No. 26-2806

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

X.AI LLC,
Plaintiff - Appellant

v.

Keith Ellison,
IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL,
Defendant – Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
No. 0:2026-cv-03425

MOTION OF THE LIBERTY JUSTICE CENTER (LJC) TO FILE AS AMICUS CURIAE IN SUPPORT OF APPELLANT SpaceX.AI's REQUEST FOR REVERSAL OF THE DENIAL OF THE MOTION FOR PRELIMINARY INJUNCTION

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Appellate Case: 26-2806 Page: 1 Date Filed: 11/10/2026 Entry ID: 5704869

Motion for Leave to File Amicus Brief

Liberty Justice Center (LJC) respectfully requests leave to file the attached amicus brief in support of Plaintiff-Appellant SpaceX.AI's motion for a preliminary injunction. The brief that LJC proposes to file is attached, along with its certificate of compliance.

This amicus brief is entirely distinct from the brief submitted on the emergency motion, and raises substantially different legal and factual issues.

Interest of Amicus Curiae

Amicus curiae Liberty Justice Center (LJC) is a nonprofit, nonpartisan, public-interest litigation firm that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights.

LJC submits this brief because the district court's ruling represents a fundamental threat to free speech, a value LJC is sworn to preserve.

Dated: November 10, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF System. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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AMICUS BRIEF OF THE LIBERTY JUSTICE CENTER IN SUPPORT OF APPELLANT SPACEX.AI'S REQUEST FOR REVERSAL OF THE DENIAL OF THE MOTION FOR PRELIMINARY INJUNCTION

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Corporate Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eighth Circuit Local Rule 26.1A, Amicus Curiae Liberty Justice Center certifies that it does not have a parent company and no publicly held company owns 10% or more of its stock.

Interest of Amicus Curiae

The Liberty Justice Center (LJC) is a nonprofit, nonpartisan public interest litigation firm that defends and advances individual liberties and limited, accountable government. This work includes pursuing strategic, precedent-setting litigation aimed at protecting and maximizing the First Amendment's freedom of speech guarantee, including serving as counsel of record in the landmark Supreme Court case *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018). LJC has previously filed amicus briefs on free speech issues, including in this case below at the district court, and in other cases concerning the attempted censorship of AI platforms. *See, e.g.*, *The Babylon Bee, LLC v. Bonta*, No. 25-6138 (9th Cir. Mar. 18, 2026).

Introduction & Summary of Argument

The Free Speech Clause of the First Amendment to our Constitution is more than just a parchment guarantee: it has teeth. Specifically, it prohibits overbroad laws like Minnesota's House File 1606 (HF 1606). SpaceXAI explains this well in its briefing.

HF 1606 defines "nudify" to mean altering an image or video "to depict an intimate part not depicted" in the original image, where "intimate part" includes the "inner thigh, buttocks, or breast of a human being." Minn. Stat. § 325E.91, subd. 1(d)(1); Minn. Stat. § 609.341, subd. 5. This standard could sweep even benign images—like someone in a bathing suit sitting on the beach—into the prohibition. And HF 1606 requires neither intent, knowledge, nor evidence that an image or video was created or shared with the public in order to trigger strict liability. But the district court's errors were not confined only to its treatment of these issues.

The lower court failed to consider that HF 1606's overbreadth is a problem not only for SpaceXAI and other AI platforms available to Minnesotans, but also for the millions of Minnesotans who intend to use this technology for expression the First Amendment protects, and the

millions more Americans who wish to view that work. Further, the district court categorically misstated the holding of a key Eighth Circuit case, *Cigna Corp. v. Baker*, in a way that contradicts ironclad precedent on how courts must assess the public interest when ruling on a motion for preliminary injunction.

The district court should be reversed.

Argument

I. The district court erred by not recognizing that HF 1606's enforcement would irreparably harm millions of Americans beyond SpaceXAI.

HF 1606's enforcement irreparably harms SpaceX.AI, but it does not only irreparably harm SpaceX.AI. The sweeping censorship it imposes applies to millions of Minnesotans, as well as other Americans. In the United States, "more speech, not less, is the governing rule." *Citizens United v. FEC*, 558 U.S. 310, 361 (2010). And the First Amendment's "guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits," *United States v. Stevens*, 559 U.S. 460, 470 (2010). Instead, even when pursuing "legitimate interests," the government must adhere to the "rigorous constitutional standards that apply when government

attempts to regulate expression," *Erznoznik v. Jacksonville*, 422 U.S. 205, 217 (1975), and must always take care that it does "not stifle public debate." *Snyder v. Phelps*, 562 U.S. 443, 461 (2011). Therefore, "[w]here First Amendment freedoms are at stake," "precision of drafting and clarity of purpose are essential." *Erznoznik*, 422 U.S. at 217–18.

In the preliminary injunction context, courts must determine whether "irreparable injury is *likely* in the absence of an injunction." *Winter v. NRDC*, Inc., 555 U.S. 7, 22 (2008) (emphasis in original). For an overbreadth claim, that irreparable injury—like every aspect of the claim, except standing—is analyzed for *each person* whose protected speech will be silenced absent an injunction, not just the plaintiffs themselves. *See Dombrowski v. Pfister*, 380 U.S. 479, 488 (1965). To "provid[e] breathing room for free expression," courts "allo[w] a litigant (even an undeserving one) to vindicate the rights of the silenced, as well as society's broader interest in hearing them speak." *United States v. Hansen*, 599 U.S. 762, 769–70 (2023).

If a "challenger demonstrates that the statute 'prohibits a substantial amount of protected speech' relative to its plainly 'legitimate sweep,' then society's interest in free expression outweighs

its interest in the statute's lawful applications, and a court will hold the law facially invalid." *Id.* at 770. SpaceX.AI brought just such an overbreadth challenge. Compl., R. Doc. 1, at ¶ 70.[1] Here, if HF 1606 is not enjoined, AI platforms can—and probably will—simply cut off access to uploads from Minnesota IP addresses.

The result will be that millions of Minnesotans will no longer be able to use those platforms to modify images of any kind. This would include G-rated AI art, AI promotional images to help small businesses and nonprofits, and political activism (such as humorous, if biting, satire of public figures). Unfortunately, the harm does not end there. As the Supreme Court itself has noted, when people "abstain from protected speech" in the face of an overbroad law, it "harm[s] not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003). Here, by robbing Minnesotans of the right to use AI platforms to create art and political

[1] While this Court's local rules generally require the corresponding citation to the Appendix to be listed for case cites, 8th Cir. 28(A)(j), this is not possible in this preliminary proceeding, as the Joint Appendix is not yet available to amici.

advocacy, HF 1606 robs all Americans of the right to hear their unique perspectives.

And this harm cannot be remedied after the fact. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). This is especially true here, where the injury will silence political speech, which is inherently temporal in nature. But the district court ignored all this. Instead, it argued that "[i]f xAI genuinely feared irreparable harm. . . it would have acted more quickly to file this action and move for injunctive relief." Op. & Order Rejected Motion for Prelim. Inj., R. Doc. 54, at 8. Even assuming SpaceX.AI did delay filing—something it disputes, and the record does not support—such a ruling disregards the overbreadth doctrine's rule that a "litigant (even an undeserving one)" may "vindicate the rights of the silenced." *Hansen*, 599 U.S. at 769–770.

The district court should be reversed.

II. The district court erred by misstating Eighth Circuit precedent, and the public interest favors an injunction.

The district court plainly misstated the standard for analyzing the public interest on a motion for a preliminary injunction. Under the

proper standard, the factor weighs in favor of granting SpaceXAI's request for a preliminary injunction.

Citing *Cigna Corp. v. Baker*, 103 F.4th 1336 (8th Cir. 2024), the district court stated that when analyzing the public interest standard in a preliminary injunction motion against a government actor, "the Court considers whether the movant's likely harm without a preliminary injunction exceeds the nonmovant's likely harm with a preliminary injunction." R. Doc. 54, at 12. But *Cigna Corp.* did not say this. In fact, *Cigna Corp.* was not a case involving a government actor, and the word "government" is never used in the case. *Cigna Corp.*, 103 F.4th at 1341.

However, the actual public interest standard, laid out many years ago by the Supreme Court, is to consider what the public interest favors. *Winter*, 555 U.S. at 26–27. The district court's misstatement of *Cigna Corp.*, in contrast, only permits the court to consider the public interest *as it pertains to the government's interest*. Such an analysis inappropriately and impermissibly leaves out half the picture. Viewed in its entirety, the public interest analysis in an overbreadth case closely tracks the irreparable harm analysis discussed above. Absent an injunction, millions of Minnesotans will no longer be able to use those

platforms to modify images, depriving millions more Americans of the right to encounter their unique perspective.

United States v. Stevens is particularly relevant to this analysis. In *Stevens*, Congress enacted a statute intended to end the dissemination of "crush videos," which "depict women slowly crushing animals to death 'with their bare feet or while wearing high-heeled shoes,' sometimes 'while talking to the animals in a kind of dominatrix patter,' over 'the cries and squeals of the animals, which were obviously in great pain.'" *Stevens*, 559 U.S. at 470 (quoting the record). But Congress was sloppy, and instead of explicitly outlawing crush videos, it instead prohibited the far broader category of "depiction of animal cruelty," with "animal cruelty" defined as images or videos "in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed." *Id.* at 474. The Court rejected this statute as overbroad, noting that it would theoretically prohibit videos of innocuous activities like fishing. *Id.* at 475.

Similarly, the Minnesota Legislature here was sloppy in crafting HF 1606. The Legislature has an obvious interest in preventing the public dissemination of AI-modified nonconsensual "nudified" pornographic,

photorealistic images or videos of real people. But HF 1606's definition of nudify is so broad as to compel AI platforms to shut off their image modification services entirely, banning the Constitutionally-protected art and political activism of millions. *See* Minn. Stat. § 325E.91, subd. 1(d)(1); Minn. Stat. § 609.341, subd. 5. Such a restriction far exceeds the "statute's plainly legitimate sweep." *Stevens*, 559 U.S. at 473. In fact, HF 1606 is worse than the law struck down in *Stevens*. The *Stevens* statute only applied if it depicted conduct that violated federal or state law where the creation, sale, or possession of the image occurred—an exception that exists nowhere in HF 1606. *Stevens*, 559 U.S. at 465 (quoting 18 U.S.C. § 48(c)(1) (2010)). And that law was enforced by the Department of Justice, whereas both the state and private litigants with treble damages, punitive damages, and attorney fees enforce HF 1606. MN 325E.91 Subd. 5. It should be noted that when the Supreme Court invalidated the law in *Stevens*, it did not prevent Congress from banning crush videos. Recognizing the constitutional issues the Court highlighted, Congress enacted a more explicit version of its statute that passed constitutional muster. *See* 18 U.S.C. § 48.

Similarly, the Minnesota Legislature can amend HF 1606 to target nonconsensual images and videos that are intentionally shared to "nudify" third parties and violate their right to privacy. All that the First Amendment forbids it from doing is enforcing the statute as currently written, for doing so imposes staggering burdens on the public's interest in a free "marketplace of ideas." *Hicks*, 539 U.S. at 119. But the district court misstated the holding of *Cigna Corp.* and applied the wrong public interest standard. Under the correctly applied standard, the public interest clearly favors an injunction to prevent rampant censorship of constitutionally protected speech.

The district court should be reversed.

Conclusion

"The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs," and "our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it." *Stevens*, 559 U.S. at 460. If the First Amendment protects offensive speech like burning of the American flag, *Texas v. Johnson*, 491 U.S. 397, 414 (1989), cross burning to inspire racial hatred, *R.A.V. v. St. Paul*, 505

U.S. 377, 381 (1992), or displaying signs that proclaim things like "Thank God for 9/11," *Snyder*, 562 U.S. at 448, then it protects the AI generated images and videos, many entirely non-sexual and many with political or artistic value, that are unconstitutionally banned by HF 1606.

The district court should be reversed.

Dated: November 10, 2026

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This document complies with the type-volume limitation of Fed. R. App. P. 32 because it contains 1,989 words, excluding the parts of the brief exempted by Fed. R. App. P. 32, according to the word count as calculated by Microsoft Word for Microsoft Office 365, which was used to prepare this brief. This document also complies with the type-volume requirements of FRAP 32(a)(7)(B), as it is 14-point Century Schoolbook Font.

While this Court's local rules generally require the corresponding citation to the Appendix to be listed for case cites, 8th Cir. 28(A)(j), this is not possible in this preliminary proceeding, as the Joint Appendix is not yet available to amici. An explanation of this is available at footnote 1, which is affixed to the first citation to the record.

Dated: November 10, 2026

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I hereby certify that on November 10, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF System. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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