UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HEXA BUILDERS, LLC and 3043 WILLIAMSTOWN URBAN RENEWAL, LLC, **Plaintiffs,** **v.** **MAYOR AND TOWNSHIP COUNCIL OF THE TOWNSHIP OF MONROE and PLANNING BOARD OF THE TOWNSHIP OF MONROE,** **Defendants.**	**Civil Action** **No. 1:26-cv-08284-ESK-EAP** **Related Civil Action** **No. 1:26-cv-13447-ESK-EAP**

BRIEF ON BEHALF OF TECH JUSTICE LAW AND 11 OTHER PUBLIC INTEREST GROUPS AND PROFESSORS OF LAW AS AMICI CURIAE

FERRARA & GABLE, LLC
Megan P. Gable
Joseph W. Gable, Jr.
601 Longwood Avenue
Cherry Hill, NJ 08002
(856) 779-9500
mgable@ferraragable.com
jgable@ferraragable.com
Attorneys for Amicus Curiae Tech Justice Law

November 10, 2026

Of Counsel and On the Brief:

Tech Justice Law
Meetali Jain, Director & Founder
10 G Street NE, Suite 600
Washington, DC 20002
(510) 570-4116
meetali@techjusticelaw.com

Temple University Beasley School of Law
Institute for Law, Innovation & Technology
Laura Bingham, Executive Director, Practice Professor of Law
1719 North Broad Street
Philadelphia, PA 19122
(215) 204-8971
laura.bingham@temple.edu

Fordham University School of Law
Olivier Sylvain, Professor of Law
150 West 62nd Street
New York, NY 10023
(646) 312-8222
sylvain@law.fordham.edu

TABLE OF CONTENTS

Table of Authorities ii

Interest of Amici Curiae 1

Introduction 4

Argument:

I. Municipalities are best positioned to protect local residents from the local impacts of facilities like data centers. 7

II. Data centers are not mediums of expression. 11

A. Hexa's speculative claims about burdens on downstream expressive activity amount to a substantially flawed facial challenge. 12

B. Data centers do not speak when they store or process data. 14

C. Hexa's analogies to billboards, satellite dishes, and nude dancing are inapposite. 17

III. Data centers are general-purpose technologies 20

IV. Data centers do not have to be located in every local community for residents to access AI-powered products or applications. 25

Conclusion 28

TABLE OF AUTHORITIES

Cases—Federal

Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n,
447 U.S. 557 (1980).....26

City of Erie v. Pap's A.M.,
529 U.S. 277 (2000).....19

Comput. & Commc'ns Indus. Ass'n v. Uthmeier,
___ F.4th ___, 2026 WL 3071065 (11th Cir. 2026).....13

Garcia v. Character Techs., Inc.,
785 F. Supp. 3d 1157 (M.D. Fla. 2025).....17

Indep. Coin Payphone Ass'n v. City of Chicago,
863 F. Supp. 744 (N.D. Ill. 1994).....10

Loretto v. Teleprompter Manhattan CATV Corp.,
458 U.S. 419 (1982).....10

Moody v. NetChoice, LLC,
603 U.S. 707 (2024).....13, 17

NAACP v. X.AI Corp.,
No. 3:26-cv-00074-MPM-JMV (N.D. Miss. Apr. 14, 2026).....7

NetChoice v. Bonta,
761 F. Supp. 3d 1202 (N.D. Cal. 2024).....13

NetChoice, LLC v. Bonta,
152 F.4th 1002 (9th Cir. 2025).....14

NetChoice, LLC v. Bonta,
170 F.4th 744 (9th Cir. 2026) 13

NetChoice, LLC v. Yost,
180 F.4th 268 (6th Cir. 2026) 13

Reno v. ACLU,
521 U.S. 844 (1997) 24

Tik Tok v. Garland,
604 U.S. 56 (2025) 20

U.S. Telecom Assoc. v. FCC,
825 F.3d 674 (D.C. Cir. 2016) 25

U.S. Telecom Assoc. v. FCC,
855 F.3d 381 (D.C. Cir. 2017) 25

Village of Euclid v. Ambler Realty Co.,
272 U.S. 365 (1926) 9

Wash. State Grange v. Wash. State Republican Party,
552 U.S. 442 (2008) 13

Cases—State

Bell v. Stafford,
541 A.2d 692 (N.J. 1988) 18

Dome Realty, Inc. v. City of Paterson,
416 A.2d 334 (N.J. 1980) 10

Constitutional Provisions

N.J. Const. art. IV, § VII, ¶ 11 9

Statutes

15 U.S.C. § 9401 16

Monroe Township, NJ Ordinance O:25-2026 ..... passim

N.J.S.A. 18A:36-40b 10

N.J.S.A. 40:48-2 9

N.J.S.A. 40:55D-2 9

N.Y.C. Local Law No. 144 (2021) 11

New York Data Center Moratorium Act of 2026 22

Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 56, 114 8

Regulations

Exec. Order No. 14110, 88 .F.R. 75191 (2023) 25

Exec. Order No. 14179, 90 .F.R. 8741 (2025) 25

Federal Communications Commission, *Open Internet Order*, 25 FCC Rcd. 17905, 17910 (2010) 25

Other Authorities

Arvind Narayanan & Sayash Kapoor, *AI as Normal Technology* (April 15, 2025), https://knightcolumbia.org/content/ai-as-normal-technology 15

Brad Smith, *The golden opportunity for American AI*, Microsoft On the Issues (Jan. 3, 2025), https://blogs.microsoft.com/on-the-issues/2025/01/03/the-golden-opportunity-for-american-ai/ 24

Carla D. Walker & Ian Goldsmith, *From Energy Use to Air Quality, the Many Ways Data Centers Affect US Communities*, World Res. Inst. (Feb. 17, 2026), https://www.wri.org/insights/us-data-center-growth-impacts (accessed November 4, 2026) 8

Cole Stryker & Eda Kavlakoglu, *What Is Artificial Intelligence (AI)?*, IBM (updated Oct. 2, 2026), https://www.ibm.com/think/topics/artificial-intelligence 16

Daniel Howley, *Enterprise AI Spending Exploded in 2026: Report*, Yahoo Finance (Nov. 3, 2026), https://finance.yahoo.com/technology/article/enterprise-ai-spending-exploded-in-2026-report-140000265.html (accessed November 4, 2026) 21

Data in the Clouds, Centers on the Ground: The Role of Data Centers in LAC's Digital Future, UNDP (Apr. 15, 2025), https://www.undp.org/latin-america/blog/data-clouds-centers-ground-role-data-centers-lacs-digital-future 27

HAI, AI Index Report 2026, 1.3 ..... 15, 22

Heather Whitney, *Search Engines, Social Media, and the Editorial Analogy*, Knight First Amend. Inst. (Feb. 27, 2018), https://knightcolumbia.org/content/search-engines-social-media-and-editorial-analogy 17

Howard Blume, *LAUSD adopts moratorium on student AI use, another big move to limit classroom computer time*, L.A. Times (Sept. 2, 2026), https://www.latimes.com/california/story/2026-09-02/lausd-student-ai-ban-policy 11

John McCarthy et al., *A Proposal for the Dartmouth Summer Research Project on Artificial Intelligence* (Aug. 31, 1955) 15

John McCarthy, *What Is Artificial Intelligence?* (rev. 2007) ("the science and engineering of making intelligent machines").....16

Liset Cruz, *"Work boots and Subarus": Local officials say the backlash against Flock cameras is becoming bipartisan*, POLITICO (Aug. 9, 2026), https://www.politico.com/news/2026/08/09/flock-cameras-backlash-cancellations-01026242 11

Lorenzo Corneo et al., *Surrounded by the Clouds: A Comprehensive Cloud Reachability Study*, WWW '21: Proceedings of the Web Conference 2021 (Apr. 19, 2021), https://cloudreachability.github.io/documents/surrounded_WWW.pdf 8, 27

Matthew Haag, *New York City Bans A.I. in Elementary and Middle Schools*, N.Y. Times (Sept. 1, 2026), https://www.nytimes.com/2026/09/01/nyregion/ai-ban-schools-nyc.html.....11

May Lee, *Edge Data Centers: The Complete Guide to Edge Computing Infrastructure in 2026*, Netrality (Dec. 10, 2025), https://netrality.com/blog/edge-data-centers-complete-guide/ 27

Natalija Gelvanovska-Garcia, Vaiva Mačiulė & Carlo Maria Rossotto, *Advancing Cloud and Data Infrastructure Markets: Strategic Directions For Low- And Middle-Income Countries* 23 (World Bank 2024), https://www.worldbank.org/en/publication/advancing-cloud-and-data-infrastructure-markets 27

NIST Special Publication 800-209, *Security Guidelines for Storage Infrastructure*, § 2.10 (Oct. 2020) 23

NIST Special Publication 800-239 (Initial Public Draft), *AI Data Center Security Analysis: An HPC-Driven Approach* (July 27, 2026) 23

Organization for Economic Co-operation and Development, *Is generative AI a General Purpose Technology?* (June 27, 2025), https://www.oecd.org/en/publications/is-generative-ai-a-general-purpose-technology_704e2d12-en.html 23

Phill Powell & Ian Smalley, *What is a hyperscale data center?*, IBM (Nov. 17, 2025), https://www.ibm.com/think/topics/hyperscale-data-center 14

Steve Janoski, *Developer Challenges Gloucester County Data Center Ban on Free-Speech Grounds*, Jersey Vindicator (Aug. 1, 2026), https://jerseyvindicator.org/2026/08/01/developer-challenges-gloucester-county-data-center-ban-on-free-speech-grounds/ 21

Walker Orenstein, Jana Hollingsworth & Eva Herscowitz, *NDAs, Code Names and Shell Companies: How Minnesota Officials Support Data Center Secrecy*, Minn. Star Trib. (Dec. 18, 2025), https://www.startribune.com/ndas-code-names-and-shell-companies-how-minnesota-officials-support-data-center-secrecy/601499182 21

World Bank, *World Development Report 2026: The Promise of Artificial Intelligence* 1 (2026), https://ppp.worldbank.org/sites/default/files/2026-08/World%20Development%20Report%202026%20The%20Promise%20of%20Artificial%20Intelligence.pdf 28

INTEREST OF AMICI CURIAE

Tech Justice Law ("TJL") is a nonpartisan nonprofit impact litigation and advocacy organization that works to ensure artificial intelligence systems are safe by design, subject to human oversight, and transparent. TJL frequently participates directly and as amicus curiae in litigation presenting AI safety concerns and the First Amendment.

The following organizations and individuals join TJL as amici in this brief. Together, proposed amici are seven public-interest groups and five professors of law with diverse expertise in First Amendment law, community activism, and the intersection of law and technology. Amici are united in their belief that Monroe Township's ordinance banning construction of data centers does not violate the First Amendment, is a lawful exercise of the municipality's police power, and promotes public health, safety, and welfare.

The Pinelands Alliance was founded in 1989 to protect New Jersey's 1.1 million-acre Pinelands National Reserve and its surrounding communities, and to protect 800,000 acres of forest in one of the world's most densely populated regions. One of the essential elements of the area is one of North America's largest and healthiest aquifers, the Kirkwood-Cohansey, as well as rare plants and animals and natural habitats. The Pinelands Alliance advocates for enforcing and improving the Pineland Protections Act, Rules, and Comprehensive Management Plan to protect the Pinelands against sprawl, poorly designed development, and other abuses of land and water. With regards to this matter, Pinelands Alliance has been

acutely concerned about withdrawal of water from the Kirkwood-Cohansey aquifer with the development of data centers. Other concerns include air and noise pollution, and the burdens on the local communities, whereby Pinelands Alliance is strongly advocating for new laws to address these environmental issues, and the use of electricity at data centers from renewable sources.

The Electronic Privacy Information Center ("EPIC") is a public interest research center in Washington, D.C., established in 1994 to focus on emerging privacy and civil liberties issues. EPIC regularly participates as amicus in cases involving First Amendment challenges to regulations of online speech and speech intermediaries. *See* EPIC, The First Amendment (2025).

The Institute for Local Self-Reliance ("ILSR") has a vision of thriving, diverse, equitable communities. To reach this vision, it dismantles concentrated power and equips changemakers to build communities with locally accountable power.

Legal Advocates for Safe Science & Technology, Inc. ("LASST") is a nonprofit organization dedicated to making advances in science and technology safer for people and the planet. LASST advocates for legal frameworks governing AI systems that appropriately balance innovation with security and public safety.

The Open Markets Institute ("OMI") is a non-profit organization dedicated to protecting democracy and individual liberties from concentrated economic power and control.

The Center for Media & Digital Governance ("CMDG") is a research and policy center at the OMI that investigates concentrated power over digital infrastructure, AI systems, and information markets through research, convening and advocacy.

Ellen Goodman is a Distinguished Professor of Law at Rutgers University. She is also co-director and co-founder of the Rutgers Institute for Information Policy & Law.

Olivier Sylvain is a Professor of Law at Fordham Law School.

Zephyr Teachout is a Professor of Law at Fordham Law School.

Brett Frischmann is the Charles Widger Endowed University Professor in Law, Business and Economics at Villanova University.

Laura Bingham is a Practice Professor of Law at Temple University Beasley School of Law and founding director of the Temple University Institute for Law, Innovation & Technology.

INTRODUCTION

Following months of vigorous public participation, Monroe Township (Gloucester County) in New Jersey enacted a complete ban on data centers. *See* Ordinance O:25-2026.[1] It reads:

> Whereas, the Township Council recognizes that certain technological advancements and operational practices may mitigate some impacts associated with such facilities, but finds that the overall land use characteristics of Data Centers, including their specialized infrastructure demands and limited integration with surrounding uses, may not align with the Township's planning and zoning objectives; and whereas . . . the Township has determined that it is in the best interest of the Township to prohibit Data Centers and related uses in order to maintain consistency with the Township's Master Plan, zoning framework, and redevelopment goals; and whereas the Township Council finds that the adoption of this Ordinance is a reasonable and appropriate exercise of its police powers to protect the public health, safety, and general welfare of the residents of the Township of Monroe.

Soon after, Plaintiff Hexa Builders filed an action in the Superior Court of New Jersey, Law Division, Gloucester County. The action was later removed to this Court.

---

1 The full title is "An Ordinance of the Township of Monroe, County of Gloucester, State of New Jersey, Amending Chapter 175 of the Code of the Township of Monroe to Add a New Section, § 175-163.5, Entitled 'Data Centers,' Prohibiting Data Centers within the Township."

Hexa's Amended Complaint now before this Court contains twenty counts, six of which arise under the Constitution and federal laws of the United States. Count 4 contends that data centers are mediums of expression because they facilitate a handful of familiar consumer-facing products and applications like social media. Putting aside the significant technical complexity and doctrinal care that would be required to reach such sweeping conclusions, Hexa goes even further: by prohibiting the construction and operation of data centers within Monroe Township, Hexa argues, the ordinance unlawfully burdens the production and transmission of constitutionally protected speech.

As this brief will argue, Monroe Township lawfully adopted a ban to regulate the harmful effects of data centers without consideration of any downstream expressive activity. This was a constitutionally valid exercise of state police powers to protect its residents' health, safety, and welfare.

This brief supports Defendants' motion to dismiss Hexa's Amended Complaint (ECF No. 15), with specific regard to Hexa's overreaching argument that Monroe Township's ban on data centers violates its First Amendment rights. First, the brief demonstrates that Ordinance O:25-2026 falls squarely within the Township's lawmaking authority. Second, it argues that data centers are not mediums of expression in the way that, for example, billboard signage is. In any event, Hexa's sweeping claim rests on the thinnest of reeds, flouting the Supreme Court's recent warnings about generalized and thinly pleaded facial challenges like those alleged here. Third, this brief shows that data centers are general purpose

technologies in much the way electricity providers are. Finally, it explains that there is no technical or legal necessity for a data center in Monroe Township given the ways in which the market for AI-powered products and applications works.

In the end, this brief chiefly argues that this Court should reject Hexa's First Amendment claim as a misplaced attempt to invoke constitutional protections against a legitimate exercise of municipal authority. Data centers, in short, are not mediums of expression under First Amendment doctrine, but rather general purpose technologies that facilitate a wide range of activities. This is to say that they are not sites where speech is made. To the contrary, data centers support all manner of activities, including student projects, worker productivity, and business operations. They house multiple computer servers, data storage infrastructure, and computational equipment of various forms to achieve these ends. A finding that a regulation on the construction and operation of such facilities burdens Hexa's First Amendment rights would undermine the ability of local governments to protect the public health, safety, and welfare of their residents if a regulated entity's operations have any impact on expressive activity. For example, taking Hexa's argument to its logical conclusion, municipalities would neither be able to regulate electricity companies because they power political campaigns, nor enforce traffic laws against DHL carriers because of the theoretical burden on transporting books. In any event, the Ordinance withstands heightened First Amendment scrutiny because, through it, Monroe Township sought to achieve substantial, non-expressive land-use ends.

ARGUMENT

I. Municipalities are best positioned to protect local residents from the local impacts of facilities like data centers.

Municipalities have long exercised their lawful authority to regulate land use, protect public health and safety, ensure consumer access to public utilities, and maintain the welfare of their communities. A municipality's decision to prohibit data centers within its borders therefore implicates a question squarely within the domain of local governance: whether a particular use of land is compatible with the community's interests and the resources available to support it. The novelty of the technology does not somehow transform this clear-cut land-use question into an exotic conundrum of constitutional magnitude.

Public opposition to data centers across the country is grounded in concerns about the unprecedented combination of real-world risks that those facilities pose. In short, they require substantial amounts of electricity and water, occupy significant parcels of land, place additional demands on local infrastructure, and often raise concerns about the noise, public health, hazardous emissions, and other environmental impacts on poor communities effects,[2] and throw into question the

---

2 *See, e.g.*, Amended Complaint ¶¶ 7, 157–67, 169–71, 199–202, ECF No. 11 ("Compl."); *NAACP v. X.AI Corp.*, No. 3:26-cv-00074-MPM-JMV (N.D. Miss. Apr. 14, 2026), ECF No. 1 (alleging that unpermitted gas turbines built to power xAI's data center emit nitrogen oxides, formaldehyde, and fine particulate matter near predominantly Black communities already burdened by industrial pollution, and describing sustained community opposition to xAI's Memphis-area data centers).

compatibility of industrial development with community aspirations.[3] The benefits of AI, moreover, are distributed across regions and markets.[4] But communities that host data centers disproportionately bear the costs of their maintenance and operations.[5] This is also why Hexa's glib allusion to satellite communications providers is inapt. Data centers impact the communities around them directly and immediately in ways that, as federal law makes plain, satellite communications infrastructure simply does not.[6]

---

3 *See* Carla D. Walker & Ian Goldsmith, *From Energy Use to Air Quality, the Many Ways Data Centers Affect US Communities*, World Res. Inst. (Feb. 17, 2026), https://www.wri.org/insights/us-data-center-growth-impacts (accessed November 4, 2026).

4 *See* Lorenzo Corneo et al., *Surrounded by the Clouds: A Comprehensive Cloud Reachability Study*, WWW '21: Proceedings of the Web Conference 2021 (Apr. 19, 2021), https://cloudreachability.github.io/documents/surrounded_WWW.pdf.

5 *See* Walker & Goldsmith, *supra* note 3 (noting that grid upgrades for data centers have "contributed to price increases in at least one region (the Mid-Atlantic)," that "[n]early half" of data centers sit "in census tracts with above-median environmental burdens," and that local economic benefits are "fairly limited").

6 *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 56, 114 (directing the FCC to prohibit restrictions that impair reception of direct broadcast satellite services).

This is why residents generally expect their local authorities to attend to land-use risks like those presented in the Hexa application. After all, these are the same concerns that authorize municipalities to regulate facilities and infrastructure within their borders, including cable operators and other telecommunications companies' use of public rights of way, easements, and franchises, as well as companies' consumption and extraction of local natural resources.[7]

Under the New Jersey Constitution and statutory law, local governments in the state have the authority to enact land use ordinances that those municipalities deem are "necessary and proper . . . for the preservation of the public health, safety, and welfare" of their citizens. N.J.S.A. 40:48-2; *see also* N.J. Const. art. IV, § VII, ¶ 11 ("The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law."). *See generally Village of Euclid v. Ambler Realty Co*., 272 U.S. 365 (1926) (local zoning ordinances and land-use regulations are valid exercises of the state's police power under the Tenth Amendment to the U.S. Constitution); *Dome Realty,*

---

7 *See* N.J.S.A. 40:55D-2(a) ("To encourage municipal action to guide the appropriate use or development of all lands in the State, in a manner which will promote the public health, safety, morals, and general welfare").

Inc. v. City of Paterson, 416 A.2d 334 (N.J. 1980) (same). This makes plain sense. Municipalities, more than any other authorities, are best able to address these local concerns given their familiarity with residents' interests and the region's idiosyncratic topography.

To be sure, federal or state agencies impose regulatory requirements and standards in various regions. But public lawmaking does not end there. Municipalities adapt such rules to local contingencies. This is why courts have upheld local zoning laws in the face of federal constitutional claims of various kinds. *See, e.g.*, *Indep. Coin Payphone Ass'n v. City of Chicago*, 863 F. Supp. 744, 750 (N.D. Ill. 1994) (First Amendment does not invalidate municipal zoning rule banning public payphones on public rights of way unless provider enters into a franchise agreement with city). *See also Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (Takings Clause does not invalidate municipal zoning rules requiring landlords to allow cable companies to run lines through their buildings to ensure tenants had access to cable).

Local governments have also invoked their legal authority to contain harms and risks of novel networked, automated decision-making and generative AI technologies. For example, New Jersey adopted a bell-to-bell cellphone ban in K-12 schools.[8] Local governments have imposed auditing rules for public officials'

---

8 *See* N.J.S.A. 18A:36-40b (directing the Commissioner of Education to issue guidelines that "[p]rohibit non-academic use of an internet-enabled device on

use of automated systems.[9] And, just in the past couple of months, local officials across the country have limited or prohibited elementary and middle schools' use of artificial intelligence in classroom instruction and assignments[10] and limited or altogether banned local police use of AI-powered license plate readers.[11]

II. Data centers are not mediums of expression.

Hexa spends several pages of its amended complaint arguing that data centers are like warehouses since they "store[] digital data and digital communications for later use by others." (Compl. ¶ 87; *see also id. at* ¶¶ 88–89, 139). By Count Four, however, Hexa switches gears to argue that data centers are

---

school grounds during the school day," and requiring every board of education to adopt a conforming policy for grades K–12).

9 *See, e.g.*, N.Y.C. Local Law No. 144 (2021) (bias audit mandate for public agencies).

10 *See* Howard Blume, *LAUSD adopts moratorium on student AI use, another big move to limit classroom computer time*, L.A. Times (Sept. 2, 2026), https://www.latimes.com/california/story/2026-09-02/lausd-student-ai-ban-policy; Matthew Haag, *New York City Bans A.I. in Elementary and Middle Schools*, N.Y. Times (Sept. 1, 2026), https://www.nytimes.com/2026/09/01/nyregion/ai-ban-schools-nyc.html.

11 *See* Liset Cruz, *"Work boots and Subarus": Local officials say the backlash against Flock cameras is becoming bipartisan*, POLITICO (Aug. 9, 2026), https://www.politico.com/news/2026/08/09/flock-cameras-backlash-cancellations-01026242.

actually a "medium of communication and expression" (*id.* at ¶ 249); a facility that at "its very core involves computers literally communicating with each other" (*id.* at ¶ 255); and one for which "[t]here are not other adequate substitutes" (*id.* at ¶ 282). Hexa cannot have it both ways: it cannot assert that its proposed facility will be, on the one hand, like an inert warehouse or storage facility and, on the other hand, a medium of expression akin to billboards and nude dancing halls or a facility for the transmission of information like satellites. In fact, data centers are far more like the former (warehouses) than the latter (mediums of expression) because they characteristically store and process data in support of a wide range of non-expressive products and applications. And, as we assert above, even if data centers could convey a message, which they technically and practically do not, the Ordinance would still survive heightened First Amendment scrutiny because it advances substantial, non-expressive land-use interests.

A. Hexa's speculative claims about burdens on downstream expressive activity amount to a substantially flawed facial challenge.

Hexa essentially premises its First Amendment challenge on vague predictions about an extraordinarily partial and narrow set of AI-powered products and applications. In fact, it has not and cannot show how the Ordinance will apply to any specific expressive activity.

Given this failing, Hexa has effectively leveled a facial challenge to the Ordinance. The U.S. Supreme Court, however, has warned against mounting such

overbroad free speech facial challenges, particularly as it relates to the networked information economy. Writing for the Court in *Moody v. NetChoice, LLC*, Justice Elena Kagan cautioned that "[t]he online world is variegated and complex, encompassing an ever-growing number of apps, services, functionalities, and methods for communication and connection." 603 U.S. 707, 725 (2024). In order for this Court to assess the validity of a facial challenge to a law, it must first determine the "full range of applications" that the law at issue touches. *Id.* at 726.

By failing to specify either who their prospective clients are or what the purported expressive products or applications would be here, Hexa's claim "'threaten[s] to short circuit the democratic process' by preventing duly enacted laws from being implemented in constitutional ways." *Id.* at 777 (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)). Loose and unsubstantiated allusions to large language models, social media, and political advertisements, (Plaintiffs' Brief in Opposition to Motion to Dismiss 14, ECF No. 17), mean to undermine Monroe Township's lawful, public, and deliberate effort to attend to the immediate costs and real-world harms that data centers pose to its residents. Since the *Moody* decision, this tactic to perfunctorily mount a First Amendment challenge to regulations has been struck down by several courts. *See, e.g.*, *NetChoice, LLC v. Yost*, 180 F.4th 268 (6th Cir. 2026); *Comput. & Commc'ns Indus. Ass'n v. Uthmeier*, ___ F.4th ___, 2026 WL 3071065 (11th Cir. 2026) (publication forthcoming); *NetChoice, LLC v. Bonta*, 170 F.4th 744 (9th Cir. 2026); *NetChoice v. Bonta*, 761 F. Supp. 3d 1202, 1210 (N.D. Cal. 2024), *aff'd in part,*

rev'd in part and remanded sub nom. NetChoice, LLC v. Bonta, 152 F.4th 1002 (9th Cir. 2025). This Court, too, should reject Hexa's attempt to follow that playbook here.

B. Data centers do not speak when they store or process data.

Hexa argues that data centers are communication systems by *definition*. It strings together language from New Jersey's Criminal Code, the New Jersey Wiretapping and Electronic Surveillance Control Act, and the Federal Wiretap Act to aver that data centers are a mode of electronic communication because they are "computer facilities or related electronic equipment for the electronic storage of such communications." (Compl. ¶¶ 237–243). At most, however, these definitions suggest that data centers contain equipment capable of transmitting and storing electronic information. While it might be true that data centers transmit data as part of these functions, that operational function is not what defines them. Nor are all data centers tailored for all uses. AI and cloud computing data centers, for example, are general purpose computing infrastructures that house and coordinate enormous quantities of computational capacity, storage, networking, and specialized hardware that are allocated to a number of tasks, including AI model training, data analytics, and other large-scale tasks.[12] They are not mere conduits through which information simply passes.

---

12 *See* Phill Powell & Ian Smalley, *What is a hyperscale data center?*, IBM (Nov. 17, 2025), https://www.ibm.com/think/topics/hyperscale-data-center. Unlike

Recognizing this, Hexa recasts data centers writ large as places where speech is *made* because AI-enabled products and applications allow "humans to use off-site computers and the internet to create expressive content and to communicate with one another." (Compl. ¶ 222.)

This description is misleading and overly simplistic and, as such, cannot be the basis on which to invalidate a land-use law like Ordinance O:25-2026. Hexa has offered no more than an account of how the internet has worked for decades. Artificial intelligence, in fact, is an advanced computational process that generally uses the same internet infrastructure that people, developers, and companies have been using for decades.[13] Meanwhile, generative AI employs predictive algorithms to produce probabilistic outputs and perform tasks that are downstream from this

---

cloud storage data centers, "hyperscale" AI data centers require special data processing chips called graphics processing units, or GPUs, capable of performing the processing operations currently required for AI model training and inference (i.e., running the model behind a product like ChatGPT and processing real-time user prompts). HAI, AI Index Report 2026, 1.3, p. 32.

13 *See* Arvind Narayanan & Sayash Kapoor, *AI as Normal Technology* (April 15, 2025), https://knightcolumbia.org/content/ai-as-normal-technology (positing artificial intelligence (AI) as "normal technology," comparable to "transformative, general-purpose technologies such as electricity and the internet").

infrastructure,[14] the expressive nature of which has been preliminarily rejected by at least one federal court and is not at issue in Hexa's complaint.[15] It does not generally, or intrinsically, reflect a discretionary editorial choice.[16]

---

14 John McCarthy et al., *A Proposal for the Dartmouth Summer Research Project on Artificial Intelligence* (Aug. 31, 1955); John McCarthy, *What Is Artificial Intelligence?* (rev. 2007) ("the science and engineering of making intelligent machines"); *see also* 15 U.S.C. § 9401(3). Generative AI models "encode a simplified representation of their training data, and then draw from that representation to create new work that is similar, but not identical, to the original data." Cole Stryker & Eda Kavlakoglu, *What Is Artificial Intelligence (AI)?*, IBM (updated Oct. 2, 2026), https://www.ibm.com/think/topics/artificial-intelligence.

15 See *Garcia v. Character Techs., Inc.*, 785 F. Supp. 3d 1157, 1177 (M.D. Fla. 2025) (Order on motion to dismiss decided May 21, 2025) (rejecting attempt to analogize interactions with chatbots to interactions with persons on social media sites, explaining that the First Amendment inquiry does not turn on "whether" a technology is similar to protected expressive media, but rather on "how" it is similar to those media), quoting Justice Barrett's concurrence in *Moody v. NetChoice, LLC*, in which she raised her concern about how large language models may "attenuate the connection" between human intent and what is considered expressive speech. *Id.* at 1178.

The way platforms use this sort of technology might have constitutional significance. *See generally* Heather Whitney, *Search Engines, Social Media, and the Editorial Analogy*, Knight First Amend. Inst. (Feb. 27, 2018), https://knightcolumbia.org/content/search-engines-social-media-and-editorial-analogy ("In debates over tech companies and free speech coverage . . . [t]here are multiple plausible analogies that might be used, each with different First Amendment implications, and none tells us whether the normative

C. Hexa's analogies to billboards, satellite dishes, and nude dancing are inapposite.

Hexa latches on to cases involving government regulations addressed to billboards (Compl. ¶¶ 261, 231), satellite communications (*id.* at ¶¶ 232–233), and even nude dancing (*id.* at ¶ 229) to substantiate its First Amendment claim against Ordinance O:25-2026. These comparisons are grossly inapposite because the three examples are mediums of expression or facilities that exist to transmit information. Data centers are neither. Nothing in their construction or operation is expressive or meaningfully communicative.

Consider first Hexa's allusion to billboards. (Compl. ¶¶ 261, 231). Billboards are large, fixed structures that display visual or written messages to passing members of the public alongside highways or sidewalks. They typically feature commercial advertisements, public-service announcements, political messages, or other content that passersby can see quickly from a distance. The key, however, is that they exist *solely* for the purpose of conveying a message; they are quintessential mediums of expression. There is nothing even marginally expressive in the construction or operation of data centers. Quite unlike the billboard ban in

---

considerations underlying free speech coverage for the one apply to the other.").

16 *Cf. Moody*, 603 U.S. at 746 (Barrett, J., concurring) (expressing skepticism that an AI model expresses speech in the ways that editorial discretion by a human does).

Bell v. Stafford, 541 A.2d 692 (N.J. 1988), Ordinance O:25-2026 is unrelated to, or far too removed from, the kind of overt expression associated with billboards.

Hexa's reliance on satellite communication fares no better. (Compl. ¶¶ 232–233). It cites two cases that concerned territorial satellite antennas whose respective purposes were to transmit or receive broadcast content over signals. This is why the courts treated them "like billboards and signs." (*Id.* at ¶ 232.) A data center does meaningfully different work. Companies do not build them, and vendors do not rely on them, for transmission in the way they do satellite communications services. They employ them for their incredible (and extractive) computational power—where data is stored, modified, and indexed—which, in turn, supports an extraordinarily broad range of downstream non-expressive activities like student projects, business operations, and worker productivity.

Consider next Hexa's reliance on nude dancing cases. It cites, without much explanation, *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), a case involving a municipal ordinance that banned public nudity. There, the Court agreed that, while "being 'in a state of nudity' is not an inherently expressive condition," nude dancing may nevertheless qualify as "expressive conduct." *Id.* at 288. But, in the end, it upheld the ordinance as a content-neutral restriction because the ban on public nudity "regulates conduct alone" and "does not target nudity that contains an erotic message." *Id*. at 290. The City of Erie's concerns in that case were the "negative secondary effects" of public nudity, including, for example, "violence,

sexual harassment, public intoxication, prostitution, the spread of sexually transmitted diseases and other deleterious effects." *Id*.

Hexa's reliance on *City of Erie* is baffling given that the court upheld the local ordinance.[17] Even assuming the construction or operation of a data center has some expressive quality, which it plainly does not, Ordinance O:25-2026 would still survive First Amendment scrutiny because, as the record shows, the Planning Board was solely motivated by substantial non-expressive interests in environmental protection, public health, and electricity costs. These land-use concerns come nowhere close to being as contested as the "negative secondary effects" of public nudity at issue in *City of Erie*. The Board had no interest in regulating a message that Hexa may have conveyed either in the development and administration of its facility or in any other way. Nor could it, given that even Hexa has no idea who its potential licensees, tenants, or clients are, let alone what their downstream commercial uses would be.

---

17 Hexa's invocation of the U.S. Supreme Court's decision in *Tik Tok v. Garland*, is similarly baffling, since the Court upheld the federal government ban on Tik Tok because it advanced important national security interests. 604 U.S. 56, 72–73 (2025). Moreover, the law at issue there applied to social media applications, which are far more like mediums of expressive content than data centers.

III. Data centers are general-purpose technologies

As this brief explains above, Hexa's amended complaint ignores the fact that the Ordinance is in the heartland of Monroe Township's traditional authority to regulate land use. We also show that Hexa's allusion to unknown downstream AI-powered expressive activity is purely speculative and unresponsive to the Township's real-world reasons for it—never mind at odds with Supreme Court doctrine on facial First Amendment challenges.[18] We also demonstrate that the very small sample of familiar consumer-facing AI-powered products and applications that they allege could be affected, moreover, is extraordinarily unrepresentative. In fact, as a matter of spending, AI is mostly a technology that enterprises employ for operations, sales, finance, and market research, employing AI agents to execute these functions. This pattern will continue given enterprises' use of AI agents to perform tasks autonomously.[19]

---

18 *See* Steve Janoski, *Developer Challenges Gloucester County Data Center Ban on Free-Speech Grounds*, Jersey Vindicator (Aug. 1, 2026), https://jerseyvindicator.org/2026/08/01/developer-challenges-gloucester-county-data-center-ban-on-free-speech-grounds/ (accessed November 4, 2026). For many municipalities' real-world reasons for AI data centers, see Walker Orenstein, Jana Hollingsworth & Eva Herscowitz, *NDAs, Code Names and Shell Companies: How Minnesota Officials Support Data Center Secrecy*, Minn. Star Trib. (Dec. 18, 2025), https://www.startribune.com/ndas-code-names-and-shell-companies-how-minnesota-officials-support-data-center-secrecy/601499182.

19 Agents have been shown to utilize AI seven times more than humans within the enterprise domain. *See* Daniel Howley, *Enterprise AI Spending Exploded*

The hard task of disentangling Hexa's bluster from the reality of what data centers are and do reveals how misplaced its First Amendment arguments are here. In fact, they are physical facilities that combine with other public utilities and private infrastructure to support a wide variety of activities.[20]

In short, data centers like the one Hexa wants to build and operate are *general-purpose technologies* that support many different uses across industries, institutions, and markets. Although data centers—like undersea cables, electrical grids, and critical internet resources—can facilitate the creation and distribution of information, any specific uses represent only a subset of the activities that they support. Most probably have nothing to do with expression.

---

in 2026: Report, Yahoo Finance (Nov. 3, 2026), https://finance.yahoo.com/technology/article/enterprise-ai-spending-exploded-in-2026-report-l40000265.html (accessed November 4, 2026).

20 *See* HAI, AI Index Report 2026, 1.3, p. 32, *supra* note 12. *See also* New York Data Center Moratorium Act of 2026 (defining "data center" as "all buildings, equipment, structures, infrastructure within an existing structure, and other stationary items, such as server racks, that are located on a single site or on contiguous, adjacent, or otherwise connected sites, and that are owned or operated by the same entity or by any entity who controls, is controlled by, or is under common control by such entity, regardless of whether the data center is a single-occupant site or multi-occupant site, that is capable of using twenty megawatts of electricity or more and is designed or intended to be primarily engaged in data processing, data storage, data transport, web hosting, web streaming support, or other services described under code 518210 of the 2022 North American Industry Classification System.").

Nor does the record before the Township or in this litigation indicate how the proposed site would actually be put to use.[21] The Ordinance restricts the establishment of data centers within the municipality that, irrespective of downstream products and applications, would certainly impose opportunity costs and physical and environmental burdens on local residents. This is why the Township conveyed no hint of interest in specific computing infrastructure or AI-powered products or applications. It was concerned about data centers as a product- and application-agnostic general purpose technology.[22] In this regard, data centers resemble electricity, the archetypal general purpose technology.[23] This is

---

21 *See* Compl. Ex. I (March 2026 PBC minutes, indicating no tenant); *compare* NIST Special Publication 800-209, *Security Guidelines for Storage Infrastructure*, § 2.10 (Oct. 2020) (describing cloud-based storage systems and the technical reasons they are used), *with* NIST Special Publication 800-239 (Initial Public Draft), *AI Data Center Security Analysis: An HPC-Driven Approach* (July 27, 2026) (discussing AI data center architecture as "specifically optimized for the training and inference of AI models).

22 *See* Organization for Economic Co-operation and Development, *Is generative AI a General Purpose Technology?* (June 27, 2025), https://www.oecd.org/en/publications/is-generative-ai-a-general-purpose-technology_704e2d12-en.html. Whether a technology qualifies as a general purpose technology is distinct from whether a regulation implicates the First Amendment. Hexa must still demonstrate that Ordinance O:25-2026 burdens protected expression; the general-purpose character of data centers does not make that connection.

23 *Cf.* Brad Smith, *The golden opportunity for American AI*, Microsoft On the Issues (Jan. 3, 2025), https://blogs.microsoft.com/on-the-

why it is impossible to find a case in which a court accepted that a zoning or land-use decision intruded on an electricity company's First Amendment rights, even if news publishing and political campaigning rely on electricity.[24]

Reno v. ACLU, a canonical case in the area of networked communications to which Hexa loosely refers, provides no help for its argument. 521 U.S. 844 (1997). (*See* Brief in Opposition to Motion to Dismiss 17.) That case was not, as Hexa claims, a case about the regulation of the internet generally. It was about Congress's misbegotten effort to regulate online obscenity addressed to children, a very specific kind of expressive activity. It was a paradigmatic content regulation, plain and simple. The Ordinance at issue here, on the other hand, regulates land use by the proposed developers of general purpose technology without a hint of interest in expressive activity.

Nor does broadband internet service serve as an analogous example here. The Ordinance does not touch a form of infrastructure that comes anywhere close

---

issues/2025/01/03/the-golden-opportunity-for-american-ai/ (likening AI to the general purpose technologies of the past and present, including electricity and computer chips).

24 Hexa seems to recognize that the data centers they want to operate are a general purpose technology when, in their amended complaint, they assert that it would be "critical infrastructure." (Compl. ¶ 270) No matter what they call it, however, its First Amendment argument requires that the Ordinance intrude on non-speculative expressive conduct, which, as we show throughout, it does not.

to providing a communications service in the same way that broadband service providers do. Data centers, even data centers optimized for AI development and use, are simply not dedicated to communications as a matter of course. Even in the context of broadband services, which are dedicated to conveying expressive content, it does not matter that telecommunications regulations have incidental impacts on the expressive activity of, say, websites for newspapers and political campaigns. *See Federal Communications Commission*, *Open Internet Order*, 25 FCC Rcd. 17905, 17910 (2010) ("Like electricity and the computer, the Internet is a 'general purpose technology' that enables new methods of production that have a major impact on the entire economy.")[25] The same must be true for data centers, which have a far more speculative connection to downstream expressive activity given the wide variety of activities that they power. *See* Exec. Order No. 14110, 88 .F.R. 75191 (2023) (extolling the "myriad" potential societal benefits of AI); Exec. Order No. 14179, 90 .F.R. 8741 (2025).

This is not to say that electricity companies, broadband providers, data centers, or any other provider of a general purpose technology do not enjoy free speech rights. Those rights are simply not intrinsically connected to downstream

---

25 In any event, regulators may impose non-expressive obligations when providers of such services hold themselves out as serving the public indiscriminately. *See, e.g.*, *U.S. Telecom Assoc. v. FCC*, 825 F.3d 674, 740 (D.C. Cir. 2016), *denying petition for rehearing en banc*, 855 F.3d 381 (D.C. Cir. 2017) (Srinivasan, J., concurring).

expressive activity, as Hexa would have it. Rather, those rights only kick in when a governmental restriction touches a provider's actual expressive activity. The courts, for example, have subjected government restrictions on a power company's *promotional communications* to heightened scrutiny. *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980). This line of cases does not turn on the fact that the company provides a general use technology that powers others' speech activity. These cases turn on the informational nature of the promotional or marketing material. There is nothing informational or expressive in the construction or operation of the electrical grid, broadband internet access, or, as this case shows, data centers.

IV. Data centers do not have to be located in every local community for residents to access AI-powered products or applications.

Hexa assumes that prohibiting a data center in a particular municipality necessarily restricts the ability of people in that community from using AI-enabled products or applications—that somehow blocking the development and operation of data centers in Monroe Township would prevent unidentified consumers, businesses, or other institutions from accessing such products or applications by way of facilities located elsewhere.

In fact, data centers provide computing and storage capacity to customers far beyond the communities in which the facilities are located.[26] Customers may access AI-powered products or applications through remote servers, use cloud-based products and services, and access distributed networks without having a data center in their own municipality.[27] Although some AI-enabled products may require specialized computing capacity or location-sensitive infrastructure, Hexa has not claimed or established that its proposed facility would provide as much.[28] This is because, generally, the location of any given data center has marginal impacts, if any, on the development or availability of AI-enabled products or applications, and any argument to the contrary rests on sheer speculation.[29] This is

---

26 *See* Natalija Gelvanovska-Garcia, Vaiva Mačiulė & Carlo Maria Rossotto, *Advancing Cloud and Data Infrastructure Markets: Strategic Directions For Low- And Middle-Income Countries* 23 (World Bank 2024), https://www.worldbank.org/en/publication/advancing-cloud-and-data-infrastructure-markets. *See also Data in the Clouds, Centers on the Ground: The Role of Data Centers in LAC's Digital Future*, UNDP (Apr. 15, 2025), https://www.undp.org/latin-america/blog/data-clouds-centers-ground-role-data-centers-lacs-digital-future.

27 *Id.* at 32.

28 *See* May Lee, *Edge Data Centers: The Complete Guide to Edge Computing Infrastructure in 2026*, Netrality (Dec. 10, 2025), https://netrality.com/blog/edge-data-centers-complete-guide/.

29 Corneo et al., *supra* note 4.

also what distinguishes data centers from the other communications infrastructures, including billboards, for example, to which Hexa incredulously likens its proposed development project.

The high concentration of AI data centers in the United States and other industrialized countries belies the suggestion that the siting of a data center in Monroe Township, New Jersey, somehow implicates AI use generally, including any expressive activity associated with it. Indeed, the gross imbalance in global access to data center infrastructure has not dampened projections that AI will be available and equally transformative as a general use technology in lower-and middle-income countries around the world. The World Bank's 2026 Global Development Report, for example, supposes that concentration of data centers and advanced chips in the hands of a small number of American firms "allows countries to customize AI models without having to spend billions of dollars creating the most advanced AI systems from scratch."[30] As such, customers can benefit from AI-powered products or applications without each community independently hosting the infrastructure.

Here, and generally, a municipality's responsibility is to protect its residents and regulate land use within its jurisdiction. It has no obligation to optimize the

---

30 World Bank, *World Development Report 2026: The Promise of Artificial Intelligence* 1 (2026), https://ppp.worldbank.org/sites/default/files/2026-08/World%20Development%20Report%202026%20The%20Promise%20of%20Artificial%20Intelligence.pdf.

geographic distribution of data centers across New Jersey, the country, or foreign jurisdictions. Its concern is and ought to be whether the proposed data center is an appropriate use of land within its borders given the demonstrable impacts data center construction and operation has on local residents, wildlife, the environment, public health, and natural resources.

CONCLUSION

Monroe Township lawfully exercised its authority to enact Ordinance O:25-2026 that regulates how land is used within its jurisdiction. The Court should not allow Hexa to run an end run around legitimate democratic process by invoking oversimplified and inaccurate metaphors about data centers that improperly elevate them to constitutionally protected status. The Court should reject Hexa's First Amendment claim.

Respectfully,

FERRARA & GABLE, LLC

November 10, 2026

s/ *Joseph W. Gable, Jr.*

Megan P. Gable
Joseph W. Gable Jr.
601 Longwood Avenue
Cherry Hill, NJ 08002
(856) 779-9500
mgable@ferraragable.com
jgable@ferraragable.com
Attorneys for Amicus Curiae Tech Justice Law

Of Counsel and On the Brief:

Tech Justice Law
Meetali Jain, Director & Founder
10 G Street NE, Suite 600
Washington, DC 20002
(510) 570-4116
meetali@techjusticelaw.com

Temple University Beasley School of Law
Institute for Law, Innovation & Technology
Laura Bingham, Executive Director, Practice Professor of Law
1719 North Broad Street
Philadelphia, PA 19122
(215) 204-8971
laura.bingham@temple.edu

Fordham University School of Law
Olivier Sylvain, Professor of Law
150 West 62nd Street
New York, NY 10023
(646) 312-8222
sylvain@law.fordham.edu