

No. 25A97

IN THE
Supreme Court of the United States

NETCHOICE, LLC,

Petitioner,

v.

LYNN FITCH, IN HER OFFICIAL CAPACITY AS ATTORNEY
GENERAL OF MISSISSIPPI,

Respondent.

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

**BRIEF OF AMERICAN BOOKSELLERS FOR FREE
EXPRESSION, ASSOCIATION OF AMERICAN PUBLISHERS,
THE AUTHORS GUILD, INC., COMIC BOOK LEGAL DEFENSE
FUND, FREEDOM TO READ FOUNDATION, AND THE
INDEPENDENT BOOK PUBLISHERS ASSOCIATION AS *AMICI
CURIAE* IN SUPPORT OF NETCHOICE'S EMERGENCY
APPLICATION FOR VACATUR**

STEPHANIE SCHUSTER

Counsel of Record

BRIAN M. ERCOLE

JAMES D. NELSON

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, NW

Washington, DC 20004

(202) 739-3000

stephanie.schuster@morganlewis.com

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
Table of Authorities	i
Interests of <i>Amici Curiae</i> and Summary of Argument	1
Argument	4
I. The Law Has Far-Reaching Impacts on Websites Where People Access, Discuss, and Purchase Books and Other Publications and Media.	4
II. The Law Will Have Significant Negative Effects on <i>Amici</i> Members.	7
Conclusion	11

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Brown v. Ent. Merchants Ass’n</i> , 564 U.S. 786 (2011)	5
<i>Free Speech Coal., Inc. v. Paxton</i> , 145 S. Ct. 2291 (2025)	6
<i>Packingham v. North Carolina</i> , 582 U.S. 98 (2017)	5
<i>Smith v. California</i> , 361 U.S. 147 (1959)	10
<i>Whitney v. California</i> , 274 U.S. 357 (1927)	10
CONSTITUTIONAL PROVISIONS & STATUTES	
Mississippi Law § 3(1)	8
U.S. Const., amend. I	2-3, 5-6
OTHER AUTHORITIES	
Anahy Diaz, <i>What is BookTok? These readers say TikTok has changed their reading habits</i> , TODAY (Feb. 13, 2023) https://www.today.com/popculture/books/what-is-booktok-meaning-rcna70362	8
Dana Forsythe, <i>Instagram Comic Auctions Are Bringing In Thousands For Sellers In A Covid-19 World</i> , SYFY (July 19, 2020), https://www.syfy.com/syfy-wire/instagram-comic-auction-selling-buying	7
Friends Book Sales & Membership, Prince William Public Libraries, https://www.pwcva.gov/departments/library/memberships-book-sales	8
Goodreads, https://www.goodreads.com/	8
Jo Piazza, <i>Can Instagram Keep People Reading Books?</i> , Forbes (May 25, 2017), https://www.forbes.com/sites/jopiazza/2017/05/25/instagram-bookstagrammers-selling-books/	7
Mississippi House Bill 1126 (2024)	1
TikTok, <i>The Power of BookTok: Why TikTok’s Book Community Is Driving A New Era in Publishing</i> , Forbes (Apr. 21, 2025), https://www.forbes.com/sites/tiktok/2025/04/21/the-power-of-booktok-why-tiktoks-book-community-is-driving-a-new-era-in-publishing/	7

INTERESTS OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT¹

Amici support the emergency application to vacate the Fifth Circuit’s stay of the district court’s preliminary injunction of Mississippi House Bill 1126 (2024) (the “Mississippi Law”)—a law that plainly imposes content-based restrictions on protected online speech and will irreparably harm *Amici* and their members.

American Booksellers for Free Expression (“ABFE”) is the free speech initiative of the American Booksellers Association (“ABA”). ABA was founded in 1900 and is a national not-for-profit trade organization that works to help independently owned bookstores grow and succeed. ABA represents 2,863 bookstore companies operating in 3,281 locations. ABA’s members are key participants in their communities’ local economy and culture. ABFE was founded in 1990 to be the bookseller’s voice in the fight against censorship. ABFE’s mission is to promote and protect free expression, particularly expression within books and in literary culture, through legal advocacy, education, and collaboration with other groups with an interest in free speech.

Association of American Publishers (“AAP”) is a not-for-profit organization that represents the leading book, journal, and education publishers in the United States on matters of law and policy, advocating for outcomes that incentivize the publication of creative expression, professional content, and learning solutions. AAP has approximately 115 individual members, who range from major commercial book

¹ Counsel for *amici* affirms that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amici*, their members, or their counsel made such a monetary contribution.

and journal publishers to small, non-profit, university, and scholarly presses, as well as leading publishers of educational materials and digital learning platforms. AAP's members publish a substantial portion of the general, educational, and religious books produced in the United States in print and digital formats, including critically acclaimed, award-winning literature for adults, young adults, and children. AAP represents an industry that not only depends upon the exercise of rights guaranteed by the First Amendment, but also exists in service to our constitutional democracy, including the unequivocal freedoms to publish, read, and inform oneself.

The Authors Guild, Inc. (the "Guild") is a national non-profit association of over 16,000 professional, published writers of all genres including periodicals and other composite works. The Guild works to promote the rights and professional interests of authors in various areas, including copyright, freedom of expression, and fair pay. Many Guild members earn their livelihoods through their writing. Their work covers important issues in history, biography, science, politics, medicine, business, and other areas; they are frequent contributors to the most influential and well-respected publications in every field. The Guild's members are the creators on the front line, fighting for their constitutional rights under copyright to reap financial benefits from their labors.

Comic Book Legal Defense Fund ("CBLDF") is a non-profit organization dedicated to protecting the legal rights of the comic arts community. With a membership that includes creators, publishers, retailers, educators, librarians, and fans, the CBLDF has defended First Amendment cases in courts across the United

States and led important educational initiatives promoting comics literacy and free expression.

Freedom to Read Foundation (“FTRF”) was established to foster libraries as institutions that fulfill the promise of the First Amendment; support the rights of libraries to include in their collections, and make available, any work they may legally acquire; establish legal precedent for the freedom to read of all citizens; protect the public against efforts to suppress or censor speech; and support the right of libraries to collect, and individuals to access, information that reflects the diverse voices of a community so that every individual can see themselves reflected in the library’s materials and resources.

The Independent Book Publishers Association (“IBPA”) is the largest publishing trade association in the United States, with over 3,000 members. IBPA connects its members to the publishing industry and provides a forum for publishers to voice their concerns. IBPA’s mission is to lead and serve the independent publishing community through advocacy, education, and tools for success.

Amici’s members include authors, publishers, booksellers, and book-purchasing libraries—creators and disseminators of protected speech. They publish, produce, distribute, and sell books, magazines, works of art, and printed materials of all types, including works that are scholarly, literary, artistic, scientific, entertaining, and otherwise relevant to current evidence and public discourse. They have a significant interest in this case because, if the Mississippi Law goes into effect, it will hamper their ability to reach audiences and negatively impact commercial

sales by burdening users' ability to learn about, discuss, borrow, and purchase these materials online—a major use of websites affected by the Law. Because the Mississippi Law (and the Fifth Circuit's unreasoned order) ignore the massive burdens to their members, *Amici* respectfully request that the application be granted.

ARGUMENT

I. The Law Has Far-Reaching Impacts on Websites Where People Access, Discuss, and Purchase Books and Other Publications and Media.

The Mississippi Law threatens more than restricting minors' use of traditional social media services and other websites. Users of all ages access many websites likely covered by the Mississippi Law, including but not limited to the NetChoice-member websites at issue (Dreamwidth, Facebook, Instagram, Nextdoor, Pinterest, Reddit, Snapchat, X, and YouTube), to consume news, review analyses of current events, learn about and even purchase new books, and engage in a great deal more protected speech and association. The Mississippi Law will deter such expressive activity and have far-ranging and irreparable practical consequences.

Authors, publishers, and booksellers use these and other “social media” websites covered by the Mississippi law to advertise, promote, distribute, and sell new books and other publications. These First Amendment-protected publications may be geared towards adults, young adults, minors, or some combination. Beyond individual purchasers, libraries and bookstores also use social media and other websites to identify books to replenish and update their inventories, for both adults and children. For the young adult and children literature categories, the Mississippi

Law undeniably places burdens on the target audience's ability to discover, discuss, borrow, purchase, and/or read books aimed at them as an audience.

The Mississippi Law also hampers these budding minds from accessing news, trends, current events, and other media through channels minors typically use to participate in national discourse and learn about important issues. For example, it may fully prevent a 17-year-old from participating in a discussion about climate change or gun rights through social media or other covered websites that allow for users to post their views on such cutting-edge issues. Likewise, it could impose insurmountable obstacles to a 16-year-old who wants to use social media to understand, discuss, and learn more about mental health issues. And, specific to the book industry, it will burden minors' ability to participate in online discussions about upcoming books, whether fiction or non-fiction.

These significant burdens on First Amendment freedoms for minors flow from the Mississippi Law's age-verification and prior parental-consent requirements—which apply no matter whether the content is fully protected speech under the First Amendment. *See Packingham v. North Carolina*, 582 U.S. 98, 104 (2017) (stating “social media” is one of “the most important places” for the “exchange of views”); *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 795 & n.3 (2011) (noting minors' free-speech rights, including to not endure government-imposed parental-consent mandates, for fully protected speech). These requirements will chill the ability of minors to learn about and even purchase new books and to understand, discuss, and analyze current events.

The First Amendment burdens do not stop with minors. The age-verification and filtering requirements also would burden adults’ ability to use social media and other websites to access and engage with current events, book reviews, news, and discussions online—including discussion of new and forthcoming book releases, books by journalists, and other books dealing with current events. That is because filters tend to be over-inclusive and thus risk blocking fully protected expressive content. And requiring age-verification may breach *adult* users’ privacy beyond what some are willing to accept, thereby causing them to forego using the platforms whatsoever.

One month ago, this Court recognized online age-verification as a burden on the right to access speech. *Free Speech Coal., Inc. v. Paxton*, 145 S. Ct. 2291, 2299 (2025). While this Court held that protecting minors from content that is “harmful to minors” (and that they had no right to access) justified the burden under the appropriate scrutiny for that case, *id.* at 2308, 2317–19, everyone has a right to access the expressive content at issue here, which includes indisputably “fully protected speech” on social media, *id.* at 2310, so the burden is not—and cannot be—justified.

Further, in *Paxton*, the Court stressed that age-verification requirements have been used for in-person sales to protect children from “harmful to minors” material for many years. *Id.* at 2307–09. In contrast, defenders of the Mississippi Law will be hard-pressed to find real-world examples of age-verification requirements to buy otherwise fully protected books, newspapers, or magazines. Now that many users—both minors and adults alike—find access to these things through social media and other websites (sometimes exclusively), there is no justification to drastically increase

the burdens (rather than maintain the prior in-person status quo) under any form of heightened scrutiny.²

II. The Law Will Have Significant Negative Effects on *Amici* Members.

These burdens on the users of social media and other websites—both on minor and adult users—will adversely impact *Amici* and their members in numerous ways, both predictable and otherwise. To start, many small-business booksellers and publishers rely heavily (often, primarily) on social media and other online media to advertise and sell their books, including new releases. See, e.g., Jo Piazza, *Can Instagram Keep People Reading Books?*, *Forbes* (May 25, 2017), <https://www.forbes.com/sites/jopiazza/2017/05/25/instagram-bookstagrammers-selling-books/> (discussing how “Bookstagrammers” on social media drive discussion around books, traffic to book review and sales websites, and ultimately books sales, especially since “many [other] outlets that once covered books and helped them find audiences have either shrunk or disappeared”); Dana Forsythe, *Instagram Comic Auctions Are Bringing In Thousands For Sellers In A Covid-19 World*, *SYFY* (July 19, 2020), <https://www.syfy.com/syfy-wire/instagram-comic-auction-selling-buying> (noting Instagram driving comic book sales). And social media driving the conversation around new books is not unique to Instagram. See, e.g., TikTok, *The Power of BookTok: Why TikTok’s Book Community Is Driving A New Era in Publishing*, *Forbes* (Apr. 21, 2025), <https://www.forbes.com/sites/tiktok/2025/04/21/the-power-of-booktok-why-tik-toks-book-community-is-driving-a-new-era-in-publishing/> (describing “BookTok”

² Strict scrutiny should apply here because the Mississippi Law is plainly content-based. See App.18a, 21a-23a.

community and its large role in marketing new books); Anahy Diaz, *What is BookTok? These readers say TikTok has changed their reading habits*, TODAY (Feb. 13, 2023) <https://www.today.com/popculture/books/what-is-booktok-meaning-rcna70362> (similar). Libraries also rely heavily on social media and other websites to find new books to purchase and create free access for their communities, and also increase local residents' library use and engagement—an undoubted societal good. See, e.g., Friends Book Sales & Membership, Prince William Public Libraries, <https://www.pwcva.gov/department/library/memberships-book-sales> (linking users to library branch Facebook pages that advertise new books, story hours, and other opportunities for engagement).

Beyond the social media websites covered by the Mississippi Law, other websites critical to driving book and other media distribution are affected. For instance, Goodreads, a popular website made for online social engagement about books and book reviews, may not fit the Mississippi Law's carveouts. See Goodreads, <https://www.goodreads.com/>. Indeed, Goodreads is a “digital services provider,” and a court may conclude that it offers users the ability to “socially interact with other users,” create a “profile,” and “post content.” Mississippi Law § 3(1). Thus, just to create or engage with book reviews, users may have to undergo age-verification and obtain parental consent. Imposing these requirements on Goodreads and similar platforms would not serve any meaningful purpose and potentially force the company to adopt features that would prevent minors from learning about books that interest them and expressing their own views about literature.

Practically, the scope of the Mississippi Law impacts many website services that drive book, magazine, and media dissemination in apparently unintended—yet massively harmful—ways. Indeed, some smaller review and engagement websites may not be able to afford expensive age-verification and filtering software, let alone the potentially massive penalties the law imposes for forgoing those measures (up to \$10,000 per violation and criminal penalties). *Amici*'s members will suffer significant financial harm by the Mississippi Law's effect on social media websites, and also other websites as well.

To be sure, there will still be some methods and avenues for authors, publishers, comic-book sellers, and libraries to market and distribute their books, magazines, and other media. For instance, the Mississippi Law carves out websites that primarily function to provide commerce. But, as a practical matter, hampering *Amici* members' access to target audiences and customers through social media and other socially interactive websites will cause significant harms—especially for smaller or less-well known businesses and authors. Sales, marketing, and distribution do indeed take place through covered websites (where commerce is not the primary function). Regardless, the decreased social engagement and discussion of new publications, reviews, and the like among minors (as well as adults) wrought by the Mississippi Law likely will suppress sales, loans, rentals, and other dissemination most significantly.

Reduced access by both minors and adults to websites *Amici*'s members use to promote their products likely will cause online engagement (and therefore sales) to

drop. It could even push some publishers and authors out of business entirely. For example, if they have to increase expenditures on traditional commercials and advertisements, their margins will vanish, and they will be unable to compete with larger, more well-funded operations. What is more, for independent booksellers, just one or two releases a year can make or break the business—so, reduced online engagement and fewer sales opportunities may doom the success of certain books and, with it, entire booksellers. This is especially so for young adult and fantasy literature, which is greatly driven by social media engagement, though the Mississippi Law will certainly affect all types of literature.

This is all in addition to the immeasurable and significant societal harm of less content being written, published, disseminated, and discussed. See *Smith v. California*, 361 U.S. 147, 150 (1959) (“[T]he free publication and dissemination of books and other forms of the printed word furnish very familiar applications of these constitutionally protected freedoms [of the press and speech]. It is of course no matter that the dissemination takes place under commercial auspices. Certainly a retail bookseller plays a most significant role in the process of the distribution of books.” (citations omitted)); cf. *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) (responding to potential harms by some speech by noting “the remedy to be applied is more speech, not enforced silence”).

* * *

Just as there are not government-mandated parental consent requirements or age-verification rules for viewing and purchasing nearly all books, newspapers,³ and magazines at physical stores, there is no basis to burden both buyers and sellers, both publishers and consumers, and both resulting speech and online discourse through these same methods on “social media” websites.

CONCLUSION

For these reasons, *Amici* request that the Court grant the emergency application to reinstate the district court’s well-reasoned stay order pending this litigation. The Fifth Circuit erred in its decision to remove that stay without considering the real-world harms its unreasoned, single-line order will cause *Amici* and their members—as well as untold others.

³ The Mississippi Law carves out from its coverage “news” and “sports” websites, but the law’s definitions do not grapple with significant line-drawing problems, much less the problem of courts drawing those lines in the first instance. For instance, should judges be in the business of deciding whether something is “news” or not? If so, how will judges decide what is “news” under the law? What if someone writes a book about so-called “old news” (like events that were in the news years ago) but that book affects the current news-cycle? What if a presidential memoir reopens public debate about a decision made in the past? What about current events analyses that are not precisely news? How about opinion pieces in newspapers? Opinion pieces on blogs? Opinions posted on social media?

The Mississippi Law’s content-based distinctions do not save it from scrutiny. They do precisely the opposite: they show why the law is unconstitutional, and they accentuate the practical problems for courts in addition to publishers, authors, and media companies in understanding and applying the law.

Respectfully submitted,

s/ Stephanie Schuster

STEPHANIE SCHUSTER

Counsel of Record

BRIAN M. ERCOLE

JAMES D. NELSON

MORGAN, LEWIS & BOCKIUS LLP

1111 Pennsylvania Avenue, NW

Washington, DC 20004

(202) 739-3000

stephanie.schuster@morganlewis.com

Counsel for Amici Curiae

July 29, 2025