No. 23-386

In the Supreme Court of the United States

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 THE PETITIONER

Team # 7

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

SUPREME COURT CASES

CIRCUIT COURT CASES

REPORTS

JOURNALS

QUESTIONS PRESENTED

I. Under the First Amendment's Free Speech Clause (1) does the narrowly constructed common carrier status exclude social media companies and (2) does this Court's outdated decision in *Zauderer v. Disciplinary Counsel of the Supreme Court of Ohio* apply to the Speech Protection and Anti-Muzzling Act's disclosure requirement?

II. Does a state violate the First Amendment's Free Speech Clause when it prohibits private social media companies from moderating their platforms as they see fit in accordance with rules to which all users agreed?

STATEMENT OF THE CASE

This appeal arises out of Midland's attempt to curtail Headroom's freedom of speech by imposing excessive restrictions on the social media platform through the state's Speech Protection and Anti-Muzzling (SPAAM) Act.

The Algorithm and Community Standards

Headroom, Inc., a private company, provides a popular and modern social media platform. R. at 2. It connects seventy-five million monthly users around the world through various forms of media and a virtual reality environment. R. at 3. Headroom users create profiles, share content, and interact with other users' posts. *Id.* Like most social media and online platforms, Headroom utilizes an algorithm to prioritize and customize the content users see on their accounts. *Id.* This algorithm considers users' interests based on engagement history and stated preferences to curate a balanced, personalized experience. *Id.*

Headroom protects its users by creating a safe environment where "all are respected and welcome." R. at 2–3. To advance this purpose, Headroom established detailed Community Standards. R. at 3. Before joining the platform, all users *must* agree to the Standards, which explain prohibited conduct. *Id.* These Standards empower Headroom to accomplish its vital mission of "provid[ing] a space for everyone to express themselves to the world" while "promot[ing] greater inclusion, diversity, and acceptance in a divided world." R. at 2–3.

The algorithm also considers Community Standards compliance. R. at 3. Headroom employs Community Standards to "ensure a welcoming community," and accordingly deprioritizes violative content under the algorithm. *Id.* Headroom's Community Standards specifically "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

Further, Headroom's Community Standards ban "disinformation." R. at 3–4. Headroom classifies disinformation as "intentionally false or misleading information that is spread for the purpose of deceiving or manipulating individuals or groups." R. at 4. Under Headroom's Community Standards, disinformation takes many forms, including that "of fabricated stories, manipulated facts, manipulated images or videos, and misleading narratives." *Id.* Headroom issues warnings or explanatory comments on less severe violative posts. *Id.* Additionally, Headroom may demonetize, suspend, block, or remove accounts for more severe breaches. *Id.*

Creation of the SPAAM Act

Despite Headroom's purpose to uphold respect for everyone, some Midland government officials accused Headroom of discriminating against users with certain viewpoints. *Id.* Midland's Governor, Michael Thompson, and the Legislature investigated Headroom's practices, hearing only from three users, each of whom violated the Community Standards. R. at 4–5. Following the limited testimony, Midland legislators promptly passed the SPAAM Act. R. at 7.

In passing the law, legislators cite their motivations to curb social media companies' power and "restore the voice of the people." R. at 5. The legislators expanded, stating that "excessive censorship by tech behemoths is a clear violation of our fundamental rights." *Id*. Governor Thompson similarly expressed support of the Act "guarantee[ing] the protection of civil liberties while curbing the spread of harmful content." *Id.*

The Act's Limitations

The SPAAM Act imposes content moderation and disclosure requirements on all social media platforms. Midland Code § 528.491(a)(1). The Act defines a social media platform as:

> [A]ny information service, system, search engine, or software provider that: (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). The Act frames social media platforms as "the public square of the twenty-first century and common carriers of public speech." *Id.* § 528.491(b)(1).

Under the content moderation restrictions, the Act broadly forbids platforms from "censoring, deplatforming or shadow banning . . . individual[s], business[es], or journalistic enterprise[s]" based on "viewpoint." *Id.* The Act construes "censorship" as "editing, deleting, altering, or adding any commentary" to posts. *Id.* § 528.491(b)(1)(i). In addition, legislators classify "permanently or temporarily deleting or banning a user" as "deplatforming." *Id.* § 528.491(b)(1)(ii). Finally, "shadow banning" encompasses "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)(1)(iii). Midland only exempts "obscene, pornographic or otherwise illegal or patently offensive" posts from these content moderation restrictions. *Id.* § 528.491(b)(2).

The Act infringes on Headroom's implementation of the Community Standards by requiring "detailed definitions and explanations for how they will be used, interpreted, and enforced." *Id.* § 528.491(c)(1). The Act's disclosure requirements force social media platforms to "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 actions (e.g., suspension, banning, etc.) was chosen." *Id.* § 528.491(c)(2). In turn, courts may punish them for violating the Act's restrictive provisions through injunctions or fines up to $10,000 each day per infraction. *Id.* § 528.491(d)(3).

SUMMARY OF THE ARGUMENT

The United States District Court for the District of Midland correctly decided in favor of Headroom. It did so by granting Headroom's preliminary injunction and protecting Headroom's First Amendment freedoms as a private entity. Headroom does not meet the criteria of a common carrier, and the SPAAM Act created "unjustified or unduly burdensome" disclosure requirements under *Zauderer v. Off. of Disciplinary Couns. of the Sup. Ct. of Ohio*. 471 U.S. 626, 651 (1985). Additionally, as a private actor, Headroom retains the right to editorial discretion under the First Amendment, which the SPAAM Act impermissibly constrains.

First, this Court should find the common carrier definition exempts social media companies. By requiring users to agree to Headroom's Community Standards prior to becoming a member on the platform, Headroom has not met either of the requirements of the two-prong test for common carrier classification. Headroom neither holds itself out as a common carrier nor does it freely allow users to share any content they choose under its Community Standards. Indeed, this Court's rulings along with Congressional decisions exemplify that Internet platforms such as Headroom do not qualify as common carriers.

Second, this Court's ruling on disclosures in *Zauderer* does not apply. Unlike the limitation on advertising in *Zauderer*, Midland designed the SPAAM Act as a blanket ban rather than a narrow restriction. Given this Court previously finding blanket bans "impermissible," Midland must not be allowed to limit any social media platform's freedom of speech under the SPAAM Act. *Zauderer*, 471 U.S. at 638. However, even if this Court finds the SPAAM Act does not constitute a blanket ban, *Zauderer* will still not apply. The detailed disclosures combined with the monetary penalties for each infraction demonstrate the "unjustified or unduly burdensome" nature of the SPAAM Act.

Finally, Midland impermissibly strips social media companies of their constitutional free speech protections under the First Amendment by prohibiting the exercise of editorial judgment on a private platform. As a well-founded right, editorial discretion empowers private actors, such as Headroom, to influence its message by choosing what content to prioritize. The SPAAM Act directly restricts this freedom without a significant governmental interest. Midland claims the Act sustains free speech, but the government actually restricts this vital right through the imposition of the Act. Because the SPAAM Act violates Headroom's editorial judgment and cannot survive the scrutiny this Court demands, Midland violates the First Amendment. Accordingly, considering the irreparable harm to Headroom and the hinderance to the public's interest, this Court should uphold the district court's ruling and enjoin Midland from implementing the SPAAM Act.

ARGUMENT

This Court should uphold the district court's lawful ruling in granting Headroom a preliminary injunction because the First Amendment protects social media platforms. The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. The Fourteenth Amendment expands the First Amendment's restrictions onto state governments "prohibit[ing] laws that abridge the freedom of speech." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2371 (2018). As this Court has delineated, "[t]he Free Speech Clause of the First Amendment constrains governmental actors and protects private actors." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1926 (2019). The First Amendment applies broadly, with few "minor exceptions." *NetChoice, LLC v.*

Att'y Gen., *Fla*., 34 F.4th 1196, 1203 (11th Cir. 2022). Headroom has not met any of the relevant exceptions, and therefore, the First Amendment preempts Midland's SPAAM Act.

I. The Thirteenth Circuit ruled incorrectly by misclassifying social media platforms as common carriers and ignoring the punitive nature of the SPAAM Act's disclosure requirements.

In the absence of one of the few "minor exceptions," the First Amendment applies broadly. *NetChoice*, 34 F.4th at 1203. Two such exceptions constraining the First Amendment include the "common carrier" classification and the compelled disclosure requirements found under *Zauderer*. *See Zauderer*, 471 U.S. at 673; *FCC v. Midwest Video Corp*., 440 U.S. 689 (1979). Neither of these exceptions apply to Headroom; therefore, the First Amendment protects without limitation.

A. Common carriers as defined exclude social media platforms.

The phrase common carrier originates from the Communications Act of 1934. Communications Act of 1934, 47 U.S.C. § 153(11). Congress created the Communications Act with the purpose of granting "broad authority to regulate interstate telephone communication." *Glob. Crossings Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 48 (2007). Specifically, 47 U.S.C. § 153(11) states:

> The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

47 U.S.C. § 153(11). Congress granted the Federal Communications Commission (FCC) the authority to categorize companies as common carriers. Traditionally, courts have given the FCC "substantial judicial deference" when determining whether to apply the common carrier label.

Time Warner Telecom, Inc. v. FCC, 507 F.3d 205, 222 (3d Cir. 2007) ("the public interest standard is a task that Congress has delegated to the Commission.").

Social media platforms conflict with the purpose of common carriers under the Communications Act. Congress created the common carrier status with the intent of targeting paid communication services to ensure the maintenance of "just and reasonable rates." *Glob. Crossings Telecomms., Inc.*, 550 U.S. at 54; *Time Warner Telecom, Inc.*, 507 F.3d at 210. This Court bolstered legislative intent by declining to recognize several classes of communications providers as common carriers, including wireline broadband providers. *FCC v. League of Women Voters*, 468 U.S. 364, 378 (1984) (finding that the definition of common carriers excluded broadcasters, granting them wide journalistic freedom under the First Amendment); *see also Time Warner Telecom, Inc.*, 507 F. 3d at 222 (stating "that continued regulation of wireline broadband providers . . . would harm consumers by 'imped[ing] the development and deployment of innovative wireline broadband Internet access technologies and services'" (quoting Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, 20 FCC Rcd., 14853, 14887–88 P 65 (2005))). Therefore, given social media companies' actions, this Court's rulings, and Congressional intent, these companies do not meet the common carrier definition under the Communications Act. *NetChoice*, 34 F.4th at 1220–21.

i. Social media companies do not act like common carriers.

Headroom's actions have demonstrated that the company does not resemble a common carrier. Courts have previously stated that "[t]he primary sine qua non of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently." *Nat'l Ass'n of Regul. Util. Comm'rs v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976). A two-prong test has emerged to determine whether a company meets the common carrier

requirements detailed under the Communications Act. *Iowa Telecomms. Servs. v. Iowa Utils. Bd.*, 563 F.3d 743, 746 (8th Cir. 2008). The test to determine the applicability of common carrier status is: "(1) whether the carrier holds himself out to serve indifferently all potential users; and (2) whether the carrier allows customers to transmit intelligence of their own design and choosing." *Id.* (*citing U.S. Telecom Ass'n v. FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002)).

Prong One

Headroom does not satisfy the first prong of the common carrier test because it does not hold itself out as a common carrier that offers services indiscriminately to the public. Courts have recognized that self-certification as a common carrier gives "significant weight" to the determination of common carrier status. *Iowa Telecomms. Servs.*, 563 F.3d at 749; *see Bright House Networks, LLC v. Verizon Cal., Inc.*, 23 FCC Rcd. 10704, 10718 P 39 (2008). This viewpoint emerged because the common carrier label "confers substantial responsibilities as well as privilege." *Iowa Telecomms. Servs.*, 563 F.3d at 749. Courts look to three factors to satisfy the first prong: "(1) the carriers self-certified that they operated as common carriers, (2) the carriers gave public notice of their intent to act as common carriers, and (3) the carriers entered into publicly available interconnection agreements with the local exchange carrier." *Id.* (finding that Sprint met all three requirements where the company held itself out as a common carrier, willingly provided whole-sale services, marketed its services to last mile facilities, sent company representatives to trade shows, and entered into public interconnection agreements); *see Verizon Cal., Inc., v. FCC*, 555 F.3d 270, 275 (D.C. Cir. 2009) (finding Verizon affiliates met the common carrier test where they self-certified that they served and would continue to serve all "similarly situated customers equally," entered into "publicly available interconnection agreements with Verizon," and "obtained a state certificate of public convenience and necessity"

which acted as public notice of an intent to act as a common carrier). Indeed, courts do not find each factor in isolation "compelling" enough to support a finding of common carrier status. *Verizon Cal., Inc.*, 555 F.3d at 276. Because Headroom does not meet any of the factors for the first prong of the test, Headroom's conduct diverges from that of a common carrier.

Headroom neither explicitly nor implicitly advertised or labeled itself to the public as a common carrier. Headroom's Community Standards do not classify the platform as a common carrier. In fact, Headroom's mission of "ensur[ing] a welcoming community" indicates the company's desire to only collaborate with a subset of the population—users who will promote and adhere to its policy. In contrast to Sprint in *Iowa Telecommunications Services*, which held "itself out to be a common carrier," Headroom's lack of verbal communication regarding common carrier status, demonstrates its deliberate decision not to self-certify. Headroom's behavior is further distinguished from Sprint, which "willing[ly] . . . provide[d] wholesale services to any last-minute retail service provider in Iowa," because Headroom elected to limit its targeted users through its Community Standards.

Next, Headroom's detailed Community Standards along with its carefully developed categorization algorithms provide public notice of the company's intent to work with a subset of the population. Again, contrary to Sprint's behavior in *Iowa Telecommunications Services*, where it sent "company representatives to trade shows" to notify the public of its desire to form extensive relationships, Headroom has not taken any actions that notify its intent to form relationships with all members of the public. Further, unlike the affiliates in *Verizon California, Inc.*, Headroom has not obtained a state certificate of public convenience and necessity; therefore, it did not notify the public of its intent to act as a common carrier.

Finally, Headroom does not meet the last factor because it did not enter into a publicly available agreement with a local exchange carrier. As a social media platform and private entity, Headroom operates independently of any organization. Headroom does not need to work with other providers or other companies to function as a business or retain users. In contrast to the affiliates in *Verizon California, Inc.* that entered into "interconnection agreements" with Verizon, Headroom has not entered into any interconnection agreements and has no need of ever entering into such agreements.

Prong Two

Headroom does not satisfy the second prong of the common carrier test, as it does not "allow customers to transmit intelligence of their own design and choosing." *Midwest Video Corp.*, 440 U.S. at 701; *U.S. Telecom Ass'n*, 295 F.3d at 1335. When a platform makes "individualized content and viewpoint-based decisions about whether to publish particular messages or users," an entity does not meet the standard under the second prong. *NetChoice*, 34 F.4th at 1221 (finding that social media platforms like Facebook do not meet the second prong of the common carrier test and therefore have never existed as common carriers because users must agree not to "transmit content that violates the company's rules").

While any individual may attempt to sign up for Headroom's services, Headroom does not automatically grant access to every individual on its platform. To use Headroom's services and join its servers, users *must* agree to its Community Standards. Specifically, Headroom's Community Standards delineate prohibited conduct. The guidelines that Headroom enforces allow it to "ensure a welcoming community" where "all are respected." Further, the Community Standards outline banned content including that which "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." In addition, Headroom's Community Standards ban "disinformation," defined as "intentionally false or misleading information . . . spread for the purpose of deceiving or manipulating individuals or groups." Headroom states that "disinformation can take the form of fabricated stories, manipulated facts, manipulated images or videos, and misleading narratives."

Similar to Facebook users in *NetChoice*, Headroom users may "not freely . . . transmit messages 'of their own design and choosing'" because users must agree to certain conditions regarding the content that they may publish prior to creating an account. Further, through its Community Standards, Headroom makes "individualized content and viewpoint-based decisions." Thus, not meeting either prong of the common carrier test, Headroom should not be categorized as a common carrier.

ii. This Court has demonstrated social media companies must be excluded from common carrier status.

This Court's prior rulings indicate that social media companies like Headroom exist outside the reach of the previously defined common carrier status. Moreover, this Court has indicated that the treatment of social media platforms should resemble that of cable operators, instead of "traditional common carriers." *NetChoice*, 34 F.4th at 1220. This Court has previously recognized that cable operators fall outside the scope of common carrier status. *Id.* Further, this Court has previously grouped cable operators with "publishers, pamphleteers, and bookstore owners traditionally protected by the First Amendment" as opposed to "electricity providers, trucking companies, and railroads—all entities subject to traditional economic regulation." *Turner Broad. Sys., Inc., v. FCC*, 512 U.S. 622, 637–39 (1994); *U.S. Telecom Ass'n v. FCC*, 855 F.3d 381, 428 (D.C. Cir. 2017). Additionally, this Court has stated that "[n]either before nor after

the enactment of the [Communications Decency Act] have the vast democratic fora of the Internet been subject to the type of government supervision and regulation that has attended the broadcast industry." *Reno v. ACLU*, 521 U.S. 844, 868 (1997) (stating that "the Internet is not as 'invasive' as radio or television.").

Given that Headroom, through the design of its platform, allows users to independently interact with any content that they choose, Headroom resembles cable operators, where users have more control over the services. Headroom contrasts with traditional common carriers such as electricity providers, trucking companies, and railroads, which completely regulated the users' experience. Therefore, this Court should exclude Headroom from common carrier status due to its previous demonstrations that social media platforms mirror cable operators.

iii. Congress, through its behavior, encourages courts to avoid classifying Internet platforms as common carriers.

Statutory language shows Congress's intent to separate Internet companies from common carriers. Unless there exists "clear evidence of a contrary legislative intention[,] the plain language of a statute shall govern interpretation." *United States v. Apfelbaum*, 445 U.S. 115, 121 (1980). However, when analyzing statutes, courts must attempt to avoid redundant interpretations of words that would violate the statutory canon of surplusage. *Lamie v. U.S. Tr.*, 540 U.S. 526, 536 (2004).

When determining the scope of common carrier status in relation to social media platforms, courts must look to all relevant uses of the term. *United States v. Hansen*, 599 U.S. 762, 773–75 (2023). While the Communications Act of 1934 and the Telecommunications Act of 1996 exist independently as two separate laws, the common carrier status inherently links them both. The FCC has previously stated that a "telecommunication carrier" has a near identical meaning as that of a common carrier under the Communications Act. *Iowa Telecomms. Servs.*,

563 F.3d at 746; *see AT&T Submarine Sus., Inc.*, 13 FCC Rcd. 21585, 21587–88 P 6 (1998). Therefore, references to the common carrier status under the Telecommunications Act take on the definition found under the Communications Act.

The relevant portion of the Telecommunications Act of 1996 states "[n]othing in this section shall be construed to treat interactive computer services as common carriers or telecommunication carriers." Telecommunications Act of 1996, 47 U.S.C. § 223(e)(6). Interactive computer services include social media platforms. *NetChoice*, 34 F.4th at 1220–21. When Congress differentiated interactive computer services from common carriers in § 223(e)(6), Congress wished to exclude social media platforms from common carrier status. Congress's lack of redundancy demonstrates its legislative intent. Thus, under this definition, Headroom is not a common carrier.

iv. This Court should avoid expanding the common carrier status to social media platforms because similar protections apply under the Communications Decency Act.

This Court should not classify Headroom as a common carrier because it would impose unnecessary restrictions and violate the purpose of the Communications Decency Act (CDA). Congress carefully crafted the CDA decades ago in light of rapid technological developments. When designing the CDA, Congress found that the "Internet and other interactive computer services offer[ed] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activities." Communications Decency Act of 1996, 47 U.S.C. § 230(a)(3). However, Congress acknowledges in the CDA that these potential social benefits provided by social media platforms did not occur merely by chance. Rather, Congress recognized that "the Internet and other interactive computer services have flourished . . . [despite] minimum . . . government regulation." 47 U.S.C. § 230(a)(4). Congress

understood the importance of protecting Internet companies and platforms by allowing them to monitor and restrict certain content, stating:

> "No provider or user of an interactive computer service shall be held liable on account of—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 . . . "

47 U.S.C. § 230(c)(2)(A). Section 230(c)(2)(A) in turn allowed Congress to fulfill two purposes: "(i) [to] encourage wide dissemination and diversity of ideas on the Internet and (ii) [to] protect internet platforms that choose to create family friendly environments." Adam Candeub, *Bargaining for Free Speech: Common Carriage, Network Neutrality, and Section 230*, 22 Yale J.L. & Tech., 391, 419 (2020). Headroom's Community Standards simply fit within the boundaries of § 230(c)(2)(A) of the CDA. Through its Community Standards, Headroom focuses on prohibiting content including "hate speech, violence . . . abuse; bullying; [or] harassment . . . ." Given that the CDA expressly permits restricting "harassing" content in good faith, Headroom's Community Standards conform with the provisions. If this Court heightened Headroom's obligations by classifying it as a common carrier, given Congress's findings, not only would Headroom be burdened, but the public would be severely impaired.

B. *Zauderer* does not apply to the SPAAM Act both because the Act constitutes a blanket ban and unnecessarily pressures Headroom with extreme disclosure requirements.

This Court's disclosure decision in *Zauderer* does not apply to the SPAAM Act. The First Amendment protects commercial speech. *Zauderer*, 471 U.S. at 637; *see Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60 (1983). Furthermore, only in limited circumstances may the government restrict commercial speech not characterized as false, deceptive, or unrelated to unlawful activities. *Zauderer,* 471 U.S. at 638. This Court held blanket bans using nondeceptive

terminology "impermissible" in *Zauderer*. *Zauderer,* 471 U.S. at 638. (stating "that blanket bans on price advertising and rules preventing attorneys from using nondeceptive terminology to describe their fields of practice are impermissible"); *see Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977).

In *Zauderer,* the State attempted to avoid public deception by requiring the disclosure of attorneys' specific fee arrangement information. The case featured an attorney that ran two advertisements: (1) involving a promise that defendants would be refunded if convicted and (2) relating to contingency fees. To protect prospective clients, this Court held that only where "disclosure requirements are reasonably related to the State's interest in preventing deception of consumers, may commercial speech be regulated." *Zauderer*, 471 U.S. at 673. However, this Court acknowledged that "unjustified or unduly burdensome disclosure requirements" may chill protected commercial speech, thereby offending the First Amendment. *Id.*

Midland designed the SPAAM Act akin to a blanket ban given that it applies to any and all "social media platforms." Midland Code § 528.491(a)(1). The Act additionally defines social media platforms broadly. Under the SPAAM Act, a social media platform refers to:

> [A]ny information service, system, search engine, or software provider that: (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). Moreover, the SPAAM Act restricts social media platforms' abilities in two broad ways. First, the SPAAM Act prohibits social media platforms from altering or removing users' content. Second, the SPAAM Act forbids social media platforms from "censoring, deplatforming, or shadow banning" any "individual, business, or journalistic enterprise" due to "viewpoint." *Id.* § 528.491(b)(1). Unlike the advertisement restrictions in *Zauderer*, which

applied exclusively to certain contingent-fee compensations that were "false, fraudulent, misleading, and deceptive to the public," the SPAAM Act's broad application to social media companies and types of speech form a blanket ban. The SPAAM Act is a blanket ban; therefore, the disclosure test set out in *Zauderer* would not apply.

Even if this Court rejects classifying the SPAAM Act as a blanket ban on social media platforms' speech, the *Zauderer* disclosure ruling would still not apply because of the Act's "unjustified or unduly burdensome" disclosures. The SPAAM Act coerces social media platforms to publish their community standards with "detailed definitions and explanations for how they will be used, interpreted, and enforced." Midland Code § 528.491(c)(1). In addition, when a user violates the Community Standards, Headroom would be forced to "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).

Headroom's burden stretches beyond detailed disclosures. Headroom may be subject to injunctions or fines of $10,000 each day per infraction if courts find that Headroom's acts harmed users. Unlike the rules analyzed in *Zauderer*, which imposed factual disclosures, the SPAAM Act grossly enlarges the burden by requiring factual disclosures, enforcing expressive explanations, and threatening monetary punishment. These additional punitive measures make the Act "unjustified or unduly burdensome" given the seventy-five million monthly users that interact with Headroom's platform. Further, contrary to *Zauderer*, which only applied to legal advertisements, the SPAAM Act functions as a broad standard that Headroom must satisfy regardless of the type of content published, again making the act "unjustified or unduly

burdensome" given its scope. Consequently, the disclosure ruling from *Zauderer* does not apply to the SPAAM Act.

II. Midland violated the First Amendment's Free Speech Clause by prohibiting private parties like Headroom from exercising its lawful right to editorial judgment.

A party may request the court to preliminarily enjoin the government from imposing harm through the implementation of a law. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *NetChoice*, 34 F.4th at 1207. This Court balances four factors when determining whether to enforce a preliminary injunction: (1) likelihood to "[succeed] on the merits," (2) likelihood "to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tip[ping] in [the party's] favor," and (4) an injunction being "in the public interest." *Winter*, 555 U.S. at 20. While courts must consider all of the factors, likelihood of success on the merits holds the most weight. *NetChoice*, 34 F.4th at 1209; *see Ashcroft v. ACLU*, 542 U.S. 656 (2004); *Ramirez v. Collier*, 595 U.S. 411 (2022). Here, all of the preliminary injunction factors weigh in favor of Headroom because Midland violated the Free Speech Clause.

A. Headroom succeeds on the merits of a First Amendment violation claim.

A preliminary injunction provides only temporary relief before courts actually rule on the merits of the case. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). To win an injunction, generally, a party states a claim that is likely to succeed on the merits. *Ashcroft*, 542 U.S. at 666. Even borderline constitutional violations warrant preliminary injunctions due to their harmful nature. *Id.* at 664–65. First Amendment violations are unconstitutional except in the narrow circumstance where they serve a government interest. *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382–84 (2021). Courts analyze these circumstances under varying levels of scrutiny depending on the type of First Amendment violation. *Id.*

i. Midland violates Headroom's right to free speech by steamrolling its editorial judgment.

The First Amendment constrains the government, thereby protecting private actors and their freedom of speech; however, it does *not* constrain private actors from regulating speech. *Manhattan Cmty.*, 139 S. Ct. at 1926 (stating "[t]he Free Speech Clause does not prohibit private abridgment of speech"). The First Amendment protects corporations and associations the same as individuals. *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 8 (1986). "[*A*]*ll* speech inherently involves choices of what to say and what to leave unsaid," so the freedom of speech encapsulates the freedom not to speak. *Id.* at 11. This signifies the freedom to decide, also known as the freedom to exercise editorial judgment.

When a government entity provides a forum for speech, a public forum, the government may not "exclude speech or speakers from the forum" because the First Amendment applies. *Manhattan Cmty.*, 139 S. Ct. at 1930. In stark contrast, when a private actor provides a forum for speech, the private entity "is not ordinarily constrained by the First Amendment" and "may thus exercise editorial discretion over the speech and speakers in the forum." *Id.* (holding that a private entity operating a public access broadcast channel possesses editorial discretion under the First Amendment). Editorial discretion allows private entities to decide not "to publish that which 'reason' tells them should not be published." *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974) (ruling Florida law unconstitutional because mandating newspapers to print a politician's rebuttal to a critical article infringes on editorial judgment).

A law is constitutional under the First Amendment when the government does not inhibit a private actor's desired message. *See Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47 (2006) (finding law constitutional where law required military recruitment access as a

condition to receiving government funding because military presence on campus is not inherently expressive and did not interfere with the school's desired message); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980) (holding mall must host pamphleteers when the mall did not expressly disagree with the pamphleteers' message because it did not undermine the mall's message).

Here, Midland impermissibly strips social media companies of their editorial judgment, forcing these private platforms to echo messages with which they disagree. The SPAAM Act definitively limits private actors' speech; it requires that social media platforms "operate as a corporation, association, or other legal entity." Midland Code § 528.491(a)(2)(ii). Headroom, an undeniably private company, provides a private service, not a public function. Although the Act attempts to construe social media as the modern "public square," Headroom operates an accessible yet *private* space similar to the private operator of the public access channel in *Manhattan Community. Id.* § 528.491(b). All Headroom users must agree to the Community Standards and acknowledge the environment Headroom strives to create through its speech, thereby consenting to its editorial discretion. Like the editors and publishers in *Miami Herald*, who curated an overall message for the newspaper by compiling and organizing articles, Headroom has the sole right to decide what it does and does not publish and prioritize. Headroom provides a unique and particular business service—an algorithm customized to user preferences and the platform's mission.

The SPAAM Act overbearingly prohibits deprioritizing posts and adding commentary to content, characterizing moderation under the Community Standards as "shadow banning" and "censorship." *Id.* § 528.491(b)(1)(i), (iii). Despite users consenting to Headroom's discretion under the Community Standards, the Act inhibits Headroom from fostering a safe and respectful

service by preventing it from temporarily deleting violative accounts. *Id.* § 528.491(b)(1)(ii). Through such stringent mandates, the SPAAM Act restricts Headroom's right to decide the method, audience, and content it conveys.

Midland's government infringes on the message Headroom wants to communicate. Headroom differs from the school in *Rumsfeld*, where the unexpressive nature of the law's funding requirements did not inhibit the school's speech. Additionally, Headroom deviates from the mall in *Pruneyard*, where the pamphleteers' message did not conflict with the mall's message. Here, the SPAAM Act forces social media companies to materially alter the message they want to express, pressuring alignment with the speech Midland's government wants them to communicate. Headroom specifically aims to "promote greater inclusion, diversity, and acceptance in a divided world," but the SPAAM Act compels Headroom to host contrary messages. Under the guidance of *PruneYard*, the Thirteenth Circuit suggests that Headroom may "expressly disavow any connection with the message" of users with whom it disagrees. *Pruneyard*, 447 U.S. at 87. However, "that kind of forced response is antithetical to the free discussion that the First Amendment seeks to foster." *Pac. Gas*, 475 U.S. at 16. Indeed, adding commentary, deplatforming, and demonetizing are, in fact, an expression of Headroom's views protected by the Free Speech Clause of the First Amendment. This Court acknowledged that "all speech inherently involves choices of what to say and what to leave unsaid." *Id.* at 11. The speech-chilling repercussions of the SPAAM Act subvert the First Amendment.

ii. Midland's free speech prohibitions under the SPAAM Act fail even the lowest levels of scrutiny.

This Court evaluates government infringements of First Amendment freedoms under different levels of scrutiny depending on the type or extent of government demands. *Reed v. Town of Gilbert*, 576 U.S. 155, 163–65 (2015). Two levels of scrutiny may be considered in this

case for differing reasons: strict scrutiny and intermediate scrutiny.[1] As acknowledged by this Court, determining the applicable level of scrutiny "is not always a simple task," but here, the SPAAM Act fails at every level rendering the determination ultimately moot. *Turner Broad.*, 512 U.S. at 642.

Content-based regulations trigger the most demanding justifications under a strict scrutiny analysis. *Reed*, 576 U.S. at 171. Content-based restrictions discriminate based on the topic, idea, or message expressed. *Id.* Additionally, content-based regulations require a party to look at the content of a certain expression or speech restriction in determining its compliance. *Id.* at 163; *League of Women Voters*, 468 U.S. at 383. Even if a restriction seems "facially content[] neutral," if an underlying "impermissible purpose or justification" exists, then "that restriction may be content based" and thereby subject to strict scrutiny. *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 76 (2022). Content-based regulations of speech "present 'the potential for becoming a means of suppressing a particular point of view.'" *Id.* at 72 (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981)). This Court finds content-based restrictions "presumptively unconstitutional." *Reed*, 576 U.S. at 163. To survive strict scrutiny, "the government must adopt 'the least restrictive means of achieving a compelling state interest,' rather than a means substantially related to a sufficiently important interest." *Ams. for Prosperity*, 141 S. Ct. at 2383 (quoting *McCullen v. Coakley*, 573 U.S. 464, 478 (2014)).

As opposed to strict scrutiny with content-based regulations, content-neutral restrictions of speech must withstand intermediate scrutiny. *Packingham v. North Carolina*, 582 U.S. 98,

[1] This Court specifically evaluates compelled disclosure requirements under exacting scrutiny, requiring the law to substantially relate and narrowly tailor to a "sufficiently important government interest." *Ams. for Prosperity*, 141 S. Ct. at 2383–84.

105 (2017). Content-neutral regulations generally do not concern the ideas expressed through the exercise of speech. *Turner Broad.*, 512 U.S. at 643. Speech-restrictive laws subject to intermediate scrutiny "must be 'narrowly tailored to serve a significant governmental interest.'" *Reagan Nat'l Advert*., 596 U.S. at 76 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). Such narrow tailoring requires that the law restrains private actors "no [more] than is essential to the furtherance of [the government's] interest." *United States v. O'Brien*, 391 U.S. 367, 377 (1968). The significant government interest that drives the restriction must not relate to "the suppression of free expression." *Id.*

Here, the content moderation clause of the SPAAM Act functions as a content-based restriction on social media platforms' free speech and therefore must withstand strict scrutiny. In pursuing its mission of "ensur[ing] a welcoming community" where "all are respected," Headroom analyzes the content of posts and determines their priority in each user's feed based on the company's algorithm. The SPAAM Act explicitly prohibits all social media platforms from curating their speech according to their own business models and community standards. SPAAM Act compliance requires combing through the content of users' posts, signaling the Act's content-based nature. In fact, Midland explicitly states that accordance with the SPAAM Act requires consideration of "viewpoint." Midland Code § 528.491(b)(1). Such a standard does not indicate a content-neutral regulation, one unconcerned with the ideas expressed through speech. From its genesis, the SPAAM Act has attempted to restrict expression of social media companies' viewpoints through their speech. The Act protects certain harmful dialogue by forcing different viewpoints on a private platform, exemplifying the restriction as content based and therefore subject to strict scrutiny.

Even if this Court considers the SPAAM Act's content moderation requirements as content neutral and therefore subject to intermediate scrutiny, Midland still fails under this standard.[2] Here, the Midland government proposes no legitimate governmental interest, much less a "significant" one. Midland government officials touted motivations of safeguarding free speech and "protect[ing] civil liberties while curbing the spread of harmful content." Ironically, the law constrains private parties' free speech rights. The Act also interferes with social media platforms' long-established efforts to prevent "the spread of harmful content." Further, even if the government held a justifiable interest in protecting citizens' free speech, foundational First Amendment precedent in *O'Brien* rules that the government's interest must remain "unrelated to the suppression of free expression," or speech. *O'Brien*, 391 U.S. at 377. Midland's government officials impermissibly expand their own power through the sweeping restrictions in the SPAAM Act to "curb the power" of private entities. Such behavior blatantly contradicts the purpose and history of the First Amendment and therefore does not create a significant or legitimate government interest. Because the SPAAM Act broadly prohibits all social media companies from making any editorial decisions, except for those preventing criminal activity, the narrow tailoring requirement remains unsatisfied. Thus, the SPAAM Act fails under intermediate scrutiny.

B. The SPAAM Act imposes irreparable harm upon private companies like Headroom.

This Court has required plaintiffs to "demonstrate that irreparable injury is likely in the absence of an injunction." *Winter*, 555 U.S. at 22. Irreparable injury is a fact-specific inquiry. *Id.*

[2] Because intermediate scrutiny requires a less substantial interest and less tailoring than exacting scrutiny, Petitioner analyzes the SPAAM Act's content moderation and compelled disclosure clauses together under intermediate scrutiny.

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

Here, Midland imposes irreparable harm to social media platforms like Headroom by stripping them of rights and revenue. The SPAAM Act blatantly infringes on Headroom's First Amendment rights by demolishing its editorial judgment: an "unquestionable" irreparable injury under *Elrod*. Further, as outlined under the previous issue, the SPAAM Act requires unduly burdensome disclosures. Instead of allowing Headroom to monitor content as it sees fit, the SPAAM Act forces Headroom to moderate the way Midland officials demand or face insurmountable monetary costs. With a platform as popular and successful as Headroom, seeing over seventy-five million monthly users, a per infraction fine of $10,000 each day severely stifles revenue and threatens survival, operationally and financially. The fines confiscate an absurd amount of money from businesses. Further, the restrictions deter company's editorial choices to create a safe and accepting environment, making the company's altruistic goals impossible to achieve. The risk of chilling social media platforms' speech and imposing administrative and punitive costs strips them of foundational rights, causing irreparable injury on a scale far beyond the implications on Headroom.

C. The balance of equities weighs in favor of Headroom.

The balance of equities looks to the burden facing each party when deciding whether to enjoin a law. *See Winter*, 555 U.S. at 32; *Ashcroft*, 542 U.S. at 671. Here, Midland faces no harm if this Court enjoins the SPAAM Act. Headroom and other social media platforms, however, lose their constitutional right to editorial discretion and face exponential costs each day the SPAAM Act holds authority. A preliminary injunction will maintain the status quo pending litigation of

this First Amendment violation. Meanwhile, the SPAAM Act's disruptive enforcement interrupts business practices and rapidly expands government power over private entities.

D. The public interest favors free speech and free market protections for Headroom.

This country's foundational value in protecting free speech favors the public interest. Conversely, government censorship, which the First Amendment has long constrained, adversely impacts the public interest. Through monitoring content per its Community Standards, Headroom protects itself from promoting radical, hateful, dangerous, and sometimes criminal speech and viewpoints. It also protects the public from the dangers of such content by preventing its mass circulation. Disinformation in a rapidly-evolving, innovative world poses a serious threat to social media users. By implementing the SPAAM Act, Midland allows lies and manipulation to run free and rampant, despite Headroom's efforts to curb them. Pervasive disinformation causes the public to lose trust in critical sources of media, polarizing and destabilizing the country. Headroom's fine-tuned ability to filter trustworthy content through editorial judgment benefits society by protecting public safety and the democratic process.

Additionally, Headroom's popularity and success result from the public's desire to join the private platform. If the public has an interest in a social media platform that exercises its editorial judgment differently than Headroom, then the longstanding free market will adapt for such demand, substituting the need for government imposition. The SPAAM Act's strict penalties and meticulous obligations debilitate Headroom's business practices. This ultimatum of strict legal compliance erodes business integrity and sustainable revenue for all social media platforms. The public interest in free speech and free market reinforces Headroom's request for a preliminary injunction.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed, and Headroom's preliminary injunction should be granted.

Respectfully submitted,
/s/ Team 7
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