

No. 15-26-00172-CV

**In the Fifteenth Court of Appeals
Austin, Texas**

TikTok Inc.; TikTok Ltd.; TikTok Pte. Ltd.; TikTok U.S. Data
Security Inc.; ByteDance Ltd.; ByteDance Inc.; and
TikTok USDS Joint Venture LLC,
Appellants.

v.

State of Texas,
Appellee.

On appeal from the 250th District Court of Travis County, Texas
Cause No. D-1-GN-25-003118, The Hon. Cory Liu

**BRIEF OF AMICI CURIAE NETCHOICE,
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,
THE FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION,
AND THE ELECTRONIC FRONTIER FOUNDATION
IN SUPPORT OF APPELLANTS**

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IDENTITY OF AMICI CURIAE AND COUNSEL

Under Texas Rule of Appellate Procedure 11, amici curiae NetChoice, Computer & Communications Industry Association, the Foundation for Individual Rights and Expression, and the Electronic Frontier Foundation certify that they have no parent corporation, and that no publicly held company owns 10% or more of their stock.

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INTEREST OF AMICI CURIAE

Amici have a substantial interest in this case.¹ Some of amici's members are among the entities the Supreme Court has identified as "principal sources for knowing current events . . . and otherwise exploring the vast realms of human thought and knowledge," *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017), and that the Court has analogized to newspapers and cable carriers, *Moody v. NetChoice, LLC*, 603 U.S. 707, 728-29 (2024). Furthermore, all amici have a strong interest in those members and other online services like them being afforded the U.S. Constitution's First Amendment protections for the "Press," properly understood.

NetChoice is a national trade association of online businesses that share the goal of promoting free enterprise and free expression on the Internet. For over two decades, NetChoice has worked to ensure the Internet remains innovative and free. NetChoice advocates on behalf of its membership by, among other things, participating in litigation involving issues of vital concern to the online community and filing amicus curiae briefs in cases that, like this one, could shape the way important technological innovations develop.

¹ Pursuant to Texas Rule of Appellate Procedure 11, amici curiae state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Although Appellants TikTok Inc. and TikTok USDS Joint Venture LLC are NetChoice members, Appellants did not contribute money that was intended to fund preparing or submitting the brief.

Computer & Communications Industry Association (“CCIA”) is an international, not-for-profit association that represents a broad cross-section of communications, technology, and Internet industry firms that collectively employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more than 50 years, CCIA has promoted open markets, open systems, and open networks, including as a party to or amicus in litigation. In addition, CCIA regularly advocates for the application of First Amendment protections for lawful online speech. A list of CCIA members is available at <https://perma.cc/W4SY-MDT4>.

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 First Amendment rights nationwide—without regard to the speakers’ views—through public advocacy, strategic litigation, and amicus curiae filings in cases implicating expressive rights. *See, e.g., Stanford Daily Publ’g Corp. v. Rubio*, 820 F. Supp. 3d 974 (N.D. Cal. 2026) (counsel); *Reges v. Cauce*, 162 F.4th 979 (9th Cir. 2025) (counsel). FIRE’s work includes protecting expressive rights in the digital realm and ensuring courts apply and extend First Amendment protections consistently to emerging technologies. *See, e.g., Volokh v. James*, 148 F.4th 71 (2d Cir. 2025), *certified question answered*, 2026 N.Y. Slip. Op. 03913 (June 23, 2026) (counsel); Brief of FIRE *et al.* as *Amici Curiae* Supporting Petitioners, *TikTok Inc. v. Garland*, 604

U.S. 56 (2025) (Nos. 24-656 and 24-657); Brief of FIRE as *Amicus Curiae* Supporting Respondents in No. 22-277 and Petitioners in No. 22-555, *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) (Nos. 22-277 and 22-555); Brief of FIRE *et al.* as *Amicus Curiae* Supporting Respondents, *Murthy v. Missouri*, 603 U.S. 43 (2024) (No. 23-411).

The **Electronic Frontier Foundation** (“EFF”) has, for over 35 years, worked on behalf of its more than 30,000 dues-paying members to protect the rights of all users, both individuals and institutions, to publish and receive information online. EFF has litigated extensively on the issues presented in this appeal and has filed amicus briefs in similar cases in courts around the country. For example, EFF’s amicus brief in *Packingham v. North Carolina*, 582 U.S. 98 (2017), was cited favorably by the Court.

ARGUMENT

In furtherance of First Amendment values, Texas guarantees interlocutory appeals when a trial court “denies a motion for summary judgment that is based in whole or in part upon a claim against or defense by a member of the electronic or print media, acting in such capacity . . . arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution.” Tex. Civ. Prac. & Rem. Code § 51.014(a)(6). Amici’s interest in this case is § 51.014(a)(6)’s incorporation of the First Amendment’s Press Clause (and its Texas counterpart) as part of § 51.014(a)(6)’s protections for the “electronic . . . media.”

The First Amendment’s “liberty of the press comprehends every sort of publication which affords a vehicle of information and opinion.” *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938). Today, few vehicles accomplish that task better than “[s]ocial media,” which “for many are the principal sources for knowing current events . . . and otherwise exploring the vast realms of human thought and knowledge.” *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). TikTok—as one such service—can thus avail itself of § 51.014(a)(6)’s statutory protections here. *See* TikTok.Opp.7-9, 11-13.

The State’s contrary arguments unduly restrict both statutory and constitutional protections to a small number of traditional and incumbent media. This interpretation is both wrong on the law and bad policy.

I. Social media services are entitled to the U.S. and Texas Constitutions’ Press Clause protections, and thus interlocutory appeal under Tex. Civ. Prac. & Rem. Code § 51.014(a)(6).

TikTok raised “defense[s] . . . arising under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution” as “a member of the electronic or print media.” Tex. Civ. Prac. & Rem. Code § 51.014(a)(6).

A. At its core, the “electronic or print” media protected by Texas statute includes those members of the “Press” protected by the federal Constitution. For its part, the Texas Constitution’s protections are at least as broad—if not broader. *O’Quinn v. State Bar of Tex.*, 763 S.W.2d 397, 402 (Tex. 1988) (“[I]t is quite obvious that the Texas Constitution’s affirmative grant of free speech is more broadly worded than” its federal counterpart and, it “is equally obvious that the framers of the first Texas Constitution were quite aware of the difference.”).

The statute’s protections for “member[s] of the electronic or print media” should be read alongside § 51.014(a)(6)’s instruction that courts ask whether the “defense . . . *aris[es] under the free speech or free press clause of the First Amendment to the United States Constitution, or Article I, Section 8, of the Texas Constitution.*” Tex. Civ. Prac. & Rem. Code § 51.014(a)(6) (emphases added). After all, the Supreme Court of Texas has instructed that “words and phrases are not to be considered in isolation, but rather in the context of the statute as a whole.” *Cadena Comercial USA Corp. v. Tex.*

Alcoholic Beverage Comm’n, 518 S.W.3d 318, 326 (Tex. 2017). And it has specifically instructed that courts should afford § 51.014(a)(6) a “fair reading,” “giv[ing] effect to all” the statute’s terms. *Dallas Symphony Ass’n, Inc. v. Reyes*, 571 S.W.3d 753, 759 (Tex. 2019).

The U.S. Supreme Court has long held that the “liberty of the press” protected by the First Amendment “comprehends every sort of publication which affords a vehicle of information and opinion.” *Lovell*, 303 U.S. at 452. Indeed, this is the Blackstonian conception of the free press. “Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press.” 4 William Blackstone, *Commentaries* *151.

Put otherwise, the First Amendment’s Press Clause protects the means of disseminating speech and ideas—and those who provide those means. At the time the Court decided *Lovell*, the Court emphasized that the Press Clause “embraces pamphlets and leaflets,” which ordinary citizens then used to make their voices heard. 303 U.S. at 452. And “[w]hatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of the First Amendment do not vary.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 733 (2024) (citation modified). So the Court has long applied this principle to diverse forms of media. *E.g.*, *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501-02 (1952) (“motion pictures,” in addition to “books, newspapers, and magazines”).

At bottom, the Supreme Court has held that the “liberty of the press is not confined to newspapers and periodicals” —that is, the institutional or journalistic press. *Lovell*, 303 U.S. at 452; *cf. First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 782 (1978) (“the [journalistic] press does not have a monopoly on either the First Amendment or the ability to enlighten”). The leading scholarship on the question has come to the same conclusion: “people during the Framing era likely understood the text as fitting the press-as-technology model—as securing the right of every person to use communications technology, and not just securing a right belonging exclusively to members of the publishing industry.” Eugene Volokh, *Freedom for the Press as an Industry, or for the Press as a Technology? From the Framing to Today*, 160 U. Pa. L. Rev. 459, 463 (2012). Put otherwise, “[t]his right” —the freedom of the Press— “was generally seen as the right to publish using mass technology.” *Id.* at 464; *see* Michael W. McConnell, *Reconsidering Citizens United as a Press Clause Case*, 123 Yale L.J. 412, 435-37 (2013) (“When the Founders spoke of the importance of ‘the press,’ they were not talking about professional news media, but about the printing press, meaning the ability of people to disseminate ideas easily and inexpensively to a broad public.”).

B. Today, there may be no greater mass technology for the dissemination of expression and information than “social media,” because these “websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.” *Packingham*, 582

U.S. at 107.² Accordingly, this Court should hold that social media services are protected by the “free press clause of the First Amendment” and can avail themselves of § 51.014(a)(6) as “member[s] of the electronic . . . media.” Tex. Civ. Prac. & Rem. Code § 51.014(a)(6).³

Social media combines many of the features that characterized previous generations’ conception of the press. *See* TikTok.Opp.7-9, 11-13.

Indeed, the Supreme Court has recognized that social media allows its users to encounter content on “any subject that might come to mind.” *Packingham*, 582 U.S. at 107. Perhaps that is why the Supreme Court and lower federal courts have analogized services like TikTok to forms of traditional media, such as newspapers and cable television. *Moody*, 603 U.S. at 728; *Chamber of Com. of the U.S. v. Lierman*, 151 F.4th 530, 533 (4th Cir. 2025)

² Although this case concerns TikTok’s social media service, the same rationale applies to all manner of digital services, including streaming services and messaging services.

³ That TikTok largely disseminates the speech of its third-party users and advertisers does not diminish its protections. “Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.” *Lovell*, 303 U.S. at 452 (quoting *Ex parte Jackson*, 96 U.S. 727, 733 (1877)). And the Supreme Court has expressly held that the First Amendment protects “presenting a curated compilation of speech originally created by others.” *Moody*, 603 U.S. at 728.

Lest the State argue otherwise, that does not mean that social media services fall outside of 47 U.S.C. § 230’s protections. As the Supreme Court of Texas has held, § 230 preempts liability when a cause of action or liability would be premised on “editorial or oversight duties” over third-party content that are “commonly associated with publishers,” notwithstanding that they are separately protected by the First Amendment. *In re Facebook, Inc.*, 625 S.W.3d 80, 91 (Tex. 2021).

(referring to online services as the “internet-age successors” of “those who print pamphlets”).

On social media services, one can find:

News, which has characterized the press since before the Founding, from early newspapers to modern citizen journalists, *e.g.*, *Mills v. Alabama*, 384 U.S. 214, 219 (1966); *see* TikTok.Opp.11-12. Today, “about half of U.S. adults (53%) say they at least sometimes get news from social media, roughly stable over the last few years.” Pew Research Center, Social Media and News Fact Sheet (Sept. 25, 2025), <https://perma.cc/X6Z2-9J8E>. And they receive that news from a diverse array of sources, including a new class of journalists (“news influencers”) uniquely empowered by social media. *E.g.*, Pew Research Center, News Influencers Fact Sheet (Nov. 4, 2025), <https://perma.cc/JR96-7V3Y>. People report many reasons for following these nontraditional journalists: “Influencers help them better understand current events and civic issues (54%), they are quick in reporting on breaking news (54%), they are authentic (49%), and they offer different information from other sources (46%).” *Id.*

Political speech, which has been the subject of both Framing-era pamphlets and modern editorial pages alike. *E.g.*, *Lovell*, 303 U.S. at 452; *Volokh*, 160 U. Pa. L. Rev. at 468-69 (“Madison, Hamilton, and Jay’s *The Federalist* essays are a classic example.”); *see* TikTok.Opp.7-8. The Supreme Court has even noted that “on Twitter [now X], users can petition their elected representatives and otherwise engage with them in a direct manner.

Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose.” *Packingham*, 582 U.S. at 104-05.

Entertainment, from the penny dreadfuls of the 19th century to contemporary CGI-heavy films. *E.g.*, *Joseph Burstyn*, 343 U.S. at 501 (“It cannot be doubted that motion pictures are a significant medium for the communication of ideas. . . . The importance of motion pictures as an organ of public opinion is not lessened by the fact that they are designed to entertain as well as to inform.”); see TikTok.Opp.7-8. Here too, social media has enabled new kinds of entertainment from diverse people. People are no longer reliant on a small handful of movie studios, record labels, or publishing houses to get their creative works to audiences worldwide. As just one of countless examples, *The Lizzie Bennet Diaries* won an Emmy Award for retelling Jane Austen’s *Pride and Prejudice* through a unique combination of YouTube videos, Twitter posts, and other social media activity. Television Academy, Release: Immersive and Interactive Digital Media Programs to Receive Emmys (Aug. 22, 2013), <https://perma.cc/RR7E-8G96>.

II. Texas’s contrary arguments artificially limit the Press Clause—and thus § 51.014(a)(6)—to the institutional and journalistic press.

Texas asks this Court to declare § 51.014(a)(6)—and, by logical extension, the Press Clause—to be a special privilege exclusive to the journalistic press. *E.g.*, Tex.Mot.8 (“usually professional outlets but in some

cases individuals with significant experience in news reporting”). In support, the State cites to cases from other courts of appeals purporting to hold as much. *See* Tex.Mot.9-10. But that argument is contrary to both § 51.014(a)(6)’s plain text, *see* TikTok.Opp.7-11, and the First Amendment values that § 51.014(a)(6) implements. This case, therefore, gives this Court the opportunity to faithfully interpret and apply § 51.014(a)(6)’s protections.

A. “It is passing strange to interpret the phrase ‘the freedom of speech, or of the press’ to mean, not everyone’s right to speak or publish, but rather . . . the institutional press’s right to publish. No one thought that is what it meant.” *Citizens United v. FEC*, 558 U.S. 310, 390 n.6 (2010) (Scalia, J., concurring).

The Supreme Court has explained that the Press Clause cannot be limited to the journalistic press. *E.g.*, *Mills*, 384 U.S. at 219; *Lovell*, 303 U.S. at 452; *Volokh*, 160 U. Pa. L. Rev. at 503-39 (collecting cases); *id.* at 539 (“[T]he bulk of the precedent points toward equal treatment for all speakers—or at least to equal treatment for all who use mass communications technology, whether or not they are members of the press-as-industry.”). In fact, at the time of the Framing, there was nothing akin to the modern journalistic press. *See id.* at 468-70; McConnell, 123 Yale L.J. at 436-37. The Press Clause therefore is unlikely to protect only our modern conception of the journalistic press.

Consequently, this Court should not adopt an atextual and ahistorical limitation to the federal Constitution’s Press Clause.

B. Nor should this Court insert words into § 51.014(a)(6) that the Legislature did not place there. That is where other courts have gone awry. *See* TikTok.Opp.9-11, 13-14, 19.

For instance, the First Court of Appeals held that it “is clear” that “Internet websites fall within the broadest of [§ 51.014(a)(6)’s] definitions as an electronic ‘means of mass communication.’” *Serv. Emps. Int’l Union Loc. 5 v. Prof’l Janitorial Serv. of Houston, Inc.*, 415 S.W.3d 387, 394 (Tex. App.—Houston [1st Dist.] 2013, pet. denied) (citation modified) (“*SEIU*”); *see* TikTok.Opp.9. Yet it proceeded to artificially narrow that term, focusing on legislative history and contemporary dictionary definitions of “media” and “press” that prevail outside of the First Amendment context. *SEIU*, 415 S.W.3d at 393-94 (collecting dictionary definitions). But those definitions merely reflect a modern understanding of the “press,” which is much narrower than the Press Clause’s original public meaning. *See supra* pp.3-4. The court also relied on legislative history to conclude that § 51.014(a)(6) applies only when “the person’s primary business is reporting the news” because the statute purportedly is intended to benefit “newspaper[s], radio station[s] or television station[s].” *SEIU*, 415 S.W.3d at 397-98 (citation modified). The Supreme Court of Texas has instructed, however, that “[a] statute’s operative force derives from its text, not from the purpose it was thought to serve at the time it was enacted.” *In re Greystar Dev. & Constr., L.P.*, No. 24-0293, 2026 WL 1445481, at *5 (Tex. May 22, 2026) (orig. proceeding) (citation modified).

SEIU relied, in part, on the Second Court’s uncertain multi-factor test from *Kaufman v. Islamic Society of Arlington*, 291 S.W.3d 130, 140 (Tex. App.—Fort Worth 2009, pet. denied). *SEIU*, 415 S.W.3d at 395-96; see *Kaufman*, 291 S.W.3d at 143. *Kaufman* very explicitly favors publishers with (1) “notoriety”; and (2) a “broad readership.” 291 S.W.3d at 143 (“Kaufman’s extrinsic notoriety (through his appearances on television), his substantial readership, the inherent public concern in the terrorism issues he reports and opines on, and his journalistic experience would all favor his qualification as a media defendant” (footnote omitted)); see *SEIU*, 415 S.W.3d at 396 (explaining that the test in *Kaufman* “looks to the character and text of the communication itself, its editorial process, its volume of dissemination, the communicator’s extrinsic notoriety unconnected to the communication, the communicator’s compensation for or professional relationship to making the communication, and other relevant circumstances as the facts may dictate” (citation modified)).

Put otherwise, *Kaufman* privileges traditional journalistic media, and mainstream media at that. Yet none of these considerations—or their favoritism—appear in the statute’s text, and for good reason. Inviting courts to decide who is a “real” journalist or a sufficiently “important” journalist or media outlet to warrant protection invites the same types of speech discrimination the First Amendment seeks to foreclose. And courts certainly should not do so based on the application of an indeterminate multi-factor test, rather than an objective test rooted in statutory text. See *FEC v. Wis. Right*

to Life, Inc., 551 U.S. 449, 469 (2007) (controlling plurality op.) (“WRTL”) (courts “must eschew the open-ended rough-and-tumble of factors” (citation modified)). “Courts, too, are bound by the First Amendment.” *Citizens United*, 558 U.S. at 326.⁴

SEIU also cited *Hotze v. Miller*, even though that case said that “the statute applies to anyone whose communication appears in electronic or print media when the claims or defenses involved arise under the free speech clause of the First Amendment.” 361 S.W.3d 707, 712 (Tex. App. — Tyler 2012, pet. denied). To be sure, *Hotze* emphasized a particular writer’s tenure (“has been a political writer and journalist for thirty years”) and placement in traditional media outlets (“[h]is editorials are published in a weekly newspaper . . . and he has hosted a radio broadcast”). *Id.*; see *SEIU*, 415 S.W.3d at 396 (“he also published editorials in a weekly newspaper, hosted a radio broadcast, and had thirty years’ experience as a political writer and journalist”). But the court did not *limit* the statute to such circumstances.

In sum, although traditional news and journalistic media are plainly *included* in § 51.014(a)(6)’s scope, they are not the entirety of that scope. Regardless, even under the State’s cramped view, social media’s capacity to disseminate the news and empower all manner of citizen journalists means that TikTok can avail itself of § 51.014(a)(6). See *supra* p.6; TikTok.Opp.11-12.

⁴ These kinds of multi-factor interpretations risk “arbitrary or discriminatory” application by the courts, with disfavored outlets being denied the protections that the Legislature provided them. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

C. The State's interpretation is not only wrong on the law; it would prioritize the First Amendment rights of only incumbent and mainstream media.

Among its other benefits, the internet has been a democratizing force for both publishing and accessing expression and information. *See supra* pp.6-7. Today, "any person with" an internet connection can "become a town crier with a voice that resonates farther than it could from any soapbox." *Reno v. ACLU*, 521 U.S. 844, 870 (1997). People nationwide—and worldwide—have pursued their passions as citizen journalists, political commentators, actors, writers, and directors, to name just a few. And they have reached their audiences by "publish[ing] using mass technology," *i.e.*, social media services. Volokh, 160 U. Pa. L. Rev. at 464.

In turn, § 51.014(a)(6) helps such online services (among other entities) to fully facilitate that speech, promoting important First Amendment values. The U.S. Supreme Court has explained that litigation implicating First Amendment rights should be as unobtrusive as possible. One way to do so is to provide procedural mechanisms that provide for interlocutory appeals that could limit further intrusions into First Amendment activity. Section 51.014(a)(6) does precisely that. If TikTok prevails on the merits, it would avoid the kind of unnecessary and costly trial that chills speech activities. *E.g.*, *WRTL*, 551 U.S. at 469.

Yet the State would have this Court both ignore the internet's advances and limit the protections in § 51.014(a)(6) to a favored class of media for

courts to determine on an ad hoc basis. And it would deny those protections to other entities that have contributed to a flourishing of speech. In light of this disparate treatment, rational entities may conclude that disseminating third-party speech raises more problems than it is worth. The result would be fewer opportunities for everyday Americans to have their voices heard. This Court should reject the State's narrow view.

PRAYER

Amici respectfully request that this Court deny the State's motion to dismiss and affirm the full scope of the State's statutory protections.

Dated: September 28, 2026

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2026, I electronically filed the foregoing with the Clerk of the Court using the eFileTexas.gov electronic filing system, which will send notification of such filing to the email addresses denoted on the Service Contacts List.

/s/ Jeremy Evan Maltz
Jeremy Evan Maltz

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Joshua Jilovec	24126403	jjilovec@omm.com	9/28/2026 11:45:07 AM	SENT
Richard McCutcheon	24139547	richard.mccutcheon@oag.texas.gov	9/28/2026 11:45:07 AM	ERROR