No. 25-1071

IN THE SUPREME COURT OF TEXAS

YELP, INC.,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

Appeal from the Fifteenth District Court of Appeals at Austin, Texas,
No. 15-24-00040-CV, and
the 335th Judicial District Court of Bastrop County, Texas,
Cause No. 2519-335, the Honorable Reva Towslee-Corbett, Presiding

Brief of Foundation for Individual Rights and Expression as *Amicus Curiae* in Support of Petitioner

Thomas S. Leatherbury
THOMAS S. LEATHERBURY LAW, PLLC
Cumberland Hill School Building
1901 North Akard Street
Dallas, TX 75201
T: (214) 213-5004
tom@tsleatherburylaw.com

Peter B. Steffensen
Megan Birckelbaw*
Yussra Hamid*
SMU DEDMAN SCHOOL OF LAW
FIRST AMENDMENT CLINIC
P.O. Box 750116
Dallas, TX 75275-0116
T: (214) 768-4077
psteffensen@smu.edu

* J.D. Candidate at SMU Dedman School of Law and Associate Member of the State Bar of Texas. Authorized to practice under the Rules Governing the Supervised Practice of Law by Qualified Law Students.

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INTEREST OF AMICUS CURIAE[1]

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended these rights nationwide through public advocacy, targeted litigation, and *amicus curiae* filings in cases that implicate First Amendment freedoms, without regard to the speakers' views. *See, e.g.*, *Trump v. Selzer*, No. 4:24-cv-449 (S.D. Iowa, filed Dec. 17, 2024) (counsel for Defendants); *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, 641 F. Supp. 3d 1218 (N.D. Fla. 2022), Nos. 22-13992 & 22-13994 (11th Cir. argued June 17, 2024) (counsel for Plaintiffs).

FIRE strongly opposes attempts to restrict access to information. It appears often as *amicus* in cases where the government attempts to dictate what views are acceptable online. *See, e.g.*, Brief of FIRE and other *amici* in Support of Petitioners, *TikTok, Inc. et al. v. Garland*, No. 24-656 (U.S. Sup. Ct. 2024); Brief of FIRE in Support of Petitioners, *Free Speech Coal., et al. v. Paxton*, No. 23-1122 (U.S. Sup. Ct. 2024). *Amicus*

[1] *Amicus* hereby discloses that no counsel for a party authored this brief in whole or in part. Counsel for *amicus* has not received, and will not receive, any fee for preparing this brief. *See* Tex. R. App. P. 11(c).

thus has a strong interest in protecting freedom of expression on digital platforms, including against expansive jurisdictional rules which could indirectly chill that expression. *Amicus* respectfully submits this brief in support of Petitioner.

INTRODUCTION

This is a Deceptive Trade Practices Act case in which the State alleges Yelp's constitutionally protected speech on a matter of public concern was "false, deceptive, or misleading." SCR 15. That speech—a consumer notice appended to the Yelp pages of crisis pregnancy centers (CPCs) across the country—provided generalized information to page visitors about the services "typically" provided by CPCs and the scope of medical care they may or may not offer. *See id.* at 5. At most, the consumer notice signals to page visitors to do their homework and inquire further into the services offered by a *particular* crisis pregnancy center. But on the State's theory, Yelp's nationwide notice is false and deceitful on its face, entitling the State to recover crippling civil penalties and impose a prior restraint on Yelp's speech—a result which would impose a chill across the digital media landscape.

The State's effort to reach beyond its borders and police the nationwide speech of an online expressive platform fits within a recent, troubling pattern of the State deploying its enforcement powers under the DTPA against speakers who hold viewpoints with which it disagrees. *See, e.g.*, *Media Matters for Am. v. Paxton*, 138 F.4th 563, 584 (D.C. Cir.

2025) (affirming preliminary injunction against retaliatory DTPA investigation initiated by Texas Attorney General as likely violative of online publisher's First Amendment rights).

Moreover, the State's outsized view of its enforcement authority under the DTPA extends to its position on the jurisdictional question here. The State argued below—and the court of appeals agreed—that Yelp's generalized business contacts with Texas were enough to constitute purposeful availment of Texas as a forum. Op. at 14–18. In siding with the State, the court of appeals failed to grapple with the unique features of the internet that reveal how jurisdictional rules developed for traditional media—radio, television, and print—do not always account for the technological realities of the online media ecosystem. That makes the jurisdictional analysis in cases like *TV Azteca v. Ruiz*, 490 S.W.3d 29 (Tex. 2016), an imperfect fit for resolving how the vast reach of the internet factors into whether an online expressive platform purposefully avails itself of Texas.

This Court should therefore grant review to correct the decision of the court of appeals, which confused a website's universal accessibility with purposeful availment of the Texas forum—contrary to courts that

have recognized that, for online publishers and expressive platforms like Yelp, universal accessibility cannot alone establish purposeful availment. *See Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 325 (5th Cir. 2021). Rather, the Court should hold the State's threadbare jurisdictional allegations insufficient to establish purposeful availment of the Texas forum insofar as they fail to identify Texas-specific conduct as opposed to globally applicable business choices.

So, too, should the Court grant review to assess whether the court of appeals' rule extends beyond the outer limits of the Due Process Clause. The jurisdictional rule applied here collapses the distinction between specific and general jurisdiction for online publishers and businesses. It thus both deprives defendants of "fair warning" when their conduct will subject them to the laws of a particular state, and eviscerates the ability of defendants to strategically "lessen or avoid its exposure to a given State's courts." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 360 (2021) (internal citations omitted).

If allowed to stand, the court of appeals' approach to personal jurisdiction has far-reaching consequences for online publishers. If business decisions made on a nationwide (or worldwide) basis suffice to

establish specific personal jurisdiction in any state from which users can access a website, online businesses and publishers could be sued in any and all of the 50 states for conduct which did not occur there.

Confronted with that possibility, the operators of online expressive platforms may view Texas—and other jurisdictions that expand personal jurisdiction beyond constitutional limits—as a forum that is hostile to online expression and the free exchange of ideas. The chilling effects that result could be significant, causing online speakers large and small to withdraw from Texas out of a fear the slightest alleged misstep could force them to answer a lawsuit in Texas. This Court should take action to protect the ability of online publishers to make nationally applicable editorial decisions about their expression in the American marketplace of ideas, in Texas and all other locales their online services reach.

ARGUMENT

I. Existing Jurisdictional Rules Must Conform to the Realities of Digital Media.

In the space of about thirty years, the internet has undergone a "dizzying transformation" from a mere curiosity to an "inescapable" facet of daily life. *Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024). Websites, apps, and online platforms now "structure how we relate to family and

friends, as well as to businesses, civic organizations, and governments." *Id.* Yet while digital frontiers continue to expand rapidly—including into the uncharted waters of artificial intelligence—courts have been slow to confront how longstanding doctrinal rules built for an analog world apply to our increasingly online reality.

Two terms ago, the United States Supreme Court recognized for the first time that online businesses which apply their own editorial judgment to compile third-party content into an "expressive product" are protected by the First Amendment, and the government cannot constitutionally impose laws which police that judgment in the name of "improving, or better balancing, the marketplace of ideas." *Id.* at 732. But the principles underlying the Court's conclusion were not new. *See id.* at 738 (citing *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974)). As the Court has long recognized, "whatever the challenges of applying the Constitution to ever-advancing technology, 'the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary' when a new and different medium for communication appears." *Brown v. Ent. Merchs. Ass'n*, 554 U.S. 786, 790 (2011) (quoting *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503 (1952)).

Even though these fundamental principles remain unchanged, applying them to new technological contexts is a sensitive undertaking. That is especially true here, where the Petitioner operates an expressive platform that provides information to a vast audience through its website, app, and other means. The court of appeals held that Yelp's generalized business contacts demonstrated purposeful availment of Texas as a forum, Op. at 14–18, and that the underlying Deceptive Trade Practices Act claim brought by the State adequately related to those contacts. Op. at 18–22. The implications of such a rule are significant: almost any publisher or online business accessible from Texas could be sued in Texas for conduct that occurred entirely outside of it.

The opinion of the court of appeals thus raises important questions about the limits of due process when the Petitioner and other nonresident publishers of expressive products—whose content can be accessed everywhere in the world—are sued in Texas. The court of appeals' overly permissive rule that downplays the basic realities of the internet and online commerce could result in online speakers being subjected to the laws of any state where their speech can be viewed. *See Johnson*, 21 F.4th at 325 (explaining that the "universal accessibility" of online websites

requires the court to consider the application of longstanding personal jurisdiction rules within that new context). And that could impose a profound chilling effect on online speakers who may choose to self-censor rather than risk being haled into court anywhere for decisions that have no relation to the forum state.

a. Assessing Purposeful Availment of the Texas Forum by Online Platforms Must Account for their Universal Accessibility.

1. The global reach of online platforms upends basic assumptions about intentional targeting of a forum.

As a publisher of online speech, Yelp is accessible virtually anywhere in the world, at any time. Yelp both speaks through its platform, and hosts and curates the speech of others. For example, it "allows users to post comments and pictures … for the purpose of advertising local businesses or providing firsthand accounts that reflect their consumer experience with businesses." *Moody*, 603 U.S. at 789 (Alito, J., concurring in the judgment) (internal quotations removed).

Yelp's inherent nature as a widely accessible expressive platform complicates the personal jurisdiction analysis here. This Court has long held that the "foreseeability" of a product reaching the forum state "will not alone support personal jurisdiction." *CSR Ltd. v. Link*, 925 S.W.2d

591, 595 (Tex. 1996). Rather, "the defendant must reasonably anticipate being sued in the forum *because of* actions the defendant 'purposefully directed toward the forum state.'" *TV Azteca*, 490 S.W.3d at 46 (emphasis in original) (quoting *CSR Ltd.*, 925 S.W.2d at 595).

But that rule raises special concerns for online publishers and expressive platforms, because the operators of those platforms must accept that their content can be accessed everywhere as a condition of doing business anywhere. Because the "foreseeability" of that result is an "important consideration," *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002), online publishers sued in Texas start the personal jurisdiction inquiry at a substantial disadvantage: They must explain how their conduct did not demonstrate an intent to serve the Texas market specifically *despite* the foreseeability that their expressive product would be widely accessed by consumers in Texas and virtually anywhere else.

The jurisdictional facts here only emphasize how applying that inquiry to online publishers can blur the lines between claim-specific conduct and generalized business contacts. On the one hand, the State alleges that Yelp violated the Deceptive Trade Practices Act by

appending a false, misleading, or deceptive consumer notice to listings for crisis pregnancy centers across the country, including in Texas. SCR 14 ¶ 30. That claim sounds in defamation,[2] implicating cases like *Calder v. Jones* which require courts to consider whether the forum state is the "focal point both of the [defamatory communication] and the harm suffered." *Calder v. Jones*, 465 U.S. 783, 789 (1984); *see Johnson*, 21 F.4th at 318–20. Under the *Calder* effects test, "the 'aim' of the plaintiff … must be demonstrated by showing that (1) the subject matter of and (2) the sources relied upon for the article were in the forum state." *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 426 (5th Cir. 2005).[3]

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[2] The State's lawsuit very well may be a Strategic Lawsuit Against Public Participation, because it targets Yelp's speech on a matter of public concern for silencing due to the State's disagreement with its message. In other words, "it's censorship by lawsuit." Angel Eduardo, "Why 'SLAPP' lawsuits chill free speech and threaten the First Amendment," FIRE (last updated Jan. 16, 2025), https://www.fire.org/research-learn/why-slapp-lawsuits-chill-free-speech-and-threaten-first-amendment. And had these claims been asserted by the crisis pregnancy centers themselves, Texas law would likely protect as privileged the consumer notice because it is a "reasonable and fair comment on or criticism of … [a] matter of public concern published for general information." Tex. Civ. Prac. & Rems. Code § 73.002(b)(2). *See Bigelow v. Virginia*, 421 U.S. 809, 822 (1975) (advertisement in Virginia newspaper describing legalization of abortion in New York protected by First Amendment because it "contained factual material of clear 'public interest'" and "involve[d] the exercise of the freedom of communicating information and disseminating opinion.").

[3] *See Walden v. Fiore*, 571 U.S. 277, 288 (2014) (explaining that the "crux" of *Calder* is that the "reputation-based 'effects' of the alleged libel connected the defendants to [the forum state], not just to the plaintiff").

But the State advanced—and the court of appeals accepted—a broader theory of Yelp's purposeful connection to Texas in this case. That theory focused on the claim that Yelp intentionally directed its expressive product as a whole into Texas by "do[ing] substantial business in Texas, access[ing] and generat[ing] profits from Texans who book reservations or purchase items through Yelp pages, and purposefully direct[ing] tailored advertisements to Texas users." Op. at 15. This conduct, the court of appeals held, collectively demonstrated Yelp's intent to serve the Texas market. *Id.* at 18.

This Court previously concluded that either approach may establish a defendant's purposeful availment, but neither approach accounts for the profound differences—in terms of audience and accessibility—between traditional media and digital media. *See TV Azteca*, 490 S.W.3d at 47–52. In *TV Azteca*, the Court considered whether Mexican television stations which primarily served a Mexican audience had nonetheless availed themselves of Texas as a forum by broadcasting allegedly defamatory programming into Texas. Though the defendant television stations operated in Mexico, their television signals were received in a small section of the Rio Grande Valley and would be

"rebroadcast" to Texas cable subscribers. *Id.* at 44. The Court thus had to determine whether the defendants' knowledge that their broadcasts reached a Texas audience, in addition to any other conduct, constituted intentional targeting of Texas that would pass due process scrutiny.

The Court concluded as a threshold matter that in cases involving disparaging communications, the *Calder* "effects" test is not the exclusive means by which a plaintiff can establish personal jurisdiction over an out-of-state defendant. *Id.* at 49 (citation omitted). That conclusion, the Court explained, flows from cases like *Keeton v. Hustler Magazine, Inc.*, where the defendant "continuously and deliberately exploited the New Hampshire market[,]" even though "the offending [communications] did not address events related to or drawn from sources within that state." *TV Azteca*, 490 S.W.3d at 49 (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 781 (1984)).

Considering the defendants' contacts under both of those tests, the Court held that defendants' conduct did not satisfy the requirements of *Calder*, but did more broadly show "an intent or purpose to serve the [Texas market]." *Id.* at 48, 49 (quoting *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 577 (Tex. 2007)). Under *Calder*, the Court

determined that the "subject matter of the allegedly defamatory broadcasts is completely unrelated to Texas." *Id.* at 47. Under *Keeton* and *Moki Mac*, however, the Court concluded that the defendants had "continuously and deliberately exploited the [Texas] market[,]" by: (1) "benefit[ing] from the fact that the signals travel into Texas, as well as [taking] additional efforts to promote their broadcasts and expand their Texas audience[;]" (2) "[deriv]ing substantial revenue and other benefits by selling advertising time to Texas businesses[;]" and (3) making "substantial and successful efforts to distribute their programs and increase their popularity in Texas," including the programs in which the allegedly defamatory communications occurred. *Id.* at 49–51. Thus, while the Court held the allegedly defamatory programming itself was too detached from Texas, the Court nonetheless concluded on a robust record that the defendant stations had shown by other intentional conduct their intent to benefit from the Texas market. But the practical realities of the internet require a different analysis.

2. Courts should more closely scrutinize allegations of intentional targeting in light of the "universal accessibility" of online platforms.

Though *TV Azteca* serves as a useful reference point, it simultaneously reveals how jurisdictional rules developed for traditional media are ill-equipped for the realities of the digital media ecosystem. At its core, *TV Azteca* is a case about the jurisdictional limits applied to a technology which reached into the Texas market because "over-the-air signals followed the law of physics." *Id.* at 44. But the law of physics also served as a limiting principle—the defendants' broadcast signals may have reached into the Texas market, but reached no further. The same can't be said of online publishers like Yelp whose users can access its content from anywhere.

The basic reality of the internet is that information placed online may be broadcast to a worldwide audience. "[W]ebsites are 'circulated' to the public by virtue of their universal accessibility, which exists from their inception." *Johnson*, 21 F.4th at 325. Likewise, the ways in which an online publisher may benefit from the global accessibility of their content may reflect business choices intended to have global effect.

Thus, the fact that an online publisher may sell merchandise that can be purchased by Texas consumers, generate revenue from reservations made in Texas, or utilize location-specific targeting that

directs geographically relevant advertising to Texas-based users, does not necessarily reflect intentional targeting of Texas as a forum, and certainly not if those decisions are intended to apply universally in every market from which an online publisher's content may be accessed. For example, targeted advertising—that which is directed to users based on geography, demographics, or personal affinities—has become such a deeply engrained part of the online experience today that most users expect to be personally targeted on some level on every website they visit.[4]

That fact should necessitate closer scrutiny of the jurisdictional allegations here. The court of appeals concluded that Yelp "derives benefits in the form of revenue from the sales of customizable location specific advertising, and from any reservations or other purchases made through Yelp." Op. at 15. But that would likely be true whether a user accesses Yelp from Texas, Tennessee, or Taiwan. And that is precisely what makes traditional jurisdictional rules so fraught when applied to online publishers.

[4] *See* Leslie K. John, Tami Kim, and Kate Barasz, *Ads That Don't Overstep*, Harv. Bus. Rev. (Jan. 2018), https://hbr.org/2018/01/ads-that-dont-overstep.

Generalized business decisions applied globally—or at least uniformly across markets—may be erroneously interpreted as localized conduct simply because the effects of that targeting can be perceived in a particular marketplace. And a jurisdictional rule as expansive as that which the court of appeals applied here could have significant unintended consequences for large and small online publishers alike. Under the approach the court of appeals took, "even an individual retiree carving wooden decoys in Maine can 'purposefully avail' himself of the chance to do business across the continent after drawing online orders to his e-Bay 'store' thanks to internet advertising with global reach." *Ford Motor Co.*, 592 U.S. at 382–83 (Gorsuch, J., concurring in the judgment).

b. Yelp's Contacts with Texas Do Not Sufficiently Relate to the State's Claims.

Taking into account the global accessibility of online content, an exercise of personal jurisdiction over Yelp is improper under either the effects-based approach outlined in *Calder*, or the market-exploitation approach derived from cases like *Keeton* and *Moki Mac*. Under the effects-based approach, the State has acknowledged from the beginning of this lawsuit that Yelp's consumer notice was published nationwide. SCR 5, 10–11 ¶ 19, 13–14 ¶ 28. That concession should settle the question

of purposeful targeting of the consumer notice at the Texas forum, specifically. After all, Yelp could not have purposefully directed its message at Texas when it made the decision to append its consumer notice to every crisis pregnancy center in the country. *See Walden*, 571 U.S. at 290 ("The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way."). In short, there was nothing particularly "Texas" about the notice.

That this notice accompanied over 200 crisis pregnancy center listings in Texas does not alter this conclusion. For one, the actual decision to disseminate the consumer notice occurred outside of Texas, and Yelp made it without attention to any particular effects it might have on Texas businesses. Yelp PFR at 1–2. And to the extent the court of appeals credited the impact that the nationwide notice had on Texas businesses specifically, those considerations "shift[] a court's focus from the 'relationship among the *defendant*, the forum, and the litigation' to the relationship among the *'plaintiff*, the forum … and the litigation.'" *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 790 (Tex.

2005) (emphasis in original) (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980)).

Nor do the State's allegations satisfy the market-exploitation theory of jurisdiction. Even if locational advertising and reservation-based revenue suffice to show Yelp intentionally served the Texas market, those contacts are still insufficient to establish purposeful availment, because they are not sufficiently related to the underlying claim. As this Court explained in *Moki Mac*, 221 S.W.3d at 579: "For specific-jurisdiction purposes, purposeful availment has no jurisdictional relevance unless the defendant's liability arises from or relates to the forum contacts." Here, the consumer notices are detached from these revenue streams, because Yelp neither derives revenue from advertising crisis pregnancy centers nor transacts business with crisis pregnancy centers in other ways. Yelp PFR at 1–2. The "state cannot use a defendant's forum contacts—even purposeful ones—to invent jurisdiction over claims that do not relate to or arise from those contacts." *Johnson*, 21 F.4th at 320.

In *Johnson*, the Fifth Circuit explained why this is so. In that case, the Texas-based subject of an allegedly defamatory article published by

the *Huffington Post* claimed there was personal jurisdiction over the defendant website by alleging—like the State did here—that the *Huffington Post* was accessible in Texas, sold merchandise and paid memberships, and displayed Texas-specific advertising. 21 F.4th at 317. But the *Johnson* court found that even these contacts—"Texans visit[ing] the site, clicking ads and buying things there"—at best demonstrated "HuffPost's universal accessibility, not its purposeful availment of Texas." *Id.* at 320. Like the *Huffington Post*, Yelp "shows ads to all comers; it treats Texans like everyone else. To target every user everywhere, as those ads do, is to target no place at all." *Id.* at 321–22.

Nor do the other contacts the court of appeals found relevant demonstrate more than accessibility, and thus fall short of establishing specific jurisdiction. Yelp might "generate[] profits from Texans who book reservations or purchase items through Yelp pages," Op. at 15, but that would be true of any user who visits Yelp from any place in the world its website is viewable. In other words, the jurisdictional allegations here may underscore Yelp's universal accessibility, but on that understanding, they reveal little about Yelp's direct connection to the Texas marketplace.

Neither theory of specific personal jurisdiction—the *Calder* "effects" theory or the market-exploitation theory—is thus satisfied here. Due process demands more before an exercise of personal jurisdiction is considered proper over a globally accessible expressive platform like Yelp. Accepting the court of appeals' holding "would give [Texas courts] unlimited jurisdiction over virtual defendants." *Johnson*, 21 F.4th at 325. That result respects neither of the "two sets of values" which underpin due process limitations on jurisdiction: "treating defendants fairly and protecting 'interstate federalism.'" *Ford Motor Co.*, 592 U.S. at 360 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

II. Finding Personal Jurisdiction over Yelp has Sweeping Implications for Digital Publishers.

Finding personal jurisdiction here would also pose fundamental fairness concerns for Yelp and other online publishers, big and small. *See Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d. 142, 155 (Tex. 2013) (describing considerations involved in determining whether jurisdiction comports with "traditional notions of fair play and substantial justice"). Review here is thus further warranted to consider how application of a

sweeping jurisdictional rule like the one the court of appeals applied could severely chill online publishers and speakers.

Under the State's and the court of appeals' capacious approach to specific jurisdiction, the line between specific jurisdiction and general jurisdiction essentially collapses. An exercise of jurisdiction here means that Yelp could be sued in any state where its consumer notice appeared, on a similar theory as Texas's. The jurisdictional allegations made by the State involve business conduct that is so universally adopted across the internet ecosystem that one could substitute Yelp for almost any other online publisher and feel relatively confident those allegations would hold up. Indeed, location-based advertising, affiliate marketing fees, membership fees, subscription fees, and merchandising are all widely used business strategies that online publishers rely on to survive in an ultra-competitive market that thrives on maintaining user attention and loyalty. Many online publishers will use some combination of these tactics to support their operations, on the understanding that these tactics will be deployed uniformly across the states.

The jurisdictional rule the court of appeals established is thus deeply chilling for online publishers and online businesses writ large. It

serves as a warning to any online business that merely accepting purchases from Texas consumers, or targeting locationally relevant advertising towards them, could act as a sufficient basis to hale them into a Texas court for conduct detached from those business decisions. That makes Texas a less attractive forum for speakers of all stripes who fear their message could land them in a Texas court if the platform they use deploys any of these strategies. And those same concerns could cause many businesses to second-guess whether making their online products accessible to Texas consumers is worth the risk of universal *in personam* jurisdiction.

Consider another concern of the "fair play" analysis: Texas's specific interest in adjudicating this dispute. Unlike in *TV Azteca*, where a robust record of Texas-specific conduct connected the state to the publication, *see* 490 S.W.3d at 49–51, nothing in the record here suggests Texas has a particularly unique interest compared to any other state in adjudicating whether Yelp's consumer notice was false, disparaging, or misleading. The court of appeals credited the impact of the consumer notice on Texas businesses, Yelp's Texas-based revenue, and its use of location-based advertising. Op. at 15, 18. But given Yelp's nationwide

reach, Yelp could likely be haled into the courts of any other state where a crisis pregnancy center operates. That again highlights how Texas's jurisdictional claims are in reality generic allegations of business activity masquerading as forum-specific conduct. On that understanding, the State has no more of an interest than any other state in adjudicating the alleged harms that arose out of Yelp's nationwide consumer notice.

Moreover, the court of appeals landed on the rule it did while downplaying Yelp's efforts to intentionally avoid the Texas forum by requiring Yelp users to litigate its disputes in California, and by declining to contract with or generate revenue from crisis pregnancy centers anywhere. *See* Yelp PFR at 13, 14–15. That undermines the Due Process Clause's assurance of predictability "that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.*, 444 U.S. at 297.

Consequently, if Yelp's efforts to avoid the Texas forum have little impact on the purposeful availment analysis, online businesses may decide that the only way to truly avoid Texas's reach is to wall themselves off from Texas entirely. That kind of determination is not without

precedent. For example, following the passage of the European Union's General Data Protection Regulation—a sweeping data privacy regime that claimed global jurisdiction to impose severe penalties on online businesses for their non-compliance[5]—U.S. publishers such as the *Los Angeles Times* and the *Chicago Tribune* cut off access to their online platforms from E.U. member states.[6]

These are precisely the kind of large-scale chilling effects that cut against a rule like the one articulated by the court of appeals. As several courts have observed, the big picture consequences of a broad jurisdictional rule can weigh against the fairness of applying that rule to individual defendants.

In *Technology Patents, LLC v. Deutsche Telekom AG*, for example, a federal district court rejected an exercise of personal jurisdiction over nearly 120 telecommunications companies who allegedly made their wireless services available in the forum state. *Tech. Patents, LLC v. Deutsch Telekom AG*, 573 F. Supp. 2d 903, 913 (D. Md. 2008), *aff'd*, 700

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[5] *See*, *e.g.*, Kurt Wimmer, *Free Expression and EU Privacy Regulation: Can the GDPR Reach U.S. Publishers?*, 68 SYRACUSE L. REV. 547, 548–51 (2018).

[6] *See* Matthew Ingram, "Four days into GDPR, US publishers are starting to feel the effects," *Colum. J. Rev.* (May 29, 2018), https://www.cjr.org/the_new_gatekeepers/gdpr-rules-publishers.php.

F.3d 482 (Fed. Cir. 2012). The court warned of the "chilling effect" such a rule could have if "nearly every telecommunications company who provided any type of wireless telephonic or messaging services" could be dragged into a foreign court. *Id.* at 917. As is the case here, "technology cannot eviscerate the constitutional limit on a State's power to exercise jurisdiction over a defendant." *Id.* (quoting *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 711 (4th Cir. 2002)). *See also Ha v. Gulick*, 567 F. Supp. 3d 1267, 1272–73 (D. Ore. 2021) (noting the "chilling effect" an exercise of personal jurisdiction would have on medical professionals' willingness to treat out-of-state patients); *Leonard A. Feinberg, Inc. v. Central Asia Capital Corp., Ltd.*, 936 F. Supp. 250, 259 (E.D. Pa. 1996) (describing "chilling effect and … serious impediments to financial transactions" of a rule permitting personal jurisdiction over a bank sued over a letter of credit sent into a particular forum).

At bottom, the rule applied by the court of appeals expands Texas's jurisdictional reach beyond the outer limits of due process. That is at least partly the result of a doctrine which still has not caught up to the realities of online commerce. True, "[a]s technological progress has increased the flow of commerce between States, the need for jurisdiction

over nonresidents has undergone a similar increase." *Hanson v. Denckla*, 357 U.S. 235, 250–51 (1958). But the holding of the court of appeals is an overcorrection—it softens the "territorial limitations on the power of the respective States" by making personal jurisdiction against online publishers and other businesses all but inevitable. *Id.* at 251.

CONCLUSION

For the foregoing reasons, this Court should review the court of appeals' opinion to clarify the application of longstanding personal jurisdiction principles to universally accessible online businesses and publishers, by holding that the State's bare allegations of generalized business conduct here cannot suffice to confer personal jurisdiction over an online publisher such as Yelp.

Dated: March 4, 2026

Respectfully submitted,

/s/ Peter B. Steffensen

Peter B. Steffensen
State Bar No. 24106464
Megan Birckelbaw*
State Bar No. 24150974
Yussra Hamid*
State Bar No. 24151001
SMU DEDMAN SCHOOL OF LAW
FIRST AMENDMENT CLINIC
P.O. Box 750116
Dallas, TX 75275-0116
T: (214) 768-4077
psteffensen@smu.edu

Counsel for Amicus Curiae

Thomas S. Leatherbury
State Bar No. 12095275
THOMAS S. LEATHERBURY LAW, PLLC
Cumberland Hill School Building
1901 North Akard Street
Dallas, TX 75201-2305
T: (214) 213-5004
tom@tsleatherburylaw.com

* J.D. Candidate at SMU Dedman School of Law and Associate Member of the State Bar of Texas. Authorized to practice under the Rules Governing the Supervised Practice of Law by Qualified Law Students.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(B) because it contains 5,206 words, as determined by the word-count function of Microsoft Word, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

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/s/ Peter B. Steffensen
Peter B. Steffensen

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I certify that the foregoing brief was electronically filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served via electronic service on all counsel of record on March 4, 2026.

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Bar No. 24106464
psteffensen@smu.edu
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Farquharson	24100550	rob.farquharson@oag.texas.gov	3/4/2026 9:23:47 PM	SENT
Laura Prather		laura.prather@haynesboone.com	3/4/2026 9:23:47 PM	SENT
Catherine Robb		Catherine.robb@haynesboone.com	3/4/2026 9:23:47 PM	SENT
Michael Lambert		michael.lambert@haynesboone.com	3/4/2026 9:23:47 PM	SENT
Carey Wallick		carey.wallick@haynesboone.com	3/4/2026 9:23:47 PM	SENT
Reid Pillifant		reid.pillifant@haynesboone.com	3/4/2026 9:23:47 PM	SENT
Hannah Keck		hannah.keck@haynesboone.com	3/4/2026 9:23:47 PM	SENT
Scott Froman		Scott.Froman@oag.texas.gov	3/4/2026 9:23:47 PM	SENT
Jeremy Maltz		jeremy@lkcfirm.com	3/4/2026 9:23:47 PM	SENT