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Supreme Court agrees to hear arguments in birthright citizenship challenge

DECEMBER 5, 2025 · 2:55 PM ET


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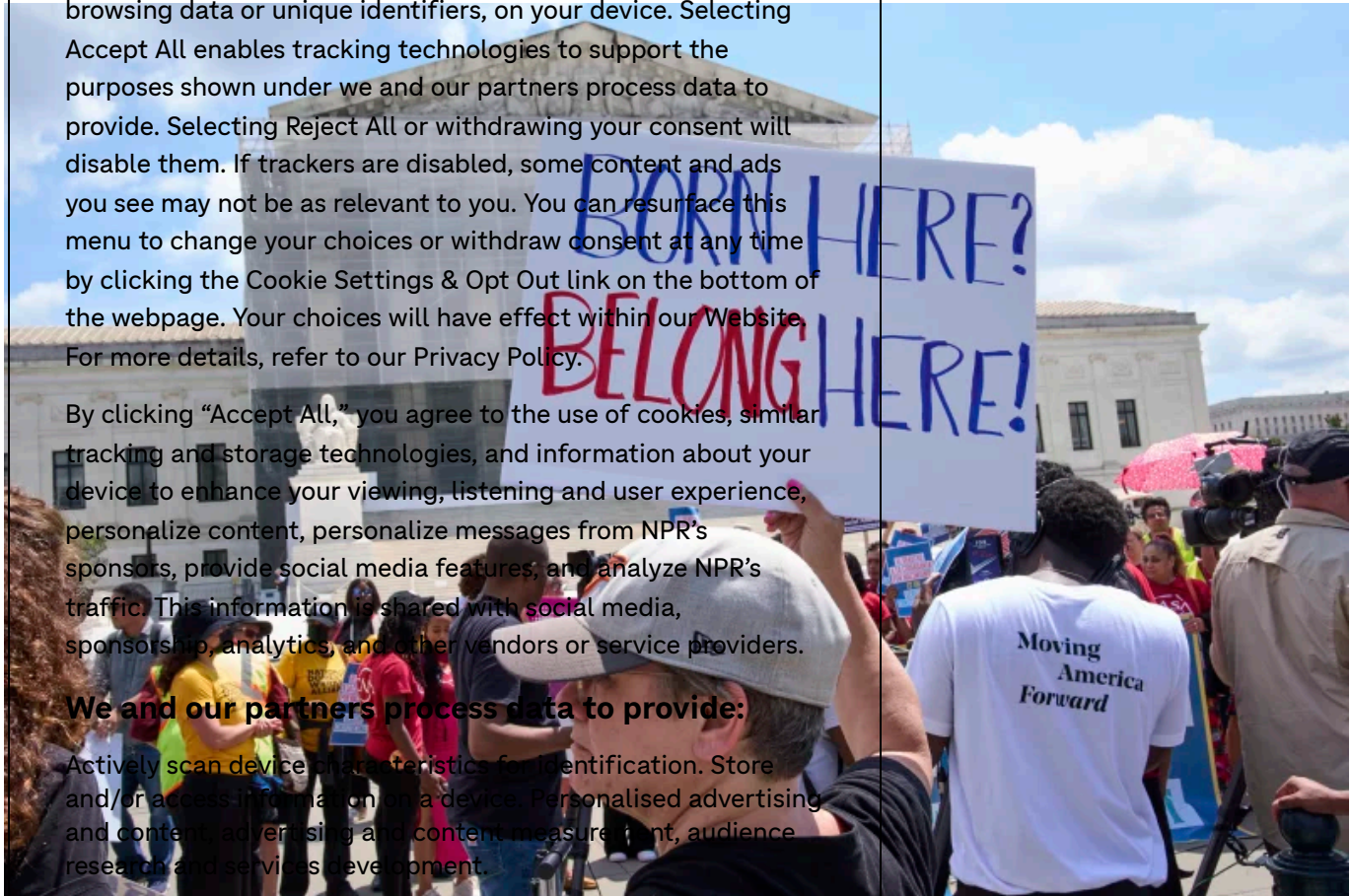
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Jenny Harris, of Baltimore, protests in support of birthright citizenship and the immigrant community, May 15, 2025, outside of the Supreme Court in Washington.

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The Supreme Court on Friday agreed to take up one of President Trump's most contentious policies by reviewing the American legal principle of "birthright

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citizenship," potentially upending a 127-year-old understanding of who gets to be a U.S. citizen.

The Trump administration argues that citizenship has been too freely granted to the offspring of non-citizens. On his first day back in office, Trump signed an executive order withholding citizenship from children born to non-citizens "unlawfully present" in the U.S., or non-citizens in the country on a temporary basis, such as tourists. The order would apply only to people born 30 days after the order was signed, on January 20, 2025.

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Four federal courts and three state courts have blocked implementation of the executive order. Courts cite the 14th amendment, which was passed after the Civil

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In one of those cases, the Supreme Court earlier this year handed down an important ruling limiting the ability of lower courts to issue universal injunctions. But it did not rule on the constitutionality of Trump's executive order, or the validity of birthright citizenship in these cases.

Lawyers for the administration say parents in the country temporarily are not "subject to the jurisdiction" of the U.S., and that broad "birthright citizenship" is out of step with what's done in other countries. The administration also says current practices allow for what they deride as "birth tourism," in which parents

without meaningful ties to the U.S. claim citizenship for their children by giving birth here. This practice is not tracked in government statistics, but the Center for Immigration Studies estimates there are more than 20,000 such cases per year.

Despite the administration's repeated losses in lower courts on this issue, the high court will now hear its arguments this spring.

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"It does say something about how important this issue is to the President," says César Cuahtemoc García Hernández, a law professor at Ohio State who specializes in immigration law. He says the Trump administration is playing "the long game." This information is shared with social media, sponsorship, analytics, and other vendors or service providers.

"Those skirmishes in the lower courts are skirmishes that they are willing to lose because they have their eyes set on the main prize, and that's a favorable audience in the Supreme Court," he says.

But García Hernández says that doesn't mean the Supreme Court will necessarily agree with the administration's position.

"Birthright citizenship based on the location of birth is common within our neighbors in North America and throughout the Western Hemisphere, but highly unusual in other parts of the world," he says. "But what should dictate the way in which citizenship law evolves moving forward is the text of the 14th Amendment, and how that applies in the modern United States."

Since 1898, the governing case has been United States v. Wong Kim Ark, which affirmed the citizenship of a man born to Chinese citizens in San Francisco.

That case has long been seen as establishing an unambiguous citizenship right for children of foreign nationals, but it has also long been criticized by some for allowing foreign-born mothers to exploit the right by visiting the U.S. expressly for the purpose of giving birth here. As President Trump began his second term in January, he made curbing that phenomenon a central part of his larger immigration enforcement plans.

By agreeing to take the case this term, the Supreme Court may end up highlighting the issue ahead of the 2026 mid-term elections.

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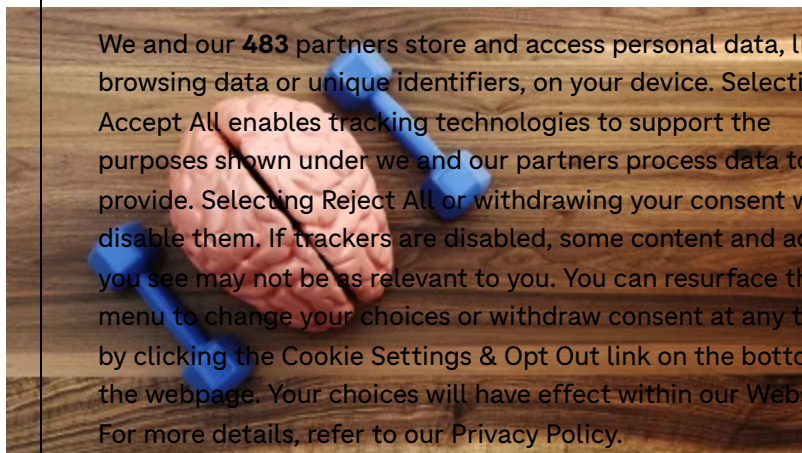
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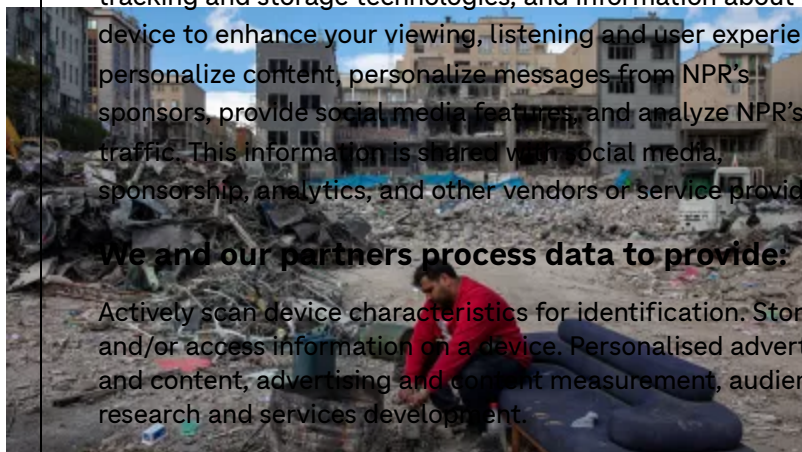
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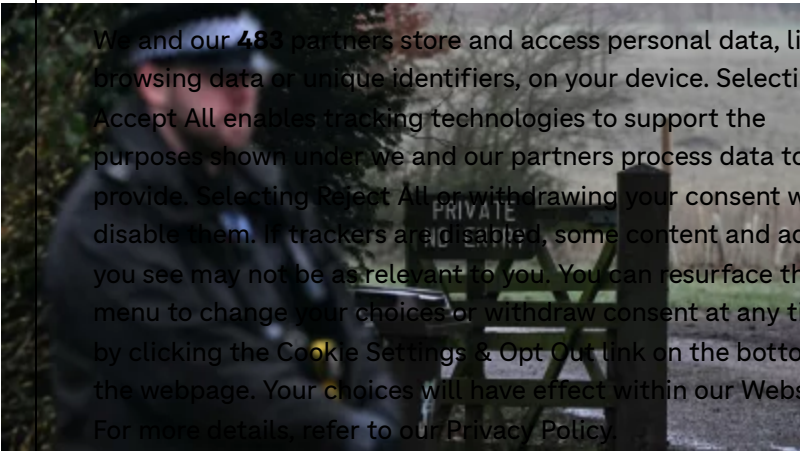
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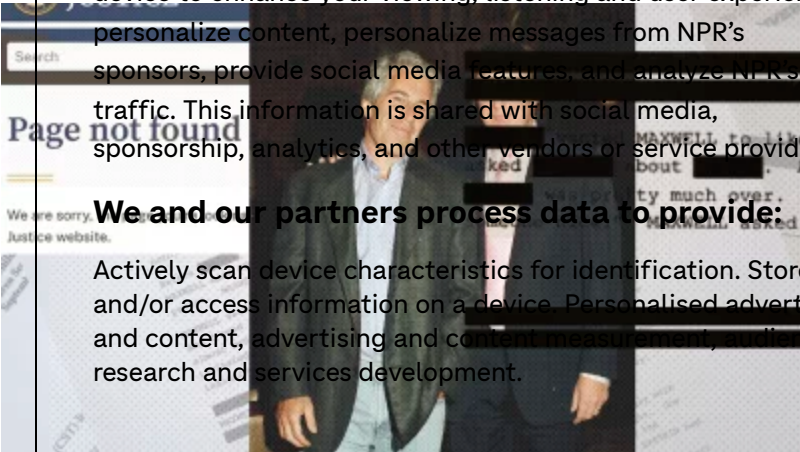
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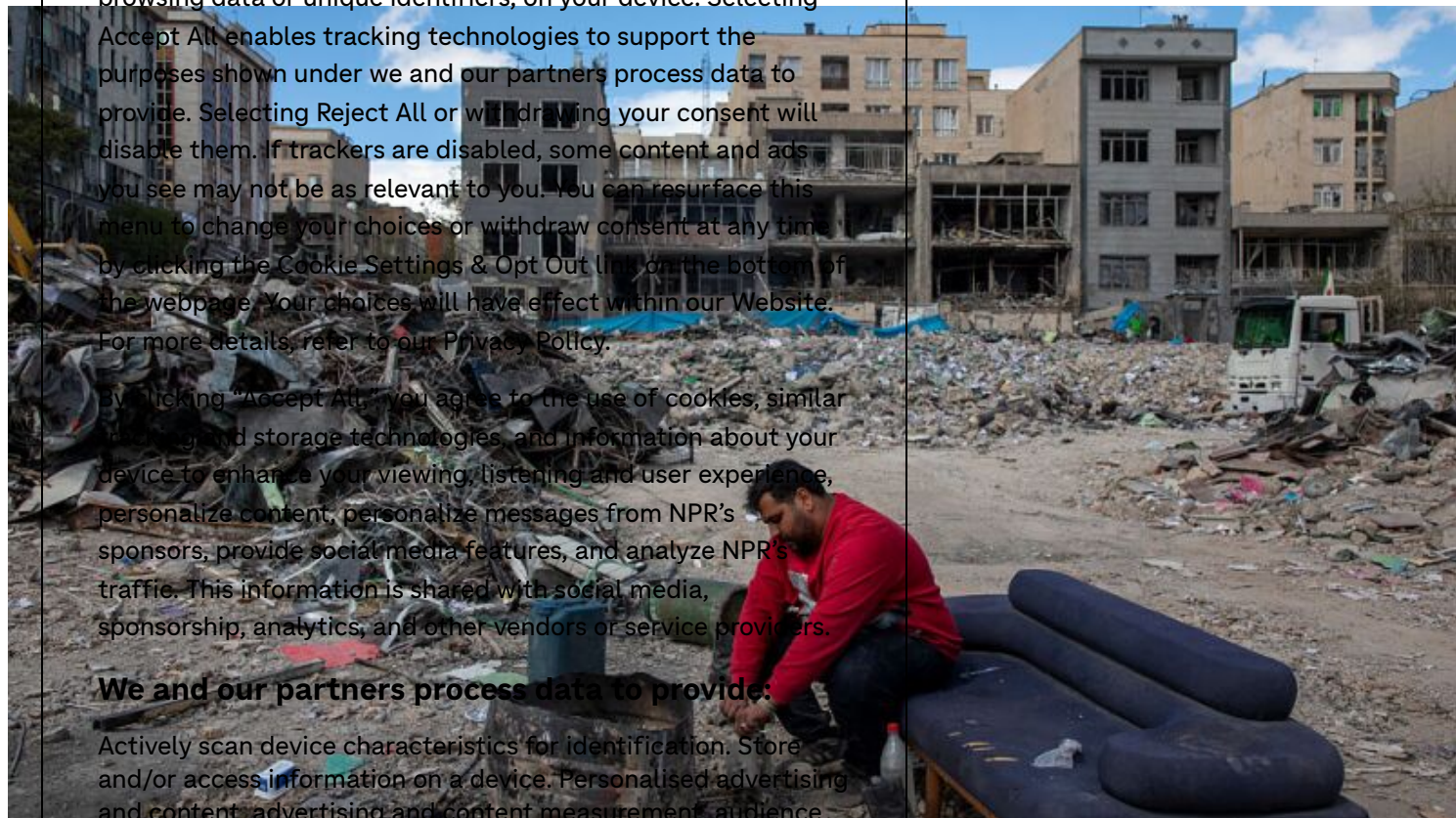
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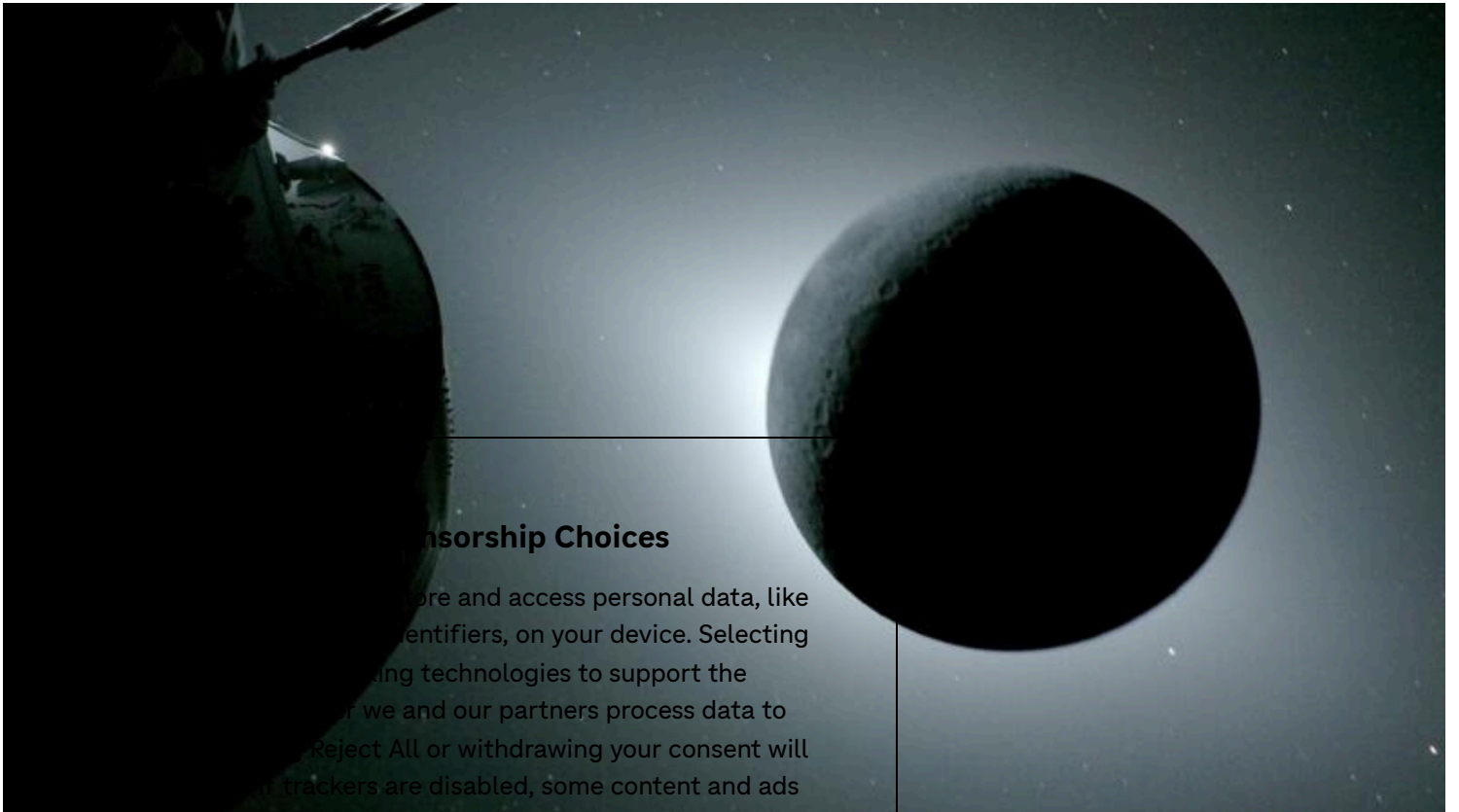
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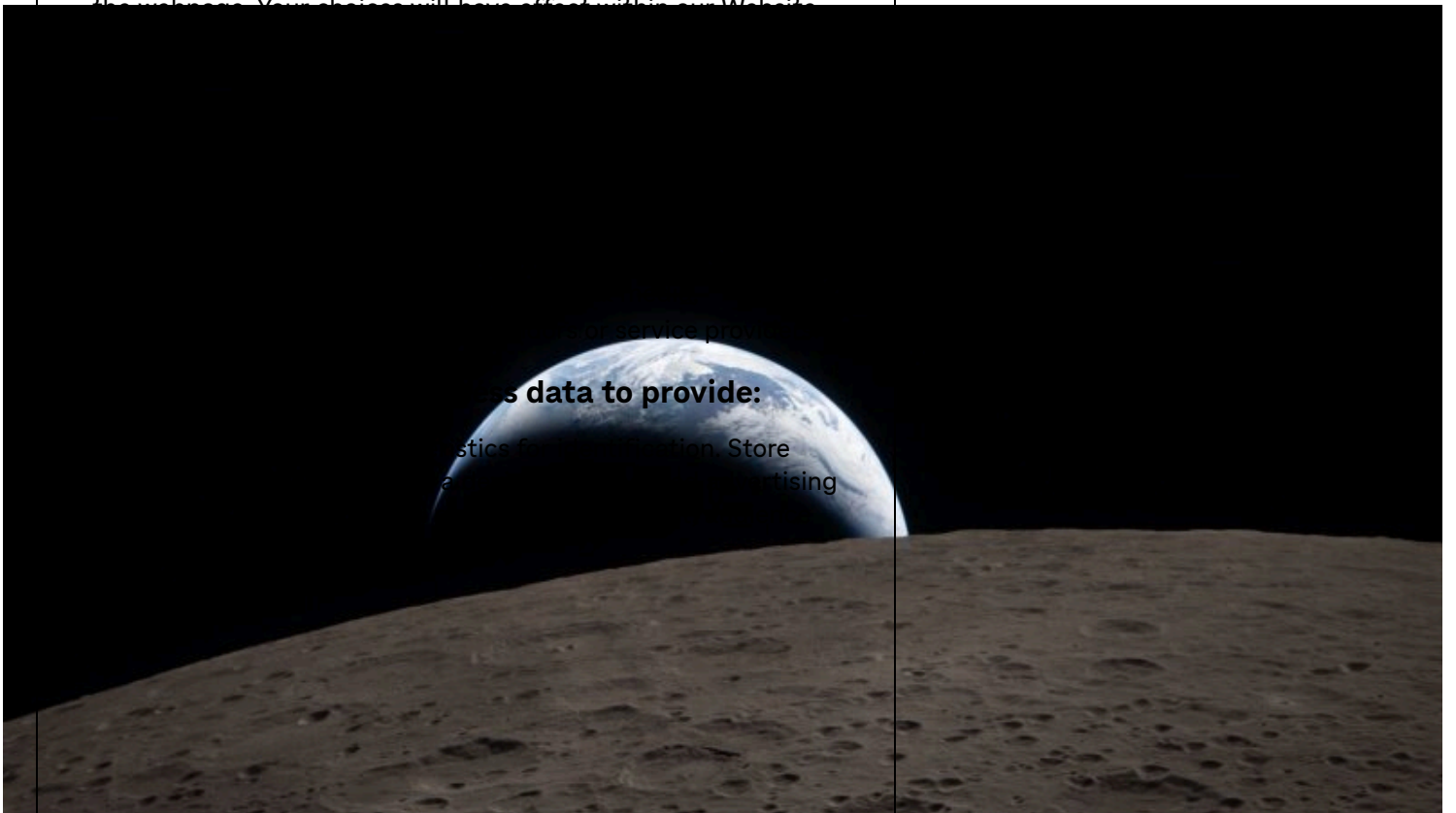
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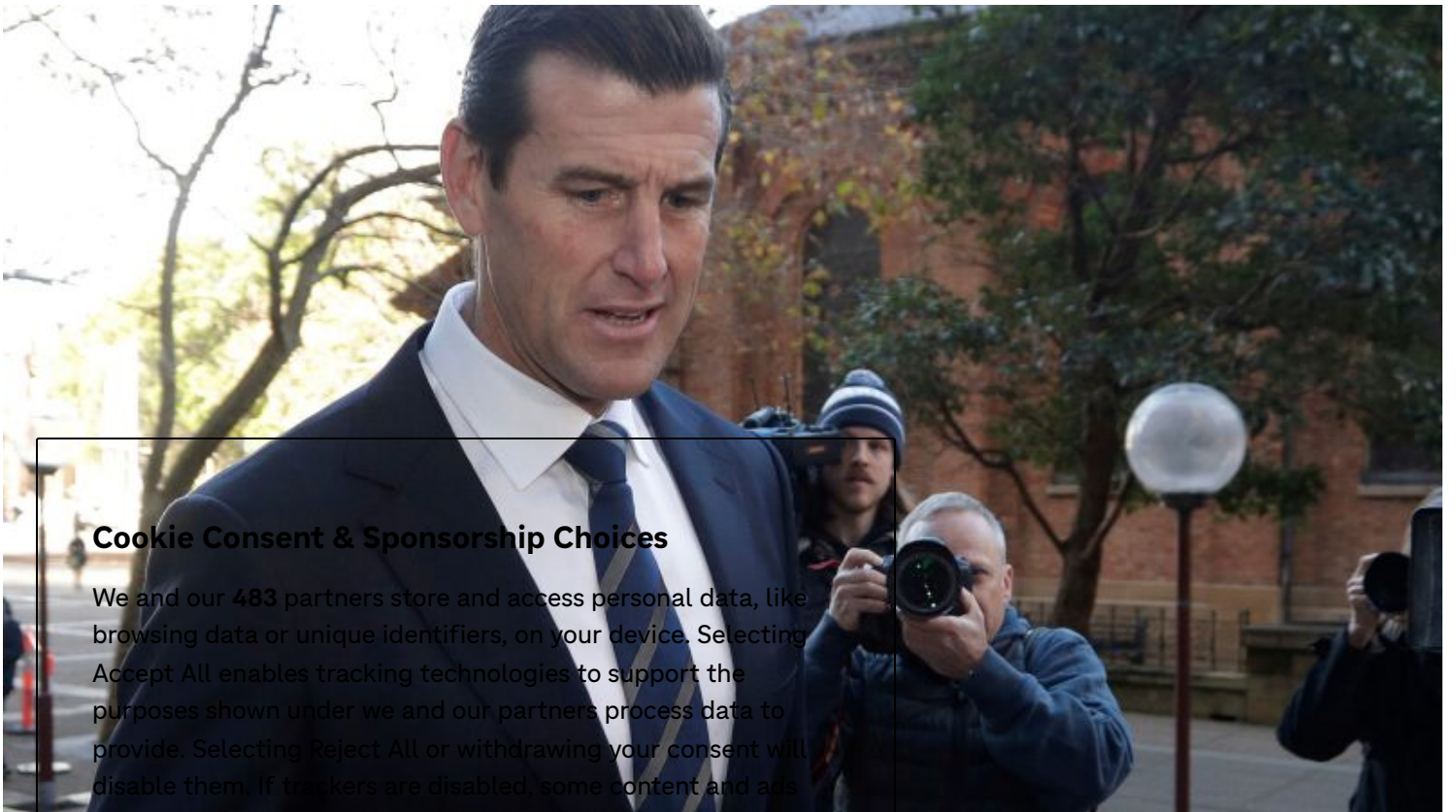
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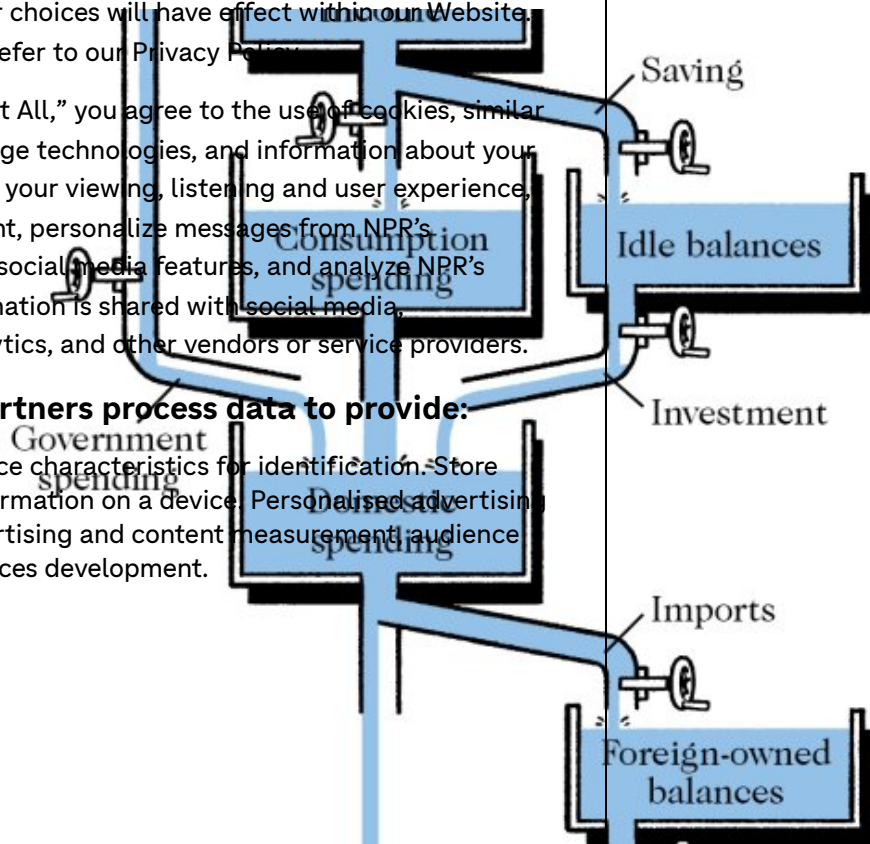
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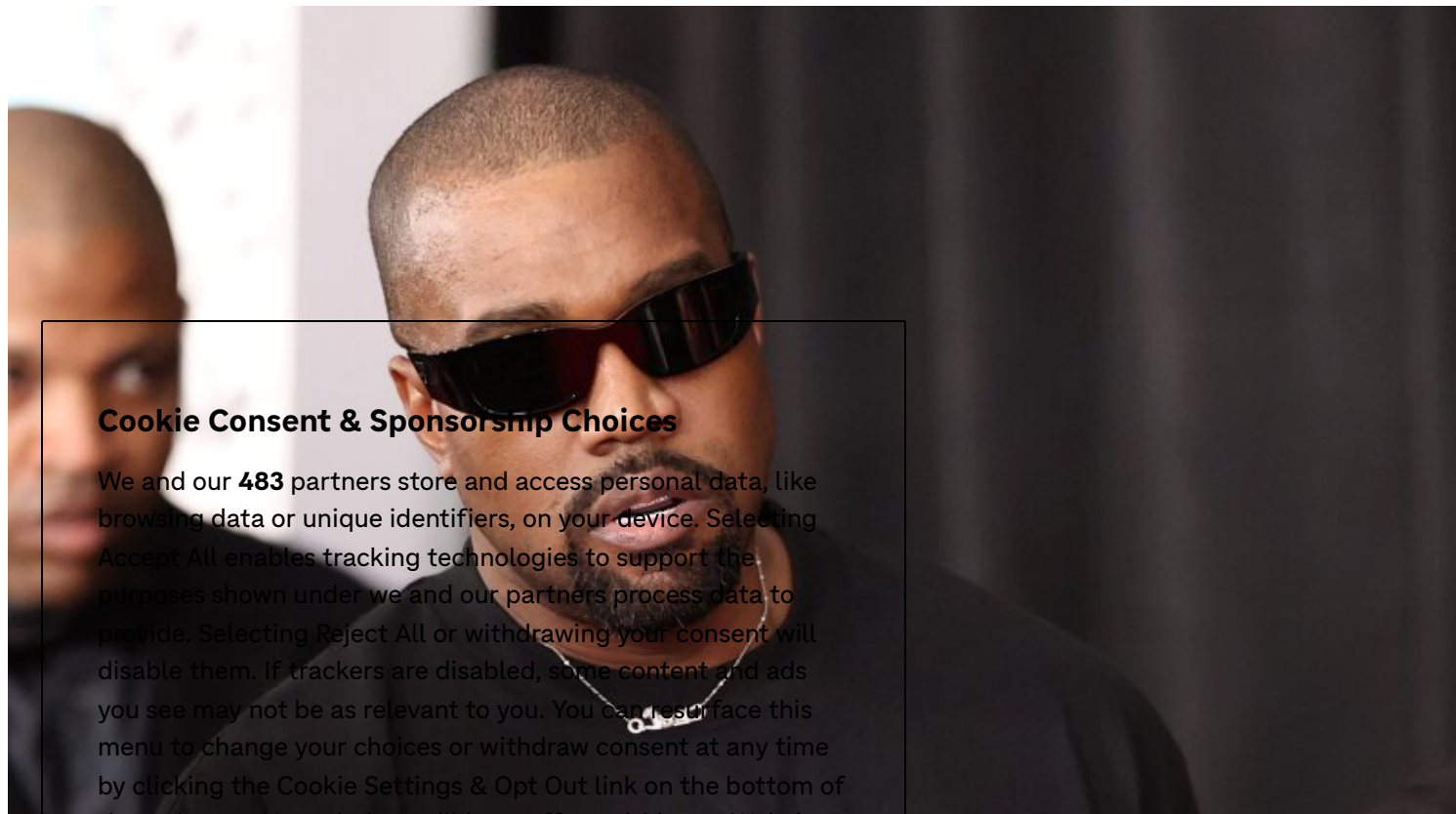
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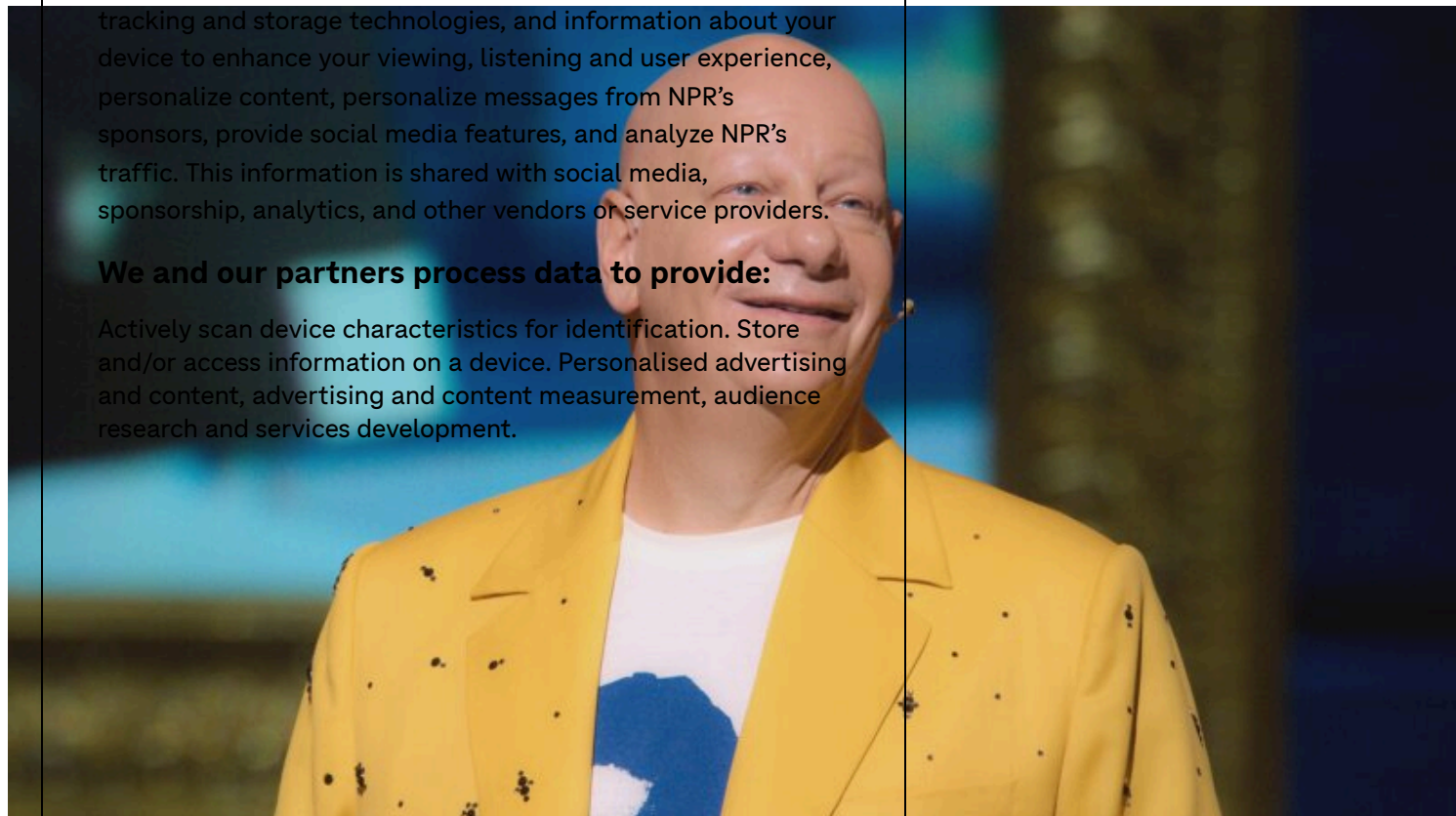
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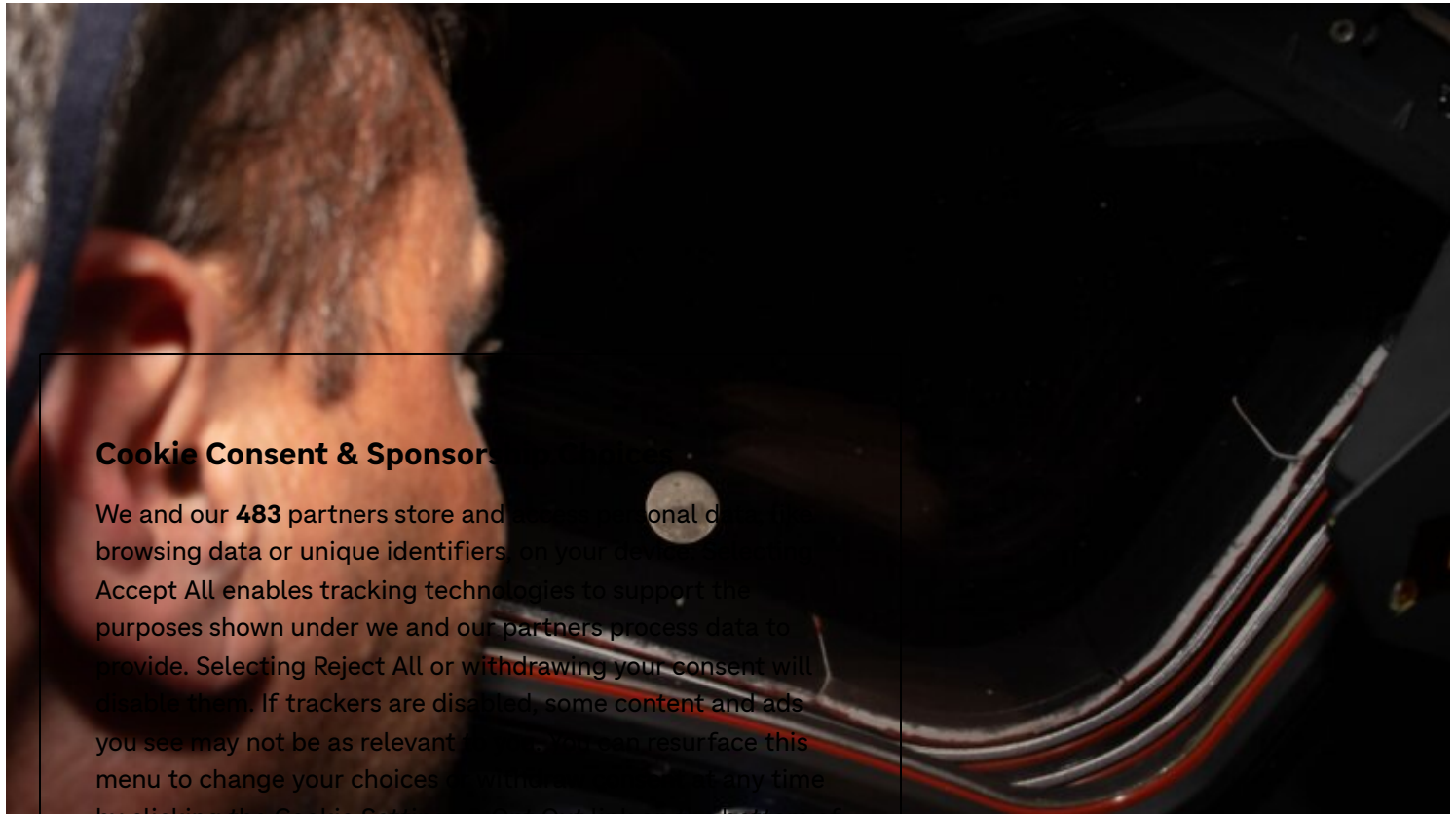
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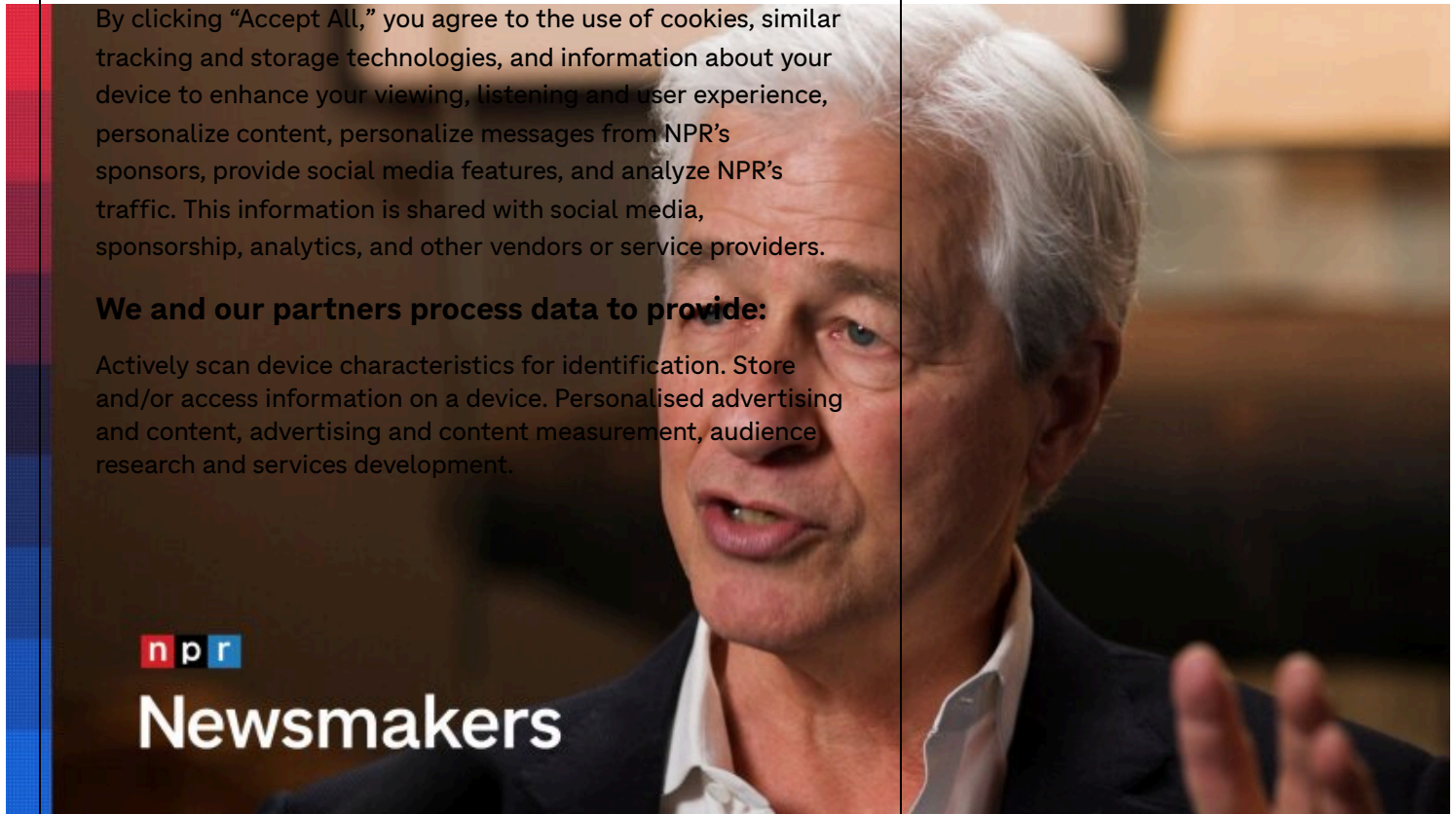
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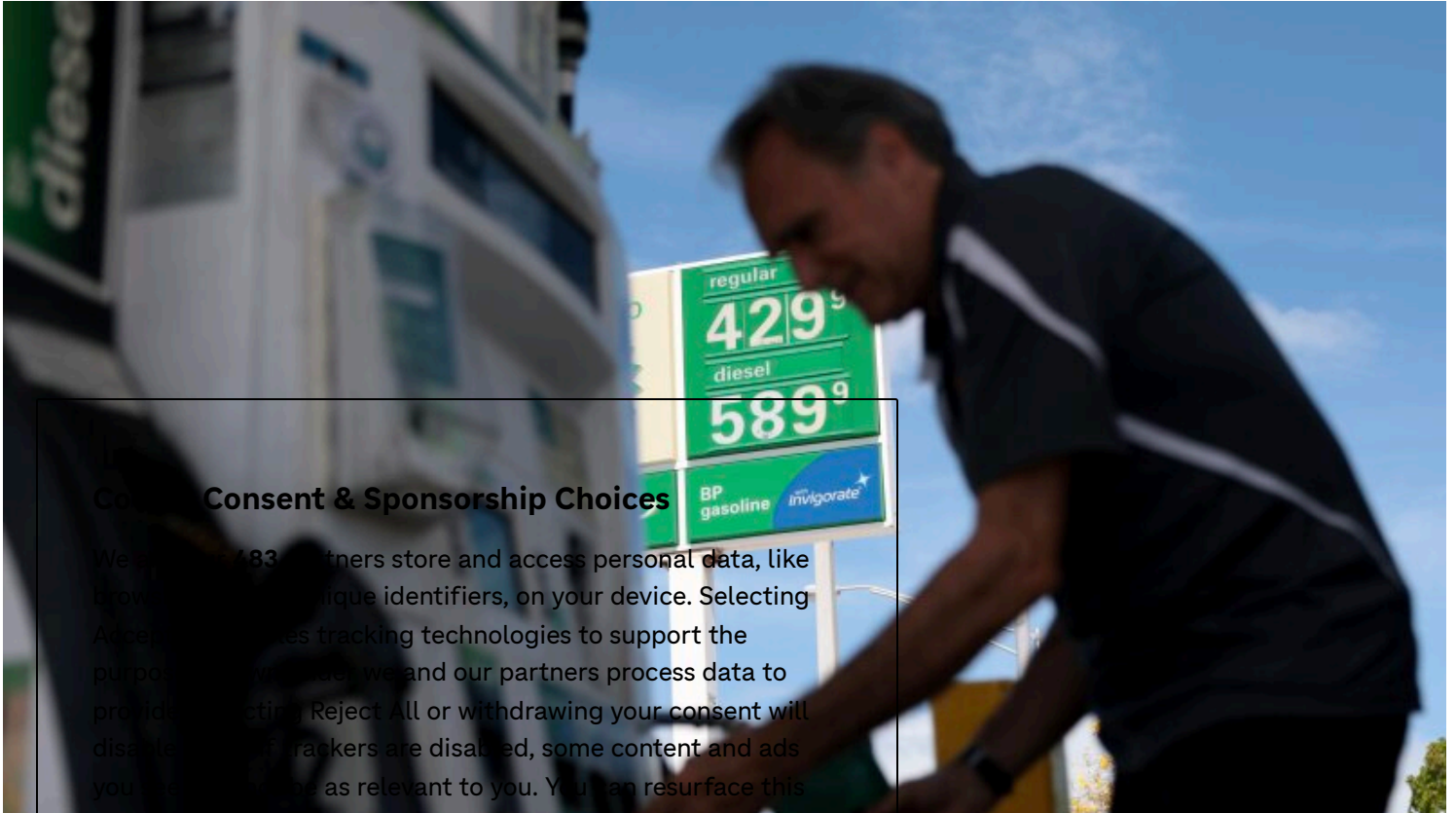
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