No. _____

In The
Supreme Court of the United States

OUTDOOR ONE COMMUNICATIONS LLC,

Petitioner,

v.

CHARTER TOWNSHIP OF CANTON, MICHIGAN,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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April 28, 2022

QUESTIONS PRESENTED

The Township of Canton's Sign Ordinance imposes prior restraints on speech in the form of a permit requirement and variance scheme which vests Township officials with open-ended discretion to modify any of its sign restrictions on a case-by-case basis. At the same time, the Ordinance categorizes signs based on their content and then restricts their size, height, and other characteristics depending on the message displayed on the sign.

Outdoor One Communications sought to erect a sign in the Township that electronically displays different types of content that changes every eight seconds. As a result, the regulatory treatment of its sign will shift from moment to moment, depending on the message displayed, subjecting it to a variety of content-based restrictions found throughout the Ordinance.

The Sixth Circuit held that a) Outdoor lacked standing to challenge the Sign Ordinance as an unconstitutional prior restraint on speech because it could not demonstrate the Ordinance caused it to engage in self-censorship and b) Outdoor lacked standing to challenge the Sign Ordinance's constitutionality because the court concluded the restrictions applicable to Outdoor's speech were "more generous" than the restrictions applicable to other categories of content regulated under the scheme.

The questions presented are:

1. Whether a speaker must first engage in self-censorship to have standing to attack the constitutionality of a prior restraint on its speech.

QUESTIONS PRESENTED – Continued

2. Whether a speaker lacks standing to challenge a facially content-based regulation of its speech if a court concludes the speaker receives "generous" treatment under the scheme.

PARTIES TO THE PROCEEDING

Petitioner Outdoor One Communications LLC was the plaintiff in the district court and appellant in the court of appeals. Respondent Charter Township of Canton, Michigan was the defendant in the district court and appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Outdoor One Communications LLC has no parent corporation and no publicly held entity has any stock or other ownership interest in it.

STATEMENT OF RELATED PROCEEDINGS

Outdoor One Communications LLC v. Charter Twp. of Canton, Michigan, No. 21-1323 (6th Cir.) (opinion issued and judgment entered on December 16, 2021; petition for rehearing and rehearing en banc denied January 28, 2022; mandate issued February 7, 2022).

Outdoor One Communications LLC v. Charter Twp. of Canton, Michigan, No. 20-cv-10934 (E.D. Mich.) (order denying motion for summary judgment issued March 3, 2021; order entering summary judgment issued March 15, 2021; order vacating order (ECF 28), reaffirming summary judgment (ECF 26) and reaffirming entry of judgment (ECF 29) issued April 29, 2021).

STATEMENT OF RELATED PROCEEDINGS –
Continued

There are no additional proceedings in any court that are directly related to this case.

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This case presents two questions of critical and far-reaching importance for speakers that seek to establish Article III standing to challenge unlawful restrictions on their speech. One of these questions has caused a three-way split among the courts of appeals.

Believe it or not, the Sixth Circuit held that a speaker cannot establish standing to challenge a prior restraint on its speech – even one that was actually enforced against the speaker – unless it can come forward with evidence that the prior restraint caused it to actively engage in self-censorship. In contrast, this Court has repeatedly held that "a facial challenge lies whenever a licensing law gives a government official or agency substantial power to discriminate based on the content or viewpoint of speech." *City of Lakewood v. Plain Dealer Publish Co.*, 486 U.S. 750, 759 (1988); *see also Freedman v. State of Md.*, 380 U.S. 51, 56 (1965) ("[I]t is well established that one has standing to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a properly drawn statute, and whether or not he applied for a license."). The Sixth Circuit's holding in this case not only flies in the face of the standing doctrine articulated in *City of Lakewood* and *Freedman*, but further deepens a preexisting three-way circuit split over whether a speaker who is subject to an unlawful prior restraint on its speech has standing to challenge the law's constitutionality.

Additionally, the Sixth Circuit held that a speaker lacks standing to challenge a facially content-based regulation of its speech when the speaker receives "more generous" regulatory treatment versus other speakers who display different categories of speech restricted under the scheme. Its rationale? A "generous" regulation of speech can never trigger a constitutional injury under the First Amendment. But the Sixth Circuit's reasoning is antithetical to *Reed v. Town of Gilbert*'s central teaching: "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." 576 U.S. 155, 165 (2015) (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993)). Under *Reed*, a facially content-based restriction of speech that fails constitutional muster necessarily triggers a constitutional injury for speakers regulated thereunder. This is especially so here, where the sign code at issue is backed by criminal sanctions and the government has enforced the code against the speaker.

The decision below is profoundly wrong, yet profoundly important. The Sixth Circuit has embraced a view of Article III standing that improperly insulates patently unconstitutional restrictions on speech from constitutional attack by the very speakers for whom the restrictions are both directed toward and enforced against. Each question independently warrants certiorari, but taken together, compel it.

The Court should take this case to resolve the three-way circuit split and to clarify that speakers who are subject to a facially content-based scheme of speech regulation always sustain a constitutional injury if that scheme does not survive review under strict scrutiny.

OPINIONS BELOW

The opinion of the Sixth Circuit is unpublished but available at 2021 WL 5974157 and is reproduced at App.1a-13a. The Sixth Circuit's order denying panel rehearing and rehearing en banc is unreported and reproduced at App.31a. The opinion of the District Court for the Eastern District of Michigan is unreported but available at 2021 WL 807872 and is reproduced at App.14a-30a.

JURISDICTION

The Sixth Circuit issued its panel opinion on December 16, 2021. That judgment became final on January 28, 2022, when the court denied Outdoor's petition for panel rehearing and rehearing en banc. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND TOWNSHIP ORDINANCE PROVISIONS INVOLVED

The First Amendment provides, in relevant part: "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. Const. amend. I.

The Fourteenth Amendment provides, in relevant part: "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, sec.1.

Canton's Sign Ordinance and related zoning ordinance provisions are set forth at App.32a-103a.

STATEMENT OF THE CASE

A. Canton's Sign Ordinance.

Canton regulates the display of signs through the Canton Charter Township Code, Appendix A, Article 6A.00 – Signs (the "Sign Ordinance"). App.32a-93a. Under threat of criminal penalty, the Sign Ordinance makes it "unlawful to construct, display, install, [or] change . . . any sign upon any property within the township in violation of the requirements of [the Ordinance]." App.43a (§6A.03). Violators are subject to penalties including fines and imprisonment. App.103a (§27.09.3).

No material facts are disputed in this case. App.29a. The face of Canton's Sign Ordinance is

permeated with content-based distinctions among signs and incorporates multiple speech licensing provisions that function as prior restraints on speech.

1. The Sign Ordinance's stated purpose.

The Sign Ordinance states that its "purpose . . . is to promote the general safety and welfare of the public by regulating and controlling all public and private graphics communications and displays." App.43a (§6A.02). Canton does not assert a compelling interest in regulating the content of speech.

2. The Sign Ordinance's content-based nature.

The Sign Ordinance establishes a content-based regulatory regime by distinguishing signs based on the message displayed and then restricting their size, height, and other characteristics depending on the content. For instance, some of the content categories regulated by the Ordinance include "political signs," App.49a (§6A.09.11), signs "for use by educational nonprofit institutions licensed by the state, houses of worship or other public entities," App.48a (§6A.09.8), "[s]igns of a primarily decorative nature, not used for any commercial purpose and commonly associated with any national, local or religious holiday," App.48a-49a (§6A.09.10), real estate signs, App.47a-48a (§6A.09.7) and "directional signs," App.76a (§6A.21), among others. And consider Section 6A.24's regulation of "billboard" speech; what starts off

as a typical off-premises sign regulation is transformed into a facially content-based regulation of speech by introducing the caveat that "[o]ff-premises *directional* signs . . . *shall not* be considered billboards for the purpose of this chapter."[1] App.33a-34a (§6A.01.7) (emphasis added). These and the other content-based regulatory distinctions found throughout the Sign Ordinance require the Township's "enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred." *McCullen v. Coakley*, 573 U.S. 464, 479 (2014) (cleaned up).

The Sign Ordinance also prohibits signs that display certain categories of content. For instance, a sign "erected for the purpose of advertising a product, event, person, or *subject*[2]not related to the premises

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[1] In that way, the Sign Ordinance's definition of "billboard," even read in isolation from the rest of the content-based scheme, "singles out specific subject matter [i.e., directional content] for differential treatment." *Reed*, 576 U.S. at 156; *accord City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, No. 20-1029, 2022 WL 1177494, at *5, 596 U.S. ___ (2022) ("Unlike the sign code at issue in *Reed*, however, the City's provisions at issue here do not single out any topic or subject matter for differential treatment."). For example, a sign that displayed a message stating "God is Listening!" would be regulated as a "billboard," while a sign that states "God is Listening . . . at St. Paul's Parish, Next Exit!" would be regulated as a "directional sign."

[2] In *City of Austin*, the "off-premises sign" regulation differs from Canton's "billboard" regulation in one other crucial respect: Austin "regulate[d] signs that advertise *things* that are not located on the same premises as the sign, as well as signs that direct[ed] people to *offsite locations*," whereas Canton's "billboard" regulation purports to regulate "subjects." *See* 2022

on which the sign is located" – also known as a "billboard" sign[3] – is effectively prohibited from being displayed in the Township. *See* App.33a (§6A.01.7) (emphasis added), 87a (§6A.24). The Township surreptitiously effects this prohibition by imposing a requirement that such signs shall be located in a "GI" zoning district and situated "adjacent to limited access interstate freeways." App.87a (§6A.24). However, there are no GI zoning districts adjacent to the only limited access interstate freeway in the Township. *See* C.A. Appellant Reply Br. 8 (providing visual illustration). Thus, core categories of protected expression that fall under the "billboard" sign definition – such as ideological, patriotic, social, and many forms of religious speech – can *never* lawfully be displayed in the Township.

Importantly, the comprehensive sign code challenged in this case is fundamentally different from the isolated "off-premises sign" restriction recently held to be content neutral in *City of Austin, Texas*

WL 1177494, at *2-*3 (citation omitted) (emphasis added) (explaining that the "City's sign code defined the term 'off-premise [sic] sign' to mean 'a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that site.' "). Where "subjects," such as ideological speech, are expressly regulated by Canton under its "billboard" regulation, Austin's off-premises signs regulation never purported to extend its regulatory reach into the realm of ideas.

[3] Under the Ordinance's definition of "billboard" even small 4' x 4' signs displaying messages such as "Greenpeace!", "USA!", "My Body My Choice", and "Choose Life" would all be regulated as "billboards" due to their content. App.33a-34a (§6A.01.7).

v. Reagan Nat'l Advert. of Austin, LLC, No. 20-1029, 2022 WL 1177494, 596 U.S. ___ (2022). Like the sign code in *Reed*, Canton's Sign Ordinance is a comprehensive sign code that regulates a panoply of content differently depending on the message displayed on the sign. As the Court pointed out, "[t]he *Reed* Court confronted a very different regulatory scheme than the one at issue [in the *Austin* case]: a comprehensive sign code that singled out specific subject matter for differential treatment." *Id.* at *5 (cleaned up). The Court explained that unlike the sole off-premises sign regulation at issue in *Austin*, "[t]he town of Gilbert, Arizona, had adopted a code that applied distinct size, placement, and time restrictions to 23 different categories of signs." *Id.* Where the regulation in *City of Austin* "d[id] not single out any topic or subject matter for differential treatment," *id.*, the district court in this case readily conceded that:

> Canton must look at the content of the sign to decide if the message falls into one of the permit-exempt categories. Canton's Sign Ordinance thus singles out specific subject matter for differential treatment. The Supreme Court in *Reed* labeled this treatment "a paradigmatic example of content-based discrimination."

App.27 (quoting *Reed*, 576 U.S. at 156).

3. The Sign Ordinance's content-based nature produces a regulatory regime that is inherently unpredictable and subjective.

To determine how a sign is regulated, Township officials not only have to read the message on the sign to determine its meaning, but they must also identify the speaker seeking to display the sign. As illustrated by the following chart, the message determines the sign type (as defined by the Sign Ordinance), which then determines whether a permit is required, whether the sign may be legally placed in the Township, the size of the sign, and how long it may be displayed:

Message	Sign Type Defined by the Sign Ordinance	Permit	Legal Location Possible	Size Limitation	Display Duration Limit
"Vote for Smith"	Political	No	Yes	None	None
"Turn Left to Vote"	Directional	Yes	Yes	6 sq.ft.	None
"Just Vote"	Billboard	Yes	No	160 sq.ft.	None
"Get Vaccinated"	Billboard	Yes	No	160 sq.ft.	None
"God is Hope" [Displayed at a church]	Institutional Bulletin Board	No	Yes	18 sq.ft.	None

"God is Hope" [Displayed at auto repair shop]	Billboard	Yes	No	160 sq.ft.	None
"Merry Christ-mas"	Holiday Sign	No	Yes	None	Yes

As with all content-based schemes of regulation, the applicability of the Sign Ordinance's various (and overlapping) restrictions on speech are inherently unpredictable and subjective. To illustrate, a sign that advertises an "event . . . not related to the premises on which the sign is located" would be regulated as a "billboard." App.33a (§6A.01.7). But what if the "event" was to rally "support for . . . a candidate for political office," App.39a (§6A.01.29), and thus, triggered regulation as a "political sign"? App.49a (§6A.09.11). Still, even more confusing, what if that same political advertisement also directed the public to the event by stating "next exit and left two miles" – would that additional content implicate the Ordinance's restrictions applicable to "directional signs"? App.76a (§6A.21). Ultimately, an official from the Township's building division would have to evaluate the sign's content and decide how to apply a series of content-based restrictions that are arguably all potentially applicable, yet facially incommensurable.[4]

[4] To take one example, a directional sign is subject to the permit requirement, App.76a (§6A.21), while political signs

4. The Sign Ordinance's speech licensing provisions.

The Sign Ordinance operates as a prior restraint on speech through three distinct speech licensing provisions.

The Sign Permit Requirement. The Sign Ordinance imposes a sign permit requirement. *See* App.46a (§6A.08) (stating that it is "unlawful to construct, display, install, [or] change . . . a sign requiring a permit upon any property within the township without first obtaining a sign permit"). However, certain categories of signs are exempt from the permit requirement based upon the content of the sign's message or the speaker. App.46a (§6A.09). Some exempted content-based categories include:

- "Political signs" App.49a (§6A.09.11).
- "Memorial signs or tablets." App.46a (§6A.09.2).
- "[N]ational, local or religious holiday" signs. App.48a-49a (§6A.09.10).
- "Flags of government, civic, philanthropic, educational, and religious organizations and other public or private corporations or entities." App.48a (§6A.09.9).
- "Open house" signs. App.49a-50a (§6A.09.13).

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are not, App.49a (§6A.09.11); but logically a sign cannot be simultaneously subject to and exempt from the permit requirement. To know where the line between political and directional content is demarcated, one would have to ask a Canton official to know for certain.

- "[G]arage sale signs." App.49a-50a (§6A.09.13).
- "[F]or rent, lease or sale" signs. App.47a-48a (§6A.09.7).
- Signs used "by educational nonprofit institutions licensed by the state, houses of worship or other public entities." App.48a (§6A.09.8).
- Signs "for the purpose of identifying [a] model [home] style." App.49a (§6A.09.12).
- Signs "identifying on-site construction activity." App.50a-51a (§6A.09.14).
- "Help wanted signs." App.51a (§6A.09.16).

The Sign Ordinance does not contain a time limit under which the Township must act on a sign permit application. It does not specify the information necessary an applicant must provide to obtain a sign permit. Rather, the Ordinance directs the Township's building division to determine whether the proposed sign for which a permit is sought is "in compliance with" its regulations. App.91a (§6A.26). To carry out this "compliance" check, a Township official must read the sign in order to determine what restriction(s) apply to its display – or whether the sign is exempt from the permit requirement in the first place.

The Variance Process. The Sign Ordinance incorporates a variance process by which a speaker must first seek approval from the Township in order to transgress any restriction imposed on its speech. App.91a (§6A.27), 94a (§27.05.A). The criteria by which

the Township grants variances are subjective and arbitrary. For instance, these criteria include whether the "variance . . . will not be *materially* detrimental to the *public welfare* or *materially* injurious to other nearby properties or improvements," App.100a (§27.05.D.1) (emphasis added), whether the variance "can be granted *in such fashion* that *the spirit of the ordinance* will be observed and public safety and *welfare secured*," App.99a (§27.05.D.1) (emphasis added), and whether "[g]ranting of a requested variance . . . would do *substantial justice* to the applicant." App.99a (§27.05.D.1) (emphasis added).

Special Permission to Display Expressly Prohibited Signs. The Sign Ordinance expressly prohibits certain categories of signage it deems to be "unsafe, dangerous, hazardous, or an attractive nuisance." App.53a (§6A.11). For example, a "sign which *no longer* advertises a bona fide business or product sold" is expressly prohibited. App.55a (§6A.11.10). Notwithstanding the supposedly "dangerous" nature of such signs, any "prohibited" sign may be displayed by way of a variance *if* the speaker obtains a special approval from the Township's building official, police chief, and fire chief. App.53a (§6A.11). There are no criteria or standards to guide the designated Township officials' decision to approve the display of a prohibited sign.

B. Outdoor seeks to erect a sign.

Outdoor sought and was refused a sign permit to display a digital sign at an industrial-zoned parcel of

real property adjacent to an interstate freeway in the Township. Compl., E.D. Mich. Case No. 20-cv-1323, ECF No.1, PageID.10. Canton stated that the proposed sign violated the Sign Ordinance's size and height regulations for "billboards." *Id.* at PageID.13. In truth, however, because OOC displays a multiplicity of content that changes every eight seconds, the regulatory treatment of its sign will invariably shift from moment to moment, depending on the content displayed, subjecting it to other restrictions found in the Ordinance, such as those applying to political or directional content, just to name a few. *See* App.39a (§6A.01.29), 35a (§6A.01.12).

C. Proceedings below.

1. On April 15, 2020, Outdoor filed this lawsuit identifying violations of the First and Fourteenth Amendments arising from the enactment and enforcement of the Sign Ordinance and facially challenging its constitutionality under 42 U.S.C. § 1983. Outdoor alleged the Sign Ordinance violates the First Amendment in four ways: 1) it constitutes a textbook content-based scheme of speech regulation that lacks a compelling government interest; 2) it is unconstitutionally underinclusive and overinclusive; 3) it constitutes an unlawful prior restraint on speech; and 4) it creates a subjective and indefinite enforcement regime that is unconstitutionally vague. Its complaint sought injunctive and declaratory relief, in addition to an award of damages and attorney fees.

Importantly, the substantive doctrinal tests set forth by this Court in *Reed* and *City of Lakewood* shape the contours of the facial claims advanced by Outdoor in this case. *See* Richard H. Fallon, Jr., *As-Applied and Facial Challenges and Third-Party Standing*, 113 Harv. L. Rev. 1321, 1324 (2000) (explaining that "the availability of facial challenges varies on a doctrine-by-doctrine basis and is a function of the applicable substantive tests of constitutional validity"). Outdoor never raised a so-called "as-applied" challenge – i.e., "alleging that the law is unconstitutional as applied to the particular facts that th[is] case presents." Marc E. Isserles, *Overcoming Overbreadth: Facial Challenges and the Valid Rule Requirement*, 48 Am. U. L. Rev. 359, 360 (1998). Nor did it raise a so-called "overbreadth" challenge, "which predicates facial invalidity on some aggregate number of unconstitutional applications of an otherwise valid rule of law." *Id.* at 363. Rather, Outdoor raised what is sometimes labeled as a "valid rule" facial challenge which "directs judicial scrutiny to the terms of the statute itself, and demonstrates that those terms, measured against the relevant constitutional doctrine, and independent of the constitutionality of particular applications, contains a constitutional infirmity that invalidates the statute in its entirety." *Ezell v. City of Chicago*, 651 F.3d 684, 698 (7th Cir. 2011) (Sykes, J.) (cleaned up). In essence, Outdoor "assert[ed] a personal right to be judged under a constitutionally valid rule of law." *See* Isserles, *Overcoming Overbreadth, supra*, at 387; *see also Marbury v. Madison*, 5 U.S. (Cranch) 137, 180 (1803) (holding that "a law repugnant to the constitution is void").

2. On March 3, 2021, the district court denied Outdoor's motion for summary judgment, App.14a-30a, and on March 15, 2021, entered summary judgment in favor of Canton. *See* App.3a. The jurisdiction of the district court was invoked under a) 28 U.S.C. § 1331 because Outdoor asserted claims arising under the United States Constitution and 42 U.S.C. § 1983 and b) 28 U.S.C. § 1343(a)(3) and (4) because Outdoor sought to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

The district court agreed that the Sign Ordinance imposed an unlawful prior restraint on Outdoor's speech and that Outdoor had sustained an injury-in-fact as the result of the Ordinance's enforcement. App.27a. But the court refused to enjoin the Sign Ordinance, declare it unconstitutional, or award damages to Outdoor – even to compensate it for the costs it incurred to comply with the unconstitutional sign permitting scheme. App.29a. Curiously, the district court held that because the unconstitutional prior restraint provisions were severable, Outdoor could not obtain redress. App.27a-29a. The district court never articulated its basis to conclude, severability notwithstanding, why enjoining the problematic portions of the law (or compensating Outdoor) could not redress the past and ongoing injuries the court acknowledged Outdoor had sustained.

And while the district court labeled the Sign Ordinance "a paradigmatic example of content-based discrimination," it refused to test the Ordinance's

constitutionality under strict scrutiny. App.27a. The district court agreed that "Canton must look at the content of the sign to decide if the message falls into one of the permit-exempt categories" and that "Canton's Sign Ordinance thus singles out specific subject matter for differential treatment." App.27a. Instead of proceeding as prescribed under *Reed*, the court asserted that it needed only to evaluate the constitutionality of one Sign Ordinance subsection (Section 6A.24 – the restrictions that apply to "billboard" content) that Canton used as its basis to deny Outdoor a sign permit. App.25a. By doing so, the district court declined to assess the constitutionality of the overall scheme itself – let alone the numerous other content-based restrictions that purport to apply to the other forms of content that the district court conceded Outdoor sought to display. App.15a.

3. The Sixth Circuit affirmed the judgment of the district court. App.1a. But in doing so, it articulated a basis for affirmance that conspicuously stood at odds with the district court's opinion and contradicted nearly a century of this Court's free speech precedents.

Unlike the district court, the Sixth Circuit held that Outdoor lacked standing to challenge the Sign Ordinance's operation as a prior restraint on speech *not* because Outdoor lacked redress (as the district court concluded), but because it did not satisfy the injury-in-fact element of standing. App.9a-10a. The Sixth Circuit claimed that "Outdoor didn't self-censor because of the prospect of the permitting process" and that it "hasn't alleged that its speech was altered or

deterred by any prior restraint." App.10a. According to the court of appeals, "[i]f Outdoor had alleged any such injury, it would doubtless have standing to challenge Canton's ordinance" as an unlawful prior restraint. App.10a.

The Sixth Circuit also ruled that Outdoor lacked standing to challenge the Sign Ordinance as an unconstitutional content-based scheme of speech regulation. The court of appeals acknowledged "the content-based restrictions sprinkled throughout Canton's sign ordinance." App.8a. However, it claimed that this feature of the Ordinance did not "matter" because Outdoor's speech received "generous" treatment under the scheme. App.5a, 8a. In a novel move, the Sixth Circuit posited that the "size restrictions" applicable only to so-called "billboard" content (or, for that matter, any other category of content regulated by the Sign Ordinance) could be conceptually decoupled and read in isolation from the particular content category to which the restriction applied. App.5a-6a. From that vantagepoint, the court held that "§ 6A.24's allegedly content-based distinction didn't cause [Outdoor's] injury," rather the sole culprit had been the "size restrictions in § 6A.24." App.5a. And because "[t]he size restrictions in § 6A.24 are *more* generous than those for all other ground signs" the court reasoned Outdoor had not suffered a constitutional injury.

On the whole, the Sixth Circuit declined to engage with Outdoor's contention that the principal constitutional flaw of the Sign Ordinance rested in its multifarious content-based distinctions. Rather, the

court asserted that Outdoor lacked standing to make that argument because "[Outdoor] was injured only by the size provisions" of the Ordinance. App.11a. Similarly, the court sought to distinguish this case from *Reed v. Town of Gilbert*, claiming that in *Reed*, "the content-based categories actually mattered" whereas here, the court concluded they did not. App.8a.

4. Outdoor's petition for rehearing and rehearing en banc was denied. App.31a.

REASONS FOR GRANTING THE PETITION

I. This case deepens an entrenched three-way circuit split over whether a speaker who is subject to an unlawful prior restraint on its speech has standing to challenge the law's constitutionality.

The Sixth Circuit's decision further deepens a significant three-way conflict among ten circuits by holding that a speaker subject to a prior restraint on its speech does not satisfy the injury-in-fact element of standing unless the speaker can show that the prior restraint caused it to engage in self-censorship. The Sixth Circuit's holding is shared by the Fourth and Tenth Circuits. In contrast, the First, Second, Fifth, Seventh, Eleventh, and Federal Circuits rightly hold that a speaker need only show that it is subject to the prior restraint to establish standing to challenge its constitutionality. The Ninth Circuit strikes out its own path holding that speakers lack standing to challenge an unlawful prior restraint on their speech if the

government can establish that it did not actually exercise unbridled discretion in refusing to license the speech at issue. This disarray among the circuits is both worrying and untenable as it concerns the basic prerequisites for a speaker's standing to challenge laws that contravene the First Amendment. This Court's review is urgently needed.

A. Six circuits hold that a speaker need only demonstrate its speech is subject to a prior restraint to have standing to challenge the law's constitutionality.

1. *First Circuit*. In *Van Wagner Boston, LLC v. Davey*, the First Circuit held that when a speaker seeks to challenge a prior restraint on its speech, "the plaintiff need only be subject to that regulation to establish a cognizable injury in fact." 770 F.3d 33, 38 (1st Cir. 2014) (citations omitted). In *Van Wagner*, an outdoor advertising company complained that Massachusetts' billboard regulations imposed an unlawful prior restraint on its speech. The district court ruled that the advertising company did not allege a sufficient injury in fact, noting that the advertising company "had applied for more than seventy permits . . . without having had a single application denied." *See id.* at 37. On appeal, the First Circuit disagreed. It explained that under this Court's holdings in *City of Lakewood* and *Freedman*, a government imposition of a prior restraint on speech raises "two salient concerns" – that "such schemes *may* prompt regulated parties to self-censor their speech out of, say, a desire

'to receive a favorable and speedy disposition on [a] permit application'" and "without clear standards '*post hoc* rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy, making it difficult for courts to determine in any particular case whether the licensor is permitting favorable, and suppressing unfavorable, expression.'" *Id.* (quoting *City of Lakewood*, 486 U.S. at 758-59) (first emphasis added) (alteration in original). It reasoned that those concerns are the ones that "undergirded th[is] Court's conceptualization of injury sufficient to support standing in a way that would allow facial challenges to such licensing schemes to proceed before the twin threats of self-censorship and undetectable content-based censorship could take hold." *Id.* (citing *City of Lakewood*, 486 U.S. at 759). The First Circuit rightly concluded that "[i]t is being subject to a prior restraint on protected expression through requirements embodying standardless discretion, not being harmed by the unfavorable exercise of such discretion, that causes the initial injury." *Id.* at 38.

2. *Eleventh Circuit*. In *CAMP Legal Defense Fund, Inc. v. City of Atlanta*, the Eleventh Circuit similarly relied on this Court's decision in *City of Lakewood* when holding that when "'one who is subject to,' or imminently will be subject to, the provisions that allegedly grant unbridled discretion [to government officials], then [a speaker] has standing to challenge th[ose] provisions." 451 F.3d 1257, 1274 (11th Cir. 2006) (quoting *City of Lakewood*, 486 U.S. at 755) (cleaned up). Like the First Circuit,

the Eleventh Circuit highlighted that it was the "*threat* of the identified censorship risks" inherently associated with prior restraints that triggered a constitutional injury under Article III. *Id.* (quoting *City of Lakewood*, 486 U.S. at 758) (emphasis added). It concluded that "because [the speaker] ha[d] applied for permits and its future applications would be subject to [the law imposing the prior restraint], it ha[d] standing" to assert its First Amendment challenge. *Id.*

3. *Seventh Circuit*. The Seventh Circuit reached the same conclusion in *Southworth v. Board of Regents of University of Wisconsin System*, 307 F.3d 566 (7th Cir. 2002). In *Southworth*, the defendant "University argued that the [student-speakers] lack[ed] standing to [challenge the constitutionality of an alleged prior restrain] because they fail[ed] to allege *any actual incidents* of viewpoint discrimination." *Id.* at 580. The Seventh Circuit disagreed. The court noted this Court's longstanding precedent "that when a licensing scheme vests unbridled discretion in a government official, a plaintiff has standing to facially challenge that regulation without applying for a license." *Id.* From there, the court of appeals concluded that "[a] straightforward application of those principles to the case at hand, then, demonstrates that the plaintiffs have standing to facially challenge the [prior restraint] on the grounds that it grants the [defendant] unbridled discretion; just as a plaintiff has standing to present a facial challenge to a licensing statute without applying for a license." *Id.* at 581 (citing *City of Lakewood*, 486 U.S. at 574-78).

4. *Second Circuit*. In *MacDonald v. Safir*, 206 F.3d 183 (2d Cir. 2000), the Second Circuit similarly approached the question of a speaker's standing to challenge a prior restraint on his speech through a straightforward application of the standing principles articulated in *City of Lakewood*. It observed that "regulating permits for parades . . . has a close nexus to 'conduct commonly associated with expression' . . . [a]nd the principal thrust of [the speaker's] complaint is precisely that the Police Commissioner is vested with unbridled discretion. . . . ,which, if true, poses real censorship risks." *Id.* at 189 (quoting *City of Lakewood*, 486 U.S. at 759) (citation omitted). The Second Circuit also emphasized that "[w]hile, therefore, [the speaker] need not have applied for and staged parades . . . in the past to satisfy the requirements of *Lakewood*, the fact that it has done so is helpful, as it indicates that [the speaker] has been and will continue to be subject to th[e] ordinance." *Id.* The court of appeals "readily conclude[d] that [the speaker] ha[d] satisfied all of the requirements for bringing a facial challenge to the bulk of this ordinance" because "[he] is injured by the law if the law violates the First Amendment" and "the injury claimed by [the speaker] is traceable to the [government's] conduct under the regulation, and it could be redressed were [the court] to find the regulation unconstitutional." *Id.* (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)).

5. *Fifth Circuit*. In *Beckerman v. City of Tupelo, Mississippi*, an anti-racism organization challenged Tupelo, Mississippi's parade ordinance as an unlawful

prior restraint on speech even though the organization "ha[d] not been refused a parade permit under the ordinance." 664 F.2d 502, 506 (5th Cir. 1981). Relying on *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969), the Fifth Circuit held that the organization had "standing to challenge . . . the parade . . . ordinance" explaining that it "need not allege that there has been an abuse of discretion as a prerequisite to a facial attack" as "facial challenges are permitted because the mere existence of such discretion is unconstitutional." *Beckerman*, 664 F.2d at 506-07 (citations omitted).

6. *Federal Circuit*. In *Griffin v. Secretary of Veterans Affairs*, 288 F.3d 1309 (Fed. Cir. 2002) the Federal Circuit held that a speaker had standing to facially challenge a prior restraint on its speech based on regulations that granted the government power to authorize speech *that was otherwise prohibited* under federal regulations. Importantly, the court of appeals noted that "[w]hether or not [the speaker] has a constitutional right to display [its speech] has very little bearing on whether [the prior restraint] violates the First Amendment on its face." *Id.* at 1317. The court reasoned that the "[f]acial attacks on the discretion granted to a decisionmaker are not dependent on the facts surrounding any particular permit decision." *Id.* (quoting *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 133 n. 10 (1992)) (quotations omitted). Therefore, the court "conclude[d] that [the speaker] ha[d] standing to mount a facial challenge against [the prior restraint]." *Id.* at 1317-18.

B. Three circuits hold that a speaker must demonstrate it engaged in self-censorship to have standing to challenge the constitutionality of a prior restraint imposed on its speech.

In contrast to most of the circuits, the Fourth, Sixth, and Tenth Circuits have imposed additional burdens on speakers that seek to challenge a prior restraint on their speech. They hold that a speaker subject to a prior restraint on its speech must demonstrate that the challenged law caused it to engage in self-censorship to have standing to attack the prior restraint's constitutionality. Under the Fourth, Sixth, and Tenth Circuits' logic, a speaker "subject to" a prior restraint on its speech constitutes a necessary, but, nonetheless, insufficient condition to trigger a constitutional injury under Article III.

1. *Tenth Circuit*. In *Brammer-Hoelter v. Twin Peaks Charter Academy*, the Tenth Circuit held that a group of speakers "d[id] not have standing [to challenge an] alleged prior restraint" because the speakers "ha[d] cited to nothing in the record indicating their speech or association was *altered or deterred in any way*." 602 F.3d 1175, 1183 (10th Cir. 2010) (emphasis added). The court explained that its circuit's precedent required it to "consider for each restraint whether any evidence in the record supports the conclusion that the restraint *actually chilled* Plaintiffs' speech and association and such chilling effect was *caused by an objectively justified fear* of real consequences." *Id.* at 1183 (emphasis added).

2. *Fourth Circuit*. In *Covenant Media of North Carolina, L.L.C. v. City of Monroe*, the Fourth Circuit joined the Tenth Circuit in holding that the plaintiff-speakers "suffer no threat of prior restraint and lack standing to bring the claim" because they "d[id] not assert that they were intimidated into censoring their own speech." 285 F. App'x 30, 37 (4th Cir. 2008). In support of its conclusion, the Fourth Circuit quoted the Sixth Circuit's decision in *Prime Media, Inc. v. City of Brentwood*, 485 F.3d 343, 351 (6th Cir. 2007) which stated that "'the prospect of prior restraint and resulting self-censorship can itself constitute the required actual injury' for Article III standing purposes." *Id.* (quoting *Prime Media*, 485 F.3d at 351).

3. *Sixth Circuit*. In accord with the Fourth and Tenth Circuits, the Sixth Circuit also holds that a speaker who is subject to a prior restraint on its speech does not have standing to challenge the law's constitutionality where the speaker "didn't self-censor because of the prospect of the permitting process." App.10a. In support, the court cited the Tenth Circuit's decision in *Brammer-Hoelter*, for the proposition that a speaker "do[es] not have standing . . . to [challenge an] alleged prior restraint" where the speaker "cite[s] to nothing in the record indicating their speech or association was altered or deterred in any way." App.9a. The Sixth Circuit concluded that because "Outdoor hasn't alleged that its speech was altered or deterred by any prior restraint" and had not alleged it was "self-censoring" its speech, it lacked standing

to challenge the prior restraints incorporated within Canton's Sign Ordinance. App.10a.

C. One circuit holds that a speaker's standing to challenge an unlawful prior restraint can be defeated if the government demonstrates it did not actually exercise unbridled discretion in refusing to license the speech at issue.

In *Get Outdoors II, LLC v. City of San Diego, California*, the Ninth Circuit held that a speaker that "challenge[d] the discretionary provisions contained in [San Diego's] sign ordinance and the absence of a time-limit provision" lacked standing because the court concluded that the speaker's applications were "*denied on grounds that are constitutionally valid*." 506 F.3d 886, 895 (9th Cir. 2007) (emphasis added). The court of appeals reasoned that because the City acted constitutionally by denying the permit application "on grounds that are constitutionally valid," the speaker could not "show that it would *ever* be genuinely threatened by an unconstitutional prior restraint in this case." *Id.* In essence, the Ninth Circuit departs from both the majority of circuits and the three-circuit minority by holding that a prior restraint on speech can never produce a constitutional injury where the government does not exercise unbridled discretion in an adverse permit determination. Under the Ninth Circuit's logic, whether the challenged statute grants unbridled discretion regarding the decision to license speech is peripheral; the primary question is whether

the government *actually* exercised that discretion when processing the permit application.

II. The Sixth Circuit's decision is wrong.

A. A speaker who is subject to an unlawful prior restraint on its speech has standing to challenge the law's constitutionality.

Under this Court's free speech precedents, a speaker need not prove it engaged in self-censorship to have standing to challenge an unlawful prior restraint on its speech. Rather, speakers that are subject to such laws have standing to facially challenge their constitutionality under the First Amendment. The Sixth Circuit's decision squarely conflicts with this Court's precedents.

In *Freedman v. Maryland*, this Court reconfirmed that "it is well established that **one has standing** to challenge a statute on the ground that it delegates overly broad licensing discretion to an administrative office, whether or not his conduct could be proscribed by a properly drawn statute, and whether or not he applied for a license." 380 U.S. at 56 (emphasis added). The Court explained that "**[s]tanding is recognized** in such cases because of the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application." *Id.* (cleaned up) (emphasis added). The Sixth Circuit's imposition of a "self-censorship" standing criterion makes even less sense when one

considers that the successful plaintiff-filmmaker in *Freedman* never self-censored his speech prior to successfully challenging the law. *Id.* at 52.

Similarly, in *City of Lakewood v. Plain Dealer Publish Co.*, this Court repeated that "**a facial challenge lies** whenever a licensing law gives a government official or agency substantial power to discriminate based on the content or viewpoint of speech." 486 U.S. at 759 (emphasis added). And it repeated the rule in *Freedman* that "it is well established **one has standing**" to challenge an unlawful prior restraint on one's speech. *Id.* at 756 (quoting *Freedman* 380 U.S. at 56) (emphasis added). Contrary to the Sixth Circuit's "self-censorship" standing criterion, this Court holds that "[p]roof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas." *Id.* at 757 (quoting *Thornhill v. State of Alabama*, 310 U.S. 88, 97 (1940)). That is because unlawful prior restraints on speech necessarily "engender identifiable risks to free expression that can be effectively alleviated only through a facial challenge" and that it is "the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion." *Id.* (cleaned up). When a speaker files suit alleging a "statute[] threaten[s] these risks to a significant degree" this Court's instructions could not be more clear: "courts must entertain an immediate facial attack on the law." *Id.* at 759 (emphasis added).

B. A speaker who is subject to a facially unconstitutional content-based regulation of its speech has standing to challenge the law's constitutionality.

A content-based restriction on speech that lacks a compelling government interest is unconstitutional on its face – no matter how "generous" a court thinks the restrictions are. Under *Reed v. Town of Gilbert*, "a speech regulation targeted at specific subject matter is content-based even if it does not discriminate." 576 U.S. at 169.

Like the sign code in *Reed*, Canton's Sign Ordinance:

> singles out signs bearing a particular message: [e.g., religious content, directional content, and political content]. This type of ordinance may seem like a perfectly rational way to regulate signs, but a clear and firm rule governing content neutrality is an essential means of protecting the freedom of speech, even if laws that might seem "entirely reasonable" will sometimes be "struck down because of their content-based nature."

Id. at 171 (citation omitted).

And even if Canton were to have supplied a compelling interest in the regulation of content, the Sign Ordinance is not "narrowly tailored to achieve that interest." *Id.* (quoting *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011)). Far from "narrowly tailored," the Sign

Ordinance is grossly overinclusive and underinclusive of any legitimate interest in the regulation of signs. As to overinclusiveness, Canton simply goes too far in broadly regulating multiple areas of content (that Outdoor seeks to display) differently. For instance, what possible interest can be served by regulating content like holiday messages and political messages differently? So too is it overkill (even under intermediate scrutiny) for Canton to restrict "billboard" content in such a way as to makes it *impossible* to erect signs that display, for example, ideological speech, most forms of religious speech, or patriotic speech, in the Township.[5] For instance, what good are the supposedly "generous" size restrictions of the Ordinance if the sign can *never* lawfully be displayed *anywhere* in the Township? *See* C.A. Appellant

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[5] Like the sign code in *Metromedia, Inc. v. City of San Diego*, the Sign Ordinance "contains exceptions that permit various kinds of noncommercial signs, whether on property where goods and services are offered or not, that would otherwise be . . . ban[ned]" under Section 6A.24. 453 U.S. 490, 514 (1981). As the Court explained, though Canton "may distinguish between the relative value of different categories of commercial speech, the [Township] does not have the same range of choice in the area of noncommercial speech to evaluate the strength of, or distinguish between, various communicative interests." *Id.* Under *Metromedia*'s holding, "[b]ecause some noncommercial messages may be conveyed on [signs] throughout the [the Township], [Canton] must similarly allow [signs] conveying other noncommercial messages." *Id.* at 515. But under the Sign Ordinance, the important categories of core protected speech mentioned above can never be displayed, while, for example, political or holiday messages can be displayed anywhere. This method of sign regulation is glaringly unconstitutional under *Metromedia*'s holding.

Reply Br. 7-8 (providing visual illustration). As to underinclusiveness, it is duplicitous for Canton to maintain that the Sign Ordinance's restrictions are critical "to promote the general safety and welfare," App.43a (§6A.02), when *any* of its restrictions can be excused or eliminated based on the subjective whims of Township officials.[6] It is impossible to conceive how a draconian system of sign regulation which exempts speakers from some or all sign requirements can be tailored to achieve Canton's supposed "general safety and welfare" interests.

The Sixth Circuit endeavored to sidestep *Reed v. Town of Gilbert* by purporting to couch its legal analysis in the context of standing. In doing so, it sought to avoid having to grapple with the numerous content-based distinctions that are, as the court put it, "sprinkled throughout Canton's sign ordinance." App.8a. Instead, the court framed the standing inquiry around whether one "size and height" restriction read in isolation from the "billboard" sign category to which it applied could trigger a constitutional injury. App.5a-6a. Then it concluded that because these restrictions are "*more* generous than those for all other ground signs" Outdoor did not suffer an Article III injury. App.5a-6a. By framing the standing inquiry as such, the Sixth Circuit subverted this Court's substantive First Amendment doctrine.

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[6] While the Township's variance scheme is certainly an unconstitutional prior restraint on speech, it also represents one of the broadest and most unconstitutionally underinclusive aspects of the Sign Ordinance's scheme of sign regulation.

Contrary to the Sixth Circuit's approach, the essence of a constitutional injury is the "*invasion* of a legally protected interest." *Lujan*, 504 U.S. at 560 (emphasis added). The First Amendment establishes a "legally protected interest" in the right to free speech and this Court's doctrinal tests delineate when a restriction on speech invades that free speech interest. The Court has long held that free speech is "among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from *invasion by state action*" and that "[i]t is also well settled that municipal ordinances adopted under state authority *constitute state action* and are within the prohibition of the amendment." *Lovell v. City of Griffin, Ga.*, 303 U.S. 444, 450 (1938) (citations omitted) (emphasis added). Outdoor has "standing to challenge [the] government action" made manifest in the Sign Ordinance because "it restricts [its] *own* constitutionally protected activities" in an unconstitutional manner. *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 764 (6th Cir. 2019) (citing *Massachusetts v. Oakes*, 491 U.S. 576, 581 (1989); *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 634 (1980)).

According to this Court's substantive doctrine, "a municipal government vested with state authority, 'has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Reed*, 576 U.S. at 163 (quoting *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972)). Contrary to the Sixth Circuit's holding in this case, if one's speech is regulated under a content-based scheme of speech regulation, the next step in the inquiry is *not* to then

ask whether it was the law's "size restrictions" or rather the "content-based distinction" that *truly* injured the speaker. Indeed, the Sixth Circuit's approach is unintelligible under this Court's substantive First Amendment doctrine. First, the doctrinal test implicated by Outdoor's constitutional claim "requires a court to consider whether a regulation of speech 'on its face' draws distinctions based on the message" to determine whether a constitutional injury arises in the first place. *See id.* at 163 (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565-66 (2011)). And second, the Court has consistently held that systems of speech regulation that combine content-based and content-neutral factors are nevertheless content based. *See, e.g.*, *Mosley*, 408 U.S. at 98 (holding a law was content based where it did not allow nonlabor-related picketing near specific locations); *Carey v. Brown*, 447 U.S. 455, 460 (1980) (same); *Boos v. Barry*, 485 U.S. 312, 318-319 (1988) (holding a law was content based where it did not allow the display of signs that were "critical of [a] foreign government" within 500 feet of an embassy). The fact that the Ordinance falls far short of passing constitutional muster indicates that its restrictions on speech are constitutionally injurious by their very nature.

By failing to assess whether Canton possessed a compelling government interest in distinguishing its various restrictions on signs based on their content and, instead, attempting to parse out whether "Outdoor's injury . . . [was] 'fairly traceable' to the on-premises/off-premises distinction," App.6a, the Sixth Circuit's standing analysis meandered down a path

altogether divorced from the doctrinal test that governs the constitutional validity of the Sign Ordinance to begin with. Indeed, *Lujan*'s traceability rules require "a causal connection between the injury and *the conduct complained of*." *Lujan*, 504 U.S. at 560 (1992) (emphasis added). Here, the "conduct complained of" was that Canton regulated Outdoor's speech through an ordinance that was unconstitutional on its face, in part, because it contained a myriad of content-based distinctions that required "enforcement authorities to examine the content of the message that is conveyed to determine whether a violation has occurred." *McCullen*, 573 U.S. at 479 (cleaned up). Naturally, in order to evaluate if Outdoor's allegations were true and, by extension, whether Canton's method of speech regulation triggered an Article III injury, the court of appeals should have evaluated the conduct Outdoor "complained of" under substantive constitutional test articulated by this Court.

It bears repeating that the Sign Ordinance does not regulate just one category of content Outdoor seeks to display – but several categories of content under a comprehensive scheme. That scheme is backed by criminal sanctions and was enforced against Outdoor to prevent it from speaking. The decisive feature of this scheme is its method of imposing varying degrees of regulation on the characteristics of a sign based entirely on the content displayed. That feature constitutes the focal point of Outdoor's constitutional attack. There is no dispute that Outdoor's speech was curtailed under this scheme of regulation – but the operative question remains: does the scheme pass

constitutional muster? Because the Sign Ordinance is neither backed by a compelling government interest, nor is it narrowly tailored to achieve either a compelling or substantial interest in the regulation of speech, Outdoor has sustained a cognizable constitutional injury under Article III. The injury is traceable to the various content-based distinctions contained throughout the Ordinance, along with the open-ended variance provisions that allow the Township to arbitrarily exempt speakers from *any* sign restriction on a case-by-case basis. Outdoor's injury can be redressed through injunctive and declaratory relief, in addition to an award of damages.

III. The questions presented are exceptionally important and this case provides a clean vehicle.

The national significance of the questions raised by this petition cannot be understated. Permit requirements and variance schemes are ubiquitous elements in municipal sign ordinances around the country. Nationally, between 2001 and 2006, speakers seeking to erect signs have challenged over 100 municipal sign ordinances and "these challenges have continued unabated since that time." Brian J. Connolly, *Environmental Aesthetics and Free Speech: Toward A Consistent Content Neutrality Standard for Outdoor Sign Regulation*, 2 Mich. J. Envtl. & Admin. L. 185, 188 (2012). Resolving the entrenched conflict that has sharply divided nearly all the circuit courts on a basic element of standing necessary to sustain a

constitutional challenge to a prior restraint on speech would provide much needed clarity for speakers, government regulators, and lower courts alike.

The questions presented are also undeniably important because they center on the ability to vindicate free speech rights in federal court. Free speech is necessary in any functioning democracy and, to be sure, the First Amendment guarantees this right. But practically the First Amendment means little if speakers are blocked from challenging the constitutionality of laws that purport to restrict their speech. Indeed, this is especially so under the circumstances presented here, where the law targets the intended speech, the law has been enforced against the speaker, and the speaker faces jail time if the law is violated.

Finally, this case presents an ideal vehicle for resolving the questions presented. The relevant facts are not in dispute. The Court can resolve these questions based on the face of Canton's Sign Ordinance. All aspects of Outdoor's free speech claims and bases for standing were thoroughly briefed below and the Sixth Circuit wrongly, but nonetheless, definitively resolved the claims in Canton's favor.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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