

No. 25-459

IN THE
Supreme Court of the United States

MICHAEL SALAZAR,

Petitioner,

v.

PARAMOUNT GLOBAL, DBA 247SPORTS,

Respondent.

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

**Brief of the Liberty Justice Center as
Amicus Curiae in Support of Neither
Party**

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Question Presented

Whether the phrase “goods or services from a video tape service provider,” as used in the Video Privacy Protection Act’s definition of “consumer,” refers to *all* a video tape service provider’s goods or services or only to its *audiovisual* goods or services?

Table of Contents

Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Interest of the Amicus Curiae	1
Summary of Argument.....	1
Argument.....	3
I. This Court should make clear that the constitutional protections for Americans’ substantial privacy interests in aggregated digital data about the information they receive are not limited by its ruling on statutory protections.	3
A. Americans have a constitutionally protected privacy interest in the information they receive and the videos they watch.....	3
B. Aggregated digital data about Americans’ activities poses novel and unique privacy concerns.....	5
C. Americans have a substantial privacy interest in aggregated digital data about the videos they view that deserves the highest possible privacy protection.	8
D. In deciding this case, this Court should ensure inherent constitutional protections for Americans’ aggregated digital data are not confused with or improperly limited by the statutory protections under the VPPA.....	10
Conclusion	11

Table of Authorities

Cases

<i>Bd. of Educ. v. Pico</i> , 457 U.S. 853 (1982).....	3
<i>Biden v. Knight First Amendment Inst. at Columbia Univ.</i> , 141 S. Ct. 1220 (2021).....	7
<i>Brown v. Ent. Merchs. Ass'n</i> , 564 U.S. 786 (2011).....	4, 9
<i>Carpenter v. United States</i> , 585 U.S. 296 (2018).....	6, 10
<i>Chatrie v. United States</i> , 136 F.4th 100 (4th Cir. 2025).....	1
<i>Free Speech Coal., Inc. v. Paxton</i> , 606 U.S. 461 (2025).....	10
<i>Lindke v. Freed</i> , 601 U.S. 187 (2024).....	7
<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024).....	9
<i>NetChoice, LLC v. Paxton</i> , 142 S. Ct. 1715 (2022).....	7
<i>Nw. Airlines, Inc. v. Minnesota</i> , 322 U.S. 292 (1944).....	10
<i>Riley v. California</i> , 573 U.S. 373 (2014).....	4, 5, 6, 7, 10
<i>Scholl v. Ill. State Police</i> , 776 F. Supp. 3d 701 (N.D. Ill. 2025).....	1
<i>Stanley v. Georgia</i> , 394 U.S. 557 (1969).....	3, 4

<i>TikTok Inc. v. Garland</i> , 604 U.S. 56 (2025).....	10
<i>United States DOJ v. Reporters Comm. for Freedom of Press</i> , 489 U.S. 749 (1989).....	5, 7
<i>United States v. Reidel</i> , 402 U.S. 351 (1971).....	4, 9
<i>W. Va. State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943).....	4
<i>Whalen v. Roe</i> , 429 U.S. 589 (1977).....	5
<i>Winters v. New York</i> , 333 U.S. 507 (1948).....	4
 Statutes	
CCPA, 47 U.S.C. § 551	4
VPPA, 18 U.S.C. § 2710	4, 5
 Other Authorities	
FED. TRADE COMM’N, A LOOK BEHIND THE SCREENS: EXAMINING THE DATA PRACTICES OF SOCIAL MEDIA AND VIDEO STREAMING SERVICES (2024).....	8, 9

Interest of the Amicus Curiae

Liberty Justice Center (LJC) is a nonprofit, nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights.¹

LJC is interested in this case because it frequently litigates important cases against government overreach and violations of Americans' privacy rights. For example, in *Scholl v. Ill. State Police*, 776 F. Supp. 3d 701 (N.D. Ill. 2025), LJC has argued that warrantless dragnet surveillance of every citizen that drives by automated license plate readers (ALPRs) constitutes an unreasonable search.

LJC also files amicus briefs on similar issues, such as its brief in *Chatrie v. United States*, 136 F.4th 100 (4th Cir. 2025), *petition for cert. granted*, No. 25-112 (U.S. Jan. 16, 2026), which argues geofence warrants to obtain smartphone geolocation data violate Americans' privacy rights.

Summary of Argument

The Video Privacy Protection Act (VPPA) was passed to provide additional statutory protections for Americans' video viewing history because Congress recognized the privacy interest individuals have in their viewing habits. Those interests are even greater now, given the expansion of digital video content and

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission.

ability for service providers to aggregate data on viewing behavior.

While this case is about a civil dispute between one specific service provider and one customer, the issues raised have implications for constitutional rights regarding digital data and digital privacy generally. In deciding the extent of the statutory protections provided by the VPPA, this Court should make clear that the limits of those statutory rights do not impair the protections provided for by the Constitution.

The Court should affirm the importance of the right to receive information, and the importance of the privacy interests an individual has in the information they receive. The receipt of information and aggregation of digital data about that receipt poses novel and unique issues. Americans have a substantial privacy interest in aggregated digital data about the information they receive, and this Court should ensure that data is appropriately protected from the government.

In clarifying the statutory protections provided by the VPPA for Americans' privacy interests, this Court should ensure it does not confuse or impair the inherent protections provided by the Constitution to this data.

Argument

- I. **This Court should make clear that the constitutional protections for Americans’ substantial privacy interests in aggregated digital data about the information they receive are not limited by its ruling on statutory protections.**

While this case involves statutory protections in a civil context, the digital data at issue implicates fundamental rights of Americans with inherent constitutional protections that should be upheld. Robust privacy protections for digital data are essential as that data expands in volume and is aggregated into massive databases. This Court should ensure its approach remains consistent and rigorously evaluate how its privacy decisions affect the constitutional rights of Americans.

- A. **Americans have a constitutionally protected privacy interest in the information they receive and the videos they watch.**

“[T]he Constitution protects the right to receive information and ideas.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (quoting *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)). This is because “the right to receive ideas is a necessary predicate to the *recipient’s* meaningful exercise of his own rights of speech, press, and political freedom.” *Id.* (emphasis in original).

This “right to receive” “is a right to a protective zone ensuring the freedom of a man’s inner life, be it rich or sordid.” *United States v. Reidel*, 402 U.S. 351,

359–60 (1971) (Harlan, J., concurring) (citing *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)); *see also Riley v. California*, 573 U.S. 373, 395 (2014) (“An Internet search and browsing history, for example, . . . could reveal an individual’s private interests or concerns . . .”). And the “right to receive information and ideas, regardless of their social worth is fundamental to our free society.” *Stanley*, 394 U.S. at 564 (citing *Winters v. New York*, 333 U.S. 507, 510 (1948)) (citation omitted).

This right includes the freedom to receive and watch entertainment. *See id.* at 566 (“The line between the transmission of ideas and mere entertainment is much too elusive for this Court to draw, if indeed such a line can be drawn at all.”) (citing *Winters*, 333 U.S. at 510); *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 790 (2011) (“it is difficult to distinguish politics from entertainment, and dangerous to try”) (noting books, plays, movies, and video games receive First Amendment protection).

Congress sought to provide additional statutory protections for Americans’ privacy interest in their viewing histories by passing the Cable Communications Policy Act (CCPA) and the VPPA. The CCPA protects the viewing data of cable subscribers and provides a private right of action for violations. *See* CCPA, 47 U.S.C. § 551(f). It allows a court to award damages at a minimum of \$100 a day or \$1000 total liquidated damages, whichever is higher, along with punitive damages and fees. CCPA, 47 U.S.C. § 551(f)(2). The VPPA similarly protects the video request history of customers and provides a private right of action. *See* VPPA, 18 U.S.C. § 2710(c). It allows a court to award a minimum \$2,500

liquidated damages, along with punitive damages, fees, and preliminary and equitable relief. VPPA, 18 U.S.C. § 2710(c)(2).

Both this Court and Congress recognize Americans' profound privacy interest in their viewing habits—an interest that has only intensified as technology advances and data aggregation scales.

B. Aggregated digital data about Americans' activities poses novel and unique privacy concerns.

This Court has recognized “the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks.” *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 770 (1989) (quoting *Whalen v. Roe*, 429 U.S. 589, 605 (1977)). Digital technologies allow for vast troves of information to be stored and easily shared. This aggregation of data poses novel and unique issues for individual privacy. Personal information that posed little risk in the past could warrant privacy protection now because the amount and type of data available to government actors has metastasized in the digital era.

This Court has recognized the unique privacy issues that aggregated digital data poses to both constitutional and statutory rights and has had to adjust its decisions to reflect those changing realities.

In the Fourth Amendment context, this Court has acknowledged the distinction between digital and physical evidence. *See Riley*, 573 U.S. at 393. (“Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an

arrestee’s person.”). This Court noted that digital technologies allow for the collection of significantly more information, and much older information, than physical evidence. *See id.* at 393–98 (“Most people cannot lug around . . . every book or article they have read—nor would they have any reason to attempt to do so.”). Because of that difference, this Court held that different standards must be used to determine when physical evidence can be searched incident to arrest and when digital evidence can be searched. *See id.* at 386.

This Court has also recognized that records obtained by the government that previously might not have constituted a search now constitute a search in the digital era. Cell phone geolocation data can provide “a detailed chronicle of a person’s physical presence compiled every day, every moment, over several years.” *Carpenter v. United States*, 585 U.S. 296, 315 (2018). And “[s]uch a chronicle implicates privacy concerns far beyond those considered” by this Court in previous cases. *Id.* Because of the “unique nature of cell phone location information” and the level of insight that geolocation data can provide, this Court found that obtaining such records from a third party is a search. *Id.* at 315–16.

This Court has also recognized the privacy interests implicated by aggregations of data in the civil context. In considering what information the government had to disclose and what it could withhold under Freedom of Information Act exemptions, this Court noted the “distinction, in terms of personal privacy, between scattered disclosure of the bits of information contained in a rap sheet and revelation of the rap sheet as a whole.” *Reporters Comm. for*

Freedom of Press, 489 U.S. at 764. Even if the individual pieces of data might be public, the aggregation of that data creates a unique privacy concern that is “substantial.” *Id.* at 771. And “[t]he substantial character of that interest is affected by the fact that in today's society the computer can accumulate and store information that would otherwise have surely been forgotten” *Id.*

Further threatening these privacy interests is the fact that digital data from one source can be combined with digital data from another source to create a comprehensive picture of a person. When different types of digital data are put together, they can “reveal much more in combination than any isolated record.” *Riley*, 573 U.S. at 394.

And issues about how to deal with digital data and service providers with access to that data will continue to pose novel questions for this Court to answer. *See, e.g., Lindke v. Freed*, 601 U.S. 187, 204 (2024) (“The nature of the technology matters to the state-action analysis.”); *NetChoice, LLC v. Paxton*, 142 S. Ct. 1715, 1717 (2022) (Alito, J. dissenting from grant of application to vacate stay) (“It is not at all obvious how our existing precedents, which predate the age of the internet, should apply to large social media companies”); *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1221 (2021) (Thomas, J. concurring in grant of certiorari) (noting that “applying old doctrines to new digital platforms is rarely straightforward”).

Digital data—and especially aggregated digital data—raises unique privacy interests that this Court confronted in recent years, and this Court should not

apply older precedents without accounting for the distinct and substantial nature of those interests.

C. Americans have a substantial privacy interest in aggregated digital data about the videos they view that deserves the highest possible privacy protection.

These substantial privacy interests are particularly deserving of protection when they relate to fundamental rights, such as the right to receive information. And there are very real risks currently posed to these rights.

The Federal Trade Commission has warned about risks video streaming services pose to consumers' privacy. *See* FED. TRADE COMM'N, A LOOK BEHIND THE SCREENS: EXAMINING THE DATA PRACTICES OF SOCIAL MEDIA AND VIDEO STREAMING SERVICES (2024). Such companies collect or infer data about users' age, gender, language, education, income, marital status, and parental status. *See id.* at 17. Companies also have information about users' interests, which are often used for targeted advertising. *See id.* at 20. Most of the companies reviewed by the FTC "claimed to prohibit targeting users based on sensitive categories (such as political affiliation, race, religion, health, or sexual orientation) and represented that they had restrictions in place regarding ads targeted at Children and Teens," but the data available makes those risks possible. *Id.* at 43. Harms from such activities could "include, for example, unlawful discrimination, emotional distress, stigma, reputational harm, embarrassment, and invasion of privacy." *Id.* at 44. The FTC warned that "self-

regulation has been a failure” and “without significant action, the commercial surveillance ecosystem will only get worse.” *Id.* at ii.

What information a person seeks out and receives, whether through reading or watching, provides insight into their mind and views. As the FTC warns, aggregated digital data about those subjects therefore has the potential to disclose an individual’s interests, concerns, likes, and dislikes. Given the amount of data that can be stored digitally, it can provide insight into an individual’s views on a variety of different topics, including particularly sensitive ones like their political or religious views. And given the historical data that can be stored digitally, it can also disclose how those interests or beliefs may have changed or evolved over time.

Such insights provide a look straight into “a man’s inner life,” *Reidel*, 402 U.S. at 359–60 (Harlan, J. concurring), and therefore this data deserves the highest protections possible to guard individuals’ substantial privacy interests in it. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 733 (2024) (“Whatever the challenges of applying the Constitution to ever-advancing technology, the basic principles’ of the First Amendment ‘do not vary.’”) (quoting *Ent. Merchs. Ass’n*, 564 U. S. at 790).

D. In deciding this case, this Court should ensure inherent constitutional protections for Americans’ aggregated digital data are not confused with or improperly limited by the statutory protections under the VPPA.

“When confronting new concerns wrought by digital technology, this Court has been careful not to uncritically extend existing precedents.” *Carpenter*, 585 U.S. at 318 (citing *Riley*, 573 U.S., at 386); *see also TikTok Inc. v. Garland*, 604 U.S. 56, 62 (2025) (per curiam) (noting “the cases before us involve new technologies with transformative capabilities. This challenging new context counsels caution on our part”); *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 489 (2025) (explaining this Court had been “mindful that ‘judicial answers’ to ‘the totally new problems’ presented by new technology are necessarily ‘truncated,’ and that in such circumstances ‘[the Court] ought not anticipate’ questions beyond those immediately presented.”) (quoting *Nw. Airlines, Inc. v. Minnesota*, 322 U.S. 292, 300 (1944)).

This Court should similarly act with caution here, especially given the fundamental constitutional rights at issue. Aggregated digital data about a person’s video viewing habits constitutes a substantial privacy interest deserving of the highest privacy protections. Data about the information Americans receive must be cautiously guarded to protect their First and Fourth Amendment rights. It should be protected from government intrusion by the Constitution, regardless of what statutory limits might also exist.

This Court should make clear that its interpretation of the VPPA does not diminish the constitutional privacy protections that apply to aggregated digital data reflecting a person’s video-viewing habits. Undermining those protections would expose Americans’ “inner lives” to government scrutiny.

Conclusion

Digital data poses unique legal issues. Data that previously would have required a trunk or house to store now can be kept in the palm of your hand.

Because of the massive amount of data that can now be stored and shared, this Court has had to adjust its approaches to reflect a new reality. What once may have been reasonable or may not have violated someone’s privacy interests, now does—and in ways previously unimaginable.

Digital data privacy has implications for contexts far beyond this civil case. It impacts fundamental rights related to the freedom of speech and constitutional protections in criminal prosecutions.

This Court should keep this broader context in mind when deciding this case, as the way it addresses privacy interests here could have repercussions far beyond the VPPA. Americans have substantial constitutionally protected privacy interests in aggregated digital data about what information they receive through watching videos. And those privacy interests deserve the highest possible privacy protections. When determining the extent of statutory protections under the VPPA, this Court must clarify that constitutional privacy rights are not limited by

its holding, as doing so could grant the government greater access to the private details of Americans' lives.

March 19, 2026 Respectfully submitted,

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