No. 23-386

SUPREME COURT OF THE UNITED STATES

HEADROOM, INC.,

Petitioner,

v.

EDWIN SINCLAIR,
ATTORNEY GENERAL FOR THE STATE OF MIDLAND,

Respondent.

On Appeal from the United States Court of Appeals
for the Thirteenth Circuit

BRIEF FOR PETITIONERS

Counsel for Petitioner - Team 23

October 9, 2023

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II. Is the SPAAM Act's disclosure requirement unduly burdensome when it forces Headroom to provide detailed explanations each time it regulates content, and does this result in a "chilling effect" on free speech when it over-broadly applies to all social media companies?

III. Does the SPAAM Act survive constitutional muster when it restricts Headroom's ability to remove or alter users' content that they feel is contrary to their platform's viewpoint, as well as when the SPAAM Act compels Headroom to provide detailed explanations of why the content violates the Community Standards?

STATEMENT OF THE CASE

As one of the most popular social media companies in America, Headroom Inc. ("Headroom") focused its objective on creating a platform for individuals of all backgrounds to express themselves amidst a social division in today's world. R. at 2. Headroom users are encouraged to customize their profiles, post content, and share others' posts. R. at 3. Moreover, alongside its unique virtual-reality headset feature, users can monetize their posts, gain sponsorships, and foster donations between other users. R. at 3. Headroom is a cyber powerhouse for businesses, with approximately seventy-five million monthly users, many of whom depend on Headroom's platform to grow their business and maintain their livelihood. R. at 3. In order for Headroom to successfully offer these opportunities, it created an algorithm to prioritize content that users prefer based on their interactions with other content. R. at 3. Furthermore, Headroom openly holds its users to their Community Standards; as a result, if a violation occurs, Headroom's artificial intelligence deprioritizes that user's content and may ban their account. R. at 3.

Headroom maintains its prestigious status by having all of its users agree to its Community Standards prior to platform engagement. R. at 3. The goal of these standards is to "ensure a welcoming community where all are respected and welcome." R. at 3. To achieve this goal, Headroom prohibits the creating, posting, or sharing of content that "encourages 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 towards protected classes." R. at 3. Additionally, disinformation is banned by the Community Standards. In accordance with the standards, "disinformation [is] intentionally false or misleading information that is spread for the purpose of deceiving or manipulating individuals or groups." R. at 4.

The Community Standards allow Headroom to impose penalties on users who violate them. R. at 4. At the minimum, Headroom would attach a warning to posts that potentially violated its Community Standards, and it informed viewers that this post could include disconcerting content. R. at 4. Headroom imposed harsher penalties on the posts that they believed were in clear violation of the Community Standards. R. at 4. These penalties include de-prioritization, demonetization, suspension, and/or obstruction of the post in question. R. at 4. Further, as a last resort, Headroom can de-platform or ban the user. R. at 4.

Subsequent to Headroom's penalties, users set forth accusations against Headroom which put in motion Midland's creation of the Speech Protection and Anti-Muzzling Act. ("the SPAAM Act"). R. at 5. As a result, two State representatives expressed their concerns and alleged that Headroom suppressed protected speech and thus, the SPAAM Act was enacted. R. at 7. The SPAAM Act applies to all social media platforms. Midland Code § 528.491(a)(1); R. at 5. Under the SPAAM Act, a "social media platform" is

> any information service, system, search engine, or software provider: (i) provides or enables computer access by multiple users to its servers and site; (ii) operates as a corporation association, or other legal entity; (iii) does business and/or is headquartered in Midland; and (iv) has at least twenty-five million monthly individual platform users globally.

Id. § 528.491(a)(2)(i) -(iv); R. at 5-6.

The SPAAM Act has two requirements. R. at 6. First, the SPAAM Act prohibits social media platforms from "censoring, de-platforming, or shadow banning any individual, business, or journalistic enterprise because of viewpoint." *Id.* § 528.491(b)(1); R. at 6.[1]

[1] The SPAAM Act defines "censorship" or "censoring" as "editing, deleting, altering, or adding any commentary" to a user's content. *Id.* § 528.491(b)(1)(i); R. at 6. The SPAAM Act also defines "deplatforming" as "permanently or temporarily deleting or banning a user." *Id.* § 528.491(b)(1)(ii); R. at 6. The SPAAM Act defines "shadow banning" as "any action limiting or eliminating either the user's or their content's exposure on the platform or deprioritizing their content to a less prominent position on the platform. *Id.* §528.491(b)(iii); R. at 6.

Second, the SPAAM Act requires social media platforms to publish "public Community Standards with detailed definitions and explanations for how they will be used, interpreted, and enforced." *Id.* § 528.491(c)(1). R. at 6. The SPAAM Act further states that "when a social media platform enforces its Community Standards, the platform 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." *Id.* § 528.491(c)(2). R. at 6. The Attorney General of Midland, Edwin Sinclair ("Respondent"), is responsible for the enforcement of the SPAAM Act. R. at 6. If a user believes they suffered harm from a social media platform's violation of the SPAAM Act, they could either sue the platform or file a complaint with the Respondent. *Id.* § 528.491(d)(2). R. at 6. The relief granted would either be an injunction on the platform, or fines that would total $10,000 a day per infraction. *Id.* § 528.491(d)(3). R. at 7.

Headroom filed a pre-enforcement challenge in the United States District Court for the District of Midland on March 25, 2022, to prevent the enforcement of the SPAAM Act by Respondent. R. at 7. The District Court held in Headroom's favor and concluded that the SPAAM Act violated Headroom's First Amendment rights and declared that Headroom is not a common carrier. R. at 9-11. Moreover, it reasoned that the SPAAM Act imposes an undue burden that chills Headroom's free speech because it forces Headroom to disclose a lengthy explanation when it decides to de-platform, deprioritize, or de-monetize users of the platform. R. at 11. Finally, the District Court applied intermediate scrutiny, essentially concluding that the SPAAM Act failed. R. at 11. The Court of Appeals for the Thirteenth Circuit reversed the District Court's decision and held that the SPAAM Act did not violate Headroom's First Amendment rights because Midland proved that the regulation is substantially related to an important government objection and

therefore survived intermediate scrutiny. R. at 19. The Supreme Court granted Headroom's Petition for Certiorari and is set to be argued in the October Term of 2023. R. at 21.

SUMMARY OF THE ARGUMENT

The State of Midland's erroneous SPAAM Act immensely violates social media companies' First Amendment right to freedom of speech. It impedes on Headroom's editorial discretion and compels Headroom to speak when it would not otherwise choose to do so. The First Amendment expressly declares that the government shall not make a law that abridges a private actor's freedom of speech. U.S. Const. amend. I. Headroom is not a private actor. Therefore, the State of Midland cannot compel Headroom to provide detailed explanations whenever Headroom sensors or deplatforms a user that goes against Community Standards.

Midland classifies social media as a common carrier to regulate Headroom's speech. However, social media companies are undeniably distinct from traditional common carriers. Social media companies do not offer their services indiscriminately; they do not possess the requisite market power that traditional common carriers do, and they exercise editorial judgment over content that conflicts with their Community Standards. The Eleventh Circuit correctly relied on this Court's precedent to conclude that social media is not classified as a common carrier. On the contrary, the Fifth Circuit misapprehended the use of social media as "the modern public square" when it relied on the fact that social media holds itself out as a neutral conduit of information. It is undeniable that social media companies are not a common carrier.

The State of Midland cannot use this Court's holding in *Zauderer v. Office of Disciplinary Counsel* to compel Headroom to publish lengthy explanations each time Headroom makes judgment calls on a user's content (i.e., censoring, shadow banning, deplatforming). First, the SPAAM Act's requirements impose significant implementation costs and substantial liability for

failure to comply. Such burdensome requirements will *"chill"* Headroom's free speech to make editorial judgments that protect users, which opens the door for users to post any content they want notwithstanding the affects the post may have on the users of the community. Midland suffers no irreparable injury, whereas Headroom would.

Supreme Court precedent established that, under the circumstances, strict scrutiny is the appropriate test yet, the SPAAM Act is destined to fail constitutional muster. The SPAAM Act is a content-based regulation that directly infringes on Headroom's right to exercise editorial control over their platform. The SPAAM Act restricts fully protected speech because Headroom is not a state actor and, therefore, is not subject to constraints of the First Amendment. Moreover, Headroom's speech is conceivably commercial speech, which provides for greater protection. Midland cannot prove a compelling governmental interest since the SPAAM Act completely obscures their objective of "ensuring democratic value" when they infringe on Headroom's constitutional rights. Even if Midland were to prove a compelling interest, the latter part of the test fails; the means in which the SPAAM Act regulates content is not narrowly tailored to achieve such a governmental interest. It is crucial to take into consideration the over-broadness of the SPAAM Act. Overbroad regulations are inherently designed to fail constitutional muster. Thus, the SPAAM Act fails strict scrutiny and should not be upheld.

The right to editorial discretion has consistently been upheld for private organizations that allow for public engagement. Interference by Midland is unwarranted. The First Amendment protects a private actor's right to speak and not to speak. The SPAAM Act violates this principle because the second requirement compels Headroom to provide a detailed explanation of how certain content violated their Community Standards, as well as the consequences they seek to impose on the user who posted the inappropriate content. However, this requirement is not feasible

for a platform with such a high volume of engagement because the burden this requirement imposes on Headroom outweighs the need for the requirement.

The effects that would occur if the lower court's judgment were affirmed would be detrimental to not only social media platforms, such as Headroom, but also the users. There are over seventy-five million users each month that use Headroom for various purposes. With this immense level of engagement comes a responsibility from Headroom to ensure that its users enjoy their use of the platform. To allow the SPAAM Act to dictate how Headroom runs their platform, is to completely disregard the wellbeing of the millions of people who use the platform every day. It is crucial to consider that since Headroom uses virtual reality as their platform's identity and way to provide a live feed to its users, there is a heightened effect on the viewer because they embody the content they consume. Even though Headroom offers users a way to immerse themselves into a virtual world, the users should not be forced to drown in undesirable content. Headroom's objective of their well-established Community Standards is to protect its users from the undesirable content. Midland has no right to hinder Headroom's honorable objective.

ARGUMENT

I. MAJOR SOCIAL MEDIA COMPANIES ARE NOT COMMON CARRIERS BECAUSE THEY ARE UNDENIABLY DISTINCT

Traditional common carriers possess inherent distinctions from social media companies. Generally, common carriers offer themselves out to the public to provide a good or service indiscriminately. *Am. Orient Exp. Ry. v. STB,* 484 F.3d 554 (D.C. Cir. 2007). Moreover, scholars argue that a company can be deemed a common carrier if it possesses monopolistic dominance over the public. *Biden v. Knight First Amendment Institute at Columbia University,* 141 S. Ct. 1220 (2021) (Thomas, J. concurring). By contrast, social media companies do not conform to this rule. Social media companies offer their services indiscriminately and make editorial judgments

on content that conflicts with its Community Standards. *Miami Herald Pub. Co., Div. of Knight Newspapers, Inc. v. Tornillo,* 418 U.S. 241 (1974). Furthermore, social media companies lack monopoly power over one another because each social media platform offers its own unique characteristic to differentiate itself from competitors. As a result, the Eleventh Circuit correctly held that social media companies are not common carriers. *NetChoice, LLC v. AG, Fla*., 34 F.4th 1196 (2022).

A. Social Media Companies Do Not Offer Their Services Indiscriminately

Social media companies are not offered to the public as a neutral conduit; common carriers are. It is a common carrier's duty "to serve the public indiscriminately." *Am. Orient Exp. Ry.,* F.3d at 557; accord *FCC v. Midwest Video Corp.*, 440 U.S. 689, 701 (1979). In other words, common carriers must provide an "indifferent service" that accommodates all users and "confers common carrier status." *National Asso. of Regulatory Utility Comm'rs v. Federal Communications Com.*, 533 F.2d 601, 608 (D.C. Cir. 1976). Moreover, common carriage only applies to providers that "hold themselves out as neutral, indiscriminate conduits." *United States Telecom Ass'n v. FCC,* 855 F.3d 381, 389 (2017) (citing *United States Telecom Ass'n v. FCC*, 825 F.3d 674, 742 (2016)). For example, an internet service provider ("ISP") who makes it sufficiently clear to potential customers that it provides a filtered service, is not subject to common carriage. *U.S. Telecom Ass'n,* 855 F.3d at 389 (2017).

Similar to the ISP's in *United States Telecom Ass'n,* social media platforms warn users of their ability to enforce their standards to promote the platforms' central objective. For example, X, formerly known as Twitter, stated that its purpose is to "ensure all people can participate in the public conversation freely and safely." *X, Platform Use Guidelines: The X Rules https://help.twitter.com/en/rules-and-policies/x-rules* (Last visited: October 1, 2023). In a

summary of X's terms and conditions, X stated that it has "broad enforcement rights," and "X reserves the right to take enforcement actions against [users] if [they] violate these terms, such as, for example, removing content, limiting visibility, discontinuing access to X, or taking legal action." *Id.* X will not tolerate speech that "harasses, threatens, or uses fear to silence the voices of others;" however, X will sometimes "include perspectives that may be offensive, controversial, and/or bigoted to others." *Id.* Facebook's Community Standards seek to "create a place for expression and give people a voice." *Facebook: Community Standards https://transparency.fb.com/policies/community-standards/* (last visited: October 1, 2023). Facebook warns its users that it will remove content that goes against its standards. *Id.* However, unlike X, Facebook implements a strike system to "count violations and hold [users] accountable for the content [they] post." *Id.* The strike system goes even further to allow Facebook to either restrict or disable the account "depending on which policy [the] content goes against, [the] previous history of violations, and the number of strikes [a user] has." *Id.* These Community Standards are offered conditionally before users are given access to their accounts, and social media companies enforce these standards routinely because of their ability to make individualized decisions. The difference between X and Facebook is X's leniency to allow more content that Facebook may otherwise restrict or remove. Ultimately, social media companies have different standards for viewpoints to be heard; although social media offers public conversation, it is not a place for public neutrality. Social media companies have never held themselves out to offer "indiscriminate access to [social media] content without any editorial intervention." *U.S. Telecom Ass'n,* 855 F.3d at 392 (2017) (Srinivasan, J., concurring).

B. Social Media Companies Lawfully Exercise Expressive Editorial Discretion

Social media companies are expressive in nature, common carriers are not. The First Amendment affords "a speaker…the autonomy to choose the content of his own message." *Hurley*

v. Irish-American Gay, Lesbian and Bisexual Group of Boston, 515 U.S. 557, 573 (1995). Congress protects this right in § 230 of the Communications Decency Act. § 230 states, in pertinent part, that,

> No platform or user shall be held liable for any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.

Communications Decency Act § 230.

Further, § 230 allows platforms to act discriminately since social media companies exercise "editorial control and judgment" over the content that users post. *Miami Herald,* 418 U.S. at 258. To emphasize, social media companies do not present themselves as neutral conduits; they use editorial judgments to enforce Community Standards in line with § 230.

This Court has recognized the right of organizations to refuse to host the speech of others and should consider this to differentiate social media companies from common carriers. For example, this Court protected cable operators' right to "exercise editorial discretion over which station or programs are included in its repertoire [because] cable programmers and operators seek to communicate messages on a wide variety of topics and in a wide variety of formats" *Turner Broad. Sys. v. FCC,* 512 U.S. 622, 637 (1994); quoting *Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 494 (1986); see also *Miami Herald,* 418 U.S. at 258 (preserving newspapers' editorial autonomy to select content for publication). This Court also protected "[t]he decisions [newspapers] made as to limitations on the size and content of the paper [because it constitutes] the exercise of editorial control and judgment." *Miami Herald,* 418 U.S. at 258. Lastly, this Court correctly held that organizers of a private parade lawfully denied a group's participation in Boston's first annual St. Patrick's Day parade. *Hurley,* 515 U.S. 557 (1995). In that case, the organizers of the parade had no intention to exclude individuals of a certain group from the parade;

instead, they prohibited the viewpoint that the group sought to convey because it was inconsistent with the parade's central message. *Id.*

This Court should consider editorial discretion as a strong factor to determine that social media is not a common carrier. Similar to *Turner, Hurley,* and *Miami Herald*, all prominent social media companies exercise an inherent right to make editorial decisions that promote their companies' objectives. In comparison to *Turner,* social media companies also "communicate messages on a wide variety of topics and in a wide variety of formats." *Turner*, 512 U.S. at 637. Thus, when social media companies filter which posts to be displayed, they do so in the same capacity as when cable programmers filter which station or programs they want to include. In comparison to *Miami Herald,* social media companies are more than just a "passive receptacle for news, comment, and advertising." *Miami Herald,* 418 U.S. 241, 258. Thus, when social media companies remove or restrict a user's post, they are essentially editing a column out of a newspaper. Finally, in comparison to *Hurley,* when social media companies de-platform or ban an account, they deny that account from expressing a viewpoint that is inconsistent with their Community Standard, or in *Hurley*'s case inconsistent with the "parade's overall message." *Hurley,* 515 U.S. at 577.

C. Social Media Does Not Exert Significant Market Dominance And It Does Not Physically Transport Goods or Services

Social media platforms and traditional common carriers are not analogous due to their distinct nature of operations. This Court recognized the historical context of common carriage is "the transportation of property." *German Alliance Ins. Co. v. Lewis,* 233 U.S. 389, 406 (1914). It further acknowledged that "the transmission of intelligence is of cognate character." *Id.* Other important factors scholars have considered in addressing common carriage is if the entity possesses market power. See *Biden,* 141 S.Ct. at 1223.

First, social media does not transport any physical property, it is the medium within which third-parties speak. It may be true that social media companies transport ideas, but not to the extent "of cognate character" to be labeled a common carrier. *German Alliance,* 233 U.S. at 406-07. For example, telegraphs "resemble[d] railroad companies and other common carriers," because they were "bound to serve all customers alike, without discrimination." *Primrose* v. *Western Union Telegraph Co.*, 154 U. S. 1, 14 (1894); *Biden*, 141 S. Ct. at 1223 (Thomas, J. concurring). That is not the case for social media. As parties asserted in arguments before the Eleventh Circuit, "telegraphs were treated as a commodity product to be purveyed through some sort of (typically scarce) public thoroughfare."[2] See *German Alliance,* 233 U.S. at 426-27 (Lamar, J. dissenting). By contrast, "the Internet can hardly be considered a 'scarce' expressive commodity." *Reno v. American Civil Liberties Union,* 521 U.S. 844, 870 (1997). Social media offers multiple forums that are private enterprises who display their own individualized form of communication. For example, X is a microblog; Instagram is predominately a photo-sharing service with a recent addition of video sharing; TikTok is a short form video-hosting service; Facebook is a social networking service; Snapchat is an instant messaging service consisting of photos and videos; and YouTube is a video sharing service. All in all, each company offers its own unique content.

A second distinguishable trait from common carriage is that no social media platform possesses any market dominance or monopolistic control over another. All prominent social media companies (Facebook, X, Instagram, TikTok, YouTube) compete against one another. This Court in *Turner* was concerned with cable operators' power to control most of the programming that was delivered into subscribers' homes and the dangers its power posed to the viability of broadcast television. *Turner,* 512 U.S. at 633-634. Thus, a regulation was necessary to correct the

[2] Brief of *Amicus Curiae* TechFreedom filed in support of Appellees, p.7 (2021) *NetChoice, LLC v. Attorney General, State of Florida*. This Brief was used in furtherance of the argument that social media differs from common carriage, set forth in this brief.

competitive imbalance between broadcast and cable. Conversely, no single platform possesses "bottleneck or gatekeeper" control over all other platforms. *Id.* at 655. For example, while it is true that Facebook weighs in at 2 billion active users daily, its market share and products have stagnated due to the rise of TikTok, a new rival platform. *Article: Why Social Media Platforms Are Not Common Carriers 2 J. Free Speech L.* 127 at 138. Moreover, when X was still Twitter, it had 229 million active users worldwide and deplatformed former President Donald Trump. After that, Trump created his own social network, Truth Social. *Id.* Overall, these differences further the point that social media is not a common carrier.

D. The Eleventh Circuit Correctly Found That Social Media Is Not A Common Carrier

The Eleventh Circuit correctly relied on this Court's decision in *Turner* and the District of Columbia's Decision in *U.S. Telecom Ass'n v. FCC* to suggest that social media is not a common carrier. This Court's landmark decision in *Turner,* found that cable programmers and cable operators engage in and transmit speech, so they were entitled to First Amendment protections. *Turner,* 512 U.S. at 637. *Turner* established that cable operators were not subject to common carriage even though it held favorably to Congress's regulation. *Id.* This Court only favored the regulation because Congress's interest was compelling enough to pass constitutional muster. However, *Turner* recognized that broadcast media displayed 'unique physical limitations' – chiefly the scarcity of broadcast frequencies." *AG, Fla.*, 34 F.4th at 1220; *Turner,* 512 U.S. at 637-39. As a result, since cable operators did not suffer from these limitations (i.e., marker power), *Turner* "cabined" its less-stringent approach to broadcast media and offered higher scrutiny to cable media. *Id.* More importantly, *Turner* further analogized cable operators to "publishers, pamphleteers, and bookstore owners traditionally protected by the First Amendment." *Id.* See also *U.S. Telecom Ass'n*, 855 F.3d at 428 (Kavanaugh, J., dissenting). By that logic, the Eleventh Circuit

held that "social media platforms should be treated more like cable operators" who also do not suffer from "physical limitations" since there are multiple platforms to choose from. *Id.* To further this point, the Eleventh Circuit relied on *Reno,* which emphasized that the "vast democratic forums of the internet" have never been "subject to the type of government supervision and regulations that has attended the broadcast industry." *Reno,* 521 U.S. at 868-69.

The Fifth Circuit misapprehended the distinction between common carriers and social media when it decided *NetChoice, L.L.C. v. Paxton*. This Circuit misunderstood the Supreme Court's categorization of social media as "the modern public square" *Packingham v. North Carolina,* 137 S. Ct. 1730, 1737 (2017). The Fifth Circuit relied on this analogy because it "reflect[ed] [on] the fact that in-person social interactions, cultural experiences, and economic undertakings are being replaced by … the platforms." *NetChoice, L.L.C. v. Paxton,* 49 F.4th 439, 475 (2022). What the Fifth Circuit fails to recognize is that, based on its own logic, newspapers were the modern public square before social media. Newspapers share all kinds of topics. For example, the New York Times offers the following: World, U.S., Politics, Health, Arts, Books, Style, Travel Magazine, etc. Today's society has made significant strides away from paper and transitioned into digital news, virtual meetings, kindle books and, of course, social media. The framers of the Constitution did not intend for technology to advance as it did when they wrote it; however, based upon this Court's recognition of "protecting newspapers, pamphleteers, and bookstore owners" it is clear that social media platforms would fall into the same category. *Miami Herald,* 418 U.S. at 258. Social media now also shares all the same topics as newspapers. It even offers newspapers the ability to create an account to use the platform. Instead of paper, social media is digital. Instead of news writers, social media has "influencers." Instead of editors, social media has "technology and human reviewers" (i.e., artificial intelligence). *Instagram: Community*

Guidelines https://help.instagram.com (last visited: October 1, 2023). A newspaper prints "a curated set of material selected by its editors," *Paxton,* 49 F.4th at 456 and social media curates the content selected by the platform's reviewers. Clearly, social media offers undeniable similarities to cable operators and newspapers. Thus, this Court should determine that social media is not a common carrier.

II. *ZAUDERER* IS INAPPLICABLE BECAUSE THE SPAAM ACT IMPOSES PENALTIES THAT ARE UNDULY BURDENSOME.

This Court has firmly held that *Zauderer*'s reasonableness standard may be struck down for disclosure requirements that are "unjustified or unduly burdensome," or else they risk a "chilling" effect on protected speech. *Zauderer v. Office of Disciplinary Counsel of Supreme Court,* 471 U.S. 626, 650 (1985). When the state compels a commercial disclosure requirement, this Court will only apply a deferential level of scrutiny if the disclosure requirement consists of "purely factual and uncontroversial information about the terms under which [the] services will be available." *Id.* at 651. This Court further requires disclosures to "remedy a harm that is 'potentially real not purely hypothetical," *National Institute of Family & Life v. Becerra,* 138 S. Ct. 2361, 2377 (2018); *Ibanez v. Florida Dep't of Bus & Professional Regulation, Bd. of Accountancy*, 512 U.S. 136, 146, (1994), "and to extend no broader than reasonably necessary." *Becerra,* 138 S. Ct. at 2377; *In re R.M.J.*, 455 U.S. 191, 203 (1982).

A. The SPAAM Act's Detailed Explanation Requirement Imposes An Undue Burden That Chills Headroom's Protected Speech

This Court recognized that "unjustified or unduly burdensome disclosure requirements" are unconstitutional when it "chills protected speech" even if the requirement is "factual or uncontroversial." *Zauderer,* 471 U.S. at 651. Since Headroom has seventy-five million monthly users and makes countless editorial judgments, it would be unconscionable to enforce legislation

that requires "detailed definitions and explanations" every time Headroom enforces its Community Standards. R. at 6; § 528.491(c)(1). Thus, the undue burden imposed by § 528.491(c) may chill Headroom's free speech. Consequently, platforms like Headroom will abstain from content moderation, which would result in social media anarchy.

Precedent from this Court and Circuit Courts have struck down unduly burdensome disclosure requirements. This Court held that a required disclosure is unduly burdensome if it "effectively rules out" the speech's purpose in particular media, *Ibanez,* 512 U.S. at 146-47 or it promotes policies or views that "are expressly contrary to the corporation's views." *Am. Bev. Ass'n v. City & Cty of San Francisco*, 871 F.3d 884, 894 (2017) (quoting *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n*, 475 U.S. 1, 15 n.12 (1986) (plurality opinion). The Ninth Circuit struck down the compulsion of a "black-box warning" that covered 20 percent of a soda advertisement because it takes over the advertiser's message. *City & Cty of San Francisco,* 871 F.3d at 886. The Fifth Circuit struck down a law that required use of a font size "that [was] so large that an advertisement can no longer convey its message," *Public Citizen Inc. v. Louisiana Attorney Disciplinary Board*, 632 F.3d 212, 228 (2011). The Eleventh circuit struck down a law which compelled one-sixth of the broadcast time of a television advertisement to the government's message. *Tillman v. Miller*, 133 F.3d 1402, 1404 (1998) Finally, the Third Circuit struck down a law that required attorneys to cite a full-length judicial opinion in an advertisement that took a quote from said opinion. *Dwyer v. Cappell,* 762 F.3d 275, 283-84 (2014).

Based upon these principles, it is evident that the SPAAM Act's detailed explanation requirement is unduly burdensome for a few reasons. First, in line with *Ibanez*, the detailed explanation requirement "rules out" the purpose for Headroom's Community Standards. Before a user gains access to the platform, they must agree to the Community Standards, which lay out what

Headroom can and cannot enforce. Accordingly, the requirement to provide excessive detailed and lengthy explanations negates the entire purpose of Headroom's implementation of Community Standards. It undermines the effectiveness and efficiency of the existing guidelines. Moreover, similar to *Tillman* and *Dwyer,* the detailed explanations will take up too much room. As the record reflects, the SPAAM Act requires the platform to "provide a detailed and thorough explanation of what standards were violated, how the users content violated the platform's Community Standards, and why the specific action was chosen." R. at 6. This is impractical and time-consuming. For instance, if a user has multiple infractions on Headroom's Community Standards, the detailed explanation could amount to unnecessarily lengthy statements. This would hinder Headroom's ability to swiftly address harmful or inappropriate content. As a result, Headroom's ability to take action would be delayed, which could potentially allow harmful content to remain visible for longer periods of time. Furthermore, to implement such "detailed explanations" can be costly. Headroom will be subjected to increased operational expenses and resource allocation, including hiring more employees to draft, review, and publish detailed explanations for each regulatory decision. This can strain the platform's budget, especially since Headroom is not a government-funded organization. Likewise, Headroom faces irreparable injury at the risk of incurring multiple fines, totaling $10,000 per day as well as litigation costs and attorney's fees to defend against claims. All in all, the SPAAM Act is unduly burdensome.

In consequence of the unduly burdensome explanations, the SPAAM Act's "chilling effect" may be detrimental to Headroom's growth and success. Headroom may become extra cautious and hesitant to enforce its standards, from the fear of backlash or legal repercussions. As a result, a "chilling effect" will lead to inconsistent or ineffective content moderation, which leads

to a negative user experience. This will undermine Headroom's efforts to maintain a safe and inclusive environment, which will lead to the downfall of Headroom's reputation.

B. The Governmental Interest Is Purely Speculative and Overbroad

This Court's precedent requires disclosures to remedy a harm that is "potentially real, not purely hypothetical." *Becerra,* 138 S. Ct. at 2377; *Ibanez*, 512 U. S. at 146. Moreover, the disclosure must be "no broader than reasonably necessary." *Id.; In re R. M. J.,* 455 U. S. at 203; accord*, Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.,* 425 U. S. 748, 772 (1976)*; Bates v. State Bar of Ariz.,* 433 U. S. 350, 384 (1977)*; cf.* Zauderer, 471 U. S. at 649, (rejecting "broad prophylactic rules" in this area). Broad disclosure requirements risk "chilling" protected speech. *Id.*

By extension of *Becerra,* Headroom "need not decide what type of state interest is sufficient to sustain a disclosure requirement [because] [Midland] has not demonstrated any justification for the [disclosure requirement] that is more than 'purely hypothetical'." *Becerra,* 138 S. Ct. at 2377. First, Representative Barnes's concern about "excessive censorship," is mere speculation. R. at 5. It assumes that censorship is the sole action for users' decrease in viewership. Although Midland seeks to "ensure the protection of democratic values," it is even more essential to consider that moderation is *also* a fundamental right. Such moderation is crucial to maintain a safe and inclusive environment. For instance, the government offers the argument where Max Sterling alleges that Headroom deprioritized his content after he posted a dramatic "They're Coming for You" monologue. R. at 5. However, the government failed to recognize that Headroom was not the sole cause of Max's viewership decline, and viewers likely unfollowed Max after seeing such an unsettling post. Second, Barnes' argument that "robust legislation [is needed] to curb social media's power and restore the voices of the people" is also speculative. This assumes

that legislation will automatically achieve a desired outcome. Both Barnes and Midland fail to see that legislation could impose even heftier restrictions than Headroom on what users post, which will minimize the "voice for the people" to an even lesser degree. R. at 5. Finally, Nancy Thornberry expressed concern that the "ability to challenge political orthodoxy is under siege" after WhimsiWear alleged that her user engagements dropped by thirty-four percent after she criticized a controversial candidate. R. at 5. Again, the government failed to recognize that Headroom was not the sole cause of WhimsiWear's downfall.

The SPAAM Act is also overbroad and the adverse effects of its implementation burdens Headroom and other social media sites alike. The SPAAM Act does not consider that social media companies are complex and experience personalized challenges. As stated, this Court rejects "broad prophylactic rules" because, like the unduly burdensome aspect, the over-broadness imposes a "chilling effect" on protected speech. *Zauderer,* 471 U.S. at 649. It is of major concern that the SPAAM Act seeks to encompass all social media companies because it will stifle creativity and hinder competition. Social media companies offer their own uniqueness to distinguish themselves from one another. Headroom's selling point is its ability to have its users experience a virtual reality, which requires different interaction from companies like X, which is based on microblogging. To force all social media companies to conform to a single blanket rule is to diminish their unique creative essence. Not only will Headroom suffer the "chilling effect" from the SPAAM Act; now, all social media companies will be subjected to hefty fines, higher costs, and tedious work. Since Midland lacks any justifiable rationale, other than mere hypothetical concerns, Headroom and other companies shouldn't suffer such irrational injuries. Not only are there collateral damages after the infringement on the right to regulate Headroom's platform, "[t]he

loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable harm." *Elrod v. Burns,* 427 U.S. 347, 373 (1976).

Ultimately, the SPAAM Act is unduly burdensome and undoubtedly overboard. No justification can outweigh the "chilling effect" on Headroom's free speech. Thus, it is necessary to protect the fundamental freedoms of free speech and apply a more stringent level of scrutiny.

III. THE SPAAM ACT FAILS STRICT SCRUTINY BECAUSE IT IS A CONTENT-BASED REGULATION AND IT IS NOT NECESSARY TO ACHIEVE A COMPELLING GOVERNMENTAL INTEREST

The lower courts erred in applying intermediate scrutiny to determine the constitutionality of the SPAAM Act because it is content-based, not content-neutral. Decisions in landmark Supreme Court cases have set the precedent that now guides this Court when faced with scenarios such as this one. As stated, *Zauderer* is not the applicable standard because the circumstances here deserve the utmost protection under the law. As will be discussed below, the SPAAM Act subjects itself to strict scrutiny because it is content-based and compels Headroom's speech. Nonetheless, the State of Midland is not justified in the creation of the SPAAM Act, nor is the Respondent justified in the enforcement of it. Both Headroom and its users deserve to feel safe and make decisions they see fit for the wellbeing of the community. Suitably, this Court should reverse the lower court's decision and maintain the binding principle that content-based regulations are in violation of First Amendment free speech rights when they fail constitutional muster.

Under the First Amendment Free Speech Clause, different levels of scrutiny are applied to government regulations, subject to consideration of several factors, which include, *inter alia,* (1) whether the speech is protected or unprotected, (2) whether the regulation is content-based or content-neutral, and (3) the type of forum the speech is used in. The established level of scrutiny then has its own requirements to be met for the regulation to survive the applicable level of

scrutiny. Notably, there must be state action in order for the regulation to be subject to First Amendment constraints. Here, there is unquestionable state action because the SPAAM Act was created and passed by the State of Midland and enforced by the Attorney General. R. at 5-7.

First, the speech that the SPAAM Act restricts must be protected speech. When speech is protected, it is not subject to First Amendment constraints. This Court in *Manhattan Community Access Corp.* stated, "[t]he Free Speech Clause of the First Amendment constrains governmental actors and protects private actors. To draw the line between governmental and private, this Court applies .. the state-action doctrine." *Manhattan Cmty. Access Corp. v. Halleck,* 139 S. Ct. 1921, 1926 (2019). This Court in *Manhattan Cmty. Access Corp.* further elaborated that under the state-action doctrine, "a private entity may be considered a state actor when it exercises a function 'traditionally [and] exclusively reserved to the State'." *Id.* In that case, this Court determined that MNN, Time Warner's cable system in Manhattan, is a private entity that engages in operations that are not traditional, exclusive public functions. *Id.* The complainants were two suspended producers who claimed MNN violated their First Amendment right to free speech when their access to public-access channels were restricted because of their film's content. *Id.* at 1927. Akin to that case, the present circumstances are no different. Headroom is not a state actor because it is a private company that allows public access by private users. R. at 3. Midland cannot prove Headroom is a state actor on this fact. *Id. Manhattan Cmty. Access Corp.* strongly supports the argument that Headroom's functions are not ones that are "traditionally [and] exclusively reserved to the State" because this Court concluded that the operation of public-access channels on a cable system is not a system that is traditionally and exclusively performed by the government. *Id.* at 1929. The function Headroom provides, which is the operation of public speech on their platform,

is unquestionably in the same realm as the function of the cable system, and consequently deserves the same treatment.

Headroom's status as a private social media platform is not the only protection they have under the First Amendment. Their speech is conceivably commercial speech, which the Supreme Court had established is protected. This Court in *Zauderer* emphasized, "[t]here is no longer any room to doubt that what has come to be known as 'commercial speech' is entitled to the protection of the First Amendment." *Zauderer,* 471 U.S. at 637. Further, "[c]ommercial speech that is not false or deceptive and does not concern unlawful activities, may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest." *Id.* at 638. The current facts presented before this Court portray vast commercial speech because Headroom has evolved into, not only one of the largest social media platforms in the United States, but a powerhouse center for businesses to grow and advertise. R. at 2-3. As will be discussed below, Midland has no legitimate state interest in forcing Headroom to regulate content in the way the SPAAM Act requires. It is undisputed that Headroom's speech is not false or deceptive because they provide Community Standards to their users when they make an account with Headroom, to which the user must agree prior to creating their account. R. at 3. Headroom's commercial speech is lawful and truthful. For these reasons, Headroom's speech is protected several times over.

Next, the regulation must be content-based. Supreme Court precedent has established that, under the present circumstances, the SPAAM Act is a content-based regulation. Content-based regulations are ones that "target speech based on its communicative content …." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Further, this Court in *Reed* provides, "[g]overnment regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* at 163. Here, The SPAAM Act applies to particular speech

Headroom views as inappropriate for their platform, which includes hate speech, violence, child exploitation or abuse, bullying, harassment, suicide or self-injury, racist, sexist, homophobic, or transphobic ideas, or criticism toward protected classes. Headroom's viewpoint is discriminated against by the SPAAM Act, which this Court heavily disfavors. *Id.* at 168. Moreover, this Court in *Reed* emphasized a law is content-based where it "singles out specific subject matter for differential treatment." *Id.* at 156.

In further support, *Otto* stated, "[o]ne reliable way to tell if a law restricting speech is content-based is to ask whether enforcement authorities must examine the content of the message that is conveyed to know whether the law has been violated." *Otto v. City of Boca Raton,* 981 F.3d 854, 862 (11th Cir. 2020). Here, Headroom is forced to filter out and remove specific content the SPAAM Act classifies as discriminatory. R. at 6. To do this, Headroom must examine the content posted and decide whether it violates the Community Standards. If it does, the content must get taken down, or there are punitive measures imposed on the user who posted that content. R. at 6. This is undoubtedly in accordance with what *Otto* expressed is the way to determine if a regulation is content-based. *Id.* A content-based regulation is subject to a strict scrutiny standard of review and is presumptively unconstitutional, unless the government can show the regulation is narrowly tailored to serve a compelling state interest. *Reed,* 576 U.S. at 163.

Last, the forum of the speech must be considered when courts decide the applicable level of scrutiny. *Reno* concentrates on the central idea that the Internet is a fully protected public forum. *Reno*, 521 U.S. at 863. The Internet has become so advanced throughout the years, it is arguably its own forum. The District Court in *ACLU v. Reno* reviewed "the special attributes of Internet communication" and concluded, "the First Amendment denies Congress the power to regulate the content of protected speech on the Internet." *Reno,* 521 U.S. at 863 (citing *ACLU v. Reno*, 929 F.

Supp. 824, 867 (1996)). Further, the District Court in *ACLU* properly held that the Internet, as "the most participatory form of mass speech yet developed" is entitled to "the highest protection from governmental intrusion." *Reno,* 521 U.S. at 863 (citing *ACLU,* 929 F. Supp. at 873). This Court in *Reno* affirmed the District Court's assertion that the Internet is a fully protected public forum. *Reno,* 521 U.S. at 885.

Because the SPAAM Act is content-based, strict scrutiny must be analyzed to properly determine that the SPAAM Act fails strict scrutiny because it violates Headroom's First Amendment rights. Strict scrutiny is the highest standard of review. As stated above, to survive strict scrutiny, the state first has the burden to prove the challenged regulation "furthers a compelling state interest." *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003). Second, if there is a compelling state interest, the State must prove the challenged regulation is narrowly tailored - necessary - to accomplish the state interest. *Fisher v. Univ. of Tex.,* 570 U.S. 297, 311 (2013).

The first step in the 2-step approach to analyze strict scrutiny is whether the SPAAM Act furthers a compelling state interest. *Grutter*, 539 U.S. at 326. Here, Midland's motivation for creating and passing the SPAAM Act is to protect Headroom's consumers and their speech. R. at 5. Yet, this goal arguably has a contradictory effect, and is therefore *not* compelling. Midland wants to protect the users of Headroom. However, the SPAAM Act subjects the users to harsh and offensive content because it restricts Headroom from removing such content, and hence does not achieve Midland's intended objective. Additionally, the SPAAM Act infringes on the rights of Headroom as a private social media platform. Consequently, Midland cannot prove the SPAAM Act furthers a compelling state interest. The second step in the 2-step approach to analyze strict scrutiny requires the State to prove the challenged regulation is narrowly tailored to accomplish their compelling interest. *Fisher*, 570 U.S. at 311. This Court in *Grutter* defines 'narrowly tailored'

as, "[t]he means chosen to accomplish the government's asserted purpose must be specifically and narrowly framed to accomplish that purpose." *Grutter*, 539 U.S. at 333 (citing *Shaw v. Hunt*, 517 U.S. 899, 908 (1996)). Even if Midland can prove a compelling state interest, the SPAAM Act would still fail strict scrutiny because the means to achieve that interest are not narrowly tailored. *Grutter,* 539 U.S. at 333. The SPAAM Act prohibits Headroom from filtering and removing content from their platform, notwithstanding the severity of its violation of the Community Standards.[3] Midland's actions under the SPAAM Act are unjust because they don't accomplish their goal. The SPAAM Act is not necessary to protect the speech of the users and is accordingly not narrowly tailored to achieve Midland's purpose.

In further support, the SPAAM Act is overbroad, which is unconstitutional. A regulation is overbroad when it encompasses an immense amount of regulation on too many actors, and its application on those actors would be unconstitutional. *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2387 (2021). In the present case, Midland passed an overbroad act because it applies to "any social media platform." Midland Code § 528.491(a)(1). It does not specify the type of platforms the SPAAM Act applies to and fails to take into consideration other variables that make social media platforms different. Including "all social media platforms" in the SPAAM Act creates an unquestionable infringement on all platforms' constitutional rights, including Headroom's.[4] Presently, there is no indication that the SPAAM Act is in pursuance with the requirements of strict scrutiny, and appropriately, the SPAAM Act should be found unconstitutional.

Even if intermediate scrutiny applied here, the SPAAM Act would persist to fail. To survive intermediate scrutiny, the SPAAM Act must be "narrowly tailored to serve a significant

[3] This argument was first advanced by appellee in *NetChoice LLC., v Attorney General, State of Florida*, see Appellee's Br. 48, 49, and further advances this instant case.
[4] *Id. at 49.*

governmental interest." *City of Austin v. Reagan Nat'l Adver. of Austin, LLC,* 142 S. Ct. 1464, 1475 (2022). First, Midland does not make clear any important state interest they wish to achieve that would satisfy the requirement to survive intermediate scrutiny. In fact, the SPAAM Act was arguably implemented so Midland could exploit any power they believe they have over Headroom. Midland's reason for passing the SPAAM Act centered around holding Headroom accountable to ensure "democratic values." R. at 5. However, this statement is completely contradictory to the effect of the SPAAM Act. The SPAAM Act forces Headroom to take action outside of their democratic values. Second, even if Midland could prove an important state interest, the SPAAM Act is not narrowly tailored. "[t]he challenged requirement must be narrowly tailored to the interest it promotes." *Ams. for Prosperity Found,* 141 S. Ct. at 2384. Here, the SPAAM Act forces Headroom to host speech they would otherwise reject with the risk of repercussions for removing the content. at 6. Essentially, the SPAAM Act seeks to punish Headroom for making its own decisions; decisions Headroom has the right to make. Conclusively, this requirement of the SPAAM Act is not necessary for any legitimate interest Midland may prove. As stated above, Headroom is a private entity that has the right to make decisions that are best fit for their platform, and no government intervention is warranted. For the aforementioned reasons, if intermediate scrutiny were applicable, the SPAAM Act would not survive constitutionality.

IV. THE SPAAM ACT COMPELS HEADROOM TO SPEAK BECAUSE IT REQUIRES THE COMPANY TO ISSUE STANDARDS AND EXPLAIN ITSELF IN A VARIETY OF WAYS

The requirements set forth in the SPAAM Act are clear violations of Headroom's First Amendment rights because they force Headroom to adhere to Midland's viewpoints, rather than their own. Headroom has an inherent right to editorial discretion, which they should be able to exercise without the fear of government infraction. *Miami Herald,* 418 U.S. at 258. Further,

compelling Headroom to speak despite their right to choose not to speak, is unlawful. *W. Va. State Bd. of Educ. v. Barnette,* 319 U.S. 624, 645 (1943). Conclusively, the SPAAM Act should be deemed unconstitutional for discussion of the aforementioned reasons.

A. The SPAAM Act Restricts Headroom's Editorial Discretion by Restricting its Ability to Remove or Alter Users' Content That Headroom Feels is Inappropriate to be Posted on its Platform

The SPAAM Act imposes limits on Headroom's ability to choose what content to allow on their platform, which is in violation of Headroom's First Amendment rights as a private social media company. The Supreme Court has strongly advocated in favor of private social media companies' entitlement to exercise their editorial discretion as they see fit for their platform. Supreme Court cases have consistently held it is no one's decision but the private entities' to remove or alter content they believe shouldn't be available for their users to view. A private entities' right to exercise editorial discretion is arguably the central idea of the First Amendment, as there are protections against governmental intrusion on private decisions, as well as protections against government attempts to suppress or compel private speech.

The Supreme Court case, *Miami Herald*, firmly held that government infringement on a private entity's editorial discretion is in violation of the First Amendment. *Miami Herald,* 418 U.S. at 258. Akin to the present case, *Miami Herald* focused on a Florida state statute, the "right of reply" statute, that sought to compel a private newspaper to allow political candidates space in their newspaper to reply to ridicule about their re-election. *Id.* at 244. This is not a decision the newspaper would have made on its own. *Id.* at 258. The newspaper pursued a First Amendment violation on the grounds that the Florida statute was an infringement on their right to editorial discretion. *Id.* at 245. The Supreme Court's decision was based primarily on the established theory that "[t]he choice of material to go into a newspaper, and the decisions made as to limitations on

the size and content of the paper, and treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial control and judgment." *Id.* at 258. Further, the Court in *Rumsfeld* emphasized the government's attempt to interfere with the newspaper's speech in *Miami Herald* was another infringement on the newspaper's "desired message." *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.,* 547 U.S. 47, 64 (2006). Moreover, this Court in *Pacific Gas* determined the government cannot force a private entity to spread a message with which it does not agree with. *Pacific Gas,* 475 U.S. at 7. Complementary to *Pacific Gas*, this Court in *Hurley*, concluded, "it boils down to the choice of a speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government's power to control." *Hurley,* 515 U.S. at 575. In further support, this Court in both *Harris* and *Wooley* held the same principle. This Court in Wooley stated, "[t]he right to speak and the right to refrain from speaking are complementary components of the broader concept of "individual freedom of mind." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). This Court in *Harris* heavily relied on, "the bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support." *Harris v. Quinn,* 573 U.S. 616, 656 (2014). The Court of Appeals for the Thirteenth Circuit incorrectly relied on *Pacific Gas's* interpretation of *Pruneyard* because the private shopping mall didn't express rejection of the pamphlets like Headroom has expressed rejection to its users' distasteful content. *Pacific Gas,* 475 U.S. at 12. The Circuit Court in *Miami Herald* "concluded that dictating what a newspaper must print was no different than dictating what it must not print." *Miami Herald,* 418 U.S. at 245. In the present case, Headroom is told what they can and cannot allow to be posted on their platform, however, that is no one's decision but Headroom's to make. Previously discussed Supreme Court

precedent has acknowledged government attempts to infringe on private companies' rights and has consistently advocated for the private company. The facts of the present case are not an exception.

Succinctly, the First Amendment protects private companies from government interference. Social media companies, such as Headroom, are entitled to create and maintain the community of their choice without fear of the government impeding on this right. Therefore, the SPAAM Act unconstitutionally restricts Headroom's editorial discretion rights that they're justly entitled to, as a private social media company.

B. The SPAAM Act Requires Headroom to Publish Detailed "Community Standards" and Explanations of Why and How They Are Choosing to Implement Disciplinary Actions for the User in Violation of the Community Standards

The SPAAM Act further infringes on Headroom's First Amendment rights when it compels the platform to publish detailed "Community Standards" along with explanations of why they intend to impose a certain punishment on a user. Headroom has a right to be silent. In support, this Court in *Barnette* concluded, "[t]he action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all government control." *Barnette,* 319 U.S. at 642. The appellees in *Barnette* are Jehovah's Witnesses who refused to comply with a West Virginia statute which ordered a salute to the American flag must be a part of schools' everyday routine. *Id.* at 626. Analogous to the children in *Barnette*, Headroom is forced to speak when they're not comfortable to and would not otherwise choose to do so. *Id.* The Constitution protects against state action, including both the right to speak and the right to not speak at all. *Id*. at 645. Compelling Headroom to publish detailed Community Standards, as well as the explanations for each users' punishment, violates the First Amendment.

V. HEADROOM HAS AN OBLIGATION TO ALL OF THEIR USERS TO REGULATE CONTENT TO MAKE THEM FEEL SAFE IN USING THEIR PLATFORM

Headroom, as one of the most used social media platforms in the country, has strict goals and objectives they strive to accomplish focusing on the safety, happiness, and creative outlets they provide to their users. Headroom's Community Standards were written and implemented with only the best interests of their users in mind. These Standards have been continuously triumphant in filtering out inappropriate content. Headroom's primary obligation as a private social media company is to make sure each and every user feels safe and comfortable to use their platform. Although most of Headroom's users utilize the features to enhance their business, other users use the platform to express themselves and be creative, and they deserve a safe space to do that. The Court of Appeals of the Thirteenth Circuit, in this case, failed to appreciate the importance of the policy consideration that is so crucial to uphold both Headroom's reputation, and the wellbeing of its users. This Court in *Pruneyard* concludes, "[t]he views expressed by members of the public in passing out pamphlets or seeking signatures for a petition thus will not likely be identified with those of the owner." *Pruneyard Shopping Ctr. v. Robbins,* 447 U.S. 74, 87 (1980). This reasoning in *Pruneyard* gives inadequate weight to what is important to Headroom, and hence was incorrectly applied by the lower court.

There is no doubt Headroom is used by people of various backgrounds and ages as an outlet to escape from the divided world, and the harsh reality that society has become. Allowing the SPAAM Act to impede on Headroom's already effective Community Standards would ultimately force Headroom's users to face a continued harsh reality on the platform by subjecting them to upsetting, offensive, and cruel content. There is no reason the State can provide that would justify the unreasonable deprivation of Headroom's power to remove or alter this content as they see fit.

Further, Headroom's means of interaction is so unique to the world of cyberspace, as they use virtual reality headsets. R. at 3. This supports the theory that users are so drawn to this specific platform because they strive to be in a reality away from their own, and so they view the content in a more vivid manner. The intent of Headroom's Community Standards is to ensure that viewers have a satisfactory experience when viewing the content in such a pragmatic setting. R. at 2-3. Without Headroom's own Community Standards continuing to govern how content is filtered, users will take advantage and post carelessly, making everyone uncomfortable.

Simply put, users rely on Headroom to provide a safe space to post content, interact, and further business ventures. The SPAAM Act is a major barrier to Headroom's objectives. This Court should consider how detrimental it would be if social media companies were forced to keep distasteful and unsettling content up for everyone to see. No one would feel comfortable to use these platforms due to the fear of logging on and being bullied, harassed, hated, and criticized. It is of utmost importance to note this exact matter is currently being considered by this Court in three separate cases. If this Court affirms the Thirteenth Circuit's holding, it will lead to excessive government regulation under the guise of ensuring democratic values.

CONCLUSION

For the aforementioned reasons, the SPAAM Act is unconstitutional, and the decision of the lower court should be reversed.

Respectfully submitted

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