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 CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

LEGISLATIVE MATERIALS

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber has a substantial interest in the resolution of this case, which raises issues at the heart of the Internet economy. Many of the Chamber's members engage in data sharing—a longstanding and routine business practice. Data sharing supports targeted advertising geared at a user's individual characteristics or revealed interests. Targeted advertising provides an important revenue stream for providers of online content, many of whom do not have a sufficiently widespread base of website visitors to support their operations through non-targeted advertising alone.

The petitioner here, and other plaintiffs in similar lawsuits, seek to impose far-reaching liability on this practice under the Video Privacy Protection Act

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[1] In accordance with this Court's Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

("VPPA")—and, ultimately, to alter the fundamental business model of targeted advertising. The Chamber's viewpoint will provide the Court with helpful context in interpreting the scope of the VPPA.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case asks whether a 1988 statute about video-rental records silently regulates the advertising economy of the modern Internet. Salazar's case boils down to a single observation: the word "video" does not appear immediately before "goods or services" in the VPPA's definition of "consumer." 18 U.S.C. § 2710(a)(1). Salazar infers from that omission that the VPPA—a statute enacted to protect the privacy of video rental records—is so broad as to apply to a person who bought breakfast cereal from a grocery store that happens to sell DVDs and then watched a video on the store's website. Salazar's reading is not textualism but literalism—the reading of a single phrase in isolation, stretched to its broadest dictionary limit, in defiance of everything around it. This Court has repeatedly rejected that method of interpreting statutes. Read as a whole, and as an ordinary English speaker would understand it, the definition of "consumer" reaches those who rent, purchase, or subscribe to a video tape service provider's *video* goods or services.

Context supplies that limitation. An ordinary reader would understand "goods or services from a video tape service provider" to refer to the goods or services characteristically obtained from a video tape service provider, just as "goods or services from a car

dealership" means a car, financing, or a repair, not a soda from the showroom vending machine. The same conclusion follows from the nearby language Congress chose: "renter, purchaser, or subscriber" describes the ways one obtained video in 1988 and fits nothing else. And it also follows from the statute's structure, in which the word "video" suffuses every title, heading, and operative provision. Salazar's contrary reading is not merely bad policy; it is wrong as a matter of meaning. A construction under which the privacy of a person's video viewing turns on whether he once bought an unrelated bag of chips has lost the thread of the words Congress wrote.

The consequences of Salazar's reading confirm its error. He does not seek a modest clarification of a video-privacy statute; he seeks to convert it into a federal instrument for regulating—and in practical effect abolishing—the targeted-advertising model that funds much of the Internet. Because a business cannot know which of its website visitors once bought some unrelated product, and because the statute imposes statutory damages of $2,500 per video, every business that hosts video would face a choice between turning off targeted advertising for everyone or extracting individualized consent before every video. That is the avowed aim of a nationwide wave of VPPA class actions against defendants in every sector of the economy. Congress enacted nothing of the kind. The VPPA was a narrow response to a discrete harm—a video clerk's disclosure of Judge Bork's rental history—at a time when the targeted-advertising ecosystem would have been science fiction and a cookie was a snack.

Finally, Salazar's reading is not only textually unnatural but also practically ruinous. Whether businesses respond by abandoning targeted advertising or by burying consumers under unceasing consent demands, the result is the same: a worse and costlier Internet. Targeted advertising subsidizes the free online content that consumers overwhelmingly prefer to paywalls, and its loss would fall hardest on the small businesses that depend on affordable, audience-specific advertising and on the consumers who would lose free access or face new fees. The alternative—endless VPPA consent banners—would only deepen the consent fatigue that plagues users' experience online. The judgment below should be affirmed.

ARGUMENT

I. Under the VPPA's Plain Text, a "Consumer" Must Rent, Purchase, or Subscribe to the Delivery of "Prerecorded Video Cassette Tapes or Similar Audio Visual Materials."

Salazar's case reduces to a single observation: the word "video" does not appear immediately before "goods or services" in the definition of "consumer." 18 U.S.C. § 2710(a)(1). From that lone omission he builds a statute that reaches the entire economy—one in which buying potato chips or a coffee mug from any company that also happens to post videos online makes a person a federally protected "consumer" under the VPPA.

Salazar insists this result is compelled by textualism. It is not. Textualism does not require reading a single phrase in isolation, assigning it "the broadest

imaginable" dictionary meaning, and ignoring everything around it. *Dubin v. United States*, 599 U.S. 110, 120 (2023). Read as a whole, and as an ordinary English speaker would understand it, the definition of "consumer" reaches those who rent, purchase, or subscribe to a video tape service provider's *video* goods or services.

A. Good textualism reads the whole text as an ordinary speaker would; it does not isolate one phrase and stretch it to its dictionary limit.

Textualism is not the mechanical maximization of a single phrase's dictionary range. It is the search for the meaning the words convey *in context* to an ordinary, reasonable reader.

Start with the foundational instruction: the Court's "duty" is "to construe statutes, not isolated provisions." *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 275 (2023) (quotation marks omitted). "[T]he Court must read the words Congress enacted 'in their context and with a view to their place in the overall statutory scheme.'" *Id.* (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)). The meaning of a word "may only become evident when placed in context," *Sackett v. EPA*, 598 U.S. 651, 674 (2023) (quotation marks omitted), and a phrase "cannot be construed in a vacuum," *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 441 (2019) (quotation marks omitted).

The reason these cases reject phrase-by-phrase literalism is that ordinary readers do not speak or understand language that way. "[T]wo words together may assume a more particular meaning than those

words in isolation." *FCC v. AT&T Inc.*, 562 U.S. 397, 406 (2011). Learned Hand put the point memorably: "the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes." *Helvering v. Gregory*, 69 F.2d 809, 810–11 (2d Cir. 1934), *aff'd*, 293 U.S. 465 (1935). And "[c]ontext . . . includes common sense," because "literalism—the antithesis of context-driven interpretation—falls short." *Biden v. Nebraska*, 600 U.S. 477, 512 (2023) (Barrett, J., concurring).

The U.S. Reports teem with cases applying that principle. In *Bond v. United States*, for example, the literal text of a chemical-weapons statute swept in a jilted spouse's use of caustic chemicals, yet the Court declined the literal reading because it clashed with the statute's evident concern and ordinary understanding. 572 U.S. 844, 860–66 (2014); *see also Yates v. United States*, 574 U.S. 528, 536 (2015) (finding that the phrase "tangible object," in context, did not encompass a fish). The lesson of *Bond* and *Yates* is that when a broad, isolated term would carry a statute far past its evident subject, the broad reading is *wrong as a matter of meaning*—not merely unwise as a matter of policy.

The upshot is straightforward. Salazar's argument depends entirely on the claim that "goods or services," standing utterly alone, is unlimited. Even granting that premise about the phrase *in isolation*, it proves nothing. The question is not what "goods or services" could mean stripped of its setting; it is what "renter, purchaser, or subscriber of goods or services *from a video tape service provider*" means as a whole, to an ordinary reader, in a

statute called the Video Privacy Protection Act. 18 U.S.C. § 2710(a)(1).

B. In context, an ordinary speaker understands "goods or services from a video tape service provider" to mean the video goods and services such a provider characteristically supplies.

Read the full phrase the way people actually use language, and the answer is plain. A "consumer" is "any renter, purchaser, or subscriber of goods or services from a video tape service provider." 18 U.S.C. § 2710(a)(1) The statute then defines that provider as one "engaged in the business . . . of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." *Id.* § 2710(a)(4). "Putting the words together," a consumer of "a video tape service provider" is "someone who rent[s], purchase[s], or subscribe[s] to the good or service that a video tape service provider offers—that is, video cassette tapes or similar audio visual materials." *Pileggi v. Wash. Newspaper Publ'g Co.*, 146 F.4th 1219, 1232 (D.C. Cir. 2025) (internal quotation marks omitted), *petition for cert. filed*, 94 U.S.L.W. 3284 (U.S. Mar. 4, 2026) (No. 25-1040).

That is not a limitation smuggled in from outside the text. It is the limitation the text supplies through the words "from a video tape service provider." Congress coined and deployed a *status term*—"video tape service provider"—that identifies a person by reference to a particular line of trade, *i.e.*, the provision of video tapes. When a statute refers to the goods or services that come "from" an actor identified by a particular line of trade,

the ordinary reader understands the statute to refer to the goods or services associated with that line of trade.

Salazar insists that, unless Congress wrote the word "video" a second time, "goods or services" must mean *everything*. But ordinary language does not work by belt-and-suspenders repetition. Speakers omit a qualifier precisely when context already supplies it—and listeners fill it in automatically. When we say a dish is "from the Italian place," or that a song is "from a country artist," we are not merely locating a source; we are also signaling the kind of thing it is. Likewise, tell someone "Get whatever you want from the coffee shop," and they will not return with a lottery ticket the shop happened to sell. They will bring coffee, or something coffee-shop-adjacent, because that is what "from the coffee shop" conveys. The preposition "from" does double duty in ordinary speech—origin and, by implication, kind—because we identify the source by what it characteristically produces.

Thus, to the ordinary English speaker, a statute protecting anyone who obtains "goods or services from a car dealership" would protect a person who obtained a car, financing, or a repair from that dealership, not a person who bought a can of soda from the showroom vending machine and obtained a vehicle elsewhere. Congress wrote the VPPA in exactly that register: it identified the regulated actor by its line of trade and then defined "consumer" by reference to that actor.

Congress's use of the unadorned phrase "goods or services" is best understood as a means of redundancy avoidance. Suppose a friend says, "I'm a regular customer of the bakery down the street." You do not ask

whether he means a customer of *bread* or instead of postage stamps the store might happen to sell at the register. The subject matter is supplied by "bakery." Had he said "I'm a regular *bread* customer of the bakery," the added word would sound oddly redundant—as if he needed to clarify that a bakery sells bread. Congress faced the same choice. To write "video goods or services from a video tape service provider" would have been to say "video" twice in seven words. Congress instead let the defined term carry the subject matter once—exactly as ordinary speakers do. The absence of a second "video" is evidence of plain English drafting, not of boundlessness.

And "video" does not merely appear in the definition of "consumer." The word "video" "suffuses the statute." *Pileggi*, 146 F.4th at 1233. It is the first word of the title—the "Video Privacy Protection Act." It is the title of the codified section—"Wrongful disclosure of *video* tape rental or sale records." It is the heading of the very subsection that creates liability—"*Video* Tape Rental and Sale Records." It appears in the title, repeatedly in the definitional section, and over a dozen times in the statute as a whole. *Id.* A statute that cannot complete a thought without invoking "video" is not plausibly read to regulate the privacy of potato-chip purchases.

Cementing the point, no liability attaches unless the disclosed information identifies the "title, description, or subject matter of any *video* tapes or other audio visual material" a consumer acquired. 18 U.S.C. § 2710(b)(2)(D)(ii). Thus, Congress was protecting consumers of actual video services, not building a

general consumer-privacy statute for everyone who ever bought anything from a company with a video page.

C. The nearby language Congress chose—"renter, purchaser, or subscriber"—confirms that Salazar's unbounded interpretation is wrong.

The VPPA's nearby language provide an additional contextual clue. Had Congress meant to reach consumers of goods and services in general, the natural drafting would have used a single, capacious term—"any consumer," "anyone who acquires," or "any buyer." Instead Congress specified three particular modes of acquisition: "renter, purchaser, or subscriber." 18 U.S.C. § 2710(a)(1). That triad is not a random sampling of ways to obtain things; it is a closely fitted description of the ways one obtains *video*.

Most goods and services can be acquired in one or two of these modes, but not all three. You can rent a car or an apartment, but you cannot subscribe to one. You can subscribe to a magazine or a newspaper, but you cannot rent one. You can purchase a candy bar, but you neither rent nor subscribe to it. The one category of consumer offering that an ordinary person in 1988 could rent *and* purchase *and* subscribe to was video: a person rented a tape from the corner store, bought a cassette off the shelf, or subscribed to a video service such as a premium movie channel or a tape-of-the-month club. Thus, when Congress defined "consumer" as a "renter, purchaser, or subscriber," the enumeration itself points to the subject matter for which all three words are apt—audiovisual content.

The point is especially clear for "subscriber"—the only term Salazar can invoke. In 1988, to "subscribe" was to pay, in advance and on a continuing basis, for something furnished over time. For example, one could subscribe to cable television by paying a monthly subscription fee every month. *See* Resp. Br. 5, 22-23 (describing video subscription services as they existed in 1988); S. Rep. No. 100-599, at 3 (1988), *as reprinted in*, 1988 U.S.C.C.A.N. 4342-1, 4342-3 (discussing privacy protections for cable subscribers—the sole reference to "subscribers" in the VPPA's Senate Report). Free email "newsletters" did not exist. Reading "subscriber" to mean the recipient of a free promotional email imports a present-day usage into a 1988 statute, and it wrenches "subscriber" out of the rent-buy-subscribe triad in which Congress placed it—for no one would say a person "rents" or "purchases" a free newsletter.

The three nouns also track the nouns Congress used to define the provider. A "video tape service provider" is engaged in "*rental, sale, or delivery*" of video. 18 U.S.C. § 2710(a)(4). A "consumer" is a "*renter, purchaser, or subscriber*" of its goods or services. *Id.* § 2710(a)(1). Renter to rental; purchaser to sale; subscriber to (ongoing) delivery. The supply-side terms in (a)(4) take unambiguously video objects—"prerecorded video cassette tapes or similar audio visual materials." The demand-side terms in (a)(1) mirror them. That parallelism is powerful evidence that the two definitions lock together around a single subject matter: video.

The order matters, too. A list like this is naturally read with its most prominent member first, and

Congress led with "renter." That would be a strange choice if the statute concerned goods and services at large: most goods are bought rather than rented, so one would expect "purchaser" to head the list. Leading with "renter" makes sense only against a video backdrop. In 1988, renting was by far the most common way Americans obtained video—prerecorded tapes were expensive to own and the neighborhood video-rental store was a fixture of American life. *See, e.g.*, U.S. Dep't of Commerce, *1992 Census of Service Industries*, at 352-62 tbl. 30 (1996), https://www2.census.gov/library/publications/economic-census/1992/service-industries/sc92-s-4.pdf (noting that rental market for videotapes was substantially larger than sales market). It was a rental history, after all, that exposed Judge Bork and prompted the VPPA. Congress fronted "renter" because renting was the dominant mode of the video consumption it set out to protect.

D. Salazar's "Congress used 'video' elsewhere" argument fails.

Salazar's primary structural argument is that Congress wrote "specific video materials or services" in the definition of "personally identifiable information," 18 U.S.C. § 2710(a)(3), but only "goods or services" in the definition of "consumer," *id.* § 2710(a)(1)—so, he says, the latter must be broader. Pet. Br. 22–30.

The argument fails. Salazar's meaningful-variation argument assumes that (a)(1) and (a)(3) are grammatically parallel clauses describing the same kind of subject matter, so that the presence of "video" in one and its absence in the other must signal a difference in breadth. But the clauses are not parallel, and the word

that exposes the difference is one Salazar's argument quietly drops: "*specific*." Section 2710(a)(3) protects information identifying a person "as having requested or obtained *specific* video materials or services." 18 U.S.C. § 2710(a)(3) (emphasis added). That clause is not defining who is a protected person; it is defining *what* is protected—the particular title or program a consumer watched. "Specific video materials" means *this film, that show*. The modifier "video" travels with "specific" to pin the protected fact down to individual works. There is no "specific" in (a)(1), because (a)(1) is doing a wholly different job—identifying who is protected rather than identifying the protected fact.

E. The potato-chips anomaly is not just bad policy; it shows Salazar has misread the words.

On Salazar's reading, two people can watch the very same free videos on the very same website, with identical interests in the privacy of their viewing, yet only one of them is a protected "consumer"—because that one, at some unknown earlier time, bought a bag of potato chips from a grocery store that happened to stock DVDs, while the other bought identical chips from a store with no DVD rack. The federal privacy protection for your *video* viewing would turn on a wholly unrelated *snack* purchase. *Accord Pileggi*, 146 F.4th at 1233 (plaintiff "could purchase a single ticket at a baseball game and then sue the baseball team's owner after watching a free video on the team's website years later"). That line is both arbitrary and inexplicable.

This is not merely a complaint that Salazar's rule makes for bad policy—though it does. It bears directly on *meaning*. This Court treats an interpretation that

yields arbitrary or incongruous applications as a signal that the interpretation has departed from the words' ordinary sense. That is the logic of *Bond* and *Yates*: the literal reading was rejected because it produced applications no ordinary reader would think the words reached. *Bond*, 572 U.S. at 860–66; *Yates*, 574 U.S. at 540. When a construction of "goods or services" makes federal video-privacy rights hinge on chip purchases, the construction has lost the thread of the words.

Moreover, the potato-chips hypothetical makes nonsense of the rest of the VPPA. The VPPA "creat[es] liability only for the transmission of a consumer's personally identifiable video information," and so "the statute presumes that video tape service providers know whether someone is a 'consumer' of their goods or services." *Pileggi*, 146 F.4th at 1234. That presumption only makes sense if "consumer" denotes the video relationship the provider can actually identify—the customer it rented or sold or delivered video to. A provider has no way to know, and the statute gives it no reason to care, whether a given website visitor once bought chips. Salazar's reading would force providers to "assume that all visitors to their websites are consumers," which "would leave the term 'consumer' 'no work to do.'" *Id.* at 1234 (quoting *Fischer v. United States*, 603 U.S. 480, 490 (2024)).

Salazar would tether the defendant to video but cut the *plaintiff's* triggering transaction loose from video entirely. Why would Congress carefully define the regulated actor by its video business, yet allow the qualifying transaction to be the purchase of anything at

all? The correct reading keeps *both* ends of the relationship video-tethered.

II. Salazar's Reading Would Compel a Sweeping and Harmful Transformation of the Internet that Congress Never Intended.

Salazar seeks to convert a 1988 law about video-rental records into a federal instrument for regulating—and in practical effect abolishing—the targeted-advertising model that underwrites much of the modern Internet. Congress did no such thing in the VPPA. Adopting Salazar's interpretation of the VPPA would have harmful consequences that Congress could not have imagined, much less intended.

A. Salazar's reading would conscript the VPPA into a de facto ban on targeted advertising.

Under Salazar's reading of the VPPA, any business that posts videos on its website—and allows ordinary web-analytics tools to share viewing data with a third party such as a social-media platform—faces class-action liability of $2,500 per video, 18 U.S.C. § 2710(c)(2)(A), as to any viewer who also, at any point, bought or subscribed to anything from the business.

The trouble is that, if Salazar's interpretation prevails, a business has no way to sort the protected viewers from the rest. A breakfast-cereal company that hosts recipe videos cannot know whether a given visitor to its website once bought a box of its cereal years earlier. A sports-news site cannot know whether a video viewer once subscribed to a newsletter, bought a hat, or purchased nothing at all. Because the triggering transaction (Salazar says) can be *any* purchase or

subscription, and because that transaction is invisible to the provider at the moment of disclosure, every viewer becomes a potential class member.

That leaves businesses with only two options, both ruinous to the prevailing model of ad-supported online content. They can stop sharing viewing data for targeted advertising altogether—turning off, for all viewers, the revenue engine that funds free online content. Or they can attempt to obtain individualized, informed, written consent from every viewer before every video, the only safe harbor the statute provides. 18 U.S.C. § 2710(b)(2). Neither is workable at Internet scale, and the predictable result is the first: the wholesale abandonment of targeted advertising by any business unwilling to bet its solvency on the hope that no viewer ever bought anything.

This is not a marginal effect at the edges of the statute; it is the deliberate object of a nationwide wave of VPPA class actions. Plaintiffs across the country have filed VPPA claims like this one against businesses from every sector of the economy, ranging from print media publishers and movie theatres,[2] to advocacy groups,[3] to

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[2] *Bretto v. AMC Ent. Holdings, Inc.*, No. 23-cv-2317, 2025 WL 2144996 (D. Kan. July 29, 2025); *Braun v. Phila. Inquirer, LLC*, No. 22-cv-4185, 2025 WL 1314089 (E.D. Pa. May 6, 2025); *Lee v. Springer Nature Am., Inc.*, 769 F. Supp. 3d 234, 243 (S.D.N.Y. 2025); *Osheske v. Silver Cinemas Acquisition Co.*, 132 F.4th 1110 (9th Cir. 2025); *Berryman v. Reading Int'l, Inc.*, 763 F. Supp. 3d 596, 599 (S.D.N.Y. 2025).

[3] *Chandra v. Prager Univ. Found.*, No. 25-cv-3984, 2025 WL 3049870 (C.D. Cal. Oct. 21, 2025).

sports leagues,[4] to health and fitness websites,[5] to parenting-advice companies,[6] to chess websites,[7] to crafting websites,[8] to nursing training services,[9] to notary training services,[10] to media and entertainment

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[4] *Joiner v. NHL Enters., Inc.*, No. 23-cv-2083, 2025 WL 3126106 (S.D.N.Y. Sept. 29, 2025); *Hughes v. NFL*, No. 24-2656, 2025 WL 1720295 (2d Cir. June 20, 2025), *cert. denied*, No. 25-868, 2026 WL 642810 (U.S. Mar. 9, 2026); *Wong v. MLB Advanced Media, L.P.*, No. 24-CV-00779, 2025 WL 2180445 (N.D. Cal. Jan. 22, 2025).

[5] *Manza v. Pesi, Inc.*, 784 F. Supp. 3d 1110, 1114 (W.D. Wis. 2025); *Sarhadi v. Pear Health Labs, Inc.*, No. 24-cv-7921, 2025 WL 1350033 (N.D. Cal. Apr. 18, 2025); *Jancik v. WebMD LLC*, No. 22-CV-644, 2025 WL 560705 (N.D. Ga. Feb. 20, 2025)

[6] *Carruth v. KD Creatives, Inc.*, No. 2:24-cv-2484, 2025 WL 2623291 (E.D. Cal. Sept. 11, 2025).

[7] *Krueger v. Chess.com, LLC*, No. 24-cv-5722, 2025 WL 2765375 (N.D. Ill. Sept. 28, 2025).

[8] *Croteau v. TN Mktg., LLC*, No. 25-CV-0940, 2026 WL 810813 (D. Minn. Mar. 24, 2026)

[9] *Benson v. SimpleNursing, LLC*, No. 24-1118, 2026 WL 1045614 (D. Del. Apr. 17, 2026).

[10] *Turner v. Nat'l Notary Ass'n*, No. CV 25-0334, 2026 WL 947171 (C.D. Cal. Mar. 27, 2026).

companies,[11] to professional networking sites,[12] to universities and instructional websites,[13] to every other

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[11] *Korn v. Simplilearn Ams. Inc.*, No. 25-10461, 2026 WL 472984 (D. Mass. Feb. 19, 2026); *Simon v. Scripps Networks, LLC*, No. 24-cv-8175, 2025 WL 3167915 (S.D.N.Y. Nov. 13, 2025); *Glinoga v. Sullivan Ent. Inc.*, No. 25-cv-707, 2025 WL 3035032 (S.D. Cal. Oct. 30, 2025); *Riley v. Zeus Networks, LLC*, No. 24-cv-13120, 2025 WL 2793753 (D. Mass. Sept. 30, 2025); *Mull v. Gotham Distrib. Corp.*, No. 24-cv-6083, 2025 WL 2712215 (E.D. Pa. Sept. 22, 2025); *Balestrieri v. SportsEdTV, Inc.*, No. 25-cv-4046, 2025 WL 2776356 (N.D. Cal. Sept. 16, 2025); *Taino v. Bow Tie Cinemas, LLC*, No. 23-cv-5371, 2025 WL 2652730 (S.D.N.Y. Sept. 16, 2025); *Hossain v. Mediastar Ltd.*, No. 24-cv-1201, 2025 WL 2578128 (S.D.N.Y. Sept. 5, 2025); *Golden v. NBCUniversal Media, LLC*, No. 22-cv-9858, 2025 WL 2530689 (S.D.N.Y. Sept. 3, 2025), *aff'd*, No. 25-2226, 2026 WL 1098473 (2d Cir. Apr. 23, 2026); *Plotsker v. Envato Pty. Ltd.*, No. 24-cv-4412, 2025 WL 2481422 (C.D. Cal. Aug. 26, 2025); *Morrison v. Yippee Ent., Inc.*, No. 24-7235, 2025 WL 2389424 (9th Cir. Aug. 18, 2025); *Garcia v. Bandai Namco Ent. Am. Inc.*, No. 25-cv-967, 2025 WL 2451033 (C.D. Cal. Aug. 7, 2025); *Nixon v. Pond5, Inc.*, No. 24-cv-5823, 2025 WL 2030303 (S.D.N.Y. July 21, 2025); *Joseph v. IGN Ent., Inc.*, No. 24-cv-11579, 2025 WL 2597913 (D. Mass. July 10, 2025); *Archer v. NBCUniversal Media, LLC*, 794 F. Supp. 3d 716 (C.D. Cal. 2025); *Ballard v. Insomniac Holdings, LLC*, No. 25-cv-811, 2025 WL 1696558 (N.D. Cal. June 17, 2025); *Hoang To v. DirectToU, LLC*, No. 24-cv-6447, 2025 WL 1676858 (N.D. Cal. June 13, 2025); *Stark v. Patreon, Inc.*, No. 22-cv-3131, 2025 WL 1592736 (N.D. Cal. June 5, 2025); *Beagle v. Amazon.com, Inc.*, No. 24-cv-316, 2025 WL 1782958 (W.D. Wash. May 30, 2025), *appeal docketed*, No. 25-3989 (9th Cir. June 26, 2025); *Therrien v. Hearst Television, Inc.*, No. 23-cv-10998, 2025 WL 1208535 (D. Mass. Apr. 25, 2025), *appeal docketed*, No. 25-1487 (1st Cir. May 21, 2025); *N.Z. v. Fenxi Int'l Ltd.*, No. 8:24-cv-1655, 2025 WL 1122493 (C.D. Cal. Apr. 9, 2025); *Shapiro v. Peacock TV*, No. 23-cv-6345, 2025 WL 968519 (S.D.N.Y. Mar. 31, 2025); *Afriyie v. NBCUniversal Media, LLC*, 775 F. Supp. 3d 791 (S.D.N.Y. 2025); *Edwards v. MUBI, Inc.*, 773 F. Supp. 3d 868 (N.D. Cal. 2025); *Gardner v. Me-TV Nat'l Ltd. P'ship*, 132 F.4th 1022 (7th Cir. 2025); *Lee v. Plex, Inc.*, 773 F. Supp. 3d 755 (N.D. Cal. 2025);

type of defendant under the sun. That litigation campaign seeks to use the VPPA to accomplish through private lawsuits what no legislature has chosen to enact: the dismantling of targeted advertising.

In bringing these suits, plaintiffs take advantage of the fact that most businesses cannot afford to risk VPPA liability given its robust remedies. The VPPA provides for statutory damages of $2,500 per violation, 18 U.S.C. § 2710(c)(2)(A). Indeed, the ability to recover statutory damages when little or no actual damages exist is the reason the VPPA has been such an attractive statute for the plaintiff's bar. For large businesses that sell to many customers, liability in a VPPA class action (as most of these cases are) could be massive, as anyone who watched a video and who purchased a product could be a class member. Faced with the threat of bet-the-company liability, VPPA defendants frequently have little choice but to pay settlements and abandon their targeted advertising practices.

Rodriguez v. ByteDance, Inc., No. 23 CV 4953, 2025 WL 672951 (N.D. Ill. Mar. 3, 2025); *Jones v. Starz Ent., LLC*, 129 F.4th 1176 (9th Cir. 2025); *Wissel v. Rural Media Grp., Inc.*, No. 24-CV-00999-P, 2025 WL 641434 (N.D. Tex. Feb. 27, 2025); *Thornton v. Mindvalley, Inc.*, No. 24-CV-00593, 2025 WL 877714 (N.D. Cal. Feb. 14, 2025).

[12] *Cole v. LinkedIn Corp.*, 807 F. Supp. 3d 959 (N.D. Cal. 2025).

[13] *Goodman v. Hillsdale Coll.*, No. 25-cv-417, 2025 WL 2941542 (W.D. Mich. Oct. 17, 2025); *Nguyen v. Elsevier Inc.*, No. 25-cv-825, 2025 WL 2901059 (N.D. Cal. Oct. 7, 2025); *Haines v. Cengage Learning, Inc.*, No. 24-cv-710, 2025 WL 2045644 (S.D. Ohio July 22, 2025); *Cochenour v. 360training.com, Inc.*, No. 25-cv-7, 2025 WL 1954062 (W.D. Tex. July 8, 2025); *Lovett v. Continued.com, LLC*, No. 24-cv-590, 2025 WL 1809719 (S.D. Ohio July 1, 2025).

B. Congress did not enact the VPPA to regulate the Internet advertising economy.

It would be an understatement to say this result is foreign to the statute Congress wrote. The VPPA was enacted in 1988 in response to a discrete episode—the publication of Judge Robert Bork's video-rental history—and it was aimed at a discrete harm: a video-store clerk leaking which films a customer rented. *See In re Nickelodeon Consumer Privacy Litig.*, 827 F.3d 262, 278, 290 (3d Cir. 2016). When Congress passed the Act, the targeted-advertising ecosystem that funds the modern Internet would have been science fiction. Cookies were a snack. The notion that a 1988 video-privacy law silently encoded a national policy on Internet behavioral advertising is precisely the kind of anachronism this Court warns against.

Courts confronting these suits have recognized the mismatch. As the Third Circuit put it, "Congress's purpose in passing the Video Privacy Protection Act was quite narrow," and it did not "intend[] for the law to cover factual circumstances far removed from those that motivated its passage." *Nickelodeon*, 827 F.3d at 284. "Every step away from that 1988 paradigm"—a video clerk disclosing a customer's rental history—"will make it harder for a plaintiff to make out a successful claim." *Id.* at 290. Salazar's reading takes not a step but a leap away from that paradigm, landing on a policy question—how the Internet should be funded and how online privacy should be balanced against it—that Congress never addressed in 1988 and has continued to debate, without resolution, ever since.

That debate belongs in Congress. Whether and how to regulate targeted advertising is a nuanced policy debate requiring the weighing of competing interests. It implicates the livelihoods of small businesses that cannot afford untargeted advertising, the price and availability of free online content, and the privacy interests of hundreds of millions of users. These are quintessentially legislative judgments. They should not be made through the interpretation of a single undefined word in a thirty-eight-year-old statute about video stores.

C. Banning Targeted Advertising or Requiring Unceasing Consents Would Harm Businesses and Consumers.

As previously described, Plaintiffs' legal theory, if successful, would leave businesses with two choices: turning off, for all viewers, the revenue engine that funds free online content, or attempting to obtain individualized consent from every viewer before every video. Both outcomes would harm businesses and consumers.

The business practice of offering content to consumers online for free, collecting some information about consumers, and then sharing that information with third parties is a cornerstone of the modern Internet economy. Service providers are paid to gather and share website data with companies who then use that data to place advertisements, often via intermediaries like ad networks. *See* D. Daniel Sokol & Feng Zhu, Essay, *Harming Competition and Consumers Under the Guise of Protecting Privacy: An Analysis of Apple's iOS 14 Policy Updates*, 107 Cornell L. Rev. Online 94, 96-100 (2022) (explaining personalized

advertising model in digital ecosystems). This practice has "enabled the open internet to flourish" because it subsidizes free services and content on the Internet, "supports a thriving R&D ecosystem," and "creates a high-value-added tech sector that benefits American workers." *Id.* at 98; Hadi Houalla, *Big Tech's Free Online Services Aren't Costing Consumers Their Privacy*, Info. Tech. & Innovation Found. (Sept. 20, 2023), https://itif.org/publications/2023/09/20/big-techs-free-online-services-arent-costing-consumers-their-privacy. Removing the option of data sharing to support targeted advertising would hurt consumers and businesses alike—and especially small businesses.

Research shows that the vast majority of consumers prefer *not* to "pay a fee for [Internet] services [rather] than see advertisements" (93%) or "pay a fee rather than have the platform collect data on them and their activities" (90%). Pinar Akman, *A Web of Paradoxes: Empirical Evidence on Online Platform Users and Implications for Competition and Regulation in Digital Markets*, 16 Va. L. & Bus. Rev. 217, 273–74 (2022); *see also* Interactive Advertising Bureau, *The Free and Open Ad-Supported Internet: Consumers, Content, and Assessing the Data Value Exchange* 14, 17 (Jan. 2024), https://www.iab.com/wp-content/uploads/2024/01/IAB-Consumer-Privacy-Report-January-2024.pdf (noting that 78% of consumers would prefer to get more advertisements and pay nothing than to pay a small fee, and 69% of consumers are willing to share personal data to support advertising).

Forcing website providers to depend on revenue from sources other than targeted advertising would

undermine that consumer preference and transform the Internet into something unrecognizable. Consumers would face new fees for services that were previously free, and those services may be of lower quality. *See* Ash Johnson, *Banning Targeted Ads Would Sink the Internet Economy*, Info. Tech. & Innovation Found. (Jan. 20, 2022), https://itif.org/publications/2022/01/20/banning-targeted-ads-would-sink-internet-economy/; Houalla, *supra* (increased privacy results in lower ad effectiveness, leaving companies with less to spend on designing features for consumers). That would, in turn, create concerning inequities. "Wealthier households could bear the burden of paying for ad-free services. In contrast, households that could not afford additional subscription fees on top of their current expenses would be cut off from large swaths of the Internet." Johnson, *supra*; *see also* Houalla, *supra* ("Banning targeted ads would force companies to monetize their services with subscription fees against the wishes of consumers and at the expense of low-income consumers."). As now-Chairman Ferguson of the Federal Trade Commission explained: "[T]argeted advertising makes much of the internet possible. The reason so much of our online activity does not require the constant exchange of money is because of targeted advertising. If regulators and lawmakers attempt to ban or seriously curtail targeted advertising, they will be undoing the balance of the online economy." Concurring and Dissenting Statement of Commissioner Andrew N. Ferguson Regarding the Social Media and Video Streaming Services Report, Fed. Trade Comm'n 4 (Sept. 19, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-statement-social-media-6b.pdf.

Businesses, too, would suffer. Blocking targeted advertising would hurt both the websites providing data and advertising space and the businesses using that data and buying that advertising space. Targeted advertisements are crucial to businesses, particularly small businesses, seeking to find consumers and gain a foothold in highly competitive online markets. According to a recent study, 73% of small business owners agreed that losing the ability to use targeted advertising would harm their businesses. U.S. Chamber of Com., *Empowering Small Business: The Impact of Technology on U.S. Small Business* 31 (4th ed. 2025), https://www.uschamber.com/assets/documents/2025 1621-CTEC-Empowering-Small-Business-Report-2025-v1-r10-Digital-FINAL.pdf. On the provider side, Internet advertising has become an engine of economic growth, accounting for $298 billion in total spending per year. John Deighton & Leora Kornfeld, *Measuring the Digital Economy: Advertising, Content, Commerce, and Innovation*, Interactive Advert. Bureau 22 (Apr. 2025), https://www.iab.com/wp-content/uploads/2025/04/Meas uring-the-Digital-Economy_April_29.pdf. "The firms and technologies that enable this spending—ad agencies, ad networks, ad exchanges, data firms, and measurement firms, as well as publishers, platforms, self-employed web programmers, designers, writers, and digital creators—are responsible for millions of jobs in the U.S." *Id.*

"If advertisers and app developers cannot show the right ad to the right user," "developers' and publishers' revenues will plummet." Sokol & Zhu, *supra*, at 100. Indeed, according to one analysis, deprecating third-party cookies in digital advertising would decrease

advertising revenues by 42%. Art Muldoon, *A Post-Cookie Revenue Risk and Revenue Replacement Playbook*, Digital Context Next (July 1, 2024), https://digitalcontentnext.org/blog/2024/07/01/a-post-cookie-revenue-risk-and-revenue-replacement-playbook/. And innovation in Internet and app development would stall. *See* Tobias Kircher & Jens Foerderer, *Ban Targeted Advertising? An Empirical Investigation of the Consequences for App Development*, 70 Mgmt. Sci. 1070, 1088-89 (2024).

Once again, it is small businesses—not the largest corporations—that would suffer most. Personalized advertising does not require a multimillion-dollar budget and so is more accessible to small businesses than, say, "foot[ing] the bill for television commercials that are irrelevant to most of the millions of viewers of an NFL game or 'The Voice.'" Sokol & Zhu, *supra*, at 99. It allows small businesses to specifically target the right audiences for their products and services in a relatively cost-effective manner; as a result, it empowers direct-to-consumer and "small, new, or niche brands" to compete with established players. *Id.* at 98-100. Taking away this business model would make it far costlier and more challenging for small businesses to find and reach audiences most likely to pay for their products and services. *Id.*

The only websites that could continue to provide this valuable consumer differentiation for advertising would be so-called "Walled Garden[s]"—the small number of digital publishers large enough that "platform data and consumer access are made exclusively available within their ecosystem." Jonathan Kaplan, Note, *Consumer*

Data Privacy Postmortem or: How I Learned to Stop Worrying and Love Big Tech, 64 U. Louisville L. Rev. 347, 354 (2026); *see also* Meaghan Donahue, Note, *"Times They Are a Changin'"—Can the Ad Tech Industry Survive in a Privacy Conscious World?*, 30 Cath. U. J. L. & Tech. 193, 201 (2021) (observing that walled gardens "produce highly accurate consumer profiles that result in more efficient ad placement without the use of traditional tracking mechanisms"). This would result in a shift of billions of dollars of advertising and ecosystem revenue away from the open web. John Deighton & Leora Kornfeld, *The Socioeconomic Impact of Internet Tracking*, Interactive Advert. Bureau 4 (Feb. 2020), https://www.iab.com/wp-content/uploads/2020/02/The-Socio-Economic-Impact-of-Internet-Tracking.pdf.

Businesses also have the option of demanding that consumers consent before clicking on a video. But consumers do not benefit from being bombarded with opaque disclosure banners concerning the VPPA that they will never read, much less understand. When they go online, consumers already must engage with an overwhelming volume of privacy notices, consent requests, pop-ups, click boxes, terms and conditions, and the like, on virtually every app or website they use. *See* Hana Habib et al., *"Okay, Whatever": An Evaluation of Cookie Consent Interfaces*, Chi. Conference on Human Factors in Computing Systems 17 (Apr. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/PrivacyCon-2022-Habib-Li-Young-Cranor-Okay-whatever-An-Evaluation-of-Cookie-Consent-Interfaces.pdf.

All this hassle, in most cases, undermines the goal of providing notification and requiring consent. Studies show that when consumers are confronted with more disclosures, they have a harder time making informed decisions about their privacy. *See*, *e.g.*, Karl van der Schyff et al., *Online Privacy Fatigue: A Scoping Review and Research Agenda*, 15 Future Internet 164 (2023), https://www.mdpi.com/1999-5903/15/5/164 (explaining that "overly complex privacy controls . . . significant[ly] increase" experience of "online privacy fatigue"). That effect is exacerbated by the fact that, as disclosures become more numerous due to changing regulatory requirements, they also become longer and more involved. *See* Isabel Wagner, *Privacy Policies Across the Ages: Content and Readability of Privacy Policies 1996-2021* (Jan. 2022), https://ar5iv.labs.arxiv.org/html/2201.08739. Studies show that such a "haystack" of privacy and consent materials causes "information overload," meaning these materials "cannot be read and processed by lay people and [are] impractical for decision-making." Ella Corren, *The Consent Burden in Consumer and Digital Markets*, 36 Harv. J. L. & Tech. 551, 570 (2023) (footnote omitted). Indeed, "performance in cognitive tasks declines as attention drops," so consumers react to increased "amount[s] and complexity of information" by "choos[ing] rational ignorance over getting into the weeds of the information." *Id.* at 571.

To illustrate the point, following the adoption of the General Data Protection Regulation ("GDPR"), some European countries saw an increase of up to 45% in websites displaying cookie banners. Christine Utz et al., *(Un)informed Consent: Studying GDPR Consent Notices in the Field*, 2019 ACM SIGSAC Conf. on Comp.

& Commc'ns Sec. (2019), https://www.ftc.gov/system/files/documents/public_events/1548288/privacycon-2020-christine_utz.pdf. This caused users to become increasingly "fatigued with privacy notifications," prompting them to seek browser extensions to block these banners. *Id.* at 1. Ironically, effects of the privacy law ultimately increased demand for streamlined consents across websites. *Id.* The Court should be reluctant to conclude that Congress unwittingly enacted the American equivalent of the GDPR nearly 40 years ago.

Nor would it make practical or economic sense for consumers to spend time digesting these types of disclosures. Engaging with the already-existing notices and forms would add hours to the average person's typical day. *See* Irma Šlekytė, *NordVPN Study Shows: Nine Hours to Read the Privacy Policies of the 20 Most Visited Websites in the US*, NordVPN (Oct. 23, 2023), https://perma.cc/F432-TV7S.

Reducing the number of useless but legally required consent forms also helps businesses avoid wasteful spending. In a study of 53 multinational companies, the average business spent between $5.5 million and $22 million per year complying with data privacy laws. Ponemon Inst. LLC, *The True Cost of Compliance with Data Protection Regulations*, 7 (2017), https://static.fortra.com/globalscape/pdfs/guides/gs-true-cost-of-compliance-data-protection-regulations-gd.pdf. With increased privacy regulation, those costs increase, as companies must hire more employees and upgrade technology to keep up. Mert Demirer et al., *Data, Privacy Laws and Firm Production: Evidence from the*

GDPR, at OA12-14 (Nat'l Bureau of Econ. Rsch., Working Paper No. 32146, 2024, revised 2026), https://www.nber.org/system/files/working_papers/w32146/w32146.pdf.

Small businesses bear the brunt of these burdens. Before the passage of the California Consumer Privacy Act, a report commissioned by the state Attorney General's office found that small firms would face disproportionately high compliance costs, providing a competitive advantage to larger businesses, which are more likely to be able to invest significant in-house compliance resources to adjust to new regulation. *See* David Roland-Holst et al., Berkeley Econ. Advising & Rsch., LLC, *Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations* (Aug. 2019), https://dof.ca.gov/media/docs/forecasting/economics/major-regulations/major-regulations-table/CCPA_Regulations-SRIA-DOF.pdf. The VPPA is a case in point. Entrepreneurs starting innovative Internet businesses would have no idea that they might face class action lawsuits based on an obscure 1980s-era statute addressing movie rentals. And they would be especially surprised to learn that even if they exhaustively disclose all of their privacy practices and require affirmative consent, they might still be sued on the theory that multiple clicks are required rather than one. Large businesses can retain counsel to track the plaintiff's bar's ever-shifting ingenuities and adjust their never-read consent forms to withstand litigation, but small businesses investing their funds in product development rather than regulatory counsel do not have that luxury.

These practical stakes do not themselves resolve the question presented; the VPPA means what it meant in 1988, and a statute's consequences cannot rewrite its text. But they underscore the stakes of getting the answer right. Questions of that magnitude are for Congress to resolve in the clear light of legislative debate—not for the plaintiffs' bar to engineer from the silences of a statute enacted to stop a video clerk from leaking which movies a customer took home.

CONCLUSION

For the foregoing reasons, the Court should affirm the Sixth Circuit's decision.

Respectfully submitted,

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