No. 19-792

In the

Supreme Court of the United States

VUGO, INC.

Petitioner,

v.

CITY OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

In *Reed v. Town of Gilbert*, this Court clarified that content-based restrictions are those that apply to particular speech because of the topic discussed or the idea or message expressed, and reaffirmed that content-based restrictions on speech require strict scrutiny review. Government restrictions on commercial speech that do not apply to non-commercial speech are content-based. Should strict scrutiny review apply in such a challenge?

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

PLF was founded more than 40 years ago and is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. PLF litigates matters affecting the public interest at all levels of state and federal courts and represents the views of thousands of supporters nationwide. In furtherance of PLF's continuing mission to defend individual and economic liberties, the Foundation fights for the right to freedom of speech. PLF attorneys argued *Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1891 (2018), and PLF has participated as an amicus in several cases before this Court on matters related to the First Amendment and commercial speech. *See, e.g., 1A Auto, Inc. v. Sullivan*, 139 S. Ct. 2613 (2019); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Wine & Spirits Retailers, Inc. v. Rhode Island and Providence Plantations,* 552 U.S. 889 (2007); *Nike, Inc. v. Kasky,* 539 U.S. 654 (2003); *Fed. Election Comm'n v. Beaumont,* 539 U.S. 146 (2003); and *Nixon v. Shrink Mo. Gov't PAC,* 528 U.S. 377 (2000). PLF believes that the First Amendment prohibits government regulation of speech—be it political or commercial, by individuals, associations, or corporations—unless the regulation satisfies strict scrutiny.

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[1] Pursuant to this Court's Rule 37.2(a), all parties consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of Amicus Curiae's intention to file this brief. Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF REASONS TO GRANT THE PETITION

The First Amendment broadly prohibits laws "abridging the freedom of speech." U.S. Const., amend. I. One of the First Amendment's core guarantees is that the government cannot "restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 95 (1972). Unfortunately, this Court historically subjected certain categories of speech to less robust protection, including commercial speech. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980) (establishing a multifactor, intermediate-scrutiny test to assess the constitutionality of restrictions on commercial speech). The *Central Hudson* case has been ensconced as the standard-bearer for the "commercial speech doctrine" for forty years.

Unfortunately, this doctrine is an aberration, subjecting certain kinds of speech to less protection solely because of the content of the speech or the identity or economic motivation of the speaker. And decades of precedent have shown that the distinction between commercial and non-commercial speech is illogical and leads to arbitrary and even discriminatory outcomes.

There was never a bright line between commercial and non-commercial speech, and that line has grown ever more blurry when even routine purchasing decisions may have political and social consequences. Companies are increasingly expected to touch on hot-button matters of public concern to establish their brand image and entice consumers who share their ideology. In this environment, state officials and courts are hard-pressed to place speech in neat categories labelled "political," "artistic," or "commercial." Overlap is the rule, not the exception. For this reason, government officials attempting to discern between these categories will invariably make arbitrary and haphazard decisions based on their own biases and the identities of the speakers. The First Amendment cannot countenance infringement on speech rights in such a random manner.

Moreover, allowing government officials to treat commercial speech differently based on the speaker and the content of the speech has led to a host of negative outcomes that the First Amendment is directly intended to prevent. Government agencies like the New York Taxicab and Limousine Commission (TLC) are able to suppress innovative speech platforms like Vugo for the purposes of protecting established industries and paternalistically shielding citizens from speech they may find annoying. These are the predictable consequences of this Court's diminished protection for commercial speech. This Court should grant certiorari to restore full First Amendment protection to commercial speech and overrule *Central Hudson*.

REASONS TO GRANT THE PETITION

I

CENTRAL HUDSON IS UNWORKABLE BECAUSE THERE IS NO CLEAR LINE BETWEEN COMMERCIAL AND NON-COMMERCIAL SPEECH

The diminished protection for commercial speech rests on the presumption that there is a meaningful distinction between commercial and non-commercial speech. That premise was questionable even when *Central Hudson* was decided in 1980. Since then, courts have struggled mightily to distinguish between commercial and non-commercial speech.[2] Indeed, this Court has recognized that this categorization is particularly difficult. *See, e.g.*, *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 419-20 (1993) ("This very case illustrates the difficulty of drawing bright lines that will clearly cabin commercial speech in a distinct category . . ."); *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio,* 471 U.S. 626, 637 (1985) ("the precise bounds of the category of . . . commercial speech" are "subject to doubt, perhaps"). These difficulties are exacerbated by innovations in the nature of commercial speech that

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[2] Many lower courts have expressly noted their struggle to apply *Central Hudson. See, e.g., Alexander v. Cahill,* 598 F.3d 79, 88 (2d Cir. 2010) ("[T]he Supreme Court has offered differing, and not always fully consistent, descriptions as to what constitutes protected commercial speech."); *Commodity Trend Serv., Inc. v. Commodity Futures Trading Comm'n,* 149 F.3d 679, 684 (7th Cir. 1998); *cf. Kasky v. Nike, Inc.,* 27 Cal. 4th 939, 980 (2002) (Brown, J., dissenting) ("[T]he commercial speech doctrine, in its current form, fails to account for the realities of the modern world—a world in which personal, political, and commercial arenas no longer have sharply defined boundaries.").

increasingly blur the line between "pure" commercial speech and other types of expression such as political and artistic speech.[3]

A. Is it Political Speech or Commercial Speech or Both?

This Court's commercial speech precedent envisions a bright line between speech which merely proposes "an ordinary commercial proposal" and speech on matters "of clear public interest." *Bigelow v. Virginia*, 421 U.S. 809, 822 (1975). But today more than ever, where we shop and what products we buy are acts with political and social overtones.[4] An invitation to conduct a commercial transaction frequently carries with it far more significance than a mere purchase. Instead, it is an opportunity to express one's identity and values. Customers also increasingly expect their chosen brands to align with them on social and political issues and may boycott or refuse to support companies that do not do so.[5] Accordingly, contemporary advertising is aimed not

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[3] *See* Deborah J. La Fetra, *Kick It Up A Notch: First Amendment Protection for Commercial Speech*, 54 Case W. Res. L. Rev. 1205, 1207 (2004) ("With greater frequency and subtlety, new technologies and innovative marketing strategies introduce corporate profit-motive into what otherwise would be fully-protected speech. The current commercial speech doctrine cannot predictably resolve disputes resulting from these new modes of expression.")

[4] Nailya Ordabayeva, *How Liberals and Conservatives Shop Differently*, Harvard Business Review (June 19, 2018), https://hbr.org/2018/06/how-liberals-and-conservatives-shop-differently.

[5] Jesse Bernard, *Brands Struggle to Make 'Woke' Marketing Work*, Raconteur (Mar. 13, 2019), https://www.raconteur.net/business-innovation/brands-woke-marketing.

just at selling a particular product but at promoting a brand image or "lifestyle."[6]

Some advertisers speak out on controversial political and social issues as a way to promote their product to consumers. For instance, athletic wear company Nike's recent decision to feature NFL player Colin Kaepernick in its advertisements led to immense controversy including angry twitter posts by President Donald J. Trump, but also to billions of dollars in added sales for the global brand.[7] Shaving product manufacturer Gillette similarly stirred debate by positioning its brand as part of the #MeToo movement with an ad targeting "toxic masculinity."[8] Beer company Anheuser-Busch and construction supply company 84 Lumber both featured ads

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[6] "[L]ifestyle' advertising provides imagery that is rich in connotations. The choice of models, setting and activities can not only display attractive people as consumers of a brand, but can also display attitudes, emotional experience, social status, etc." *Schwab v. Philip Morris USA, Inc.,* 449 F. Supp. 2d 992, 1186 (E.D.N.Y. 2006). *See also* Solomon Thimothy, *Why Brand Image Matters More Than You Think*, Forbes (Oct. 31, 2016), https://www.forbes.com/sites/forbesagencycouncil/2016/10/31/why-brand-image-matters-more-than-you-think/#1fff0c3410b8.

[7] Alex Abad-Santos, *Nike's Colin Kaepernick Ad Sparked a Boycott–and Earned $6 Billion for Nike*, Vox (Sept. 24, 2018), https://www.vox.com/2018/9/24/17895704/nike-colin-kaepernick-boycott-6-billion.

[8] Gillette, *We Believe: The Best Men Can B*e (Jan. 13, 2019), https://www.youtube.com/watch?v=koPmuEyP3a0. *See also* Bree Brouwer, *Nike v. Gillette: "We Believe" Ad Wins Big with Massive Reach*, Tubular Insights (Jan. 21, 2019), https://tubularinsights.com/gillette-we-believe-ad/.

strongly favoring welcoming immigrants.[9] And a wide variety of advertisers promote LGBTQ rights with the ubiquitous presence of pride rainbows (an identifiable "political" symbol), *see Minn. Voters Alliance (MVA) v. Mansky*, 138 S. Ct. 1876, 1891 (2018).[10]

Even when companies are not expressly invoking politics, they increasingly distinguish themselves in socially conscious ways. For instance, tech giant Apple's recent ad campaign focused on how Apple phones provide greater privacy than its competitors.[11] Rival Microsoft recently promoted its efforts to make its video game console and games accessible to disabled individuals.[12] These advertisements advance a traditional goal of making particular products more appealing to customers, but do so by expressly focusing on important matters of public concern rather than aspects of the promoted product itself.

In light of these trends, determining whether a particular advertisement is solely commercial or not of public interest is arbitrary and "haphazard."

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[9] Molly St. Louis, *6 Socially Charged Ads that Caused a Stir*, Adweek (Oct. 11, 2018), https://www.adweek.com/brand-marketing/5-socially-charged-ads-that-caused-a-stir/.

[10] *See* Renault UK, *30 Years in the Making* (Nov. 7, 2019), https://www.youtube.com/watch?v=MrNCVAqbCD0; Airbnb, *Connecting 50 years of Pride* (June 10, 2019), https://www.youtube.com/watch?v=KTQpqTRR9Jc; Proctor and Gamble, *Out of the Shadows: Risking their Careers in the Name of Equality* (June 18, 2019), https://www.youtube.com/watch?v=2iDCO_47350&feature=emb_title.

[11] Apple, *Privacy on iPhone–Simple as That* (Oct. 25, 2019), https://www.youtube.com/watch?v=Py0acqg1oKc.

[12] Microsoft, *Super Bowl Commercial 2019: We All Win (Extended Version)* (Jan. 31, 2019), https://www.youtube.com/watch?v=_YISTzpLXCY&t.

MVA, 138 S. Ct. at 1888. In *MVA*, this Court invalidated Minnesota's ban on political attire at a polling place because it was unreasonable to expect election officials "to maintain a mental index of the platforms and positions of every candidate and party on the ballot." *Id.* It is similarly unreasonable to expect state officials enforcing commercial speech restrictions to keep abreast of every matter of public concern that an advertisement might touch upon in order to accurately determine whether the ad touches on a matter of public concern. Instead, determinations as to whether speech is commercial or political in nature will improperly "turn in significant part on the background knowledge and media consumption of the particular [state official] applying it." *Id.* at 1890.

Furthermore, speech is often made with more than one motivation, making such categorizations near impossible. *See Cohen v. California,* 403 U.S. 15, 26 (1971) ("[M]uch linguistic expression serves a dual communicative function."). There is no clear standard that can be applied to determine which of several mixed motives may predominate, leading to arbitrary outcomes.[13] There is also no standard to determine

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[13] *See* La Fetra, *supra*, 54 Case W. Res. L. Rev. at 1218 ("[I]f courts cannot distinguish between commercial and noncommercial speech, punishments for false speech are likely to be arbitrarily imposed—an unacceptable result in a society which values fairness and due process, and abhors selective enforcement of the law."). The distinction between commercial and religious speech can similarly be blurred at times. *See* Alex Kozinski and Stuart Banner, *Who's Afraid of Commercial Speech?*, 76 Va. L. Rev. 627, 646-48 (1990); Rodney A. Smolla, *Information, Imagery, and the First Amendment: A Case for Expansive Protection of Commercial Speech*, 71 Tex. L. Rev. 777, 800 (1993).

what test applies to restrictions on a medium like the tablets provided by Vugo that display a mix of commercial advertising, with some of it clearly touching on matters of public concern and others not, as well as other, clearly non-commercial content.[14]

Furthermore, the line between commercial speech and political speech may turn not only on the content of the speech but also on who is speaking. *See Kasky v. Nike, Inc.,* 27 Cal. 4th 939, 960 (2002) ("[C]ategorizing a particular statement as commercial or noncommercial speech requires consideration of three elements: the speaker, the intended audience, and the content of the message."). For instance, one 2016 ad by Planned Parenthood describes a list of services available at a Planned Parenthood clinic, including such routine services as a flu shot or a diabetes test.[15] In light of controversy surrounding the organization itself, however, this ad may be construed to convey a politically charged message about the abortion provider.[16] On the other hand, a

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[14] The record shows that Vugo intends to display public service announcements and perhaps political advertisements in addition to commercials. *Vugo, Inc. v. City of New York*, 309 F. Supp. 3d 139, 146 (S.D.N.Y. 2018), *rev'd,* 931 F.3d 42 (2d Cir. 2019) (Vugo "distributes advertisements, entertainment content, and public service announcements."); Plaintiff's Statement of Undisputed Facts ¶¶ 26, 47, Case No. 1:15-cv-08253-RA (S.D.N.Y. 2018).

[15] Planned Parenthood of the Great Northwest and the Hawaiian Islands, *Planned Parenthood 30 Second Commercial* (posted Aug. 25, 2016), https://www.youtube.com/watch?v=lEFQEiny K4o.

[16] Michelle Ye Hee Lee, *For Planned Parenthood abortion stats, '3 percent' and '94 percent' are both misleading*, Washington Post, Fact Checker (Aug. 12, 2015), https://www.washingtonpost.com/ news/fact-checker/wp/2015/08/12/for-planned-parenthood-aborti

recent advertisement by pharmacy chain Walgreens for free flu shots does not carry with it the same political baggage and therefore may not be deemed to touch on matters of public concern.[17] *Central Hudson* thus can give government officials power to treat speech differently depending on the identity of the speaker, a particularly dangerous power for the government to have, because "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content." *Citizens United,* 558 U.S. at 340.

B. Is it Artistic Speech or Commercial Speech or Both?

The line between commercial speech and artistic expression is also increasingly blurred. This is not entirely new. After all, as Andy Warhol illustrated with his famous Campbell's Soup Can paintings, one man's consumer product can be another's artistic canvas.[18] Commercial advertisements are increasingly crafted with artistic flair by established musicians and artists.[19] For instance, one recent ad from Apple featured a complex animated story with

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on-stats-3-percent-and-94-percent-are-both-misleading/?arc404=true.

[17] Walgreens, *Flu Fighters*, ispot.tv (2019), https://www.isp ot.tv/ad/oEuv/walgreens-flu-fighters-song-by-the-teskey-brothers.

[18] Andy Warhol, *Campbell's Soup Cans* (1962), https ://www.moma.org/learn/moma_learning/andy-warhol-campbells-soup-cans-1962/.

[19] *See* Kozinski and Banner, *supra*, 76 Va. L. Rev. at 639 ("On one level, the commercial does not propose a transaction at all. It is a thirty-second minidrama that can stand on its own as a piece of film.").

original music by singer-songwriter Billie Eilish.[20] Another Apple ad was directed by Oscar winning director Spike Jonze.[21] And British department store John Lewis & Partners released a mini-documentary about the life of singer Elton John which would not have been out of place on a movie screen.[22] Aside from the appearance of a logo linking these ads to a brand or product, these advertisements are utterly indistinguishable from the creative artistic expression of short films that enjoy full protection under the First Amendment.[23] *See Ward v. Rock Against Racism*, 491

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[20] AdTV, Apple *Share Your Gifts (World)*, (Nov. 30, 2018), https://www.youtube. com/watch?v=LGGTBd6w6Z0. *See also* David Griner, *The 25 Best Ads of 2018*, Adweek (Dec. 13, 2018), https://www.adw eek.com/creativity/the-25-best-ads-of-2018/.

[21] Chester Bennington, *HomePod–Welcome Home by Spike Jonze* (Aug. 19, 2018), https://www.youtube.com/watch?v=70P7-pkyP4Q. *See also* Tim Nudd, *Spike Jonze and FKA twigs Made a Jaw-Dropping Short Film for Apple's HomePod*, AdWeek (March 5, 2018), https://www.adweek.com/brand-marketing/spike-jonze-and-fka-twigs-made-a-jaw-dropping-short-film-for-apples-homepod/.

[22] John Lewis & Partners, *The Making of The Boy and the Piano* (Nov. 17, 2018), https://www.youtube.com/watch?v=5cA7RjKcbk8. *See also* David Griner, *John Lewis Christmas Ad is a Lovely Ode to Elton John's Career, and How it All Began*, AdWeek (Nov. 15, 2018), https://www.adweek.com/creativity/john-lewis-christmas-ad-is-a-lovely-ode-to-elton-johns-career-and-how-it-all-began/.

[23] The Kentucky Supreme Court has held that music videos are fully protected by the First Amendment because they "are in essence mini-movies that often require the same level of artistic and creative input from the performers, actors, and directors as is required in the making of motion pictures." *Montgomery v. Montgomery,* 60 S.W.3d 524, 529 (Ky. 2001). The same could be said for today's elaborate product advertisements. Kozinski and Banner, *supra*, 76 Va. L. Rev. at 640-41 ("To say the Diet Pepsi commercial is commercial speech comes perilously close to

U.S. 781, 790 (1989). Commercials compete to win artistic awards just as movies or TV shows do.[24] And of particular relevance to the work of Vugo and its competitors, advertisers increasingly collaborate closely with video game developers to create synergistic gaming experiences which also promote brand awareness.[25] *See Brown v. Entertainment Merchants Association,* 564 U.S. 786, 790 (2011) (holding that videogames are protected artistic speech, and emphasizing that "it is difficult to distinguish politics from entertainment, and dangerous to try"). State officials are incapable of evaluating the relative artistic accomplishments of various kinds of commercial speech to decide which ones qualify as "expressive" or "artistic" and which ones are "merely commercial." First Amendment protection cannot depend on such haphazard determinations.

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making the distinction turn on the running time of the medium, a distinction that jeopardizes the First Amendment protection of films shorter than standard length.")

[24] 71st Emmy Awards Nominees and Winners, *Outstanding Commercial*, (2019), https://www.emmys.com/awards/nominees-winner s/2019/outstanding-commercial.

[25] Martin Barnes, *The Past, Present & Future of Advertising in Video Games*, TrendJackers (Feb. 25, 2019), https://tre ndjackers.com/the-past-present-future-of-advertising-within-vid eo-games/; Dave Their, *You'll Only Understand This 'The Rise of Skywalker' Plot Point if You Play 'Fornite,'* Forbes (Dec. 22, 2019) (describing how Disney promoted the latest Star Wars film by revealing an important plot point in Fortnite, the most popular video game in the world today), https://www.forbes.com/s ites/davidthier/2019/12/22/youll-only-understand-this-the-rise-o f-skywalker-plot-point-if-you-play-fortnite/#bc9dc972fe7d.

II
CENTRAL HUDSON FACILITATES PROTECTIONISM, PATERNALISM AND HOSTILITY TOWARD INNOVATION

The relaxed standard of *Central Hudson* permits the type of protectionism that is amply illustrated in this case. The New York City Taxi and Limousine Commission (TLC) allows one market participant, taxicabs, to display commercial advertisements in their vehicles while not allowing rival market participants, rideshare vehicles, to do the same. It is no secret that regulators like the TLC have repeatedly acted to protect established entities like taxicab companies. *See, e.g.*, Jonathan Stempel, *Uber Sued New York City over Cruising and Licensing Caps*, Reuters (Sept. 20, 2019).[26] The TLC's actions regarding in-cab advertisements reflect another manifestation of the TLC's protectionism against rideshare drivers and companies.

Central Hudson allows regulators to engage in such protectionism based on a very flimsy rationale. The TLC claims that taxicabs must be given the sole privilege of displaying ads to recoup the cost of installing rider-friendly technology that the TLC mandated for taxicabs. But why should rideshare operators be punished for relying on more innovative expressive technology? The TLC's policy essentially serves as an innovation tax that operates to boost the struggling taxicab industry. Under strict scrutiny no

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[26] https://www.reuters.com/article/us-uber-new-york-idUSKBN1W52AV (visited Jan. 14, 2020).

government agency would be allowed to stifle speech to ensure the profitability of one market participant at the expense of another.

The deference *Central Hudson* grants to regulators serves as a tool to stifle innovation. In this case, the TLC justifies its ban based on years-old survey data which shows that taxicab riders are annoyed by the material displayed on Taxi TV. *Vugo, Inc. v. City of New York*, 931 F.3d 42, 47 (2d Cir. 2019). But Taxi TV is an outdated technology lacking many innovations employed by Vugo or its competitors. Taxi TV plays a static 14 minute video loop throughout the day. In contrast, Vugo's tablets, and those offered by its competitors, are customized to display relevant location-based information for passengers and even interactive experiences like video games.[27] Moreover, with rideshare apps, customers rate their drivers, who therefore have a strong incentive to make the ride experience as pleasant as possible for the passenger.[28] As a result, there is evidence of highly positive rider

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[27] Julie Walmsley, *Will Ride Hail Be Free by 2021? The Startup Ad Platform Vugo Says Yes*, Fast Company (Mar. 3, 2017), ("Vugo's secret sauce is its 'TripIntent' technology, an algorithm that derives insights about passengers' consumer tendencies based on the entertainment they choose, current location, and planned destination in order to deliver more tailored content."), https://www.fastcompany.com/3068575/will-ride-hail-be-free-by-2021-the-startup-ad-platform-vugo-says-yes.

[28] The Second Circuit noted that Vugo's tablets cannot be turned off or muted and can only be placed into a "near-mute." *Vugo, Inc. v. City of New York*, 931 F.3d 42, 48 (2d Cir. 2019). But innovations continue and other devices may well offer full muting. Given the thriving market, it is not a stretch to anticipate robust competition in this space allowing for the introduction of devices that offer the highest quality experience for riders and drivers.

engagement and driver satisfaction with devices like those offered by Vugo and its rideshare competitors.[29]

Under strict scrutiny, a government regulator could not justify a speech ban based on outdated survey data taken based on a completely different type of technology. *See, e.g.*, *Rothe Dev. Corp. v. U.S. Dep't of Def.*, 262 F.3d 1306, 1324 (Fed. Cir. 2001) (rejecting outdated statistics to justify race-based legislation under strict scrutiny). Nor could such flimsy data justify a total ban rather than less restrictive regulations intended to improve the rider experience. *United States v. Playboy Entm't Grp., Inc.,* 529 U.S. 803, 826 (2000) (the government must select the less restrictive alternative when the evidence "is silent as to the comparative effectiveness of the two alternatives.").

Finally, *Central Hudson* permits government paternalism. Even though "a State's paternalistic assumption that the public will use truthful, nonmisleading commercial information unwisely cannot justify a decision to suppress it," government agencies continue to rely on highly paternalistic justifications for the suppression of commercial speech. *44 Liquormart Inc., v. Rhode Island*, 517 U.S. 484 at 497 (1996). The TLC's argument that its ban is necessary to prevent annoyance is emblematic of this trend towards paternalism. In a city filed with 9,000-square-foot billboards, street performers, and buskers, the TLC's desire to shield riders from advertisements is almost quaint. Governments cannot

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[29] *See* Paul Sawers, *How the Ride-Hailing Industry is Fueling a New Breed of Start Up*, Venture Beat (Nov. 8, 2019), https://venturebeat.com/2019/11/08/driver-dissatisfaction-in-the-ride-hailing-industry-is-fueling-a-new-breed-of-startup/.

restrict speech merely to avoid extreme offense, let alone the minor inconvenience of being exposed to an unwanted 30-second advertisement. *See Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (upholding the right of funeral protestors to hold derogatory and highly offensive signs, and emphasizing that "speech cannot be restricted simply because it is upsetting or arouses contempt"); *Texas v. Johnson,* 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."). *Central Hudson* encourages precisely this type of paternalism, which has no place in First Amendment law.

CONCLUSION

The petition for writ of certiorari should be granted.

DATED: January 17, 2020.

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