

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 Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit*

**BRIEF AMICUS CURIAE OF
PACIFIC LEGAL FOUNDATION
IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

Identity and interest of amicus curiae	1
Introduction and summary of argument	2
Argument.....	4
I. The commercial speech test clashes with core First Amendment principles.....	4
II. There is no sound basis for distinguishing between commercial and noncommercial speech	8
III. The rationales for the commercial speech test do not withstand scrutiny	11
A. Regulated party expertise	11
B. Hardiness of commercial speech	13
C. First Amendment centrality	15
Conclusion	18

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>44 Liquormart, Inc. v. Rhode Island</i> , 517 U.S. 484 (1996)	3, 16
<i>Ashcroft v. Free Speech Coalition</i> , 535 U.S. 234 (2002)	8
<i>Bolger v. Youngs Drug Products Corp.</i> , 463 U.S. 60 (1983)	8, 12
<i>Brown v. Ent. Merch. Ass’n</i> , 564 U.S. 786 (2011)	9-10, 16
<i>Central Hudson Gas & Electric v. Pub. Serv. Comm’n of N.Y.</i> , 447 U.S. 557 (1980)	2-7, 11-13, 18
<i>Chiles v. Salazar</i> , 146 S.Ct. 1010 (2026)	2, 4, 6, 11, 16, 18
<i>Citizens United v. FEC</i> , 558 U.S. 310 (2010)	5-6
<i>Council for Responsible Nutrition v. James</i> , 159 F.4th 155 (2d Cir. 2025)	2
<i>Greater New Orleans Broad. Ass’n v. United States</i> , 527 U.S. 173 (1999)	12
<i>Iancu v. Brunetti</i> , 588 U.S. 388 (2019)	5
<i>Lorillard Co. v. Reilly</i> , 533 U.S. 525 (2001)	3
<i>MacDonald v. Sabando</i> , No. 25-2090, _ F.4th _ (3d Cir. 2025)	1
<i>Molieri v. Bonham</i> , No. 2:25-cv-02832-JAM-CSK (E.D. Cal. 2025)	1

<i>Ohralik v. Ohio State Bar Ass’n</i> , 436 U.S. 447 (1978)	11, 15
<i>Oncale v. Sundowner Offshore Servs., Inc.</i> , 523 U.S. 75 (1998)	17
<i>Reed v. Town of Gilbert</i> , 576 U.S. 155 (2015)	4, 6
<i>Rosenberger v. Rector and Visitors of Univ. of Va.</i> , 515 U.S. 819 (1995)	4
<i>Rubin v. Coors Brewing Co.</i> , 514 U.S. 476 (1995)	12
<i>Slaughter-House Cases</i> , 83 U.S. 36 (1872)	17
<i>Snyder v. Phelps</i> , 562 U.S. 443 (2011)	8
<i>Sorrell v. IMS Health Inc.</i> , 564 U.S. 552 (2011)	5
<i>Texas v. Johnson</i> , 491 U.S. 397 (1989)	8
<i>United States v. Alvarez</i> , 567 U.S. 709 (2012)	12
<i>United States v. O’Brien</i> , 391 U.S. 367 (1968)	14
<i>United States v. Playboy Enter. Grp., Inc.</i> , 529 U.S. 803 (2000).	6
<i>Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council</i> , 425 U.S. 748 (1976)	13
<i>Valentine v. Chrestensen</i> , 316 U.S. 52 (1942)	16
<i>Wavehuggers, LLC v. Cal. Dep’t of Parks & Rec.</i> , No. 3:25-cv-02215-RSH-BJW (S.D. Cal. 2025).....	1

<i>West Va. State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943)	15
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Statutes:

N.Y. Gen. Bus. Law § 391-oo(1)(a)	2
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Miscellaneous:

Barney, Joshua, <i>GLP-1 Drugs May Not Provide Key Weight-Loss Benefit, UVA Experts Caution</i> , Univ. of Va. Sch. of Educ. & Hum. Dev. (Apr. 8, 2024), https://tinyurl.com/you3bk6zu	7
BeVier, Lillian, <i>The First Amendment and Political Speech</i> , 30 Stanford L. Rev. 299 (1978)	15
Calvert, Clay & Papandrea, Mary-Rose, <i>The End of Balancing? Text, History & Tradition in First Amendment Speech Cases After Bruen</i> , 18 Duke J. Const. L. & Pub. Pol'y 59 (2023)	16
Carbonara, David, <i>The Carousel from Mad Men's Season 1 Finale</i> (Sep. 1, 2023), https://tinyurl.com/3jeayxyc	11
The Daily Wire, <i>Jeremy's Razors: The Greatest Commercial Ever</i> (YouTube, Mar. 22, 2022), https://www.youtube.com/watch?v=s92UMJNjPIA	8-9
Dietary Supplement Regulatory Uniformity Act, H.R. 7366, 119th Cong., § 2 (2026)	14
GeForce, Nvidia, https://www.nvidia.com/en-us/geforce/ (last accessed May 1, 2026)	14

Guardian News, <i>Gillette’s “We believe: the best men can be” razors commercial takes on toxic masculinity</i> (YouTube, Jan. 14, 2019), https://www.youtube.com/watch?v=UYaY2Kb_PKI	9
Hamm, Richard, <i>Off the Streets: The Origins of the Doctrine of Commercial Speech</i> , 57 Am. J. Legal Hist. 495 (2017)	17
Hims & Hers, <i>Sick of the System</i> (YouTube, Feb. 9, 2025), https://www.youtube.com/watch?v=l5l6QMNNqoc	9
Hims & Hers, <i>Rich People Live Longer</i> (YouTube, Jan. 29, 2026), https://www.youtube.com/watch?v=aZ7Z5LTJWHM	3
Howard, Alan, <i>The Mode in the Middle: Recognizing a New Category of Speech Regulations for Modes of Expression</i> , 14 UCLA Ent. L. Rev. 47 (2007)	6
Kozinski, Alex & Banner, Stuart, <i>The Anti-History and Pre-History of Commercial Speech</i> , 71 Tex. L. Rev. 747 (1993)	16
<i>Mad Men</i> , season 1, episode 13, “The Wheel” (AMC, Oct. 18, 2007)	10
Memorandum and Order, <i>Cozy Inn, Inc. v. City of Salina</i> , No. 24-cv-01027-TC, 2025 WL 3223806 (D.C. Kan. 2025)	10
60 Minutes, <i>Doctors explain how Wegovy and Ozempic work</i> (YouTube, Jan. 1, 2023), https://www.youtube.com/watch?v=QO5GHR7vZBU	5

Moynahan, Brian, <i>God's Bestseller</i> (2003)	15
OrthoInfo, <i>Creatine Supplements</i> (last accessed May 1, 2026), https://tinyurl.com/43hybyh9	7
Post, Robert, <i>The Constitutional Status of Commercial Speech</i> , 48 UCLA L. Rev. 1 (2000)	15
Seddiq, Oma & Eastland, Maggie, <i>House Seeks Say Over AI Chip Sales After Nvidia's China Win</i> , Bloomberg (Jan. 21, 2026), https://tinyurl.com/2nr52fy4	14
Shanor, Amanda, <i>The New Lochner</i> , 2016 Wis. L. Rev. 133, 151 (2016)	6
Thorne, <i>Hero film</i> (YouTube, Sep. 8, 2025), https://www.youtube.com/watch?v=w_hR dFjnFZo	10
Valenton, Kathleen, <i>Creatine and Women: What the Science Actually Says</i> , Lemme (Mar. 19, 2026), https://tinyurl.com/8fsmykun	7

IDENTITY AND INTEREST OF AMICUS CURIAE¹

Pacific Legal Foundation (PLF), a nonprofit law firm, has defended liberty since 1973—including many appearances before this Court, both at the petition and merits stages. Across decades of litigation, PLF has fought to preserve property rights, the right to earn a living, the right to equal treatment under the law, and the right to speak freely.

PLF has a particular interest in the proper application of the First Amendment to speech connected with work, commerce, and the pursuit of a lawful occupation. PLF has filed amicus briefs and litigated cases involving occupational licensing, commercial advertising, professional speech, and other forms of expression tied to economic life. These include First Amendment challenges to laws restricting surf instruction,² wildlife safety training,³ and telehealth services.⁴ In these cases, PLF has urged courts to reject labels that treat speech as constitutionally inferior simply because it relates to work or commerce.

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

² *Wavehuggers, LLC v. Cal. Dep't of Parks & Rec.*, No. 3:25-cv-02215-RSH-BJW (S.D. Cal. 2025).

³ *Molieri v. Bonham*, No. 2:25-cv-02832-JAM-CSK (E.D. Cal. 2025).

⁴ *MacDonald v. Sabando*, No. 25-2090, _ F.4th _ (3d Cir. 2025).

PLF’s long experience litigating commercial speech cases will assist this Court’s review of this petition.

INTRODUCTION AND SUMMARY OF ARGUMENT

New York law discriminates against speech based on both viewpoint and content about matters of major public concern that touch on science, politics, and human health. But because these speakers discuss such matters to promote a product, the Second Circuit Court of Appeals employed intermediate scrutiny and upheld New York’s discriminatory speech law. *See Council for Responsible Nutrition v. James*, 159 F.4th 155 (2d Cir. 2025).

When a nutrition supplement company advertises products in New York, state law imposes a regulatory disability: products marketed for weight loss or muscle gain cannot be sold to minors. N.Y. Gen. Bus. Law § 391-oo(1)(a). This law invokes the two major First Amendment villains: viewpoint discrimination and content discrimination. Yet the commercial speech test crafted by this Court in *Central Hudson Gas & Electric v. Public Service Commission of New York*, 447 U.S. 557 (1980), says New York’s law need not survive the strict scrutiny typical for laws discriminating against viewpoint and content. *See Chiles v. Salazar*, 146 S.Ct. 1010, 1024 (2026) (“And, under our precedents, viewpoint restrictions like that are not subject to mere rational-basis review or intermediate scrutiny.”).

Consider an example. At this year’s Super Bowl, nutrition company Hims & Hers aired a commercial that used both political and scientific commentary to promote its products. “Rich people live longer,” it be-

gins.⁵ “The wealth gap is a health gap.”⁶ It then markets its products as a way to close that gap: now you can get the kind of healthcare restricted to the rich through Hims & Hers products and services, including weight-loss supplements. This advertisement, which promotes its products through commentary on societal and health issues of public concern, would trigger a legal penalty under New York law. Meanwhile, the many speakers warning about weight-loss supplements would face no penalty.

This case underscores the *Central Hudson* test’s inconsistency with this Court’s core First Amendment doctrines. New York law imposes a regulatory disability on nutrition companies—a restricted market—based solely on content (speech related to weight-loss and muscle-gain products) and viewpoint (advocating for the use of such products). Marketing for these supplements touches on contested matters of great public concern.

In any other context, such speech would warrant full First Amendment protection. But when this speech comes clothed in the superficial trappings of an advertisement, the *Central Hudson* test instructs courts to dilute the First Amendment’s strength. As Justice Thomas has noted, this artificial distinction “makes no sense.” *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 528 (1996) (Thomas, J., concurring in part). Other members of this Court have shared his concerns. *See Lorillard Co. v. Reilly*, 533 U.S. 525, 554 (2001) (“[S]everal Members of the Court have expressed doubts about the *Central Hudson* analysis.”).

⁵ Hims & Hers, *Rich People Live Longer* (YouTube, Jan. 29, 2026), <https://www.youtube.com/watch?v=aZ7Z5LTJWHM>.

⁶ *Ibid.*

This Court should grant the petition to reconsider this anomaly in First Amendment doctrine.

ARGUMENT

I. The Commercial Speech Test Clashes With Core First Amendment Principles

By subjecting commercial speech to intermediate scrutiny, the *Central Hudson* test⁷ contradicts the two most fundamental First Amendment prohibitions: viewpoint-based and content-based discrimination. In most other settings, such discrimination faces strict scrutiny. *See Chiles*, 146 S.Ct. at 1021 (“‘Viewpoint discrimination,’ as we have put it, represents ‘an egregious form’ of content regulation, and governments in this country must nearly always ‘abstain’ from it.”) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)); *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”). Not so with the commercial speech doctrine. In fact, the doctrine embraces both by requiring courts to apply different legal standards based on content

⁷ This test says that if commercial speech is not misleading and does not relate to unlawful activity, then it is protected by a three-part approach under intermediate scrutiny. Restrictions on such speech must (1) be related to a substantial government interest; (2) directly advance that interest; and (3) be more no more extensive than necessary to serve that interest. *See Central Hudson*, 447 U.S. at 566.

and viewpoint, and by allowing governments to engage in viewpoint and content discrimination against commercial speakers.

Central Hudson folds viewpoint discrimination into the test itself. Such discrimination takes place when a law “favors” or “disfavors” one view over another. *Iancu v. Brunetti*, 588 U.S. 388, 394 (2019). Speech discouraging people from buying a product enjoys full First Amendment protection, while speech encouraging people to buy the product does not. A one-star Google review enjoys full protection, while an ad toutting a company’s five stars on Google receives flaccid speech protection.

The *Central Hudson* test itself also discriminates directly by targeting “disfavored speakers.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565 (2011). If a commercial speaker promotes their product, they face intermediate scrutiny, yet if an unaffiliated party touts the product, such speech would enjoy full First Amendment protection. An example relevant here: in a *60 Minutes* interview in 2023, Dr. Caroline Apovian, a professor at Harvard Medical School, made positive remarks about the use of Ozempic and Wegovy for weight loss.⁸ If Novo Nordisk, the company that produces and sells these drugs, were to make the same claims on this pressing issue of great significance for millions of Americans, such speech would enjoy only intermediate scrutiny. This Court has long looked askance at regulators discriminating between speakers. *See, e.g., Citizens United v. FEC*, 558 U.S. 310, 340 (2010) (“Quite apart from the purpose or effect of

⁸ 60 Minutes, *Doctors explain how Wegovy and Ozempic work*, (YouTube, Jan. 1, 2023), <https://www.youtube.com/watch?v=QO5GHR7vZBU>.

regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers.”). It should ensure that its own doctrines do not commit the same constitutional error.

The *Central Hudson* test also embraces content discrimination, where a law “applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed*, 576 U.S. at 163. *Central Hudson* incorporates content discrimination because “the very category of commercial speech is a content-based category.” Amanda Shanor, *The New Lochner*, 2016 Wis. L. Rev. 133, 151 (2016). Courts, like any other government actor, should avoid weighing the relative importance of different topics or types of speech.⁹ “What the Constitution says is that these judgments are for the individual to make, not for the Government to decree” *United States v. Playboy Enter. Grp., Inc.*, 529 U.S. 803, 818 (2000). Yet such judgments are precisely what *Central Hudson* requires. See Alan Howard, *The Mode in the Middle: Recognizing a New Category of Speech Regulations for Modes of Expression*, 14 UCLA Ent. L. Rev. 47, 88 (2007) (noting how courts often “do precisely what the First Amendment forbids any government official from doing: judging the social worth of the speaker’s underlying message” in order to exempt speech from “the general rule against content-based regulations”).

⁹ Of course, there are narrow categories of speech that enjoy little to no First Amendment protection, but—unlike commercial speech—these exceptions exist because the speech causes direct material harm, is wholly lacking social value, and its exclusion from protection has a foundation in history. See *Chiles*, 146 S.Ct. at 1026-27.

This case demonstrates how *Central Hudson* bakes viewpoint discrimination into the commercial speech test. The Hims & Hers “rich people” advertisement advocating weight-loss supplements would trigger a regulatory penalty under New York law, yet University of Virginia researchers can publish their research about potential long-term harms from weight-loss supplements with no penalty.¹⁰ Or, to take another example, Lemme—a women’s wellness supplement brand that launched this year—triggers a regulatory penalty when it promotes its Lemme Creatine products for muscle building with a blog post making scientific claims that women get too little creatine.¹¹ By contrast, the American Academy of Orthopaedic Surgeons faces no penalty for publishing warnings about possible risks of creatine over-consumption.¹² Advertising is a key voice in the debate on these topics of great interest to the public, yet the commercial speech test allows states to hamstring certain voices competing in the marketplace of ideas. Outside the context of commercial speech, this asymmetry would be condemned as viewpoint discrimination. Yet it is a core premise undergirding the commercial speech test.

¹⁰ See Joshua Barney, *GLP-1 Drugs May Not Provide Key Weight-Loss Benefit, UVA Experts Caution*, Univ. of Va. Sch. of Educ. & Hum. Dev. (Apr. 8, 2024), <https://tinyurl.com/yu3bk6zu>.

¹¹ Kathleen Valenton, *Creatine and Women: What the Science Actually Says*, Lemme (Mar. 19, 2026), <https://tinyurl.com/8fsm ykun>.

¹² OrthoInfo, *Creatine Supplements* (last accessed May 1, 2026), <https://tinyurl.com/43hybyh9>.

II. There Is No Sound Basis For Distinguishing Between Commercial And Noncommercial Speech

Even if advertising is somehow less deserving of First Amendment protection than, say, protests at funerals,¹³ pornography,¹⁴ or flag-burning,¹⁵ the commercial speech doctrine still fails to account for commercial speech's entanglement with other forms of fully protected speech. In theory, the commercial speech doctrine's reduced protections apply only to "speech which does no more than propose a commercial transaction." *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66 (1983) (internal quotation marks omitted). But advertising often incorporates otherwise fully protected speech; it can be artistic, literary, political, satirical, musical, scientific, and otherwise take any form of expression that courts would typically recognize as meriting full First Amendment protection.

For instance, commercial speech often includes "brand activism" that touches on political topics. To take one example: in 2022, a new company called Jeremy's Razors aired the "greatest commercial ever."¹⁶ The commercial—and indeed the company itself—was the conservative website Daily Wire's response to Harry's Razors pulling its ads from Daily Wire shows due to "values misalignment."¹⁷ In the ad, Daily Wire

¹³ See *Snyder v. Phelps*, 562 U.S. 443 (2011).

¹⁴ See *Ashcroft v. Free Speech Coal.*, 535 U.S. 234 (2002).

¹⁵ See *Texas v. Johnson*, 491 U.S. 397 (1989).

¹⁶ The Daily Wire, *Jeremy's Razors: The Greatest Commercial Ever* (YouTube, Mar. 22, 2022), <https://www.youtube.com/watch?v=s92UMJNjPIA>.

¹⁷ *Ibid.*

co-founder Jeremy Boreing slams the political views of Harry's Razors and Gillette, which had aired its own commercial about "toxic masculinity" a few years before.¹⁸ Boreing, garbed as a king and lounging on a throne, concludes: "Stop giving your money to woke corporations who don't think you deserve their product. Give it to me instead."¹⁹ This advertisement is just as much a political and satirical statement as a commercial one.

Other examples abound, including in the nutrition industry. Hims & Hers, for instance, aired another advertisement at the 2025 Super Bowl that promoted its weight-loss products through a critique of the food and healthcare industries.²⁰ The political commentary did not just run alongside promotion for the supplement—the political commentary *was* the promotion: the "system" that profits from the obesity epidemic keeps you "sick and stuck," but Hims weight-loss products liberate you from that parasitic system.²¹ Such overtly political advertising would trigger New York's law here, yet the law need only survive intermediate scrutiny, rather than the strict scrutiny that would apply to other limits on political speech. Hence, this Court's warning in a similar context applies here as well: "The Free Speech Clause exists principally to protect discourse on public matters, but

¹⁸ *Ibid.*; Guardian News, Gillette's "We believe: the best men can be" razors commercial takes on toxic masculinity (YouTube, Jan. 14, 2019), https://www.youtube.com/watch?v=UYaY2Kb_PKI.

¹⁹ The Daily Wire, *supra* note 16.

²⁰ Hims & Hers, *Sick of the System* (YouTube, Feb. 9, 2025), <https://www.youtube.com/watch?v=l5l6QMNnqoc>.

²¹ *See ibid.*

we have long recognized that it is difficult to distinguish politics from entertainment, and dangerous to try.” *Brown v. Ent. Merch. Ass’n*, 564 U.S. 786, 790 (2011).

Beyond its entanglement with political matters, commercial speech passes through the entire spectrum of speech that courts routinely shield with strict scrutiny. Advertisements are often artistic. For instance, a small business in Salina, Kansas, recently faced a sign code violation thanks to a giant burger mural on the building featuring flying saucers shooting condiments. See Memorandum and Order, *Cozy Inn, Inc. v. City of Salina*, No. 24-cv-01027-TC, 2025 WL 3223806 (D.C. Kan. 2025). Nutrition ads are no different. Nutrition company Thorne has rolled out a series of advertisements for its muscle-building creatine featuring popular performing artist Ciara.²² Again, to analogize to this Court’s approach to a different medium: “Like the protected books, plays, and movies that preceded them, video games communicate ideas—and even social messages—through many familiar literary devices (such as characters, dialogue, plot, and music)” *Brown*, 564 U.S. at 790.

The same is true of commercial speech. The popular television series *Mad Men* displays the massive creative enterprise behind the commercial advertising industry. In one famous scene, advertising executive Don Draper reduces a board of male executives to tears with his creative pitch for a commercial about a slide projector.²³ Ironically, commentators have

²² Thorne, *Hero film* (YouTube, Sep. 8, 2025), https://www.youtube.com/watch?v=w_hRdFjnFZo.

²³ *Mad Men*, season 1, episode 13, “The Wheel” (AMC, Oct. 18, 2007).

called this scene—which displays quintessential commercial speech—one of the greatest moments in television history.²⁴ Commercial speech can involve as much creative thought as any work to be found at the National Portrait Gallery or the Sundance Film Festival. Such core expression “cannot be renamed away” through “mere labels” like commercial or noncommercial. *Chiles*, 146 S.Ct. at 1023 (citation omitted). “The First Amendment is no word game.” *Ibid*.

III. The Rationales For The Commercial Speech Test Do Not Withstand Scrutiny

In the past, this Court has offered three primary rationales for the second-class citizenship of commercial speech:

- Commercial speakers have “extensive knowledge” of “both the market and their products.” *Central Hudson*, 447 U.S. at 564 n.6.
- Commercial speech is “a hardy breed of expression” that can withstand overbroad regulation. *Ibid*.
- Commercial speech is not the central concern of the First Amendment. *See Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 456 (1978).

None hold up to scrutiny.

A. Regulated party expertise

The *Central Hudson* Court saw commercial speech as more amenable to regulation because commercial speakers know their market. *Central Hudson*, 447 U.S. at 564 n.6. Thus, in theory, they will be more

²⁴ David Carbonara, *The Carousel from Mad Men’s Season 1 Finale* (Sep. 1, 2023), <https://tinyurl.com/3jeayxyc>.

aware of what speech will be misleading or unlawful and therefore less likely to face a chilling effect from aggressive regulation. *Ibid.* Also, since they know more, the law can expect a higher standard of transparency. *Ibid.* This rationale, however, does not justify reduced protections for commercial speech.

For one, this reasoning seems to only apply to speech regulations designed to protect against misleading or false speech.²⁵ Yet the commercial speech doctrine extends far beyond that narrow range. Many cases apply the doctrine against laws designed to influence consumer choice by censoring certain information, which cannot be justified on the rationale that businesses know their products. Indeed, the entire point of such paternalistic laws is to *reduce* the pool of commercial knowledge, not expand it or ensure its accuracy. *See, e.g., Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173 (1999) (applying commercial speech test to regulation prohibiting ads about private casino gambling, including lawful gambling); *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995) (applying commercial speech test to law prohibiting beer labels from displaying alcohol content); *Bolger*, 463 U.S. 60 (applying commercial speech test to law prohibiting mailing of unsolicited contraceptive ads).

Plus, the superior knowledge of commercial actors is good reason to *protect* commercial speech, not expose it to greater regulatory control. After all, we

²⁵ The commercial speech doctrine is not even necessary to deal with fraudulent speech, which is already prohibited under the separate test for false statements associated with “some other legally cognizable harm.” *United States v. Alvarez*, 567 U.S. 709, 719 (2012).

want informed speakers to enjoy broad First Amendment protection. The commercial speech test hampers knowledgeable speech while leaving less informed speech to roam free. Thus, third parties like Consumer Reports or customer reviewers are more free to discuss a product than the actual creator. This skewed marketplace of ideas leaves consumers impoverished and ignores their “reciprocal right to receive the advertising.” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 757 (1976).

This case demonstrates why the expertise rationale fails to justify the *Central Hudson* test. Nutrition companies’ expertise does not reduce the chilling effect imposed by New York’s law. That chilling effect exists because a special condition attaches to certain speech about supplements—thus penalizing speech promoting a certain viewpoint on a certain topic. It is not a law with an ambiguous reach, where regulated parties have a reduced chilling effect because their sophistication helps them navigate between lawful and unlawful speech.

B. Hardiness of commercial speech

Central Hudson also claimed that courts should allow greater regulatory control over commercial speech because it is “a hardy breed of expression” not prone to being “crushed by overbroad regulation.” *Central Hudson*, 447 U.S. at 564 n.6 (internal quotation mark omitted). Commercial speech has this hardy character because it is “the offspring of economic self-interest.” *Ibid.* This rationale fares no better.

Plenty of fully protected speech arises from economic self-interest. George Lucas has become the wealthiest director alive from his expressive activities, yet his economic self-interest does not exclude the

Star Wars films from full First Amendment protection. The same could be said of novels, commissioned artwork, and the multibillion-dollar streaming industry, among many others.

Likewise, businesses are driven by their own economic interests when they engage in other fully protected speech, such as political lobbying. When Nvidia lobbied to stop restrictions on its ability to sell AI chips to adversary nations,²⁶ that speech was no less driven by economic self-interest than its advertising campaign for its advanced graphics cards.²⁷ Indeed, the petitioner in this matter and its members engage in lobbying to support bills like the Dietary Supplement Regulatory Uniformity Act, which would enshrine FDA preemptive authority to prevent a state-by-state patchwork regulatory environment.²⁸ They have a strong economic self-interest in such lobbying, yet that expressive activity enjoys full First Amendment protection—as it should—while member company advertisements must suffer greater regulatory control. Why the latter is more “hardy” than the former is unknown.

Further, other motives may be just as hardy or even harder than a profit motive. When David O’Brien burned draft cards on courthouse steps to protest the Vietnam War, he acted out of political conviction. *United States v. O’Brien*, 391 U.S. 367 (1968).

²⁶ Oma Seddiq & Maggie Eastland, *House Seeks Say Over AI Chip Sales After Nvidia’s China Win*, Bloomberg (Jan. 21, 2026), <https://tinyurl.com/2nr52fy4>.

²⁷ See *GeForce*, Nvidia, <https://www.nvidia.com/en-us/geforce/> (last accessed May 1, 2026).

²⁸ See Dietary Supplement Regulatory Uniformity Act, H.R. 7366, 119th Cong., § 2 (2026) (introduced).

When Gathie and Marie Barnette refused to salute the American flag in school, they acted out of religious conviction. *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). Courts have not addressed why these convictions are less “hardy” than economic self-interest. In fact, the reverse may be true. If William Tyndale’s English translation of the Bible had been motivated by economic self-interest, it is hard to believe he would have risked persecution and martyrdom when he could have simply found a less dangerous way to make a living.²⁹ Few people will risk their necks for profit, but many do for principle.

C. First Amendment centrality

This Court has also justified reduced protection for commercial speech because such speech occupies a “subordinate position in the scale of First Amendment values.” *Ohralik*, 436 U.S. at 456. This rationale does not comport with this Court’s other holdings regarding speech categories.

Advocates of this speech hierarchy, with commercial speech low on the totem pole, tend to argue that free speech rights exist to serve a political function—namely to enrich the “process of self-government” and protect “forms of participation necessary to sustain democratic legitimacy.” Robert Post, *The Constitutional Status of Commercial Speech*, 48 UCLA L. Rev. 1, 1, 56 (2000). In other words, speech rights are for political speech. See Lillian BeVier, *The First Amendment and Political Speech*, 30 Stanford L. Rev. 299, 343 (1978) (“The political speech principle only protects participation in the processes of democratic government.”).

²⁹ See generally Brian Moynahan, *God’s Bestseller* (2003).

This argument, however, faces an uphill battle. This Court exhibits “especial reluctance to mark off new categories of speech for diminished constitutional protection.” *Chiles*, 146 S.Ct. at 1027 (citation modified). To overcome that reluctance, the burden rests on those who would dial down the First Amendment to show “persuasive historical evidence” of a “long tradition” of permissible regulation of commercial speech. *Id.* at 1026-27 (citation omitted). *See also Brown*, 564 U.S. at 792 (requiring a “historical warrant” for subjecting certain types of speech to less protection).

Such a historical pedigree is dubious when it comes to commercial speech. “Advertising has been a part of our culture throughout our history,” 44 *Liquormart*, 517 U.S. at 495, and yet no strong pattern of regulation has accompanied it that would suggest a long tradition of distinguishing between commercial and non-commercial expression.³⁰ “Indeed, some historical materials suggest to the contrary.” 44 *Liquormart*, 517 U.S. at 522 (Thomas, J., concurring in part). The first commercial/noncommercial distinction made by this Court in the perfunctory 1942 case of *Valentine v. Chrestensen*, 316 U.S. 52, made no attempt to root its reasoning in a historical analysis. Rather, historical evidence of the time period indicates that *Valentine*

³⁰ *See* Clay Calvert & Mary-Rose Papandrea, *The End of Balancing? Text, History & Tradition in First Amendment Speech Cases After Bruen*, 18 Duke J. Const. L. & Pub. Pol’y 59 (2023); Alex Kozinski & Stuart Banner, *The Anti-History and Pre-History of Commercial Speech*, 71 Tex. L. Rev. 747, 756 (1993) (“We have no evidence that the Framers (or anyone else until quite recently) conceptualized speech as divisible into the categories of commercial and noncommercial, and it wasn’t until 1942 that the Supreme Court made the distinction explicit.”).

was simply a pragmatic compromise to grapple with a rise in disputes over anti-littering laws as leafletting began to proliferate in the 1930s. See Richard Hamm, *Off the Streets: The Origins of the Doctrine of Commercial Speech*, 57 Am. J. Legal Hist. 495, 519 (2017). Thus, it seems the distinction first arose in a jurisprudential era when this Court put far less emphasis on historical understanding.

But even if the founders did not mean to protect commercial speech, that intent does not override what they actually wrote, which made no distinctions between types of speech. A law's scope is dictated by its text, not the animating concerns behind the legislation. See *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998) (“[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.”). This is equally true in how courts have interpreted the Bill of Rights. See *Slaughter-House Cases*, 83 U.S. 36, 72 (1872) (“Undoubtedly while negro slavery alone was in the mind of the Congress which proposed the thirteenth article, it forbids any other kind of slavery, now or hereafter.”). This core canon of interpretation explains why this Court has long extended full First Amendment protection to other nonpolitical speech, such as novels, films, and the visual arts. It should extend the same to advertising.

CONCLUSION

This Court should revisit its commercial speech jurisprudence, and this petition demonstrates why. A national debate is raging about our health—including how best to address obesity, a matter of major public concern and controversy. Nutrition companies waded into this debate in many ways, including through their advertising. New York’s law has hobbled one perspective in this poignant national conversation, yet federal court reliance on the *Central Hudson* test gives it a pass. This Court has recently affirmed that “faith in the free marketplace of ideas [i]s the best means for discovering truth.” *Chiles*, 146 S.Ct. at 1029. When it comes to commercial speech, this Court should restore that faith.

Respectfully submitted,

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