No. 25-459

In the

Supreme Court of the United States

MICHAEL SALAZAR,
Petitioner,

v.

PARAMOUNT GLOBAL, D/B/A 247SPORTS,
Respondent.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AND TECHFREEDOM AS AMICI CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether Salazar is a "consumer" under 18 U.S.C. § 2710(a)(1).

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INTEREST OF AMICI CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. It defends free enterprise, individual rights, limited government, and the rule of law. To that end, WLF often appears as amicus curiae to urge this Court to reject overbroad statutory interpretations that swap Congress's meaning for a party's policy preferences. *Cisco Sys. v. Doe*, 609 U.S. __ (2026); *Epic Sys. v. Lewis*, 584 U.S. 497 (2018).

TechFreedom is a nonprofit, nonpartisan think tank dedicated to promoting technological progress that improves the human condition. It seeks to advance public policy that makes experimentation, entrepreneurship, and investment possible. TechFreedom rejects anomalous interpretations of statutes that flout the will of Congress. *See, e.g.*, Br. of TechFreedom, *Ohio Telecom Ass'n v. FCC*, Nos. 24-3133, 24-3206, 24-3552 (6th Cir. Oct. 6, 2025) (opposing interpretation of the Congressional Review Act that would allow agencies to flout congressional disapproval of agency rules).

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court doesn't "augment statutes," it "interprets them." *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, 608 U.S. __; Slip Op.

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* No party's counsel authored any part of this brief. No person or entity, other than Amici and its counsel, paid for the brief's preparation or submission.

at 4 (2026) (tense altered). As any reasonable reader of the English language well knows, words acquire meaning from how and why they are used. A broad word or two (here it's three: "goods or services") can often narrow in context. 18 U.S.C. § 2710(a).

The Sixth Circuit properly limited the Video Privacy Protection Act's (VPPA) definition of "goods or services" to "video cassette tapes or similar audiovisual materials." 18 U.S.C. § 2710(a) (spelling modernized). Salazar rejects that reading. He takes "goods or services" at their most "all-inclusive"—hammers, dog bandanas, coffee mugs, and (especially) e-newsletters. Pet. App. 12a (internal quotation marks omitted). Receipt of pretty much anything gets him there.

Paramount's got the better of the argument. To know why, let's dig into the "statute's backstory." *Fischer v. United States*, 603 U.S. 480, 513 (2024) (Barrett, J., dissenting). In 1987, in the runup to Judge Bork's confirmation hearings, a D.C. journalist exposed the jurist's viewing habits by sifting his video store's records. Michael Dolan, *The Bork Tapes*, Wash. City Paper (Sept. 25, 1987).

Dolan's rewind of Bork's video-rental record revealed no scandal. But he previewed sequel work to come. The piece concluded with an open call for the rental history of Senators Biden, Dole, and Kennedy, Governor Mario Cuomo, and media figures Pat Buchanan, Sam Donaldson, and George Will. Dolan, *The Bork Tapes* ("Gee, this could be a life's work").

An infuriated Congress—perhaps fearing exposure that "some members . . . may have had other

viewing predilections" than Judge Bork's—acted fast. *Gardner v. Me-TV Nat'l Ltd. P'ship*, 132 F.4th 1022, 1023 (7th Cir. 2025). Six months after being introduced, the VPPA was law.

The Act doesn't impose a prior restraint on sharing consumer information. It deters by punishment, vesting consumers ("renters, purchasers, or subscribers of goods or services from a video tape service provider") with a civil action against providers "engaged in the business . . . of rental, sale, or delivery of prerecorded video cassette tapes or similar audiovisual materials" if they spring a leak. 18 U.S.C. § 2710 (spelling modernized, pluralization supplied).

So the VPPA made the chain of events that led to *The Bork Tapes* actionable—it didn't usher in a privacy revolution. *Cf. Fischer*, 603 U.S. at 498 ("Given that [the Sarbanes-Oxley Act] was enacted to address the Enron disaster, not some further flung set of dangers, it is unlikely that Congress responded with such an unfocused and 'grossly incommensurate patch'") (citation omitted). Newsletters aren't "similar audiovisual materials" to "video cassette tapes," 18 U.S.C. § 2710(a) (spelling modernized), so Salazar can't be a "consumer" with standing to sue a "provider."

Thank goodness. Salazar's true aim is "to transmogrify [the VPPA] into a prohibition against targeted advertising on the internet." BIO 1 (capitalization altered). Personalized ads get a bad rap, but they're quite a good deal for consumers and producers alike.

From the producer perspective, a targeted ad reduces transaction costs by better pairing a company's pitch with a receptive audience. And consumers mutually benefit by seeing more ads for things they're likely to want (and buy). Yan Lau, *A Brief Primer on the Economics of Targeted Advertising* at 5, Bureau of Econ. – FTC (Jan. 2020); https://perma.cc/3ZF9-JDD5. By clearing markets more efficiently, personalized ads mean that companies can spend less money to directly promote their products—which leaves firms with more resources to reward shareholders, invest in innovation, or reduce prices. *See id.* at 6, 11–12.

And just think of the products supported by the efficiencies generated by personalized advertising. It's obviously not limited to college sports newsletters—it's most of the internet. Take away the benefits of targeted ads and large chunks of the web will go behind paywalls, become cluttered with more useless ads than ever, or (for marginal concerns) be deleted forever by market forces. No American benefits—least of all those with fewer resources—when information becomes more expensive and less accessible.

The dissent below gainsaid these concerns on the theory that the VPPA allows consumers to frictionlessly opt-in to information sharing. *See* Pet. App. 37a (Bloomekatz, J., dissenting). Let's be honest, Paramount wouldn't be here if it believed that was true. And it's not—the Act's opt-in is a minefield of kludge and legal uncertainty. So it's no salvation.

Salazar's backstory-denying bid for a backdoor restriction on personalized ads was properly dispatched below. This Court should affirm.

ARGUMENT

I. NEWSLETTERS AREN'T LIKE VIDEO TAPES.

What does the VPPA mean by "goods or services?" 18 U.S.C. § 2710(a). When faced with two competing claims about "common words that are . . . inordinately sensitive to context," *Smith v. United States*, 508 U.S. 223, 245 (1993) (Scalia, J., dissenting), a reasonable interpreter will find the "statute's backstory" helpful. *Fischer*, 603 U.S. at 513 (Barrett, J., dissenting). So it is here.

Flashback to late September 1987. Ronald Reagan is President. Los Lobos's "La Bamba" tops the charts. Judge Robert Heron Bork is shortly to face the Senate Judiciary Committee for hearings on his (doomed) nomination to this Court. And Michael Dolan, a reporter for the *Washington City Paper*, has his hands on an item about the nominee.

Dolan didn't have evidence of disqualifying indiscretions in Judge Bork's past, but he procured access to something that screams of-the-1980s even more than leg warmers and Jazzercise—a list of the Bork family's VHS tape rentals. The story hit the pavement that fall (it's 1987, the *City Paper* didn't have a website) and revealed little more than the fact that over two years, the Borks rented 146 videos (including, oddly enough, a Walter Matthau-Jill Clayburgh comedy about this Court). Dolan, *The Bork*

Tapes (referencing *First Monday in October* (Paramount 1981)).

It's universally agreed that *The Bork Tapes* didn't derail Bork's confirmation. In fact, it was one of the few things that drew senators from both sides of the aisle to the nominee's defense. And Dolan's sly suggestion that he might soon greenlight a sequel, *id.*, spurred Congress to ensure that the project could never be realized.

Enter the VPPA. It vests a "consumer" of "goods or services from a video tape service provider" with a civil action for damages if her private information, "includ[ing] information which identifies [her] as having requested or obtained specific video materials or services" is leaked by a provider or any other person. 18 U.S.C. § 2710.

Providers—the target of the law—are "any person, engaged in the business" of the "rental, sale, or delivery of prerecorded video cassette tapes or similar audiovisual materials." *Id.* § 2710(a)(4) (spelling modernized). Consumers—VPPA beneficiaries—are "any renter, purchaser, or subscriber of goods or services from a video tape service provider." *Id.* § 2710(a)(1). So "a 'consumer' of a 'video tape service provider' is someone who 'rents, purchases, or subscribes' to the 'good or service' that a 'video tape service provider' offers—that is, 'video cassette tapes or similar audiovisual materials.'" *Pileggi v. Wash. Newspaper Publ'g Co.*, 146 F.4th 1219, 1232 (D.C. Cir. 2025) (quoting 18 U.S.C. § 2710(a)) (brackets omitted, spelling modernized).

Salazar doesn't care for that. He simply notes that the VPPA talks of "goods or services" and he receives a free newsletter. 18 U.S.C. § 2710(a)(1). But no reasonable interpreter relies on a text that way—"a vacuum is no home for a textualist," *Biden v. Nebraska*, 600 U.S. 477, 517 (2023) (Barrett, J., concurring), who must interpret statutes "in light of" the "text and context, not in the abstract." *Delaware v. Pennsylvania*, 598 U.S. 115, 127 (2023) (internal quotation marks and citation omitted). Just as the Sarbanes-Oxley Act was designed to prevent a rerun of the Enron scandal, and its text didn't capture tossing an illegal catch overboard, *Yates v. United States*, 574 U.S. 528, 532 (2015) (Ginsburg, J., plurality), the VPPA's backstory informs a narrower reading of the statute.

Acknowledging the Act's genesis allows an interpreter to take all of Congress's choices seriously. If we know the backstory, we also know why the VPPA isn't called the All Purchases from a Video Provider Privacy Protection Act. *Dubin v. United States*, 599 U.S. 110, 121 (2023) (noting that "the title Congress chose is among those terms" that informs the meaning of the statutory text). And why § 2710's heading is the "[w]rongful disclosure of video tape rental or sale records," not the "wrongful disclosure of general purchase history." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 180–82 (2012) (title and headings of statute are permissible interpretive guides). And it explains the Act's provision of statutory damages as a rough price for a relatively rare injury—not an incentive for serial, mass tort class actions.

That doesn't make the Act a "dinosaur statute" cabined to a particular place and time. *Salazar v. NBA*, 118 F.4th 533, 553 (2d Cir. 2024). Give Congress its due: it knew that video tapes might not dominate longform A/V content in the future. So the statute didn't limit itself to revelations of returned video tapes, but the renting, purchase, or subscription of all "similar audiovisual materials" to movie rentals. 18 U.S.C. § 2710(a) (spelling modernized). That's just more evidence that Congress intended to narrowly capture the kind of thing that happened to Judge Bork—the exposure of one's private home movie viewing.

Salazar isn't a consumer under the statute—full stop.

II. PERSONALIZED ADVERTISING IS BENEFICIAL.

There's no such thing as a free e-newsletter. Paramount's offering 247Sports because it's a revenue opportunity, and that money comes from licensing user data for personalized ads. If it didn't do that, Paramount would likely either need to put up a paywall or shutter the newsletter entirely. That would disrupt a good deal—not just for Paramount, but for Salazar's entire class.

A. Personalized advertising is welfare-maximizing.

Targeted advertising isn't new. Sigmund Sameth, *They've Got You on a List*, Saturday Evening Post (Nov. 11, 1944) ("Mailed advertising is economical only when it is beamed at a specialized group—6000 New York executives with preschool

children . . . or 224,000 buyers of 15-cent dress patterns").

Modern technology makes personalized ads better than ever. Firms can nimbly place tailored promotions in front of specific viewers. All of us are looking for products and services that can meet a need—so when we receive a targeted pitch, we "on average find [it] more 'relevant' compared to untargeted ones, and spend less time searching for firms and their products to match [our] interests." Lau at 5. That's a win/win. No company ever wants to waste time and money going after the disinterested. And consumers don't want to squander their time and attention scrolling past ads for stuff they don't like.

And because targeted advertising increases efficiency in finding consumers (because each additional advertising dollar is more likely to yield a product-purchasing match), firms can save money without reducing output. *See id.* at 6, 11–12. Those savings can be used to reward shareholders, invest in innovation, or to reduce prices. In short, personalized ads help markets clear and generate wealth creation. If no law forbids them—and the VPPA doesn't—this good thing shouldn't come to an end.

B. Without personalized advertising, the internet would be smaller and more expensive.

In 1984, Stewart Brand noted a seeming paradox. "[I]nformation sort of wants to be expensive because it is so valuable—the right information in the right place just changes your life." Joshua Gans, *"Information Wants to be Free": The History of That Quote*, Digitopoly (Oct. 25, 2015); https://perma.cc/

3SWK-G6M4. "On the other hand, information almost wants to be free because the costs of getting it out is getting lower and lower all of the time." *Id.* (emphasis omitted).

So it is today. The right information at the right time—everything from the present price of a publicly traded stock to a copy of *The Iliad* to a vacancy at a dream employer—remains valuable. And thanks to the Nation's telecommunications infrastructure and the innovative capacities unleashed by the American free-market system, this information comes to us on command, virtually instantly, right to the palm of our hand (or, with wireless headphones, directly to our ears).

Much of that information travels without hitting our bank accounts or credit card statements. Ads—especially personalized ones—allow that. But give the VPPA Salazar's interpretation and the internet won't just become chockablock with untailored, largely useless ads. Since those ads won't generate sufficient revenue, more of the internet will go behind a paywall or (if there's insufficient demand at a profit-making market price for any given online product) be deleted for good. No American—least of all those with modest means—will benefit from information becoming harder to come by.

You might think the fallout minimal since the Act reaches only patrons of "video tape service providers." But that limiting principle is illusory. Recall that under Salazar's theory, "a plaintiff could purchase a single ticket at a baseball game [or subscribe to some free for-fans product] and then sue the baseball team's owner after watching a free video

on the team's website years later." *Pileggi*, 146 F.4th at 1233. No firm could ever be sure that *any* viewer of its online A/V materials wasn't such a "consumer." BIO 14. As a result, rational actors will cease sharing any data about visitors to their websites to preclude liability. *Id*. Especially since future plaintiffs will almost certainly argue, as Salazar did below, Pet. App. 4a, n.3, that merely signing up for a free online thing is an ask for "similar" enough embedded audiovisual material to trigger the VPPA. 18 U.S.C. § 2710(a)(4). To be safe, pretty much any online content provider collecting user data—and that's quite a bit of the internet—must consider itself a "video tape service provider."

C. The opt-in provision is no panacea.

While this suit is designed to stake "targeted advertising on the [i]nternet," BIO 1, the dissent below rejected that outcome as an implausible "doomsday scenario." Pet. App. 37a (Bloomekatz, J., dissenting). Why? Because "[m]any websites already ask for various forms of consent" and the VPPA permits a consumer opt-in to data-sharing. *Id*; 18 U.S.C. § 2710(b)(2)(B). If it were that easy, it wouldn't make sense for Paramount and other going concerns to have spent so much time and scarce resources arguing these cases across the Nation. Pet. 13–17 (collecting cases). Firms commit at this level because a material aspect of their business model is on the line—not for a "nice to have."

So it's no shock that the VPPA makes obtaining permission harder and more expensive to secure than it needs to be. 18 U.S.C. § 2710(b)(2)(B). Section 2710(b)(2)(B) allows a provider to disclose identifying

information about a consumer—but only if she provides a separate, written blanket consent for either a "set period of time, not to exceed 2 years" or if a provider secures her permission literally every time it wishes to share her data. *Id.*

So opt-ins must be repeatedly obtained, and a certain (maybe even critical) percentage will decline the invitation. That increases the cost of procuring monetizable data *and* reduces the amount of it that any given firm will have. That means things won't hold constant if Salazar gets his way. The opt-in provision might mitigate pressure to paywall-or-delete online products, but it's no cure-all—revenues will still have to catch up someway and somehow.

And because consumers may "withdraw [consent] on a case-by-case basis or" from all "ongoing disclosures, at [her] election," *id.* § 2710(b)(2)(B)(iii), that means a company's universe of data will always be in flux. The VPPA is unforgiving—any knowing disclosure of customer data brings liability. 18 U.S.C. § 2710(b)(1). Since customer data is constantly used to create personalized advertising, yet permission may be yanked back instantly, there's always a serious risk that a company will receive an opt-out (knowledge, as the statute calls it) before an instruction can be sent to cease using that file for targeted ads. That risk alone will chill the beneficial use of any customer data a provider has.

In short, the opt-in doesn't work because it increases transaction costs and legal uncertainty. It's no roadblock to Salazar's mission of "challenging targeted advertising on the free [i]nternet." BIO 21.

CONCLUSION

Salazar wants to ignore the VPPA's backstory to get a backdoor restriction on personalized ads. The lower court was right to reject that gambit. This Court should affirm.

Respectfully submitted,

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