No. 25-1145

IN THE

Supreme Court of the United States

COUNCIL FOR RESPONSIBLE NUTRITION,
Petitioner,

v.

LETITIA JAMES, IN HER OFFICIAL CAPACITY AS NEW YORK ATTORNEY GENERAL,
Respondent.

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

BRIEF OF THE NATIONAL RETAIL FEDERATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICUS CURIAE*

Established in 1911, the National Retail Federation (NRF) is the world's largest retail trade association and the voice of retail worldwide. Retail is the largest private-sector employer in the United States. It comprises over 3.8 million retail establishments, contributes $5.3 trillion to annual Gross Domestic Product, and supports 55 million employees. NRF's membership includes retailers of all sizes, formats, and channels of distribution, spanning all industries that sell goods and services to consumers. NRF provides courts with the perspective of the retail industry on important legal issues affecting its members.[1]

Retailers depend on the ability to communicate truthful, non-misleading information about their products to consumers—including through labeling, online product descriptions, and advertising. Increasingly, states are regulating products indirectly by regulating what retailers can say about those products.

Because many NRF members operate nationally, NRF and its members have a strong interest in resolving the circuit split over the meaning of *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980), and ensuring uniformity in the scope of regulators' authority to restrict commercial speech under the First Amendment. The Second Circuit's misinterpretation of *Central Hudson* is out of line

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus* made a monetary contribution to the preparation or submission of the brief. *Amicus* provided timely notice of this brief to the parties.

with most other Circuits, raises serious constitutional concerns, and warrants this Court's review.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns the constitutionality of a New York law, General Business Law Section 391-oo, which prohibits selling dietary supplements to minors but only if the supplements are "labeled, marketed, or represented for the purpose of achieving weight loss or muscle building." N.Y. Gen. Bus. Law § 391-oo(1)(a), (2). Because the same supplement *could be sold* to minors if its weight-loss or muscle-building uses were not disclosed, the law's primary effect is censoring truthful information: Sellers are barred from telling customers that a supplement has particular attributes. The Second Circuit's decision denying Petitioner the Council for Responsible Nutrition's motion for a preliminary injunction is out of step with this Court's precedents and with most other circuits' application of the *Central Hudson* factors.

Central Hudson requires courts to consider four factors when reviewing the constitutionality of government regulations of commercial speech: (1) whether the speech "concern[s] lawful activity" and is not "misleading"; (2) "whether the asserted governmental interest is substantial"; (3) "whether the regulation directly advances the governmental interest asserted"; and (4) whether the speech restriction "is not more extensive than necessary to serve that interest." *Central Hudson*, 447 U.S. at 566.

As to the third prong, this Court has signaled—and the Fifth, Sixth, Ninth, and Tenth Circuits have understood—that the government has to offer *evidence* that a regulation of speech actually and materially advances a state interest; it cannot simply rely on its own say-so. Indeed, that distinction is in part the difference between intermediate scrutiny and rational basis review. But the First, Second, and Fourth Circuits, relying on inapt dicta from this Court, have suggested that the state may rely on "common sense" alone.

Likewise, as to the fourth prong, the Second Circuit has substituted legislative deference for this Court's instruction that courts interrogate whether a regulation is narrowly tailored. And in so doing, the Second Circuit again collapses the distinction between intermediate scrutiny and rational basis review.

The burden for regulators to comply with constitutional dictates should not vary by geography. NRF members operate nationally and engage in speech that can trigger a host of federal and state restrictions. At a minimum, NRF members should be able to operate on an even playing field across the country: Speech restrictions that are unconstitutional in California and Texas should be unconstitutional in New York.

Beyond that, NRF and its members rely on the heightened scrutiny applicable to commercial speech to defend against government overreach. States like New York are aggressively ramping up their efforts to regulate via both mandatory disclosures and restrictions on speech. Properly understood, the First Amendment serves as a shield against the worst of these abuses. But as interpreted by the Second Circuit, a state's *ipse dixit* can suffice.

This case is an ideal vehicle for the Court to clarify First Amendment commercial speech jurisprudence and ensure it is applied consistently and uniformly in all the circuit courts. The Court should grant the petition.

ARGUMENT

This Court's guidance on how lower courts should review regulations of commercial speech is sorely needed. Even assuming *Central Hudson*'s intermediate scrutiny standard supplies the relevant standard of review here,[2] the Second Circuit's

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[2] NRF believes strict, not intermediate scrutiny, should apply in this case because N.Y. General Business Law Section 391-oo "singles out specific subject matter for differential treatment" by penalizing the dissemination of certain, but not all, health information about dietary supplements. *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015). It makes no difference that the speech at issue is advertising. An American's interest in commercial information "may be as keen, if not keener by far, than his interest in the day's most urgent political debate." *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 763 (1976). Even regulations of *unprotected* speech trigger strict scrutiny when they make arbitrary content-based distinctions. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 386, 391 (1992). It follows, and many lower courts correctly understand, that the principle in *Reed* requires the application of strict scrutiny when regulations of *protected commercial speech* draw the kinds of subject matter distinctions at issue here. *See, e.g.*, *Int'l Outdoor, Inc. v. City of Troy*, 974 F.3d 690, 702–03 (6th Cir. 2020) ("[A] regulation of commercial speech that is not content-neutral is still subject to strict scrutiny under *Reed*."); *Dana's R.R. Supply v. Att'y Gen., Fla.*, 807 F.3d 1235, 1248 (11th Cir. 2015) (commercial speech restrictions are not insulated from strict scrutiny when they draw impermissible viewpoint distinctions); *Greater Phila. Chamber of Com. v. City of Philadelphia*, 949 F.3d 116, 139 (3d Cir. 2020) (likewise finding it "appropriate to apply strict scrutiny to a restriction on

application of the *Central Hudson* factors deepens a circuit split and runs contrary to this Court's efforts to bolster protections for commercial speech in recent decades—protections that are critical to NRF's members. While other circuits like the Fifth and Ninth Circuits strictly enforce the third and fourth prongs of *Central Hudson*, the Second Circuit's approach essentially absolves the government of its burden to show that the speech restriction at issue will actually and materially ameliorate harm and that the regulation is narrowly tailored. In so doing, the Second Circuit blurs the line between rational basis and intermediate scrutiny. This Court should resolve the circuit split and clarify when *Central Hudson* applies and how to apply it.

I. There Is a Circuit Split on What *Central Hudson*'s Third Prong Requires.

More than a quarter century ago, this Court left open "the question whether any lack of evidence in the record fails to satisfy the standard of proof under *Central Hudson*." *Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173, 190 (1999). Not long after, members of the Court dissenting from the denial of certiorari in *Borgner v. Florida Board of Dentistry* reiterated that the Court's commercial speech jurisprudence had not "sufficiently clarified the nature and the quality of the evidence a State must present" to satisfy the third *Central Hudson*

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commercial speech that is viewpoint-based"); *Am. Beverage Ass'n v. Paxton*, --- F. Supp. 3d ---, 2026 WL 395513, at *2 (W.D. Tex. Feb. 11, 2026) (content-based regulations of commercial speech are subject to strict scrutiny). Thus, not only should the Petition be granted but the question presented expanded; and the Second Circuit should be reversed for this reason as well.

prong. *Borgner*, 537 U.S. 1080, 123 S. Ct. 688, 689 (2002) (mem.) (Thomas, J., dissenting). So although this Court has, across its decisions, indicated that the third prong demands a robust evidentiary showing, it has never definitively answered the question. The result is a circuit split the Court should now resolve.

A. The Fifth, Sixth, Ninth, and Tenth Circuits Put Teeth in *Central Hudson*'s Third Prong.

In the absence of clear instruction from this Court, several circuits have looked to this Court's decisions in cases like *Edenfield v. Fane*, 507 U.S. 761 (1993), *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995), and *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), inferring from those cases a more stringent requirement that the government offer evidence that a given regulation of speech will materially advance the government's stated interest.

In *Edenfield*, the Court held that a ban on personal solicitation by accountants violated the First Amendment. It recognized that the state's interests in maintaining the independence of public accountants and preventing conflicts of interest are "substantial," but concluded that the state had *failed to prove* the solicitation ban advanced those interests. 507 U.S. at 770. In particular, the Court faulted the state for "present[ing] no studies that suggest personal solicitation of prospective business clients by CPA's creates the dangers of fraud, overreaching, or compromised independence" and for relying instead on "a series of conclusory statements." *Id.* at 771. The state's burden under the third prong of *Central Hudson*, the Court held, "is not satisfied by mere speculation or conjecture." *Id.* at 770–71.

Rubin reaffirmed that principle when it held unconstitutional a law prohibiting beer labels from displaying alcohol content. 514 U.S. at 478. The Court noted that "the Government had failed to present any credible evidence showing that the disclosure of alcohol content would promote strength wars," and held that the "anecdotal evidence and educated guesses" on which the government relied were insufficient to justify the restriction on speech. *Id.* at 489–90.

Likewise, *44 Liquormart* held unconstitutional a statute prohibiting advertisement of liquor prices on the basis that the state had failed to meet its burden of "show[ing] that the price advertising ban will *significantly* reduce alcohol consumption." 517 U.S. at 505. "[W]ithout any findings of fact, or indeed any evidentiary support whatsoever"—much less identification of the specific "price level [that] would lead to a significant reduction in alcohol consumption" or "amount that [the State] believes prices would decrease without the ban"—the Court could "[]not agree with the assertion that the price advertising ban will significantly advance the State's interest in promoting temperance." *Id.* at 505–07. *Edenfield*, *Rubin*, and *44 Liquormart* thus support the view that scientific studies or other similar evidence is required to satisfy *Central Hudson*'s third prong.

Several circuits have adopted that interpretation of what *Central Hudson* requires. The Fifth Circuit, in *Bailey v. Morales*, held that the state failed to satisfy *Central Hudson*'s third prong when it "relie[d] on 'common sense,' not data or empirical evidence, to demonstrate that [a law restricting solicitations by chiropractors] directly and materially advances its interests." 190 F.3d 320, 324 (5th Cir. 1999). The

Sixth Circuit, in *Pagan v. Fruchey*, observed that "the government must come forward with some quantum of evidence, beyond its own belief in the necessity for regulation," that an ordinance materially advances the state's asserted interest, and held that the state "failed to produce evidence that justifie[d] the restrictions on commercial speech" at issue. 492 F.3d 766, 771 (6th Cir. 2007). The Ninth Circuit, in *Junior Sports Magazines Inc. v. Bonta*, reversed the denial of a preliminary injunction against a law prohibiting firearm sellers from advertising or marketing firearms in a manner that appeals to children, holding that "bare appeals to common sense quickly veer into impermissible speculation" and that "the state needs to provide evidence to substantiate that its law will meaningfully further its stated objectives." 80 F.4th 1109, 1118 (9th Cir. 2023). And the Tenth Circuit, in *Pacific Frontier v. Pleasant Grove City*, held unconstitutional an ordinance requiring individuals to obtain a license before engaging in door-to-door solicitation, faulting the city for "provid[ing] no evidence other than conjecture to support its argument that having solicitors' fingerprints on file would either deter crime or aid the investigation of a burglary." 414 F.3d 1221, 1226, 1235 & n.12 (10th Cir. 2005). The Fifth, Sixth, Ninth, and Tenth Circuits thus all hold regulators to a meaningful evidentiary burden for a commercial speech restriction to survive First Amendment scrutiny.

B. The First, Second, and Fourth Circuits Vitiate *Central Hudson*'s Third Prong.

In contrast, the First, Second, and Fourth Circuits have looked to dicta in *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001), and permitted regulators to rely on "common sense" alone to show that a regulation of speech materially advances an asserted state interest.

In *Lorillard Tobacco*, this Court explained:

> We do not require that "empirical data come accompanied by a surfeit of background information. We have permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether, or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and 'simple common sense.'"

533 U.S. at 555 (cleaned up) (quoting *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)).

Some circuits, latching onto the phrase "simple common sense," have held that governments can satisfy their burden under the third prong of *Central Hudson* without introducing any evidence at all.

The First Circuit, in *IMS Health Inc. v. Ayotte*, considered the constitutionality of a statute prohibiting transfers of physicians' prescribing histories for use by so-called "detailers"—pharmaceutical sales representatives promoting drugs to physicians. 550 F.3d 42, 44–45 (1st Cir. 2008), *abrogated on other grounds by Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011). The court held that "[a] state need not go beyond the demands of common sense to show that a statute promises directly to advance an identified governmental interest," and that New Hampshire had satisfied its burden, even though "there was no direct evidence" "showing that health care costs would lessen should prescriber histories be denied to detailers." *Id.* at 55, 57.

Similarly, the Fourth Circuit reversed a grant of a preliminary injunction enjoining enforcement of video lottery advertising in *West Virginia Association of Club Owners & Fraternal Services, Inc. v. Musgrave*, 553 F.3d 292 (4th Cir. 2009). Although the state had not cited any scientific studies or historical research, the court held that "the link between the advertising restrictions and the state's interest" in avoiding "the social ills associated with gambling" "is supported by 'history, consensus, and 'simple common sense.'" *Id.* at 303–05 (quoting *Lorillard*, 533 U.S. at 555).

The Second Circuit's decision below likewise adopted this lax version of the government's burden under *Central Hudson*'s third prong. In analyzing whether the law directly and materially advances a substantial state interest, the panel looked to *Lorillard Tobacco* and stated that New York could "meet [its] burden 'by reference to studies and anecdotes' as well as 'history, consensus, and simple common sense.'" Pet. App. 12a (quoting *Lorillard*, 533 U.S. at 555). New York offered only a threadbare "justification" for the law, failing to cite a single study or other source connecting the way products are marketed to the alleged harm of danger to minors. *See* Pet. at 7. Nevertheless, applying that relaxed standard, the Second Circuit held that "it is 'simple common sense' that prohibiting supplement sales to minors will reduce supplement consumption by minors." Pet. App. 13a (citation omitted).

The approach adopted by the Second Circuit threatens to unleash a wave of regulation restricting or compelling speech without sufficient justification. Indeed, in a pending lawsuit brought by NRF challenging the constitutionality of a New York law compelling disclosure of the use of so-called algorithmic pricing, New York similarly failed to articulate how the challenged law directly and materially advances any state interest in preventing price gouging or protecting consumer privacy. Instead, in its briefing in the pending appeal to the Second Circuit, the State insists that it "need not conduct its own studies or surveys before deciding to protect consumers" and that states may justify regulations "by reference to ... anecdotes" or "based on 'history, consensus, and simply common sense.'" Appellee Br. at 36, *Nat'l Retail Fed. v. James*, Case No. 25-2818 (2d Cir. Feb. 10, 2026), ECF No. 56.1 (quoting *Lorillard*, 533 U.S. at 555).

The First Amendment requires more. This Court should grant certiorari to resolve the circuit split as to what *Central Hudson*'s third prong requires and put teeth in the requirement that the government justify regulations of commercial speech.

II. The Second Circuit's Application of *Central Hudson*'s Fourth Prong Is Contrary to This Court's Precedents and the Law of Other Circuits.

If this Court's jurisprudence on the third prong of *Central Hudson* has arguably pointed in both directions, its jurisprudence on the fourth prong has been consistent for decades—and is squarely at odds with the Second Circuit's approach in this and other cases.

As Petitioners explain, this Court initially took a more lax approach to *Central Hudson*'s fourth prong, giving legislators substantial leeway to decide whether the benefits of a given regulation outweigh the burden on speech. *See* Pet. at 24–25 & n.4 (citing *Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328, 344 (1986); *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 508 (1981); *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 481 (1989)). But in *44 Liquormart*, the Court reversed itself, holding that *Posadas*' "highly deferential approach" was "erroneous[]" and that the legislature is not free "to choose suppression over a less speech-restrictive policy." 517 U.S. at 509–10. Since then, this Court has consistently held the government to its burden of affirmatively establishing that a regulation is narrowly tailored to its goal. *See Rubin*, 514 U.S. at 490; *Greater New Orleans*, 527 U.S. at 193; *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 & n.13 (1993); *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 371 (2002).

The majority of circuit courts—including the Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits—have followed this Court's lead and put teeth in the narrow tailoring requirement. *See Health Vision Ass'n v. Abbott*, 138 F.4th 385, 404–05 (5th Cir. 2025); *Mo. Broad. Ass'n v. Schmitt*, 946 F.3d 453, 461–62 (8th Cir. 2020); *Yim v. City of Seattle*, 63 F.4th 783, 795–98 (9th Cir. 2023); *U.S. W., Inc. v. FCC*, 182 F.3d 1224, 1238–39 (10th Cir. 1999); *FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1299–1301 (11th Cir. 2017); *see also Pagan*, 492 F.3d at 778 (Sixth Circuit holding that the government bears the burden of "establish[ing] that its regulation is 'narrowly tailored'" and judicial review "require[s] examination of the means chosen by the government"). And, a decade ago, the Second

Circuit did too, preliminarily enjoining a law that would have prohibited insurance claim representatives from providing insureds with the name of their affiliates without also providing the name of their competitors. *See Safelite Grp, Inc. v. Jepsen*, 764 F.3d 258, 260 (2d Cir. 2014). There, it held that the law was "more extensive than necessary" because there was at least one alternative proposal that "would have served the same governmental interests" but "been less burdensome on Safelite's speech rights than requiring Safelite to advertise the name of a direct competitor." *Id.* at 266.

More recently, however, the Second Circuit has reverted to the legislative deference that this Court and other circuits reject. In *Clear Channel Outdoor, Inc. v. City of New York*, for example, the Second Circuit "defer[red] to" "the City's determination about how to regulate outdoor commercial advertising," claiming that "it is not this Court's role to second guess the City's urban planning decisions." 594 F.3d 94, 104–05 (2d Cir. 2010). In *Vugo v. City of New York*, the Second Circuit held that the fit "between the regulator's ends and the means chosen to accomplish those ends" need only be "reasonable," and "defer[red] to the City's judgment" about how to address the harm of disruptive television advertisements in taxicabs. 931 F.3d 42, 52, 58 (2d Cir. 2019) (citation & internal quotation marks omitted). And in this case, the Second Circuit said it would "defer to the Legislature's reasonable judgment about how best to achieve [its] objectives." Pet. App. 14a.

Notably, despite the fact that *44 Liquormart* and its progeny expressly rejected the legislative deference that cases like *Posadas*, *Metromedia*, and *Fox* reflect, the Second Circuit has repeatedly relied on these cases in recent years: *Clear Channel*, *Vugo*, and the decision below all relied on *Fox* in analyzing the fourth prong. *See Clear Channel*, 594 F.3d at 104–05; *Vugo*, 931 F.3d at 58; Pet. App. 14a. *Clear Channel* and *Vugo* relied on *Metromedia*. *See Clear Channel*, 594 F.3d at 106–07; *Vugo*, 931 F.3d at 58–59. And *Clear Channel* relied on the abrogated *Posadas*. *See Clear Channel*, 594 F.3d at 107.

In short, the Second Circuit's deference to legislators' judgment is inconsistent both with this Court's precedent and with other circuit's understanding of that precedent. Worse, it is tantamount to rational basis review. "The *Central Hudson* test is significantly stricter than the rational basis test, however, requiring the Government … to prove that the regulation … is 'not more extensive than is necessary to serve [a substantial state] interest.'" *Thompson*, 535 U.S. at 374 (quoting *Central Hudson*, 447 U.S. at 566). This Court should grant certiorari to prevent the Second Circuit from further eroding the commercial speech protections this Court has built up for the past 30 years. *See 44 Liquormart*, 517 U.S. at 522 (Thomas, J., concurring in part and in the judgment) (questioning the "philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech").

III. This Case Raises Issues of Exceptional Importance to Retailers and the National Economy.

The Second Circuit's erosion of commercial speech protections under the First Amendment has significant, detrimental implications for any retailer that advertises or markets its goods and services.

The statute at issue in this case reflects an increasingly common regulatory strategy: using *speech about a product* as the trigger for regulatory restrictions on the product itself. Rather than regulate products directly—based on their ingredients, safety profile, or other inherent characteristics—legislatures are regulating the marketing or labeling of products and attaching legal consequences when certain messages are conveyed.

General Business Law Section 391-oo exemplifies that model. Rather than prohibit the sale to minors of supplements that "contain unlisted, illegal pharmaceutical ingredients that pose serious risks" to consumer health, as the New York legislature initially considered doing, *see* Pet. at 5–6 (citation omitted), the Law instead "focuse[s] on the way products are marketed, *regardless of their ingredients*," 2023-S5823C Sponsor Memo (Sen. Shelley Mayer) (emphasis added), https://www.nysenate.gov/legislation/bills/2023/S5823/amendment/C. Whether or not a product may be sold to minors depends not on what the product is, but on *what information*—even truthful information a consumer might want to know—a retailer shared to describe it. The same product could thus be treated differently under the law based solely on the information disclosed to describe it. The result is that sharing more, rather than less, information about a product, N.Y. Gen. Bus. Law § 391-oo(6)(b)–(d), can mean the difference between legality and liability.

Lawmakers across the country are similarly adopting or considering regulations with speech-based triggers. California, for example, enacted legislation that prohibits firearm sellers from advertising or marketing firearm-related products "in a manner that is designed, intended, or reasonably appears to be attractive to minors." Cal. Bus. & Prof. Code § 22949.80(a)(1). The Ninth Circuit preliminarily enjoined the law, holding that it failed *Central Hudson* review, *Junior Sports Magazines*, 80 F.4th at 1116, 1121, with one judge concurring in the judgment and calling for the application of strict scrutiny, *id.* at 1121 (VanDyke, J., concurring). The Food and Drug Administration, for its part, has expressed "concern[]" about "skin care products with anti-wrinkle or anti-aging claims." U.S. Food & Drug Admin., *Wrinkle Treatments and Other Anti-aging Products* (Feb. 25, 2022), https://perma.cc/Y5HP-SZTF. Other regulators have similarly considered regulatory actions affecting other marketing or advertising claims on retail products.

This strategy has obvious appeal to policymakers, who may find it easier to eliminate the use of certain products by suppressing the information that makes them known and attractive to consumers in the first place. But the First Amendment requires us to be "especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good." *44 Liquormart*, 517 U.S. at 503. Thus while policymakers may *want* to shield their constituents from truthful information to promote "their best interests," the First Amendment rejects "this highly paternalistic approach," *Va. Bd. of Pharma.*, 425 U.S. at 770. Charting a different course, our Constitution assumes that "information is not itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication." *Id.* New York is free, in other words, to require whatever product safety standards it wants. "But it may not do so by keeping the public in ignorance" of products it wishes to drive out of the marketplace, nor of those products' characteristics. *Id.*

As more jurisdictions experiment with similar speech-triggered regulations, it is essential that courts apply the *Central Hudson* framework with rigor. Without meaningful judicial scrutiny, legislatures will have powerful and perverse incentives to regulate speech as a substitute for regulating conduct—precisely the danger the First Amendment is designed to prevent.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted.

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