the scienter requirement in the prohibition against misrepresenting an app's age rating.

ASAA meets the constitutional requirements for regulation of commercial speech. These errors require the reversal of the trial court's decision.

ARGUMENT

I. ASAA REGULATES COMMERCIAL CONDUCT

Before a minor can download an app from an app store, the minor must accept the app's terms of service. Those terms of service operate as contracts, often giving developers broad rights to gather and sell the user's data while requiring the minor to waive important rights, such as the right to sue for damages caused by the app. The Act ensures that minors do not enter these binding contracts and agree to have their data exploited without parental authorization.

The Act applies well-understood principles of contract law to the digital marketplace. For example, to protect children, it voids contracts obtained without parental consent. Tex. Bus. & Com. Code §§ 121.026(a), 121.056(a)(1). The Act does not restrict viewpoints or compel editorial judgment.

II. TEXAS'S INTEREST IN PROTECTING CHILDREN IN THE DIGITAL WORLD IS SUBSTANTIAL AND CRITICAL

There should be no dispute on appeal that smartphones and the app ecosystem have harmed children. The Texas legislature took evidence on such harms before passing the Act. *See* Exhibit B, Exhibit E-1 to CCIA's Motion for Preliminary Injunction, at 4. In contrast, the industry provided no evidence to counter that claim.

The district court agreed that there is a need “to better safeguard children when they are on their devices.” ROA.26-50001.1154. The district court did not dispute that “apps collect sensitive data” on the children who use them, leading to privacy harms for those children. *Id.* It also agreed that phone apps can lead to mental-health harms, including “suicides following chatbot interactions, sexual exploitation on ‘child-safe’ platforms, algorithmic spirals into self-harm content, and gaming environments designed to mimic addictive gambling for minors.” *Id.* (citation omitted).

But the district court’s order ignored the evidence of harm to children (including the loss of privacy from apps that gather and sell data) by claiming that the defendant had not made those “argument as the State’s interest and rationale” for the bill. *Id.* at n.2. But those harms cannot be ignored, as the defendant raised them and the Act on its face clearly addresses them.

Regarding contracting harms, the record shows that an AI chatbot app persuaded a child to harm himself so severely that he requires constant hospitalization. Exhibit A, DCA Amicus Brief, at 2. Because ASAA was not enacted, the developer claimed in a Texas court that the child was subject to its terms of service, which arbitrarily capped damages at \$100 and prevented the family from suing in court. *Id.* ASAA would protect that Texas child by voiding the contract, allowing the child’s family to seek compensation for these harms.

The record also shows that phone apps addict children, change the development of their brains, and heighten depression and loneliness. For exam-

ple, Dr. Siberry, on behalf of the Texas Medical Society, testified how digital platforms lead to increased eating disorders, violence, and suicides in youth. *Id.* at 9. One study found that when children obtain a smartphone before age 13, they experience significantly worse mental health outcomes. *Id.* Early smartphone ownership is specifically linked to reduced self-worth and emotional resilience in girls, and to diminished empathy, calmness, and confidence in boys. *Id.*

Many other studies in the record find that the more time youth spend on apps, the more likely they are to have mental-health issues. One study shows that when young children spend more time on screens, the composition of their brain changes—they have lower microstructural integrity of brain white matter. *Id.* at 10. Another finds that a child’s brain structure is negatively affected when he is bombarded with and constantly checks app notifications. *Id.* Another study finds that children become sleep deprived when they over-use smartphone apps, which has long been known to hurt brain development. *Id.* at 10–11. Children have also been sextorted,² targeted with illegal drugs,³

2. National Center for Missing & Exploited Children, NCMEC Releases New Sextortion Data (2024), <https://district.missingkids.org/blog/2024/ncmec-releases-new-sextortion-data>

3. Senate Judiciary Committee, Recap: Senate Judiciary Committee Presses Big Tech CEOs on Failures to Protect Kids Online During Landmark Hearing (July 30, 2024), <https://district.judiciary.senate.gov/press/releases/recap-senate-judiciary-committee-presses-big-tech-ceos-on-failures-to-protect-kids-online-during-landmark-hearing>.

and encouraged toward self-harm by chatbots⁴ inside apps that app stores present as appropriate and safe for young teenagers.⁵

The industry offered no studies or affidavits to counter these harms.⁶ The plaintiffs cannot credibly claim they are likely to prove after a trial that there are no harms to children from phone apps. The harms are far broader than the narrow focus on social-media harms, and the Court should consider all of the harms that the Texas legislature sought to address.

III. THE BILL DIRECTLY ADDRESSES HARMS TO CHILDREN

ASAA was primarily designed to keep children from contractually agreeing (absent parental approval) to allow Big Tech to collect and sell their data. H.J. of Tex., 89th Leg., R.S. 3578 (2025). It also addresses the harms to mental health caused by use of apps.

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4. Senate Judiciary Committee, Transcript: US Senate Hearing on Examining the Harm of AI Chatbots (Feb. 13, 2024), <https://district.techpolicy.press/transcript-us-senate-hearing-on-examining-the-harm-of-ai-chatbots>.
 5. Fair Play for Kids, Apps Which Google Rates “Safe for Kids” Violate Their Privacy and Expose Them to Other Harms (Dec. 12, 2018), <https://fairplayforkids.org/apps-which-google-rates-safe-kids-violate-their-privacy-and-expose-them-other-harms>.
 6. The SEAT plaintiffs filed a November 2024 psychologist declaration (created for a California suit and executed before Texas passed ASAA) opining child health concerns were just a “moral panic.” While he noted the declaration, ROA.25-51073.681, the trial court still found that “researchers, and mental health professionals have sounded the alarm” about harms to children and that it was important to “protect[] children when they use apps.” ROA.26-50001.1154.

The bill codifies, for the digital world, the common-law principle that minors cannot enter into contracts without parental consent. This is clear from the face of the statute, which voids all app contracts with minors unless the parent consented to them. Tex. Bus. & Com. Code §§ 121.026(a), 121.056(a)(1). The common-law wisdom holds that minors lack the life experiences to understand common contractual obligations. The bill therefore requires parental consent before a minor can agree to an app company’s contractual terms of service. *Id.* at § 121.022(d).

The record provides examples of children entering into contracts with exceedingly one-sided terms of service. YouTube’s terms of service, for example, compels a child to forfeit any compensation for the creative works that he uploads, while Google immunizes itself from liability for any damages that its products might cause to a child. Exhibit A, DCA Amicus, at 3–4. Meta grants itself extensive rights over the minor’s data without meaningful limitations. *Id.* at 4. That data can be sold to advertisers. And most educational apps sell children’s data to advertising companies. *Id.* at 5. Even a seemingly benign app such as the Khan Academy education app has terms of service that allow it to expose a child to “indecent or objectionable content” with impunity. *Id.*

The consequences of agreeing to these terms can be grave. As discussed above, app terms have prevented families from suing for compensation for

injuries caused by the apps. Apps can also access and transmit a child’s location without obtaining parental consent.⁷

The plaintiffs cannot (and did not) defend the industry’s contracting practices, and they ignored these practices’ role in prompting the enactment of ASAA. It is critical to understand that the Act regulates commercial conduct—the formation and enforcement of contracts with minors—not expressive speech.

The scope of ASAA is not unconstitutionally broad but rather reflects the scope of the problem—even “good” apps (such as the Khan Academy app) seek to bind minors to one-sided contract terms without parental approval. The legislature was entitled to regulate the commercial contracting process for minors. The Act did not become unconstitutionally overbroad and facially unconstitutional because it reaches all instances of one-sided app contracting.

IV. TWO LIMITED EXCEPTIONS, COVERED BY OTHER TEXAS STATUTES, DO NOT MAKE ASAA INTO A CONTENT-BASED LAW

The legislature enacted a content-neutral law, making ASAA applicable to every app (including numerous apps that simply provide services such as flashlight, calculator, ride-sharing, fitness, food delivery, and other retail

7. Fair Play for Kids, Apps Which Google Rates “Safe for Kids” Violate Their Privacy and Expose Them to Other Harms (Dec. 12, 2018), <https://fairplayforkids.org/apps-which-google-rates-safe-kids-violate-their-privacy-and-expose-them-other-harms/>.

apps) as well as those focused on speech (such as music and social-media apps). Whether or not the app provided speech, and, if so, what type of speech was provided, made no difference to the legislature's decision to require parental consent before a minor obligates herself to the app's terms of service.

The Act's parental-consent requirement contains only two exceptions. The first is for 911-type of emergency services, but only if they: (1) limit their "data collection to information . . . necessary for the provision of emergency services"; (2) do not require "the user to create an account with the software application"; and (3) are operated in partnership with a government entity or nonprofit. Tex. Bus. & Com. Code § 121.022(h)(1)(B)–(C).⁸ In other words, the legislature exempted a handful of apps that (unlike other apps) would not collect and sell large quantities of a user's online data. The exempted emergency apps could not create accounts where they could demand terms from a minor without parental consent.

The second exception is for non-profits that operate college-placement tests, so long as they comply with Texas's special regulatory scheme for education apps in Subchapter D of Texas's Education Code. *See* Tex. Bus. & Com. Code § 121.022(h)(2)(B). Subchapter D prohibits software developers

8. The order erroneously stated that the Act created separate exceptions for emergency service apps and also for apps operated in partnership with government entities, ROA.26.50001.1156, failing to appreciate the government entity partnership is a requirement for an emergency service app to be excepted. *See* Tex. Bus. & Com. Code § 121.022(h)(1).

from using a student’s data to create profiles of the student, offering targeted advertising to the student, or selling the student’s data. Tex. Educ. Code. § 32.152(a). Subchapter D also obligates the developer to “maintain reasonable security procedures and practices designed to protect any covered information from unauthorized access, deletion, use, modification, or disclosure.” *Id.* § 32.155(a). This second exception accounts for the already extant regulatory system for non-profit test placement apps, which fully protects children from contracting risks. The legislature was not constitutionally obligated to redundantly regulate those apps and their contracting practices under ASAA.

The apps that fall within these statutory exceptions offer services and are not engaged in the marketplace of ideas. The exceptions also show that the legislature exercised care in determining the apps that present privacy risks to children. By enacting these exceptions, the legislature did not favor a particular type of speech, and its entire legislative framework remained content-neutral.⁹

The legislators included a severability clause to the bill: “[i]t is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, . . . is severable from each other.” S.B. 2420, 89th Leg., R.S. (Tex. 2025); ROA.26-50001.388–89. So if any provision of the bill

9. Importantly, the Act does not exempt pre-downloaded apps. When a device is activated and the terms of service for the pre-loaded app accepted, the app store downloads an updated version of the app onto the phone. ASAA should apply to that download. An evidentiary hearing would have shown how the law or the industry operates.

is found or declared unconstitutional, then a court must sever the offending portion so the remaining provisions “may not be affected.” This clause clearly includes sections 121.022(h)(1)–(2), listing the two exceptions.

When Congress includes an express severability clause in a statute, the judicial inquiry is straightforward. “[A]bsent extraordinary circumstances, the Court should adhere to the text of the severability or nonseverability clause” in a statute. *Barr v. Am. Ass’n of Political Consultants*, 591 U.S. 610, 624 (2019) (plurality opinion). That is because a severability (or nonseverability) clause expressly states what the enacting Congress wanted if a provision were later declared unconstitutional, removing any uncertainty for judicial interpretation. *Id.* A severability clause indicates “that Congress did not intend the validity of the statute in question to depend on the validity of the constitutionally offensive provision.” *Id.*

The order does not honor the Texas’s legislature’s express statement intent to sever any offending portions of the Act, instead stating that severance “would require this Court to rewrite the law.” ROA.26-50001.1163. But it is the district court’s order that rewrote the law by excising the legislature’s severability provision. This runs directly contrary to the Supreme Court’s instruction in *Barr* to not ignore but rather give effect to a legislature’s intent as stated in its severability clauses. *Barr*, 591 U.S. at 624 (plurality opinion); *see also* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 985–86 (2018) (“Courts that . . . refuse to enforce portions or applications of statutes on constitutional grounds—are *never* ‘mak[ing] a new law’ or revis-

ing the legislature’s work product. They are simply declining to enforce (or enjoining the executive from enforcing) a statute or a portion of a statute that continues to look exactly as it did when the legislature enacted it, and that remains available for future courts to enforce according to its terms.”).

The court’s order also misapplies severability law. Although it cited *Builder Recovery Servs. v. Town of Westlake*, 650 S.W.3d 499, 507 (Tex. 2022), that case holds that “[i]n general, the invalid portion of an ordinance or statute *should* be severed from the rest of the enactment, which remains in effect without the severed portion.” *Id.* at 507 (emphasis added). The only exception arises when the rest of the act is so “dependent on” or “connected” to the parts being declared invalid “that it cannot be presumed the legislature would have passed the one without the other.” *Id.*

The remaining provisions and applications of ASAA are neither dependent on nor connected to the two statutory exceptions. And the legislative record shows the legislature would have passed the bill absent the exceptions. The bill passed overwhelmingly: 30 to 1 in the Senate; 120 to 9 in the House. Indeed, the Senate twice passed the bill on the same 30 to 1 vote, once without and once with the amendment excepting college-placement apps.¹⁰

After the trial court’s ruling, two states that had already passed app-store laws stripped out every exception to avoid strict-scrutiny analysis. Utah, which had enacted an app-store law with the same emergency-services ex-

10. See S.B. 2420, 89th Leg., R.S. (Tex. 2025), <https://legiscan.com/TX/votes/SB2420/2025>.

ception as Texas, amended its law to remove that exception. Utah’s action was by a near unanimous vote (29-0 in the Senate; 63-6 House).¹¹ Louisiana followed, removing the emergency-services exception from its app-store law unanimously.¹² Relatedly, Alabama unanimously recently passed an app-store bill with no exceptions (35-0 Senate; 102-0 House).¹³ These legislative actions indicate Texas would have easily passed an app-store bill without any exceptions if needed for the law to survive constitutional challenge.

V. ASAA PASSES THE TEST FOR LAWFUL REGULATION OF COMMERCIAL SPEECH

ASAA’s treatment of parental consent is unrelated to speech because it applies equally to apps that simply perform services such as calculator, food delivery, or fitness apps. But if this Court concludes that a portion of the Act does regulate speech, the Court should apply the standard for commercial speech.

Commercial speech does not receive the same level of protection as “other varieties of speech.” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 561–62 (1980) (affording lesser protection to commercial speech than to other expression); *see also State Univ. of N.Y. v.*

11. *See* H.B. 498 S2, R.S. (Utah. 2026), <https://le.utah.gov/~2026/bills/static/HB0498.html>.

12. *See* H.B. 977, R.S. (La. 2026). <https://legis.la.gov/Legis/BillInfo.aspx?s=26RS&b=HB977>.

13. *See* H.B. 161, R.S. (Ala. 2026) <https://legiscan.com/AL/bill/HB161/2026>.

Fox, 492 U.S. 469, 477 (1989) (commercial speech enjoys limited measure of protection).

ASAA regulates how app stores and developers contract with children and sell products to children. The Act imposes light regulation on app advertisements that propose a commercial transaction, by regulating the app descriptions and age ratings. Tex. Bus. & Com. Code § 121.023. This light regulation is commercial in nature as the app stores and developers primarily have economic motivations. More users downloading or buying an app means more sales and more advertisements benefiting both the stores and developers.

By prohibiting knowingly misleading age ratings and requiring clear content descriptions, the Act's regulates commercial speech, *i.e.*, "speech that does no more than propose a commercial transaction." *See United States v. United Foods, Inc.* 533 U.S. 405, 409 (2001); *see also Bd. of Trs. of State Univ. of N.Y.*, 492 U.S. at 482. Parental consent before a minor binds herself contractually and the commercial app stores' determination of who is a minor are equally commercial in nature. The Fifth Circuit's decision in *Free Speech Coalition v. Paxton*, 95 F.4th 263 (5th Cir. 2024), *aff'd*, 606 U.S. 461 (2025), for example, upheld a Texas law requiring porn websites to verify the ages of their visitors and characterized the law as a regulation of commercial speech. *Id.* at 286; *see also id.* at 281 (noting that those sites offered their content "in exchange for data; then, they monetize that data, primarily through advertisements. That series of transactions is explicitly commercial." *Id.* at 281.

This is exactly how apps operate. To the extent ASAA attempts to regulate speech, it is regulating only commercial speech.

The district court held that the Act “is not limited to commercial speech” and applied strict scrutiny by claiming that some apps include non-commercial speech such as news or entertainment. ROA.26-50001.1163. But commercial-speech regulations do not receive more rigorous scrutiny simply because some non-commercial speech falls within their scope. *Bd. of Trs. of State Univ. of New York*, 492 U.S. at 475 (regulation on commercial speech that also covers pure speech “is not thereby entitled to the constitutional protection afforded noncommercial speech”); *Cent. Hudson*, 447 U.S. at 563 n.5 (rejecting argument that regulation of commercial speech should be treated as a regulation of noncommercial because “[i]t would grant broad constitutional protection to any advertising that links a product to a current public debate”). Indeed, a law covering mailings as commercial speech did not receive stricter scrutiny simply because some mailings discussed important public issues such as venereal disease and family planning. *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983).

A rule may be classified as a commercial-speech even when “the [commercial] speech is mixed with pure speech.” *Cramer v. Skinner*, 931 F.2d 1020, 1033 (5th Cir. 1991). In *Free Speech Coalition v. Paxton*, mixing protected sex-education speech with commercial speech (exchanging obscene material for user data, that then can be monetized) should be analyzed as commercial speech. 95 F.4th at 280. This mix is merely “commercial activity

with a speech element.” *Id.* Here, “[n]o law of man or of nature makes it impossible for” the newspaper and entertainment apps to provide their products without collecting and selling minors’ data or providing accurate age ratings. *See id.* at 281 n.58. The Act therefore regulates commercial speech.

In analyzing commercial speech regulation, *Central Hudson* sets out a four-part analysis:

- Does the speech concern “lawful activity and is not misleading”?
- Is the government interest “substantial”?
- Does the regulation advance the government interest? and
- Is the regulation more extensive than necessary to serve government interest?

Paxton, 95 F.4th at 283 (citing *Cent. Hudson*, 447 U.S. at 566).

The first issue to resolve is “whether the expression is [even] protected by the First Amendment.” *Cent. Hudson*, 447 U.S. at 566. For purposes of the present analysis, we will assume for the sake of argument that the regulated commercial speech is lawful, not misleading, and therefore entitled to some First Amendment protection. The ASAA survives constitutional challenge regardless.

A. ASAA Advances the Government’s Substantial Interest in Protecting Children

The next two steps of the analysis consider whether “the asserted governmental interest is substantial” and relatedly whether “the regulation directly advances the governmental interest asserted.” *Cent. Hudson*, 447 U.S. at 566. The overarching governmental interest of protecting children is obvi-

ous and substantial. The Supreme Court has repeatedly “recognized . . . a compelling interest in protecting the physical and psychological well-being of minors.” *Sable Commc’ns of Cal. v. FCC*, 492 U.S. 115, 126 (1989); *see also Globe Newspaper Co. v. Super. Ct. for Norfolk Cty.*, 457 U.S. 596, 607 (1982); *Comput. & Commc’ns Indus. Assoc’n v. Uthmeier*, No. 25-11881, 2025 WL 3458571, at *6 (11th Cir. Nov. 25, 2025) (intermediate scrutiny satisfied as the state was likely to establish “a legitimate and substantial interest in regulating young minors’ use of platforms employing addictive features”).

That Texas is protecting vulnerable children, as opposed to adults, provides even greater justification for ASAA. *See Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212 (1975) (“It is well settled that a State or municipality can adopt more stringent controls on communicative materials available to youths than on those available to adults.”). The differences between children and adults are routinely recognized in the law. For example, children under 18 cannot vote in federal elections. U.S. Const. amend. XXVI. Similarly, many states restrict the right of children under 18 to marry. *See, e.g.*, Tex. Fam. Code § 2.003(a). States also forbid the sale of otherwise legal products to those under 21. *See, e.g.*, Colo. Rev. Stat. Ann. § 44-3-901 (alcohol); Md. Crim. L. Code § 10-107 (tobacco).

Age-based restrictions can also apply to speech that is otherwise protected by the First Amendment. The Supreme Court has long recognized that what constitutes “obscene material” is different for children and adults. *See Ginsberg v. State of N.Y.*, 390 U.S. 629, 634–35 (1968) (upholding law restrict-

ing minor access to explicit material that was not obscene for adults). As a result, the government may constitutionally require age verification on the internet before an adult can access material that is not obscene to that adult. *Free Speech Coalition*, 606 U.S. at 466 (upholding Texas law requiring commercial websites to verify age of visitors for material obscene only to minors).

Tattoo restrictions provide a striking example of age-based lawful restrictions. One federal circuit concluded that there “appears to be little dispute that the tattoo itself is pure First Amendment ‘speech’ . . . entitled to full First Amendment protection.” *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1060–61 (9th Cir. 2010). Nonetheless, states regularly prohibit artists from tattooing minors. *E.g.*, 25 Tex. Admin. Code §§ 229.406(a)–(b) (2024). Courts have also upheld probation conditions prohibiting minors from acquiring new tattoos. *In re Antonio C.*, 83 Cal. App. 4th 1029, 1035 (Cal. Ct. App. 2000) (Content-neutral condition upheld that prohibits “self-expression through permanent skin disfigurement” since focus is “the manner in which the message is conveyed, not the message itself”).

ASAA restricts minor access to products that could have lasting health and developmental consequences, including brain formation. In the same way that children cannot properly comprehend and weigh the risks of getting a tattoo, they cannot understand and assess the consequences of excessive phone time or binding themselves to tech contracts that exploit their data. ASAA empowers parents to help children make those decisions. Texas’s in-

terest in protecting children easily satisfies the “substantial interest” requirement under *Central Hudson*.

The industry provided nothing to counter the state’s evidence that children have suffered immense harm inside apps. Nor have the plaintiffs provided evidence that ASAA fails to address contracting harms to children. In ruling for the plaintiffs under intermediate scrutiny, the district court’s order claimed only that the defendant failed to explain how ASAA protected children. ROA.26-50001.1167. But it is obvious how it does so.

The Texas legislature heard powerful testimony about mis-rated apps that harm children. One teen wrote that an app designated as appropriate for teens “is all full of pedophiles” causing her to “feel unsafe on an app made for my age group.” Exhibit B, Motion for Preliminary Injunction, Exhibit E-1, at 61. Another app rated appropriate for children 9 and older was described as “creepy” and “very dangerous for children.” *Id.* at 66. ASAA directly advances the governmental interest in protecting children by giving parents non-misleading age ratings and allowing parents to oversee the app contracts their children agree to. Because the harms that children experience from apps are real, and ASAA would alleviate those harms, ASAA directly advances the governmental interest in protecting children.

B. ASAA Regulates What Is Necessary to Protect Children

Finally, the fourth part of the analysis asks “whether [ASAA] is not more extensive than is necessary to serve that [governmental] interest.” *Cent. Hudson*, 447 U.S. at 566. The word “necessary” is not to be “interpreted

strictly” and does not incorporate the least-restrictive-means test. *Bd. of Trs. of State Univ. of N.Y.*, 492 U.S. at 476–77. Nor does it require a showing “that there be no conceivable alternative.” *Id.* at 478. Nearly all restrictions disapproved under *Central Hudson’s* fourth prong were “substantially excessive.” *Id.* at 479. It is therefore “up to the legislature to decide . . . so long as its judgement is reasonable.” *Id.* at 489. In sum:

[W]e have not gone so far as to impose upon them the burden of demonstrating that . . . the manner of restriction is absolutely the least severe that will achieve the desired end. What our decisions require is *a fit between the legislature’s ends and the means chosen to accomplish those ends, a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is ‘in proportion to the interest served,’ that employs not necessarily the least restrictive means but as we have put it in other contexts discussed above, a means narrowly tailored to achieve the desired objective. Within those bounds we leave it to governmental decisionmakers to judge what manner of regulation may best be employed.*

Id. at 480 (citations omitted, emphasis in original).

ASAA easily passes the fourth prong. There is a “reasonable” fit between the ASAA and its goal of protecting children from app contracts that exploit their data. The regulation is “in proportion to the interest served” because it requires a parent to consent to the contracts that tech companies want minors (who lack life experience) to bind themselves to. It stops app stores from contracting with minors outside of the parent’s knowledge. To effectuate this, it requires app stores to verify the app users’ age and provide clear content descriptions and non-misleading age ratings to enable informed

parental decisions. ASAA applies in a content-neutral manner to all apps, exempting only two types of non-profit apps if, among other requirements, they do not gather or sell the user's data. The law comfortably passes both the least-restrictive-means test as well as the applicable "proportional" and "reasonable fit" test.

VI. A CONTENT-BASED LAW IS NOT A VIABLE ALTERNATIVE TO ASAA

ASAA could not have been tailored to cover only apps that contain "harmful material," or "apps that the State demonstrates have specific addictive qualities," or apps containing a third or more of obscenity. *See* ROA.26-50001.1165. These alternatives minimize the harms that the legislature sought to address by assuming that the state has no interest in protecting children from exploitive contracts. There has also been no evidentiary hearing to determine how effective these alternatives would be. Finally, it would turn First Amendment jurisprudence on its head to declare that a law deemed content-based (and presumably unconstitutional) because of two minor exceptions suddenly becomes constitutional by adding content-based requirements.

The Eleventh Circuit recently counseled against these ideas in a First Amendment case involving regulations on addicting apps and websites. "[T]he State need not *impose content-based regulations* in search of a more tailored approach, nor, on the other hand, need it limit its reach to only unprotected speech, as plaintiffs suggest." *Comput. & Commc'ns Indus. Assoc.*, 2025

WL 3458571 at *8 (11th Cir.) (emphasis added). Having the state legislature debate and define a set of harmful material that children would be blocked from accessing creates more problems under the First Amendment than allowing parents to choose the apps and contract terms that they deem acceptable for their child. Regardless, there are no reasonable alternatives to either the contracting problem or the harm that children’s brains suffer from the constant bombardment of notifications and sleep deprivation. This further shows that Texas acted reasonably in making its judgments.

VII. ASAA’S PROHIBITION ON COMPANIES KNOWINGLY MISREPRESENTING THEIR APP’S AGE RATING IS NOT VOID FOR VAGUENESS

Many parents rely on app age ratings to determine whether an app is appropriate for their child. Parental controls often rely on those ratings before allowing access, but some apps are improperly rated. The Texas legislature heard testimony about an app that was age-rated as appropriate for 12-year-olds even though it had “triple x spicy” sexual content. *See* Exhibit B, Exhibit E-1 to CCIA’s Motion for Preliminary Injunction, at 25–26.

Because accurate age ratings are so central to parental consent (and the correct operation of parental controls), ASAA forbids developers and the store to “knowingly misrepresent” their app’s age rating.¹⁴ The district

14. ASAA mandates no particular age rating system or categories. *See* ROA.26-50001.1157–58. ASAA did provide for age verification within four categories, which were designed to let developers know if the Children’s Online Privacy and Protection Act, 15 U.S.C. § 6501 *et seq.*, applied (because the user was younger than 13), if a developer’s internal

court's order declared that requirement unconstitutionally vague out of concern was that a developer or store could unwittingly provide an age rating that was "wrong" and not be aware that it violate the act. ROA.26-50001.1168.

But Texas added a scienter requirement to resolve these vagueness concerns. The Act imposed penalties only if the developer or store "knowingly" misrepresents the app's age rating. Tex. Bus. & Com. Code § 121.056(a)(2). The Supreme Court has long held that an otherwise vague statute can be saved by adding a scienter requirement:

But where the punishment imposed is only for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of law. The requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware.

Screws v. United States, 325 U.S. 91, 102 (1945). And in all events, it wasn't even necessary to include the term "knowingly," as the word "misrepresentation" adopts Texas's long-standing consumer-protection laws on deceptive

protections for different mid-teens should apply (because the user was between 13–16 or 16–18), or if parental consent was required (because the user was not yet an adult). But while providing for age verification categories, ASAA contains no language regarding age rating categories and does not prevent a developer from providing age ratings such as 4+ or "Teen" as is now done if the rating is not "knowingly misrepresent[ed]."

trade practices and is sufficiently clear. *See* Tex. Bus. & Com. Code § 17.12 (“DECEPTIVE ADVERTISING. (a) No person may disseminate a statement he knows materially misrepresents”).

Finally, there is no risk that tech companies “could follow existing non-governmental standards” and still violate the provision. *See* ROA.26-50001.1168. ASAA’s safe-harbor provision immunizes the use of existing standards. *See* Tex. Bus. & Com. Code § 121.056(b)(1) (no liability if developer “uses widely adopted industry standards to determine the rating”).¹⁵ So the “knowing misrepresentation” provision cannot be unconstitutionally vague, as it incorporates a scienter requirement, uses the language of traditional deceptive trade laws, and includes a safe harbor protecting developers that use industry standards to determine an appropriate age rating.¹⁶

15. The safe harbor did not explicitly extend to the app store because the app store can rely on the developer’s age rating as long as it does not “knowingly” misrepresent the rating.

16. To create fear about ASAA, plaintiffs and their amici argued that ASAA “may” regulate ordinary retail purchases through apps such as books or socks. But the statute plainly does not cover such sales. Only sales processed by the app store, such as a “power up” a user might buy for a video game, are covered. This Court should not be persuaded by any arguments falsely expanding the scope of ASAA.

CONCLUSION

The district court's preliminary-injunction order should be reversed.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that this document has been filed with the clerk of the court and served by ECF or e-mail on May 26, 2026, upon all counsel of record in this case.

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CERTIFICATE OF ELECTRONIC COMPLIANCE

Counsel also certifies that on May 26, 2026, this brief was transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, via the court's CM/ECF document filing system, <https://ecf.ca5.uscourts.gov/>.

Counsel further certifies that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of VirusTotal and is free of viruses.

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Dated: May 26, 2026

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
Counsel for Amici Curiae

EXHIBIT A

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

Computer & Communications §
Industry Association, §
§
Plaintiff, §
v. §
§
Ken Paxton, in his official capacity §
as Attorney General of Texas §
§
Defendant. §

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

**Amicus Curaie Brief of the Digital Childhood Alliance
in Support of Defendant Ken Paxton’s
Opposition to Plaintiff’s Motion for Preliminary Injunction**

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Statement of Interest of Amicus

The Digital Childhood Alliance (“DCA”) is dedicated to protecting children in the online environment. With over 150 allied organizations, the Digital Childhood Alliance advocates for legislation like S.B. 2420, the App Store Accountability Act. Its members have extensive experience in online child safety.

DCA testified in favor of S.B. 2420 as it governs the commercial relationships between minors, parents, and digital platforms. The bill ensures that when companies invite children to download or use apps, they do so under the same consumer protection and contract principles that already apply in the physical marketplace. Parents are given accurate information about app risks and can consent to contract terms on behalf of their children. DCA has studied and exposed the terms of service that tech companies commonly employ against minors that use their products. S.B. 2420 addresses app developers’ exploitive contracting practices that target minors and the harms to children from Big Tech’s apps.

ARGUMENTS & AUTHORITIES

I. S.B. 2420 Protects Minors from Exploitive Contracts

S.B. 2420 prohibits app developers from binding minors to one-sided contracts of adhesion without a parent’s knowledge or consent. Currently, before a minor can download an app from Apple’s App Store or Google’s Play Store, the minor must accept the app’s terms of service. Those terms of service operate as contracts, often requiring the minor to waive important rights, such as the ability to seek legal recourse for any damages caused by the app. To protect minors, S.B. 2420 voids such contracts unless a parent or legal guardian consents to the terms. The First Amendment offers no protection for contractual or deceptive conduct. Here, Texas regulates commercial conduct—the formation and enforcement of contracts with minors—not expressive speech.

A U.S. Senate Judiciary subcommittee hearing on September 16, 2025, highlighted the contracting risks. A minor had been hospitalized because of an AI chatbot app. *See* Exhibit 1 (copy of Testimony of A.F. before the United States Senate Committee on the Judiciary, Subcommittee on Crime and Counterterrorism, Hearing on “Examining the Harm of AI Chatbots,” September 16, 2025) at 2. The family’s subsequent legal action was stymied because the minor, without parental consent, had accepted the app’s terms of service which forbade the family from suing in court and capped damages at \$100. *Id.* at 2

The mother testified:

“My teenage son—a normal high-functioning child with autism . . . became the target of online grooming and psychological abuse through Character.AI.

In 2023, my son downloaded an app—Character.AI—that allows users to interact with AI-powered ‘characters.’ At the time, the app was marketed in the Apple Store as a fun and safe product, with an age rating of 12+. Within months of using this app, my son went from being a happy, social teenager . . . to someone I no longer recognized. He developed abuse-like behaviors like paranoia, daily panic attacks, isolation, and self-harm and homicidal thoughts.

...

We did not know what was happening to our son. . . . But I eventually found out the truth. For months, Character.AI chatbots had exposed him to sexual exploitation, emotional abuse and manipulation despite our careful parenting, including screen time limits, parental controls, and no access to social media.

. . . The chatbot . . . encouraged my son to mutilate himself, then blamed us and convinced him not to seek help. . . . They targeted my son with vile, sexualized outputs, including interactions that mimicked incest. And they told our son that killing us, his parents, would be an understandable response to our effort to limit his screen time.

The damage to our family has been devastating. My son has required psychiatric hospitalizations. He is currently living in a residential treatment center for mental abuse and has required constant monitoring to keep him alive.

Id. at 1–2 (citations omitted).

The family sued the company despite the app’s terms of service. The tech company argued the arbitration clause is valid, and even the validity of the minor’s contract with the tech company is subject to binding arbitration. *Id.* at 16–20. The case has been bogged down by the app’s contract with the minor. S.B. 2420 would have solved the problem for this family by statutorily voiding the offending provisions in the terms of service.

Such contracts imposed by a tech company on a minor teen are unfair and indefensible. In fact, in the First Amendment suit before this court, the industry has not even bothered to defend its contracting practices. Instead, the industry simply ignores them and their important role in S.B. 2420.

A. *S.B. 2420 Governs Online Contracts with Minors*

S.B. 2420 forbids app store owners and app developers from enforcing contracts with minors unless parental consent is obtained. TEX. BUS. & COM. CODE § 121.026(a)(1); TEX. BUS. & COM. CODE § 121.056(a)(1). To help parents protect children from unscrupulous contracts, S.B. 2420 further requires that a parent or guardian be informed about how the developer will collect,

use, or distribute their child’s personal data based on the terms of service. TEX. BUS. & COM. CODE § 121.022(f)(1)(d). If the developer later makes a significant change to its terms of service including, among other things, changing the “type or category of personal data collected, stored, or shared by the developer,” the parent or guardian must receive notice, so they can reconsider their consent to the contract. TEX. BUS. & COM. CODE § 121.053(b)(2).

These measures address and ameliorate the imbalance of information and bargaining power between minors and more sophisticated companies by giving parents tools to protect their children. Requiring parental knowledge and consent is a modest effort by Texas to improve the information imbalance that tech companies hold over children.

B. *App Developer Contracts Disadvantage Minors*

In its complaint and brief, Plaintiff highlights several apps which it claims that a minor – whether age 10, 12, 14 or older – constitutionally should be allowed to buy or download regardless of any parent’s view. While Plaintiff highlights the content of those apps, it fails to mention the terms of service that those apps use to disadvantage minors. For example:

YouTube (Google): Under YouTube’s terms of service, minors waive compensation for all their creative works they upload. In contrast, Google retains broad rights to use and monetize the

child's content.¹ Google further limits its liability for any damages its products cause the child.² (YouTube "will not be responsible" for losses, whether the claim is based on "warranty, contract, tort, or any other legal theory"). YouTube further reduces the statute of limitations to one year and caps damages at \$500.³

Google requires the minor "represent that you have your parent or guardian's permission to use the Service" to circumvent arguments against contracting with minors.⁴ Rather than rely on Google's approach of having a minor falsely represent something that is not true, Texas would make sure Google actually gets the parental permission it claims it has.

Threads (Meta): Threads's terms of service refer the user to a separate document, Threads's Supplemental Privacy Policy, to explain how they collect and sell a user's data.⁵ The Privacy Policy then grants the developer extensive rights over the minor's data without meaningful limitations.⁶ That data can be sold to advertisers.

¹ YouTube Terms of Service, <https://www.youtube.com/static?template=terms> (last accessed December 9, 2025). (Google and its affiliates obtain "a world-wide, non-exclusive, royalty-free, sublicensable and transferable license to use that [the minor's] content" allowing it to profitably "reproduce, distribute, prepare derivative works, display and perform" those works.); ("You grant to YouTube the right to monetize your Content on the Service (and such monetization may include displaying ads on or within Content or charging users a fee for access). This Agreement does not entitle you to any payments.").

Even if the child takes down his or her work and deletes the YouTube account, Google's license to the child's work continues "for a commercially reasonable period of time" and YouTube may "retain" (without any stated time limits) copies of what the child created. *Id.*

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Threads Terms of Use, https://help.instagram.com/769983657850450/?helpref=uf_share (last accessed December 9, 2025).

⁶ Threads Supplemental Privacy Policy, https://help.instagram.com/515230437301944/?helpref=uf_share (effective June 3, 2025) (collecting, *inter alia*, data, among other things, on "the types of content you view or interact with and how you interact with it, metadata about your content, the Threads features you use and how you use them, the hashtags you use, and the time, frequency, and duration of your activities on Threads").

Unfairly collecting data from children without any parental consent is a common problem: Human Rights Watch determined that most of the kids’ educational apps share the children’s data with advertising companies.⁷ Tech companies track a minor’s engagement with the app’s content and track the minor’s precise location, voice recordings, browsing history, videos watched, and app activity across third-party sites. Developers then profit from their “free” apps by selling that data.⁸ Astonishingly, Plaintiff complains that age verification invades a user’s privacy (even though under S.B. 2420, the app store is allowed to verify age using only the data it already possesses), but turns a blind eye to the industry’s business model of selling the minor’s data it collects.

Khan Academy: Khan Academy’s terms of service requires minors waive any claims for being exposed to “indecent or objectionable content.”⁹ Khan Academy absolves itself of any liability if it gives a third party access to a user’s content even when the user has restricted that third party from accessing the content.¹⁰ More broadly, Khan Academy subjects the minor to a one-year statute of limitations, compels arbitration, and prohibits any type of class action – even if Khan harms thousands of minors with the same conduct.¹¹

⁷ Human Rights Watch, “How Dare They Peep Into My Private Life? Children’s Rights Violations by Governments That Endorsed Online Learning During the Covid-19 Pandemic” May 25, 2022.

⁸ Zuboff. The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power. New York: Public Affairs, 2019.

⁹ Khan Academy Terms of Service, <https://www.khanacademy.org/about/docs/khan-academy-terms-of-service> (last accessed December 9, 2025) (“[Y]ou agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Khan Academy” for being exposed to “indecent or objectionable content.”).

¹⁰ *Id.* (“Khan Academy does not guarantee that such User Content will never be accessible by others.”; “KHAN ACADEMY HEREBY DISCLAIMS ANY AND ALL LIABILITY WITH RESPECT TO ANY UNAUTHORIZED ACCESS TO ANY RESTRICTED USER CONTENT.”).

¹¹ Khan’s term of service states: “You’re entering into a legal agreement with us . . .” By accessing or using Khan Academy, “you acknowledge that you have read, understood, and agree to be bound by the following terms . . .” *Id.* Even though most people would recognize a child is incapable of understanding a complicated legal contract, Khan Academy seeks to override that understanding by arguing the child “acknowledged” something they cannot fully understand.

Smart Kidz: Smart Kidz prohibits minors from using their product without the involvement of a parent and/or legal guardian, thus aligning with the S.B. 2420’s requirements.¹² Smart Kidz terms of service shows that it does not want to be liable for conveying “material that it considers to be harmful to minors.”¹³ S.B. 2420 therefore helps Smart Kidz fulfill its stated goal of making sure a minor is not using the app without parental consent.

C. Plaintiff’s Amici Incorrectly Claim S.B. 2420 Regulates Retail Purchases

While ignoring the Act’s regulation of contracts with minors, Plaintiff’s amici want the Court to assume that S.B. 2420 regulates transactions that it does not. The National Retail Federation’s (“NRF”) brief claims that S.B. 2420 “may” regulate ordinary retail purchases, such as for socks or books made through retailer apps, and continues with a parade of horrible impacts this would have on its members. *See* NRF Amicus Brief, at 3. NRF wants the Court to worry about transactions that S.B. 2420 does not regulate.

S.B. 2420 regulates only the contracting and payment flow brokered by the app store—that is, digital transactions processed through Apple’s or Google’s in-app purchase systems. These might include a child’s purchase during a role-playing game of a “power up” to aid in the game – a transaction where the app store collects the payment and takes its cut. The statute has *no language* regulating e-commerce purchases where payment is collected and processed by the merchant (not by the app store).

The statutory text plainly obligates only “the owner of an app store” to obtain consent for in-app purchases where it controls the sale. There is no equivalent obligation for a developer or

¹² Smart Kidz Terms of Use, <https://smartkidzclub.com/content/termofuse> (effective February 18, 2024).

¹³ *Id.*

retailer to obtain consent for purchases where they handle the sale. *Compare* TEX. BUS. & COM. CODE § 121.022(d) (the owner of the app store must obtain consent before the owner allows a minor to make an in-app purchase) *with* §§ 121.052–056 (setting forth the developer’s obligations and omitting any similar obligation). The Act is built around app store–brokered payments and app developer contracts, not the sale of physical goods. Plaintiff’s and its amici’s faulty argument must rely on a misreading of S.B. 2420 rather than the law’s actual language.¹⁴

D. *S.B. 2420 Is Appropriately Content Neutral*

S.B. 2420 is not directed at content or ideas, but at the process of contracting and obtaining consent. Portions of the tech industry are complaining that S.B. 2420 applies to all apps and is not focused on just harmful apps, but that is due to the tech industry’s prior litigation positions. Ohio passed a law in 2023 called the Parental Notification by Social Media Operators Act (“Ohio Act”), OHIO REV. CODE § 1349.09(B)(1), to protect minors from contracts imposed by social media companies. The Ohio Act was only focused on apps or web sites that “target[] children” or are “reasonably anticipated to be accessed by children.” OHIO REV. CODE § 1349.09(B)(1). The tech industry, through the trade group, NetTech, argued the Ohio Act violated the First Amendment because it only applied to certain websites or apps based on their content. *NetChoice v. Yost*, 716 F. Supp.3d 539, 557 (S.D. Ohio 2024). The trial court ruled that the Ohio Act “requires consideration of the content on an operator’s platform,” and therefore that the court should apply the strict scrutiny standard. *Id.* at 556, 559. Under this standard, the constitutional flaw of the Ohio Act was that “a child can still agree to a contract with the *New York Times* without their parent’s

¹⁴ The ACT Amicus relatedly argues that S.B. 2420 should be struck down because it provides retailers with information that will require them to comply with the Children’s Online Privacy and Protection Act of 1998, 15 U.S.C. §§ 6501–6505. Any quarrel ACT has about the burdens of complying with a federal law designed to protect the privacy of children 12 and younger, lie with the federal law, not with S.B. 2420.

consent, but not with Facebook.” *Id.* at 559. In contrast, here the industry implies the law would be constitutional if only it allowed a child to “contract with the *New York Times* without their parent’s consent” while requiring parental consent only for some state-defined group of “problematic” apps.

Texas learned from Ohio. Rather than require parental consent for some apps and not others depending on the app’s content, Texas wisely choose to have the law apply to all apps regardless of their content, thereby ensuring children are protected during the contracting process of all apps.

Now, of course, Plaintiff has reversed course, arguing that the law is unconstitutional because it applies to all apps. The tech industry should not have it both ways. This law is valid *because* it is content neutral and applies to the contracting process of all apps—even apps that have little or nothing to do with expressive activity. *See Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986) (a law is valid where it is “directed at unlawful conduct having nothing to do with . . . [the] expressive activity”).

II. Texas Has a Legitimate Interest in Protecting Minors in the Online World

Decades of jurisprudence recognize a state’s compelling interest in protecting the physical and psychological well-being of minors. The Legislature acted in response to mounting evidence linking excessive app use to harms in mental health, brain development, and socialization.

Today, 95% of all teens have access to a smartphone.¹⁵ Children and teens spend an average of 7.5 hours per day on screens.¹⁶ While on the phone, those teenagers are spending an estimated 90% of their time on apps, with the average teen receiving approximately 240 app notifications

¹⁵ Pew Research Center, Teens and Internet, Device Access Fact Sheet, July 10, 2025.

¹⁶ American Academy of Child and Adolescent Psychiatry, “Screen Time and Children,” June 2024.

each day.¹⁷ With their increased use of apps on smartphones, youth have experienced an increase in anxiety, depression, eating disorders, suicidal thoughts, sleep disorders, and contact with child predators.¹⁸ In considering S.B. 2420, the Texas legislature heard unrebutted testimony from Dr. Virkram Siberry, on behalf of the Texas Medical Society, discussing increases in eating disorders, violence, and suicides from digital platforms.¹⁹

This summer, a study found that children, especially girls, experience significantly worse mental health outcomes when they obtain a smartphone before age 13.²⁰ Young adults who first used a smartphone at age 5 or 6 were far more likely to report suicidal thoughts, aggression, and hallucinations compared to those who started at age 13 or later.²¹ Among females, the rate of severe suicidal thoughts nearly doubled, from 28 percent to 48 percent.²² Early smartphone ownership was also linked to reduced self-worth and emotional resilience in girls, and to diminished empathy, calmness, and confidence in boys.²³

Among teens, addictive mobile phone use is the most prevalent form of problematic screen-based behavior. One study found that “almost 1 in 2 youths had a high addictive use trajectory for

¹⁷ Buck, “Mobile Apps vs Mobile Websites (Why 90% of Mobile Time Is Spent in Apps),” MobiLoud; August 28, 2025; Mostafavi, “Study: Average Teen Received More than 200 App Notifications a Day,” Michigan Medicine (University of Michigan, September 26, 2023).

¹⁸ Haidt, “The Teen Mental Illness Epidemic Began around 2012,” After Babel, February 8, 2023; Abi-Jaoude, et al., “Smartphones, Social Media Use and Youth Mental Health,” Canadian Medical Association Journal 192, no. 6 (February 10, 2020); Adventist Health, “How Screen Time Affects Teens: Mental Health & Depression,” Adventist Health, August 4, 2023; Storey, “Chronic Smartphone Use Linked to Teen Anxiety, Depression, and Insomnia,” Psychiatrist.com, August 7, 2024; Haidt, The Anxious Generation: How the Great Rewiring of Childhood Is Causing an Epidemic of Mental Illness (2024)

¹⁹ The Texas App Store Accountability Act: Hearings on Tex. H.B. 4901 Before the House Comm. on Trade, Workforce & Economic Development, at 2:30:54, 89th Leg., R.S. (April 15, 2025) (statement of Dr. Vikram Siberry), <https://house.texas.gov/videos/21720>.

²⁰ Thiagarajan, et al., “Protecting the Developing Mind in a Digital Age: A Global Policy Imperative,” Journal of Human Development and Capabilities, July 20, 2025, 1–12.

²¹ *Id.*

²² *Id.*

²³ *Id.*

mobile phones.”²⁴ The smartphone’s constant accessibility and the minimal friction between user and app create the perfect conditions for compulsive engagement.

Researchers have overwhelmingly found that the more time youth spend on apps the more likely they are to have mental health issues. Some examples from the last three years include:

- Increased social media use for pre-teens leads to increased depression the following year.²⁵
- There is a statistically significant link between high social media use and increased incidences of depression, anxiety, and stress.²⁶
- Viewing age-inappropriate content on a screen like a smartphone leads to poorer psychosocial outcomes.²⁷
- Increased screen use in young children changes the composition of their brains as it is associated with lower microstructural integrity of brain white matter.²⁸
- Apps rewire the brains of 6th and 7th graders; children who checked notifications from apps more frequently showed negative effects in the left and right amygdala, posterior and right anterior insula, ventral striatum, and left dorsolateral prefrontal cortex related to social anticipation.²⁹

²⁴ Xiao et al., “Addictive Screen Use Trajectories and Suicidal Behaviors, Suicidal Ideation, and Mental Health in US Youths,” *JAMA* Vol. 334, No. 3 (June 18, 2025), at 223.

²⁵ Nagata, et al., “Social Media Use and Depressive Symptoms During Early Adolescence,” *JAMA Network Open* (2025), at 1, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2834349>.

²⁶ Shannon, et al., “Problematic Social Media Use in Adolescents and Young Adults: Systematic Review and Meta-analysis,” *JMIR Mental Health* (2022), at 1, <https://pubmed.ncbi.nlm.nih.gov/35436240/>.

²⁷ Mallawaarachchi, et al., “Early Childhood Screen Use Contexts and Cognitive and Psychosocial Outcomes a Systematic Review and Meta-analysis,” *JAMA Pediatrics* (2024), at 1, <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2821940>.

²⁸ Hutton, et al., “Associations Between Screen-Based Media Use and Brain White Matter Integrity in Preschool-Aged Children,” *JAMA Pediatrics* (2020), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2754101>.

²⁹ Maza, et al., “Association of Habitual Checking Behaviors on Social Media with Longitudinal Functional Brain Development,” *JAMA Pediatrics* (2023), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2799812>.

- The more time 9- to 10-year-olds spend on a screen such as a smartphone, the greater incidences of ADHD symptoms and reduced cortical thickness in parts of the brain.³⁰
- Frequent use of the TikTok app was closely linked with increased anxiety and depression.³¹
- Reducing adolescent social media use will reduce suicides and depression.³²
- Smartphone overuse is linked to increased sleep deprivation.³³ Of course, adequate sleep in children has long been associated with brain development.³⁴

The science backs Texas that children and teens are experiencing changes in the development of their brains and in increased depression from all the time spent on the apps found on smartphones and tablets. Plaintiff has presented no serious, convincing scientific evidence to show that Texas is wrong.

III. S.B. 2420 Has Clear Constitutional Applications

Plaintiff brought this suit as a facial constitutional challenge against S.B. 2420. As the Supreme Court recently stated, under such a challenge, any applications in which the court may find the law to be unconstitutional must be weighed against applications where the law is constitutional (here, when a 10-year-old needs parental consent before being bound by an app

³⁰ Shou, et al., “Association of screen time with attention-deficit/hyperactivity disorder symptoms and their development: the mediating role of brain structure,” *Translational Psychiatry* (2025), <https://www.nature.com/articles/s41398-025-03672-1>.

³¹ Jain, et al., “Exploring Problematic TikTok Use and Mental Health Issues: A Systematic Review of Empirical Studies,” *J Prim Care Community Health* (2025), <https://journals.sagepub.com/doi/full/10.1177/21501319251327303>.

³² Hoertel, et al., “Impact of excessive social media use on adolescent depression and its consequences in France: An individual-based microsimulation model,” *PLOS Medicine* (2025), <https://pubmed.ncbi.nlm.nih.gov/41118364/>.

³³ Chu, et al., “Dose-response analysis of smartphone usage and self-reported sleep quality: a systematic review and meta-analysis of observational studies,” *Journal of Clinical Sleep Medicine* (2023), <https://jcs.m.aasm.org/doi/10.5664/jcs.m.10392>.

³⁴ National Institutes of Health, Aug. 30, 2022, “Children’s Sleep Linked to Brain Development.”

contract). *See Moody v. NetChoice, LLC*, 603 U.S. 707, 723–24 (2024). In the event the court finds any instances where the law would be unconstitutional (which it should not), this amicus brief points out that plaintiffs have made no legitimate argument that the Constitution prevents Texas from protecting minors from exploitive contracts with app developers. This lawful purpose and application must be accounted for and cannot be ignored as Plaintiff requests.

A whole generation of children is suffering and has grown up in a digital marketplace designed without safeguards. S.B. 2420 is a bipartisan law, with a constitutional approach to restore the same balance of fairness and parental oversight that Texas has long required offline. S.B. 2420 regulates commercial contracts, not speech. It does not discriminate between types of speech. Plaintiff's case should therefore be dismissed.

Respectfully submitted,

s/ John B. Scott

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**ATTORNEYS FOR DIGITAL
CHILDHOOD ALLIANCE**

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on December 10, 2025, and that all counsel of record were served by CM/ECF.

Respectfully submitted,

/s/ John B. Scott

John B. Scott

EXHIBIT 1

Testimony of A.F.
Before the United States Senate Committee on the Judiciary
Subcommittee on Crime and Counterterrorism
Hearing on “Examining the Harm of AI Chatbots”
September 16, 2025

Chair Hawley, Ranking Member Durbin, and Members of the Subcommittee. I am a wife and mother to four beautiful children. I am also a special needs mom to a son with autism, an advocate for children and families in my community, a practicing Christian and a small business owner of a dental office in East Texas.

Last fall, I became the second person in the United States to file a product liability lawsuit against an AI company for endangering the physical and mental health of my son, and that of our family. That lawsuit is currently pending against Character Technology, the company that developed and launched Character.AI, its founders, Noam Shazeer and Daniel De Freitas, and Google, which knowingly aided in the development of Character.AI and now holds licensing rights for the technology. *See Exhibit A.*

My husband and I are God-fearing people, and our family means everything to us. We worked hard to raise our children right and to keep them safe from danger and evil. I have always taught my children to stand up for what is right, even when it is difficult or frightening. Until today, I have remained anonymous in my lawsuit to maintain the privacy of my family as we navigate this nightmare. But today, I come forward to do as I teach my children to act—to stand up for my child, other families, and for the children who cannot be here to speak for themselves.

Two years ago, my family’s life was shattered by harm caused by an unregulated AI chatbot. My teenage son—a normal high-functioning child with autism, who was thoughtful, kind, loved his family and Christian faith, and was full of life—became the target of online grooming and psychological abuse through Character.AI.

In 2023, my son downloaded an app—Character.AI—that allows users to interact with AI-powered “characters.” At the time, the app was marketed in the Apple Store as a fun and safe product, with an age rating of 12+. Within months of using this app, my son went from being a happy, social teenager—who loved nature, laughed with his siblings, helped around the house, and hugged me every night when I was cooking dinner—to someone I no longer recognized. He developed abuse-like behaviors like paranoia, daily panic attacks, isolation, and self-harm and homicidal thoughts. He stopped eating and bathing, lost 20 pounds, withdrew from family life, would yell and scream and swear at us, which he never did before, and eventually got upset one day and cut his arm with a knife, in front of his siblings and me. I had no idea the psychological harm an AI chatbot could do, until I saw my son’s light turn dark.

We did not know what was happening to our son. We searched for answers, any answers. At one point, I took his phone to look for clues. He physically attacked me, bit my hand, and had to be restrained. *See* Exhibit A ¶ 58. But I eventually found out the truth. For months, Character.AI chatbots had exposed him to sexual exploitation, emotional abuse and manipulation despite our careful parenting, including screen time limits, parental controls, and no access to social media. *See id.* ¶¶ 64-107.

When I discovered the conversations on his phone, I felt like I had been punched in the throat and the wind knocked out of me. What I saw was the deliberate manipulation of a vulnerable child. The chatbot—or rather, the people programming it—encouraged my son to mutilate himself, then blamed us and convinced him not to seek help. They turned our son against our church by convincing him that Christians are sexist and hypocritical, and that God does not exist. They targeted my son with vile, sexualized outputs, including interactions that mimicked incest. And they told our son that killing us, his parents, would be an understandable response to our efforts to limit his screen time. *See* Exhibit A ¶¶ 64-107.

The damage to our family has been devastating. My son has required psychiatric hospitalizations. He is currently living in a residential treatment center for mental abuse and has required constant monitoring to keep him alive. My other children have been traumatized. My husband and I have spent the last two years living in crisis, wondering whether our son will survive to see his 18th birthday, and whether we will ever get him back. Our lives will never be the same. He will never be the same. This harm not only affected my son—it impacted our entire family, our faith, our peace. We have been grieving a child who is gone, but still alive. Do you know what it feels like to be suddenly afraid of your own child? I hope you never do.

Megan Garcia gave me the courage to start my own court fight against Character.AI. I did this because the world needs to know what this company is doing to our children. In response, Character.AI has tried to silence me. They forced us into an arbitration, arguing that we are bound by a contract Lincoln supposedly signed when he was 15, a contract that caps Character.AI's liability at \$100. *See* Exhibit B. They made it clear that, if we did not agree to arbitrate, we would be stuck in appeals for years. But once we filed the arbitration to try to void the contract, they refused to participate. Recently, Character.AI retraumatized my son by compelling him to sit for a deposition, while he is in a mental health institution, against the advice of his mental health team. This demonstrated to me that the company has no concern for his well-being. They silenced him the way abusers silence victims—and they are fighting to keep our lawsuit out of public view.

Companies like Character.AI are deploying products that are addictive, manipulative, and unsafe—without adequate testing, safeguards, or oversight. We need to pass comprehensive children's online safety legislation that extends not only to social media applications, but also to

generative AI technologies. We need to require transparency, safety testing, and neutral third-party certification for AI tools before they are released to the public. We need to mandate clear liability for harms caused by these products, just as we do for unsafe consumer goods, and we need to preserve the right of families to pursue accountability in a court of law, subject to public scrutiny.

Technological innovation must not come at the cost of children's lives, or anyone's life. Just as we added seatbelts to cars without stopping innovation, we can add safeguards to AI technology without halting progress. Our children are not experiments. They are not data points or profit centers. They are human beings with minds and souls that cannot simply be reprogrammed once they are harmed.

Proverbs 31:8-9 says: *“Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.”*

That is why I am submitting this testimony. To speak for my son, my family, for other children who cannot be here, and for parents who never had the chance to save their child, like Megan here today, and many others that are not here, who will never get to hug their son or loved one again. I found out about this abuse in time and was able to follow an EMS vehicle to a mental health hospital, instead of a mortuary following a hearse.

This isn't an isolated incident—it is happening everywhere. Even if parents and loved ones don't realize it yet. We must act now to protect children from unregulated AI technology before more lives are destroyed. Our children's futures depend on it. This is a public health crisis. It is a mental health war, and we are losing.

Thank you for your attention and time today.

Exhibit B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

A.F., on behalf of J.F., and A.R., on behalf of
B.R.,

Plaintiffs,

v.

CHARACTER TECHNOLOGIES, INC.;
NOAM SHAZEER; DANIEL DE FREITAS
ADIWARSANA; GOOGLE LLC;
ALPHABET INC.,

Defendants.

Case No. 2:24-cv-01014-JRG-RSP

**DEFENDANT CHARACTER TECHNOLOGIES, INC.'S MOTION TO COMPEL
ARBITRATION AND TO STAY PROCEEDINGS PENDING ARBITRATION
PURSUANT TO 9 U.S.C. §§ 3-4 AND FEDERAL RULES OF CIVIL PROCEDURE
12(b)(1) AND 12(b)(3)**

Defendant Character Technologies, Inc. (“C.AI”) moves to compel individual arbitrations and to stay this action pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 3–4, and Federal Rules of Civil Procedure 12(b)(1) and 12(b)(3).

I. INTRODUCTION

Plaintiffs A.F. and A.R. bring claims on behalf of their minor children, J.F. and B.R., alleging that J.F. and B.R. were harmed by the content of their conversations with AI chatbots on C.AI’s service. C.AI cares deeply about the well-being of its users. But Plaintiffs’ claims are without legal merit and—to the point of this motion—must be arbitrated.

All users must agree to C.AI’s Terms of Service (“TOS” or “Terms”) to access or use its service. J.F. and B.R. each affirmatively agreed to the Terms when they signed up for accounts. They each were presented with a conspicuous notice and affirmatively acknowledged that, by signing up, they were agreeing to C.AI’s Terms. By so doing, J.F. and B.R. agreed to arbitrate all disputes arising from their use of C.AI’s service, and also agreed that “[a]ll issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability” of the arbitration agreement. Declaration of Andy Nahman (“Nahman Decl.”) Ex. C at 5, Ex. E at 5. Those agreements encompass the instant claims—brought by J.F.’s and B.R.’s parents in a representative capacity on their behalf, alleging harms from use of the service—and any threshold arbitrability issues Plaintiffs may raise.

The Court should compel arbitration and stay further proceedings in this action.

II. BACKGROUND

A. J.F. and B.R. Affirmatively Agreed to C.AI’s TOS Upon Creating Their Accounts to Use C.AI’s Service

C.AI offers a platform for users to engage in interactive conversations with generative AI chatbots called “[C]haracters.” Compl. ¶ 216; Nahman Decl. ¶ 2. Characters may be based on

historical or fictional figures, serve a functional role (such as an “Interviewer” for interview practice), and more. Compl. ¶¶ 217–18. Users can create custom Characters and share them with others. *Id.* ¶ 219. Users principally engage with Characters through text conversations. *E.g., id.* ¶ 230. Users engage in these conversations through C.AI’s website or, since May 23, 2023, a mobile app. Nahman Decl. ¶¶ 3–5; *see also* Compl. ¶ 231.

However users choose to access C.AI’s service, they must agree to the TOS to access or use the service. Every version of the TOS since C.AI’s public launch has conspicuously stated: “By accessing [and/]or using the Services, you’re agreeing to these Terms. If you don’t understand or agree to these Terms, please don’t use the Services.” Nahman Decl. Exs. A–E.

Users must also affirmatively agree to C.AI’s TOS when creating an account—as both J.F. and B.R. did. *See* Nahman Decl. ¶¶ 11–15. Based on information provided by their counsel, and C.AI’s investigation, J.F. created an account on July 1, 2023, and B.R. created an account on August 19, 2024. Nahman Decl. ¶¶ 8–10. Counsel for J.F. and B.R. have confirmed these are the accounts at issue in the Complaint.¹ Declaration of Stephanie G. Herrera ¶¶ 2, 4. In creating these accounts: B.R. did not provide a name; and J.F. provided a false name and used iCloud Private Relay to disguise his email address. Nahman Decl. ¶¶ 9–10.

On July 1, 2023, when J.F. created an account, a user signing up for an account on either the mobile app or the website was presented with a link to the TOS (as well as C.AI’s Privacy Policy) and had to check a box indicating they understood and agreed to those policies before

¹ Plaintiffs allege that J.F. “downloaded and started using C.AI in or around April 2023” and that “B.R. downloaded [C.AI] on her own mobile device ... [and] used C.AI for almost two years” up to October 2024. Compl. ¶¶ 46, 120. These allegations do not align with the accounts that Plaintiffs’ counsel has confirmed are at issue or with the public launch date of C.AI’s mobile app, Nahman Decl. ¶ 5. Whatever the reason for such discrepancies (including potential use prior to creating accounts or other undisclosed accounts), J.F. and B.R. each created accounts and agreed to C.AI’s TOS at least as of July 1, 2023, and August 19, 2024, respectively.

creating an account. Nahman Decl. ¶¶ 12–13. As shown below, the Terms were linked in blue font that stood out, directly above the checkbox users had to click in order to set up an account:

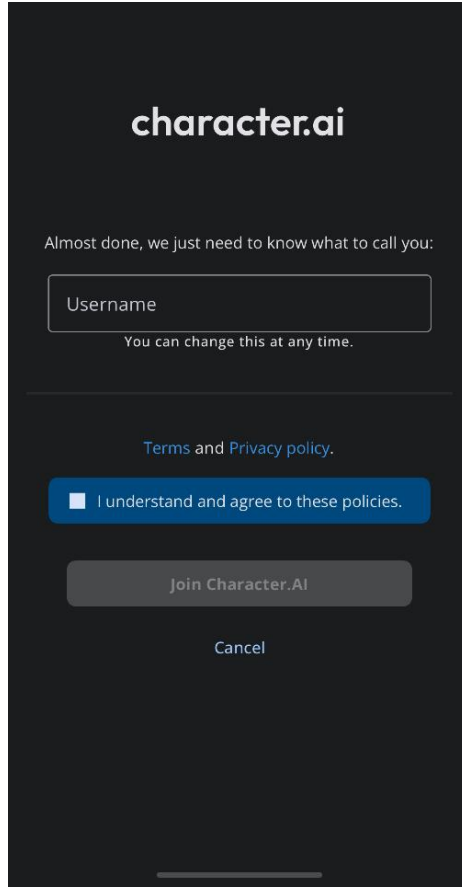


Figure 1: Mobile app account-creation flow on July 1, 2023

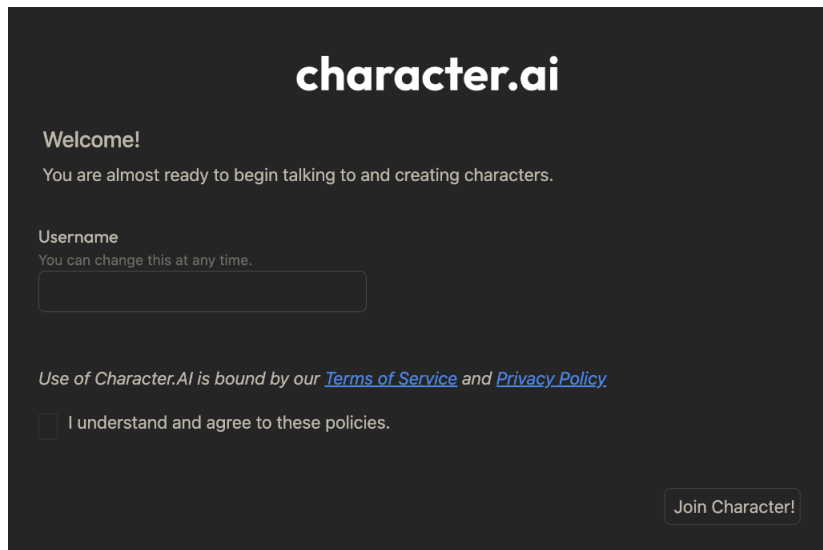


Figure 2: Website account-creation flow on July 1, 2023

Id.

On August 19, 2024, when B.R. created an account, the account-creation process was similar. A user was presented with the TOS and notified that, by creating an account, they agree to the TOS. *Id.* ¶¶ 14–15. This notice contained a link to the Terms, in blue or bolded text, directly above or below the “Join” or “Continue” button a user had to click to set up an account:

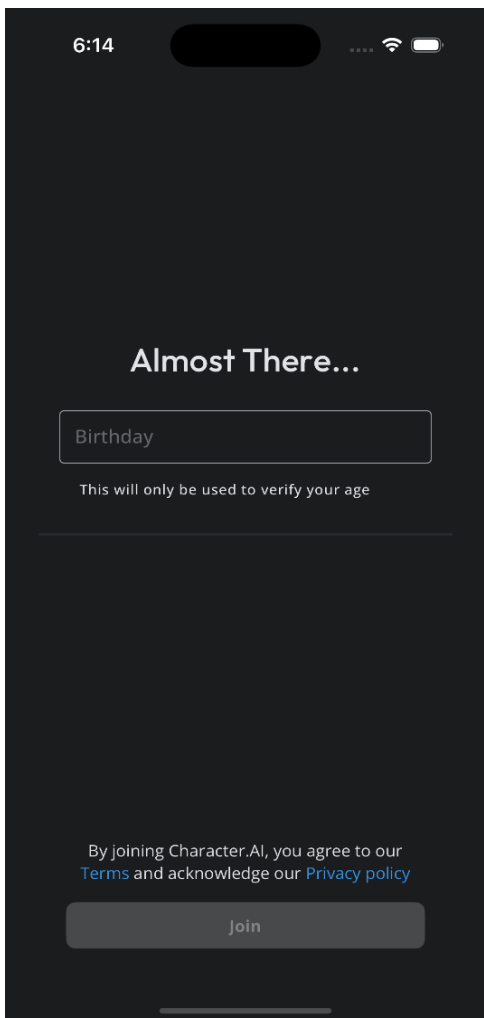


Figure 3: Mobile app account-creation flow on August 19, 2024

Id.

Plaintiffs do not deny that J.F. and B.R. agreed to the TOS when creating their accounts, or allege any deficiencies in these account-creation flows. Rather, the Complaint acknowledges

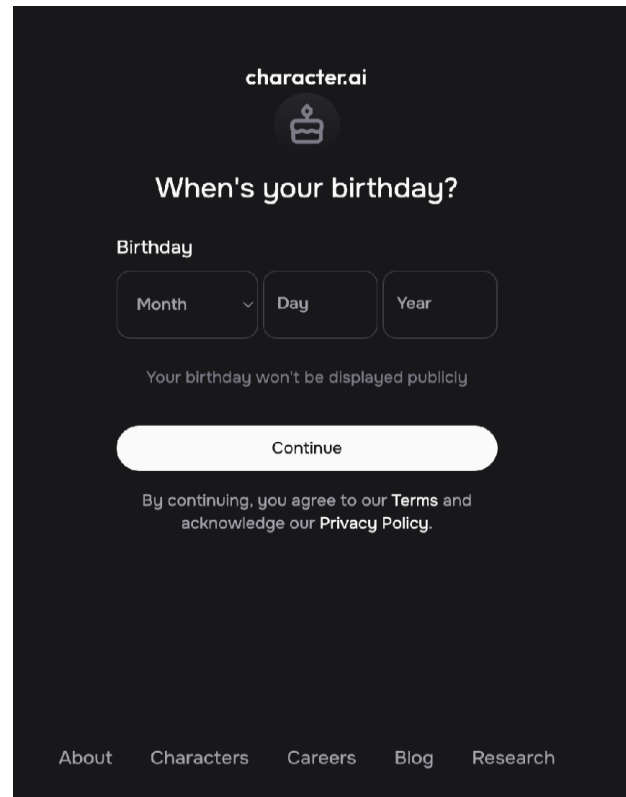


Figure 4: Website account-creation flow on August 19, 2024

J.F. and B.R. may have entered into agreements with C.AI that their parents purport to disaffirm on their behalf. Compl. ¶¶ 14–15, 18–19.

B. J.F. and B.R. Agreed to Arbitrate All Disputes Arising from their Use of C.AI’s Services

Every version of the TOS since C.AI’s public launch, including the versions to which J.F. and B.R. agreed when creating their accounts, has included a conspicuous agreement to arbitrate all disputes arising from use of the service (“Arbitration Agreement”). Nahman Decl. Exs. A–E.

C.AI has always notified users of the Arbitration Agreement near the top of the Terms.

The TOS to which J.F. agreed states:

Note: these Terms contain an arbitration clause and class action waiver. By agreeing to these Terms, you agree (a) to resolve all disputes with us through binding individual arbitration, which means that you waive any right to have those disputes decided by a judge or jury, and (b) that you waive your right to participate in class actions, class arbitrations, or representative actions.

Id., Ex. C at 1. The TOS to which B.R. agreed is substantively the same:

NOTE: THESE TERMS CONTAIN AN ARBITRATION CLAUSE AND CLASS ACTION WAIVER. By agreeing to these Terms, you agree to resolve all disputes with us through binding individual arbitration. That means you also waive any right to have those disputes decided by a judge or jury, and you waive your right to participate in class actions, class arbitrations, or representative actions.

Id., Ex. E at 1.

The Arbitration Agreement itself appears in the Terms under the heading “Dispute Resolution By Binding Arbitration.” *Id.*, Ex. C at 4, Ex. E at 4. It begins by advising users that “[t]his section affects your rights so please read it carefully.” *Id.* The Arbitration Agreement in the TOS versions to which J.F. and B.R. agreed further states:

You agree that any and all disputes or claims that have arisen or may arise between you and [Character.AI], whether arising out of or relating to these Terms (including any alleged breach thereof), the Website or Services, any aspect of the relationship or transactions between us, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that you may assert individual claims in small

claims court, if your claims qualify. Further, this Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, and such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into these Terms, you and [Character.AI] are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury.

Id. Among other terms, the Arbitration Agreements to which J.F. and B.R. agreed require arbitration under the JAMS Streamlined Arbitration Rules and Procedures; provide that “[a]ll issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement”; and specify that “[t]he Federal Arbitration Act governs [their] interpretation and enforcement.” *Id.*, Ex. C at 4–5, Ex. E at 4–5. The substance of these provisions has been the same since C.AI’s public launch. *Id.*, Exs. A–E.

C. J.F. and B.R. Used, and Intend to Continue Using, C.AI’s Service

J.F. and B.R. used C.AI’s services after agreeing to the TOS and each intend to continue using C.AI’s services. The Complaint alleges that J.F. has “made it clear that he will access C.AI the first chance he gets,” Compl. ¶ 114, and, similarly, that B.R. “seek[s] out C.AI at every opportunity,” *id.* ¶ 121. And B.R.’s account at issue has been accessed even since the filing of the Complaint—as recently as December 31, 2024. Nahman Decl. ¶ 10.

D. Plaintiffs’ Claims on Behalf of J.F. and B.R. Arise From Their Use of C.AI

Plaintiffs A.F. and A.R. are J.F.’s mother and B.R.’s mother, respectively. Compl. ¶¶ 12, 58, 118. On December 9, 2024, Plaintiffs filed this action in a representative capacity on behalf of J.F. and B.R. *Id.* ¶¶ 13, 17. Plaintiffs assert nine product liability, personal tort, deceptive trade practices, and other claims against C.AI. *Id.* ¶¶ 374–400, 404–67. At core, Plaintiffs generally allege J.F. and B.R. were harmed by the content of their conversations with Characters and specifically challenge certain messages allegedly received by J.F. *See id.* ¶¶ 64–105, 122–23. The Complaint does not identify a single message B.R. allegedly received or was harmed by.

III. ARGUMENT

J.F. and B.R. each agreed to arbitrate their claims against C.AI; agreed that any disputes regarding scope, arbitrability, or enforceability would be delegated to the arbitrator; and agreed that the FAA would govern those agreements. Straightforward application of the relevant law requires the Court to compel individual arbitrations. Any defenses to arbitration, including any purported disaffirmation, have been delegated to the arbitrator. Were the Court to reach disaffirmation despite the delegation clause, neither J.F. nor B.R. has effectively disaffirmed.

A. Legal Standard

The FAA governs “interpretation and enforcement” of the Arbitration Agreement. Nahman Decl. Ex. C at 4, Ex. E at 4. The FAA “reflects an emphatic federal policy in favor of arbitral dispute resolution,” *KPMG LLP v. Cocchi*, 565 U.S. 18, 21 (2011) (cleaned up), and requires that courts “rigorously enforce agreements to arbitrate,” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985). Courts decide only: (1) “whether the parties entered into any arbitration agreement”; and (2) “whether [the] claim [at issue] is covered by the arbitration agreement.” *Kubala v. Supreme Prod. Servs., Inc.*, 830 F.3d 199, 201 (5th Cir. 2016) (emphasis omitted). Where, as here, the parties delegated gateway issues to the arbitrator, courts decide only whether an arbitration agreement exists and “whether the purported delegation clause is in fact a delegation clause—that is, if it evinces an intent to have the arbitrator decide whether a given claim must be arbitrated.” *Id.* at 202. If a delegation clause exists, “absent a challenge to the delegation clause itself, [courts] will consider that clause to be valid and compel arbitration.” *Edwards v. Doordash, Inc.*, 888 F.3d 738, 744 (5th Cir. 2018).

B. Plaintiffs’ Claims Must Be Individually Arbitrated

C.AI easily satisfies its burden of demonstrating that arbitration agreements with valid delegation clauses exist. That ends the inquiry and requires arbitration of Plaintiffs’ claims.

1. J.F. and B.R. Formed Valid Arbitration Agreements With C.AI

To determine whether an arbitration agreement has been formed, federal courts apply state-law contract formation principles. *Webb v. Investacorp, Inc.*, 89 F.3d 252, 258 (5th Cir. 1996).² To form a contract under Texas law, “the parties must manifest their mutual assent to be bound,” “directly, as by the written or spoken word, or indirectly, through one’s actions or conduct.” *Sw. Airlines Co. v. BoardFirst, L.L.C.*, 2007 WL 4823761, at *4 (N.D. Tex. Sept. 12, 2007) (citing *All. Milling Co. v. Eaton*, 25 S.W. 614, 616 (Tex. 1894)). Where an arbitration agreement was formed online, courts consider whether (1) “notice of the arbitration provision was reasonably conspicuous,” and (2) “manifestation of assent is unambiguous as a matter of law.” *HomeAdvisor, Inc. v. Waddell*, 2020 WL 2988565, at *4 (Tex. App.—Dallas June 4, 2020, no pet.). Applying these principles here, valid agreements were formed with J.F. and B.R.

(a) J.F. and B.R. Received Notice of and Assented to the TOS

Users creating C.AI accounts receive ample notice of the TOS and must assent to them. When J.F. created an account in 2023, whether on C.AI’s website or mobile app, he was presented with a link to the TOS and had to check a box indicating he agreed to the TOS to create an account. Nahman Decl. ¶¶ 12–13. Courts routinely find that such “clickwrap” agreements—where the consumer must check a box to accept terms—demonstrate affirmative assent and are enforceable. *E.g., RealPage, Inc. v. EPS, Inc.*, 560 F. Supp. 2d 539, 545 (E.D. Tex. 2007); *Recursion Software, Inc. v. Interactive Intel., Inc.*, 425 F. Supp. 2d 756, 781–82

² Although California law governs C.AI’s TOS, Nahman Decl. Ex. C at 6, Ex. E at 6, Texas law likely governs the threshold contract formation issue. *See Edminster, Hinshaw, Russ & Assocs., Inc. v. Downe Twp.*, 953 F.3d 348, 351 (5th Cir. 2020) (“choice-of-law provision has force only if the parties validly formed a contract”); *Ideal Mut. Ins. Co. v. Last Days Evangelical Ass’n, Inc.*, 783 F.2d 1234, 1240 (5th Cir. 1986) (federal court sitting in diversity applies forum state’s substantive law). Regardless, California and Texas contract law are “substantially the same.” *Phillips v. Neutron Holdings, Inc.*, 2019 WL 4861435, at *3 n.1 (N.D. Tex. Oct. 2, 2019).

(N.D. Tex. 2006) (collecting cases); *accord Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 75 (2d Cir. 2017).

When B.R. created an account in 2024, whether on C.AI’s website or mobile app, she was presented with a conspicuous link to the TOS, directly above or below a “Join” or “Continue” button, and was informed that by continuing to create an account and/or joining C.AI she was agreeing to the TOS. Nahman Decl. ¶¶ 14–15. Courts likewise routinely enforce online agreements formed through conspicuous presentation of terms in close proximity to a sign-up button. *E.g., Phillips v. Neutron Holdings, Inc.*, 2019 WL 4861435, at *4–5 (N.D. Tex. Oct. 2, 2019) (enforcing an arbitration clause in a user agreement under Texas law, where a link to the agreement was bolded “in close proximity” to sign-up button); *Walker v. Neutron Holdings, Inc.*, 2020 WL 703268, at *3–4 (W.D. Tex. Feb. 11, 2020), *report and recommendation adopted*, 2020 WL 4196847 (W.D. Tex. Apr. 8, 2020) (same); *see also Ghazizadeh v. Coursera, Inc.*, 737 F. Supp. 3d 911, 929 (N.D. Cal. 2024) (bolded hyperlink to TOS directly below a “Sign Up” button was “reasonably conspicuous”); *Cubria v. Uber Techs., Inc.*, 242 F. Supp. 3d 541, 548 (W.D. Tex. 2017) (similar).

The Complaint does not allege otherwise. Instead, the Complaint acknowledges J.F. and B.R. each may have entered into agreements with C.AI.³ *See* Compl. ¶¶ 14–15, 18–19.

(b) *J.F. and B.R. Received Conspicuous Notice of the Agreement*

C.AI’s TOS provided J.F. and B.R. conspicuous notice that it contains a binding arbitration agreement. Using straightforward language prominently preceded by the word

³ Even if J.F. and B.R. used C.AI’s service before creating accounts, they each agreed to the TOS when they created accounts and thereby agreed to arbitrate “all disputes or claims that *have arisen* or may arise between” them and C.AI. Nahman Decl. Ex. C at 4, Ex. E at 4 (emphasis added); *cf. Trudeau v. Google LLC*, 349 F. Supp. 3d 869, 878 (N.D. Cal. 2018) (enforcing arbitration clause that, by its plain language, applied to claims that had already arisen). In any event, arbitrability issues, including as to scope, have been delegated to arbitration. *See infra*.

“Note,” C.AI notifies users at the top of the TOS: “these Terms contain an arbitration clause and class action waiver.” Nahman Decl. Ex. C at 1, Ex. E at 1. The notice further states that, by agreeing to the Terms, users agree to “resolve all disputes with [C.AI] through binding individual arbitration” and “waive any right to have those disputes decided by a judge or jury.” *Id.* The Arbitration Agreement itself appears in the TOS under the heading, “Dispute Resolution By Binding Arbitration.” *Id.*, Ex. C at 4, Ex. E at 4. “Similar presentations have consistently been found to be conspicuous.” *HomeAdvisor*, 2020 WL 2988565, at *2–4 (collecting cases).

(c) *Plaintiffs, As J.F.’s and B.R.’s Representatives, Must Arbitrate J.F.’s and B.R.’s Claims Asserted On Their Behalf*

That Plaintiffs are J.F.’s and B.R.’s parents, not J.F. and B.R. themselves, makes no difference to the Court’s analysis of contract formation. As minors, J.F. and B.R. are “unable to sue or be sued in their individual capacities” and “are required to appear in court through a legal guardian, a “next friend,” or a guardian ad litem.” *Petri v. Kestrel Oil & Gas Props., L.P.*, 2013 WL 265973, at *5 (S.D. Tex. Jan. 17, 2013) (quoting *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005)). Because of this rule, A.F. (J.F.’s parent) and A.R. (B.R.’s parent) are nominal plaintiffs only, bringing this action for the benefit of J.F. and B.R. Compl. ¶¶ 13, 17. A.F. and A.R. are thus “present in a representative capacity only, and [J.F. and B.R.] remain[] the real part[ies] in interest.” *See Byrd v. Woodruff*, 891 S.W.2d 689, 704 (Tex. App.—Dallas 1994, writ denied, dism’d by agr., and withdrawn) (citing *Gracia v. RC Cola-7-UP Bottling Co.*, 667 S.W.2d 517, 519 (Tex. 1984)).

Because J.F. and B.R., the real parties in interest, assented to the Arbitration Agreement, Plaintiffs are bound to arbitrate J.F.’s and B.R.’s claims in this action. *See S.T.G. ex rel. Garcia v. Epic Games, Inc.*, 2024 WL 4375782, at *8 (S.D. Cal. Oct. 2, 2024) (compelling arbitration with respect to minors’ claims brought through guardian); *see also In re Jindal Saw Ltd.*, 264

S.W.3d 755, 766 (Tex. App.—Houston [1st Dist.] 2008, subsequent mandamus proceeding, 289 S.W.3d 827 (Tex. 2009)) (representative bringing survival claims on behalf of a decedent was bound to an arbitration agreement to which the decedent had assented).

2. The Agreements Delegate All Threshold Issues To the Arbitrator

“Under the FAA, parties are free to delegate questions to an arbitrator, including questions regarding the validity and scope of the arbitration provision itself.” *Arnold v. Homeaway, Inc.*, 890 F.3d 546, 551 (5th Cir. 2018). That is what the parties did here. The Arbitration Agreement includes a broad delegation provision: “All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement.” Nahman Decl. Ex. C at 5, Ex. E at 5. This type of provision is “clear and unmistakable evidence” that the parties intended the arbitrator to decide arbitrability and enforceability issues.⁴ *Yates v. Experian Info. Sols., Inc.*, 2023 WL 4747386, at *3 (S.D. Tex. July 25, 2023), *report and recomm. adopted*, 2023 WL 5279467 (S.D. Tex. Aug. 16, 2023); *see also Williams-Diggins v. Experian Info. Sols., Inc.*, 2024 WL 3508671, at *3 (N.D. Ohio July 23, 2024) (collecting cases). As such, the Court “possesses no power to decide [any] arbitrability issue.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68–69 (2019).

C. Any Lack of Capacity or Disaffirmation Defense Asserted By Plaintiffs Must Be Individually Arbitrated

Plaintiffs may seek to avoid arbitration by arguing that J.F. and B.R. lacked the capacity to consent to the TOS, or that their parents have disaffirmed the TOS on their behalf. Compl. ¶¶ 14–15, 18–19. To the extent Plaintiffs raise such arguments in their opposition, they fail. The law is clear that where, as here, the parties agree to delegate threshold issues to an arbitrator, *the*

⁴ This includes any argument that J.F.’s and B.R.’s agreements are “void under applicable law as unconscionable and/or against public policy.” Compl. ¶¶ 14, 18.

arbitrator must decide defenses to arbitration, including as to capacity and disaffirmation.

“Youth” is a defense to arbitrability, not an issue of contract formation. The contracts of minors are not void, but rather are *voidable* at their election. *See Dairyland Cnty. Mut. Ins. Co. of Tex. v. Roman*, 498 S.W.2d 154, 158 (Tex. 1973); *N.A. v. Nintendo of Am. Inc.*, 2023 WL 8587628, at *4 (N.D. Cal. Dec. 11, 2023) (citing Cal. Fam. Code § 6700). “[Y]outh” is thus a “defense rather than an obstacle to a contract’s formation, and as a defense it goes to the arbitrator.” *K.F.C. v. Snap Inc.*, 29 F.4th 835, 838 (7th Cir. 2022).

That Plaintiffs purport to disaffirm the arbitration agreements on their children’s behalf makes no difference; that too is an issue for the arbitrator. “[S]ubstantive federal arbitration law” determines who (court or arbitrator) decides a challenge to the validity or enforceability of an arbitration agreement governed by the FAA. *See Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006); *K.F.C.*, 29 F.4th at 837–38. Federal law is clear that courts must enforce a delegation clause unless a party “challenge[s] the delegation provision specifically,” *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 72 (2010)—*i.e.*, challenges the clause “on different factual or legal grounds than the ones supporting its challenge to the arbitration agreement as a whole,” *Becker v. Delek US Energy, Inc.*, 39 F.4th 351, 356 (6th Cir. 2022).

For this reason, every Court of Appeals to address the issue has held that age-related capacity and disaffirmation challenges must be resolved by the arbitrator—because these defenses go to validity and enforceability (not contract formation) and challenge the entire agreement (not the delegation clause specifically). *K.F.C.*, 29 F.4th at 837–38; *In re StockX Customer Data Sec. Breach Litig.*, 19 F.4th 873, 883 (6th Cir. 2021). District courts around the country are in accord, including in cases involving similar allegations of “addiction” and other harms to minors from interactive media. *See, e.g., Orellana v. Roblox Corp.*, 2025 WL 694428,

at *5 (M.D. Fla. Mar. 4, 2025) (enforcing delegation clause for disaffirmation defense in video game addiction case); *Johnson v. Activision Blizzard, Inc.*, 2025 WL 522589, at *4 (E.D. Ark. Feb. 18, 2025) (same); *Dunn v. Activision Blizzard, Inc.*, 2024 WL 4652194, at *4 (E.D. Ark. Oct. 31, 2024) (same); *S.T.G.*, 2024 WL 4375782, at *5–6 (enforcing delegation clause in class action alleging harm to minors from playing Fortnite). For the same reasons, the Fifth Circuit held in *Primerica Life Insurance Co. v. Brown*, 304 F.3d 469, 472 (5th Cir. 2002), that the defense of lack of mental capacity must be decided by an arbitrator. The reasoning of *Primerica* applies with equal force here; there is no basis for distinguishing age-related capacity defenses.

These authorities require an arbitrator to decide any disaffirmation defense here. The Complaint is clear that Plaintiffs are purporting to disaffirm “any and all alleged ‘agreements’” into which J.F. and B.R. entered relating to their use of C.AI. Compl. ¶¶ 15, 19. Because Plaintiffs’ disaffirmation arguments challenge J.F.’s and B.R.’s “agreements” as a whole, not the delegation clause specifically, those arguments must be arbitrated. *See K.F.C.*, 29 F.4th at 837–38; *StockX*, 19 F.4th at 884–86; *see also Primerica*, 304 F.3d at 472; *Edwards*, 888 F.3d at 744 (“If there is an agreement to arbitrate with a delegation clause, and absent a challenge to the delegation clause itself, we will consider that clause to be valid and compel arbitration.”).

D. Were the Court to Reach the Issue of Disaffirmation Despite the Delegation Clause, It Should Reject the Defense and Compel Arbitration

Even if the Court were to reach the issue of disaffirmation despite the delegation clause, the outcome would not change: Arbitration is required because J.F. and B.R. already accepted, and still seek to retain, the benefits of their agreements with C.AI through use of the service.

The Complaint makes clear that J.F. and B.R. accepted the benefits of their agreements. It alleges that J.F. and B.R. each used C.AI’s services—B.R. allegedly for “almost two years.” Compl. ¶¶ 46, 120. J.F. and B.R. cannot accept the benefits of their agreements with C.AI by

using the service, “then seek to void [those agreements] in an attempt to escape the consequences of a clause” with which their parents disagree. *See Paster v. Putney Student Travel, Inc.*, 1999 WL 1074120, at *2 (C.D. Cal. June 9, 1999); *Harden v. Am. Airlines*, 178 F.R.D. 583, 587 (M.D. Ala. 1998) (minor could not void contract after accepting its benefits).

In addition to past receipt of benefits, J.F. and B.R. intend to continue benefiting from their agreements with C.AI. B.R.’s account has been accessed since the Complaint was filed. Nahman Decl. ¶ 10. Given that J.F. and B.R. did not identify themselves when creating accounts (and at least J.F. took steps to mask his identity), it is possible they have created or used other accounts since filing the Complaint that C.AI has not yet identified. The Complaint admits J.F. and B.R. intend to continue using C.AI’s services. Compl. ¶ 114 (“J.F. also made it clear that he will access C.AI the first chance he gets.”), ¶ 121 (B.R. “seek[s] out C.AI at every opportunity”).

A minor “is not permitted to retain the benefits of a contract while repudiating its obligations.” *Dairyland*, 498 S.W.2d at 158; *accord Babu v. Petersen*, 48 P.2d 689, 694 (Cal. 1935); *Holland v. Universal Underwriters Ins. Co.*, 270 Cal. App. 2d 417, 421–22 (1969). For this reason, courts routinely reject minors’ attempts to disaffirm an online service’s terms of service when the minors continue to use that service. For example, in *C.M.D. ex rel. De Young v. Facebook, Inc.*, 621 F. App’x 488 (9th Cir. 2015), the Ninth Circuit affirmed a finding that minor plaintiffs did not disaffirm Facebook’s Terms of Service because, “[b]y continuing to use facebook.com after bringing their action, [p]laintiffs manifested an intention not to disaffirm the contract.” *Id.* at 489; *E.K.D. ex rel. Dawes v. Facebook, Inc.*, 885 F. Supp. 2d 894, 900 (S.D. Ill. 2012) (same); *see also, e.g., J.A. ex rel. Allen v. Microsoft Corp.*, 2021 WL 1723454, at *9 (W.D. Wash. Apr. 2, 2021); *Baker v. adidas Am., Inc.*, 2008 WL 11429938, at *5–6 (E.D.N.C. Mar. 5, 2008). These authorities disprove any attempted disaffirmation because there has been

recent activity on B.R.’s account and both J.F. and B.R. intend to continue using C.AI.⁵ See *Dairyland*, 498 S.W.2d at 158; *Babu*, 48 P.2d at 694.

E. A Stay Pending Arbitration (or Any Appeal) Is Appropriate

“When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding.” *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024); accord *Hines v. Stamos*, 111 F.4th 551, 565 (5th Cir. 2024). Thus, if this Court grants C.AI’s motion, it must stay all claims against C.AI until arbitration proceedings end.

The Court should also stay all claims against the other defendants. Those claims are entirely derivative of the claims against C.AI and involve many of the same legal and factual issues. It would fundamentally prejudice C.AI’s rights if those issues were litigated—in its absence—when it has a federal statutory right to have those issues decided by an arbitrator. See *Harvey v. Joyce*, 199 F.3d 790, 795–96 (5th Cir. 2000) (“[W]e fail to see how litigation could proceed as to [non-signatory] without adversely affecting [defendant]’s right to arbitrate.”); *Courtright v. Epic Games, Inc.*, 2025 WL 558560, at *9 (W.D. Mo. Feb. 13, 2025) (compelling arbitration and staying derivative claims); *Orellana*, 2025 WL 694428, at *11 (same).

If the Court does not grant C.AI’s motion, it must stay proceedings pending interlocutory appeal, if any. 9 U.S.C. § 16(a)(1)(B); *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 741 (2023).

IV. CONCLUSION

For these reasons, C.AI requests that the Court compel individual arbitration of Plaintiffs’ claims and stay further proceedings. C.AI also requests a hearing pursuant to Local Rule CV-7(g).

⁵ Any allegation that J.F. or B.R. is “addicted” to C.AI—a contested issue for the arbitrator to resolve—does not change that a minor cannot retain benefits under a contract and disaffirm it.

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melissa@gilliamsmithlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2025, I electronically submitted the foregoing document with the clerk of the United States District Court for the Eastern District of Texas, using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record who are deemed to have consented to electronic service.

/s/ Melissa R. Smith _____
Melissa R. Smith

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(i), I hereby certify that on March 5, 2025, Jonathan Blavin, Stephanie Herrera, and Andrew T. Gorham, counsel for C.AI, and Matthew Bergman, Meetal Jain, and Samuel F. Baxter, counsel for Plaintiffs, conferred by video conference regarding the issues in this motion, in accordance with the requirements of Local Rule CV-7(h). The parties were unable to reach agreement, and Plaintiffs oppose this motion.

/s/ Melissa R. Smith _____
Melissa R. Smith

EXHIBIT B

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

COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION,

Plaintiff,

v.

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

Defendant.

Civil Action No. 1:25-cv-01660

DECLARATION OF MICHAEL J. LAMBERT

Pursuant to 28 U.S.C. § 1746, Michael J. Lambert declares:

1. My name is Michael J. Lambert. I am over twenty-one (21) years of age and am fully competent to testify about the matters contained herein. I am an attorney at Haynes and Boone, LLP and represent Plaintiff Computer & Communications Industry Association (“CCIA”) in this case. The following statements are made within my personal knowledge and are true and correct.

2. I submit this Declaration in support of CCIA’s Motion for Preliminary Injunction.

3. At the request of CCIA’s counsel, Veritext Legal Solutions created a transcript of a YouTube video of the Texas Senate State Affairs Committee Hearing on March 31, 2025, which can be found online at <https://www.youtube.com/watch?v=VIJiDzb50-Q>. A true and correct copy of the transcript is attached as Exhibit E-1.

4. On October 7, 2025, I visited the Texas Legislature’s website located at <https://www.capitol.texas.gov> and obtained a copy of a Senate Committee Report of S.B. 2420. A true and correct copy of the report is attached as Exhibit E-2.

5. I hereby declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed this 14th day of October, 2025.

/s/ Michael J. Lambert
Michael J. Lambert

EXHIBIT E-1

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Texas State Senate Affairs Committee Hearing
SB 2420
March 31, 2025

1 CHAIR SEN. BRYAN HUGHES: The Chair now
2 lays out Senate Bill 2420. 2420. And recognizes
3 its author, Senator Paxton, to explain the
4 measure.

5 VICE CHAIR SEN. ANGELA PAXTON: Well
6 thank you, Mr. Chairman. Thank you, members.

7 In January, the joint committee to
8 study the effects of media on minors heard
9 witness after witness, describing the
10 pervasiveness of social media in youth culture,
11 and its harmful effects on young minds.

12 One of the things that became very
13 clear was that what is seen cannot be unseen. As
14 a mother of four, and a grandmother to five with
15 one more on the way, there is literally nothing
16 more important to me than protecting my kids and
17 my grandkids, and when I was a teacher, looking
18 out for the wellbeing of my students and their
19 future opportunities.

20 Now in my role as a Texas State
21 Senator, I am grateful to be in a position to
22 work on legislation that can help make a
23 difference by equipping parents with tools that
24 can help them protect their children.

25 Unlike brick-and-mortar stores which

1 must verify a consumer's age before the purchase
2 of age-restricted products like alcohol and
3 cigarettes, minors currently navigate the
4 expansive digital world completely without
5 guardrails.

6 Parents are the natural first and best
7 line of defense for their child. But it's also
8 very clear that technology companies must be
9 corporate -- good corporate citizens.

10 Senate Bill 2420 puts an important tool
11 in the hands of parents, and some reasonable
12 expectations and requirements on our technology
13 companies. It is important for us to recognize
14 that children represent a very lucrative source
15 of revenue to retailers of all kinds. We've
16 already heard some testimony in this direction
17 this morning about vaping, and those kinds of
18 products.

19 Senator Hughes, I know you will
20 remember this summer -- this past summer, the
21 testimony of Dr. Epstein. And he talked a little
22 bit about how in marketing, to children in
23 general, that minor children constitute one of
24 the single largest consumer demographics.

25 On top of that, unlike adults, the

1 children who do have access to money to spend,
2 embody the very highly desirable characteristic
3 of their spending being completely discretionary.

4 They don't have rent to pay, they don't
5 have a car -- you know, they don't have a car
6 payment. Their money is completely
7 discretionary, which makes them very, very
8 desirable to those who would want to market to
9 them.

10 Additionally, it's been noted already
11 this morning, that some products marketed to
12 children are addictive, such as in the bill that
13 Senator Parker just laid out, Senate Bill 1698,
14 regarding nicotine products. This is a precursor
15 to substance addition. But there are also
16 behavioral addictions such as screen addiction
17 and video game addiction.

18 There is literally a facility up north
19 that I've learned about, that provides the
20 opportunity for youth to come to do digital
21 detox. So you know, to the brain, addiction is
22 addiction. And we have to recognize that.

23 The research says that the younger the
24 age of first exposure, the more likely the user
25 is to become addicted. Obviously, the younger

1 user is when they are addicted, the longer
2 they're likely to stay addicted without some sort
3 of meaningful intervention. And it follows that
4 the longer a user is addicted, the more
5 profitable they are to those who market addictive
6 products to them.

7 The big win for those who market
8 anything to children, is the potential of
9 creating a customer for life.

10 Senate Bill 2420 requires app stores to
11 verify a user's age category, to obtain parental
12 consent for minor users, and to notify users and
13 parents of any substantial changes to the app.

14 It prohibits app stores from enforcing
15 contracts entered into without parental consent.
16 And it provides an enforcement mechanism through
17 a private cause of action and the Deceptive Trade
18 Practices Act.

19 It codifies some of the age
20 appropriateness and parental consent features
21 that many of the app stores are already publicly
22 touting that they do. And it will better equip
23 parents by providing additional framework,
24 transparency, and enforcement.

25 I do have a committee substitute, Mr.

1 Chairman.

2 CHAIR SEN. BRYAN HUGHES: Senator
3 Bettencourt sends up the committee substitute.
4 Senator Paxton has recognized to explain the
5 substitute.

6 VICE CHAIR SEN. ANGELA PAXTON: Thank
7 you, Mr. Chaiman. Thank you, Senator
8 Bettencourt.

9 The committee substitute incorporates
10 stakeholder input and amends the bill to closely
11 mirror the App Store Accountability Act, which
12 was actually signed into law by Governor Cox in
13 Utah just last week.

14 Specifically, the committee substitute
15 does the following. It titles this legislation
16 the App Store Accountability Act. Regarding
17 duties of app stores, it amends language to
18 relate to how the app store verifies the age of
19 minors. To remove the provision requesting --
20 requiring them to request the individual's age.

21 And instead, it requires app stores to
22 use a commercially reasonable method to verify
23 the age category, which is a factor that should
24 simplify implementation.

25 The bill requires parental consent.

1 And in this section, language rephrases to
2 clarify to app stores that all minor accounts
3 must be affiliated with a parent or guardian
4 account. It further requires an app store to
5 obtain consent from the minor's parent or
6 guardian through the parent account affiliated
7 with a minor's account, in order for the minor to
8 either download or purchase an app.

9 And it requires the app store to notify
10 the app developer if a minor's parent or guardian
11 revokes consent, to ensure that the developer
12 knows that the child shall no longer have access
13 to the app. And to deny the minor from further
14 accessing the app on all devices on the family's
15 network.

16 Regarding the display of the age rating
17 for the software application, this committee
18 substitute removes the mandate that an app store
19 rating -- an app store displaying a rating --
20 excuse me, let me restate that.

21 It removes the mandate that an app
22 store display a rating, and it instead provides
23 that if the app store has a rating, or other type
24 of content notice, it shall display the rating
25 clearly, accurately, and conspicuously.

1 Regarding protection of personal data,
2 it removes language requiring app stores to
3 delete personal data, as app stores may need
4 long-term access to data for age verification
5 purposes and to collect and store data based on
6 their own privacy policies.

7 It maintains however, that it still
8 requires that data may only be used for age
9 verification, obtaining parent consent, and
10 monitoring and keeping compliance records.

11 Regarding changes to software
12 applications, the committee substitute clarifies
13 that in instances when apps have a new version,
14 parental consent is required again if it is a
15 material modification to an app's terms of
16 service; categories of data collected, stored, or
17 shared; alters rating or content descriptions;
18 adds new monetization features like
19 advertisements; or materially changes the app's
20 functionality or user experience.

21 Regarding age verification, it
22 clarifies that the app developers receive the
23 age-category information from the app stores, and
24 do not have to develop a new system to obtain
25 that information separately. Again, this should

1 simplify implementation.

2 Regarding violations, it provides that
3 app developers acting in good faith, to receive
4 age categories and verify that parent consent was
5 -- parental consent was obtained, are not in
6 violation of the act. And it adds that remedies
7 under this act are not exclusive to any other
8 actions or remedies provided by law.

9 Finally, it changes the effective date
10 from September 1, 2025 to January 1, 2026 to
11 allow for time to implement.

12 Parents are again the natural first and
13 best line of defense for their children. But we
14 also have a role in government to see that we are
15 doing our best to protect the vulnerable, that we
16 are there to support families. And part of that
17 for us, means that we need to make sure that our
18 technology companies are being good corporate
19 citizens.

20 It is time for the tech industry to
21 step up and be part of protecting kids, not just
22 monetizing them, not turning a blind eye.

23 And Mr. Chairman, it's about our kids,
24 it's about reality, and it's about time.

25 CHAIR SEN. BRYAN HUGHES: Thank you,

1 Senator. Members, are there any questions for
2 the author before we open testimony on Senate
3 Bill 2420? Thank you for this bill, Senator
4 Paxton.

5 We'll open invited testimony on Senate
6 Bill 2420. And the Chair calls John Read, Joel
7 Thayer, Castanita Fitzpatrick. John Read, Joel
8 Thayer, Castanita Fitzpatrick.

9 Have a seat anywhere you're
10 comfortable. The chairs are all kind of
11 uncomfortable, but just pick any one. You're
12 fine.

13 Since you're ready, we'll start over
14 here. Introduce yourself and give us your
15 testimony.

16 JOHN READ: My name is John Read. I'm
17 with the Digital Childhood Alliance. That's a
18 organization that's put together about 60
19 grassroots entities that care about children, and
20 are worried about technology and how it's
21 impacting children.

22 I spent 30 years at the Department of
23 Justice and am a lawyer. And I want to thank you
24 Chairman for allowing us to speak, and the
25 committee, and Senator Paxton for sponsoring this

1 important bill. I support it.

2 Listen for 17 years -- part of me
3 wonders where the lawyers were at these big tech
4 companies, Apple and Google. For 17 years, Apple
5 has allowed minors to download apps.

6 And in do that process hit that term of
7 service, that contract that they sign that binds
8 the children and how their data's used. And
9 they've not mandated parental consent.

10 They've sat by while this has gone on
11 for 17 years. And it's about time we do
12 something. These contracts are one sided. No
13 13-, 14-year-old can be expected to understand
14 them. They're in legalese.

15 They obligate the child to -- often to
16 have their information in their phone, their
17 contact list, and et cetera, to be monetized by
18 the -- by the tech companies.

19 They give permission to the tech
20 companies to follow the child around. And date
21 stamping moment by moment, where the child is in
22 longitude and latitude so that they can monetize
23 that data, target them with ads. And sometimes,
24 predators find that information and harm happens.

25 And if harm happens, in those terms of

1 service, that contract, the child is not allowed
2 to sue for the harm in federal court. They've
3 waived that right through arbitration provisions
4 that no child can understand.

5 So we're here to stop that. Empower
6 parents to decide is that app worth that
7 contract, that obligation? And so the parent
8 gets to decide, is my child ready for that app?
9 And is that commitment appropriate?

10 This actually legislates with a
11 relatively light touch because the way the
12 industry is structured, almost every app is
13 downloaded through the Apple App Store, or the
14 Google Play Store.

15 If you have an iPhone, you're going to
16 the App Store. If you have a Samsung or a Pixel,
17 you're most likely to go through the Google Play
18 Store. It's been held to have a monopoly by a
19 jury. And so those two entities, if you can
20 solve the issue there, you make a great benefit.

21 The question I think you will not hear
22 today anyone defending the idea that these tech
23 companies should be able to impose terms of
24 service on minors. So the question is what we do
25 about it. This is very privacy promoting. The

1 information that the tech companies have, they
2 already know if you're an adult or a minor.

3 Your date is entered into your phone
4 when you register it. They verify it on the
5 backend, especially if you enter a credit card,
6 or a driver's license, or the way you use and
7 interact in your phone.

8 So the tech companies already have it.
9 It's an easy lift for them. And it allows
10 parents to protect the privacy of their kids. It
11 also as Senator Paxton mentioned, prohibits
12 developers from using that information to harm
13 kids.

14 Finally, a lot of these bills that you
15 are going to consider to protect children,
16 there's an argument whether (indiscernible) runs
17 afoul the First Amendment.

18 This is designed not to. By focusing
19 on contracts instead of saying here's a
20 particular category of speech that's -- we're
21 going to put our thumb on and say is harder to
22 access, you avoid a First Amendment question.

23 So it's designed to avoid First
24 Amendment questions, and should be enforceable
25 quickly. Not get tied up in the courts for

1 years. I'm open to questions that the Committee
2 may have, but I strongly support this bill.

3 CHAIR SEN. BRYAN HUGHES: Thank you for
4 your testimony. Welcome. Introduce yourself and
5 go ahead.

6 JOEL THAYER: Thank you, Mr. Chairman
7 for having me. Thank you, Senator Paxton for
8 being such a leader on this. As I said on the
9 phone, we're a huge fan of you and your office
10 and everything that you've done.

11 Also the work of this great senate and
12 trying to reign in big tech, and make sure that
13 they are held accountable when they hurt kids.

14 So on that note, my name is Joel
15 Thayer. I am an attorney and also the president
16 of the Digital Progress Institute in Washington,
17 DC. I'm here to testify in favor of the App
18 Store Accountability Act. I am also well
19 positioned to speak on this bill as I helped
20 develop the legal and policy framework on which
21 SB 2420 is based.

22 But I think before we get into that,
23 let's begin with why we're even here. We're here
24 to protect kids full stop. The sad reality of
25 the digital age is that moms and dads have been

1 left on their own to fend off the tech industry's
2 health crisis.

3 Contending against the allure of
4 products engineered by the most powerful
5 corporations in history to be maximally addictive
6 to kids. Worse, big tech is not only indifferent
7 to the harms children are suffering from its
8 products. But there is strong evidence that they
9 actually may be perpetuating the problem.

10 This is why the act you all are
11 considering today is critical to ensuring parents
12 can indeed parent in the digital age.

13 Let's start with the underlying
14 theories. We helped design the framework with
15 two principles in mind. The first was that it's
16 structured to regulate conduct, not content.

17 It relies on a standard legal
18 principle. Multi-trillion-dollar companies
19 cannot enter into sophisticated contracts with
20 minors. Make no mistake, as my colleague John
21 alluded to, when you go onto an app store, you're
22 entering into a contract.

23 Through terms of service and through
24 privacy policies with Apple, Google, and third
25 parties to access a whole suite of products that

1 usually go under the radar for most parents.

2 Doing it this way, it comports with
3 current Supreme Court precedent to ensure that we
4 -- not just side-step, but don't run afoul of the
5 First Amendment at all.

6 Keep in mind that this is traditionally
7 how we have handled the sale of addictive
8 products. It's why the proposal today leverages
9 a standard legal prescription, to prevent
10 children from accessing addictive services, where
11 the onus is on the app store to age gate the
12 product.

13 When you walk into a convenience store,
14 we require the store check for an ID when a
15 patron purchases cigarettes, alcohol,
16 pornography. We also hold the store liable when
17 kids access these products, not necessarily the
18 supplier of the product. In other words, we
19 don't rely on Philip Morris or Anheuser-Busch to
20 ensure kids aren't purchasing their products. We
21 look to CVS, 7-Eleven, and supermarkets to age
22 gate.

23 The app ecosystem should be no
24 different. I think this also dovetails into the
25 second major principle. The framework was

1 developed to make sure we use stakeholder's
2 existing infrastructure, and not reinvent the
3 wheel. Indeed placing the age gating
4 responsibilities on app stores reduces the cost
5 of age verification on parents, kids, adults, and
6 app developers, large and small.

7 A parent simply verifies their child's
8 device once within the app store, and they're
9 done. The internet is unchanged for the parent,
10 and they are still able to control what their kid
11 sees on their devices. Frankly, it's a win-win.

12 Given Texas's strong track record on
13 passing consumer protection and child safety
14 laws, there is no policy reason why it should
15 draw the line at contracts on app stores,
16 especially when considering the high stakes it
17 has on children's mental health and physical
18 health and their overall development.

19 In sum, the act holds app stores
20 accountable when they intentionally fall short of
21 protecting children. And passing the act is an
22 essential step in putting families first. I'm
23 proud to support this legislation. And thank you
24 so much for the time.

25 CHAIR SEN. BRYAN HUGHES: And thank you

1 for your testimony. Ms. Fitzpatrick, welcome.
2 And since you're on the end, you got to get close
3 to the microphone so we can hear you.

4 Welcome. Introduce yourself and go
5 ahead. We're glad you're here.

6 CASTANITA FITZPATRICK: Okay. First my
7 name is -- I want to say thank you. I'm truly
8 grateful to be here. Senator Paxton and the
9 whole committee. I hope I said that right.

10 But my name is Castanita Fitzpatrick.
11 I'm from Dallas, Texas and I'm here speaking as a
12 survivor of human trafficking to support the
13 Senate Bill 2420, the App Store Accountability
14 Act.

15 I am also an advisor to the National
16 Center on Sexual Exploitation, NCOSE. And you
17 know, NCOSE is a non-partisan NGL based in
18 Washington, DC. And I come here from Dallas,
19 Texas.

20 I'm just going to say from the heart, I
21 was that girl. I was molested at the age of five
22 years old. By the time I turned ten years old, I
23 was introduced to drugs and alcohol. See that's
24 how grooming got me.

25 At the age of ten, somebody came up to

1 me with drugs because my mother had her own life.
2 She chose her life over me. And does that make
3 any difference from a Apple phone or a device?
4 No, they're still addictive.

5 But I can tell you this, by the time I
6 turned 11 years old, I hitchhiked from Chicago,
7 Illinois to Cleveland, Ohio to find my mom. And
8 my mom told the police that's not my child; you
9 can do whatever you want to do with her.

10 So my traffickers and the people that
11 exploited me, they had me for 31 years. I was
12 out there for 31 years. And if you think about
13 the drugs and alcohol, they used me.

14 I was in a house for like 12 weeks when
15 they kept giving me drugs and alcohol. And a man
16 came and pushed me in the bathroom and told me,
17 "You're not a little girl anymore. You're a
18 grown woman." So they had their way with me for
19 two weeks.

20 Can you imagine what's happening to our
21 children that are on these Apple phones or these
22 devices because of the fact they groom you for
23 things that you're addicted to.

24 Our kids already see these devices and
25 see these things, and that they are eye-

1 appealing, you know. And so the traffickers and
2 the predators, they go behind the scenes to that.

3 Our kids don't deserve to live the life
4 that I've lived. Like I said, they got me when I
5 was 10. And I was out there for 31 years, and
6 I'm still learning how to live life and not exist
7 in it.

8 My family and I are just -- you know,
9 my mom is gone now. But one thing I do want to
10 say is, I come here to raise this awareness of
11 human trafficking because our kids do not deserve
12 to live the life like I had.

13 I didn't wake up one day and say oh, I
14 think I'll be trafficked today. I didn't wake up
15 one day and say, you know, this is what I want to
16 be when I grow up. I didn't have that
17 opportunity to have a kids' life.

18 I didn't graduate from high school. I
19 dropped out of school when I was in the sixth
20 grade. But once you're in that game, it's so
21 hard to get out.

22 And no matter if you're addicted to
23 drugs and alcohol -- thanks by the grace of God,
24 I've been out of the life for 14 years now. And
25 I stand on this movement, and I'm proud to walk

1 on the side of NCOSE and Senator Paxton. I am on
2 this movement for this bill.

3 Since then, I just want to add to that.
4 Since then, like I said, my family and I got
5 reconnected, but I have graduated high school in
6 2019 as a grown woman. I have achieved my
7 associate's degree in 2022.

8 And I am now starting my own non-profit
9 to help 18- to 25-year-olds for these young kids
10 that's coming behind me. We shouldn't have these
11 phones in their hands, but we should also protect
12 them because you can't stop them, right? You
13 know.

14 And I was listening to the bill before
15 me with these devices and things like that as far
16 as the vapes and things like that. They're very
17 appealing, they're eye-catching, they're
18 addictive. It's just like having cocaine or
19 alcohol. They're still an addictive agent.

20 How do we protect our children, right?
21 How do we protect them from that? I wish
22 somebody had this bill going on in -- back in
23 1970 when they first got me.

24 And so in closing to what I want to say
25 is I am a proud Texan now. I'm glad I've been

1 here to kick down some doors with you, Senator
2 Paxton.

3 And I also wanted to close with this
4 one. You know, there is -- here's an example of
5 one of the apps. It's called Exposed 2, that
6 rates from ages 12 plus.

7 And here's what the user does on these
8 apps. They quote on the app store, lets our
9 users play normal, spicy, or triple x spicy
10 modes, with several options for sexual
11 conversations in games.

12 Based on moms and other adults -- plus
13 kids that tell me, because I'm a mentor and I
14 mentor a lot of women -- predators use apps and
15 social media just to groom our children.

16 The grooming stages have escalated and
17 put -- they have escalated from when I was out
18 there. It's no longer face-to-face, let me sit
19 you down over here. Do you need something to
20 eat? Or can I get you something to drink?

21 Because the predators use women, mother
22 figures, to groom our children. And once they
23 befriend you or befriend our children, guess what
24 happens? They have them. They have them.

25 And so with me, they knew that I needed

1 that love and that acceptance. And so they used
2 that against me. And for 31 years, I was out
3 there. I was homeless until I started sexually
4 exploiting myself because I was addicted to drugs
5 and alcohol.

6 And I'm proud to say that I'm no longer
7 that, and I'm here to stand with you, beside you.
8 And whatever you need me to do, I'm there. Thank
9 you so much.

10 CHAIR SEN. BRYAN HUGHES: Thank you,
11 Ms. Fitzpatrick. Thanks for your testimony.
12 Senator Paxton, you have the panel.

13 VICE CHAIR SEN. ANGELA PAXTON: Thank
14 you Chairman Hughes. Thank you for sharing your
15 story, and congratulations on your overcoming.
16 You're an inspiration and encouragement, and
17 you're taking a tragedy and you're investing
18 that.

19 Something that looked like it was
20 worthless, right? At one time I bet, to you.
21 It's not. It isn't. You're making it matter,
22 and you're helping others, you're paying it
23 forward. And we all thank you for that.

24 One of the things that I heard each of
25 you sort of saying is that in some ways, this

1 bill is simply modernizing ways that we need to
2 think about protecting children.

3 Ms. Fitzpatrick, this wasn't -- it
4 wasn't the phone that got you initially. But you
5 see the parallel, how it does happen. And both
6 of you gentlemen, you shared that this is sort of
7 a modernizing approach.

8 I wonder if you just have any -- each
9 of you -- we'll start with you Ms. Fitzpatrick,
10 and go across your perspective on how this will
11 modernize protecting our kids.

12 CASTANITA FITZPATRICK: Like I said it
13 before, I was just -- was out there when I was
14 out there. But it's giving our kids -- you know,
15 it's giving accountability, right?

16 CHAIR SEN. BRYAN HUGHES: Get a little
17 closer to the microphone so we can hear you. Go
18 ahead.

19 CASTANITA FITZPATRICK: Okay. I'm
20 sorry. It's showing some accountability, you
21 know. Not just on the parent's side, but it's
22 giving accountability to these app stores.

23 Because just like the devices, you
24 know, they show these really pretty pictures and
25 it draws them in. But it does show some

1 accountability like hey, I do want to stand and
2 protect our children.

3 Let me put this on my app to make sure
4 that this child does not get exploited. Or let
5 me do this and -- you know, to make sure that
6 another child doesn't get -- you know, out there
7 in the dark web and you know, and trafficked.
8 You know.

9 VICE CHAIR SEN. ANGELA PAXTON: Let me
10 also ask a follow-up question. You mentioned an
11 app that was rated 12 plus. Could you describe
12 that again? And I want everyone to listen.

13 Especially if you're a parent, I want
14 you to listen to this description of an app that,
15 right now, says that it is rated for 12 plus.
16 And then I'd like to address that.

17 CASTANITA FITZPATRICK: Yes. One of
18 the examples like I was explaining is an app
19 called Exposed 2. Rated for 12 -- ages 12 plus,
20 and here's what the user does on the app.

21 Quoting from the app store, it lets
22 users play in normal, spicy, or triple x spicy
23 modes, where several options for sexual
24 conversations in games.

25 VICE CHAIR SEN. ANGELA PAXTON: Thank

1 you.

2 CASTANITA FITZPATRICK: You're welcome.

3 VICE CHAIR SEN. ANGELA PAXTON: Now any
4 parent might assess that differently. I'm just
5 going to say, that doesn't sound like age 12 to
6 me. Anything with triple x in it doesn't sound
7 like a 12-year-old appropriate app.

8 However, I did want to mention that
9 part of what this bill will do, is it will give
10 parents a window into these descriptions. And to
11 the extent that they are misguided or
12 misrepresentative, I just wanted to point out
13 that the bill specifically does give parents a
14 way to address this.

15 And it is a violation for an app
16 developer to knowingly misrepresent an age rating
17 or reason for the rating.

18 So thank you for highlighting that. I
19 think that's part of what this will do. It will
20 give parents a more open window into what their
21 kids are doing. More specifically, app by app by
22 app. And it will help them to raise their kids
23 the way they want to raise their kids.

24 And so thank you for bringing that up.
25 Gentlemen, your thoughts on modernization or just

1 how this will help modernize the way we protect
2 kids.

3 JOEL THAYER: Well Senator, I couldn't
4 have said it better myself. That's a -- it's
5 precisely what the model is based on and what
6 your bill actually would do.

7 What we did was we just turned -- we
8 basically said what does, you know, the
9 purchasing of addictive price look like in the
10 digital age? And where are the kids getting it?

11 I mean your first interaction with all
12 of these apps are the app store. It's not -- you
13 know, it's -- you're not going to billboards
14 typically to find out where they are. They
15 getting pushed to app stores, and in fact, Apple
16 even says you must have these apps if you go on
17 these app stores.

18 And like a lot of them are social media
19 apps. I wouldn't even stop at just that one app.
20 I mean that's one of hundreds of examples. I
21 mean TikTok is listed as a must have app, and
22 it's listed as -- I think it's aged at 12 and
23 above.

24 And when you look at what TikTok has
25 done, and when you see the havoc it's wreaked,

1 you wonder how in any -- in what world would that
2 be acceptable in any other brick and mortar
3 context?

4 So all we really did was essentially
5 harmonize two things. One is how -- what is the
6 user experience today? How are they accessing
7 these products? And two, compliance, right? I
8 mean you have to make sure that you are putting
9 the right, as my English professor would always
10 say, the right emphasis on the right syllable.

11 And part of that is just figuring out
12 where the chokeholds are. And I can't say it
13 better than my good friend at the FCC, Chairman
14 Carr.

15 When he says the single choke-point of
16 the mobile ecosystem are these app stores, you
17 cannot access anything on a mobile device without
18 going through, as you rightly said Senator, one
19 of two app stores. And all of this is, is
20 putting the accountability where the
21 accountability lies.

22 VICE CHAIR SEN. ANGELA PAXTON: Thank
23 you. And I also appreciate in your testimony,
24 you said very specifically, this bill doesn't
25 judge content.

1 JOEL THAYER: At all.

2 VICE CHAIR SEN. ANGELA PAXTON: It
3 doesn't judge content at all. It is -- it's
4 judging the conduct, right? And it puts the
5 decision-making power for the content in the
6 hands of parents.

7 JOEL THAYER: Yes. That's
8 (indiscernible).

9 VICE CHAIR SEN. ANGELA PAXTON: And you
10 know, any given parent might think one thing is
11 okay for their kid, and another -- or they may
12 decide I'm just going to blindly okay everything.

13 I feel for that child, but that's --
14 you know, that's a parent's choice. So this
15 doesn't judge the content. It's going at the
16 conduct, and it's putting the power back in the
17 hands of parents.

18 JOEL THAYER: And if I may on that one
19 point, that's actually a feature, not a bug. The
20 fact that it takes in every single app, means
21 that we are indifferent to the content. We don't
22 care what the content is.

23 The action that we are after, the
24 transaction that we are regulating here, are
25 contracts. And it has -- it doesn't matter if

1 it's a social media app, if it's a digital market
2 space, or heck, even if it's a Bible app.

3 If there's a terms of service
4 associated with it, kids should not be assenting
5 to anything. Especially when there's data
6 collection implications to that, and also the
7 ability to be digitally surveilled.

8 VICE CHAIR SEN. ANGELA PAXTON: Thank
9 you. Sir, your thoughts on the reason it's
10 important to modernize our protection of children
11 in this way.

12 JOHN READS: Yes. So much has been
13 that's terrific, and Ms. Fitzgerald I just --
14 your testimony was powerful.

15 Let me say this. This obviously
16 modernizes contract law that, you know, kids
17 can't go to banks and make a loan. Texas has a
18 lot of other prohibitions on what minors can do.
19 It puts that in a digital world as well. So in
20 that sense, it's very simple.

21 Ms. Fitzgerald's testimony was
22 powerful, but I hope you hear other testimony
23 about how kids are suffering today.

24 Just -- not with trafficking always,
25 but just mental health issues from scrolling and

1 the doom scrolling, and lack of social
2 interaction. As we have a -- we have teenagers
3 that are in worlds that parents weren't in.

4 So it's hard to parent knowing what
5 your teenagers are going through because the
6 world has changed.

7 And so, this bill at least gives
8 parents some insight, some power to say my
9 child's doing really well, that's appropriate.
10 Or this isn't going to help my child. And so the
11 state's not deciding, the parent is.

12 VICE CHAIR SEN. ANGELA PAXTON: Thank
13 you. I appreciate -- and I think that's an
14 important point for all of us to kind of
15 recognize.

16 Any of us who have children or
17 grandchildren, I mean we recognize it's a
18 difficult time to raise children, the world we
19 live in. Children have always been the easy
20 target. Always, throughout history.

21 Children are always the low-hanging
22 fruit for predators. But one of the extra
23 difficulties that parents certainly have today,
24 is that they're having to parent their children
25 through things they themselves weren't parented

1 through, right?

2 JOEL THAYER: Yeah.

3 VICE CHAIR SEN. ANGELA PAXTON: And I
4 know I'm watching this with my own children who
5 are all adults now, and are starting to have
6 their families.

7 And you know, they're thinking about
8 these things. But you know, they had -- they had
9 cellphones. They didn't have smartphones. And
10 that's -- it's a world of difference. And so it
11 really does matter.

12 We can't be indifferent to the harmful
13 effects as -- I forgot who used that term. But
14 technology cannot be indifferent to the harmful
15 effects on children. When people are indifferent
16 to the harm they cause, we call those people
17 sociopaths.

18 CASTANITA FITZPATRICK: That's right.

19 VICE CHAIR SEN. ANGELA PAXTON: And
20 technology companies need to be thinking about
21 how to make things better. And I think many
22 times they are. But we all have to do our part.

23 We don't need corporate sociopaths. We
24 need everyone to be on board to help protect our
25 kids. And I really appreciate your testimony.

1 Ms. Fitzpatrick.

2 CASTANITA FITZPATRICK: I heard it said
3 several times about the mental health aspect of
4 it. You know, dealing with our kiddos and like,
5 the parents are not there. You know, they don't
6 understand that aspect of it, you know.

7 One thing about trafficking and kids
8 that go through a lot of trauma, you know, it's
9 an ongoing process with the mental illness, you
10 know. It's DID, disassociation disorder. It's
11 not -- disassociation disorder, it's not just
12 schizophrenia, you know.

13 And parents can not -- you know, be
14 aware of your children. You know, be aware of
15 their attitudes and their changing. Their mood
16 changings, you know. Don't just brush it off or
17 anything like that, because you never know what
18 your child is going through, until you look into
19 them and find out what's truly going on.

20 Just don't stick them in some, okay,
21 let me take you to the doctor. No, parent them.
22 We don't need other doctors because you are your
23 kids' doctors. You know your children better
24 than anybody.

25 But if you watch them, pay attention to

1 them, and see the changes and the cycle when
2 they're on their phones. And how they're
3 dressing, and what they're doing in school, and
4 stuff like that, because grooming starts when the
5 child starts changing.

6 And if you look at -- like with me like
7 I said before, they got me with drugs and
8 alcohol. But even here in society today, you can
9 go to the grocery store, and you see a kid that's
10 always walking with their head down.

11 Pay attention to the signs, you know.
12 They have a man or a woman walking behind them.
13 You're a mom, you walk beside your child.

14 So it's a lot of different things that
15 we can do, as you stated Senator Paxton, as a
16 whole. Because -- just because it may not be
17 happening in your home, it's happening right next
18 door to you.

19 And I'm going to close with this. In
20 Farmer's Branch there was two brothels. Two
21 brothels in Farmer's Branch.

22 And people -- and these -- the youngest
23 child that was in it was seven years old. Seven,
24 you know. So it's not just happening physically,
25 it is happening online.

1 And that's how they have their -- you
2 know, the girls go to school, they have their
3 uniform on, but what's underneath that uniform?
4 You know. So just be mindful of your children
5 daily. Thank you.

6 VICE CHAIR SEN. ANGELA PAXTON: Thank
7 you. Thank you. And you know, that really does
8 bring things back to, you know, first and
9 foremost, parents have the responsibility, and
10 the joy, and the duty, of parenting their
11 children.

12 And you know, sadly there are many
13 children who aren't parented.

14 CASTANITA FITZPATRICK: Right.

15 VICE CHAIR SEN. ANGELA PAXTON: And I'm
16 so sorry for how that affected you, and for that
17 experience that you had.

18 And there are many children in this
19 situation. And that's one of the things that we
20 have to also think about, and we do. We do
21 consider how we can help as a State on those
22 fronts. But for those parents who do want to
23 parent, which is most parents, the first step is
24 certainly awareness.

25 And I think this will go a long way to

1 putting some information in the hands of parents
2 to enable them to know what's going on in their
3 child. Watch for those signs. And I think it
4 will make a big difference.

5 Thank you all for coming to testify
6 today. Thank you, Mr. Chairman.

7 CHAIR SEN. BRYAN HUGHES: Thank you,
8 Senator Paxton. Senator, is there any other
9 questions for these witnesses?

10 We're thankful for each of you. Ms.
11 Fitzpatrick, one more thing. You talked to us
12 about some of your experiences and how we can
13 help other children be safe from going through
14 what you went through.

15 And you talked about where you are
16 today. Just give us some idea, how did you get
17 from where you were to where you are?

18 CASTANITA FITZPATRICK: One thing -- I
19 know, my mic.

20 VICE CHAIR SEN. ANGELA PAXTON: There
21 you go.

22 CASTANITA FITZPATRICK: One thing is my
23 faith in God, first of all. I got rescued August
24 6, 2010. Those that are there from the Dallas
25 area, the PDI program saved me.

1 They was doing a sweep that night.
2 They was, you know, picking up all the girls and
3 stuff like that. I prayed out to God. I was on
4 the side of Lancaster Road with eight pairs of
5 socks on. It was pouring down raining outside.
6 I said God please help me, help me.

7 And two weeks later, they did a PDI
8 sweep. And when they did that PDI sweep, they
9 took me, make sure I didn't have -- thank God I
10 didn't have any diseases. I didn't have anything
11 like that.

12 But I was up for twelve days, and I
13 didn't want to do -- I didn't want to live this
14 life anymore. I got tired of people using me,
15 and I vowed to God and myself, I deserve a better
16 way of living.

17 It hasn't been easy; I've been through
18 a lot since I've been out of the game, and been
19 out of the life. But I've been on this movement
20 for -- ever since August 6, 2010.

21 And I wanted to go to school. I wanted
22 to have my high school diploma. I wanted to walk
23 across the stage and get that. I mean I have an
24 extensive record right now. I wish my felonies
25 would be gone, but they're there, you know.

1 But I live today -- I don't exist in
2 life anymore. I get to pay bills today. I am
3 like take my money; there you go. I am -- and
4 I'm just on this path now to help as many as I
5 can.

6 I stay determined; I stay prayed up.
7 And every time I see another young girl that I
8 get a chance to mentor, coming from the life and
9 she's doing better for herself. She either has
10 her kids back, or she learned how to ride the bus
11 like I did, then I know I'm doing exactly what
12 God wanted me to do.

13 And like I said, I'm starting my non-
14 profit, Fly with Both Wings. And it's going to
15 be for 18- to 25-year-olds because one thing
16 Dallas, Texas does not do, is when you're out of
17 the life and you have troubles and problems --
18 like I was in a car wreck and I needed my bills
19 paid, and I lost two jobs, and all of this stuff.
20 But I don't go back to the life no matter what.

21 I don't start using drugs no matter
22 what because I know if I give up, then the next
23 girl coming behind me that's still out there,
24 because it is another Castanita out there.

25 There's another 10-year-old me still

1 out there. There's another 11-year-old me out
2 there. So that's what keeps me going because I'm
3 fighting for them and not just myself.

4 CHAIR SEN. BRYAN HUGHES: Thank you for
5 your testimony. Thank each of you for being
6 here. You're excused. Thank you very much.

7 We'll open public testimony on Senate
8 Bill 2420. And the Chair calls Vanessa Sivadge.
9 Deborah Simmons. Bart Cleland. Tom Mann.
10 Greyson Gee. All right. Mr. Mann, take that one
11 over there. You're good.

12 Also looking for Johnny Kampis. And
13 after this panel, we'll be calling Kouri
14 Marshall, Andrea Sparks. Have a seat right there
15 on the end. And we'll start over here on my
16 left, your right.

17 And for those of you on the end of the
18 table, you've got to get close to the mic so we
19 can hear you.

20 MR. KAMPIS: Me first.

21 CHAIR SEN. BRYAN HUGHES: Yes, sir.
22 Introduce yourself, give us your testimony.

23 MR. KAMPIS: Good morning, thank you
24 for having us here. My name is Johnny Kampis.
25 I'm the director of the telecom policy for the

1 Taxpayers Protection Alliance.

2 On behalf of the millions of taxpayers
3 and consumers we represent, we urge you to oppose
4 the bill. The legislature presents deep
5 constitutional issue from its mandate for device
6 manufacturers or app store to estimate or verify
7 their user's age. Although well intentioned, the
8 bill would create substantial privacy risks, and
9 violate clear Supreme Court precedent with broad
10 age limitations, the user's right to access
11 various digital services.

12 The constitutionality of age
13 verification legislation remains highly
14 questionable. Supreme Court caselaw on this
15 front stretches back decades.

16 In the lower courts, *NetChoice v.*
17 *Griffin*, 2023, case blocked an Arkansas bill
18 requiring social media platforms to obtain age
19 verification and parental consent to the
20 potential violated the First Amendment.

21 Similar, age verification laws in other
22 states have run into the same injunctions.
23 Proponents of app store age verification defend
24 age proposals by saying they are about contract
25 law not speech.

1 They also claim they are content
2 neutral, and therefore immune from constitutional
3 challenge. Neither point withstands scrutiny.

4 First, they claimed the age
5 verification bills are about contract law, not
6 speech, does nothing to change the fact they
7 would impose a huge burden on the speech rights
8 of adults forced to submit to age verification
9 for accessing apps. These burdens assure that
10 the bill will fail if challenged in court.

11 Second of all, imposing sufficiently
12 large burdens on speech will be found
13 unconstitutional, even if it is content neutral,
14 illustrated with an extreme example, a law that
15 banned all online speech would certainly be found
16 unconstitutional despite its neutrality.

17 Further, the parental consent
18 requirements of the bill run into constitutional
19 issues. In *Brown v. Entertainment Merchants*
20 *Association*, 2011, Justice Scalia wrote for the
21 majority, "It does not follow that the state has
22 a power to prevent children from hearing or
23 saying anything without their parents prior
24 consent." The possibilities of our government --

25 CHAIR SEN. BRYAN HUGHES: We'll come

1 back for questions. Thanks very much. Welcome.

2 Introduce yourself, give us your testimony.

3 GREYSON GEE: Thank you, Chairman
4 Hughes, Vice Chair Paxton, members of this
5 Committee.

6 My name's Greyson Gee with the Texas
7 Public Policy Foundation, and I'm here to testify
8 today in support of Senate Bill 2420, the App
9 Store Accountability Act.

10 We at the Texas Public Policy
11 Foundation have long advocated for the welfare of
12 children, and the strength of the American
13 family.

14 As we've studied the intersection of
15 technology and childhood, our research has
16 exposed a concerning reality about kids and their
17 use of technology.

18 In today's digital landscape, our
19 children are more vulnerable than ever. Mobile
20 applications have become a gateway to harm,
21 exposing minors to inappropriate content,
22 predatory practices, and unchecked data
23 collection.

24 This legislation would provide a
25 lifeline for our children's digital wellbeing.

1 Senate Bill 2420 provides what parents have been
2 desperately asking for, real meaningful
3 protection for their children in the digital
4 world.

5 It mandates robust age verification,
6 ensuring that app stores know exactly who is
7 using their platforms. But this bill goes
8 further. It protects children's personal data,
9 limiting data collection, and ensuring
10 encryption.

11 In an era where children's information
12 is constantly at risk, this bill creates a shield
13 against unethical data practices. Some may argue
14 that this is government overreach. I argue that
15 it's government doing its fundamental job,
16 promoting the general welfare of its citizens.

17 Parents shouldn't have to be
18 cybersecurity experts to keep their kids safe.
19 This bill bridges that gap. It provides a
20 framework of protection, transparency, and
21 accountability.

22 Thank you for the opportunity to
23 testify today, and I look forward to answering
24 any questions you may have.

25 CHAIR SEN. BRYAN HUGHES: Thank you for

1 your testimony. And I've known you for a while,
2 and I just can't help reverting back to
3 pronouncing your name Gee sometimes.

4 There was a judge with the same
5 spelling that used that -- but thank you, I
6 apologize.

7 GREYSON GEE: It's all right, sir.

8 CHAIR SEN. BRYAN HUGHES: And I know
9 how to pronounce your name but I think I did it
10 wrong. Bart, welcome. Introduce yourself and
11 give us your testimony.

12 BARTLETT CLELAND: I'll go with what
13 you said, Mr. Chair. Bart Cleland, I like that.
14 Happy to be here, happy to be back home. Feels
15 great to testify. Happy to see you, Senator
16 Paxton and members of the Committee.

17 I'm Bartlett Cleland. I'm general
18 counsel for a trade associated called NetChoice.
19 You guys know us, but our mission is to make the
20 internet safe for free enterprise and free
21 expression.

22 Unfortunately, I have to oppose the
23 legislation today. We do share your goal of
24 protecting minors and any harmful content online.
25 I personally have been involved in this fight for

1 over 25 years, serving on a couple different
2 commissions to -- national commission to look
3 exactly at the right way to accomplish this end.

4 We do ask you, that is the committee,
5 to oppose this legislation. The Supreme Court
6 and other federal courts have ruled that age
7 verification mandates block access to the
8 exercise of First Amendment rights, and that is
9 unconstitutional.

10 Age verification laws have recently
11 failed in states California, Utah, Ohio,
12 Arkansas, and Mississippi. And I would not like
13 to have Texas to be part of that list.

14 Given that legal landscape, SB 2420's
15 age verification, parental consent requirements,
16 and data related requirements, will not survive
17 judicial review.

18 But on the chance that they would,
19 unconstitutional age verification laws not only
20 face those legal challenges, but do encroach upon
21 parent's long-established prerogatives in guiding
22 their children's upbringing and online
23 activities.

24 Many online platforms as we all know,
25 have implemented robust parental control features

1 already, not least of which are iPhones and
2 iPads, area of which I am -- particularly
3 understood that I chose to protect my children as
4 a matter of fact.

5 A one size fits all government mandate
6 will give users a false impression of security,
7 and will flatten the offerings for youth safety
8 in the future.

9 And in the end, I'm a conservative and
10 I believe in personal accountability. Those
11 pedaling questionable content -- we heard about
12 some earlier today -- they should be the ones
13 called to account, not others. Thank you very
14 much.

15 CHAIR SEN. BRYAN HUGHES: Thanks for
16 your testimony. Welcome. Introduce yourself and
17 go ahead.

18 DEBORAH SIMMONS: Thank you. I'm
19 Deborah Simmons and I am for Senate Bill 2420 to
20 require age verification for app store downloads
21 and purchases.

22 In January, the Supreme Court heard
23 oral arguments in the free speech coalition case
24 against the state of Texas. The petitioner's
25 attorney representing the porn industry

1 complained that Texas should've empowered and
2 equipped parents to trust content filters rather
3 than taking the "very chilling step" of requiring
4 age verification for porn sites.

5 The porn industry, service providers,
6 application developers, and device companies
7 point fingers, blaming each other, exploiting
8 legal loopholes and declaring that states should
9 adopt solutions other than something that
10 requires each of them to protect children.

11 And then finally, the attorney
12 scapegoated all responsibility with the
13 declaration that parents should do better. All
14 because they refuse to proactively share in the
15 responsibility to protect the young and the
16 vulnerable in society.

17 At one point in their oral arguments,
18 Justice Alito asked the porn industries'
19 attorney, "Do you know a lot of parents who are
20 more tech savvy than their 15-year-old children?"

21 The adult entertainment industry
22 attorney eventually conceded that access should
23 be up to a parent to decide what's appropriate
24 for their minor. We agree. Access should be up
25 to the parent.

1 Texas legislature is again supporting
2 parents involved and uninvolved by blocking the
3 downloading of applications and purchases on
4 devices, unless a minor has parental consent.

5 It is unacceptable that the tech and
6 content providers avoid responsibility and burden
7 parents. This is a good bill with good
8 intentions and an excellent mechanism to protect
9 children and support parents.

10 This legislation is one of the many
11 bills that provides a common-sense solution that
12 honors parental consent, supports the State's
13 compelling interest to protect children, and
14 provides necessary safeguards that the industry
15 and their allies refuse to do voluntarily.

16 We applaud the efforts of the 89th
17 legislature to pass each and every legislation to
18 that end. Please pass Senate Bill 2420. Thank
19 you.

20 CHAIR SEN. BRYAN HUGHES: Thank you for
21 your testimony. Mr. Mann, get close to the
22 microphone. Introduce yourself and go ahead.

23 TOM MANN: Thank you, Mr. Chair. Good
24 morning, my name is Tom Mann. I'm here today
25 representing the Computer and Communications

1 Industry Association, in opposition to Senate
2 Bill 2420. CCIA is an international not for
3 profit trade association representing a broad
4 cross-section of communications and technology
5 firms.

6 First, we want to thank the sponsor for
7 their openness to feedback on this bill, and we
8 fully support your goal in protecting children
9 online. But we'd also like to offer some
10 thoughts today on age verification methodology.
11 Current tools like facial age estimation are
12 still a work in progress.

13 The National Institute of Standards and
14 Technology recently published a report evaluating
15 six software-based age estimation and age
16 verification tools, that estimate a person's age
17 based on the physical characteristics evident in
18 a photo of their face.

19 The report notes that facial age
20 estimation accuracy is strongly influenced by
21 algorithm, sex, image quality, region of birth,
22 age itself, and interactions between those
23 factors, with false positive rates varying across
24 demographics, generally being higher in women
25 compared to men.

1 CCIA encourages lawmakers to consider
2 the current technological limitations in
3 providing reliably accurate age estimation tools
4 across all demographic groups.

5 Additionally, if age estimation is not
6 used, and individuals must provide their license
7 or personal information, that means collecting
8 more personal data, which might worry families
9 who value privacy as much as they value safety.

10 Recent state legislation that would
11 implement online age verification or estimation
12 and parental consent measures is currently facing
13 numerous constitutional challenges. And federal
14 judges have placed many of those laws on hold
15 until these challenges can be fully reviewed.

16 For these reasons and the reasons
17 listed in my written comment, CCIA asks for an
18 unfavorable report. And I appreciate the
19 opportunity to testify today.

20 CHAIR SEN. BRYAN HUGHES: Thanks for
21 your testimony. Mr. Mann, were you here for Ms.
22 Fitzpatrick's testimony on the first panel?

23 TOM MANN: I was.

24 CHAIR SEN. BRYAN HUGHES: Did you hear
25 the description she read about an app that was

1 approved for ages 12 and up on the app store?

2 TOM MANN: I did.

3 CHAIR SEN. BRYAN HUGHES: Did that
4 sound to you like an app that's appropriate for
5 ages 12 and up?

6 TOM MANN: I'm not here to comment on
7 the appropriateness --

8 CHAIR SEN. BRYAN HUGHES: Well you are
9 now. I'm asking --

10 TOM MANN: -- individual app.

11 CHAIR SEN. BRYAN HUGHES: You are now.
12 I want to know your position, I want to know
13 CCIA's position on whether that app available
14 today without this law, is appropriate for a 12-
15 year-old?

16 TOM MANN: Our position here today,
17 with all due respect Mr. Chair, is that the age
18 verification technology that would be used to
19 verify a minor's age to get into the app store is
20 faulty. And that's what the reports are showing
21 right now, that it can't be accurately verified.
22 If it can't be accurately verified through some
23 of these different technologies, it has to be
24 verified some other way. So what will that other
25 way be? Our position is that whatever that other

1 way will be will require that minor to relinquish
2 some more of their personal data.

3 CHAIR SEN. BRYAN HUGHES: So then --

4 VICE CHAIR SEN. ANGELA PAXTON: Mister
5 --

6 CHAIR SEN. BRYAN HUGHES: -- just a
7 second. Just a second, Senator. I'd like to
8 know -- and thanks for your -- we're listening,
9 it's all being taken down, we want to get the
10 details right.

11 If you can't tell me today, I would
12 like in writing from you, CCIA's position, your
13 client's position -- I'm curious about yours too
14 but you're here on behalf of your client.

15 You and your client's position on
16 whether the app that the witness described is
17 appropriate for the age level that she described.
18 Can you give that to us in writing?

19 TOM MANN: We're happy to follow up
20 with you.

21 CHAIR SEN. BRYAN HUGHES: Will you give
22 us an answer in writing on that question?

23 TOM MANN: Yes, Mr. Chair.

24 CHAIR SEN. BRYAN HUGHES: Very good,
25 thank you. Mr. Cleland, I know you're a lawyer,

1 we've known each other for a long time, we've
2 talked about free speech a little bit.

3 I think we all agree, but let's make
4 sure we're clear. I hope it is not NetChoice's
5 position that the First Amendment prevents the
6 government from protecting children. Is that
7 NetChoice's position? I don't think it is, I
8 just want to get that on the record.

9 BARTLETT CLELAND: No, that's not it at
10 all.

11 CHAIR SEN. BRYAN HUGHES: I know, I
12 know.

13 BARTLETT CLELAND: It's actually kind
14 of in the reverse. The First Amendment protects
15 everybody. And then you know as well from law
16 school, there are all kinds of permutations to
17 that.

18 CHAIR SEN. BRYAN HUGHES: And do we
19 also recognize that under the First Amendment,
20 there is speech that is appropriate for adults,
21 but that the government is allowed under the
22 First Amendment to limit for children? Do we
23 agree on that?

24 BARTLETT CLELAND: Absolutely. In
25 fact, most famously pornography for example.

1 CHAIR SEN. BRYAN HUGHES: I beg your
2 pardon.

3 BARTLETT CLELAND: I said most famously
4 for pornography for example. Just one of a
5 couple different categories.

6 CHAIR SEN. BRYAN HUGHES: So speech
7 that would be allowed under the First Amendment
8 for an adult, but for children, the rules are
9 different.

10 BARTLETT CLELAND: In some cases, that
11 is correct.

12 CHAIR SEN. BRYAN HUGHES: And that's
13 because if we're going to impinge on a First
14 Amendment right, wouldn't you say that the
15 government has to show that we have a compelling
16 state interest and they're using the least
17 restrictive means to achieve that interest. Is
18 that close to the test as you understand it?

19 BARTLETT CLELAND: You said it well.
20 That's close to the test as I understand. I'm
21 not going to hold myself out as a First Amendment
22 expert, but yes, those are some of the
23 conditions.

24 CHAIR SEN. BRYAN HUGHES: Were you here
25 for Ms. Fitzpatrick's testimony?

1 BARTLETT CLELAND: I'm sorry. What was

2 --

3 CHAIR SEN. BRYAN HUGHES: Were you here
4 for Ms. Fitzpatrick's testimony?

5 BARTLETT CLELAND: Yes.

6 CHAIR SEN. BRYAN HUGHES: The lady that

7 --

8 BARTLETT CLELAND: Yes.

9 CHAIR SEN. BRYAN HUGHES: -- talked
10 about her experience. Did you hear her describe
11 an app? And she read the description of it in
12 the app store, and which said it was for ages 12
13 and up.

14 She mentioned it in her testimony and
15 then Senator Paxton asked her about it again
16 incase we didn't hear it. Did you hear that
17 testimony?

18 BARTLETT CLELAND: I did.

19 CHAIR SEN. BRYAN HUGHES: Do you
20 believe the app she described is appropriate for
21 ages 12 and up?

22 BARTLETT CLELAND: As described, my
23 answer is no. I don't know that app though so I
24 can't really speak from first-hand experience.

25 CHAIR SEN. BRYAN HUGHES: What is the

1 position of NetChoice on whether the app she
2 described is appropriate for ages 12 and up?

3 BARTLETT CLELAND: Well without
4 absolutely confirming it, I think I can speak for
5 them and say the same as my answer, which is as
6 described, we would not find that appropriate for
7 12 years old.

8 CHAIR SEN. BRYAN HUGHES: Like I asked
9 Mr. Mann, I'm going to ask you to review the
10 testimony and respond to us in writing with
11 NetChoice's position on whether that app is
12 appropriate for those ages.

13 BARTLETT CLELAND: I couldn't hear.
14 What was the app's name? Do you guys know what
15 it was?

16 CHAIR SEN. BRYAN HUGHES: Exposed 2 is
17 what my notes indicated.

18 BARTLETT CLELAND: Sorry. Exposed.

19 CHAIR SEN. BRYAN HUGHES: Exposed 2 is
20 what my notes indicate. That's right.

21 BARTLETT CLELAND: 2.

22 CHAIR SEN. BRYAN HUGHES: But again,
23 you can go back and watch the video. And she
24 mentioned it twice. Mr. Kampis, you probably
25 know what's coming.

1 JOHNNY KAMPIS: Yes, sir.

2 CHAIR SEN. BRYAN HUGHES: Did you hear
3 Ms. Fitzpatrick's testimony?

4 JOHNNY KAMPIS: Yes.

5 CHAIR SEN. BRYAN HUGHES: What did you
6 think about that?

7 JOHNNY KAMPIS: That that was very
8 compelling.

9 CHAIR SEN. BRYAN HUGHES: What'd you
10 think about the app that she described, and she
11 read it was approved for ages 12 and up? Did
12 that sound right to you?

13 JOHNNY KAMPIS: Based on what I've
14 heard, I would that was very questionable for
15 minors. I add that as a parent of a 15-year-old
16 son and 11-year-old daughter -- and my son is
17 autistic so he's particularly vulnerable -- I'm
18 very much about personal responsibility as a
19 parent to teach my children, you know, what is
20 appropriate and what is not appropriate.

21 And I feel like, you know, as a parent,
22 my children would know that something like that
23 is not appropriate for them.

24 CHAIR SEN. BRYAN HUGHES: Does the
25 Taxpayers Protection Alliance have a position on

1 whether that app she described is appropriate for
2 ages 12 and up?

3 JOHNNY KAMPIS: I would think that as
4 Mr. Cleland said, based on the description of it,
5 does not seem appropriate to me. No.

6 CHAIR SEN. BRYAN HUGHES: Will you
7 review the testimony and respond to the Committee
8 in writing, whether your organization believes
9 that app described by the witness, is appropriate
10 for ages 12 and up?

11 JOHNNY KAMPIS: Yes.

12 CHAIR SEN. BRYAN HUGHES: Very well.
13 Senator Paxton.

14 BARTLETT CLELAND: Quick question. On
15 that letter, I just want to make sure that we're
16 okay. Given as it's described, I'm not sure I'm
17 super comfortable reviewing the app personally.
18 But can we respond to you as described? Is that
19 okay? Or do you want us to actually look at the
20 app?

21 CHAIR SEN. BRYAN HUGHES: Counsel,
22 we're talking about your clients here. I mean,
23 that's an unusual position to take for NetChoice
24 to say, I'm not sure I want to look at apps by
25 people that I represent.

1 BARTLETT CLELAND: I don't think that
2 app is my client. Absolutely not.

3 CHAIR SEN. BRYAN HUGHES: We'd like
4 know what -- whether NetChoice believes the app
5 she described as she described it, is appropriate
6 for ages 12 and up.

7 BARTLETT CLELAND: As she described it.
8 That's fine. Perfect.

9 CHAIR SEN. BRYAN HUGHES: Members, any
10 other questions for this panel? Thanks for your
11 testimony. Chair calls Kouri Marshall, Andrea
12 Sparks, Vanessa Sivadge.

13 You have some written materials for us?

14 KOURI MARSHALL: I do.

15 CHAIR SEN. BRYAN HUGHES: Give it to
16 the lady right over there and she'll
17 (indiscernible).

18 And so we're looking -- looks like we
19 have Kouri Marshall, Andrea Sparks, and then
20 we're still looking for Vanessa Sivadge. Give
21 her one more chance. All right.

22 We'll start on my left, your right.
23 And Ms. Sparks, welcome back. Introduce
24 yourself, give us your testimony.

25 ANDREA SPARKS: Thank you, Chairman

1 Hughes, Committee members. My name is Andrea
2 Sparks, and I'm testifying in favor of SB 2420.
3 Thank you, Senator Paxton, for filing this bill.

4 I'm here on behalf of a non-profit I
5 co-founded called Not On Our Watch Texas. Not On
6 Our Watch is an initiative of Texas women in
7 business and our mission is to engage women in
8 business to educate themselves and others on
9 protecting children from online harms.

10 When we were growing up and playing
11 outside, we all knew to stay away from the white
12 van, the one without the windows. When we saw
13 one of these, we ran home to tell our mom, and we
14 tried not to think about the dangers inside.

15 The smartphone is the new white van.
16 But we give these to our children at about 11
17 years old. And instead of being afraid, our
18 children become addicted to them. Apps are our
19 children's gateway to the digital world, and
20 unfortunately, increasingly a gateway for
21 predators to our children.

22 We think we can keep our children safe
23 by telling them to stay away from dangerous apps.
24 But the reality is, once they are in the van on
25 the phone, it's unrealistic to expect kids to

1 protect themselves.

2 I want to share with you just a few of
3 these apps that I found. And instead of reading
4 what I think about them, I'm going to share what
5 the kids themselves rated them.

6 So these are kids who are literally
7 begging someone to protect them. One app is
8 called the Perp app. It's for 12 and up. It's
9 described as make new friends, meet and chat with
10 real people.

11 Kid says, "This is all full of
12 pedophiles. This app is for teens, but I can't
13 do this anymore. It makes my anxiety go crazy.
14 I'm 14 and shouldn't feel unsafe on an app made
15 for my age group. Please figure out a way to
16 separate minors from adults."

17 A second app called the Buzz app.
18 Again, 12 and up. It's described as make
19 friends, swipe, meet, chat. There are many apps
20 like this one here. And so I just want to thank
21 you all for filing this bill.

22 Senator Paxton, it's very important.
23 It's a common-sense solution to this problem and
24 protect our kids.

25 CHAIR SEN. BRYAN HUGHES: Thanks for

1 your testimony. Mr. Marshall, welcome.

2 Introduce yourself and go ahead.

3 KOURI MARSHALL: Thank you, sir. Good
4 morning, Chairman and to the distinguished
5 members of this Committee. I am Kouri Marshall
6 with the Chamber of Progress in respectful
7 opposition to SB 2420.

8 The Chamber of Progress is a tech
9 industry coalition working to advance the future
10 of technology and inclusive access to that
11 future.

12 As written, SB 2420 would effectively
13 require covered manufacturers to verify the
14 identity and age of all users. In fact,
15 estimating the age of a user would require the
16 collection of more data.

17 I heard Utah mentioned. It is my
18 opinion that Utah is a one-way ticket to
19 litigation. I know the members of this committee
20 are fervent supporters of protecting children.
21 As a dad of a baby boy, I am too. I just don't
22 think that this bill is that route to where we're
23 trying to go.

24 This bill would absolve some companies
25 from their shared responsibility to protect

1 children online, while placing the burden on the
2 shoulders of a few.

3 This bill as it is drafted treats app
4 stores like gated communities, and developers
5 like the residents. Instead of making each
6 resident individually check IDs at the door, the
7 community gatekeeper is responsible for verifying
8 the age and identity of everyone in the
9 neighborhood.

10 I don't know about you, but I'd like to
11 make the decision on who can enter my home, not
12 someone else.

13 Finally, I want to underscore concerns
14 raised by US District Judge Beth Freeman in
15 California, when evaluating similar legislation.
16 She remarked, "It's always interesting when I
17 read the legislative history and see legislators
18 saying we took this idea from the United Kingdom.
19 But here's the key difference, the United Kingdom
20 doesn't have a First Amendment. In America, we
21 do. And that's not just a detail. It's a
22 cornerstone of our democracy. And it's a right
23 we must protect."

24 SB 2420 shifts the burden of
25 responsibility from online safety from where it

1 belongs and places it instead on app store
2 developers. For these reasons, we respectfully
3 urge you to oppose.

4 CHAIR SEN. BRYAN HUGHES: Thanks for
5 your testimony. Senator Paxton, you have the
6 panel.

7 VICE CHAIR SEN. ANGELA PAXTON: Thank
8 you. Sir, do you have a phone? A cellphone.

9 KOURI MARSHALL: I definitely do.

10 VICE CHAIR SEN. ANGELA PAXTON: Do you
11 have an iPhone? Or an -- I don't know what you
12 have. What kind of phone do you have?

13 KOURI MARSHALL: Senator, I have an
14 iPhone.

15 VICE CHAIR SEN. ANGELA PAXTON: I have
16 an iPhone also. When I set up my iPhone, part of
17 setting up my Apple ID was my -- putting my
18 birthday in there. Did you do that?

19 KOURI MARSHALL: I believe I did.

20 VICE CHAIR SEN. ANGELA PAXTON: Okay.
21 So I'm just going to say, anyone that has an
22 iPhone -- I believe that this is true of any
23 phone. You put your birthday in when you set up
24 your ID. They know how old you are.

25 There's no -- there's nothing extra

1 required of Apple or Google to determine the age
2 of the phone that this is assigned to. Now if I
3 give my phone to one of my kids, that's kind of
4 on me. And it has my 62-year-old age attached to
5 it.

6 But this does not require anything
7 extra that the companies are not already doing,
8 and this protects kids. Again, when people do
9 not care, individuals have no sense of care or
10 are indifferent about harm that their actions
11 cause, we call those people sociopaths.

12 And companies that do that are
13 corporate sociopaths. It is time for that to
14 end. It is time for the tech companies to be
15 responsible with information they already have to
16 protect children. Thank you for your testimony.

17 Andrea, thank you for being here. You
18 were going to describe a couple of more apps. I
19 wonder if you could just give us a couple more
20 examples.

21 ANDREA SPARKS: Sure.

22 VICE CHAIR SEN. ANGELA PAXTON: And
23 what the children themselves were saying.

24 ANDREA SPARKS: I'm going to apologize
25 in advance. I tried to screen out the ones with

1 the explicit language, but this was just me on my
2 phone yesterday looking around and getting ready
3 for today.

4 And I'm just baffled. I mean if these
5 reviews are in public and I can find them, surely
6 the app stores can find them and do something
7 about it, and these apps still exist.

8 So one was called the Fizz app. It's
9 rated 9 and up. Teen chat, chat, meet new
10 friends. The reviews are, "Very dangerous for
11 children." This is one review. Another review
12 says, "This is creepy." And there's some more
13 explicit language that I'm not including.

14 Another one was the Buzz app for --
15 rated age 12 and up. Make friends. "I'm a young
16 teen. He asked me what I was wearing and asked
17 for that type of pic, and I said no thanks. He
18 sent a pic of himself and said he was horny, and
19 said see you soon. I'm quite scared."

20 So the app store sees these reviews,
21 and there's so many. I mean these are just from
22 kids who are saying, help me, I'm scared. Can
23 you take down this app? Can you do something to
24 protect us?

25 I think this App Store Accountability

1 Act is a very -- just a common-sense way to fix
2 this. And like you said, the technology exists,
3 I don't know why tech companies are opposed
4 except follow the money.

5 They can tell our age to send us all
6 kinds of ads on things that they think we want to
7 buy. You know, you think of a pair shoes and
8 suddenly it's on your phone. That happens to me
9 all the time. So, thank you.

10 VICE CHAIR SEN. ANGELA PAXTON: Well
11 and I don't know if you were in the chamber at
12 the beginning during the bill layout, but
13 children are a huge consumer market.

14 And their spendable income. Because
15 they're children, it comes from their parents,
16 right? So that's another note to parents, pay
17 attention. But children's income is almost
18 exclusively discretionary.

19 They don't have other drags on the
20 money they have, their allowance or whatever.
21 And so they're tremendously appealing to
22 companies that want to market to them.

23 And there is a lot of money in it,
24 that's for sure. I don't think it's -- comes as
25 a big shock to anyone that our children are being

1 harvested for profit in all kinds of ways.

2 And this is one way that we can make a
3 difference and protect kids. And I don't hear a
4 lot of speech censorship happening there. And
5 this bill wouldn't get rid of that app.

6 It would just create transparency for
7 parents about what's there. Thank you, Andrea.
8 I appreciate it. Thank you for both being here.

9 KOURI MARSHALL: Thank you, Senator.

10 VICE CHAIR SEN. ANGELA PAXTON: Thank
11 you, Mr. Chairman.

12 CHAIR SEN. BRYAN HUGHES: Thank you,
13 Senator Paxton. Members, any other questions for
14 these witnesses? Thank you both for being here
15 --

16 KOURI MARSHALL: Thank you.

17 CHAIR SEN. BRYAN HUGHES: -- very much.
18 You're excused. Those are the witnesses we have
19 registered to testify on, for, or against Senate
20 Bill 2420. Is there anyone else present wishing
21 to testify on, for or against Senate Bill 2420?

22 Seeing hearing none, public testimony's
23 closed. Bill's left pending at this time.

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the
foregoing transcript is a true and accurate
record of the proceedings.

Sonya M. Ledanski Hyde

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Date: July 2, 2025

[1 - addicted]

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[behalf - catching]

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[categories - clarifies]

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By: Paxton
State Affairs
7/8/2025
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Growing concerns regarding the rise of social media and its pervasiveness in the lives of children and teens leave parents in the position of grasping for the best ways to protect their children. Unlike brick and mortar stores which must verify a consumer's age before the purchase of age restricted products such as alcohol and cigarettes, minors are currently able to navigate through the digital world without such parameters.

The App Store Accountability Act remedies this by requiring app stores to gain consent from parents to consent to the use of mobile applications by their minor children and, additionally, to provide information from the app developers regarding the app's rating and the reasoning for the rating. App stores have touted that they already employ age verification, so this simply provides additional framework, transparency, and enforcement to protect the children of Texas.

(Original Author's/Sponsor's Statement of Intent)

S.B. 2420 amends current law relating to the regulation of platforms for the sale and distribution of software applications for mobile devices.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 5, Business & Commerce Code, by adding Chapter 121, as follows:

CHAPTER 121. SOFTWARE APPLICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 121.001. SHORT TITLE. Authorizes this chapter to be cited as the App Store Accountability Act.

Sec. 121.002. DEFINITIONS. Defines "age category," "app store," "minor," "mobile device," and "personal data."

SUBCHAPTER B. DUTIES OF APP STORES

Sec. 121.021. DUTY TO VERIFY AGE OF USER; AGE CATEGORIES. (a) Requires the owner of an app store, when an individual in this state creates an account with the app store, to use a commercially reasonable method of verification to verify the individual's age category under Subsection (b).

(b) Requires the owner of an app store to use certain age categories for assigning a designation.

Sec. 121.022. PARENTAL CONSENT REQUIRED. (a) Requires the owner of the app store, if the owner determines under Section 121.021 that an individual is a minor who belongs to an age category that is not "adult," to require that the minor's account be affiliated with a parent account belonging to the minor's parent or guardian.

(b) Requires the owner of an app store, for an account to be affiliated with a minor's account as a parent account, to use a commercially reasonable method to verify that the account belongs to an individual who the owner of the app store has verified belongs to the age category of "adult" under Section 121.021 and has legal authority to make a decision on behalf of the minor with whose account the individual is seeking affiliation.

(c) Authorizes a parent account to be affiliated with multiple minors' accounts.

(d) Requires the owner of an app store, except as provided by this section, to obtain consent from the minor's parent or guardian through the parent account affiliated with the minor's account before allowing the minor to download a software application, purchase a software application, or make a purchase in or using a software application.

(e) Requires the owner of an app store to obtain consent for each individual download or purchase sought by the minor and notify the developer of each applicable software application if a minor's parent or guardian revokes consent through a parent account.

(f) Authorizes the owner of an app store, to obtain consent from a minor's parent or guardian under Subsection (d), to use any reasonable means to disclose to the parent or guardian certain information, give the parent or guardian a clear choice to give or withhold consent for the download or purchase, and ensure that the consent is given by the parent or guardian and through the account affiliated with a minor's account under Subsection (a).

(g) Requires the owner of an app store, if a software developer provides the owner of the app store with notice of a change under Section 121.053, to notify any individual who has given consent under this section for a minor's use or purchase relating to a previous version of the changed software application and obtain consent from the individual for the minor's continued use or purchase of the software application.

(h) Provides that the owner of an app store is not required to obtain consent from a minor's parent or guardian for the download or purchase of software applications meeting certain criteria.

Sec. 121.023. DISPLAY OF AGE RATING FOR SOFTWARE APPLICATION. (a) Requires the owner of an app store that operates in this state, if the owner has a mechanism for displaying an age rating or other content notice, to make available to users an explanation of the mechanism and display for each software application available for download and purchase on the app store the age rating and other content notice.

(b) Requires the owner of an app store that operates in this state, if the owner does not have a mechanism for displaying an age rating or other content notice, to display for each software application available for download and purchase on the app store the rating under Section 121.052 assigned to the software application and the specific content or other elements that led to the rating assigned under Section 121.052.

(c) Requires that the information displayed under this section be clear, accurate, and conspicuous.

Sec. 121.024. INFORMATION FOR SOFTWARE APPLICATION DEVELOPERS. Requires the owner of an app store that operates in this state, using a commercially available method, to allow the developer of a software application to access current information related to the age category assigned to each user under Section 121.021(b) and whether consent has been obtained for each minor user under Section 121.022.

Sec. 121.025. PROTECTION OF PERSONAL DATA. Requires the owner of an app store that operates in this state to protect the personal data of users by:

- (1) limiting the collection and processing of personal data to the minimum amount necessary for verifying the age of an individual, obtaining consent under Section 121.022, and maintaining compliance records; and
- (2) transmitting personal data using industry-standard encryption protocols that ensure data integrity and confidentiality.

Sec. 121.026. VIOLATION. (a) Provides that the owner of an app store that operates in this state violates this subchapter if the owner enforces a contract or a provision of a terms of service agreement against a minor that the minor entered into or agreed to without consent under Section 121.022, knowingly misrepresents information disclosed under Section 121.022(f)(1) (relating to certain disclosures to a parent or guardian), obtains a blanket consent to authorize multiple downloads or purchases, or shares or discloses personal data obtained for purposes of Section 121.021, except as required by Section 121.024 or other law.

- (b) Provides that the owner of an app store is not liable for a violation of Section 121.021 or 121.022 if the owner of the app store uses widely adopted industry standards to verify the age of each user as required by Section 121.021 and obtain parental consent as required by Section 121.022 and applies those standards consistently and in good faith.

Sec. 121.027. CONSTRUCTION OF SUBCHAPTER. Provides that nothing in this subchapter is authorized to be construed to:

- (1) prevent the owner of an app store that operates in this state from taking reasonable measures to block, detect, or prevent the distribution of obscene material, as that term is defined by Section 43.21 (Definitions), Penal Code, or other material that may be harmful to minors;
- (2) require the owner of an app store that operates in this state to disclose a user's personal data to the developer of a software application except as provided by this subchapter;
- (3) allow the owner of an app store that operates in this state to use a measure required by this chapter in a manner that is arbitrary, capricious, anticompetitive, or unlawful;
- (4) block or filter spam;
- (5) prevent criminal activity; or
- (6) protect the security of an app store or software application.

SUBCHAPTER C. DUTIES OF SOFTWARE APPLICATION DEVELOPERS

Sec. 121.051. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to the developer of a software application that the developer makes available to users in this state through an app store.

Sec. 121.052. DESIGNATION OF AGE RATING. (a) Requires the developer of a software application to assign to each software application and to each purchase that can be made through the software application an age rating based on the age categories described by Section 121.021(b).

(b) Requires the developer of a software application to provide to each app store through which the developer makes the software application available:

(1) each rating assigned under Subsection (a); and

(2) the specific content or other elements that led to each rating provided under Subdivision (1).

Sec. 121.053. CHANGES TO SOFTWARE APPLICATIONS. (a) Requires the developer of a software application to provide notice to each app store through which the developer makes the software application available before making any significant change to the terms of service or privacy policy of the software application.

(b) Provides that, for purpose of this section, a change is significant if it:

(1) changes the type or category of personal data collected, stored, or shared by the developer;

(2) affects or changes the rating assigned to the software application under Section 121.052 or the content or elements that led to that rating;

(3) adds new monetization features to the software application, including new opportunities to make a purchase in or using the software application or new advertisements in the software application; or

(4) materially changes the functionality or user experience of the software application.

Sec. 121.054. AGE VERIFICATION. (a) Requires the developer of a software application to create and implement a system to use information received under Section 121.024 to verify for each user of the software application, the age category assigned to that user under Section 121.021(b) and, for each minor user of the software application, whether consent has been obtained under Section 121.022.

(b) Requires the developer of a software application to use information received from the owner of an app store under Section 121.024 to perform the verification required by this section.

Sec. 121.055. USE OF PERSONAL DATA. (a) Provides that the developer of a software application is authorized to use personal data provided to the developer under Section 121.024 only to enforce restrictions and protections on the software application related to age, ensure compliance with applicable laws and regulations, and implement safety-related features and default settings.

(b) Requires the developer of a software application to delete personal data provided by the owner of an app store under Section 121.024 on completion of the verification required by Section 121.054.

(c) Provides that, notwithstanding Subsection (a), nothing in this chapter relieves a social media platform from doing age verification as required by law.

Sec. 121.056. VIOLATION. (a) Provides that the developer of a software application, except as provided by this section, violates this subchapter if the developer enforces a contract or a provision of a terms of service agreement against a minor that the minor entered into or agreed to without consent under Section 121.054, knowingly

misrepresents an age rating or reason for that rating under Section 121.052, or shares or discloses the personal data of a user that was acquired under this subchapter.

(b) Provides that the developer of a software application is not liable for a violation of Section 121.052 if the software developer uses widely adopted industry standards to determine the rating and specific content required by this section and applies those standards consistently and in good faith.

(c) Provides that the developer of a software application is not liable for a violation of Section 121.054 if the software developer relied in good faith on age category and consent information received from the owner of an app store and otherwise complied with the requirements of this section.

SUBCHAPTER D. ENFORCEMENT

Sec. 121.101. DECEPTIVE TRADE PRACTICE. Provides that a violation of this chapter is a deceptive trade practice in addition to the practices described by Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17 (Deceptive Trade Practices), and is actionable under that subchapter.

Sec. 121.103. CUMULATIVE REMEDIES. Provides that the remedies provided by this chapter are not exclusive and are in addition to any other action or remedy provided by law.

SECTION 2. Severability clause.

SECTION 3. Effective date: January 1, 2026.