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

AMICUS BRIEF OF NATIONAL RETAIL FEDERATION IN SUPPORT OF RESPONDENT

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June 30, 2026

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
A. The VPPA Applies Only to Companies Engaged in the Business of Renting, Selling, or Delivering Video Tapes and Similar Materials to Consumers	4
B. Adopting Petitioner's Interpretation Would Expose Retailers to Significant Liability and Have Wide-Ranging Consequences	6
C. An Expansive Reading of the VPPA Does Not Give Fair Notice of Prohibited Conduct and Would Effectively Eliminate the Use of Videos By Retailers	10
CONCLUSION	12

TABLE OF AUTHORITIES

CASES Page(s)

Bouie v. City of Columbia, 378 U.S. 347 (1964) 10

FCC v. Fox Television Stations, Inc., 567 U.S. 239 (2012) 10

Hernandez v. Container Store, Inc., No. 2:23-cv-05067-HDV-RAO, 2024 WL 72657 (C.D. Cal. Jan. 3, 2024) 8

Pileggi v. Wash. Newspaper Publ'g Co., LLC, 146 F.4th 1219 (D.C. Cir. 2025) 9, 10

Salazar v. Nat'l Basketball Ass'n, 118 F.4th 533 (2d Cir. 2024) 6

Salazar v. Paramount Glob., 133 F.4th 642 (6th Cir. 2025) 4

STATUTES

18 U.S.C. §§ 2510–2523) 5

18 U.S.C. § 2710(a)(1) 4

18 U.S.C. § 2710(a)(4) 4

18 U.S.C. § 2710(b)(1) 4

Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848. 5

COURT FILINGS

Brief for Amicus Curiae Chamber of Commerce, *Salazar v. Paramount Global*, 133 F.4th 642 (6th Cir., 2025) (No. 23-5748), Dkt. No. 20 9

TABLE OF AUTHORITIES—Continued

Page(s)

Complaint, *Lam v. Books-A-Million, Inc.*, No. 6:22-cv-01717 (M.D. Fla. Sept. 9, 2022) 8-9

Complaint, *Tawam v. Godiva Chocolatier Inc.*, No. 37-2023-00003071-CU-CR-CTL (San Diego, Cal. Super. Ct. Jan. 24, 2023) 8

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INTEREST OF AMICUS CURIAE NATIONAL RETAIL FEDERATION[1]

Established in 1911, the National Retail Foundation ("NRF") is the world's largest retail trade association. Retail is the largest private-sector employer in the United States, supporting more than one in four United States jobs—approximately 55 million American workers—and contributing $5.3 trillion to the annual GDP.

NRF represents retailers of all sizes, formats, and channels of distribution. NRF's members include discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers from the United States and more than 45 other countries.

Many of NRF's members sell goods and services online through websites that feature videos. These free short-form videos—most of which last less than a minute—help customers preview, evaluate, assemble, install, maintain, and use the myriad goods and services that retailers sell.

Retailers also offer consumers the opportunity to sign up for online accounts or to receive emails from the store. These modes of consumer-focused interactions help retailers inform customers and potential customers about products, trends, sales, member benefits, shipping status, returns, warranty information, and countless other topics.

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[1] No counsel for any party authored the brief in whole or in part, and no party, counsel for a party or entity other than amicus curiae, its members, and its counsel made a monetary contribution intended to fund the brief's preparation or submission.

In recent years, retailers have faced a surge of class action litigation brought under the Video Privacy Protection Act ("VPPA")—a statute enacted nearly four decades ago—for offering video content on their websites. The plaintiffs' claims are premised on the theory that any business that (1) offers video content, and (2) allows consumers to subscribe to email communications or register for an account is automatically transformed into a video tape service provider under the VPPA—even when the videos and email subscriptions or account registrations are entirely unconnected.

NRF files this Amicus Brief to provide the Court with the retail sector's perspective on the detrimental effect that Petitioner's overly expansive view of the VPPA has on NRF members and the retail industry at large. The VPPA should be limited to its plain meaning: protecting consumers' right to keep private the titles of audio-visual material that they have subscribed to, purchased, or rented from companies like Blockbuster and Netflix that are engaged in the business of selling, renting, or delivering audio-visual content. The VPPA is not and was never intended to be a general-purpose privacy regime that ensnares anyone, including retailers, just because they offer helpful product information in video form. The Court should affirm the Sixth Circuit's decision.

SUMMARY OF ARGUMENT

Today's digital media landscape is markedly different than it was in 1988, when the VPPA was enacted. As commentators and courts have observed, the VPPA was enacted when videos were VHS tapes that were purchased or rented from businesses such as Blockbuster. In the decades since 1988, online

streaming services such as Netflix have replaced most brick-and-mortar video stores—a technological transition that Congress contemplated the VPPA could address.

But with the rise of the Internet, companies other than video tape service providers began using short-form videos on their websites to supplement information that was traditionally communicated with pictures, illustrations, and text alone. Those businesses are not selling, renting, or delivering video content to consumers like Blockbuster did or Netflix still does. They are merely posting free, short-form video clips to their website as a resource for consumers seeking a better understanding of those businesses' products or services.

Petitioner puts this valuable consumer resource at risk by asking the Court to convert the VPPA into a general data privacy act that treats any website that posts even just one video as "video tape service provider" and any web visitor that signs up for an account or to receive emails from the website as a "consumer" even when the emails the visitor receives or the account they signed up for are not related to or required to access the website's videos. This arbitrary and overbroad application of the VPPA is not in line with the statutory language or the purpose and intent of the VPPA. It also threatens potential massive and unforeseen liability on retailers that Congress never intended when it adopted the VPPA in 1988.

NRF urges the Court to uphold the Sixth Circuit's well-reasoned opinion that limits the VPPA to the natural application of its text.

ARGUMENT

A. The VPPA Applies Only to Companies Engaged in the Business of Renting, Selling, or Delivering Video Tapes and Similar Materials to Consumers.

Congress enacted the VPPA in 1988 to prohibit a "video tape service provider" from "knowingly disclos[ing], to any person, personally identifiable information concerning any consumer of such provider." 18 U.S.C. § 2710(b)(1).

The statute defines "video tape service provider," in relevant part, as "any person, engaged in the business . . . of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." *Id.* (a)(4). The term "consumer" is defined as "any renter, purchaser, or subscriber of goods or services from a video tape service provider." *Id.* (a)(1). Read together, a person qualifies as a "consumer" under the VPPA only when they rent, purchase, or subscribe to prerecorded video cassette tapes or similar audio visual materials from a business engaged in the rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.

The Sixth Circuit affirmed this natural reading of the VPPA. *Salazar v. Paramount Glob.*, 133 F.4th 642, 650–51 (6th Cir. 2025) (holding "a person is a 'consumer' only when he subscribes to 'goods or services' in the nature of 'video cassette tapes or similar audio visual materials'" (first quoting 18 U.S.C. § 2710(a)(1); then quoting *id.* (a)(4))). Its interpretation is rooted in the statute's plain language, supported by Congress's stated purpose for enacting the VPPA, and consistent with the events that prompted the legislative action to begin with.

The VPPA was passed in 1988 in the wake of a newspaper article that had published then-Supreme Court nominee Judge Robert H. Bork's video rental history. *See* S. Rept. No. 100-599, at 5 (1988). Outraged by this affront to privacy concerning what individuals choose to watch, *see id.* at 5–8, Congress quickly passed the VPPA with stiff statutory penalties to "preserve personal privacy with respect to the rental, purchase or delivery of video tapes or similar audio visual materials" and prevent the disclosure of a person's video viewing history by companies engaged in the business of renting, selling, or delivering audio visual content. *See* S. Rept. No. 100-599, at 1 (1988).

Compared to other general privacy statutes that Congress had contemporaneously enacted, such as the Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848 (codified as amended at 18 U.S.C. §§ 2510–2523), the VPPA was narrowly tailored to address the specific kind of privacy harm that Judge Bork experienced: disclosure of his specific transactions with a particular video store. S. Rept. No. 100-599, at 11–12 (1988). As noted in the 1988 Senate Report, "simply because a business is engaged in the sale or rental of video materials or services does not mean that all of its products or services are within the scope of the bill." *Id.* at 12. Thus, "a department store that sells video tapes would be required to extend privacy protection to only those transactions involving the purchase of video tapes and not other products." *Id.* Congress did not intend for the VPPA to govern any interaction or transaction a consumer has with a business merely because that business might use audio-visual content to promote, enhance, or educate consumers.

Despite the VPPA's limited scope, Petitioner argues that a person becomes a "consumer" simply "by renting, purchasing, or subscribing to '*any* of [a video tape service] provider's "goods or services"—audiovisual or not.'" Pet. Br. at 14–15 (quoting *Salazar v. Nat'l Basketball Ass'n*, 118 F.4th 533, 549 (2d Cir. 2024)). Thus, in Petitioner's view, anyone can wield the VPPA as a sword by signing up to receive emails or registering for an account regardless of whether that subscription or account has any connection to the free video content that the business offers to casual viewers on its website. *See* Pet. Br. at 19–20. Petitioner's reading of the VPPA exposes every retailer offering any form of video content to liability from any person regardless of what they might have purchased or obtained from the retailer. This overbroad application of the VPPA is not supported by the plain language of the statute and is not what Congress intended when it enacted the statute in 1988.

B. Adopting Petitioner's Interpretation Would Expose Retailers to Significant Liability and Have Wide-Ranging Consequences.

Petitioner's interpretation of the VPPA poses a significant threat to the retail industry. To elucidate the problem to the Court, this section addresses: (1) retailers' ubiquitous use of video media in e-commerce, (2) why retailers target consumers' interests, and (3) retailers' vulnerability to lawsuits under the VPPA.

First, videos and other digital media have become ubiquitous tools in this modern era of eCommerce. *See, e.g.* Jennifer D. Fisher, Executive Perspectives, *Retail Media Enters Its Creative Era*, Wall St. J.: CMO

Today (June 17, 2025);[2] Trey Robinson*, Understanding the Power of Video for Marketing*, Forbes (March 7, 2024);[3] Ivan Popov, *Why Digital Presence Is Not A Matter Of 'If' But 'When' For Businesses*, Forbes (July 12, 2023).[4] Ninety-one percent of businesses now use some form of video to engage customers and potential customers. *Video Marketing Statistics 2026*, Wyzowl (last visited June 19, 2026).[5] Marketing videos, for instance, help showcase products through dynamic, live action and real-life testimonials; whereas instructional videos help consumers know how to use or assemble the products. *See* Simon Wesierski, *The Power of Video in eCommerce*, Commerce-UI (last visited June 19, 2026) (showing examples of how video is used successfully by retailers).[6] And consumers want to see these videos: 63% of consumers prefer learning about products or services by video than by other forms of medium; 96% report watching videos that explain how product or services work; 85% report buying products or services after watching a video; and 84% report that they want to see *more* videos from brands. Wyzowl, *supra* n.5.

Second**,** retailers frequently curate and deliver content that is specific to consumers' interests by collecting information about how users interact with

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[2] https://deloitte.wsj.com/cmo/retail-media-enters-its-creative-era-f51e7864

[3] https://www.forbes.com/councils/forbesagencycouncil/2024/03/07/understanding-the-power-of-video-for-marketing/

[4] https://www.forbes.com/councils/forbesbusinesscouncil/2023/07/12/why-digital-presence-is-not-a-matter-of-if-but-when-for-businesses/

[5] https://wyzowl.com/video-marketing-statistics/

[6] https://commerce-ui.com/insights/the-power-of-video-in-ecommerce

the retailer's website or engage with information that is linked to emails. Targeted messaging provides benefits to retailers and consumers alike. More efficient advertising enables retailers to reach interested consumers more effectively, which in turn helps lower the price of goods. *See* Ash Johnson, *Banning Targeted Ads Would Sink the Internet Economy*, Information Technology & Innovation Foundation (Jan. 20, 2022).[7] And, consumers receive more valuable, personalized information from retailers about the goods and services they are interested in and less information about those they are not. *See* Deloitte Digital, *Personalization: It's a value exchange between brands and customers* (June 2024).[8]

Third, the number of VPPA class action lawsuits has increased in recent years as plaintiffs, like Petitioner, have tried to stretch the Blockbuster-era statute from video tape service providers to all modern e-commerce providers. *See* Archis Ashok Parasharami & Sophia Mancall-Bitel, *Pixel Tools Spur a New Wave of Class Action Litigation Under the Video Privacy Protection Act*, American Bar Association: Business Law Today (April 22, 2025).[9] Retailers have been increasingly targeted by these lawsuits. *See, e.g.*, *Hernandez v. Container Store, Inc.*, No. 2:23-cv-05067-HDV-RAO, 2024 WL 72657 (C.D. Cal. Jan. 3, 2024) (discussing VPPA lawsuit against Container Store, Inc.); Complaint, *Tawam v. Godiva Chocolatier Inc.*, No. 37-2023-00003071-CU-CR-CTL (San Diego, Cal. Super. Ct. Jan. 24, 2023); Complaint, *Lam v. Books-A-*

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[7] https://itif.org/publications/2022/01/20/banning-targeted-ads-would-sink-internet-economy/

[8] https://www.deloittedigital.com/content/dam/digital/us/documents/insights/insights-20240610-personalization-report.pdf

[9] https://www.americanbar.org/groups/business_law/resources/business-law-today/2025-april/pixel-tools-vppa-class-action/

Million, Inc., No. 6:22-cv-01717 (M.D. Fla. Sept. 9, 2022); *see also* Brief for Amicus Curiae Chamber of Commerce at 10–11, *Salazar v. Paramount Global*, 133 F.4th 642 (6th Cir., 2025) (No. 23-5748), Dkt. No. 20 (collecting examples of suits against various types of defendants).

Adopting Petitioner's overbroad interpretation of the VPPA would only proliferate these class action lawsuits, exposing retailers to significant liability given the sheer volume of online customers in today's digital economy. As one court observed:

> So each time a defendant transmits information about a single video that one plaintiff watched to a single third party, the court must award at least $2,500 . . . . This means that a defendant with a website that has 100 visitors who watch five videos apiece would be liable for at least $1.25 million in damages if it disclosed their video choices.

Pileggi v. Wash. Newspaper Publ'g Co., LLC, 146 F.4th 1219, 1233 (D.C. Cir. 2025). Of course, class action lawsuits rarely allege putative classes comprised of just one hundred members. VPPA class actions typically attempt to define the class as including all persons who viewed video content on a retailer's website and who signed up to receive email in the two years prior to the filing of the complaint. Depending on the website, those classes could include hundreds of thousands—if not millions—of putative class members, all of whom claim at least $2,500 in statutory damages under the VPPA. Not even the most well-funded businesses can survive a judgment of that sort, and thus the risk exposure alone frequently forces businesses to settle rather than defend against unmeritorious VPPA claims.

This litigation risk is compounded because complying with the VPPA under Petitioner's interpretation would be unworkable. For example, a plaintiff could purchase a single ticket at a baseball game and then sue years later after watching an informational video on the team's website. *See Pileggi*, 146 F.4th at 1233–34.

Petitioner's interpretation effectively distorts "consumer" into a status that follows each and every visitor to the retailer's entire website and potentially across time in a manner that would be virtually impossible for retailers to track.

C. An Expansive Reading of the VPPA Does Not Give Fair Notice of Prohibited Conduct and Would Effectively Eliminate the Use of Videos By Retailers.

Due process requires that the "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Due process considerations constrain courts from "unforeseeably and retroactively" expanding otherwise "narrow and precise statutory language." *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964).

Petitioner asks the Court to expand the VPPA to apply to businesses that do not sell or rent video content but instead use videos as tools for educating, instructing, and marketing to customers of non-video products or services. One potential consequence of this would be to retroactively create significant liability to any person who ever purchased anything or signed up to receive an email, and watched a video provided by the retailer. Retailers did not have "fair notice" of such a wide-ranging application of the VPPA. Indeed, such

liability would have been unfathomable to Congress when it adopted the VPPA in 1988.

Moreover, Petitioner's proposed interpretation of the VPPA would turn the statute into a catch-all privacy statute that regulates how businesses track and utilize website usage data. The likely fallout would be that retailers would have to choose whether to eliminate video content altogether, attempt to satisfy the VPPA's burdensome consent requirement, or try to somehow monitor and distinguish website visitors based on their past transactions with the business, which, notwithstanding technological advancements, is not currently feasible—especially given the patchwork of other privacy and data minimization laws that companies must comply with. As a practical matter, retailers would have little choice at all: the benefits of providing helpful video content that consumers desire would easily be outweighed by the significant risks posed under the VPPA.

CONCLUSION

NRF respectfully urges the Court to reject Petitioner's overbroad and harmful reading of the VPPA. Videos serve an important role for retailers and consumers alike in this modern digital age. Retailers should not be forced to choose between using free, short-form video to educate, instruct, or market to consumers who value the content and class action exposure under a 1988 statute that was adopted for the narrow purpose of protecting consumers' right to keep private the titles of videos they choose to subscribe to, purchase, or rent from video tape service providers. The Court should affirm.

Respectfully submitted,

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