No. 25-0001

IN THE

Supreme Court of the United States

Cindy Lieberman,

in her capacity as the Attorney General of New Columbia

Petitioner,

v.

SocialAI

Respondent.

On Writ of Certiorari to the

Supreme Court of New Columbia

BRIEF FOR THE PETITIONER

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QUESTIONS PRESENTED

1. Whether Section 230 of the Communications Decency Act, 47 U.S.C. § 230, preempts New Columbia's Commonsense Artificial Intelligence Review Act as applied to Respondent SocialAI, Inc. in this case.
2. Whether New Columbia's Commonsense Artificial Intelligence Review Act violates the First Amendment to the United States Constitution as applied to Respondent SocialAI, Inc. in this case.

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STATEMENT OF JURISDICTION

The judgment of the New Columbia Supreme Court was entered on May 1, 2025. The petition for certiorari was granted on September 30, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution, states, in part, "This Constitution, and the Laws of the United States which shall be made in pursuance thereof… shall be the supreme Law of the Land." art. VI cl. 2.

The First Amendment to the Constitution states, in part, "Congress shall make no law… abridging the freedom of speech." U.S. CONST. amend. 1.

Section 230 of the Communications Decency Act, 47 U.S.C. § 230, is appended to this brief.

STATEMENT OF THE CASE

In the modern digital environment, autonomous artificial intelligence ("AI") exacerbates the real risk of manipulation and deception in the dissemination of information, putting vulnerable populations at risk. *See, e.g., Garcia v. Character Techs., Inc.,* 785 F. Supp. 3d 1157, 1179 (M.D. Fla. 2025) (AI chatbot encouraged minor to commit suicide). In response, the legislature of the State of New Columbia enacted the Commonsense Artificial Intelligence Review Act ("CAIR") to ensure public safety, prevent the dissemination of misleading content, and protect vulnerable citizens of New Columbia. CAIR provides a backstop of human review to prevent negative consequences from AI.

CAIR requires all internet content providers ("ICPs") with at least 10 million monthly users globally to review and respond to content flagged on its site. CAIR, §§ 2, 3. If fifty unique users flag content visible on the platform within a one month period, the ICP is required to provide an independent review by at least one human being and determine whether it should be allowed or removed.[1] *Id*. The human(s) may rely on AI to provide background information during this review, but the human(s) must exercise independent judgment in making the final decision. CAIR, § 3(b). If requested by one of the fifty users, a human must provide a reasoned, good-faith explanation for the decision to allow or remove the flagged information. *Id.* Failure to comply with the law subjects an ICP to a civil penalty of $10,000 per violation. *Id.* § 4(a)(b).

SocialAI is a social media platform serving more than 100 million users. Complaint, ("Compl.") para. 11. However, SocialAI only has 100 employees because it aims for a fully AI-driven platform to serve a "limitless user base." Compl. paras. 13, 17. Accordingly, SocialAI's content is controlled and promoted by an AI system called the Behavioral Recognition Artificial Intelligence Network ("BraiN"). Compl. para. 14. While BRaiN was initially programmed by human employees to moderate content, SocialAI's employees can no longer discern the system's reasons for determining what content is removed or maintained on the site. Compl. para. 16.

In 2024, SocialAI employees conducted a quarterly audit of BraiN and discovered that it was promoting advertisements for unproven medical treatments and "cures." Compl. para. 19. But SocialAI decided not to take action because the inaccurate information was "generating revenue for the company." Compl. para. 24. Following this audit, fifty unique flagged to SocialAI an advertisement for "zapper therapy" as "unsafe to members of diabetes support

[1] The legislature also incorporated an explicit Savings Clause to ensure that CAIR does not mandate or dictate the content or viewpoint of any information an internet content provider must allow or remove.

groups." Compl. para. 22 (cleaned up). Again, SocialAI took no action because the zapper "advertisements generat[ed] revenue for the company." Compl. para. 24. When one user requested a reasoned explanation for allowing the advertisement to remain, SocialAI employees ignored it. Instead, BraiN automatically appended a disclaimer to the advertisement stating that "some users have identified this content as inappropriate." Compl. para. 23. Although SocialAI does not publicly disclose its content moderation policies, BraiN further stated that "[t]he content in question has been evaluated pursuant to company policies and has been determined to be appropriate." *Id.*

The risk from this technology is real. BRaiN promoted a zapper therapy advertisement to Michelle Nickel, a New Columbia resident and SocialAI user, touting the product as a scientifically proven method to "cure" diabetes by electrically zapping the lining of the small intestine. Compl. para. 26. Despite its claims, this zapper product is not supported by any scientific evidence and is dangerous. Compl. para. 21. Desperate to manage her diabetes while in law school, Nickel purchased and self-administered the therapy. *Id.* Nickel was subsequently hospitalized for four months and forced to withdraw from law school. *Id.*

New Columbia's Attorney General filed a Complaint against SocialAI on September 1, 2024, for failure to comply with CAIR. Compl. para. 26. New Columbia sought a civil penalty and an injunction against SocialAI preventing future violations. *Id*. at p. 8. On SocialAI's motion to dismiss, the Superior Court ruled that New Columbia had failed to state a claim because CAIR was preempted by Section 230 of the Communications Decency Act, 47 U.S.C. § 230 ("Section 230"). *Lieberman v. SocialAI, Inc.*, No. 24-cv-0001 (Sup. Ct. N.C. 2024). The court further found that CAIR intruded on SocialAI's editorial discretion in contravention of the First Amendment. *Id*.

New Columbia appealed to the Supreme Court of New Columbia, which affirmed. *Lieberman v. SocialAI, Inc.*, No. 25-cv-0001 (N.C. 2025). The court held that CAIR was preempted by Section 230. *Id.* at 5. It further held that CAIR impermissibly intrudes on SocialAI's "protected editorial decision making" under the First Amendment. *Id*. And, although the Superior Court did not reach the issue, the court found that § 3(b) of CAIR, requiring SocialAI to provide an explanation for its editorial decisions, was a violation of the "First Amendment's prohibition against compelled speech." *Id*. at 6.

New Columbia petitioned this Court for certiorari, which was granted.

SUMMARY OF THE ARGUMENT

The Supreme Court of New Columbia incorrectly held that the CAIR Act was preempted by Section 230 and violated the First Amendment. This Court should reverse and remand to the Superior Court for further factual development and proceedings against SocialAI.

CAIR is not preempted by Section 230. 47 U.S.C. § 230. Federal circuit courts, and the Supreme Court of New Columbia, have misinterpreted Section 230 by ignoring the text of the statute Congress passed and replacing it with their own ideas of what constitutes a "publisher." These faulty interpretations have been used to immunize some of the largest and most powerful companies in the world from almost any liability involving their users' speech. Congress never intended Section 230 to be a "get out of jail free card" for social media platforms. Instead, as traditional tools of statutory interpretation show, Congress intended to foreclose one theory of liability that disincentivized internet companies from engaging in content moderation: common law strict liability, which traditionally applied to publishers and speakers but not other actors, such as distributors. This Court has never interpreted Section 230 before, and it should take this opportunity to correct the lower courts.

Not only does Section 230 not impose strict liability for social media companies, but it imposes no liability for content or content moderation decisions at all. As a result, even under the erroneous precedent set in *Zeran v. America Online* and followed by the majority of circuits nationwide, CAIR is not preempted because SocialAI retains its discretion in all traditional "publishing" decisions. Nor would the Ninth Circuit's bar on content monitoring requirements allow SocialAI to escape liability. CAIR only requires a human backstop for decisions made by opaque and untested AI systems, which does not treat SocialAI as a "publisher" in any sense. Rather, it treats it as a business with an obligation to give its users the tools they need to keep themselves safe.

The First Amendment does not extend to autonomous AI systems operating outside of human control. Because BRaiN does not reflect human expression, this case is outside of the First Amendment's purview entirely. CAIR is content-neutral, regulating the process of reviewing content on social media platforms, not the content itself. CAIR is justified by New Columbia's interest in public safety, and that interest is unrelated to the suppression of speech. Therefore, this Court must apply an intermediate level of scrutiny, which CAIR satisfies. Section 3(a)'s human review requirement furthers the government's interest by reducing the risk of autonomous system errors and ensuring potentially harmful content is reviewed. Section 3(b)'s reasoned explanation requirement similarly furthers public safety, as well as preventing consumer deception, by equipping users with the necessary tools to evaluate the reliability of information, so as to not be deceived by misleading content. Unlike generic, non-explanatory warnings, Section 3(b)'s disclosure requirement by human employees requires social media platforms to explain their decisions for removing or maintaining flagged content with reference to their content moderation policies. Together, both sections are narrowly tailored because they leave social media platforms with full discretion to make substantive content choices.

Even if CAIR were content-based, CAIR would still pass constitutional muster in this as-applied challenge. Because SocialAI's decision to promote a product advertisement was for the sole purpose of generating revenue, their "editorial discretion" constitutes commercial speech under the *Bolger* framework. Since the zapper advertisement is misleading, New Columbia was free to regulate SocialAI's commercial conduct. Further, Section 3(b) satisfies the *Zauderer* framework for factual disclosures on commercial speech because SocialAI's own message is not "drowned out" by compliance with CAIR, nor is the regulation burdensome or unjustified.

STANDARD OF REVIEW

On a motion to dismiss, this Court reviews questions of law *de novo*, accepting as true all factual allegations. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). "Reasonable inference[s]" are drawn in favor of the non-moving party. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

I. Section 230 does not preempt the CAIR Act.

A. Preemption is disfavored when states legislate within their police powers.

The supremacy of federal law is a fundamental doctrine within this Court's jurisprudence. Equally as fundamental, however, is the status of states as independent sovereigns with power to legislate within their own domains. "An intention to disturb the [established] balance" between federal and state power "is not lightly to be imputed to Congress." *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 513 (1940).

State laws may be preempted in three ways: (1) by express statement of Congress, *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992); (2) when state laws are in direct conflict with the federal law, *Kelly v. Washington ex rel. Foss Co.*, 302 U.S. 1, 10 (1937); or (3) if the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

Section 230 contemplates preemption but expressly states that "nothing in this section shall… prevent any State from enforcing any State law that is consistent with this section." 47 U.S.C. § 230(e)(3). *See also Cipollone*, 505 U.S. at 517 ("Congress' enactment of a provision defining the preemptive reach of a statute implies that matters beyond that reach are not pre-empted."). When a statute explicitly contemplates preemption, the court is tasked with "identify[ing] the domain expressly pre-empted by that language," *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996) — that is, to determine whether New Columbia's law is inconsistent with Section 230.

In doing so, this Court must consider two important principles. *Medtronic*, 518 U.S. at 485. First, in our federal system, "states are independent sovereigns." *Id.* As "laboratories of democracy," states are entitled to make new policy and legislate on issues peculiarly within their competence. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 387 (1932) (Brandeis, J., dissenting). When Congress legislates in an area that states have "traditionally occupied," such as police powers and public health and safety, this Court "start[s] with the assumption" that the federal act does not preempt the state one "unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Second, "the purpose of Congress is the ultimate touchstone" in determining the scope of preemption. *Medtronic*, 518 U.S. at 485. Here, the purpose of Congress, as manifested in the text of the statute and its legal and historical context, was to ensure that internet platforms would not be subject to strict liability for the content posted by its users. State statutes outside those boundaries, including CAIR, are not preempted. Because New Columbia enacted CAIR to protect its citizens from potentially harmful content online, CAIR is a valid exercise of New Columbia's police powers, and thus this Court should presume that Congress did not intend to preempt it without express language.

B. Section 230 should be interpreted narrowly, in accordance with congressional intent.

Section 230 bars "treat[ing]" an internet platform as the "publisher or speaker" of information originating with a third party. 47 U.S.C. § 230(c)(1). The text of the statute is narrow and should be construed narrowly.

When Congress enacted Section 230, it did so against the backdrop of existing common law principles that give meaning to the statutory language. "Where Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it." *George v. McDonough*, 596 U.S. 740, 746 (2022) (internal quotation omitted). Here, those terms of art are "publisher" and "speaker," which are not defined in Section 230 but instead draw their meaning from common law doctrine. *See Malwarebytes, Inc. v. Enigma Software Grp.,* 141 S. Ct. 13 (2020) (Thomas, J., respecting the denial of certiorari).

At common law, "publishers," including newspapers, were strictly liable for defamation relating to material they published on the theory that they exercised "editorial control" over that material, and thus were charged with knowledge of its content. Restatement (Second) of Torts § 580B, comment b (A.L.I. 1977). Similarly, "speakers," as the original source of the content, were also strictly liable. *Id.* at § 581, comment c. In contrast, newsstands, booksellers, and others who did not exercise editorial control over content were considered distributors and not liable for defamation absent proof they had knowledge of the defamatory statement. *Id.* at

§ 581(1); *see also Cubby v. Compuserve*, 776 F. Supp. 135 (S.D.N.Y. 1991) (treating internet news and messaging service as a distributor for purposes of defamation). Although originating in the context of defamation, these distinctions also applied to other offenses derived from the content of speech. *See, e.g., Smith v. California*, 361 U.S. 147 (1959) (holding that a bookseller could not be liable for distribution of obscene literature without proof of knowledge of the book's obscenity).

Therefore, to "treat as a publisher or speaker" means to hold strictly liable for a third party's speech. Since Congress legislated in an area traditionally governed by the common law, Section 230 must be read "favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." *United States v. Texas*, 507 U.S. 529, 534 (1993) (internal quotation omitted). Such a contrary purpose only abrogates the common law when it "speaks directly to the question addressed by the common law." *Id*. Far from showing an intent to abrogate the common law, the text of Section 230 incorporates common law terms of art without comment. 47 U.S.C. § 230(c)(1). It does not "speak directly" to the common law framework of publisher and distributor liability or the issue of scienter.

However, lower courts interpreting Section 230, including the New Columbia Supreme Court, have ignored the text and legal context of Section 230 in favor of broad purposive arguments. Congress's stated purpose of "preserv[ing[the vibrant and competitive free market for the internet… unfettered by… regulation" is far too broad to provide the kind of legislative intent necessary to abrogate the common law. *Contra Zeran v. Am. Online*, 129 F.3d 327 (4th Cir. 1996); 47 U.S.C. § 230(b)(2). While this precedent has been favored in lower courts in the last two decades, it has not gone without scrutiny. *See Anderson v. TikTok*, 116 F.4th 180 (3d Cir. 2024); *Calise v. Meta Platforms, Inc.*, 103 F.4th 732 (9th Cir. 2024); *Malwarebytes*, 141 S.

Ct. 13. Over the years, Section 230 has been used to shield companies for egregious behavior, including outright refusal to remove known child pornography from its site, *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 641 (9th Cir. 2025), failure to protect vulnerable underage users from predators, *Doe v. MySpace, Inc.*, 528 F.3d 413, 416 (5th Cir. 2008), and using algorithms that promoted hate speech and radicalized future mass shooters, *M.P. ex rel Pinckney v. Meta Platforms, Inc.*, 127 F.4th 516 (4th Cir. 2025). It cannot be that Congress intended this narrow statutory text to "confer sweeping immunity on some of the largest companies in the world" for this behavior. *Malwarebytes*, 141 S. Ct. 13 (Thomas, J., respecting denial of certiorari). This Court should favor the text of the statute over judges' ideas of Congress's purpose.

1. Congress never intended to provide blanket immunity for social media platforms.

Reading Section 230 to bar only common law strict liability is the only interpretation of the statute that comports with the text. It is a "cardinal principle of statutory construction" that courts must "give effect, if possible, to every clause and word of a statute." *Williams v. Taylor*, 529 U.S. 362, 404 (2000). To "treat as a publisher or speaker" either refers to specific forms of liability derived from third-party content or it is "mere surplusage." *Fischer v. United States*, 603 U.S. 480, 498 (2024). Indeed, elsewhere in Section 230, Congress created blanket immunity from liability when an internet platform engages in specific forms of content moderation, without regard to whether the provider is treated as a publisher or speaker. *See* 47 U.S.C. § 230(c)(2) ("No provider or user of an interactive computer service shall be held liable" for listed conduct). "Treat[ing]" an internet platform as a publisher or speaker therefore has a narrower scope because "[w]here Congress uses a particular phrase in one subsection and a different phrase in another, we ordinarily presume that the difference is meaningful." *Malwarebytes*, 141 S. Ct. at 16 (Thomas, J., respecting denial of certiorari) (citing *Russello v. United States*, 464

U.S. 16, 23 (1983)). The idea that subsection (c)(1) creates blanket immunity for social media platforms from any cause of action related to third-party speech is therefore disproven by standard tools of statutory construction. "Had Congress intended" to create blanket immunity, "it presumably would have done so expressly as it did in the immediately following subsection." *Russello*, 464 U.S. at 23.

To hold otherwise, circuit courts, and the court below, have had to ignore the terms "publisher or speaker," *cf. Zeran*, 129 F.3d at 330 (finding immunity for "*any* cause of action that would make a service provider liable for information originating with a third-party user of the service") (emphasis added), or else create out of whole cloth their own understanding of what it means to "treat" an internet platform as a publisher, ignoring both the common law and the term "speaker." *Cf. Barnes v. Yahoo!*, 570 F.3d 1096, 1102 (9th Cir. 2009). But the canon of construction *noscitur a sociis* states that words gain meaning from their association with nearby words. *Fischer*, 603 U.S. at 481. Therefore, "publisher" should be construed with reference to "speaker." The commonality between the two terms is that at common law, both publishers and speakers, as opposed to other actors, were subject to strict liability for defamation. Relying on a judge's ideas of what a publisher does to determine when a party is being "treated" as a "publisher" contravenes this established canon of statutory construction. *Barnes*, 570 F.3d at 1102. Neither blanket immunity nor a "publishing functions test" should be adopted in light of the actual text of the statute that Congress passed.

2. The legislative history of Section 230 provides further evidence that Congress intended to foreclose only strict liability.

Congress's intent to provide only narrow protection from liability is further evidenced by legislative history. Congress enacted Section 230 in response to a New York state court decision that punished an early internet message board company for engaging in content moderation by subjecting that company to strict publisher liability. *See* S. Rep. No. 104-230 ("One of the specific purposes of this section is to overrule *Stratton Oakmont v. Prodigy* and any other similar decisions which have treated [internet service] providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material.") The court decided that "computer bulletin boards should generally be regarded in the same context as bookstores, libraries and network affiliates"—that is, as distributors. *Stratton Oakmont v. Prodigy Servs.*, 1995 WL 323710, at *5 (N.Y. Sup. Ct. May 24, 1995). But it also held that Prodigy should be treated as a publisher, and therefore liable for a user's defamatory statements, because of its decision to exercise "editorial control" by using a "software [] program" that would flag offensive language, implementing content guidelines, and allowing moderators to delete posts for "offensiveness and "bad taste." *Id.*, at *4.

Congress therefore sought "to remove disincentives for the development and utilization of blocking and filtering technologies" like those imposed in *Stratton Oakmont* by ensuring that platforms could engage in content moderation without becoming a "publisher" for common law liability purposes. 47 U.S.C. § 230(b)(4). It intended to encourage effective content moderation. *See* 47 U.S.C. § 230(c)(1) (heading) ("Protection for 'Good Samaritan' blocking and screening of offensive material"). Nothing in the narrow statutory language evinces a contrary intent that would prevent a State from ensuring that social media companies provide human review of pervasive user complaints. Moreover, against this backdrop, it is logical to conclude that Congress would use the same terms—publisher, speaker, and distributor—that the court in *Stratton Oakmont* used. *Cf. George*, 596 U.S. at 741 (Congress legislated against "[a] robust regulatory backdrop" which "fill[ed] in the details" of the statutory scheme). This inquiry further establishes that decisions like *Zeran* abandon traditional tools of interpretation in favor of broad arguments based on their understanding of what Congress's purpose must have been—without reference to Congress's own statements on the matter, the most important of which is the text of the statute. This Court should not follow such cases.

C. Under any interpretation of Section 230, CAIR is not preempted.

1. Under the proper interpretation of Section 230, CAIR falls entirely outside its scope.

Because Section 230 bars only common law publisher liability, SocialAI cannot be held strictly liable for false advertising posted on its platform, such as the zapper advertisement. However, CAIR does not attach liability to any third-party content, nor does it attach any liability without notice. Nor does CAIR treat SocialAI as a publisher, but instead as a corporation doing business in New Columbia and therefore subject to its safety regulations.

CAIR requires only that SocialAI provide a backstop of human review and explanation to protect its users from its AI system. SocialAI's liability here derives not from the content of any information hosted on its platform but from its refusal to provide content review and explanations by humans. Compl. p. 7. Far from holding SocialAI liable for the harmful speech of its users, New Columbia seeks to hold SocialAI liable for its own irresponsible behavior: allowing an autonomous AI system to promote false and misleading advertisements promising fake cures to medical support groups while ignoring complaints from users. Compl. paras. 20-24.

Additionally, SocialAI did not incur any liability until after it had sufficient notice. Its obligation to provide human review did not attach until fifty unique human users of the platform notified SocialAI that the content was harmful. CAIR § 2(b); Compl. para. 22. CAIR's notice requirement ensures that platforms have every chance to comply with its safety regulations. Its theory of liability is not analogous to the common law and is thus not preempted.

2. Even under the erroneous precedent set by Zeran, CAIR does not treat SocialAI as a publisher.

This court should overturn *Zeran* and the atextual cases that followed it. However, even if this Court declines to reach this decision, CAIR is still not preempted by Section 230. Although the dicta in the *Zeran* and subsequent decisions are sweeping, their holdings are comparatively narrow and uniform, barring liability if 1) the defendant is a "provider or user of an interactive computer service"; 2) the information forming the basis of liability was "information provided by another information content provider"; and 3) the plaintiff seeks to hold the defendant "liable as the 'publisher or speaker' of that information." *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014). Most of these cases dismiss complaints predicated on theories of negligence or defamation that request blocking or removal of content as a remedy. *See, e.g., Klayman*, 753 F.3d at 1357 (seeking "an injunction to prevent Facebook from allowing the Intifada page and other similar pages on its website"); *Johnson v. Arden*, 614 F.3d 785 (8th Cir. 2010) (requesting removal of defamatory posting); *Doe v. MySpace, Inc.*, 528 F.3d at 413 (asserting negligence for allowing non-age-verified users to post personal information). The Ninth Circuit also bars liability based on monitoring requirements. *Calise*, 103 F.4th at 742.

Both parties agree that SocialAI is a "provider… of an interactive computer service." However, this case does not meet the other two prongs of this test. While the zapper advertisement is "information provided by another information content provider," SocialAI's liability is not predicated on that content. Rather, it is based on SocialAI's own conduct, including using an autonomous AI system and ignoring user complaints. Compl. p. 7. Unlike cases like *Klayman* and *Zeran* where plaintiffs objected to content based on its message and requested removal as a remedy, New Columbia does not claim injury from the message of the advertisement, and SocialAI cannot cure its liability by removing it. *Klayman*, 753 F.3d at 1357; *Zeran*, 129 F.3d at 330. The only remedy is for SocialAI to provide human review of its AI system's actions – an obligation that *Zeran* and related precedent does not bar.

Similarly, CAIR does not "treat [SocialAI] as a publisher" under this theory because it does not impose liability for decisions regarding content. CAIR does not "suggest[], dictat[e], requir[e], or mandat[e]" the allowance or removal of any content or information, including flagged information. *Id.*, at § 5; s*ee also Zeran*, 129 F.3d at 330 (barring claims based on decisions "whether to publish, withdraw, postpone or alter content"). Whether SocialAI chooses to remove or maintain content is entirely within its own discretion. CAIR requires only, as a minimum safety measure, the availability of human review of postings for users who request it, and transparency regarding whatever decisions are made. SocialAI may choose to remove some content as a consequence of its review, but New Columbia is not forcing it to do so.

CAIR also does not require SocialAI to directly monitor third-party content. Instead, it is required to provide human review only of the content flagged by users. These flags "result[] from the third-party" posts but are "distinct, internal, and nonpublic." *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019). This review obligation can "be[] satisfied without changes to content posted by the website's users"— that is, without engaging in a traditional publishing function. *Id.* at 683.

This case should be understood like the design defect claims considered by the Ninth Circuit in *Lemmon v. Snap* and *Doe 1 v. Twitter*. In those cases, the court held that the company's own product design, not third-party content, caused the plaintiff's injury. *Lemmon v. Snap*, 995 F.3d 1085, 1092 (9th Cir. 2021) (software design promoted dangerous conduct, not user posts); *Doe 1 v. Twitter,* 148 F.4th at 645 (failure to provide adequate reporting infrastructure caused injury). Here, the injury is not that SocialAI hosts, disseminates, or even algorithmically promotes harmful or dangerous content. Rather, the injury is that SocialAI unleashed an untested and opaque technology, BRaiN, on its unsuspecting users, and now refuses to allow human employees to rein it in. The BRaiN system is SocialAI's own creation, and while it feeds on third-party content, providing adequate oversight of its performance, when requested by users, has nothing to do with content and everything to do with safety.

II. The CAIR Act does not violate the First Amendment as applied to this case.

A. BRaiN does not receive First Amendment protection.

The First Amendment affords *human beings* the right to speak free of government intrusion unless justified. U.S. CONST. amend I. While the freedom of speech has been extended to corporations engaging in expressive activity, that right applies because corporations operate as a group of human beings who each individually receive constitutional protection. *Citizens United v. Fed. Elections Comm'n*, 558 U.S. 319, 365 (2010). As this Court has held, "[t]he power to publish thoughts, no less than the power to speak thoughts, belongs only to *human beings*…." *Id.*, at 392 n.7 (emphasis added). But when there is insufficient human involvement, speech is not protected. *Moody v. NetChoice*, 603 U.S. 707, 728 (2024) (Barrett, J., concurring). Because SocialAI's business model uses a fully autonomous AI system to moderate its content, this case falls out of the First Amendment's purview entirely.

To be sure, the First Amendment protects a social media platform's curation and compilation of content into a single product if it is expressive and communicates a particular message. *Moody*, 603 U.S. at 728; *Rumsfeld v. Forum for Acad. & Inst. Rts., Inc.*, 547 U.S. 47, 64 (2006) (absent a message, compilation of third-party speech is not expressive). This protection, however, has never extended to autonomous algorithms that are so far attenuated from human involvement that they no longer represent human expression. *E.g. Garcia v. Character Techs., Inc.,* 785 F. Supp. 3d 1157, 1179 (M.D. Fla. 2025) (declining to extend First Amendment protection to the output of an artificial chatbot that encouraged a child to commit suicide). Instead, as Justice Barrett suggested in her *Moody* concurrence, the First Amendment should not apply to social media companies utilizing autonomous AI systems to manage their curation of content. *Moody*, 603 U.S. at 747 ("[T]echnology may attenuate the connection between content-moderation actions and human beings' constitutionally protected right to decide for themselves the ideas deserving of expression") (cleaned up). Determining whether a particular system is entitled to First Amendment protection requires a fact-intensive inquiry into the connection between human input and algorithmic output. *See Moody*, 603 U.S. at 745 (Barrett, J, concurring); *NetChoice, LLC v. Bonta*, No. 25-146, 2025 WL 2600007, at *7 (9th Cir. Sept. 9, 2025).

BRaiN, by SocialAI's own admission, is fully autonomous. Compl. para. 16. It functions without human involvement, which is the business model fashioned and trumpeted by SocialAI's founder, Adelaide Dasher. Compl. paras. 13, 18. While BRaiN was initially programmed by SocialAI developers to detect and remove illegal, inaccurate, and unlawful content, the AI system no longer reflects human judgment. *Lieberman v. SocialAI, Inc.*, No 24-cv-0001 at *2. Not only has BRaiN departed from its initial coding instructions, but its decision-making is no longer discernible to SocialAI human employees. Compl. para. 16. Instead, it is too attenuated from human judgment for its autonomous decisions to receive First Amendment protection. *See NetChoice v. Bonta*, 2025 WL 2600007, at *7 (an algorithm that evolves from its initial coding absent human supervision reflects the AI system's judgment, not that of humans). Further, the human beings at SocialAI communicate no message of their own when they delegate all content curation to an AI system. *See id.* (an algorithm that merely responds to how users act online, giving them the content they want, is not expressive).

While SocialAI implements retrospective quality checks, that post-hoc review does not transform mechanical decision-making into human expression. Compl. para. 9. And importantly, those checks had no effect on this case, as Social AI made a "business decision" not to override BRaiN after becoming aware that BRaiN was amplifying fraudulent advertisements. Compl. para. 20. Even in the face of pervasive user complaints about the zapper advertisement, Social AI's employees did nothing because "the AI was working as expected" and "the advertisements were generating revenue for the company." Compl. para. 24. These facts do not show the exercise of human editorial discretion; they show its absence. The First Amendment therefore has no application to this case.

B. The CAIR Act is content-neutral and passes intermediate scrutiny.

1. Unrelated to the suppression of speech, the CAIR Act regulates the process of content review, not the content itself.

Even if the First Amendment applied, CAIR is constitutional. Content neutral restrictions regulate speech without reference to the ideas or viewpoints expressed and are indifferent to whether the State agrees or disagrees with the message. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). Unlike content-neutral regulations that apply to *all* content irrespective of the message's viewpoint, content-based restrictions apply to particular speech *because* of the idea or message expressed. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

The CAIR Act is content-neutral because it regulates the process through which SocialAI responds to user complaints and not the message itself. Regardless of whether New Columbia favors or disfavors the content's message, CAIR applies to all flagged content on the SocialAI platform. The New Columbia Legislature here has set no comparable limits or parameters defining what constitutes as "inaccurate", "unsafe" or "unlawful" content, unlike in *Volokh v. James*, where New York proscribed speech made on social platforms that "vilif[ied]" or "humiliate[d]" based on race, ethnicity, or other protected characteristics, 148 F.4th 71, 93 (2d Cir. 2025). SocialAI users who find content to be harmful based on their own personal beliefs, experiences, and perspectives can flag this information, prompting SocialAI to review it. New Columbia is therefore wholly agnostic about which content will, or will not, trigger its procedural requirements. Likewise, unlike in *Moody* where the Texas legislature sought to balance the marketplace of ideas through regulation, here New Columbia seeks only to protect its citizens from AI-driven content that is harmful to their health and safety, such as the injury suffered by Michelle Nickel resulting in her hospitalization. 603 U.S. at 718; Compl., para. 26. The State's concern is unrelated to the ideas or viewpoints on the platform themselves.

A facially neutral regulation is not content-based unless the law draws distinctions based on the viewpoint or subject matter. *See Ward*, 491 U.S. at 801 (holding that a sound-level ordinance was content neutral even though it disproportionately affected certain forms of expression because the law was justified without reference to the content of the speech); *United States v. O'Brien*, 391 U.S. 367, 382 (1968) (holding that a regulation against burning draft cards was permissible because it was justified by government interests unrelated to the suppression of speech). Here, CAIR's review requirement is triggered based on the secondary effects of speech on the SocialAI platform, irrespective of the content or viewpoint of speech. Users' personal reactions, not New Columbia's opinions, determine when CAIR applies. While in practice CAIR most often attaches to disputed content that generates sufficient user concern to prompt at least fifty users to request human review, this does not transform CAIR from a content-neutral regulation into one that is content-based. Because CAIR is justified by the government's interest in public safety, and that interest is unrelated to the restriction of viewpoints, CAIR is content-neutral, "even if it has an incidental effect on some speakers or messages but not others." *Ward*, 491 U.S. at 791.

2. The CAIR Act passes intermediate scrutiny.

As a content-neutral law, the CAIR Act passes constitutional muster because the regulation is narrowly tailored to further public safety for residents of the State of New Columbia.

Because CAIR is content neutral, this Court must apply an intermediate level of scrutiny. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994). To survive review, content-neutral regulations must be (1) unrelated to the suppression of free expression, (2) leave open ample alternative channels of communication, and (3) further a legitimate government interest through narrowly tailored means. *Ward*, 491 U.S., at 800; *O'Brien*, 391 U.S., at 377. In pursuing a legitimate governmental interest, a state legislature is entitled to substantial deference in its choice of regulations, provided that it employs meaningful criteria. *See Turner*, 512 U.S. at 656–666.

New Columbia's interests, ensuring public safety and preventing consumer protection, are recognized by courts as not only legitimate, but compelling. *See McCullen v. Coakley*, 573 U.S. 464, 486 (2014); *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio,* 471 U.S. 626, 651 (1985). By mandating that SocialAI's human employees review content that has been flagged by fifty independent users and provide a reasoned explanation for its decision to remove or maintain a piece of content, CAIR promotes public safety and protects vulnerable populations. CAIR, §§1, 3.

a. Section 3(a) involves humans to provide a check on a currently uncontrolled process.

By allowing users to flag what content they find harmful, rather than content favored or disfavored by the New Columbia legislature, content that would not otherwise be reviewed by humans receives such review. CAIR requires human oversight to ensure that decisions about content are not solely made by opaque, autonomous algorithms, especially when, as here, those algorithms prioritize user engagement and revenue over safety. *Lieberman v. SocialAI*, *Inc.*, No. 25-cv-0001, at *9, (Bumpstein, J, dissenting) (quotation marks omitted). Further, requiring that flagged content be reviewed by human beings reduces the margin of error for decisions requiring complex reasoning and ethical judgments. Logol AG, *The Range of Error Accepted in AI Utilization vs. Human Error in the Legal Sector*, https://perma.cc/9ERR-U4W3. While AI systems generally excel at high-volume, data-intensive tasks, human judgment remains essential to the good-faith and effective review of potentially harmful and inaccurate content on SocialAI's platform. *Id.* These concerns are not speculative. BRaiN's failure to respond to misleading and harmful content resulted in the hospitalization of Michelle Nickel. Compl. para. 26.

The CAIR Act therefore offers a minimally intrusive regulatory check on an otherwise unchecked process in the rapidly evolving AI-driven social media landscape. And CAIR does so in a way that is unrelated to the suppression of free expression, by focusing narrowly on review procedures and not outcomes.

b. Section 3(b) gives users the tools to discern truthful information from misleading content.

Section 3(b) of the CAIR Act is narrowly tailored to advance the government's substantial interest in protecting the public from harmful and misleading information disseminated through automated systems. Rather than imposing a blanket removal requirement or compelling platforms to adopt a particular viewpoint, Section 3(b) requires only that a human employee provide a reasoned, responsive, and good-faith explanation when flagged content is reviewed. Offering this disclosure furthers public safety by equipping users with the necessary tools to evaluate the reliability of information while preserving their ability to make independent judgments. *See Volokh,* 148 F.4th at 91 (disclosure requirements enabling users to make informed choices satisfies *Zauderer* review). Moreover, CAIR regulates a documented failure of automated moderation systems: namely, the use of generic, non-explanatory warnings that obscure the basis for content decisions and frustrate the aim of the statute. Compl. para. 23 (warning that "[s]ome users have identified this content as inappropriate" did not comply with CAIR)). By requiring a human explanation, Section 3(b) directly addresses this deficiency without restricting lawful speech or mandating content removal. Lastly, because CAIR regulates process and not speech, SocialAI retains full discretion over all substantive content decisions, including offering additional messaging if it chooses. *See Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974). As such, ample alternative channels of communication remain available.

C. Even if the CAIR Act were content based, because SocialAI's speech is commercial, the CAIR Act would still pass constitutional muster.

The CAIR Act does not target any one viewpoint or category of speech. But even if CAIR were content-based and the proper review were strict scrutiny, the First Amendment challenge would fail because the zapper advertisement is commercial speech under all frameworks utilized by this Court. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 561-562 (1980); *Bolger v. Youngs Drug Prods. Corp*., 463 U.S. 60, 66, (1983).

Commercial speech is speech related solely to the economic interests of the speaker and its audience, proposing a commercial transaction. *Bolger,* 463 U.S. at 67 (holding that an advertisement for a specific product, promoted solely for economic motivation, was commercial speech within the First Amendment). The Constitution affords lesser protection to commercial speech than to other constitutionally guaranteed expression. *Cent. Hudson*, 447 U.S. at 563. To justify a regulation burdening commercial speech, the State is required to prove that there is a "reasonable fit" between the interest and the means chosen to further it. *Bd. of Trs. of State Univ. of New York v. Fox*, 492 U.S. 469, 480 (1989). However, where a communication is misleading or related to unlawful activity, the inquiry ends and a State is free to regulate this form of commercial speech. *Cent. Hudson*, 447 U.S. at 563-564 ("[T]here can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity."); *In re RMJ*, 455 U.S. 191, 203 (1982) (misleading advertising may be prohibited entirely by the State).

The advertisement for the zapper is commercial speech. Satisfying all three *Bolger* factors, the advertisement was for the purchase of a product and related solely to the economic interests of the speaker. 463 U.S. at 67. The zapper advertisement promoted a product, purportedly supported by "peer-reviewed scientific evidence," that zaps the lining of the small intestine with electric pulses to "cure" individuals of diabetes. Compl. para. 21. Not only is the zapper advertisement unlawful as violative of consumer protection laws against deceptive advertising of a harmful product, 15 U.S.C. § 45, but the advertisement misleads by using false claims to trick vulnerable individuals into buying the product. Compl. para. 21; *see Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 251 (2010). Because the advertisement was unquestionably misleading if not blatantly false, New Columbia was free to regulate it.

Even assuming *arguendo* SocialAI's AI-driven curation of content constitutes protected editorial judgment under the First Amendment, its decision to promote a product advertisement for the sole purpose of generating revenue constitutes the platform's own first-party commercial speech. Compl. para. 24. By promoting the advertisement on the platform, notwithstanding knowledge that BRaIN amplified misleading material, SocialAI's editorial discretion operated to advance a commercial transaction, thereby rendering that promotional decision commercial speech under *Bolger*. 463 U.S. at 67. And when SocialAI's commercial speech is considered alongside its claimed "expressive activity," it does not receive heightened First Amendment protection merely because it is linked to noncommercial speech. *See Bd. of Trs. v. Fox*, 492 U.S. at 473. Because the advertisement was unquestionably misleading if not blatantly false, and SocialAI continued to promote it, New Columbia was free to regulate Social AI's commercial conduct.

D. Section 3(b) of the CAIR Act satisfies the *Zauderer* framework for factual disclosures on commercial speech.

The First Amendment protects both the right to speak and the right not to speak. *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of California*, 475 U.S. 1, 11 (1986). This Court has nonetheless recognized that the First Amendment is not violated when laws requiring commercial disclosures compel only factual and noncontroversial information. *Zauderer*, 471 U.S. at 651 (finding that a speaker's interest in not providing factual information is minimal, and the government therefore can mandate factual disclosures). The disclosure requirement must be reasonably related to further the State's interest and must not be unjustified or burdensome. *Id.*; *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 778 (2018) (finding that disclosure requirements which "drown out" a speaker's message do not satisfy *Zauderer* review). The liberty interests guarded by the First Amendment and implicated by personal or political speech are not implicated by compelled commercial disclosures. *Nat'l Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 114 (2d Cir. 2001).

Section 3(b) of the CAIR Act requires only factual and noncontroversial information. Nowhere does CAIR mandate SocialAI to take a stance or state an opinion on the specific contents of flagged information. *See* CAIR. Instead, human employees retain discretion to decide whether content deemed inappropriate, harmful, or inaccurate by users warrants removal per their own internal policies. If requested by a user, human employees must offer a factual statement detailing the action taken and why, not normative judgments. This measure for transparency differs from *X Corp* where California forced platforms to speak in the government's voice about contested social categories. *X Corp. v. Bonta*, 116 F.4th 888, 901 (9th Cir. 2024); Cal. Bus. & Prof. Code §§ 22675–81 (requiring social media companies to detail how they define hate speech, racism, extremism, and publicly post these terms). On the contrary, CAIR does not require SocialAI to take a stance on controversial topics. Here, CAIR only requires that SocialAI publicly disclose the results of its content moderation policies as they relate to information flagged by users. *See Volokh*, 148 F.4th at 90 (holding that disclosure requirements warrant *Zauderer* review when they "bear on what social media users can expect social media companies to do after receiving certain complaints"). This does not run afoul of the First Amendment because this requirement for disclosure of factual information does not require SocialAI to indicate what content is "worthy of moderation," instead, all content is treated the same. *Id.*at 90. Merely because SocialAI may not wish to make the disclosures required by CAIR or would prefer to make a different statement does not render the disclosure controversial. *Nat'l Retail Fed'n v. James,* No. 25-CV-5500, 2025 WL 2848212, at *6 (S.D.N.Y. Oct. 8, 2025).

Section 3(b) reasonably relates to furthering the interest of ensuring public safety and preventing consumer deception by equipping users with the necessary tools to distinguish accurate information from harmful, misleading content. *Supra* Section II.C; *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 498 (1996) (explaining that legislatures may require commercial messages to provide warnings and disclaimers as are necessary to prevent consumer deception). Neither is CAIR unjustified or unduly burdensome. Because CAIR does not require removal of any content and SocialAI is not restricted from conveying their own message outside of what is required by the disclosure, speech is not drowned out or unduly burdened. *See Nat'l Retail Fed'n,* 2025 WL 2848212, at *3. The real harm at issue, misleading content injuring vulnerable populations, is being remedied by CAIR in a means that is not more extensive than reasonably necessary. *See Becerra*, 585 U.S. at 776 (holding that commercial disclosures must remedy harm that is not merely hypothetical, to prevent the risk of chilling speech).

CONCLUSION

For the foregoing reasons, the judgment of the New Columbia Supreme Court should be REVERSED and REMANDED to the New Columbia Superior Court for further proceedings against SocialAI.

Respectfully submitted,

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CERTIFICATION

1. This brief contains 7,827 words with 3,081 words in Issue I and 3,092 words in Issue II.
2. This brief is in 12-point Times New Roman font, left justified, and has 1” margins.
3. I certify on my honor, I submit this work in good faith and pledge that I have neither given nor received improper aid in its completion.

APPENDIX

47 U.S. Code § 230 - Protection for private blocking and screening of offensive material

(a) FINDINGS
The Congress finds the following:
(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.
(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.
(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.
(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.
(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) POLICY
It is the policy of the United States—
(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;
(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;
(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;
(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and
(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) PROTECTION FOR "GOOD SAMARITAN" BLOCKING AND SCREENING OF OFFENSIVE MATERIAL
(1) TREATMENT OF PUBLISHER OR SPEAKER
No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) CIVIL LIABILITY
No provider or user of an interactive computer service shall be held liable on account of—
(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) EFFECT ON OTHER LAWS

(1) NO EFFECT ON CRIMINAL LAW

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) STATE LAW

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) NO EFFECT ON SEX TRAFFICKING LAW

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—
(A) any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;
(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18; or
(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f)DEFINITIONS

As used in this section:

(1) INTERNET

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) INTERACTIVE COMPUTER SERVICE

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) INFORMATION CONTENT PROVIDER

The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) ACCESS SOFTWARE PROVIDER

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.