IN THE
SUPREME COURT
OF THE UNITED STATES

No. 23-386
OCTOBER TERM 2023

HEADROOM, INC.,

Petitioner,

v.

EDWIN SINCLAIR,
ATTORNEY GENERAL FOR THE STATE OF MIDLAND,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
For the Thirteenth Circuit

BRIEF FOR TEAM 26 - RESPONDENT

COUNSEL OF RECORD

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QUESTIONS PRESENTED

I. Under the First Amendment's Free Speech Clause, (1) do major social media platforms possess the traditional factors used by courts to determine an entity is a common carrier, and (2) do the State of Midland's Speech Protection and Anti-Muzzling (SPAAM) Act's disclosure requirements request "purely factual and uncontroversial information" per *Zauderer v. Disciplinary Counsel of the Supreme Court of Ohio*?

II. Under the First Amendment, do State requirements that safeguard citizens' non-discriminatory access to social media platforms violate the Free Speech Clause?

STATEMENT OF THE CASE

The Petitioner, Headroom, is one of the country's most popular social media companies with over 75 million monthly users and a "dominant market share in Midland and across the nation." R. at 2-3, 18. The Petitioner operates as a virtual reality ("VR") environment, unlike any other social media companies. *Id*. at 3. In this VR environment, users can monetize their posts and create income. *Id.* As a result, the Petitioner has grown into a "hub of business in cyber space" and many users depend on the Petitioner to supports their businesses and livelihoods. *Id*.

The Petitioner's mission is to "provide a safe space for everyone to express themselves to the world" *Id*. at 2. Like virtually any modern business, the Petitioner has policies that limit the actions a user can take. *Id*. at 3. Before joining the platform, every single user must agree to the exact same Community Standards. *Id*. These standards provide that "all are respected and welcome." *Id*. at 2. If a user violates these standards, for instance, by harassing other users, they face a range of penalties, including pinning warnings to posts, deplatforming, or an outright ban. *Id*. at 4. As the Respondent recently became aware, the Petitioner has been using these standards to justify their ongoing practice of censorship and the suppression of free speech. *Id*.

In 2022, the Petitioner was accused of viewpoint-based discrimination by some of their "prominent users[.]" *Id*. Midland's governor called for a special legislative session in response to the allegations, where multiple users testified to being censored by the Petitioner. *Id*. In several situations where users acted legally yet expressed controversial opinions, the Petitioner was accused of deprioritizing content, adding unnecessary warnings to posts, as well as banning accounts. *Id*. at 4-5. In direct response to the testimony, Midland took action to protect citizens' free speech rights against the dangers of "virtual dictators." *Id*. at 5.

The Midland Legislature then passed the SPAAM Act ("SPAAM"), vesting enforcement power in Midland's Attorney General. *Id*. at 6-7. The intent behind SPAAM was to "restore the voice of the people" and provide "a system of oversight that guarantees the protection of civil liberties." *Id*. at 5. SPAAM applies to any social media platform, a term which the Act defines, and imposes two main requirements. *Id*. at 6. First, under § 528.491(b), SPAAM limits social media companies' (including the Petitioners') ability to censor viewpoints. *Id*. Actions such as blocking, deplatforming, or shadow banning are no longer available to these companies, except for "obscene, pornographic or otherwise illegal or patently offensive" content. *Id*.

While the first requirement ensures that users will not be censored for sharing their views, the second helps to make sure this occurs in practice. *Id*. SPAAM's second requirement, under § 528.491(c), imposes disclosure requirements on social media platforms such as the Petitioner, for anytime their community standards are enforced. *Id*. Explanations must be provided to users which thoroughly explain what standards were violated, how the content violated the standards, and why the platform is taking the specific action. *Id*.

Just one day after SPAAM came into effect, on March 25, 2022, the Petitioner filed a pre-enforcement challenge with the United States District Court for the District of Midland. *Id*. at 7. The Petitioner alleged that its First Amendment rights are violated by the Act's requirements, and sought both a preliminary and permanent injunction. *Id*. The District Court granted the motion for a preliminary injunction, finding that the Act violates the First Amendment, it cannot survive strict scrutiny, and the Petitioner was therefore likely to succeed on the merits. *Id*. at 15. The Respondent appealed, and the decision was reviewed on an abuse of discretion standard by the United States Court of Appeals for the Thirteenth Circuit. *Id*. at 16.

The Court of Appeals disagreed with the lower court on all counts, reversed the decision and vacated the granting of a preliminary injunction. *Id*. at 19. The court found that the First Amendment's protections were not triggered in this case, due to the Petitioner's status as a common carrier. *Id*. at 17. Even if the First Amendment did apply, however, the court found that SPAAM would still be saved under intermediate scrutiny. *Id*. at 19. Finally, the remaining preliminary injunction factors were found to favor the Respondent as well. *Id*. The Petitioner subsequently petitioned this Court for certiorari, and this Court granted the petition. *Id*. at 21.

SUMMARY OF THE ARGUMENT

The Court of Appeals for the Thirteenth Circuit correctly held that social media platforms are common carriers and considered the three most relevant factors used by courts when assessing common carrier status. Each of these three factors was satisfied by the Petitioner. The Petitioner is of public importance, has substantial market power, and holds itself out as open to the public. As a result, the Petitioner was correctly found to be a common carrier. As a common carrier, the Petitioner enjoys less protection under the First Amendment.

Moreover, the Thirteenth Circuit also correctly held that the SPAAM Act's disclosure requirements are subject to the standard set out by this Court in *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626 (1985). This is because the disclosure requirements are reasonably related to the State's interest in preventing consumer deception, and they do not impermissibly burden the Petitioners' protected speech.

Further, State requirements that safeguard citizens' nondiscriminatory access to social media platforms do not violate the First Amendment. SPAAM does not encroach on platforms' First Amendment rights. Engaging in censorship is not the same as exercising editorial control. Censorship is not protected speech or expressive conduct under the First Amendment. Even if the First Amendment is implicated, SPAAM survives intermediate scrutiny.

ARGUMENT

I. The Petitioner is a Common Carrier.

It is important that the question of common carrier status is resolved at the outset, because whether an entity is a common carrier will impact its First Amendment rights. The Thirteenth Circuit's decision that the Petitioner is a common carrier should be affirmed. The court correctly recognized that the Petitioner is a common carrier under the First Amendment. The Thirteenth Circuit applied the most relevant and applicable factors in their determination of common carrier status. As a result, the Thirteenth Circuit correctly held the Petitioner is a common carrier for three reasons: (1) the Petitioner is of public importance; (2) the Petitioner possesses substantial market power; and (3) the Petitioner holds themselves out to the public.

Before this Court can answer whether SPAAM violates the Free Speech Clause of the First Amendment, there is a threshold question of whether major social media companies are common carriers. This is because it has long been recognized that common carriers have limited free speech rights under the First Amendment. *See, e.g., U.S. Telecom. Ass'n v. FCC*, 825 F.3d 674, 740 (D.C. Cir. 2016)*; FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 395 (1984); *Denver Area Educ. Telecomm. Consortium v. FCC*, 518 U.S. 727, 739 (1996).

While the exact level of First Amendment protection offered to common carriers has not yet been delineated by this Court, common carriage legislation has been upheld against several constitutional challenges. *See, e.g., Turner Broad. Sys. Inc. v. FCC (*hereafter *"Turner I")*, 512 U.S. 622 (1994)*; Red Lion Broad. Co. v. FCC*, 395 U.S. 367 (1969)*; Chi., Burlington & Quincy R.R. Co. v. Iowa*, 94 U.S. 155 (1876); *W. Union Tel. Co. v. James*, 162 U.S. 650 (1896).

"[N]ot every interference with speech triggers the same degree of scrutiny under the First Amendment[.]" *Turner I*, 512 U.S. at 637. While some mediums of speech are afforded the highest levels of protection, others receive a "less rigorous standard of First Amendment scrutiny[.]" *Id.*

Common carriers are an example of the latter; where an entity is held to be a common carrier, it weighs in favor of a finding that the common carriage legislation being challenged is constitutional. *NetChoice, LLC v.* Paxton, 49 F.4th 439 (5th Cir. 2022); *W. Union Tel. Co. v. Call Publ'g Co.*, 181 U.S. 92 (1901).

Courts consider the following three factors when assessing whether or not an entity is a common carrier: (1) holding oneself out to the public; (2) market power or monopoly status; and (3) public importance. *See, e.g., Munn v. Illinois*, 94 U.S. 113 (1876); *Primrose v. W. Union Tel. Co.*, 154 U.S. 1 (1894); *Flytenow, Inc. v. FAA*, 808 F.3d 882 (D. C. Cir. 2015).

Even in factually-similar cases dealing with legislation regulating major social media platforms as common carriers, courts have used these same factors when determining if platforms are common carriers. *See Paxton*, 49 F.4th at 473-479 (5th Cir. 2022); *NetChoice, LLC v. Attorney General, Florida.,* 34 F.4th 1196, 1220-1222 (11th Cir. 2022). Affirming the decision of the Thirteenth Circuit that the Petitioner is a common carrier is appropriate because the Petitioner: (1) is of public interest; (2) possesses substantial market power; and (3) holds themselves out to the public. R. at 17-18.

A. The Petitioner is of Public Interest.

Historically, challenged common carriage legislation has been upheld on the basis that the common carriers are "affected with a public interest." *Munn*, 94 U.S. at 130. This legislation, although not imposed on non-common carriers, is still constitutional because common carriers are "of public consequence, and affect the community at large." *Id.* at 126. The public importance of these entities, combined with consumers' complete lack of control over them, explains the need for legislative intervention. *Nat'l Ass. of Reg. Util. Comm'rs v. FCC*, 525 F.2d 630, 640 (D. C. Cir. 1976).

Where a private business is not "one in which the public have come to have an interest in[,]" this Court has rejected their designation as a common carrier. *Chas. Wolff Packing Co. v. Ct. of Indus. Rels*., 262 U.S. 522, 536 (1923). Since the 1920s, an entity challenging the validity of their designation as a common carrier would assert that they are "not affected with a public interest[.]" *State of Wash. ex rel. Stimson Lumber Co. v. Kuykendall*, 275 U.S. 207, 210 (1927). Evidently, if one does not believe itself to be a common carrier because they are publicly unimportant, then an entity which is undeniably important to the public ought to be considered a common carrier.

Where the general public has a need for and relies upon a service, State regulation of that service may be needed to prevent abuses of power or extortion. *Munn*, 94 U.S. at 122. As such, public importance was also an important factor when this Court upheld common carriage legislation in Illinois regulating grain elevators as common carriers. *Id.* at 130. There, the grain elevator was used "in a manner to make it of public consequence." *Id.* at 126. And this will be even more so true where that service operates as a monopoly. *Id.* at 127.

Social media platforms like the Petitioner's are clearly "affected with a public interest" in today's world. *Id.* at 130. As the Thirteenth Circuit correctly stated, social media platforms act as "the modern public square." R. at 17 (*quoting Packingham v. North Carolina*, 582 U.S. 98, 107 (2017)). The importance of social media to the general public cannot be understated. The number of users on the social media platforms alone is evidence that they "affect the community at large." *Munn*, 94 U.S. at 126. For example, the Petitioner's platform has over seventy-five million users, and they are "one of the most popular social media companies in America." R. at 2-3. It is also undisputed that the Petitioner's platform operates as "a hub of business in cyber space" as it promotes the businesses of and supports the livelihoods of many users. *Id.* at 3.

This Court has already recognized that social media can provide "legitimate benefit[s by providing] … access to the world of ideas[.]" *Packingham*, 582 U.S. at 108. Hence the Midland legislature's recognition within SPAAM that social media platforms are "the public square of the twenty-first century[.]" R. at 6. This also tracks with this Court's recognition that social media platforms function as "the modern public square" and may resemble "a public forum." *Packingham*, 582 U.S. at 107; *Biden v. Knight First Amend. Inst.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J., concurring). The Court's use of analogies such as public squares or public forums, which are spaces traditionally important to the public, illustrates the importance of social media platforms to the public today.

Like the grain elevators found to be common carriers by this Court in *Munn*, Americans rely on social media platforms, yet have a complete lack of control over them. This very concern drove the Midland legislature to pass SPAAM, as the Speaker of Midland's House of Representatives recognized that "speech is increasingly being centralized in unaccountable companies[.]" R. at 5. Given that the Petitioner is an unaccountable company with substantial market power, its importance to the public must not be undervalued. As modern day public forums, social media platforms like the Petitioner are common carriers

B. The Petitioner Possesses Substantial Market Power.

The monopoly or substantial market power of common carriers in various industries have justified their regulation throughout history. For example, this Court upheld nondiscrimination requirements imposed on a terminal company that controlled every railway bridge which crossed the Mississippi River, because it was "impossible for any railroad company to pass through … without using the facilities entirely controlled by the terminal company." *United States v. Terminal R.R. Ass'n of St. Louis*, 224 U.S. 383, 397 (1912). In addition to their public importance, the grain elevators considered by this Court in *Munn* were also found to be common carriers because they

operated as "a 'virtual' monopoly" and stood "in the very 'gateway of commerce[.]'" 94. U.S. at 132. In the context of cable operators as well, their "bottleneck monopoly" was cited as a justification for their differential treatment. *Turner I*, 512 U.S. at 623-624.

On the other hand, common carriage has also been found "even where nothing approaching monopoly power exists." *Nat'l Ass'n of Regulatory Util. Comm'rs*, 525 F.2d at 641. Substantial market power or monopoly status is thus a factor which *supports* a finding of common carriage, but it is not required. Nevertheless, as Justice Thomas noted in his concurrence in *Biden,* "[t]he analogy to common carriers is even clearer for digital platforms that have dominant market share." 141 S.Ct. at 1224 (Thomas, J., concurring).

Social media platforms like the Petitioner possess substantial market power, and possibly even monopoly status. In the Petitioner's case, they possess "dominant market share in Midland and across the nation" which provides "uninhibited power[.]" R. at 18. With over 75 million monthly users, it is undisputed that the Petitioner is "one of the most popular social media companies in America." *Id.* at 2-3. Further, "unlike other social media companies," the Petitioner's platform operates as a "virtual reality environment[,]" setting it even further apart. *Id.* at 3. The Petitioner is not another copy of a pre-existing platform such as Facebook, and is not in competition with it. The Petitioner dominates the virtual reality environment. *Id.*

Like the grain elevators in *Munn (*or railway bridges, cable operators and railroads) social media platforms like the Petitioner have a dominant market share in their industry. *Id.* at 18. Also like the grain elevators, users depend on the Petitioner's services to "support their businesses and livelihood." *Id.* at 3. Due to the VR nature of the Petitioner's services, there is an absence of any comparable platforms. *Id.* Just as consumers had no choice but to use the railway bridges' services if they wished to cross the Mississippi, individuals wishing to "promote their business and create

new revenue streams" through a VR environment must use the Petitioners' service. *Id.* And as Justice Thomas noted, "in assessing whether a company exercises substantial market power, what matters is whether the alternatives are comparable. For many of today's digital platforms, nothing is." *Biden*, 141 S.Ct. at 1225 (Thomas, J., concurring). In the Petitioner's case, no alternatives compare.

C. The Petitioner Holds Itself Out to the Public.

The most definitive factor in this analysis, which forms the "basic characteristic of common carriage[,] is the requirement to hold oneself out to serve the public indiscriminately." *U.S. Telecom Ass'n v. FCC,* 825 F.3d 674, 740 (D.C. Cir. 2016). This has also been described as "an essential element" of common carrier status. *Nat'l Ass'n of Regulatory Util. Comm'rs*, 525 at 641. Importantly, a common carrier "holding themselves out to the public" has never meant that they "must practically be available to the entire public." *Id*. Even common carriers are free to turn away business where it is "not the type normally accepted" or where the service is only "of possible use to a fraction of the total population." *Id.* Both "common sense as well as case law" support this notion. *Id.*

In *Taxicab*, for example, this Court held that the Plaintiff, a taxicab corporation, was a common carrier, even though it did not serve every single customer. *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 254-255 (1916). This Court correctly recognized that "[n]o carrier services all the public. His customers are limited by place, requirements, ability to pay, and other facts." *Id.* at 255. The fact that a taxi driver may turn away customers, such as those who are unable to pay, does not amount to that driver making "individualized decisions, in particular cases, whether and on what terms to deal[.]" *Semon v. Royal Indem. Co*., 279 F.2d 737, 739-740 (5th Cir. 1960). Only where entities make specific case-by-case decisions about who to serve, do they not hold themselves out to the public. *Id.; Nat'l Ass'n of Regulatory Util. Comm'rs*, 525 F.2d at 641.

Social media platforms like the Petitioner hold themselves out to the public. It is undisputed that Petitioner's mission is to "provide a space for *everyone* to express themselves to the world[.]" R. at 2, emphasis added. Evidently, the Petitioner's Community Standards state "*all* are respected and welcome." *Id.*, emphasis added. While it is true that users must agree to Community Standards before joining a platform, the function of the Community Standards is not to discriminate against users. In fact, the opposite is true. These standards exist for the very purpose of ensuring the platform is a safe space "for everyone to express themselves." *Id.* The standards ensure that individuals wishing to express themselves are not subject to hate speech, violence, bullying, harassment, or worse. *Id.* at 3. By creating a welcoming space for everyone, the Petitioner's Community Standards are evidence that the Petitioner holds themselves out to the public. *Id.* at 2.

Further, the history of common carriage explains why the use of Community Standards is not fatal. As this Court correctly recognized over one hundred years ago in *Taxicab,* "[n]o carrier services all the public[.]" 241 U.S. at 255. Similarly, the Fifth Circuit has recognized that common carriers in telecommunications and transportation industries have historically been allowed to "filter obscene or harassing expression … or disorderly passengers[.]" *Paxton*, 49 F.4th at 474. Like the driver in *Taxicab*, the Petitioner is a common carrier, even though they may not serve *every* single member of the public.

Common carriers' refusal to serve a subset of customers (such as those who present threats or dangers to others) does not make them any less of common carriers. No one would expect that common carriers of any kind, whether social media platforms or railways, should have to host and endure hate speech, violence, or abuse from their patrons. Common carriage has never meant that individuals have a right to use services however "they see fit." R. at 11.

Requiring all patrons to abide by a general set of rules or policies has not historically, and still does not, amount to platforms making "individualized decisions" about who to serve. *FCC v. Midwest Video Corp*., 440 U.S. 689, 701 (1979). The fact that every individual is held to the exact same Community Standards suggests the opposite to be true, because there are no case-by-case decisions to be made. R. at 3. To suggest that an entity is only a common carrier if it accepts every single patron (regardless of whether that patron engages in verbal abuse, for example) is not logical. If that were true, we would have no common carriers.

The judgment of the Court of Appeals for the Thirteenth Circuit should be affirmed. The Petitioner was correctly held to be a common carrier under the First Amendment, because they possess the three factors traditionally used by courts to identify common carriers. As a common carrier, the Petitioner is entitled to less protection under the First Amendment, and this supports the conclusion that SPAAM is constitutionally valid.

II. ***Zauderer v. Disciplinary Counsel of the Supreme Court of Ohio*** **Applies to the SPAAM Act's Disclosure Requirements.**

This Court should find that the *Zauderer* standard applies to sections 528.491(c)(1) and 528.491(c)(2) of SPAAM's disclosure requirements because they are merely an attempt to prevent consumer deception and promote the free flow of information, and they do not impermissibly burden the Petitioners' protected speech. Historically, *Zauderer*'s "less exacting scrutiny standard" governs this Court's review when reviewing disclosure requirements that request "purely factual and uncontroversial information about the terms under which [a commercial entity's] services will be available." *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 249 (2010); *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 651 (1985). Under the *Zauderer* standard, a commercial entity's rights are "adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Zauderer*, 471

U.S. at 651. As such, SPAAM's disclosure requirements do not unduly burden Petitioners' protected speech, as they are reasonably related to the State's interest in promoting the free flow of information to consumers. Therefore, the decision of the Court of Appeals for the Thirteenth Circuit should be affirmed.

Disclosure requirements function to "dissipate the possibility of consumer confusion or deception[,]" and, importantly, they differ from "flat prohibitions on speech." *In re R.M.J.*, 455 U.S. 191, 201 (1982); *Zauderer*, 471 U.S. at 651. *See Milavetz*, 559 U.S. at 252-53 ("[B]ecause the challenged provisions impose a disclosure requirement rather than an affirmative limitation on speech … the less exacting scrutiny described in *Zauderer* governs our review.") As such, if an act requires a commercial entity to disclose information, but in doing so does not prevent the entity from speaking to consumers, then *Zauderer* would apply. *Expressions Hair Design v. Schneiderman,* 877 F.3d 99, 104 (2nd Cir. 2017).

However, if an act involves a prohibition of protected speech that "sweeps much more broadly" than a standard disclosure requirement, then *Central Hudson* would apply. *Expressions Hair Design,* 877 F.3d at 104. This Court has imposed the *Central Hudson* standard where an Act does more than simply request disclosure of "purely factual and uncontroversial information" from commercial actors. *Zauderer*, 471 U.S. at 651. Where there is no effect of misleading consumers, and where an act impedes on a commercial entity's protected speech, *Central Hudson* is applied. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980). Under the *Central Hudson* standard, the court must ask "whether the asserted governmental interest is substantial" and if so, "whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest." *Id*.

Thus, the Thirteenth Circuit's use of the *Zauderer* standard in its decision that SPAAM's disclosure requirements are constitutional should be affirmed because: (1) the SPAAM Act's disclosure requirements are not unduly burdensome on the Petitioners' protected speech; and (2) the requirements are reasonably related to the State's interest in preventing consumer deception.

A. The SPAAM Act's Disclosure Requirements Are Reasonably Related to Midland's Interest in Preventing Consumer Deception.

The constitutional protection afforded to free speech "'serves significant societal interests' wholly apart from the speaker's interest in self-expression." *Pac. Gas and Elec. Co. v. Pub. Utilities Comm'n of Cal.*, 475 U.S. 1, 8 (1986) (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978)). Notably, not only does the First Amendment protect those who wish to freely express themselves without governmental interference, but it "protects the public's interest in receiving information." *Pac. Gas and Elec. Co.*, 475 U.S. at 8.

Accordingly, the Federal and State governments are "free to prevent the dissemination of commercial speech that is false, deceptive, or misleading" by requesting "purely factual and uncontroversial information about the terms under which [a commercial entity's] services will be available." *Zauderer*, 471 U.S. at 638, 651. However, "unjustified or unduly burdensome disclosure requirements might offend the First Amendment by chilling protected commercial speech." *Id*. at 651. Nevertheless, disclosure requirements will be upheld as long as they are "reasonably related to the State's interest in preventing deception of consumers." *Id*.

This Court has held that arguments against disclosure "based on the benefits of public ignorance" are dubious. *Bates v. State Bar of Ariz.*, 433 U.S. 350, 375 (1977). This is because commercial speech is constitutionally protected "not so much because it pertains to the seller's business as because it furthers the societal interest in the 'free flow of commercial information.'" *First Nat'l Bank of Boston*, 435 U.S. at 783 (quoting *Va. State Bd. of Pharmacy v. Va. Citizens*

Consumer Council, Inc., 425 U.S. 748, 764 (1976)). Thus, although the State has the power to "correct omissions that have the effect of presenting an inaccurate picture, the preferred remedy is more disclosure, rather than less." *Bates*, 433 U.S. at 375.

Under *Zauderer,* disclosure requirements are subject to far more deferential scrutiny as compared to "flat prohibitions on speech[.]" 471 U.S. at 651. This is because "disclosure requirements trench much more narrowly" on a commercial entity's free speech interests "than do flat prohibitions on speech[.]" *Id*. As such, this Court has held that "warnings or disclaimers might be appropriately required ... in order to dissipate the possibility of consumer confusion or deception." *Id*. (cleaned up). Accord, *In re R.M.J.,* 455 U.S., at 201; *Cent. Hudson Gas & Elec. Corp*, 447 U.S. at 565; *Bates v. State Bar of Ariz.*, 433 U.S. 350, 384 (1977).

Zauderer dealt with an attorney who was reprimanded by the Office of Disciplinary Counsel of the Supreme Court of Ohio due to deceptive advertising about the services provided at his law firm. 471 U.S. at 630-31. By not including a distinction between legal fees and costs in his advertisement, the advertisement was deemed deceptive as potential clients could be misled that their legal representation would be free. *Id*. at 652.

It was reasoned that the risk of members of the public being misled is "hardly a speculative one" because people are generally unaware of the technical differences between terms such as "costs" and "fees" which are used interchangeably in everyday use. *Id*. at 652. As such, the State was not required to "conduct a survey of the … public before it may determine that the advertisement had a tendency to mislead." *Id*. at 653 (cleaned up) (quoting *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 391 (1965)).

This was grounded in the high value that consumers place on the "free flow of commercial information[.]" *Id*. at 646. Meaning, the "free flow of commercial information" is "valuable

enough to justify imposing on would-be regulators the costs of distinguishing the truthful from the false, the helpful from the misleading, and the harmless from the harmful." *Id*. As such, "the Court concluded that an attorney's constitutionally protected interest in *not* providing any particular factual information is 'minimal'." *Milavetz*, 559 U.S. at 249-250 (cleaned up) (quoting *Zauderer*, 471 U.S. at 651)).

Similarly, Midland's interest in promoting the "free flow of commercial information" and preventing consumer deception is undoubtedly reasonably related to SPAAM's disclosure requirements. *Zauderer*, 471 U.S. at 646. Midland's legislative intent was to "establish a system of oversight" to ensure the protection of "civil liberties while curbing the spread of harmful content." R. at 5. This "system of oversight" is to ensure that social media platforms, such as the Petitioner, who possess "dominant market share in Midland and across the nation" are providing clear guidelines to citizens. *Id.* at 5, 18.

When a user violates the Petitioner's Community Standards, the Petitioner may penalize the user anywhere from simply "append[ing] commentary to a user's post stating that the post runs a risk of violating the Community Standards" all the way to "outright remov[ing] the account and ban[ning] the user from Headroom." R. at 4. With such a range of possible reprimands,[1] it is even more important that the Petitioner clearly articulate their Community Standards to new and current users. However, as it stands, the Petitioner's Community Standards are nothing more than generic statements which are insufficient as a resource for users of the platform to refer to. This creates a real, and substantial, risk of consumer deception. *See Zauderer*, 471 U.S. at 652 ("The assumption that substantial numbers of potential clients would be so misled is hardly a speculative one[.]") It

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[1] The Petitioner's Community Standards forbid users from "creating, posting, or sharing content that either explicitly or implicitly promotes or communicates hate speech; violence; child sexual exploitation or abuse; bullying; harassment; suicide or self-injury; racist, sexist, homophobic, or transphobic ideas; or negative comments or criticism toward protected classes." R. at 3.

is "hardly a speculative" risk that users will be misled by what can cause future reprimands, or what caused their current reprimand, on the Petitioner's platform. *Zauderer*, 471 U.S. at 652.

This was demonstrated by the allegations made by users Max Sterling, Mia Everly, and Ava Rosewood concerning their posts being deprioritized by the Petitioner's algorithm. R. at 3-4. Since the Petitioner does not provide a formal explanation to users when they are reprimanded on the platform, Mr. Sterling, Ms. Everly, and Ms. Rosewood cannot know with certainty both which of their posts were at issue and how exactly they breached the community standards. Users should know what standards they are being held to, otherwise it is unreasonable to expect them to abide by them. Even more, for users who rely on the platform for their livelihood as a revenue stream and through the promotion of their businesses. *Id*. at 3, 5. Certainly, users wouldn't expect that their mere expression of political viewpoints would welcome a reprimand on a platform that holds itself out as "'a welcoming community' where 'all are respected and welcome.'" *Id*. at 3.

As a commercial entity that serves over seventy-five million monthly users, SPAAM's disclosure requirements are reasonably related to Midland's interest in preventing consumer deception, and promoting the "free flow of commercial information[.]" *Id*.; *Zauderer*, 471 U.S. at 646. Even more, as many Midlandians' livelihoods rely on the Petitioner's platform for revenue and as a form of business promotion, Midland has a strong interest in protecting its citizens, and its economy. Therefore, this Court should affirm the decision of the Thirteenth Circuit.

B. The SPAAM Act's Disclosure Requirements Are Not Unduly Burdensome.

SPAAM's disclosure requirements do not unduly burden Petitioners' protected speech as they merely request transparent communication concerning their business practices. Whether a disclosure requirement is unduly burdensome turns on whether there is a burden on protected *speech*, "as opposed to imposing technical, economic, or operational burdens." *Paxton,* 49 F.4th at 486. This is a narrow inquiry on whether "an entity's First Amendment speech rights" were

intruded upon. *Id*. SPAAM's disclosure requirements do not prevent or restrict the Petitioner's protected speech. Therefore, this Court should affirm the decision of the Thirteenth Circuit.

Disclosure requirements must act to "remedy a harm that is 'potentially real not purely hypothetical," and they mustn't extend "broader than reasonably necessary[.]" *Nat'l Inst. of Fam. and Life Advocates v. Becerra*, 138 S.Ct. 2361, 2377 (2018) (hereafter *NIFLA*) (quoting *Ibanez v. Fla. Dep't of Bus. and Pro. Regul., Bd. of Acct.*, 512 U.S. 136, 146 (1994)). "Otherwise, they risk 'chilling' protected speech." *NIFLA*, 138 S.Ct. at 2377 (quoting *Zauderer*, 471 U.S. at 651)).

NIFLA illustrates that the "unduly burdensome" analysis is concerned with the burden a law places on an entity's protected *speech*. *Paxton*, 49 F.4th at 486, n.36. In *NIFLA*, California required clinics that serve pregnant women to provide certain notices. 138 S.Ct. at 2368. However, this meant that, for example, a billboard for a clinic which states "Choose Life" would have to include a 29-word statement from the government. *Id*. at 2378. This effectively "drown[ed] out the facility's own message" as the facility would need to publicly publish the specific governmental notice, and bring attention to it "by some method such as larger text or contrasting type or color." *Id*. As such, this Court held that the Act "failed First Amendment scrutiny under *Zauderer*—not because it was 'unduly burdensome' in some administrative or operational sense, but because it would chill the clinics' protected *speech*." *Paxton,* 49 F.4th at 486, n.36.

The Court also found that the State's interest was not reasonably related to the disclosure requirement, and was insufficient to uphold it. *NIFLA*, 138 S.Ct. at 2377. This was because the State could have educated the public itself through a campaign, "without burdening a speaker with unwanted speech." *Id*. at 2376; *Riley v. Nat'l Fed'n of the Blind of N.C.,* 487 U.S. 781, 800 (1988). Where the government can achieve its stated interest without burdening a speaker, they must do so. *NIFLA*, 138 S.Ct. at 2376; *see also Riley,* 487 U.S. at 800 (the disclosure requirement was

"unconstitutional because the government could 'itself publish … the disclosure[.]'") As such, although "[u]njustified or unduly burdensome disclosure requirements" run the risk of "chilling protected speech," as long as a disclosure requirement is "reasonably related to the State's interest in preventing deception of consumers" then a commercial entity's rights are protected. *Milavetz*, 559 U.S. at 250; *Zauderer*, 471 U.S. at 651.

Neither section 528.491(c)(1) nor section 528.491(c)(2) of SPAAM's disclosure requirements are an undue burden that chills the Petitioner's protected speech. *NIFLA*, 138 S.Ct. at 2378. First, section 528.491(c)(1)'s required publication of "community standards" with "detailed definitions and explanations for how they will be used, interpreted, and enforced" is a clearly articulated guide for the Petitioner and other social media platforms to follow. R. at 6; *see Zauderer*, 471 U.S. at 653, n.15 (where the State "articulate[s] its disclosure rules … in such a way that they provide a sure guide" the First Amendment doesn't preclude "a penalty for the violation of those rules.")

Importantly, the Petitioner has not put forth any set of facts which has demonstrated that this would unduly burden their protected speech. The Petitioner already has a set of community standards, the only difference is that SPAAM provides a clear guide on what additional information must be provided to consumers. R. at 3-4. Without a clear understanding of Petitioners' content moderation guidelines, users are left in a precarious position. Even more, users whose livelihoods rely on Petitioners' platform are forced to either give up their First Amendment right to free speech, or lose a source of income. *Id*. at 5.

Further, SPAAM's disclosure requirements are no different than any other consumer protection law which seeks to quell consumer deception. *See* 12 U.S.C. § 5531 ("Prohibiting unfair, deceptive, or abusive acts or practices[.]"); *see also* 15 U.S.C. § 45f (known by Congress

and the Federal Trade Commission as the INFORM Consumers Act). Therefore, disclosure requirements which request information about Petitioners' "content management and business practices" fit comfortably in this understanding of the prevention of consumer deception. *Paxton,* 49 F.4th at 485.

Second, section 528.491(c)(2)'s requirement that social media companies such as the Petitioner must provide a "detailed and thorough explanation of what standards were violated, how the user's content violated the platform's community standards, and why the specific action (e.g., suspension, banning, etc.) was chosen" is not unduly burdensome on the Petitioner's protected speech. R. at 6. Again, the Petitioner has not put forth any set of facts that demonstrate that this would unduly burden their protected speech. Regardless, by providing users with a clear reason as to why they are being reprimanded, this does not have the effect of drowning out the Petitioner's own message. *NIFLA*, 138 S.Ct. at 2378. SPAAM merely asks that further information is provided, and this is especially important where many Midlandians' livelihoods depend on the Petitioner's platform. R. at 5.

This is unlike the governmental notice that clinics were required to publish in a clear and conspicuous manner in *NIFLA,* which had the effect of drowning out their own message. 138 S.Ct. at 2378. Under SPAAM, platforms are only asked to provide an explanation to users as to why they were reprimanded. Platforms are not required to publish a governmental disclosure publicly, and SPAAM does not impose restrictions on the way in which social media companies can communicate that message to users; as such, they are free to communicate that explanation how they please.

SPAAM's disclosure requirements are not "unjustified or unduly burdensome" and thereby do not chill the Petitioner's protected speech. *Zauderer*, 471 U.S. at 651. The disclosure

requirements request clear and transparent communication with users of the Petitioner's platform, which is "reasonably related to the State's interest in preventing deception of consumers." *Id*. at 646. Therefore, this Court should affirm the decision of the Thirteenth Circuit.

III. State Requirements That Safeguard Citizen's Non-Discriminatory Access to Social Media Platforms Do Not Violate The First Amendment.

This Court should affirm the decision of the Thirteenth Circuit because SPAAM does not encroach upon the Petitioner's First Amendment rights. Section 528.49 of SPAAM requires social media platforms to have neutral censorship policies, restricting them from censoring content based on the user's viewpoint. R. at 16. The First Amendment protects freedom of speech. U.S. Const., amend. I. "A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more." *Packingham,* 582 U.S. at 104. As such, State's are permitted to regulate conduct of an organization that hosts speech, as long as that regulation does not violate the First Amendment rights of the host. *Paxton*, 49 F.4th at 455.

In today's world, the internet and social media platforms have become a primary global means for sharing ideas and communication. Consequently, both democracy and innovation rely on the freedom of the internet. *Packingham,* 582 U.S. at 1735; Candeub Adam, *Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230*. Yale JL & Tech., 22, 391, 393 (2020). This Court should affirm the Thirteenth Circuit's decision that SPAAM does not infringe upon the Petitioner's First Amendment rights for two reasons: (1) the Petitioner's conduct censoring its user's content is not protected speech; and (2) alternatively, even if it is protected speech, SPAAM withstands intermediate scrutiny by promoting a substantial government interest in safeguarding citizen's freedom of speech.

A. Petitioner's Conduct is Not Protected Under the First Amendment Because Censoring Content Does Not Constitute Editorial Discretion or Protected Speech.

Censorship of users' speech on social media platforms by the platform, based on users' viewpoints, is not considered protected speech. The Petitioner asserted that SPAAM violates its rights under the First Amendment's Free Speech clause by regulating its censorship practices. R. at 7. However, the Thirteenth Circuit held that SPAAM does not violate the Petitioner's Free Speech rights because their actions are not protected under the First Amendment. *Id.* at 17. This Court should affirm the Thirteenth Circuit's decision for two reasons: (1) social media platforms primarily serve as channels for public expression, acting as common carriers that facilitate the dissemination of speech to the broader public, but not exerting editorial control over the content shared on their platforms; and (2) actions such as censorship, de-platforming, and shadow banning do not qualify as expressive speech within the scope of the First Amendment.

1. Censoring User's Content on Platforms is Not the Same as Exercising Editorial Control or Judgment.

Social media platforms function as carriers of public information and do not exercise editorial control or judgment over the content they host. They have evolved into the modern-day equivalent of traditional public forums like public parks and public streets. *Packingham,* 582 U.S. at 104. In *Nat'l Broad. Co. v. United States*, while addressing the emergence of radio as a carrier of public speech, this Court held that the government could restrict "specified network practices" without abridging the freedom of speech . 319 U.S. 190, 226-27 (1943). Similarly, as a common carrier, social media platforms are subject to specific regulations regulating platform's censorship practices. However, in the context of newspapers, this Court held that content regulation infringes on the newspaper's First Amendment rights because of its intrusion into the function of editors. *Miami Herald Publ'g Co. v. Tornillo,* 418 U.S. 241, 258 (1974). Therefore, the distinction between social media platforms and newspapers is crucial because they operate differently in society. *Id*. at

258. Newspapers exercise editorial control over and assume liability for the content they publish while social media platforms have historically asserted that they bear no liability for user-posted content, emphasizing their lack of control over it. *Tornillo,* 418 U.S. at 258; *Paxton*, at 459-66; *Associated Press v. NLRB*, 301 U.S. 103, 127 (1937).

Social media platforms are fundamentally different from newspapers. Newspaper editors select content for publication based on various factors, including considerations of reputation, image, fairness, as well as the size and positioning of the material. *Tornillo,* 418 U.S. at 258. Newspapers only print a curated set of content vetted and edited by its editors. *Id*. Editors bear the responsibility of assessing the “news value of items received” prior to publication, and consequently, they assume accountability for the accuracy of the content published. *Associated Press,* 301 U.S. at 127. Therefore, everything newspapers publish, in a sense, becomes their speech. *Tornillo,* 418 U.S. at 258.

In contrast, content hosted on public forums open to the wider public is unlikely to “be identified with those of the owner.” *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 87 (1980). PruneYard, a private shopping mall open to the public, maintained a policy prohibiting any visitor or tenant from engaging in public expressive activities unrelated to the shopping mall. *Id.* at 77. This policy was consistently enforced in a non-discriminatory manner. *Id*. After being denied access to the mall to circulate petitions, a group of high school students claimed their right to free speech was violated by the mall’s policy. *Id*. at 78. In response, the owner of the mall asserted that their First Amendment rights would be infringed if they were forced to accommodate the students. *Id*. at 85.

This Court ruled that the student’s rights to free speech did not infringe on the owners' First Amendment rights. *Id*. at 87. The Court distinguished shopping malls, which operate as public

forums, from other means of expression such as newspapers. Unlike newspapers, whose editorial control is protected under the First Amendment, shopping malls do not exercise editorial discretion for two reasons. *Id*. at 88. First, shopping malls as public forums do not indulge in material selection or content curation for publication. *Id*. at 88-101. Second, given the public nature of shopping malls, petitions circulated within the mall cannot reasonably be construed as reflective of the views of the shopping mall. *Id*. Ultimately, the Court ruled that legislation allowing individuals to exercise free speech in public shopping centers does not violate the First Amendment rights of the center's owners. *Id*. at 75.

Like the shopping mall in *PruneYard*, the Petitioner in this case, as a social media platform, serves as a public forum without exerting control over the shared material. R. at 2-3. With seventy-five million monthly users, the Petitioner's platform is open to the general public, providing a space for individuals to express their views and ideas. *Id*. Like a shopping mall, the Petitioner provides a platform that merely offers a space for users to post, thereby refraining from selecting or modifying it. *Id*.; *PruneYard*, 477 U.S. at 88. As such, unlike selected content published by a newspaper, content on social media platforms doesn't inherently represent the platform's speech. *PruneYard*, 477 U.S. at 88. Even if they arrange or manage content after dissemination, it's unlikely that any reasonable person would identify specific content as an expression of the platform. *Paxton,* 49 F.4th at 465. This is because, they do not edit the content itself, instead, they use algorithms to prioritize and deprioritize content after it's posted on their platform. R. at 3.

Since the content on the platform cannot reasonably be perceived as expressing the platform's viewpoint, there is no infringement on editorial control protected under the First Amendment. *PruneYard,* 447 U.S. at 88. As such, SPAAM's regulation of social media companies' censorship policies does not violate the Petitioner's First Amendment right to exercise

editorial discretion. R. at 5. Therefore, this Court should affirm the decision of the Thirteenth Circuit.

2. Conduct Like Censorship Does Not Meet the Criteria for Speech or Expressive Conduct Protected Under the First Amendment.

The First Amendment protects both speech and expressive conduct, and it is not violated even when the government requires a host to host speech or content. U.S. Const., amend. I; *Rumsfeld v. F. for Acad. and Institutional Rts., Inc*., 547 U.S. 47, 65 (2006) (hereafter "*FAIR*"). As such, infringement on a host's freedom of speech occurs only where a regulation requires them to accommodate content that either restricts the host's speech or compels them to speak. *Id*. at 63. As such, hosting content by itself is a form of conduct, not speech. *Id*. at 60. To qualify as expressive conduct within the meaning of the First Amendment, conduct must be accompanied by its message or speech. *Id*. at 66. Therefore, the Petitioner's conduct of censoring user content, by itself, does not qualify as speech or expressive conduct. R. at 6.

Not all conduct is inherently expressive conduct. *FAIR,* 547 U.S. at 60. In *FAIR,* Congress required universities to host military recruiters on the same terms that they hosted nonmilitary recruiters on, to receive federal funding. *Id*. at 47. An association of law schools sought to restrict military recruiting on their campuses because they objected to the military's policy on banning LGTBQ+ recruits. *Id*. Consequently, the law schools sought a preliminary injunction against enforcement of Congress's regulation, arguing that forced inclusion and equal treatment of military recruiters violated the school's First Amendment rights of speech and association. *Id.*

The Court concluded that this regulation does not violate the school's First Amendment rights for two reasons. *Id*. at 64. First, accommodating the recruiter's message on the school's forum did not restrict the law schools' freedom of speech. *Id*. at 64. Second, the freedom of expressive association was not violated because merely hosting or allowing military recruiters on

campus, although an interaction, did not inherently constitute expressive association. *Id*. at 69-70. This is especially true because the school had the ability to openly express disapproval of the military recruiter's policy and explicitly dissociate themselves from the recruiter's viewpoints, which is protected speech. *Id*. Therefore, since the alleged regulation did not restrict or compel the law schools' speech by regulating their non-expressive conduct, this Court held that there was no infringement on the schools' First Amendment rights. *Id*. at 64.

Censorship is not pure speech or expressive conduct protected under the First Amendment. *Paxton*, 49 F.4th at 451. Like the law schools in *FAIR*, the Petitioner functions as a platform, acting as a host for the content posted by its users. *Id*. at 69-70. Being compelled to host users' speech does not impose a penalty on the Petitioner's own speech. R. at 19. Like law schools forced to accommodate military recruiters against school's policies, Petitioner retains the freedom to disavow any connection to user content. *Id*. Moreover, the Petitioner is not limited in space and has the resources to broadcast their views on the user's content. There is no compulsion for them to dissociate because user content isn't reasonably considered to be from the host's own views. *FAIR,* 547 U.S. at 69-70. This is because the Petitioner's use of automated algorithms to regulate user-generated content renders it non-expressive conduct. R. at 3-4. As such, section 528.491(b) of SPAAM only prevents the Petitioner from suspending or banning user accounts based on their viewpoint, which does not qualify as expressive conduct protected under the First Amendment. *Id*. at 4.

There is also statutory authority supporting the idea that social media platforms are not speaking or engaging in expressive conduct when they manage user activity. 47 U.S.C. § 230, *Protection for private blocking and screening of offensive material,* provides social media platforms like the Petitioner protection from any liability arising from being associated with

content disseminated by their users. *Paxton*, 49 F.4th at 477. Congress enacted section 230 to establish that platforms cannot be "treated as the publisher or speaker of any information provided by another." 47 U.S.C. § 230(c)(1). This statutory provision aligns with this Court's determination in *FAIR* that platforms are "not speaking" when they host other people's speech. *Paxton*, 49 F.4th at 448. Additionally, the platform's consistent reliance on section 230 to establish immunity against defamation liability for user's content undercuts their assertion that the content posted on the platforms is the platform's own speech. R. at 13. As such, this Court should affirm the Thirteenth Circuit's decision that the Petitioner's censorship is not protected under the First Amendment. *Id*. at 19.

B. The SPAAM Act is Constitutional, as it Withstands Intermediate Scrutiny.

Even if this Court finds that SPAAM's prohibition on censorship infringes the Petitioner's First Amendment rights, SPAAM should still be upheld, as it survives intermediate scrutiny. Intermediate scrutiny is the appropriate judicial standard of review to be used when dealing with content-neutral restrictions that incidentally burden speech. *Turner I*, 512 U.S. at 642-43. In the First Amendment context, a content-neutral law will survive intermediate scrutiny and be upheld as Constitutionally valid only:

> if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms are no greater than is essential to the furtherance of that interest.

Turner I, 512 U.S. at 662 (quoting *United States v. O'Brien*, 391 U.S. 367, 377 (1968)).

Affirming the decision of the Thirteenth Circuit that SPAAM withstands intermediate scrutiny is appropriate for the following three reasons: (1) SPAAM is content-neutral; (2) it is enforced to further Midland's significant interest in safeguarding citizen's freedom of speech; and (3) SPAAM is tailored to its specific purpose without infringing any rights on its face.

1. The SPAAM Act is Content-Neutral Both on its Face And in Application.

"Regulations that are unrelated to the content of the speech are subject to an intermediate level of scrutiny." *Turner I*, 512 U.S. at 642. To determine whether a regulation is content-based or content-neutral, the primary consideration is whether the government implemented the regulation due to "agreement or disagreement with the message it conveys." *Id*. A regulation is not content-neutral where it was passed due to disagreement with political viewpoints, for example. *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 70 (2022). As such, a content-neutral regulation imposing an incidental burden on speech is subject to intermediate scrutiny. *Id*. at 622.

In this case, intermediate scrutiny is applicable because SPAAM is content-neutral, as it applies to all social media companies, regardless of their ideological or political viewpoints. R. at 12. SPAAM applies uniformly to any "social media platform" and this term is defined through factors such as their function, location or number of users. *Id*. at 3-6. SPAAM's application does not depend on the content or views shared on these platforms. *Id.* SPAAM requires social media platforms to adopt a content-neutral censoring policy, by prohibiting platforms from "censoring, de-platforming, or shadow banning" any "individual, business or journalistic enterprise" because of their viewpoint. *Id*.

As such, SPAAM is content-neutral both on its face and in its effect, because it does not require social media platforms to favor one viewpoint over the other. Instead, it regulates the platform's censorship practices towards all speech. R. at 6. SPAAM maintains content neutrality in its application, affecting all social media platforms with at least twenty-five million monthly users, without distinguishing platforms based on their censorship practices or purpose. R. at 5-6. Therefore, since SPAAM is content-neutral, it is appropriate to evaluate its constitutionality under

the standard of intermediate scrutiny and consequently affirm the Thirteenth Circuit's decision that SPAAM survives intermediate scrutiny.

2. The SPAAM Act Furthers Midland's Significant Interest in Protecting Its Citizens' Rights.

A content-neutral regulation will be sustained if "it furthers an important or substantial governmental interest; [and] if the governmental interest is unrelated to the suppression of free expression." *O'Brien,* 391 U.S. at 377. A state's interest in safeguarding the public's equal access to information is paramount, as it furthers the core principle of the First Amendment. *Turner I,* 512 U.S. at 663. Therefore, a state regulation protecting its citizens' First Amendment rights, without suppressing free expression, will survive intermediate scrutiny.

SPAAM survives intermediate scrutiny because it furthers Midland's interest in protecting its citizens' fundamental rights. R. at 5. SPAAM aims to prevent the curtailment of the free exchange of ideas and mitigate potential negative impacts on the livelihoods of citizens who use the Petitioner's platform to promote their interests. *Id*. at 6. Excessive censorship by social media platforms is a clear violation of citizens' fundamental rights. *Id*. at 5. SPAAM prevents these restrictions on users' speech and furthers Midland's substantial interest in protecting the free exchange of ideas. *Id*. It does not suppress free speech, as it does not restrict or compel the platform's speech. Instead, it operates to prevent social media platforms from suppressing user's free speech rights. *Id*. Midland's goal is to hold social media platforms like the Petitioner accountable and ensure the protection of our democratic values including access to the free exchange of ideas. *Id*. Hence, this Court should affirm the Thirteenth Circuit's decision that SPAAM advances substantial governmental interests without impeding on the Petitioner's freedom of speech.

3. The SPAAM Act is Narrowly Tailored to Ensure the Protection of Platform User's Free Speech Without Encroaching on the Platform's Rights.

A content-neutral regulation must also be narrowly tailored to substantially further an important government objective to survive intermediate scrutiny. *Clark v. Jeter*, 486 U.S. 456, 461 (1988). A narrowly tailored regulation advances significant government interests without unnecessarily restricting more speech than required. *Ward v. Rock Against Racism,* 491 U.S. 781, 799 (1968). To withstand intermediate scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Americans for Prosperity Found. v. Bonta,* 141 S.Ct. 2373, 2383 (2021). Therefore, if a regulation only imposes a minimal burden while furthering a significant governmental interest, it survives intermediate scrutiny.

Safeguarding citizen's freedom of speech is a significant state interest. *Turner I,* 512 U.S. at 663. Section 528.491 of SPAAM is narrowly tailored to prevent social media platforms from indulging in viewpoint-based discrimination. R. at 19. Contrary to Petitioner's assertions, SPAAM exempts "obscene, pornographic or otherwise illegal or patently offensive" content from this requirement. *Id*. at 6. Moreover, it does not prevent social media platforms from dissociating themselves from user's content that they do not agree with as platforms are still free to express their views. SPAAM simply requires social media platforms of public importance, with immense market power, that hold themselves out to the public to adopt neutral policies and refrain from engaging in viewpoint-based discrimination. *Id*. at 5-6. As a result, SPAAM's requirement that social media platforms adopt neutral censoring policies does not violate the Petitioner's First Amendment right to free speech. Therefore, this Court should affirm the Thirteenth Circuit's decision that the SPAAM Act is narrowly tailored to advance a significant state interest, and therefore survives intermediate scrutiny.

CONCLUSION

For these reasons, Respondent respectfully requests that this Court affirm the decision of the Court of Appeals for the Thirteenth Circuit.

Respectfully submitted,

Team 26

Counsel for Respondent