No. 23-386

IN THE

Supreme Court of the United States

October Term 2023

Headroom, Inc.,

Petitioner,

v.

Edwin Sinclair,
Attorney General For The State Of Midland,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

Submitted By:
TEAM 8

Counsel for Petitioner

QUESTIONS PRESENTED

1. Under the First Amendment's Free Speech Clause, (1) are major social media companies common carriers, and (2) does this Court's decision in *Zauderer v. Disciplinary Counsel of the Supreme Court of Ohio* apply to the SPAAM Act's disclosure requirements?
2. Does a state violate the First Amendment's Free Speech Clause when it prohibits major social media companies from denying users nondiscriminatory access to its services?

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The United States Court of Appeals for the Thirteenth Circuit opinion, *Sinclair v. Headroom, Inc.*, can be found at No. 22-19042. R. at 16. The District Court's opinion granting Headroom's preliminary injunction can be found at No. 22-cv-137. R. at 2.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the United States Constitution provides, in relevant part: "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. Const. amend. I. This amendment applies to state actors, like Midland, under the Fourteenth Amendment. U.S. Const. amend. XVI. Moreover, the Supremacy Clause, which provides, as follows: "the Laws of the United States ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding," serves to preempt the SPAAM Act passed by Midland. U.S. Const., Art. VI, cl. 2.

This case also involves the State of Midland's Speech Protection and Anti-Muzzling (SPAAM) Act. Midland Code § 528.491. The revelation portions are outlined below:

> § 528.491(a)(2)(i)–(iv) defines a "social media platform" as "any 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."
>
> § 528.491(b)(1) prohibits any social media platform from "censoring, deplatforming, or shadow banning" any "individual, business, or journalistic enterprise" because of "viewpoint" and further defines (i) "censorship" or

"censoring" as "editing, deleting, altering, or adding any commentary" to a user's content, (ii) "deplatforming" as "permanently or temporarily deleting or banning a user, (iii) "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" and (2) exempts "obscene, pornographic or otherwise illegal or patently offensive" content from the section's requirement.

§ 528.491(c) requires social media platforms to (1) publish "community standards" with "detailed definitions and explanations for how they will be used, interpreted, and enforced" and (2) "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" when enforcing their own community standards.

§ 528.491(d) (1) outlines that enforcement of the Act is vested in Midland's Attorney General and (2) provides that users who have been harmed by a platform's violation of the Act may either file a complaint with the Attorney General or sue on their own and that courts may grant relief either in the form of injunctions or fines totaling $10,000 a day per infraction.

STATEMENT OF THE CASE

Headroom: An Online Community

Headroom, Inc. is an online community with a user base of over 75 million monthly visitors; users engage with one another within a virtual-reality environment, accessible through virtual-reality headsets. R. at 3. Headroom users enjoy the ability to create profiles, share content, and engage in a secure and welcoming community. R. at 3.

Headroom's mission is to "provide a space for everyone to express themselves to the world" and to "promote greater inclusion, diversity, and acceptance in a divided world." R. at 2-3. To create this community, Headroom has outlined standards (hereafter "Community Standards") that users must agree to before joining the platform. R. at 3. The Community Standards forbid users from creating, posting, or sharing content that either explicitly or implicity promotes or communicates hate speech; violence; child sexual exploitation or abuse; bullying; harassment; suicide or self injury; racist, sexist, or transphobic ideas; or negative comments or criticism toward protected classes. R. at 3. Additionally, the Community Standards ban users from posting "intentionally false or misleading information that is spread for the purpose of deceiving or manipulating individuals or groups . . . [which] can take the form of fabricated stories, manipulated facts . . . images, or videos, and misleading narratives." R. at 4.

The Community Standards outline penalties for users that violate the agreed upon terms. R. at 4. Content that violates the Community Standards may be subject to deprioritization by the Headroom algorithm, demonetization, account suspension, or removal from the platform. R. at 4. Headroom uses data tracking technology and algorithms to prioritize content and curate the user experience. R. at 3. Use of this technology also helps Headroom identify content that runs afoul of the Community Standards. R. at 4.

Consequences of Enforcing the SPAAM Act

In 2022, Midland's legislature introduced the State of Midland's Speech Protection and Anti-Muzzling Act (SPAAM) Act (hereafter, the "Act"), targeting social media companies like Headroom. R. at 1, 4. The Act has two main restrictions. R. at 6. First, the Act prohibits a social media platform from engaging in content moderation by "censoring, deplatforming, or shadow banning" any of its users. R. at 6. § 528.491(b)(2). Second, the Act mandates social media

companies to publish community standards with "detailed definitions and explanations for how they will be used, interpreted, and enforced." R. at 6. § 528.491(c)(1). Further, when a violation occurs and the platform enforces the community standards, the Act requires the platform 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 . . . was chosen." R. at 6. § 528.491(c)(2).

Under the Act, Headroom will be unable to exercise editorial judgment to moderate content. All content on Headroom's site must abide by the Community Standards; all users must agree to post in accordance with the Community Standards as a condition of using the site. R. at 3-4. Everything on Headroom's site advances the message put forth in Headroom's Community Standards. The Act will alter Headroom's message and, should Headroom exercise its authority to remove content, it imposes disclosure requirements that burden Headroom's speech. R. at 6. These provisions unfairly target Headroom, which Midland classifies as "virtual dictators" that "ruin . . . [the lives of] hardworking Midlandians." R. at 5. In reality, Headroom seeks to create a diverse and inclusive online community through content moderation. R. at 3.

Procedural History

In response to the enactment of the Act, Headroom filed a pre-enforcement challenge and moved for preliminary injunction which was granted by the district court. R. at 7; 15. Midland appealed to the Thirteenth Circuit where the preliminary injunction was vacated. R. at 16; 19. Headroom filed a petition for Writ of Certiorari. R. at 21. This Court granted review. R. at 21.

SUMMARY OF THE ARGUMENT

Headroom is a corporation. It does not serve a state function, such that it must host the speech of others indiscriminately. It is not a common carrier, subject to less stringent First

Amendment standards. Headroom is a social media company that operates a privately-owned website domain. As a private entity, Headroom enjoys the full protection of the First Amendment: including, but not limited to, use of its editorial discretion and ability to spread its own message through content moderation.

The Court's decision in *Zauderer* should be construed narrowly. Disclosure requirements regarding attorneys fees in advertisements, where potential clients could be misled about their contractual obligations in an attorney-client relationship, are not comparable to the disclosure requirements under the SPAAM Act. The disclosure requirements of the Act are unduly burdensome to Headroom's speech. Requiring Headroom to explain its editorial decisions any time it removes or deprioritizes content—particularly when these editorial decisions are integral to the function of Headroom's site—violates the First Amendment.

Headroom is a speaker. It exercises editorial judgment by moderating content using algorithms and data tracking to prioritize and deprioritize content; by amending user posts to correct disinformation or add contextual information; and by removing posts violating its Community Standards. Despite its novelty as a social media platform, Headroom enjoys the protections this Court has enshrined under precedent protecting editorial discretion of private entities.

The Act is subject to strict scrutiny because it is content based: application of the Act alters the content of Headroom's speech by preventing it from exercising editorial discretion to remove posts that conflict with its message. The Act fails under strict (and even intermediate) scrutiny because forcing private entities to host the speech of those who may feel silenced or unheard is not a compelling (nor an important) government interest. The Act is also overly broad in its disclosure requirements.

Finally, the content moderation provisions of the Act are preempted by federal law. Section 230 of the Communications Decency Act protects internet providers from liability for good-faith actions to restrict access to material. Section 230(e)(3) further prevents any state or local laws inconsistent with Section 230 from imposing liability. The SPAAM Act's intrusion into the editorial judgment of covered providers contradicts the clear language and intent of Section 230, thereby preempting the relevant sections of the SPAAM Act. Furthermore, Congress intended to minimize government regulation on the internet while encouraging self-regulation among service providers. Federal law preempts state laws like the SPAAM Act that conflict with Section 230 under the Supremacy Clause.

ARGUMENT

I. HEADROOM IS A PRIVATE ENTITY ENGAGING IN SPEECH, NOT A COMMON CARRIER, AND THE COURT'S HOLDING IN *ZAUDERER* DOES NOT APPLY TO THE SPAAM ACT'S DISCLOSURE REQUIREMENTS.

Headroom is a social media company with the mission to "promote greater inclusion, diversity, and acceptance in a divided world." R. at 2-3. All content on Headroom's website is curated by use of data tracking and algorithms that prioritize and deprioritize content. R. at 3. Not only are the Community Standards themselves speech, Headroom communicates a message through editorial discretion when it prioritizes, deprioritizes, or removes content and users in conflict with the Community Standards. R. at 7.

Headroom is not a state actor, nor a common carrier: it is a private entity that exercises editorial control and engages in its own speech. Editorial judgment– the decision to include or exclude certain statements and viewpoints– is afforded protection under the First Amendment. *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 255 (1974) (finding a statute requiring a newspaper to publish a reply to a political editorial unconstitutional). Not only does Headroom

exercise editorial control, it also speaks a message through expressive association. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 580 (1995) (holding public accommodations laws cannot compel parade organizers to include LGBT participants contrary to the parade's intended message). Headroom creates an online community expressive of its values by requiring all Headroom users to abide by the Community Standards as a condition to using the site. R. at 3.

In *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, the Court held that purely factual disclosures do not impinge on editorial discretion when the disclosures are reasonably related to a legitimate state interest. 471 U.S. 626, 651 (1985). The disclosures required under the Act are not purely factual. The Act requires Headroom 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." R. at 6; § 528.491(c)(2). Further, the Court in *Zauderer* clarified, disclosure requirements that are "unduly burdensome" may violate the First Amendment by chilling protected speech. 471 U.S. at 651. The Act's disclosure requirements chill Headroom's speech by preventing free exercise of its editorial control through application of its Community Standards. The Community Standards have been put in place to indicate Headroom's values, and fulfill the company's purpose in creating an inclusive and diverse online community. R. at 3.

A. As a private entity engaging in speech, Headroom enjoys the full Protection of the First Amendment.

At the very least, Headroom exercises editorial control via application of its Community Standards. *NetChoice, LLC v. Att'y Gen., Fla.* ("*NetChoice I*"), 34 F.4th 1196, 1204 (11th Cir. 2022). At most, Headroom's site—a vast online community— functions as an expression of its

values. *See Hurley* 515 U.S. at 574-75; *see also 303 Creative LLC v. Elenis*, 600 U.S. 570, 587 (2023). Either way, Headroom enjoys the full protection of the First Amendment.

i. Headroom is not a state actor and therefore not required to host the speech of others indiscriminately.

The First Amendment is a constraint on government action, not private persons. *Columbia Broad. Sys., Inc. v. Democratic Nat. Comm.*, 412 U.S. 94, 114 (1973); *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019). A private entity can qualify as a state actor "when it exercises powers traditionally exclusively reserved to the State." *Id.* at 1929. Broadcast licensees, for example, are not state actors, despite their role as "public trustees," with an "obligation to provide balanced coverage of issues and events;" the Court recognizes their editorial discretion, because broadcast licensees maintain "broad discretion to decide how that obligation will be met." *Columbia Broad.*, 412 U.S. at 118-19.

Finding that operating public access channels on a cable system is not "a traditional, exclusive public function," the Court rejected a broad lens that cable operators host "a public forum for speech," such that they are constrained by the First Amendment. *Halleck*, 139 S. Ct. at 1930. Instead, the Court explained "when a private entity provides a forum for speech, the private entity is not ordinarily constrained by the First Amendment because the private entity is not a state actor." *Id.*

Headroom is a private entity, not a state actor. Therefore, it is free to exercise editorial discretion and exclude or amend the speech of others in accordance with its desired message. *See id.* Websites do not serve a traditional, exclusive public function. For the most part, websites are hosted on purchased domains by private individuals or entities. "All manner of speech… qualify for the First Amendment's protections; no less can hold true when it comes to speech…conveyed over the Internet." *303 Creative LLC*, 600 U.S. at 588 (holding that wedding websites constitute

pure speech). Simply because Headroom accommodates a mass of users does not tip the scales to treat it as a state actor.

ii. Headroom is a private entity engaging in speech, not a common carrier.

In the communications context, common carriers hold themselves open to all members of the public, whereby members of the public are free to transmit messages of their own, without interference or influence from the hosting entity. *FCC v. Midwest Video Corp.*, 440 U.S. 689, 701-02 (1979). Relaxed scrutiny standards have been applied to regulations of broadcast television to account for inherent limitations of broadcast media: there are a limited number of broadcast channels, such that government regulation can be necessary to ensure fair access. *Red Lion Broadcasting v. F.C.C.*, 395 U.S. 367, 387-88 (1969). If left unregulated, broadcast frequencies would no longer serve their purpose, because the limited frequencies could not fairly host "the cacophony of competing voices." *Red Lion*, 395 U.S. at 376. Government regulation in this context serves to advance First Amendment freedoms. *Red Lion*, 395 U.S. at 390.

The court's decision in *Red Lion* addressed a dilemma unique to broadcast mediums: "Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish." 395 U.S. at 388. (holding FCC regulations requiring a broadcast licensee to host a reply to personal attacks broadcast by the licensee did not violate the licensee's First Amendment right to free speech).

The Court in *Turner Broadcasting* differentiated broadcast television from cable television. Scarcity is not a concern in cable regulation. *Turner Broadcasting System, Inc. v. F.C.C.*, 512 U.S. 622, 637-8 (1994). Broadcast media presents an "inherent physical limitation" for speakers, which has required "adjustment in traditional First Amendment analysis to permit

the Government to place limited content restraints, and impose certain affirmative obligations on broadcast licensees." *Turner*, 512 U.S. at 638. This approach, as set forth in *Red Lion*, is inapplicable to cable transmission. *Id.* at 639.

Ultimately, the Court in *Turner Broadcasting* found the challenged "must-carry" obligations interfered with cable operators' editorial discretion. *Id.* at 643-44. The purpose of the must-carry provisions was to "prevent cable operators from exploiting their economic power," but the Court remanded the case because the government failed to sufficiently establish the threat to broadcast media. *Id.* at 649, 667-68. The Court did not classify cable providers as common carriers, and clarified "[c]able programmers and cable operators engage in and transmit speech, and they are entitled to the protection of the speech and press provisions of the First Amendment." *Id.* at 636; *see also Midwest Video Corp.*, 440 U.S. at 707-08 (holding it is unconstitutional to require cable operators to provide access to third parties and allocate channels for public use, because such regulation is contrary to the protection of journalistic freedom and editorial control).

The dilemma presented in *Red Lion* is inapplicable here. The Internet is groundbreaking because of its endlessness and accessibility. There is not limited space that Headroom eats up, such that their website should be subject to constrained First Amendment rights, let alone classified as a common carrier. Users of the Internet have countless opportunities to host their own speech, including on their own websites, which are relatively easy to make nowadays. Further, Headroom is not uniquely positioned to inform the public on matters of public concern, like broadcast media. Users have to opt in to use Headroom's services by creating an account and agreeing to Headroom's Terms of Service and Community Standards. R. at 3. Headroom

moderates content to filter disinformation, but it is not providing news or educational programming similar to broadcast media. R. at 4.

The Court grappled with regulation of cable providers, not as common carriers, but where cable monopolies might drown out broadcast messaging. There is no comparable push and pull here: there are countless sites on the Internet where users post messages, some bound by community standards, and some not. Other sites that are limited by community standards may seek to portray a message different from Headroom's; some sites may exist as an unregulated bulletin board. The Court draws the line at editorial control. *See Turner*, 512 U.S. at 650. Headroom exercises editorial control through its Community Standards. R. at 3. Headroom retains the right to remove posts, deprioritize posts, or add additional commentary to posts to ensure all content aligns with the standards of communication set forth by these standards. R. at 4.

By contrast, telephone companies are designated common carriers by statute. *See Turner*, 512 U.S. at 685 (O'Connor, J. concurring). Unlike a telephone company, Headroom's site does not simply host communication between users: all content on the site is monitored and curated by Headroom. R. at 3. Headroom uses data tracking technology to control user experience and filter content. R. at 3. Headroom does not just passively connect two individuals to communicate their own messages– like a telephone company– it hosts speech in accordance with its values, embodied in the Community Standards.

Advancements in telecommunications render the instant case unique in comparison to television or telephone communications. The Court in *Reno v. ACLU* emphasized the vastness and accessibility of the Internet, which allows users to engage in "a wide variety of communication and information retrieval methods." 521 U.S. 844, 851 (1997). The court

compares the worldwide web to "a vast library including millions of readily available and indexed publications," and "a sprawling mall offering goods and services." *Reno*, 521 U.S. at 852. Notably, publishers on the web—private users like Headroom—have the choice to "make their material available to the entire pool of Internet users, or confine access to a selected group." *Id.* at 853. Because of the Internet's unique position in our society, the Court admitted that previous case law "provide[s] no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium." *Id.* at 870.

Upholding the establishment of "net neutrality," the court in *United States Telecom Ass'n v. Federal Communications Commission*, held that open internet rules do not violate broadband providers First Amendment rights. 825 F.3d 674, 743-44 (D.C. Cir. 2016). The court categorized broadband providers as common carriers because regulations merely affected the providers "neutral transmission of *others'* speech." *Id.* at 740 (emphasis in original). The providers do not exercise control over what content Internet users access and do not intend to convey their own message. *Id.* at 742. In this sense, the court analogized to telephone networks: "both telephones and the internet can serve as a medium of transmission." *Id.*

Even still, there are instances in which a broadband provider may be appropriately categorized as a speaker: "[i]f a broadband provider nonetheless were to choose to exercise editorial discretion—for instance, by picking a limited set of websites to carry and offering that service as a curated internet experience—it might then qualify as a First Amendment speaker." *Id.* at 743. The key inquiry, again, is whether the entity exercises editorial discretion. *Id.* at 742-43.

Headroom is not a broadband provider, it does not provide Internet access. Broadband providers are required to transmit data on a nondiscriminatory basis, but as an Internet user itself,

and as a private entity, Headroom is a speaker and enjoys the full protection of the First Amendment. Headroom seeks to convey its own message: as a condition to use the site, users must agree not to post content that "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. This type of content is banned because it conflicts with Headroom's message and ethos. Content that conflicts with this message will be removed in violation of Headroom's Community Standards. R. at 4. This is textbook editorial control.

Further, Headroom controls what content its users access, unlike a broadband provider engaging in "neutral transmission" of data. *Telecom Ass'n*, 825 F.3d at 740. "Headroom uses algorithms to categorize and order content that users see," curating each user's experience. R. at 3.

As it pertains to social media companies, this Court must resolve a split in circuit decisions. In *NetChoice, LLC v. Att'y Gen., Fla.* (*Netchoice I*), the court explained that, while social media sites are accessible to the general public, and widely used by most people, the companies hosting these sites require users to abide by terms and conditions and community standards as an initial gatekeeping mechanism. 34 F.4th at 1220. Therefore, users "are *not* freely able to transmit messages" because users' content must conform to rules set forth by the company. *Id.* (emphasis in original). The hallmark feature of a common carrier is that common carriers hold themselves out to serve the public indiscriminately. *Id.* at 1221. Social media companies, by their very nature, do not serve indiscriminately. *Id.*

Social media companies also engage in their own speech. *Id.* at 1204. This includes publication of the company's community standards and addition of addenda or disclaimers to

user posts. *NetChoice I*, 34 F.4th at 1204. But social media companies also express a message by exercising editorial judgment and removing posts in violation of community standards, and by using algorithms to display and prioritize content. *Id.*

The court in *NetChoice v. Paxton* ("*NetChoice II*"), however, asserts that "boilerplate" terms of service do not suffice to evade common carrier status. 49 F.4th 439, 474 (5th Cir. 2022). The court paints editorial discretion—a company's decision to censor and remove certain content—as "viewpoint-based discrimination" in violation of their common carrier obligations. *Id.* at 474-75. The court points to public dependence on social media companies and the companies' dominance in commerce as indicative of their common carrier status, suggesting it would be difficult to engage in public life without use of social media. *Id.* at 475-76. Many individuals choose not to use social media and these individuals are not cut off from news, political discourse, commerce, and social interaction: social media does not supplant our real-life interactions, it enhances them. Market success and widespread popularity alone do not subject a private company to common carrier status. *See Biden v. Knight First Amend. Inst.*, 141 S. Ct. 1220, 1225 (2021) (Thomas, J. concurring) ("assessing whether a company exercises substantial market power, what matters is whether the alternatives are comparable.").

Further, Headroom's Community Standards are not boilerplate. The Community Standards were thoughtfully crafted to ensure Headroom's site functioned as an inclusive and diverse community, representative of Headroom's values. R. at 2-3; 13-14. Petitioners draw this Court's attention to the companies at issue in the *NetChoice* cases: namely, Facebook, Twitter, and YouTube. Headroom has 75 million users, and while this is nothing to balk at, it is nowhere near the 3 billion users on Facebook. R. at 3; *Knight First Amend. Inst.*, 141 S. Ct. at 1224 (Thomas, J. concurring). Finally, there is nothing in the record to indicate Headroom

disseminates news or hosts public profiles of political figures, which was an important aspect of the court's decision in *NetChoice II*. *See NetChoice II*, 49 F.4th at 476. Petitioners ask this Court to follow the decision of *NetChoice I*, and allow Congress to regulate corporations under antitrust principles, rather than choke private business's speech with judge-made law.

Through the Act, Midland attempts to control Headroom's editorial judgment and alter its message. The Act explicitly prohibits any social media company from "censoring" content. R. at 6. As a private entity, Headroom has the freedom to choose what message it communicates. Headroom's message is embodied in the Community Standards that confine all content curated by Headroom. Headroom is a private company that hosts an online community, not a common carrier.

B. Headroom's speech is unduly burdened by the Act's disclosure requirements.

Under *Zauderer*, the Court created an exception to the "least restrictive means" analysis for disclosure requirements in advertising. *Zauderer*, 471 U.S. at 651. The Court held that disclosure requirements in advertising do not violate the First Amendment "as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Id.* The Court maintained, however, that "commercial speech that is not false or deceptive and does not concern unlawful activities" should be subject to the standard approach for commercial speech, and "may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest." *Id.* at 638.

To be clear, Headroom does not engage in commercial speech. The Court distinguishes commercial speech "on the common-sense distinction between speech proposing a commercial transaction ... and other varieties of speech." *Id.* at 637. (internal quotations omitted). Headroom is not proposing a commercial transaction, it is curating personalized communities among users:

by selecting content to display to users, Headroom "blend[s] others' speech to present a unified whole that reflects Headroom's values." R. at 13-14. While commercial transactions can be made through Headroom's site, the site's use expands far beyond the simplicity of advertisement. Headroom uses algorithms and data tracking to prioritize and deprioritize content, shaping a community that interacts not only through posts and reposts, but also through virtual reality by use of artificial intelligence. R. at 3-4.

In *Zauderer* the Court distinguishes *Wooley v. Maynard*, 430 U.S. 705 (1977) (finding it was unconstitutional to require individuals to display a state motto upon their vehicle's license plates); *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241 (1974) (finding it was unconstitutional to require a newspaper to publish a political candidate's reply to an editorial attack); and *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943) (finding it was unconstitutional to require public school students to salute the American flag). The inability to enforce its Community Standards would not only compel Headroom to speak a message in violation of its First Amendment rights, it would also fundamentally change the message Headroom speaks through application of these standards. The speech which Headroom engages is comparable to that in *Hurley*, where the Court found that a parade was "expressive" for First Amendment purposes, such that parade organizers could exclude others from participating to protect the message the parade meant to convey. 515 U.S. at 569-70. The Headroom "feed," which users are able to engage with in virtual reality, is a parade of content curated by Headroom to express a message of diversity and inclusion where hate speech, violence, child exploitation, homophobia, transphobia, racism, sexism, and other attacks on protected classes is not tolerated. R. at 3. Headroom exercises its editorial discretion to exclude those who interfere with this message to create a welcoming community. *Id.*

The goal of *Zauderer* was ensuring potential clients were not misled by advertisements. 471 U.S. at 651-52. Underlying this goal is the contractual, fiduciary relationship between an attorney and her client. Here, Headroom is not misleading anyone. Headroom has been upfront about the Community Standards, requiring all users to read and accept the Terms of Service, including adherence to the Community Standards, as a condition to using the site. R. at 3. By prohibiting content it finds objectionable, Headroom expresses its values and conveys a message: Headroom curates a community experience by exercising its editorial discretion to filter and sort content. R. at 4. Headroom is a private company which users choose to engage with on the company's terms, the relationship is not comparable to the attorney-client relationship underlying the issue in *Zauderer*.

The Court's decision in *Zauderer* rests upon the government's broader interest in preventing the spread of misleading information. 471 U.S. at 651. The Court justified intrusion upon a speaker's message for this specific reason, and the case should be applied narrowly. Interestingly, Headroom also bans the dissemination of "disinformation." R. at 3-4. The disclosure requirements at issue in *Zauderer* were put in place to remedy an issue that Headroom actively combats by removing disinformation from its site.

The Court in *Zauderer* clarified, "unjustified or unduly burdensome disclosure requirements might offend the First Amendment by chilling protected commercial speech." 471 U.S. at 651. The Act compels Headroom to "provide detailed explanations of its Community Standards and its enforcement decisions." R. at 7. Headroom is compelled– under threat of government enforcement and hefty fines—to explain its editorial decisions. Virtually *everything* a Headroom user sees when she logs on to her account is a result of Headroom's editorial voice. Justice Brennan provides an example where disclosure requirements may go too far: "compelling

the publication of detailed fee information that would fill far more space than the advertisement itself, would chill the publication of protected commercial speech and would be entirely out of proportion to the State's legitimate interest in preventing potential deception." *Zauderer*, 471 U.S. at 663-664 (Brennan, J. concurring in part and dissenting in part).

Not only is Headroom's speech not commercial speech, as established above, but the Act's disclosure requirements unduly burden Headroom's speech by requiring Headroom to explain the application of its Community Standards, which underlie all content on Headroom's site. The Act incorrectly classifies social media companies as common carriers and violates the First Amendment rights of private entities to exercise editorial discretion and speak a message in accordance with the companies' values. *See NetChoice I*, 34 F.4th at 1203; *but see NetChoice II*, 49 F.4th at 447-48.

II. MIDLAND IS VIOLATING HEADROOM'S FIRST AMENDMENT RIGHT TO FREE SPEECH BY PASSING AND ENFORCING THE SPAAM ACT.

In the ever-evolving landscape of social media, entities such as Headroom and its counterparts have ushered in unprecedented modes of communication. To put it simply, Headroom embodies a mode of interaction that would have surpassed even the wildest imaginings of the Constitution's framers. But "whatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of freedom of speech… do not vary when a new and different medium for communication appears." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 790 (2011) (quotation marks omitted). One of these foundational principles, in fact, the very bedrock of them all, is that the "Free Speech Clause of the First Amendment *constrains governmental actors and protects private actors*." *Halleck*, 139 S. Ct. at 1926 (emphasis added). In simple terms, with only rare exceptions, the government cannot dictate

what a private individual or entity says or how they express themselves. *NetChoice II*, 34 F.4th at 1203.

A. The SPAAM Act triggers First Amendment scrutiny because it restricts Headroom's exercise of editorial judgment.

The First Amendment, in its pertinent portion, states that "Congress shall make no law ... abridging the freedom of speech." U.S. Const. amend. I. The Fourteenth Amendment extends the reach of the First Amendment's Free Speech Clause to apply to the States: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law ...." U.S. Const. amend. XIV. § 1. Like its counterpart in the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment was intended to prevent government "from abusing [its] power, or employing it as an instrument of oppression," *Davidson v. Cannon*, 474 U.S. 344, 348 (1986); *see also Daniels v. Williams*, 474 U.S. 327, 331 (1986) (" ' "to secure the individual from the arbitrary exercise of the powers of government," ' " and "to prevent governmental power from being 'used for purposes of oppression' ") (internal citations omitted); *Parratt v. Taylor*, 451 U.S. 527, 549 (1981) (Powell, J., concurring in result) (to prevent the "affirmative abuse of power").

The wording and intent of these Amendments, along with the enduring precedents of the Court, firmly establish that the Free Speech Clause solely forbids government infringement upon speech. *Halleck*, 139 S. Ct. at 1928. The Free Speech Clause does not prohibit private abridgment of speech. See, *e.g., Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 737 (1996) (plurality opinion); *Hurley*, 515 U.S. at 566; *Hudgens v. NLRB*, 424 U.S. 507, 513 (1976); cf. *Tornillo*, 418 U.S. at 256. The First Amendment safeguards the ability

of private entities to exercise editorial discretion in determining the message they wish to communicate.

In *Tornillo*, this Court invalidated a Florida statute known as the "right to reply" law, which sought to compel newspapers to provide space for candidates or elected officials to respond to negative criticisms previously published by the newspaper. *See generally Tornillo*, 418 U.S. at 241. The Court emphasized that the "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" enjoying full protection under the First Amendment. *Tornillo*, 418 U.S. at 258. The statute's further "intrusion into the function of editors," regardless of any additional expenses or space limitations imposed on the newspaper, it still failed to "clear the barriers of the First Amendment." *Id.* The ruling in *Tornillo* underscored the significance of editorial discretion as a fundamental safeguard under the First Amendment, one that government interference cannot infringe upon.

Moreover, the Court's stance in *Tornillo* remained resolute, showing no sympathy for the assertion that the state did not encroach upon the newspaper's capacity to "say[] anything it wished." *Id.* at 256. By compelling "editors or publishers to publish that which reason tells them should not be published," the law operated "as a command in the same sense" as a statute "forbidding" a newspaper to "publish specified matter." *Id.* Mandates for media access transgress property rights as they compel private platforms to accommodate users and disseminate content that they would otherwise choose to exclude. *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979) (holding that the right to exclude is "one of the most essential sticks in the bundle of rights that are commonly characterized as property"); 2 William Blackstone, Commentaries *2

(describing property as "that sole and despotic dominion which one man claims and exercises . . . in total exclusion of the right of any other individual in the universe.").

However, utilizing private property to amplify specific viewpoints is not sanctioned by the First Amendment, and "the concept that government may restrict the speech of some elements of our society," here, Headroom's online social media platform, "in order to enhance the relative voice of others is wholly foreign to the First Amendment," *Buckley v. Valeo*, 424 U.S. 1, 49 (1976); *see also Moody v. NetChoice*, 546 F. Supp. 3d at 1096 (noting that "balancing the exchange of ideas among private speakers is not a legitimate governmental interest"). Property rights, in this context, become an unintended casualty in Midland's endeavor to counteract what they perceive as bias in social media platforms. Indeed, this perceived "bias" stems from Headroom's core values: its Community Standards are designed to prohibit content that Headroom fundamentally opposes. R. at 3. As a private entity, Headroom has the legitimate right to exclude speech that runs counter to its beliefs and principles.

Midland leans on the precedent of *PruneYard Shopping Center v. Robins* to assert its authority to take control of the platforms by governmental decree. 447 U.S. 74 (1980) (holding that a private shopping mall that banned all expressive activity on its property must allow individuals to handout pamphlets); R. at 14. First, the application of *PruneYard* in this context is unsuitable since the shopping center in question did not engage in publishing speech. Additionally, this case differs from *PruneYard* because social media platforms exercise their editorial discretion to exclude specific content due to their objections to that content. *See Hurley*, 515 U.S at 580 (explaining that *PruneYard* "did not involve any concern that access to this area might affect the shopping center owner's exercise of his own right to speak" and that the owner in *PruneYard* "did not even allege that he objected to the content of the pamphlets") (internal

citations omitted). Moreover, *PruneYard* is an entirely distinct entity engaged in entirely different activities—nothing akin to online service providers like Headroom, which exercise expressive editorial discretion in determining which content to disseminate. R. at 2-3. It was the perceived ideological nature of these editorial judgments that drew the state's criticism, a contrast that sets *PruneYard* apart.

PruneYard's argument, which posits that compelling the physical hosting of speech doesn't raise any First Amendment issues, was fundamentally at odds with *Wooley*. 430 U.S. 705 (1977). In *Wooley*, it was established that a state cannot "require an individual to participate in the dissemination of an ideological message by displaying it on his private property in a manner and for the express purpose that it be observed and read by the public." *Id.* at 713. Furthermore, its proposal that the First Amendment harm arising from the mandated support of speech can be rectified through a non-endorsement disclaimer has been consistently eroded by subsequent Supreme Court decisions. *See Janus v. Am. Fed'n of State, Cty., & Mun. Employees*, 138 S. Ct. 2448 (2018) (compelling non-members to financially support union speech infringes upon their freedom of speech, even though no one would interpret such funding as an endorsement); *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (law mandating that crisis pregnancy centers inform patients about the availability of publicly funded abortion was deemed compelled speech and found to contravene the First Amendment, irrespective of any perceived endorsement); *United States v. United Foods, Inc.*, 533 U.S. 405 (2001) (forcing individuals to pay an assessment for the promotion of mushrooms was deemed a violation of the First Amendment); *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921 (2019) (right of access to privately operated cable television channels was found to be in violation of the First

Amendment). Therefore, this Court should abstain from invoking *PruneYard* in the unconventional and unsuitable context of social media.

When Headroom engages in content moderation, whether it be the censoring of pornographic content or the prohibition on disinformation, it is conveying a message to its users. The SPAAM Act restricts Headroom's ability to speak that message by restricting its editorial control.

Social media platforms, acting as editors and publishers of distinct speech products like their "feeds" or "timelines," possess a First Amendment entitlement to exercise discretion in selecting the content they choose to publish. R. at 3; *Halleck*, 139 S. Ct. at 1932 (recognizing that "certain private entities . . . have rights to exercise editorial control over speech and speakers on their properties or platforms"). The Supreme Court has long recognized that "[t]he choice of material . . . the decisions made as to limitations on the size and content . . . and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment." *Tornillo*, 418 U.S. at 258.

This editorial liberty goes well beyond newspapers and other forms of print media. *See, e.g., Hurley*, 515 U.S. at 567-70 (recognizing that editorial privilege also applies to parade organizers); *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (noting that the First Amendment safeguards the discretion of an online bulletin board to make choices regarding "publishing, withdrawing, postponing, or modifying content"); *Moody*, 546 F. Supp. 3d at 1093 (determining that strict scrutiny is applicable to laws that restrict the editorial decisions of social media platforms); *Entm't Merchs. Ass'n*, 564 U.S. at 790 (2011) (acknowledging that First Amendment protections remain consistent, regardless of the emergence of new and diverse communication mediums). *See also La'Tiejira v. Facebook, Inc.*, 272 F. Supp. 3d 981 (S.D. Tex.

2017) (concluding that the First Amendment encompasses social media networks); *Zhang v. Baidu.com, Inc.*, 10 F. Supp. 3d 433, 437 (S.D.N.Y. 2013) (same holds true for internet search engines in terms of the First Amendment); *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 629–30 (D. Del. 2007) (same).

The First Amendment's protections remain consistent, irrespective of the emergence of new communication mediums, and social media platforms do not relinquish their constitutional rights simply by expanding the avenues by which we communicate. *See generally Entm't Merchs. Ass'n*, 564 U.S. at 790; *see also Reno*, 521 U.S. at 849 (finding the First Amendment applies with full force to internet media).

Moreover, it's important to understand that First Amendment rights are not determined by how closely a medium resembles a newspaper. We don't need to draw comparisons between platforms and various entities like grocery stores, malls, parade organizers, law school career fairs, or doctors to affirm that the act of publishing and withdrawing third-party content is a protected form of editorial activity. Eric Goldman, *Of Course the First Amendment Protects Google and Facebook (and It's Not a Close Question)*, Santa Clara Digital Commons (2018). While the editorial discretion of a social media platform may not align neatly with our traditional 20th-century concept of a newspaper editor handpicking articles for publication, emphasis on the platform's volume of hosted speech or the consistency of its message is a diversion from the key issue. *NetChoice II*, 49 F.4th 439 (5th Cir. 2022). The fundamental question in determining whether content moderation is safeguarded by the First Amendment remains whether a private company exercises editorial discretion in controlling the distribution of content. *Id.*

Courts have consistently rejected laws and lawsuits attempting to hold online social media platforms accountable for enforcing their community standards or taking actions against

users who violate them. *See Moody*, 546 F. Supp. 3d 1082 (issuing a preliminary injunction against Florida's "Stop Media Censorship Act" as it would otherwise inflict irreparable harm upon the plaintiffs' constitutionally protected editorial discretion); *Illoominate Media, Inc. v. Cair Fla., Inc.*, 841 Fed. Appx. 132 (11th Cir. 2020) (affirming the dismissal of a lawsuit filed by a prominent political figure in response to her ban from Twitter); *Domen v. Vimeo, Inc.*, 991 F.3d 66 (2d Cir. 2021) (affirming the decision to dismiss a case involving the termination of a Vimeo account); *Fyk v. Facebook, Inc.*, 808 Fed. Appx. 597 (9th Cir. 2020) (concluding that the dismissal of a user's lawsuit against Facebook for the removal of his content was appropriate).

Much of content moderation involves the intricate task of making nuanced judgment calls to determine whether content adheres to or breaches a platform's guidelines: Is a user making a forbidden call for violence or discussing the plot of a video game? Is a post discriminating against someone's protected class or is it simply reporting on it? Do images within a post contain explicit sexual content or are they being used to provide sexual education? Does this post misinform the public or is it satirical? Even if a post does not breach any rules, companies maintain the freedom to choose which content they wish to host, much like bookstores have the prerogative to select the books they offer for sale. Every piece of content that appears on a user's Headroom "feed" is carefully selected and curated by Headroom itself. R. at 3. These editorial decisions, guided by the platform's Community Standards, are made with the goal of creating an inclusive online community that aligns with Headroom's vision. R. at 2-3.

These are exactly the types of editorial choices that *Tornillo* protects. In the same way the government cannot mandate that a newspaper must publish a politician's response to criticism, it similarly cannot compel a platform to host specific content. Conversely, the government cannot

prohibit a newspaper from publishing or a platform from hosting legal content, such as hate speech or disinformation, as both fall under constitutionally protected speech.

B. The SPAAM Act unconstitutionally infringes upon headroom's First Amendment rights under strict, and even intermediate, scrutiny.

Midland's SPAAM Act oversteps speech protections provided by the First Amendment and will be unable to survive both strict and intermediate scrutiny. The Act is a content based statute that requires strict scrutiny analysis, a standard that it cannot endure. In *Riley v. Nat'l. Fed'n of Blind*, this Court recognized that "[m]andating speech that a speaker would not otherwise make necessarily alters the 'content' and constitutes a 'content-based regulation of speech.'" 487 U.S. 781, 795 (1988); *Hurley*, 515 U.S. at 575 (stating that the choice to "propound a particular point of view . . . is presumed to lie beyond the government's power to control."). Headroom is expressing its own message through its editorial judgment. By restricting Headroom's ability to moderate the content on their platform, Midland alters the content of Headroom's message, making it a content based statute and subject to strict scrutiny.

If unconvinced by the above, this Court should view the Act as a facially content neutral policy. Even a provision that appears neutral on its face may be content based if its manifest purpose is to regulate speech because of the message it conveys and subject to strict scrutiny. *United States v. Eichman*, 496 U.S. 310, 315 (1990). A statute is facially content-neutral when it "generally functions" as a regulation on conduct but "the conduct triggering coverage under the statute consists of communicating a message." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 26-28 (2010). Here, as established above, Headroom is expressing its own message through its editorial judgment and content moderation—a message that Midland adherently disagrees with, going so far as to call Headroom "virtual dictators" that "ruin . . . [the lives of] hardworking Midlandians." R. at 5. Headroom's editorial judgment triggers the SPAAM Act and because

Headroom's editorial judgment expresses Headroom's own message, the SPAAM Act is, at the very least, facially content neutral and should be subjected to strict scrutiny analysis.

In order to satisfy strict scrutiny, Midland must prove two things: first, that there is an existing compelling state interest, and second, that their restriction is narrowly tailored to address that interest. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015). Intermediate scrutiny requires that the law does not substantially burden more speech than necessary to further the government's legitimate interest. *Packingham v. North Carolina*, 137 S.Ct. 1730, 1739 (2017). Midland falls short of justifying the important government interest required by intermediate scrutiny and comes nowhere near close to the compelling interest standard required to survive strict scrutiny. Moreover, the SPAAM Act is an excessively broad statute that is overly burdensome and is not narrowly tailored to support any purported government interest.

Midland has expressed that the intent behind the SPAAM Act is to "restore the voice of the people." R at 5. But First Amendment precedent has continuously rejected the notion of leveling the playing field as a legitimate governmental interest. *See Buckley* , 424 U.S. at 48-49 (the "concept that government may restrict the speech of some elements of our society in order to enhance the relative choice of others is wholly foreign to the First Amendment."); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578 (2011) ("The State may not burden the speech of others in order to title public debate in a preferred direction."); *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n*, 475 U.S. 1, 20 (1986) (the state "cannot advance some points of view by burdening the expression of others."); *Tornillo*, 418 U.S. at 247-48 ("ensur[ing] that a wide variety of views reach the public" is not sufficient to justify forcing private entities to disseminate content and viewpoints they reject).

Further, the Act is overburdensome and is not narrowly tailored to address Midland's supposed governmental interest. "Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly." *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2384 (2021). The SPAAM Act inhibits Headroom's editorial discretion by "prohibit[ing] any social media platform from censoring, deplatforming, or shadow banning any individual, business, or journalistic enterprise because of viewpoint" no matter how severely the content violates the community standards without requiring Headroom "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 . . . was chosen." R. at 6 (internal quotations omitted). Even if this Court finds that Midland has a legitimate interest, the SPAAM Act is a prime example of an overburdensome policy that is not narrowly tailored to a governmental interest.

While Midland's First Amendment violations should be subjected to strict scrutiny, even if this Court agrees with the lower courts application of intermediate scrutiny, the SPAAM Act remains unconstitutional. As stated above, Midland does not have an important nor a compelling interest in leveling the playing field and the SPAAM Act more than substantially burdens Headroom's First Amendment rights by revoking its ability to moderate content through editorial judgment.

III. THE CONTENT-MODERATION RESTRICTIONS OF THE SPAAM ACT ARE PREEMPTED BY FEDERAL LAW.

Section 230(c)(1) provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Section 230(c)(2) provides that "[n]o 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(e)(3), in turn, makes clear that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Id.* § 230(e)(3). Midland's intrusion into the editorial judgment of covered providers, such as Headroom, compelling them to display specific content, is fundamentally at odds with the clear language of Section 230. Thus, sections 528.491(b)(1) & 528.491(c) of the SPAAM Act, are preempted by the above provisions of Section 230.

Section 230 of the Act may preempt two sections, but it's crucial to consider that the entire Act should align with the principles of the First Amendment. Headroom's strong likelihood of succeeding in its First Amendment claims is evident and impacts the entire statute. Therefore, there's no need for the Court to delve into separate preemption issues. Additionally, adhering to constitutional avoidance principles isn't favorable in this case because the Act significantly infringes upon First Amendment values. Depriving someone of their First Amendment rights is a classic example of an irreparable injury, whereas being subjected to a preempted law doesn't carry the same weight.

Congress, in its passage of § 230 observed that the internet has "flourished, to the benefit of all Americans, with a minimum of government regulation," and goes even further declaring that it is the policy of the United States" that the internet remain "unfettered by Federal or State regulation." 47 U.S.C. § 230(a), (b). Moreover, Congress was well aware that abuse takes place online, and that left without a mechanism to control content, internet providers would be forced to disseminate harmful and abusive content. *See* Telecommunications Act of 1996, Tit. V, Pub.

L. No. 104-104, 110 Stat. 56, 133-39. *See also Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997) (stating Congress chose "to encourage service providers to self-regulate the dissemination of offensive material over their services."); *FTC v. LeadClick Media, LLC*, 838 F.3d 158, 174 (2nd Cir. 2016) (stating Section 230 "bars lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content.") (citations and internal quotation marks omitted); *Force v. Facebook, Inc.*, 934 F.3d 53, 67 (2nd Cir. 2019) (publishing covers "the decision to host third-party content in the first place"); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009) ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content."); *Ebeid v. Facebook, Inc.*, No. 18-CV-07030 (PJH), 2019 WL 2059662, at *5 (N.D. Cal. May 9, 2019) ("defendant's decision to remove plaintiff's posts undoubtedly falls under 'publisher' conduct").

Federal law preempts conflicting State Constitutions and statutes under the Supremacy Clause, which provides, as follows: "the Laws of the United States ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., Art. VI, cl. 2. Therefore, the SPAAM Act should fail because it runs "contrary" to the "supreme Law of the Land."

CONCLUSION

For the stated reasons, Petitioner asks this Court to reverse the decision of the United States Court of Appeals for the Thirteenth Circuit and grant Petitioner's motion for preliminary injunction.

Respectfully submitted,
/s/ Team 8
Petitioner-Appellant