



April 1, 2026

VIA ELECTRONIC SUBMISSION

Commissioner Hester M. Peirce and Members of the SEC Crypto Task Force
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-0213

***Re: Request for Information Regarding National Securities Exchanges and
Alternative Trading Systems Trading Crypto Assets***

Dear Commissioner Peirce and the Crypto Task Force:

The DeFi Education Fund (“DEF”) submits this letter to the Securities and Exchange Commission (the “SEC” or “Commission”) to address several of the issues raised in Commissioner Peirce’s December 17, 2025 Request for Information. In particular, Question 2 and Question 16 implicate, respectively, the breadth of the Commission’s interpretation of the terms “facility” and “group of persons” under the Securities Exchange Act of 1934 (“Exchange Act”). We respectfully suggest that the Commission clarify the meaning of both terms in a manner that will promote the continued innovation and growth of decentralized finance (“DeFi”). Specifically, the Commission should adopt a functional test for the term “facility,” which would ensure that software developers and technology are not regulated as part of an “exchange” unless those developers are actually performing or facilitating the functions of a national securities exchange. And the Commission should avoid treating developers as a “group of persons” who can be regulated as an exchange, except when a developer both provides a product that performs an exchange function *and* seeks to act in concert with an existing exchange or other person to perform that function.

DEF is a nonpartisan, nonprofit research and advocacy organization. Its mission is to advocate for sound policy for DeFi, educate lawmakers and regulators about the technical workings and benefits of DeFi, and represent the interests of users and developers in the DeFi space.¹ DEF fully agrees with Commissioner Peirce’s statement that “market participants need to be able to operate under the certainty of clear market structure rules that facilitate fair and orderly markets without imposing unnecessary burdens,” and the December requests for information are an important step on the path to achieving that certainty.² We would welcome the opportunity to work with the Commission and its staff on these important issues.

¹ DeFi refers to a financial system built on public blockchains that allows people to engage in self-directed financial transactions without relying on intermediaries and while maintaining custody and control over their own funds and data. For more resources and tech explainers, please see our website and previous submissions to the Commission’s Crypto Task Force, *available at* <https://www.defieducationfund.org/docs/educational/defi-101-readings/>.

² Commissioner Hester M. Peirce, *And Then Some: Request for Information Regarding National Securities Exchanges and Alternative Trading Systems Trading Crypto Assets* (Dec. 17, 2025) (“RFI”), <https://www.sec.gov/newsroom/speeches-statements/peirce-12172025-then-some-request-information-regarding-national-securities-exchanges-alternative-trading-systems>.

I. The Commission Should Apply a Functional Test in Assessing Whether DeFi Technology Is a “Facility” of an Exchange

Question 2 seeks information about “[w]hen should a crypto ATS that is affiliated with an NSE be considered a facility of such exchange.”³ As Commissioner Peirce observed, the Commission has provided little “in the way of meaningful guidance about what the term ‘facility’ means in practice.”⁴ Instead of articulating objective rules of the road that would provide clarity as to the meaning of “facility” across different contexts, the Commission historically has opted for “an analysis of the particular facts and circumstances” that apply to a given product or service.⁵

The Commission should modify its approach to provide forward-looking, principles-based guidance about what constitutes a “facility.” The need for clarity about what constitutes a “facility” will only increase in the coming years, as DeFi technology continues to evolve and potentially becomes relied upon in traditional securities markets. The Commission’s interpretation of “facility” should therefore be focused enough to give meaningful guidance to innovators in DeFi while also remaining flexible in the face of uncertainty about the precise role DeFi technology will play. Fortunately, the reading of “facility” best supported by the text and structure of the Exchange Act would further these twin aims. That reading embraces a functional test, one focused on whether a facility is performing or facilitating an *exchange* function, as opposed to playing a different role vis-à-vis an exchange. For instance, property on the site of an exchange that facilitates an exchange function, such as a trading floor, should be considered a “facility” of an exchange subject to the Commission’s jurisdiction. Similarly, property on the site of an exchange that has nothing to do with facilitating an exchange function, like a cafeteria, should not be considered a “facility” of an exchange or subject to the Commission’s jurisdiction. Critically, applying such a functional test would avoid a reading of “facility” that could sweep in automated market makers (“AMMs”), decentralized exchanges (“DEXs”), smart contract protocols, liquidity providers and users themselves, or other yet-to-be-created technology that may soon *interact* with—but serve a distinct functional purpose from—exchanges.

³ *Id.*

⁴ Commissioner Hester M. Peirce, *Statement on Order Approving a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections* (Oct. 16, 2020) (“Statement on Wireless Order”), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-wireless-fee-schedule>.

⁵ Securities Exchange Act Rel. No. 76127 at n.9 (Oct. 9, 2015), 80 Fed. Reg. 62584 (Oct. 16, 2015).

A. *The Text And Structure Of The Exchange Act Support a Functional Test for What Constitutes a “Facility”*

A proper understanding of the term “facility” begins with the Exchange Act’s definition of “exchange.” An “exchange” is defined as: “any organization, association, or group of persons ... which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and market facilities maintained by such exchange.”⁶

Two aspects of this definition stand out. First, the text expressly focuses on an exchange’s *function*—i.e., an exchange must either “bring[] together purchasers and sellers” or “otherwise perform[] ... the functions” of “a stock exchange.”⁷ As the Fifth Circuit has recognized, the essence of that function is to serve as a market place, i.e., “to provide a secondary market for trading in stocks.”⁸ Second, the definition of “exchange” supplies important context for the meaning of “facility.” The “exchange” definition makes clear that the terms “market place” and “facilities” each embrace the same concept, as each is a place where the just-described exchange functions occur. That understanding is reinforced by the final clause of the “exchange” definition, which clarifies that “the market place” and “market facilities maintained by [an] exchange” are themselves considered part of—and thus subject to the Commission’s regulatory authority regarding—an exchange.⁹

Against that backdrop, the Exchange Act defines “facility,” specifically “when used with respect to an exchange,” to include four things: (1) “its premises,” (2) “tangible or intangible property whether on the premises or not,” (3) “any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange),” and (4) “any right of the exchange to the use of any property or service.”¹⁰

This language, although broad in the abstract, becomes clearer when viewed through the lens of the exchange functions that a facility must support. The question, at its core, is whether a product or service functions as part of a marketplace that brings purchasers and sellers of securities together. If so, then it is performing an exchange function and—assuming the other statutory criteria for an “exchange” have been met—can be regulated as part of an exchange. The corollary to this understanding of “facility” is that when a product or service performs a *non-exchange* function—including where it instead performs a function described elsewhere in the Exchange Act—then it cannot be regulated as an exchange.

This functional approach aligns with how Congress understood an exchange and its facilities when it enacted the Exchange Act. Historically, the key feature of a securities

⁶ 15 U.S.C. § 78c(a)(1).

⁷ *Id.*

⁸ *Alliance for Fair Bd. Recruitment v. SEC*, 125 F.4th 159, 169 (5th Cir. 2024).

⁹ 15 U.S.C. § 78c(a)(1).

¹⁰ *Id.* § 78c(a)(2).

exchange was that it was a “physical place . . . and organized rules and procedures . . . for buying and selling securities.”¹¹ The physical floor of the exchange “provide[d] a central location for buy and sell orders to meet and to be executed at the best available price.”¹² Accordingly, Congress understood in 1934 that the defining functional characteristic of an exchange and its facilities was that, together, they serve as a forum for “bringing together purchasers and sellers of securities.”¹³ Indeed, the Seventh Circuit has described that as an exchange’s “central” function.¹⁴

Technological advances have of course moved most exchange activity away from physical trading floors, but the essence of that activity remains the same. In other words, although “many functions traditionally performed by exchange members or exchange facilities” are now automated, this “technology merely allows the computer to perform both faster and cheaper those functions previously done by securities professionals.”¹⁵ The functional understanding of “exchange” and “facility” embraced by the Exchange Act is therefore dispositive even as the scope of what those terms encompass has evolved to include technological developments.

That is the approach the Commission took when, for example, it determined the Chicago Match, the Chicago Stock Exchange’s (“CHX”) electronic order matching system, was a facility of CHX.¹⁶ Even though the Chicago Match “differ[ed] in important respects from the traditional trading floor design,” it still “us[ed] the CHX’s premises, property, and services for effecting and reporting . . . transactions” and therefore was “properly regulated as a facility of an exchange.”¹⁷ And the Commission took a similar approach in approving a mechanism “for the execution of large-sized stock orders at the volume weighted average price (‘VWAP’)” operated by the Philadelphia Stock Exchange.¹⁸ The VWAP system plainly constituted a “facility” because it was integrated into the exchange for the purpose of performing a core exchange function—i.e., “match[ing] the orders” it received “for execution according to an algorithm.”¹⁹ The Commission thus rightly concluded that, because the VWAP system would “be using the Exchange’s premises, property, and services for effecting and reporting System matches,” and would be performing an exchange function, the system was “properly regulated as a facility of the Exchange.”²⁰

¹¹ Maynard, *What Is an “Exchange?”—Proprietary Electronic Securities Trading Systems and the Statutory Definition of an Exchange*, 49 Wash. & Lee L. Rev. 833, 841 (1992).

¹² *Id.* at 841.

¹³ 15 U.S.C. § 78c(a)(1); *see also* S. Rep. No. 73-1455, at 30 (1934) (“The true function of an exchange is to maintain an open market for securities, whose supply and demand may freely meet at prices uninfluenced by manipulation or control.”).

¹⁴ *Board of Trade of City of Chi. v. SEC*, 923 F.2d 1270, 1272 (7th Cir. 1991).

¹⁵ Maynard, 49 Wash. & Lee L. Rev. at 852.

¹⁶ Securities Exchange Act Rel. No. 35030 (Nov. 30, 1994), 59 Fed. Reg. 63141 (Dec. 7, 1994).

¹⁷ *Id.* at 63146.

¹⁸ Securities Exchange Act Rel. No. 41210 (Mar. 24, 1999), 64 Fed. Reg. 15857 (Apr. 1, 1999).

¹⁹ *Id.* at 15858.

²⁰ *Id.* at 15863.

The functional test we advocate for is also consistent with the view of “exchange” reflected in the Commission’s own regulation. Rule 3b-16 again links the meaning of “exchange” to the core function of “[b]ring[ing] together the orders for securities of multiple buyers and sellers.”²¹ In promulgating the rule, the Commission emphasized that Rule 3b-16 is “descriptive of those activities [it] considers to be the activities of a ‘market’ where buyers and sellers meet.”²² As importantly, the rule excludes from its scope several functions that are adjacent to, but not a part of, the function of an exchange. For instance, a product that simply “[r]outes orders to a national securities exchange” does not perform an exchange function.²³

Adopting a functional understanding of “exchange” and “facility” is particularly important today, when the Commission faces competing requests about how to apply decades-old statutory terms to new settings and rapidly developing technologies. In evaluating those requests, the Commission’s north star should be the clear metes and bounds of its authority. As an administrative agency, the SEC is a “creature[] of statute” and thus “possess[es] only the authority that Congress has provided.”²⁴ Moreover, particularly in the wake of the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, the Commission’s responsibility to arrive at the *best* interpretation of the Exchange Act is heightened.²⁵

Contrary to what the Commission has at times suggested, the best understanding of “facility” is not a “very broad[]” one, but rather one that is tailored to the functional limits set out in the Exchange Act.²⁶ Those are the limits a court would adhere to in interpreting the Exchange Act, and any Commission understanding of “facility” that is broader than the statute would therefore be invalidated after *Loper Bright*. To that end, Commissioner Peirce has previously highlighted the need for the Commission to focus its regulatory authority on “the key *functions* that make an exchange an exchange.”²⁷ The Commission should indeed adopt that approach when considering whether any given technology is a facility of any exchange.

B. Applying a Functional Understanding of “Facility” Would Ensure Technology And Developers Are Not Improperly Regulated as an Exchange

An overly broad reading of the term “facility” would lead the Commission to exceed its statutory authority and stifle promising avenues for DeFi technology. We are entering an era where decentralized, intermediary-less technology may increasingly be connected to traditional exchanges. We have already seen the announcement of partnerships between national securities

²¹ 17 C.F.R. § 240.3b-16(a)(1).

²² *Regulation of Exchanges and Alternative Trading Systems*, 63 Fed. Reg. 70844, 70849 (Dec. 22, 1998).

²³ 17 C.F.R. § 240.3b-16(b)(1).

²⁴ *National Fed’n of Indep. Bus. v. Department of Lab.*, 595 U.S. 109, 117 (2022) (per curiam).

²⁵ 603 U.S. 369, 412-13 (2024) (courts do not provide deference in assessing whether an agency “acted within its statutory authority”).

²⁶ Securities Exchange Act Rel. No. 90209 (Oct. 15, 2020), 85 Fed. Reg. 67044, 67048 (Oct. 21, 2020).

²⁷ Peirce, *Statement on Wireless Order*, *supra* (emphasis added).

exchanges and digital asset exchanges.²⁸ As national securities exchanges start to engage with market participants in the broader digital asset ecosystem—particularly those that are centralized, able to enter contractual relationships, and have control over their software—the Commission should be careful not to paint with too broad a brush. However the Commission chooses to address the interactions between this first wave of centralized crypto market participants and national securities exchanges, it should not adopt an interpretation of the term “facility” that would constrain DeFi technology moving forward.

To that end, it is easy to envision any number of scenarios in which DeFi technology would interact with exchanges in a context that makes clear that neither the technology nor its developers are performing an exchange function. One example would be if a national securities exchange sought to source liquidity from an AMM, DEX or other protocol comprised entirely of self-executing smart contracts. Such a connection is precisely the kind of development the Commission should encourage, as it would open up new avenues for providing market liquidity and thereby further the Commission’s goal of facilitating capital formation. But irrespective of *how* that connection is accomplished, it should be clear that the smart contracts that comprise the AMM would not qualify as a “facility” of an exchange under those circumstances. That conclusion follows from the distinct functional role that AMMs could play. They could provide liquidity *to* an exchange, as distinct from the order-matching function that an exchange performs—and that a facility of the exchange must facilitate. In other words, AMMs would be in a different functional lane from an exchange, and they therefore cannot be regulated as a “facility” of an exchange.

The AMM example illustrates how embracing a functional test will make it easier for the SEC to resolve what might otherwise seem like thorny interpretive issues. Undoubtedly, if and when AMMs comprised of self-executing smart contracts and other DeFi systems connect to national securities exchanges, there will be novel technical questions about the nature of those connections. But whether DeFi technology and developers are regulated as part of an exchange should not hinge on the answer to those questions. Just as an organization that simply “[r]outes orders to a national securities exchange” does not qualify as a facility of an exchange, regardless of the means by which the orders are routed, so too an AMM comprised of smart contracts should not be regulated as part of an exchange regardless of the mechanics by which it interacts with an exchange to provide liquidity.²⁹ Neither software developers that create systems that allow third parties to provide liquidity to the exchange nor the software itself are performing a function subject to regulation as an exchange.

If the Commission nonetheless sought to subject DeFi technology to regulation as part of an exchange, the incentive would be to develop technology that can work around arbitrary

²⁸ For example, Payward, Inc., the entity behind the Kraken Digital Asset Exchange, announced a partnership with the National Association of Securities Dealers Automated Quotations (“Nasdaq”) to “build an equities transformation gateway that connects tokenized equity capital markets with decentralized blockchain networks, combining Nasdaq’s regulated market infrastructure with Kraken’s xStocks framework to enable tokenized equities to move fluidly between permissioned institutional markets and permissionless DeFi ecosystems.” Kraken Blog, *Payward partners with Nasdaq to develop xStocks-powered gateway connecting permissioned and permissionless tokenized equities markets* (Mar. 9, 2026), <https://blog.kraken.com/news/payward-partners-with-nasdaq>.

²⁹ 17 C.F.R. § 240.3b-16(b)(1).

regulatory lines, including moving these markets outside of the U.S., rather than to develop technology that will best serve securities markets and investors.

To be sure, there are additional reasons that disintermediated technology will not count as a “facility” in a given case. For instance, self-custodial wallets are neither “service[s]” nor “property” of an exchange, as they are fully controlled by the users who own them, and the exchange has no right over them.³⁰ Similarly, self-executing smart contracts, such as those that make up AMMs, liquidity pools, and DEX aggregators, are also neither “service[s]” nor “property” of an exchange.³¹ They are software, and in many instances they are not controlled by a central entity or person and operate autonomously.

To the extent recent Commission decisions regarding the meaning of “facility” could be read to support a different regulatory path than what we have outlined here, the reasoning from those decisions is unlikely to apply to DeFi technology because the decisions relied on a degree of affiliation between an exchange and a facility that generally will not be present for technology like an AMM comprised of self-executing smart contracts. For instance, in a 2024 decision rejecting a proposed rule for an order and execution management systems (OEMS) owned by Cboe Exchange, Inc., the Commission stated that “an OEMS *owned or operated by* a national securities exchange or its affiliate is a facility of an exchange” if it allows “users to enter or route orders to the exchange for execution or receive market data from the exchange.”³² And that decision, in turn, relied on the D.C. Circuit’s 2022 decision in *Intercontinental Exchange, Inc. v. SEC*, where the court found that two wireless services were a facility of five national securities exchanges, in part, because they were offered by a company that was “an affiliate of the Exchanges.”³³

The kind of corporate ownership or affiliation the Commission has at times found significant in its assessment of the meaning of “facility” simply does not map onto DeFi technology. Rather, DeFi technology is decentralized, autonomous, and permissionless, built on smart contracts without human discretion, so by nature it cannot have the kinds of affiliation that have caused the Commission concern. At most, an exchange might *use* such technology similar to how it uses any number of off-the-shelf software programs. But the use of such programs does not render the software a facility subject to regulation as an exchange.

Stepping back, if the Commission focuses on the function of any new technology in relation to an exchange, it will avoid overregulation of DeFi. Although it is hard to predict today which DEXs, protocols, or other technologies will be relied upon by or connected to national security exchanges, the functional approach we have outlined would yield predictability—for developers and exchanges alike—because it would be easier to determine from the outset whether the technology is at risk of being classified as a facility. We respectfully request that the Commission apply the term “facility” with these considerations in mind.

³⁰ See 15 U.S.C. § 78c(a)(2).

³¹ See *id.*

³² Securities Exchange Act Rel. No. 101491 (Oct. 31, 2024), 89 Fed. Reg. 88080 (Nov. 6, 2024) (emphasis added).

³³ 23 F.4th 1013, 1015 1023 (2022).

II. The Commission Should Avoid Reading “Group of Persons” Broadly in Defining an “Exchange”

Question 16 seeks information on how the Commission can “protect the ability of individuals to develop and deploy software and transact directly (or indirectly through autonomous software intermediation) with other persons without unwarranted regulatory barriers.”³⁴ One principal way to avoid that result is to clarify that the Commission will not adopt an overbroad reading of another key term in the Exchange Act: “group of persons,” which is used in defining “exchange.”

As noted above, an “exchange” is defined by reference to the functions it performs. But it is also defined by *who* performs those functions. Specifically, an exchange is “any organization, association, or group persons”—regardless of incorporation status—that “constitutes, maintains, or provides a market place or facilities” that perform the functions of an exchange.³⁵ A “group of persons” must therefore do two things to qualify as an exchange: First, it must perform the functions of the exchange—i.e., the “constitut[ing], maintain[ing], or provid[ing]” of the market for “bringing together purchasers and sellers of securities.”³⁶ Second, there must be some unity of purpose, meaning some intention to “act[] in concert” in carrying out those functions.³⁷

Each aspect of this definition is necessary before the Commission may regulate a “group of persons” as an exchange. To take a straightforward example, if an organization operating an exchange contracts with an in-house caterer, that caterer does not become subject to the Commission’s regulations merely because it acts in concert with an exchange; rather, because the caterer does not perform any of the functions of the exchange, it is outside the purview of the Exchange Act. Similarly, a software provider—say, of a word processor—cannot be regulated as an exchange just because an exchange has chosen to purchase the software. This is true even though the software might well be important to carrying out the functions of the exchange; in that scenario, it would be clear that there is no intention for the software provider and the exchange to act *together* to maintain a securities market, and the Commission therefore could not treat the software provider as part of any salient “group of persons” under the statute.

Consistent with this view, the Commission wisely abandoned its proposed amendments to the definition of “exchange” that would have expanded the meaning of “group of persons”

³⁴ Peirce, *RFI*, *supra*.

³⁵ 15 U.S.C. § 78c(a)(1).

³⁶ *Id.*

³⁷ *Intercontinental Exch., Inc. v. SEC (“ICE”)*, 23 F.4th 1013, 1024 (D.C. Cir. 2022).

beyond that term’s plain meaning under the Exchange Act.³⁸ As DEF explained in a June 12, 2023 comment letter, the proposed rule wrongly suggested that persons who act independently, without exercising control over exchange functions or facilities, might still be regulated as an exchange if they have an “informal” agreement with respect to any exchange function.³⁹ For instance, the Commission noted that a software developer, who writes and publishes code that is ultimately used by an exchange, could be included within the definition of that exchange simply for receiving compensation for the code in an arm’s length transaction.⁴⁰ But a developer in those circumstances would fail both parts of the “group of persons test”: the developer would lack any of the control needed to constitute, maintain, or provide a securities market, and there would be no unity of purpose between the developer and the exchange in performing those functions. Rather, all of the control and intent would reside with the exchange itself, which would of course remain subject to regulation; there would therefore be no reason to broaden the regulatory lens to sweep in a developer who, having provided the relevant code, has no ongoing relationship with the exchange.

A further reason not to broaden the reach of “group of persons” is that DeFi software developers—let alone the software or source code they deploy—would not make sense as objects of exchange regulations. Exchanges are subject to burdensome requirements for good reason—they are providing a national marketplace for purchasers and sellers of securities. An exchange is required to regulate its market and member firms (broker-dealers), including implementing surveillance and compliance programs, developing listing standards, and disciplining members for violations. DeFi software itself and software developers are not situated to perform these duties. Nor do many of these obligations make sense in the context of public blockchains, where transaction information is transparent and auditable in real time. The Commission should make clear that it will interpret “group of persons” consistent with the principles above and that these principles will apply to (and appropriately limit) any effort to subject unaffiliated software developers to regulation as an exchange on the theory that they constitute a “groups of persons” under the Exchange Act. In particular, drawing a clear line between exchange functions and non-exchange functions would ensure that developers working on products that fall outside of the core exchange functions are not at risk of being regulated as an exchange. Similarly, the Commission should clarify that deploying open-source software that enables access to decentralized protocols will not, without more, trigger regulation as an exchange.

³⁸ See Letter from Miller Whitehouse-Levin, CEO, DEF, to Vanessa A. Countryman, Secretary of the SEC (June 12, 2023), *available at* https://www.defieducationfund.org/uploads/pdf-imports/84ba66_f997b07bbb6d43b8a3b6c0626f57cdf3.pdf; Supplemental Information and Reopening of Comment Period for Amendments Regarding the Definition of “Exchange”, 88 Fed. Reg. 29448, 29454 (May 5, 2023) (“Reopening Release”). Notably, non-crypto market participants also objected to the proposal, which would have expanded the meaning of “group of persons.” See *e.g.*, Letter from Douglas Friedman, General Counsel, Tradeweb, to Vanessa A. Countryman, Secretary of the SEC (June 13, 2023), *available at* <https://www.sec.gov/comments/s7-07-23/s70723-204359-411122.pdf>; Letter from Scott Pintoff, General Counsel, MarketAxess, to Vanessa A. Countryman, Secretary of the SEC (April 18, 2022), *available at* <https://www.sec.gov/comments/s7-02-22/s70222-20123863-280036.pdf>.

³⁹ See Reopening Release at 29454.

⁴⁰ See *id.* at 29454 n.78.



The D.C. Circuit has rightly warned that “vigilance is necessary to ensure the term [‘group of persons’] is not stretched too far.”⁴¹ That need for vigilance is heightened in light of the uncertainty software developers face.

We greatly appreciate the opportunity to provide comments on these important matters, and we welcome engagement with the Commission on these issues.

Respectfully submitted,

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⁴¹ *ICE*, 2 F.4th at 1024.