No. 20-1029

IN THE
Supreme Court of the United States

CITY OF AUSTIN, TEXAS,

Petitioner,

v.

REAGAN NATIONAL ADVERTISING OF AUSTIN, INCORPORATED, *et al.*,

Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

BRIEF OF THE KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY AND PROFESSOR GENEVIEVE LAKIER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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Genevieve Lakier, Reed v. Town of Gilbert *and the Rise of the Anticlassificatory First Amendment*, 2016 S. Ct. Rev. 233 (2016) 8, 9, 18

Geoffrey R. Stone, *Restrictions of Speech Because of its Content: The Peculiar Case of Subject-Matter Restrictions*, 46 U. Chi. L. Rev. 81 (1978) 20, 23

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INTERESTS OF AMICI CURIAE[1]

The Knight First Amendment Institute at Columbia University ("Knight Institute" or "Institute") is a non-partisan, not-for-profit organization that works to defend the freedoms of speech and the press in the digital age through strategic litigation, research, and public education. The Institute's aim is to promote a system of free expression that is open and inclusive, that broadens and elevates public discourse, and that fosters creativity, accountability, and effective self-government.

Professor Genevieve Lakier is a Senior Visiting Research Scholar at the Knight Institute and also a Professor of Law at the University of Chicago Law School. Professor Lakier has expertise in the First Amendment and its presumption against content-based lawmaking. She has authored numerous articles and opinion pieces on the First Amendment.

Amici have a particular interest in this Court's approach to identifying content-based regulations of speech given the proliferation of federal, state, and local laws implicating speech in the digital age. The Court recognized in *Packingham v. North Carolina*, 137 S.Ct. 1730, 1735 (2017), the vital role that cyberspace and social media play in providing

[1] Counsel for all parties have provided their written consent to the filing of this brief. Sup. Ct. R. 37.3(a). No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution to fund the preparation or submission of the brief. Sup. Ct. R. 37.6.

forums for the exchange of ideas. The Court's decision in this case could have a significant impact on the free speech rights of the countless individuals who participate in burgeoning, vibrant online communities, and on the ability of Congress and state legislatures to enact laws that are necessary to protect free speech online.

SUMMARY OF ARGUMENT

This Court's decision in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), was meant to bring clarity to a confused area of the law but has itself caused great confusion and, in the process, subjected a vast array of commonsense regulation to the constitutional death knell of strict scrutiny.

Prior to *Reed*, courts generally employed two distinct tests to determine whether a regulation of speech discriminated on the basis of content and should be, for that reason, subject to strict scrutiny. One test looked to the face of the statute; the other looked to the statute's purpose. The two tests often led to inconsistent conclusions and thus disagreement among the courts.

Reed appeared to resolve this confusion by setting forth what seemed to be a relatively straightforward two-step test for courts to apply in all cases of potential content-discrimination. First, a court must determine whether the law at issue is content-discriminatory *on its face*—that is, whether its application turns on the topic discussed or the idea or message conveyed. Second, if the law is content-neutral on its face, the court must

determine whether it reflects a content-discriminatory *purpose*—that is, whether the law was adopted because the government disagreed with the content of the regulated speech or, instead, could be justified without reference to the content. If the answer to either question is "yes," then the law is considered content-based and subject to strict scrutiny.

Despite its apparent simplicity, *Reed* has generated only further confusion, in large part because interpreting it literally would require courts to apply strict scrutiny to laws that do not risk the kind of invidious governmental purpose or effect that the prohibition on content-discrimination was meant to prevent. For example, the *Reed* test would identify as content-based and therefore subject to strict scrutiny any privacy law that limits only the dissemination of sensitive personal information (such as laws that apply only to the disclosure of "protected health information"), any campaign finance law that applies only to election-related communication, any labor law that protects workplace-related speech, the many employment laws that protect workers against discrimination on the basis of their political expression, any sign laws that make special rules for signs that announce historic landmarks and natural wonders, as well as the many, many laws that require employers, restaurants, and other commercial establishments to disclose specific health and safety information.

These laws and many others serve important governmental interests, and, when drafted carefully, do not threaten to distort the marketplace

of ideas. Indeed, many of them serve important free-speech interests by protecting the privacy often necessary to free expression, as well as the expressive freedom of workers and others. Recognizing that a broad interpretation of *Reed* would likely doom these laws and countless others, some lower courts have understandably tried to limit *Reed*'s reach. But the result has been rampant inconsistency in the content discrimination cases.

Amici respectfully suggest that this Court should adopt a more nuanced test of whether a law is content-based and thus warrants strict scrutiny—one that distinguishes between laws that threaten the harms that the presumption against content-based lawmaking is intended to address, and laws that do not. A more nuanced test would ask not only whether the law in question is content-discriminatory on its face but also, for example, whether the law's content-based distinctions closely align with its content-neutral justifications; whether the law regulates a narrow set of topics or speakers, thus risking the suppression of disfavored views; whether the law restricts discussion of an entire topic of public debate; and whether the law is otherwise likely to favor or disfavor particular viewpoints. Consideration of these factors would ensure that courts apply strict scrutiny when a law threatens official suppression of ideas or distortion of public discourse. At the same time, it would ensure that courts apply only intermediate scrutiny to regulations of speech that draw distinctions unlikely to reflect censorial motive or to have censorial effect.

Even if the Court declines to revisit *Reed*'s basic framework, it should, at the very least, clarify that *Reed* does not mandate strict scrutiny of every law that requires a government official to look at the content of speech. It should make clear, instead, that *Reed* subjects to strict scrutiny only laws that draw distinctions based on viewpoint or subject matter. Although clarifying *Reed*'s meaning in this way would not solve every problem the decision has created, it would help realign the content-discrimination inquiry more closely with the purposes it seeks to serve and provide needed guidance to the lower federal and state courts.

Applying either approach to this case leads to the conclusion that the distinction between on-premises and off-premises signs is not content-based and therefore should not be subject to the presumption of unconstitutionality. The law at issue in this case should instead be subject to intermediate scrutiny.

ARGUMENT

I. The decision in *Reed* has cast First Amendment law into disarray.

A. *Reed* attempted to resolve confusion in content-discrimination cases.

It is a fundamental principle of First Amendment law that content-based regulations of speech are presumptively unconstitutional. *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 382 (1992). This principle reflects the view that, in a democratic society, the

topics fit for public debate, and the outcomes of public debate, should be determined by the people, not the government. *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) ("[T]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments"); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943) (in a democratic society "[a]uthority . . . is to be controlled by public opinion, not public opinion by authority").

The presumption against content-based lawmaking protects the independence of the marketplace of ideas from government control by requiring courts to apply strict scrutiny to laws that are "especially likely to be improper attempts to value some forms of speech over others, or are particularly susceptible to being used by the government to distort public debate." *City of Ladue v. Gilleo*, 512 U.S. 43, 60 (1994) (O'Connor J., concurring). The Court has explained that the government can distort public debate in at least two ways: by "giv[ing] one side of a debatable public question an advantage in expressing its views," *id.*, at 60, and by "prohibit[ing the] public discussion of an entire topic." *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 530, 538 (1980).

Despite widespread agreement about the importance of the presumption against content-based lawmaking to protecting the marketplace of ideas from government control, there has for decades been significant disagreement and confusion among the courts about how to apply the presumption. Prior to *Reed*, courts—including this Court—applied two

distinct and sometimes inconsistent tests to determine when laws were content-based and thus subject to the presumption of unconstitutionality.

In some cases, courts employed a facial test that classified laws as content-based whenever the laws applied only to speech of a particular content. *E.g.*, *Burson v. Freeman*, 504 U.S. 191, 197 (1992) (law prohibiting election-related speech near polling places is content-based because "[w]hether individuals may exercise their free speech rights near polling places depends entirely on whether their speech is related to a political campaign"); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991) (law prohibiting convicted felons from profiting off stories of their crimes is content-based because it is "directed only at works with a specified content"); *Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 230 (1987) (law taxing general interest magazines but exempting newspapers and religious, professional, trade, and sports magazines is content-based because, in order to apply the law, "enforcement authorities must necessarily examine the content of the message . . . conveyed" (citation omitted)).

In other cases, courts employed a purpose test that treated laws as content-based only when they could not be "justified without reference to the content of regulated speech." *Hill v. Colorado*, 530 U.S. 703, 720 (2000) (law prohibiting any person from knowingly approaching another near the entrance to a healthcare facility in order to "engage[] in oral protest, education or counseling" is not

content-based because it furthered a legitimate state purpose by "protect[ing] listeners from unwanted communication"); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986) (zoning restriction applying only to theatres that display sexually explicit motion pictures is content-neutral because it can be justified by content-neutral purposes, such as "prevent[ing] crime, protect[ing] the city's retail trade [and] maintain[ing] property values").

In cases involving laws that did not make facial content distinctions, these two tests were easy to reconcile. Courts could, and did, "unproblematically appl[y] the 'justified without reference to the content" test to determine whether the law was content-based. Genevieve Lakier, Reed v. Town of Gilbert *and the Rise of the Anticlassificatory First Amendment*, 2016 S. Ct. Rev. 233, 247 (2016). But in cases involving laws that *did* make facial content-distinctions but could be justified by a content-neutral purpose, these two tests led to inconsistent conclusions. A law considered content-based under one test was considered content-neutral under the other. *E.g.*, *Renton*, 475 U.S. at 55 (Brennan J., dissenting) (disputing the majority's conclusion that a law that "selectively imposes limitations on the location of a movie theater based exclusively on the content of the films shown there" could be treated as a content-neutral regulation of speech).

The result was significant "perplexity" and disagreement among the courts called on to resolve content-discrimination cases. Seth F. Kreimer, *Good Enough for Government Work: Two Cheers for*

Content Neutrality, 15 U. Pa. J. Const. L. 1261, 1270 (2014) ("The Court has regularly fallen into acrimonious disputes over the question of whether a particular regulation is 'content-based' or 'content-neutral,' and which strand of analysis should serve as the dividing line. A similar perplexity has afflicted the lower courts."); *see also* Lakier, 2016 S. Ct. Rev. at 249 ("The persistence of . . . two distinct and inconsistent tests of content-based lawmaking in the Court's First Amendment cases created a very confusing and contentious body of law.").

In *Reed*, the Court attempted to bring clarity to this area of law by setting forth what seemed to be a straightforward two-step test for determining when a regulation of speech is content-based. First, courts must examine the face of the statute to determine whether it "draws distinctions based on the message a speaker conveys." 576 U.S. at 163. *Reed* made explicit that laws that make these types of facial distinctions are content-based even if they can be justified by a content-neutral purpose. *Id.* at 165 ("A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech." (citation omitted)); *id.* at 167 ("Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech.").

Second, if the statute is facially content-neutral, courts must examine the statute's purposes. If the statute "cannot be 'justified without reference to the

content of the regulated speech,'" or if it was "adopted by the government 'because of disagreement with the message [the speech] conveys,'" then it is content-based. *Id.* at 164 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). The Court made clear that a law can be content-based under either step of the test, and that as a result "a court must evaluate each [step] before it concludes that the law is content neutral." *Id.* at 166. Thus, after *Reed*, courts are no longer free to choose between a facial test and a purpose test; the *Reed* test incorporated and instructed courts to use both.

B. *Reed* has generated only further confusion and inconsistency in content-discrimination cases.

Notwithstanding the apparent simplicity of *Reed*'s two-step test, the decision has generated *new* kinds of perplexity and disagreement among lower courts about what constitutes a content-based regulation of speech. This is the case for two reasons. First, this Court has yet to attempt to reconcile *Reed* with its many prior inconsistent cases, which has led to confusion about whether courts can continue to rely on these prior inconsistent cases. Second, even when courts apply *Reed* rather than any prior inconsistent case, they have interpreted the first step of the *Reed* test in starkly divergent ways.

Although *Reed* is flatly inconsistent with many of this Court's prior cases, the Court has yet to address,

let alone resolve, those inconsistencies.[2] This has left courts unclear about *Reed*'s reach. *E.g.*, *Int'l Outdoor, Inc. v. City of Troy, Mich.*, 974 F.3d 690, 703–04 (6th Cir. 2020) (noting disagreement among circuit courts about whether the *Reed* test applies in commercial speech cases). It has also enabled courts to continue to rely upon precedents that "direct[ly] conflict with *Reed*'s pronouncement that [courts] cannot look behind a facially content-based law to a benign motive in order to shield the law from the rigors of strict scrutiny." *Free Speech Coal., Inc. v. Att'y Gen. United States*, 825 F.3d 149, 164 (3d Cir. 2016) (noting conflict between the principles underpinning *Reed* and those underpinning the "secondary effects" cases but concluding that "we must leave it to the Supreme Court 'the prerogative of overruling its own decision'" (quoting *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989))); *see also Doyle v. Hogan*, 411 F. Supp.

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[2] Prior Supreme Court precedents that are inconsistent with *Reed* include cases concerning commercial speech, such as *CBS v. Democratic Nat'l Comm.*, 412 U.S. 94, 130 (1973), *Lehman v. City of Shaker Heights*, 418 U.S. 298, 304 (1974), *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 468 (1978), *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980), *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 512 (1981), *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 651 (1985); cases concerning political speech, including *Greer v. Spock*, 424 U.S. 828, 839 (1976); cases concerning speech pertaining to pornographic material and adult businesses, including *Rowan v. U.S. Post Off. Dep't*, 397 U.S. 728, 731 (1970), *Young v. Am. Mini Theatres*, 427 U.S. 50, 72–73 (1976), *Renton*, 475 U.S. at 54–55, *City of Los Angeles v. Alameda Books*, 535 U.S. 425 (2002); and cases concerning professional speech, including *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 884 (1992).

3d 337, 344–45 (D. Md. 2019), *vacated on other grounds*, 1 F.4th 249 (4th Cir. 2021) (concluding that *Reed* does not apply to law regulating gender conversion therapy because law involves the regulation of professional speech); *Boelter v. Hearst Commc'ns, Inc.*, 192 F. Supp. 3d 427, 447 & n.10 (S.D.N.Y. 2016) (upholding statute under intermediate scrutiny, even though *Reed* "reiterated that content-based restrictions are subject to strict scrutiny," because the Supreme Court "has not explicitly overturned the decades of jurisprudence holding that commercial speech, and speech like it—which inherently requires a content-based distinction—warrants less First Amendment protection").

Second, even when lower courts have relied on *Reed* itself rather than prior inconsistent decisions of this Court, they have given the first step of the *Reed* test very different interpretations. Some courts, like the Fifth Circuit, have interpreted the first step of the *Reed* test broadly to encompass any law that requires a government official to examine a speaker's message in applying the law. *Reagan Nat'l Advert. of Austin, Inc. v. City of Austin*, 972 F.3d 696 (5th Cir. 2020); *see also Int'l Outdoor, Inc.*, 974 F.3d at 707–08 (same); *Thomas v. Bright*, 937 F.3d 721, 724 (6th Cir. 2019) (same); *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1204 (9th Cir. 2018) (law making it a crime to record agricultural "operations" without the owners' consent is content-based because "only by viewing the recording can the . . . authorities make a determination about criminal liability").

In other cases, courts have interpreted the *Reed* test more narrowly to mandate application of strict scrutiny only to laws that require a government official to make a more than "cursory" examination of the content of speech in applying the law. *See, e.g.*, *Act Now to Stop War & End Racism Coal. & Muslim Am. Soc'y Freedom Found. v. Dist. of Columbia*, 846 F.3d 391, 396, 404 (D.C. Cir. 2017) (law allowing signs to remain on public lampposts for 180 days but requiring signs relating to events to be removed after 30 days is content-neutral because even though "officials may look at what a poster says to determine whether it is 'event-related,' . . . such 'cursory examination' did not render the statute facially content based" (quoting *Hill*, 530 U.S. at 720, 722); *Porter v. Gore*, 354 F. Supp. 3d 1162, 1173 (S.D. Cal. 2018) (law prohibiting use of an automobile horn except "when reasonably necessary to insure safe operation" is not content-based because, even though official may have to look at the content of the honk to determine whether it "was reasonably necessary to insure safe vehicular operation . . . such a 'cursory examination' is not 'problematic'" (citation omitted)).

In a third category of cases, courts have interpreted the *Reed* test's first step even more narrowly to exclude from its reach laws that, for example, regulate sexually explicit speech. *E.g.*, *Pharaohs GC, Inc. v. U.S. Small Bus. Admin.*, 990 F.3d 217, 231 (2d Cir. 2021) (regulation prohibiting businesses that host "live performances of a prurient sexual nature" from receiving Paycheck Protection Act funds is content-based but does not trigger strict scrutiny under *Reed* because "prurience and patent

offensiveness are . . . permissible grounds on which to discriminate"); *see also People v. Austin*, 155 N.E.3d 439, 457–58 (2019), *cert. denied sub nom. Austin v. Illinois*, 141 S. Ct. 233 (2020) (law making it a felony to "intentionally disseminate[] an image of another person . . . at least 18 years of age . . . who is engaged in a sexual act or whose intimate parts are exposed" without consent is not content-based because the law distinguishes dissemination of a sexual image not based on the image's content itself but based on the fact that "the person in the image has not consented to the dissemination").

These divergent interpretations of *Reed* reflect deep disagreement and confusion about when laws should be considered content-based. *Compare Porter*, 354 F. Supp. 3d at 1166 (law prohibiting honking of horns except for purpose of vehicle safety is content-based), *with Goedert v. City of Ferndale*, 596 F. Supp. 2d 1027, 1033 (E.D. Mich. 2008) (opposite); *compare also Reagan Nat'l Advert.,* 972 F.3d at 696 (law distinguishing on-site from off-site signs is content-based), *with Clear Channel Outdoor, Inc. v. Dir., Dep't of Fin. of Baltimore City*, 472 Md. 444, 475–76 (2021) (opposite), *with Reed,* 576 U.S. at 174–75 (Alito, J., concurring) (stating that "Rules distinguishing between on-premises and off-premises signs" would not be content-based); *compare also Thomas*, 937 F.3d at 729–30 (Batchelder, J., concurring) (concluding that law distinguishing on-premises from off-premises signs is content-based because government officials "must read the message written on the sign" to apply the law and noting that this conclusion is "neither . . . close nor . . . difficult" but is instead "indisputable"),

with Comm. to Impose Term Limits on Ohio Supreme Ct. v. Ohio Ballot Bd., 885 F.3d 443, 448 (6th Cir. 2018) (Batchelder J.) (concluding that election law allowing ballot initiatives to contain only one amendment is not content-based even though it requires election officials to examine the content of the proposed initiative to determine whether it proposes more than one amendment, because violating the law "depends not on what [speakers] say, but simply on where they say it").

II. *Reed* is overbroad and should be narrowed.

A. That the *Reed* test has been so inconsistently applied shows that it suffers from a deep underlying problem.

The confusion and disagreement that has plagued lower court interpretations of *Reed* is a consequence of *Reed*'s overly expansive test for content-based lawmaking. As *Reed* itself acknowledged, speech regulations should be considered content-based only when they pose a greater than ordinary risk of being used by the government to favor or disfavor particular viewpoints, messages, or topics. *Reed*, 576 U.S. at 167 ("'The vice of content-based legislation . . . is not that it is always used for invidious, thought-control purposes, but that it lends itself to use for those purposes.'" (quoting *Hill*, 530 U.S. at 743 (Scalia, J., dissenting))); *id.* at 182 (Kagan J., concurring). But the mere fact that a law "draws distinctions based on the message a speaker conveys," does not by itself

give rise to a risk of these improper purposes or effects.

This is the case for two reasons. First, there are many, entirely legitimate reasons why the government might regulate speech based on its content. For example, privacy laws quite sensibly regulate the disclosure of private information but not other information. *See, e.g.*, Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule, 45 CFR § 164.502 (imposing significant constraints on the use and dissemination of "individually identifiable health information"); Daniel J. Solove, *The Virtues of Knowing Less: Justifying Privacy Protections Against Disclosure*, 53 Duke L.J. 967, 971–73 (2003) (describing the many and varied state and federal laws that regulate the disclosure of personal information). Similarly, the government might want to regulate speech about emergencies differently than speech about other events because it recognizes that the costs of restricting speech about an imminent emergency may be much greater than the costs of restricting other kinds of speech. *See, e.g.*, Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(B) (making it unlawful to use an automatic dialing system to call a home to deliver a message by artificial or prerecorded voice, *except* when that call is initiated for emergency purposes).[3] Even if such

[3] In *Barr v. American Association of Political Consultants*, this Court struck down another provision in the TCPA which exempted calls made to collect government debt from the general ban on robocalls, after concluding that the exemption was content-based and therefore presumptively unconstitutional. 140 S. Ct. 2335, 2347 (2020). Although the

laws would survive strict scrutiny, there is no valid reason to subject such laws to this highly demanding standard of review.

The fact that there are many non-invidious reasons for regulating speech based on its content suggests that the mere fact of content-discrimination does not make it especially likely that these laws are the product of an invidious intent. There is, in these cases, and in others like them, nothing inherently suspicious about the fact of the content distinction.

Second, it simply is not true that all laws that regulate speech based on its content lend themselves to invidious uses. Laws that discriminate on the basis of viewpoint *do* pose this risk, because they can easily be used to "giv[e] one side of a debatable public question an advantage in expressing its views." *Ladue*, 512 U.S. at 60 (O'Connor J., concurring). That is why this Court has repeatedly emphasized the particular dangers of viewpoint-based laws. *E.g.*, *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) ("Viewpoint discrimination is . . . an egregious form of content discrimination.").

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opinion did not address the emergency calls exemption of the TCPA, its reasoning, which relied heavily on the test of content-discrimination articulated in *Reed*, makes clear that this exemption too should be considered content-based and therefore presumptively unconstitutional. *Id.* at 2346 (concluding that because the government debt exemption "favors speech [about that topic] over political and other speech, the law is a content-based restriction").

Laws that limit discussion of a narrowly defined topic of public debate—that, for example, prohibit corporations from publicly expressinig their views on the merits of proposed reforms to the state constitution, *Bellotti,* 435 U.S. at 765, or that prevent convicted criminals from making a profit from tales of their crimes, *Simon & Schuster*, 502 U.S. at 105—also pose a significant risk that they are motivated by constitutionally illegitimate purposes, or can be used to those ends. This is because these kinds of narrow subject matter laws tend to affect only a discrete group of speakers—for-profit corporations, for example, or ex-felons. Like viewpoint-based laws, they "lower the costs of repression, by making it possible for the government to repress only the speech of its enemies and not the speech of its friends." Lakier, 2016 S. Ct. Rev. at 252.

The same is not always true, however, of laws that draw *broad* subject matter distinctions—that distinguish, for example, between those who disseminate "individually identifiable health information" and those who disseminate other kinds of information, or those who make emergency robocalls and those who do not. Other examples of laws that fall into this category are campaign finance laws that regulate only election-related speech, *see, e.g.*, 52 U.S.C. § 30116(a)(7)(c) (regulating disbursements for "electioneering communications[s])"), labor laws that protect workers when they speak about employment-related matters but not otherwise, 29 U.S.C. §§ 157–158 (protecting employees against discrimination for engaging in expression made for the purpose of "collective bargaining or other mutual aid or

protection"), employment discrimination laws that protect employees against workplace sanctions for their off-the-job political speech, *e.g.*, Mo. Ann. Stat. § 130.028 (protecting employees against discrimination on the basis of their "political beliefs or opinions"); whistleblower laws that protect the disclosure of only certain kinds of information, *e.g.*, 5 U.S.C. § 2302 (protecting federal whistleblowers who disclose information about "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety"), sign laws that make special rules for "signs and notices pertaining to natural wonders, scenic and historical attractions," 23 U.S.C. § 131(c), as well as the many, many laws that require commercial establishments to disclose to patrons, potential customers, and workers specific health or safety information.

These laws do not usually have a strongly viewpoint-differential effect. They tend to affect both "side[s] of a debatable public question" equally. *Ladue*, 512 U.S. at 60 (O'Connor J., concurring). Nor do they impact only a narrow class of speakers, or ones united by shared ideological or political convictions. A wide variety of speakers might wish to disseminate personally identifiable health information, The same is true of those who wish to make emergency robocalls, or engage in political expression outside of the workplace, or disclose fraud and abuse in the workplace. The fact that these laws generally apply to heterogeneous groups of speakers makes them unlikely instruments for abuse. It also provides another reason to doubt the invidiousness of the intent motivating them. *See*

Geoffrey R. Stone, *Restrictions of Speech Because of its Content: The Peculiar Case of Subject-Matter Restrictions*, 46 U. Chi. L. Rev. 81, 112 (1978) (although "subject-matter restrictions that are directed against broad classes of speech, cutting across a wide spectrum of issues . . . may at times have de facto, viewpoint-differential effects, those effects are likely to be spread over a fairly wide range of issues, thus mitigating the risk that the restriction is tainted by an improper legislative motivation directed against a particular viewpoint").

The risk of nefarious motives or ends is even less of a concern for laws, like the one at issue in this case, that make neither viewpoint nor subject matter distinctions but instead use the content of speech as a proxy for other kinds of distinctions (in this case, the distinction between local business owners and other advertisers). *See Metromedia*,453 U.S. at 526 ("[On-site signs] are used primarily for the purpose of identifying a business, its products or its services at the point of manufacture, distribution or sale . . . Off-premise advertising is an advertising service for others which erects and maintains outdoor advertising displays on premises owned, leased or controlled by the producer of the advertising service." (internal citations omitted)).

Because these laws affect very broad categories of people, they are very unlikely to have a significant viewpoint-differential effect. And because they do not single out any specific topic for special treatment, they are extremely unlikely to have the effect of "prohibit[ing] public discussion of an entire topic." *Consol. Edison*, 447 U.S. at 530.

These laws, like laws that make broad subject matter distinctions, do not pose a significant risk of abuse, and thus do not need to be treated as presumptively unconstitutional. Instead, their constitutionality should be reviewed under the rigorous, but nevertheless more deferential standard of intermediate scrutiny that courts have long used to assess the validity of content-neutral speech regulations. *E.g.*, *Ward*, 491 U.S. at 791.

The efforts that lower federal and state courts have made to limit the reach of the first step of the *Reed* test reflect their recognition of its over-expansiveness and the threat this poses to the government's ability to vindicate important dignitary, privacy, and free-speech interests.[4] For example, the Illinois Supreme Court construed *Reed* narrowly so as not to "cast doubt on the constitutionality" of the "entire field of privacy law." *Austin*, 155 N.E.3d at 458; *see also Otto v. City of Boca Raton, Fla.*, 353 F. Supp. 3d 1237, 1256 (S.D. Fla. 2019), *rev'd and remanded*, 981 F.3d 854 (11th Cir. 2020) ("[T]his case demonstrates why an unbending, categorical approach to the First Amendment proves unwieldy to the point of

[4] The Court has recognized on multiple occasions the important First Amendment interests that are promoted by privacy laws. *See, e.g.*, *Bartnicki v. Vopper*, 532 U.S. 514, 532–33 (2001) (noting that "[p]rivacy of communication is an important interest" and that "the fear of public disclosure of private conversations might well have a chilling effect on private speech"); *United States v. U.S. Dist. Court for the E. Dist. of Mich.*, 407 U.S. 297, 313–14 (1972) ("For private dissent, no less than open public discourse, is essential to our free society.")

unworkable. In fact, the exemptions to the automatic 'trigger' of strict scrutiny illustrate a recognition that an ironclad, categorical approach is untenable in applying the First Amendment to seemingly endless permutations and circumstances."); *Recycle for Change v. City of Oakland*, 856 F.3d 666, 670–72 (9th Cir. 2017) (refusing to interpret *Reed* to require treating any law as content-based whenever it requires a government official to read the content of a sign because "[i]f applied without common sense, this principle would mean that every sign, except a blank sign, would be content-based").

What these efforts have produced, however, is a deeply confusing and conflicted body of law that fails to provide the consistency and predictability that the First Amendment requires. *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253–54 (2012) ("[P]recision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.").

The willingness of lower federal and state courts to interpret *Reed* much more narrowly than its language suggests has also enabled courts in some cases to conclude that laws are content-neutral under *Reed* even when they *do* pose a heightened risk of being used for "invidious, thought-control purposes." *Reed*, 576 U.S. at 167*, see also BBL, Inc. v. City of Angola*, 809 F.3d 317, 326 (7th Cir. 2015) (rejecting the idea that "*Reed* upends established

[secondary effects] doctrine for evaluating regulation of businesses that offer sexually explicit entertainment, a category the Court has said occupies the outer fringes of First Amendment protection"); Stone, 46 U. Chi. L. Rev. at 111–12 (noting that the sexually explicit "speech suppressed by restrictions such as those involved in [the secondary effects cases] will almost invariably carry an implicit, if not explicit, message in favor of more relaxed sexual mores" and consequently, because these kinds of regulations "have a potent viewpoint-differential effect . . . , restriction along these lines will carry an extraordinarily high risk that its enactment was tainted by this fundamentally illegitimate consideration").

B. The Court should adopt a more nuanced test of whether a law is content-based and thus warrants strict scrutiny.

To avoid the problems created by an overly broad interpretation of *Reed*, this Court should adopt a more nuanced test for determining whether a law is content-based and therefore subject to strict scrutiny. In crafting a more nuanced test, the Court should be guided by a recognition that not every regulation that discriminates on the basis of content carries with it the risks that this Court has pointed to in justifying the application of strict scrutiny. The Court should recognize, in other words, that legislators often have perfectly legitimate reasons to tailor legislation to problems specific to particular categories of content.

In developing a more nuanced test for determining whether to apply strict scrutiny to these laws, the Court should continue to treat as highly relevant, although not dispositive, the two factors from *Reed*—whether the law makes facial content distinctions, and whether the law can be justified without reference to the content of speech. Both these factors are obviously important to identifying when the government has enacted a law in order to "give one side of a debatable public question an advantage in expressing its views," *Ladue*, 512 U.S. at 60 (O'Connor J., concurring), or *to* "prohibit[] public discussion of an entire topic," *Consol. Edison Co.*, 447 U.S. at 537.

But the Court should also look to other factors in determining whether a law that employs content distinctions on its face, or that is justified by a purpose that does not relate to the content of speech, in fact presents a significant-enough risk of abuse to warrant the application of strict scrutiny:

- Whether the law's content-based distinctions closely align with its content-neutral justifications. *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92, 100 (1972) (concluding that a statutory distinction between labor and non-labor picketing "slip(s) from the neutrality of time, place, and circumstance into a concern about content" because the distinction between labor and non-labor picketing had no relationship to the "city's legitimate concern" in "preventing school disruption").

- Whether the law regulates a narrow set of topics or speakers. As explained above, laws that

regulate a narrow set of topics or speakers are more likely to reflect an improper effort by the government to favor or disfavor particular ideas or messages. Laws that regulate broader categories of speech—for example, privacy laws—generally do not favor or disfavor any particular side of a public debate.

- Whether the law restricts discussion of a particular topic or, to the contrary, protects that discussion by, for example, protecting speakers against private discrimination and abuse.

- Whether the law is otherwise likely to have the effect of favoring or disfavoring particular speakers or viewpoints, given the context or circumstances in which it applies. Content distinctions have effect on the speech landscape in particular contexts. When determining whether a given law poses a serious threat of advancing "invidious, thought-control purposes," courts should examine the law in its context rather than resting the analysis solely on the nature of the content distinctions involved.

Consideration of these factors would allow courts to more reliably identify laws that have the impermissible purpose or effect of favoring or disfavoring particular ideas or messages, and it would allow courts to guard against regulations that, even if enacted in good faith, risk distorting public discourse. But it would also and crucially leave room for courts to recognize, as they ought to, that not every distinction drawn on the basis of

content should trigger the nearly automatic invalidation that strict scrutiny entails.

Of course, a law that was not considered content-based under this more nuanced test would not necessarily be constitutional. As a content-neutral regulation of speech, it would simply be subject to intermediate rather than strict scrutiny. *Ward*, 491 U.S. at 791. The government could sustain the law only by showing that it served an important governmental purpose and that it was narrowly drawn to that purpose. And even if sustained as a general matter, the law could be subject to as-applied challenges, if it was enforced in a discriminatory manner. But the presumption of unconstitutionality that extends to all content-based laws would not apply.

C. At the very least, the Court should clarify that *Reed* applies only to laws that make viewpoint or subject-matter distinctions.

Even if the Court is unwilling to reshape the law of content discrimination to more effectively vindicate the purposes that motivate it, *see* Part II.B, it should at the very least reject the broadest interpretation of *Reed* as subjecting to strict scrutiny all regulations that require a government official to look at the content of speech. Many courts have adopted that interpretation and have required strict scrutiny even of laws that do not contain the kinds of viewpoint or subject matter distinctions that have historically been the focus of judicial concern in content discrimination cases. *E.g.*, *Int'l Outdoor,*

Inc., 974 F.3d at 707–08; *Animal Legal Def. Fund*, 878 F.3d at 1204; *Centro de la Comunidad Hispana v. Town of Oyster Bay*, 868 F.3d 104 (2d Cir. 2017); *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*, No. 21-22492-CIV, 2021 WL 3471585, at *8 (S.D. Fla. Aug. 8, 2021); *GEFT Outdoor, LLC v. City of Westfield*, 491 F. Supp. 3d 387, 405 (S.D. Ind. 2020).

This is an unnecessarily broad reading of the opinion in *Reed*. The law at issue in that case did not merely require a government official to look at the content of a sign in order to determine whether and how the law applied. It made explicit subject matter distinctions—subject matter distinctions that had, moreover, a strongly viewpoint-differential effect. *Reed*, 576 U.S. at 159–61 (noting that the town sign code distinguished between, among other categories of signs, "Political Signs" that discussed issues related to elections, "Temporary Directional Signs" that advertised upcoming events, and "Ideological Signs" that discussed messages or ideas that did not fit into any of the other categories); James Howard, *Salvaging Commercial Speech Doctrine: Reconciling* Reed v. Town of Gilbert *with the Constitutional Free Speech Tradition*, 27 Geo. Mason U. C.R.L.J. 239, 239–41 (2017) (noting that the restrictions the sign code imposed on "temporary directional signs" made it much more difficult for the Good News Community Church to advertise its event because it was the only local curch "that . . . met at temporary locations [and] lacked its own building").

In striking down the sign code, the majority opinion focused primarily on the threat that laws of this kind—laws that make facial subject-matter

distinctions—pose to the independence of the marketplace of ideas. *Reed*, 576 U.S. at 168–69. And in explaining what kinds of distinctions merited "First Amendment[] hostility," the majority discussed only two: laws that "discriminate among viewpoints" and laws that "target[] a[] specific subject matter." *Id.* at 168–69; *see also id.* at 174 (Alito J., concurring) (equating "content-based laws" with laws that make subject matter distinctions and noting that these laws "must satisfy strict scrutiny" because "[l]imiting speech based on its 'topic' or 'subject' favors those who do not want to disturb the status quo" and thus 'may interfere with democratic self-government and the search for truth'").

It is far from obvious, therefore, that the majority in *Reed* intended its opinion to be interpreted as broadly as it has been. And for the reasons explained above, the opinion should *not* be read so broadly.

The Court should make clear that, under *Reed*, facially content-based laws trigger strict scrutiny as a matter of course only when they "discriminate among viewpoints" or "target[] a[] specific subject matter" and not when they merely require government officials to look at the content of a sign to apply them. 576 U.S. at 169. This is in fact how some lower courts have interpreted *Reed*. *E.g.*, *Norton v. City of Springfield, Ill.*, 806 F.3d 411, 412 (7th Cir. 2015) ("The majority opinion in *Reed* effectively abolishes any distinction between content regulation and subject-matter regulation.").

Interpreting *Reed* more narrowly in this manner would not address all of the problems identified in

Part II. Laws that draw reasonable subject-matter distinctions would still be subject to strict scrutiny. The result would still be a test of content-based lawmaking that sweeps more broadly than the purposes that justify it.

Nevertheless, clarifying the limits of *Reed* in this manner would help align the doctrine more closely with its purposes. Doing so would also provide valuable and needed guidance to the lower courts. It would spare courts from having to determine when a government official's examination of speech is so cursory that it does not trigger the presumption of unconstitutionality. *See Reagan Nat'l Advert.*, 972 F.3d at 705–06 (discussing various hypothetical applications of sign codes in order to determine whether they require a government official to engage in a merely cursory, or more than cursory, analysis of the content of signs). It would, accordingly, help refocus judicial analysis in content discrimination cases on what should be the primary concern: namely, the risk that a given law reflects, or might be used to give, official preference to certain ideas or speakers over others, or to otherwise manipulate public debate. And it would limit, even if it would not entirely resolve, the significant disagreement in the lower courts about how to interpret *Reed*.

III. The City of Austin's distinction between on-premises and off-premises signs is content-neutral under *Reed* as this Court should interpret it.

If the Court applies either the more nuanced test proposed in Part II.B, or the narrowed interpretation of *Reed* proposed in Part II.C, it should conclude that the Austin sign ordinance is not content-based and therefore not subject to the presumption of unconstitutionality. *Reed*, 576 U.S. at 174–75 (Alito, J., concurring) (noting that "[r]ules distinguishing between on-premises and off-premises signs" would "not be content based"). The ordinance neither discriminates on the basis of viewpoint or ideology, nor targets any topics of public conversation for special treatment. For this reason, it is unlikely to have a strongly viewpoint-differential effect.

The distinction between off-premises and on-premises signs also furthers relevant statutory goals, by allowing the government to limit the aesthetic harm produced by billboards without making it excessively difficult for business owners to direct potential customers to the goods and services they offer. *Metromedia*, 453 U.S. at 512 (finding it reasonable to "conclude that a commercial enterprise—as well as the interested public—has a stronger interest in identifying its place of business and advertising the products or services available there than it has in using or leasing its available space for the purpose of advertising commercial enterprises located elsewhere"). That is to say, it does not draw a distinction that reflects an

underlying judgment of the value, or lack thereof, of different kinds of speech; nor does it rely upon purely speculative predictions of the characteristics of different kinds of speakers. *Mosley*, 408 U.S. at 100–01 (rejecting the claim that nonlabor picketing can be prohibited, but labor picketing allowed because the former is likely to be more disruptive than the latter and noting that "[f]reedom of expression . . . would rest on a soft foundation indeed if government could distinguish between picketers on such a wholesale and categorical basis").

Finally, a desire to protect the ability of property owners to advertise, but to limit the aesthetic harms of billboards otherwise, is a perfectly legitimate interest under the First Amendment. It does not reflect a desire by the government to limit speech because the government finds it "offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Nor does it advance any other "invidious, thought-control purposes." *Reed*, 576 U.S. at 167.

In short there is simply no reason to treat the Austin sign ordinance as presumptively unconstitutional. Doing so furthers no First Amendment values. Instead, the law should properly be subject to intermediate scrutiny.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to reverse the judgment of the United States Court of Appeals for the Fifth Circuit.

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