No. 17-1161

IN THE

Supreme Court of the United States

NATIONWIDE BIWEEKLY ADMINISTRATION, INC., ET AL.,

Petitioners,

v.

JOHN HUBANKS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Ilya Shapiro
Counsel of Record
Meggan DeWitt
Cato Institute
1000 Mass. Ave. N.W.
Washington, D.C. 20001
(202) 842-0200
ishapiro@cato.org

March 21, 2018

QUESTION PRESENTED

1. Whether the state demonstrates a government interest sufficient to compel a disclosure or disclaimer simply by positing the goal of preventing commercial speech from being misleading.

2. Whether characterizing a regulation as imposing a "disclosure" rather than a "restriction" on commercial speech is alone sufficient to trigger less rigorous First Amendment scrutiny.

3. Whether a compelled commercial disclosure that favors or disfavors a particular speaker requires heightened scrutiny.

4. Whether a compelled disclosure may be considered purely factual, noncontroversial, and nonburdensome if it disadvantages the speaker's message or favors incumbent competitors.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonprofit, nonpartisan public policy research foundation that was established in 1977 to advance the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies works to restore the principles of constitutional government that are the foundation of liberty. Toward those ends, Cato holds conferences and publishes books, studies, and the annual *Cato Supreme Court Review*.

Amicus believes that the right not to speak is an essential part of the liberty guaranteed by the First Amendment—and that when someone is forced to act as a mouthpiece for a particular government message, that compulsion warrants the most rigorous First Amendment review. *See generally W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943). When state power treads on free speech rights, whether individual or corporate, it threatens the fundamental First Amendment "principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013) (quotation marks omitted).

SUMMARY OF ARGUMENT

The petition presents an important and unsettled question of law that goes to the heart of the First Amendment and raises serious concerns about

---

[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for any party authored this brief in whole or in part. Further, no person other than *amicus*, its members, or its counsel made a monetary contribution to fund its preparation or submission. Both parties were notified and have consented to the filing of this brief.

government power: How much scrutiny does the First Amendment require when "disclosure" regimes force sellers to speak and disparage their own products?

The answer to that question is critical. Governments at all levels nationwide are increasingly turning to compelled disclaimer or warning regimes that "are, for all practical purposes, requirements that commercial actors communicate value-laden messages." Jonathan H. Adler, *Compelled Commercial Speech and the Consumer "Right to Know"*, 58 Ariz. L. Rev. 421, 450 (2016). These mandates raise a serious concern that governments are using so-called disclosures to "burden the speech of others in order to tilt public debate in a preferred direction." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578–79 (2011).

The proliferation of controversial "disclosure" requirements is dangerous. In addition to undermining the fundamental First Amendment "principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence," *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013) (quotation marks omitted), these regimes harm speakers in tangible ways. Most obviously, they "burden[] a [private] speaker with unwanted speech." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 800 (1988). But they also force private speakers "either to appear to agree" with the government's "views or to respond." *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n*, 475 U.S. 1, 15 (1986) (plurality opinion). "That kind of forced response," however, requires speakers to alter their messages in a manner that "is antithetical to the free discussion that the First Amendment seeks to foster." *Id.* at 16.

Despite the push toward more forced speech against the speaker's interests, courts remain uncertain about how to apply the First Amendment to compelled commercial speech. The decision below illustrates the doctrinal "innovations" this uncertainty encourages. The Ninth Circuit changed the constitutional test used by this Court to scrutinize state-mandated disclosures and permitted California to avoid producing any evidence to prove that the harms it purportedly seeks to address "are real." *Edenfield v. Fane*, 507 U.S. 761, 771 (1993). It concluded that it is acceptable to assume consumer deception on the government's say-so, and determined that, in the interest of "administrative clarity," regulators may compel delivery of government-mandated scripts to entire categories of speech. Judge Wardlaw, dissenting from denial of rehearing en banc in another recent Ninth Circuit case applying *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio,* 471 U.S. 626 (1985), rightly recognized that failure to apply the correct legal standard would embolden "state or local government[s] . . . to pass ordinances compelling disclosures by their citizens . . . without any regard" to the proper level of First Amendment scrutiny. *CTIA-The Wireless Ass'n v. City of Berkeley, Cal.*, 873 F.3d 774, 777 (9th Cir. 2017) (Wardlaw, J., dissental) (cert. pet. filed Jan. 9, 2018).

Unfortunately, the Ninth Circuit is not alone in this confusion. As several members of this Court and the courts of appeal have recognized, the lower courts are sorely in need of additional guidance. In the absence of doctrinal clarity and a reaffirmation of First Amendment principles, some government entities are behaving as if the First Amendment no longer meaningfully limits their power. The Court should

grant the petition to clarify that all government attempts to impose content-based speech mandates are subject to rigorous First Amendment scrutiny.

ARGUMENT

I. The Degree of First Amendment Scrutiny Applicable to Commercial-Speech Mandates Is a Vital and Unsettled Question of Law

The petition squarely presents a question at "the heart of the First Amendment," *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994), and raises serious concerns about government power. Citing a recent erroneous decision that allowed state power to be used to compel private speech in service to any "more than trivial" government interest, *CTIA–The Wireless Ass'n v. City of Berkeley, Cal.*, 854 F.3d 1105, 1117 (9th Cir. 2017), the court below determined that compelling a self-disparaging and misleading script on commercial advertisements need only be analyzed under *Zauderer*, and that such required disclosures survive scrutiny based merely on the state's generalized interest in "preventing deception of consumers." *Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716, 731-32 (9th Cir. 2017). The Ninth Circuit's distorted standard is devoid of any real scrutiny, it allows for an assumption of consumer deception, and relieves the government of the obligation to show that the content of its mandate is both "purely factual" *and* "uncontroversial." *Id.* at 732. By alleviating the government of its burden to adequately justify its compulsion of speech, the Ninth Circuit's lax approach threatens the fundamental "principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence." *Agency for Int'l Dev. v.*

All. for Open Soc'y Int'l, Inc., 570 U.S. 205, 213 (2013) (quoting *Turner*, 512 U.S. at 641).

This case involves Nationwide's practice of advertising how much potential customers might be able to save through restructured mortgage payments, and the intersection of that practice with two provisions of the California Business and Professions Code. The first provision at issue prohibits:

> Includ[ing] the name, trade name, logo, or tagline of a lender in a written solicitation for financial services directed to a consumer who has obtained a loan from the lender without the consent of the lender, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name. This statement shall be made in close proximity to, and in the same or larger font size as, the first and the most prominent use or uses of the name, trade name, logo, or tagline in the solicitation, including on an envelope or through an envelope window containing the solicitation.

Cal. Bus. & Prof. Code § 14701(a).

The second challenged provision prohibits:

> Includ[ing] a consumer's loan number or loan amount, whether or not publicly available, in a solicitation for services or products without the consent of the consumer, unless the solicitation clearly and conspicuously states, when applicable, that the person is not sponsored by or affiliated with the lender, and states that the consumer's loan information was not provided

> to that person by that lender. This statement shall be made in close proximity to, and in the same or larger font as, the first and the most prominent use or uses of the consumer's loan information in the solicitation, including on an envelope or through an envelope window containing the solicitation.

Cal. Bus. & Prof. Code § 14702.

These provisions require that, in addition to stating clearly and repeatedly on its advertisements that Nationwide is "not affiliated, connected, or associated with, sponsored, or approved by the lender listed above" it must also explicitly state, in type as large as anything else on the solicitation, that the solicitation is "not authorized" by the lender. *Nationwide*, 873 F.3d at 731-32. The Ninth Circuit approved this compelled disclosure after relieving California of the burden of showing that the mandated script was "reasonably related to the State's interest in preventing deception of consumers," or that the scripted disclosures were "purely factual and uncontroversial." *Zauderer*, 471 U.S. at 651-52.

The court below mangled the necessary First Amendment analysis by assuming a substantial interest in preventing consumer deception, despite the lack of any evidence of consumer confusion. *Nationwide*, 873 F.3d at 732, 734. In fact, this case began when Nationwide was notified by the Monterey district attorney's office that the Monterey and Marin County offices were "in receipt of numerous complaints about the marketing and business practices of Nationwide Bi-Weekly Administration" and that the "complaints indicate a pattern of deceptive business practices having an adverse impact on California consumers." *Id.* at 722-23. It later came out, however,

that the only complaint received was from the spouse of a deputy district attorney in the Monterey County district attorney's office. *Id.* at 723, n.3. As highlighted by petitioner, "[e]ven under *Zauderer*, the state may not presume that speech is potentially misleading and obtain diminished scrutiny on that basis." Petition 16.

After assuming that countering possible consumer deception was a substantial interest—despite the absence of any evidence supporting that conclusion—the Ninth Circuit proceeded to change *Zauderer's* fit requirement. *Zauderer* required that corrective disclosures be "purely factual *and* uncontroversial." *Id.* at 651 (emphasis added); *accord Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 573 (1995) (quoting *Zauderer*); *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144, 1152 (2017) (Breyer. J., concurring in the judgment) (same). The Ninth Circuit thought otherwise. Although it asserted that any compelled disclosure must be "purely factual," *Nationwide*, 873 F.3d at 733, it also contended that possible negative connotations did not make a disclosure nonfactual and that "'uncontroversial' in this context refers [only] to the factual accuracy of the compelled disclosure, not to its subjective impact on the audience." *Id.* at 732 (citing *City of Berkeley*, 854 F.3d at 1118 ("*Zauderer* requires only that the information be 'purely factual.'")). The lower court essentially read "uncontroversial" out of the *Zauderer* standard, making it nothing more than a reiteration of "purely factual."

By conflating the separate elements of the *Zauderer* fit analysis, the Ninth Circuit had only to contemplate whether the text of the compelled disclosure was factual and whether California had a general interest in combatting potential consumer

deception. It refused to acknowledge that the disclosures may themselves be misleading or confusing to consumers. Here, for example, requiring a disclosure that the solicitations are "not authorized"—in addition to noting that Nationwide is not affiliated with, supported or approved by the lender—misleadingly implies that authorization or permission of some sort was required, but was not forthcoming. *Id.* at 733-34. Likewise, there was no consideration given to the idea that the potentially misleading nature of the compelled government script may itself be controversial, and therefore fail the *Zauderer* prong requiring that disclosures be *both* purely factual *and* uncontroversial.

Perhaps most concerning—and highlighting the need for this Court to step in and correct course—the Ninth Circuit attempted to further do away with the need to justify compelled disclosures by concluding:

> Even if it were true that Nationwide's alternative disclosures were sufficient to prevent deception, that would not mean that the statute fails *Zauderer* review. It is not necessary to show that any particular solicitation is actually deceptive before disclosure is required. Rather, in the interest of administrative simplicity, the state may reasonably decide to require disclosure for a class of solicitations that it determines pose a risk of deception.

Nationwide, 873 F.3d at 735. If the articulated purpose of "administrative simplicity" and a statement of concern for potential consumer deception suffices to compel delivery of specific scripts that are themselves misleading and require the speaker to disparage their

own products or services, then this Court's decision in *Zauderer* has no meaning or force at all.

The Ninth Circuit's approach to *Zauderer* confirms the need for this Court to act. "[T]he conflict in the circuits regarding the reach of *Zauderer*" has created "uncertainty" and thrown the doctrine into "flux." *Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518, 524 (D.C. Cir. 2015); *see also* Note, *Repackaging* Zauderer, 130 Harv. L. Rev. 972, 979 (2017) ("*Zauderer*'s treatment in various circuits most closely resembles a fractured, frequently contradictory mosaic.").

Two members of this Court have explicitly recognized that the "lower courts" are in need of "guidance" on the "oft-recurring" and "important" subject of "state-mandated disclaimers." *Borgner v. Florida Bd. of Dentistry*, 537 U.S. 1080 (2002) (Thomas, J., joined by Ginsburg, J., dissenting from denial of cert.). According to these justices, the Court has not "sufficiently clarified the nature and the quality of the evidence a State must present to show that the challenged legislation directly advances the governmental interest." *Id.* Relatedly, Justice Thomas has observed that "[t]he courts, including this Court," have found the existing commercial speech precedents "very difficult to apply with any uniformity." *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 526–27 (1996) (Thomas, J., concurring). This echoes views expressed by Justices Brennan and Marshall, who found it "somewhat difficult to determine precisely what disclosure requirements" are permitted by the test adopted in *Zauderer*. 471 U.S. at 659 (Brennan, J., joined by Marshall, J., concurring in part).

One consequence of the uncertainty surrounding the Court's commercial-speech precedents is that some

governments have mistakenly come to believe that the First Amendment does not act as a meaningful constraint on their exercise of power. For example, in another recent Ninth Circuit case applying *Zauderer*—with a cert. petition still pending—Berkeley did "not offer[] any evidence that carrying a cell phone in a pocket is in fact unsafe" when defending a mandated disclosure about the possible harms associated with radio frequency technology in cell phones. *City of Berkeley*, 854 F.3d at 1125 (Friedland, J., dissenting in part); *see also id.* ("There is . . . no evidence in the record that the message conveyed by the ordinance is true."). In similar litigation involving the City and County of San Francisco, those jurisdictions argued that their mandates were entirely "immunize[d] from First Amendment scrutiny" because private speakers remained free to counter the compelled messages. Def.'s Opp'n Pl.'s Mot. for Prelim. Inj. at 2, *CTIA–The Wireless Ass'n v. City and Cty. of San Francisco, Cal.*, 827 F. Supp. 2d 1054 (N.D. Cal. 2011) (No. C10-03224 WHA), *aff'd* 494 F. App'x 752 (9th Cir. 2012). This approach to government power is anathema to First Amendment principles.

Under the First Amendment, it is *always* the government's burden to "demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield*, 507 U.S. at 771; *see also Texas v. Johnson*, 491 U.S. 397, 406–07 (1989) ("It is, in short, . . . the governmental interest at stake that helps to determine whether a restriction on . . . expression is valid."). The Court should grant the petition to clarify that governments must carry their burden in the compelled-commercial-speech context.

Finally, recent doctrinal developments have called into question the continuing vitality of *Zauderer* altogether, at least when applied to content-based compelled commercial disclosures. In *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011), the Court explained, in the context of invalidating a content-based commercial-speech regulation, that "heightened judicial scrutiny is warranted" anytime a "content-based burden" is placed "on protected expression," *id.* at 565. Then, in *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015), the Court held, in the course of invalidating a content-based local sign ordinance, that any government regulation of speech drawing a "'content based'" distinction "'on its face'" is "subject to strict scrutiny," *id.* at 2227 (citing *Sorrell*, 131 S.Ct., at 2664); *see also* Jonathan H. Adler, *Persistent Threats to Commercial Speech*, 25 J.L. & Pol'y 289, 296–97 & n.33 (2016) (observing these decisions seemed to strengthen commercial speech protections).

The Court has yet to explore how these principles interact with other aspects of its commercial speech doctrine. *See generally* Lee Mason, *Content Neutrality and Commercial Speech Doctrine After* Reed v. Town of Gilbert, 84 U. Chi. L. Rev. 955 (2017). This case presents an excellent vehicle for doing so.

II. As Governments Increasingly Turn to Warning Regimes That Force Sellers to Disparage Their Products, There Is an Urgent Need to Settle the Appropriate Level of Scrutiny

It has long been understood that "[i]f the First Amendment means anything, it means that regulating speech must be a last-not first-resort." *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 373 (2002). However, governments at all levels are increasingly turning in

the first instance to controversial disclosure and warning regimes that "are, for all practical purposes, requirements that commercial actors communicate value-laden messages." Jonathan H. Adler, *Compelled Commercial Speech and the Consumer "Right to Know,"* 58 Ariz. L. Rev. 421, 450 (2016).

In recent years, government-compelled "[c]ommercial disclosures have become ubiquitous." Timothy J. Straub, *Fair Warning?: The First Amendment, Compelled Commercial Disclosures, and Cigarette Warning Labels*, 40 Fordham Urb. L.J. 1201, 1224 (2013); *see also* Brian E. Roe et al., *The Economics of Voluntary Versus Mandatory Labels*, 6 Ann. Rev. Resource Econ. 407, 408–09 (2014) ("[P]roduct labeling is an increasingly popular tool of regulators."). For example, Vermont sought to compel food and dairy manufacturers to "warn" consumers about their methods for producing milk, *Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67 (2d Cir. 1996), processed foods, *Grocery Mfrs. Ass'n v. Sorrell*, 102 F. Supp. 3d 583 (D. Vt. 2015), and raw agricultural commodities, *id.*—even though the U.S. Food & Drug Administration had determined that each of these food-production methods was safe. Illinois mandated distribution of "opinion-based" warnings about video games it believed were "sexually explicit," *Entm't Software Ass'n v. Blagojevich*, 469 F.3d 641, 652 (7th Cir. 2006). And California did the same for games it believed were "violent," *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 788 (2011).

Municipalities did not want to be left out of this disclosure bonanza. New York City compelled "chain" restaurants to display a "sodium warning" on their menu boards. *Nat'l Rest. Assn. v N.Y. City*, 148 A.D.3d 169, 172 (N.Y. App. Div. 2017). The City and County

of San Francisco forced advertisers of sugar-sweetened beverages to "overwhelm[]" their messages with a large "black box warning" that "convey[ed] San Francisco's disputed policy views." *Am. Beverage Ass'n v. City & Cty. of San Francisco*, 871 F.3d 884, 896–97 (9th Cir. 2017). San Francisco also sought to compel cell-phone retailers to "express[] San Francisco's opinion that using cell phones is dangerous." *CTIA–Wireless Ass'n v. City & Cty. of San Francisco, Cal.*, 494 F. App'x 752, 753 (9th Cir. 2012).

Federal administrative agencies, often at Congress's behest, have also gotten in on the action. The Securities and Exchange Commission, for example, required companies using "conflict minerals" to investigate and disclose the origin of those minerals "on each reporting company's website and in its reports to the SEC." *Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518, 522 (D.C. Cir. 2015). The Food & Drug Administration forced tobacco companies to display explicit "color graphics depicting the negative health consequences of smoking." *R.J. Reynolds Tobacco Co. v. FDA*, 696 F.3d 1205, 1208 (D.C. Cir. 2012), *overruled by Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18 (D.C. Cir. 2014). The Department of Agriculture also mandated disclosure of country-of-origin information about meat products, *see Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18 (D.C. Cir. 2014), and compelled payments from vegetable growers to support speech concerning the desirability of branded mushrooms, *see United States v. United Foods, Inc.*, 533 U.S. 405 (2001). These are just a few of the challenged regimes.

The reason for the increase in mandatory disclosures seems straightforward. Many regulators, especially at the state and local levels, feel resource-

constrained. Commercial-speech mandates are thus attractive precisely because they provide a seemingly low-cost way to advance a preferred message, without many of the technical or political difficulties associated with developing new or complex regulatory regimes—or speaking in the government's own voice.

But the quick and easy resort to speech regulation is alarming. As state-mandated disclosure regimes proliferate and courts decline to apply exacting scrutiny, the content of the government-prescribed messages is growing more controversial, as is the burden placed on the speakers from whom these disclosures are compelled. Unlike the anodyne requirements of yesteryear designed to cure deception in the marketplace through enforcement of neutral measures like "honest weights," *e.g.*, *Armour & Co. v. N. Dakota*, 240 U.S. 510, 515 (1916), many of today's requirements promote one-sided, inaccurate, or even anti-science positions. They emphasize topics that the government deems important. They claim to be factual while promoting a message.

The mandates' universality raises serious concerns that governments use so-called disclosures to "burden the speech of others in order to tilt public debate in a preferred direction." *Sorrell*, 564 U.S. at 578–79. Worse, by compelling private speakers to distribute preferred messages, governments force them "either to appear to agree" with the government's "views or to respond." *Pac. Gas & Elec. Co.*, 475 U.S. at 15. "That kind of forced response" compels commercial actors to alter their preferred messages in a manner that "is antithetical to the free discussion that the First Amendment seeks to foster." *Id.* at 16.

The problem is not unique to California. As many of the above-cited cases illustrate, in recent years similar processes have played out at all levels of government across the country. If the relaxed standard of review adopted below is allowed to stand, it is not hard to imagine the controversial speech mandates that might proliferate. Would it be acceptable to require generic drug manufacturers to state that "the safety of this medication has not be verified by the company that originally developed it"? Or to require that all Uber drivers post a large sign in their windows indicating that "the driver is an independent contractor; Uber does not take responsibility for your safety"? What if Walmart lobbied a locality to pass ordinances requiring that competitors also display Walmart prices for the same items, in the interest of avoiding the possibility that consumers may not realize that prices can fluctuate among retailers? May Mom 'n' Pop used-car lots be forced to display on each vehicle they offer for sale that "this vehicle is not certified by [insert car maker here]"? And since most market-share growth in the cell phone industry is now mostly dependent on drawing customers away from competitors, must T-Mobile or Sprint include in type just as large as anything else in their advertisement, "not authorized by Verizon"?

The list of potential examples is endless, and while the above hypotheticals may seem extreme or silly, under the standard advanced by the Ninth Circuit, they would conceivably survive in the interest of administrative expediency and preventing potential consumer deception—even though each promotes a controversial message designed to take sides and implicitly or explicitly disparages a commercial product or service. *Cf. Am. Beverage Ass'n*, 871 F.3d

at 895 (invalidating beverage warning as "misleading and, in that sense, untrue" because it took sides where "there is still debate"); *Am. Meat Inst.*, 760 F.3d at 27 (en banc majority op.) (recognizing "possibility" that some "one-sided" disclosures would be "controversial").

Of course, governments may themselves promote—or refrain from promoting—messages that some of their citizens find objectionable. "[W]hen the government speaks it is entitled to promote a program, to espouse a policy, or to take a position." *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2246 (2015). "In doing so, it represents its citizens and it carries out its duties on their behalf." *Id.* What governments generally may not do, however, is to require that *citizens* "utter or distribute speech bearing a particular message" "favored by the Government." *Turner*, 512 U.S. at 641–42; *see also Riley*, 487 U.S. at 800 (when government speaks it "communicate[s] the desired information to the public without burdening a [private] speaker with unwanted speech").

The Court should use this case to address the spread of compelled-commercial-speech mandates.

CONCLUSION

For the foregoing reasons, and those set forth in the petition, the Court should grant the petition.

Respectfully submitted,

Ilya Shapiro
Counsel of Record
Meggan DeWitt
Cato Institute
1000 Mass. Ave. N.W.
Washington, D.C. 20001
(202) 842-0200
ishapiro@cato.org

March 21, 2018