No. 08-1202

IN THE

Supreme Court of the United States

IMS HEALTH INC. & VERISPAN, LLC.,

Petitioners,

v.

KELLY A. AYOTTE, NEW HAMPSHIRE ATTORNEY GENERAL,

Respondent.

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

BRIEF OF SOURCE HEALTHCARE ANALYTICS, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

Source Healthcare Analytics, Inc., sells a variety of information products, including products addressed by New Hampshire's Prescription Restraint Law ("the Law"). [2] These products utilize prescriber-identified prescription information (omitting the identity of the patient), organized and presented in various ways, and/or combined with other information, to meet the needs of particular user groups.

One use of *Amicus*'s products covered by the Law is to enable pharmaceutical companies to identify doctors who may be interested in their products, and to provide relevant information to sales representatives who regularly meet with individual doctors. These products also enable pharmaceutical companies to identify doctors who may have patients who would be suitable participants in clinical trials of new drugs. These products have been used by

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[1] Pursuant to Supreme Court Rule 37.6, *Amicus* states that no counsel for any party authored this brief in whole or in part, and that no person or entity other than Source Healthcare Analytics, Inc., has made a monetary contribution to fund the preparation or submission of this brief. Counsel for all parties received notice more than 10 days prior to the filing of this brief, and both Petitioner and Respondent consented to its filing.

[2] Source Healthcare Analytics, Inc. is a wholly-owned subsidiary of Wolters Kluwer Health, Inc., which is a division of Wolters Kluwer U.S. Corporation. While not a plaintiff in the instant litigation, Source Healthcare Analytics, Inc., is a plaintiff in pending litigation in Maine and Vermont raising similar constitutional issues. *See IMS Health, Inc., et al. v. Steven Rowe*, No. 07-cv-127 (D. Me., filed Aug. 29, 2007); *IMS Health, Inc. v. William H. Sorrell*, No. 07-cv-188 (D. Vt., filed Aug. 29, 2007).

governmental agencies, including the FDA, to direct safety alert letters to doctors whose prescribing practices make them relevant, and to enforce civil and criminal laws against abusive prescribing practices. Governmental agencies have also used these informational products to perform regulatory impact studies which assess the effect of labeling changes on prescribing habits and usage patterns.

The First Circuit's decision would strip these products—and the valuable information they contain—of *any* protection under the First Amendment. It is unsurprising that the First Circuit's crabbed concept of what constitutes "speech" conflicts with settled precedent of this Court and with the decisions of other courts of appeals. The decision below would greatly hinder the free dissemination of essential information in the modern marketplace—of both commerce and ideas. For this reason, Source Healthcare Analytics files this brief as *amicus curiae*, urging the Court to grant the Petition and correct the decision below.

SUMMARY OF THE ARGUMENT

The First Circuit's holding that the New Hampshire statute is not a regulation of speech that must be analyzed under the First Amendment is obviously incorrect.

The transfer of truthful information from one person to another, with the expectation that the information will be used by the recipient to inform his legitimate business dealings, is near the heart of any reasonable concept of protected speech. The

information covered by the New Hampshire law bears no resemblance to obscenity, discriminatory threats and proposals of collusive, anticompetitive behavior—which the First Circuit used as an analogy to deny this information any First Amendment protection. The general rule is that the speaker and the audience assess the value of truthful, commercial information—not the government. Here, the dialogue between a pharmaceutical representative and a doctor permits the doctor to make informed decisions about what drugs to prescribe to his or her patients. This communication is protected by the First Amendment. In much the same way, the communication of information from *Amicus* and Petitioners to a pharmaceutical company to inform that very dialogue is also speech, whose restriction demands First Amendment scrutiny.

The State's efforts to affect the ultimate commercial speech by regulating the information that underlies that speech—and the First Circuit's express authorization of that approach—conflicts with a long and unbroken line of this Court's precedent. Governmental impairment of activities incidental to and supportive of speech may run afoul of the First Amendment. The decision below also conflicts with recent decisions of at least two other courts of appeals. The majority rule is that information collected, compiled and used for commercial solicitation is not categorically excluded from First Amendment scrutiny—it is, in fact, integral to and inseparable from the ultimate

commercial solicitation, and fits comfortably within the core notion of commercial speech.

The First Circuit's decision to the contrary poses a serious threat to the dissemination of a broad array of important information. By ruling that the affected information falls entirely outside the purview of the First Amendment, the court below has announced a novel proposition that is at odds with the fundamental role that information plays in our free-enterprise economy.

ARGUMENT

IT IS CRITICALLY IMPORTANT THAT THE COURT GRANT CERTIORARI AND CORRECT THE ERRONEOUS HOLDING THAT THE NEW HAMPSHIRE STATUTE IS NOT A REGULATION OF SPEECH THAT MUST BE ANALYZED UNDER THE FIRST AMENDMENT

The majority decision below acknowledges, as it must, that "pure informational data can qualify for First Amendment protection." Pet. App. 19 (citing *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976)). Things like lists of pharmaceutical products and prices, though "merely report[ing] fact[s]," have long been protected as speech under the First Amendment. *Id.* The majority decision below nevertheless holds that the Laws' ban on certain commercial transfers of informational products incorporating prescriber-identified drug data does not amount to a limitation of speech covered by the First Amendment at all. Pet. App. 26.

In reaching that conclusion, the court below asserted that the New Hampshire Law "principally regulate[s] conduct because those provisions serve only to restrict the ability of data miners to aggregate, compile, and transfer information destined for narrowly defined commercial ends." *Id.* at 22. Thus, the court reasoned, "this is a situation in which information itself has become a commodity," *id.* at 23, and, as such, the court concluded, treating it differently than some other product—"say, beef jerky"—would "stretch[] the fabric of the First Amendment beyond any rational measure." *Id.* The court noted that the "certain information exchanges . . . foreclosed by the . . . Law" are not of the type "valued by the Supreme Court's First Amendment jurisprudence but, rather, are exchanges undertaken to increase one party's bargaining power in negotiations." *Id.* at 26. Accordingly the court concluded that the "challenged portions of the . . . Law fall outside the compass of the First Amendment," and are thus entitled only to rational basis review. *Id.*

This conclusion is obviously incorrect for a number of reasons.

A. Contrary To The Court Below, The Aggregation, Organization, Compilation And Sale Of Truthful Information To Be Used For Commercial Purposes Is Protected Speech And Has Nothing In Common With Unprotected Forms Of Speech, Such As Obscenity, Harassment, Or Fighting Words

The New Hampshire Law proscribes the "transfer" of data from companies like Source

Healthcare Analytics to individuals and companies who will use that data for a specific purpose. *See* Prescription Restraint Law, 2006 N.H. Laws 328 (codified at N.H. REV. STAT. ANN. §§ 318:47-f, 318:47-g, 318-B:12, IV) (making unlawful the "license[], transfer[], use[] or [sale]" of prescriber-identified drug data for "any commercial purpose"). This "transfer" of information from one person to another, with the expectation that the information will be used by the recipient to inform and assist him in his business dealings, is near the heart of any reasonable concept of protected speech.

Amicus's products that fall within the purview of New Hampshire's statute result from a complex process of data collection, analysis and presentation in a form suited to the needs of particular end users. The fact that these products are sold as "a commodity," Pet. App. 23, does not in any way suggest that they fall outside the reach of the First Amendment. Books, newspapers, magazines and website access are all forms of information sold as "a commodity," and certainly no State could regulate the transfer of these items without any First Amendment scrutiny. *See Riley v. Nat'l Fed'n of Blind of N.C., Inc.*, 487 U.S. 781, 801 (1988) ("It is well-settled that a speaker's rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak."). Far from "stretch[ing] the fabric of the First Amendment beyond any rational measure," Pet. App. 23, providing protection to information that is sold is a core concern of the Constitution.

To support its conclusion that the First Amendment is entirely inapplicable, the court further noted that "to the extent that the challenged portions impinge at all upon speech, that speech is of scant societal value." *Id.* at 22. It placed the prescriber-identified drug data in the same "integument" as communications in restraint of trade, in furtherance of crimes, illegal labor activities, harassment, and fighting words, which categorically receive no constitutional protection because of their "nugatory informational value." *Id.* (citing cases).

This Court has sometimes said that these latter categories of expression are "not within the area of constitutionally protected speech," *Roth v. United States*, 354 U.S. 476, 483 (1957); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942); or that the "protection of the First Amendment does not extend" to them, *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 504 (1984); *Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 124 (1989). Such statements must be taken in context, however, and "are no more literally true than is the occasionally repeated shorthand characterizing obscenity 'as not being speech at all.'" *R.A.V. v. City of St. Paul*, 505 U.S. 377, 383 (1992) (citation omitted). "What they mean is that these areas of speech can, consistently with the First Amendment, be regulated *because of their constitutionally proscribable content* (obscenity, defamation, etc.)—not that they are categories of speech entirely invisible to the Constitution . . . [and] they may be made the vehicles for content discrimination." *Id.* at 383-84 (emphasis in original).

Thus, the fact that the categories of proscribable speech listed by the majority decision below can be regulated consistent with the First Amendment, *see* Pet. App. 20, does not mean that they cease to be speech within the meaning of the First Amendment. For instance, yelling fire in a crowded building, while certainly a form of speech in the everyday sense of the word, is proscribable because it carries such a great inherent risk of harmful consequences while having no apparent redeeming First Amendment value. *See Schenck v. United States*, 249 U.S. 47, 51-52 (1919) (Holmes, J.). Yet, "[t]he shout of 'Fire!' is not less speech in the Holmes instance than the shout of 'Fire!' from the mouth of an actor on the stage of the same theater, spoken as but a word in a play. It is futile to argue that an appropriately tailored law that punishes any or all of these utterances does not abridge speech." William W. Van Alstyne, *A Graphic Review of the Free Speech Clause*, 70 CAL. L. REV. 107, 114 (1982) (footnotes omitted). Most certainly, one cannot justify any such restrictions on the ground offered by the Court below—that they "principally regulate conduct." Pet. App. 22.

Regulations flatly barring certain forms of speech are proper not because the proscribed act is something other than speech, but rather because the expression is so inherently harmful and lacking in redeeming value that the courts have uniformly upheld its prohibition notwithstanding that it involves a form of expression. This is why speech aimed at illegally colluding on the price of products may be regulated consistent with the First

Amendment. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 912 (1982) (recognizing the "strong governmental interest" in regulating anticompetitive conduct, "even though such regulation may have an incidental effect on rights of speech and association"). For much the same reasons, racist, discriminatory, or sexually harassing speech escape First Amendment scrutiny. The fact that a supervisor's statement "sleep with me or you're fired" is not protected by the First Amendment does not mean that it is not actually speech. Rather, it is proscribable under this Court's case law because it expresses a verbal threat of illegal discrimination, *see* 42 U.S.C. § 2000e-2(a)(1), while carrying no redeeming content or message. *See NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969) (holding that employer's "threat of retaliation" on basis of union membership was "without the protection of the First Amendment").

The prescriber-linked data whose commercial distribution is prohibited by the Law bears no resemblance to obscenity, discriminatory threats and proposals of collusive, anticompetitive behavior. As an aggregator, organizer, and publisher of such information, which people in diverse occupations need and use for business, governmental, and other legitimate and valuable purposes, but would have great difficulty accessing in the absence of its services, *Amicus* submits that the decision below is obviously incorrect. It holds without basis that, while the raw data can qualify for First Amendment protection, Pet. App. 19, and while the transferees' ultimate marketing efforts using that data are no

doubt protected speech, *see Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 366-67 (2002), the transfer of that data from its raw form to the end user is of such "nugatory informational value" and "scant societal value" that it does not even trigger First Amendment consideration. Pet. App. 22, 26.

The "societal interests in broad access to complete and accurate commercial information" is precisely the interest that the "First Amendment coverage of commercial speech is designed to safeguard." *Edenfield v. Fane*, 507 U.S 761, 766 (1993) (citing *Va. Bd. of Pharm.*, 425 U.S. at 762-65); *Cent. Hudson Gas & Elec. Co. v. Pub. Serv. Comm'n*, 447 U.S. 557, 561-62 (1980); *see also Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985) ("the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides"). For this reason, the government cannot proscribe the most efficient means of disseminating specific information about what is being sold, by whom and at what price, even though the underlying information itself—if diligently sought out by interested persons—remains publicly available. *See Linmark Assocs., Inc. v. Twp. of Willingboro*, 431 U.S. 85, 93, 96-97 (1977) (striking down a law that forbid the posting of realty "For Sale" signs in front yards because signs are the most "effective media" to reach potential buyers with "vital . . . information [on] sales activity"); *Edenfield*, 507 U.S at 766 (striking down a law that forbid the "direct and spontaneous communication between buyer and seller" which is more effective and

informative than alternative means of communication). The value of the information at issue here is demonstrated by the fact that there is a substantial market to which *Amicus* and Petitioners respond by tailoring products for particular uses. [3]

"The general rule is that the speaker and the audience, not the government, assess the value of the information presented." 507 U.S. at 767. "People will perceive their own best interests only if they are well enough informed, and the best means to that end is to open the channels of communication rather than to close them." *Linmark*, 431 U.S. at 97

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[3] In this and similar situations, "you have both somebody who wants to speak, . . . someone who affirmatively wants to hear what [the speaker] has to say," and the government saying "no, the two of you can't do this." Tr. of Argument at 48, *Citizens United v. Fed. Election Comm'n*, March 24, 2009, 2009 WL 760811, at *48 (No. 08-205). This "kind of censorship . . . raise[s] grave First Amendment concerns," *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989), as it dangerously proscribes what specific, willing listeners may hear, read and ultimately act upon. The First Amendment has long protected a willing listener's "right to receive information and ideas"—regardless of what the state may think of those ideas, *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)—even where the judicially enforceable free speech right belongs to the speaker. *See, e.g.*, *Thomas v. Collins,* 323 U.S. 516, 534 (1945) (where "there was restriction upon Thomas' right to speak," there was also a restriction upon the "rights of the workers to hear what he had to say"); *Procunier v. Martinez*, 416 U.S. 396, 408 (1974), *overruled in part by Thornburgh*, 490 U.S. 401 ("Both parties to the correspondence have an interest in securing that . . . the letter is read by the addressee, . . . and censorship of the communication between them necessarily impinges on the interest of each.").

(quoting *Va. Bd. of Pharm.*, 425 U.S. at 770). Here, the communication of product information by a pharmaceutical representative to a doctor permits the doctor to make informed, economic decisions about what drugs to prescribe to his or her patients. So long as it is truthful, this communication falls within the ambit of the First Amendment. In the same way, the communication of prescriber-identified information from *Amicus* to the pharmaceutical company for use by its representatives is plainly speech whose restriction demands First Amendment scrutiny.

B. The New Hampshire Law Is No Less A Restriction Of Speech Simply Because It Works Indirectly To Curtail Downstream Speech Through A Ban On Upstream Transfers Of Information That Make The Latter Speech Possible

Wanting to constrict the ultimate dialogue between the sales representative and the doctor, but recognizing the constitutional obstacles in doing so, New Hampshire made an end-run around the First Amendment by restricting the penultimate communication between information services providers, like *Amicus* and Petitioners, and the pharmaceutical company. As the dissent below pointed out, "[t]he State has attempted to insulate this expression-based [regulation] from First Amendment scrutiny by directing its legislation to an earlier step in the communicative process." Pet. App. 88 (Lipez, J., dissenting). The State has even conceded that the Law seeks to "strike at the source" of the message, rather than restrict the message

itself. *Id.* at 87 (citing the New Hampshire Attorney General's characterization of the Law before the trial court).

By removing the predicate information that informs the representative's speech from the protection of the First Amendment, the majority decision below conflicts with a long and unbroken line of this Court's precedent.

Starting with *Grosjean v. American Press Co.*, 297 U.S. 233 (1936), this Court has held that governmental impairment of activities incidental to and supportive of speech may run afoul of the First Amendment. In that case, the State of Louisiana imposed a license tax of 2% of the gross receipts from the sale of advertising on all newspapers with a weekly circulation above 20,000. After noting that the tax curtailed the flow of information, *id.* at 250-51, the Court held the tax invalid as an abridgment of the freedom of the press. "[The tax] is bad because . . . it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information." *Id.* at 250. Later, this Court clarified that even where there is no evidence of impermissible legislative motive, placing a burden selectively on a critical component of actual speech amounts to a burden on the speech itself. *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 581 (1983) (a tax on newsprint and ink consumed in the production of publications was unconstitutional because it negatively impacted speech); *see also City of Cincinnati v. Discovery*

Network, Inc., 507 U.S. 410, 426-29 (1993); *Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988).

It is not meaningful to say that a person has the "freedom of speech" without having the ability to put ideas together and combine facts and ideas in order to formulate his message. Thus, the generation, assembly, compilation and analysis of information, and its communication to interested users, lie at the core of what the First Amendment protects. *See Va. Bd. of Pharm.*, 425 U.S. at 764.[4]

Thus, the State of New Hampshire cannot "skirt the Constitution's requirements" by "directing its legislation to an earlier step in the communicative process." Pet. App. 88 (Lipez, J., dissenting). It

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[4] The Supreme Court has also recognized explicitly the legitimacy of compilations and expressions that borrow, collect, and juxtapose the expressions and ideas of others to present a new message or idea: "[A] private speaker does not forfeit constitutional protection simply by combining multifarious voices, or by failing to edit their themes to isolate an exact message as the exclusive subject matter of the speech. Nor, under our precedent, does First Amendment protection require a speaker to generate, as an original matter, each item featured in the communication." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 569-70 (1995). *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994) ("Cable programmers and cable operators engage in and transmit speech, and they are entitled to the protection of the . . . First Amendment. Through 'original programming or by exercising editorial discretion over which stations or programs to include in its repertoire,' cable programmers and operators 'see[k] to communicate messages on a wide variety of topics and in a wide variety of formats.'") (citations omitted; brackets in original).

cannot target the content of the ultimate speech—here the representative-physician dialogue—simply by imposing restrictions on an earlier transfer of information on which the representatives rely. The fact that no direct restraint or punishment is imposed upon the ultimate speech by sales representatives "does not determine the free speech question." *Am. Commc'ns Ass'n, C.I.O. v. Douds*, 339 U.S. 382, 402 (1950). The earlier transfer of truthful information is speech under the First Amendment in its own right, precisely because it has the potential to inform the thoughts and actions of others.

C. The Decision Below Conflicts With Decisions Of Other Circuits In Reasoning That There Is No Impact On Speech Because The Ban On Information Transfer Is Limited To Particular Commercial Uses

The decision below also conflicts with recent decisions of at least two other courts of appeals, in categorically excluding from First Amendment scrutiny a ban on the transfer of information, on the ground that it is narrowly targeted on transfers for defined commercial purposes.

In *U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999), the government argued that FCC regulations barring telephone companies from using their own customer information for targeted marketing purposes did not infringe commercial speech. In its view, "the [regulations] only prohibit [the company] from using [the information] to target customers and do not prevent petitioner from

communicating with its customers or limit anything that it might say to them." *Id.* at 1232.

The Tenth Circuit in *U.S. West* rejected this argument because use of the proscribed data was "integral to and inseparable from the ultimate commercial solicitation," which is itself a protected form of speech. *Id.* at 1233 n.4. Because the proscribed use of the customer information itself "facilitate[d] the marketing of telecommunications services to individual customers," the Tenth Circuit held that use was "properly categorized as commercial speech." *Id.* The court thus examined the regulations under the *Central Hudson* test for commercial speech, and found the restriction invalid. *Id.* at 1233-35.

The majority decision in this case adopted precisely the line of reasoning rejected by the Tenth Circuit. In the view of the First Circuit, because Petitioners could "still gather, . . . publish, transfer and sell this information to whomever they choose *so long as that person does not use the information for detailing* . . . the restriction here is on the conduct (detailing) and not on the information with which the conduct is carried out." Pet. App. 24 (emphasis and parenthesis in original). The court thus wholly rejected the analysis found dispositive in *U.S. West*, that the restricted information transfer was "integral to and inseparable from the ultimate commercial solicitation" 182 F.3d at 1233 n.4.

Similarly, in *United Reporting Publishing Corp. v. California Highway Patrol*, 146 F.3d 1133 (9th Cir.), *rev'd on other grounds*, 528 U.S. 32 (1999), a

California law prohibited the release of arrestee-identified information to people who intended to use it for commercial purposes. Like Petitioners and *Amicus* here, United Publishing was in the business of collecting, organizing and selling data to commercial entities, and they sold arrestee-idenfiable information to businesses who would then solicit the arrestees to purchase their services (anything from legal services to drug and alcohol counselors to driving schools). In striking down the statute on First Amendment grounds, the Ninth Circuit held that the data was, in fact, "commercial speech":

> United Reporting sells arrestee information to clients; nothing more. Its speech can be reduced to, "I [United Reporting] will sell you [client] the X [names and addresses of arrestees] at the Y price." This is a pure economic transaction, comfortably within the "core notion" of commercial speech.

Id. at 1137 (citing *Va. Bd. of Pharm.*, 425 U.S. at 762) (internal citations omitted). The arrestee information, like the prescriber-identifiable drug data here, could be characterized as a "commodity," but the court held it nonetheless deserved the protection of the First Amendment. The Ninth Circuit then applied the *Central Hudson* test and struck down the statute.[5]

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[5] This Court's decision to reverse the Ninth Circuit in *United Reporting Publishing* was not inconsistent with its holding that the information was "speech" within the protection

Like the restriction on the sale of arrestee-identified information in *United Reporting Publishing*, New Hampshire's restriction on the sale of prescriber-identified data impinges upon a "pure economic transaction" for the sale of truthful, factual information, and thus falls "comfortably within the core notion of commercial speech."

The decision below is thus in conflict with decisions of the Ninth and Tenth Circuits.

(continued…)

of the First Amendment. *See Los Angeles Police Dep't v. United Reporting Publ'g Co.*, 528 U.S. 32 (1999) (holding that respondent could not assert a facial challenge to the statute where it could not first gain access to the information it wished to convey as speech). Indeed, a majority of this Court in *United Reporting Publishing* appeared to agree that, once the arrestee-identified information is in the speaker's possession, the First Amendment would presumably protect the speaker's ability to transmit that information to another person. *See id.* at 40 ("This is not a case in which the government is prohibiting a speaker from conveying information that the speaker already possesses") (citing *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995); *id.* at 42 ("Anyone who [possesses] arrestee address information . . . is free to use that information as she sees fit, . . . and [the law being challenged] would indeed be a speech restriction if it . . . prohibited people from using that information to speak to or about arrestees.") (Ginsburg, J., concurring).

D. The First Circuit's "No Speech" Ruling Poses A Serious Threat To The Dissemination Of A Broad Array Of Important Information

We live in a society that thrives on—and regularly puts to myriad commercial and personal uses—an enormous quantity of information of all types. This information is often distributed by the speaker for profit, with an active marketplace of readers and listeners willing to pay for information that is useful in their own commercial ventures. Increasingly this information is served up with the assistance of the internet and other media of mass communications by people and businesses—and *to* people and businesses—engaged in a nearly infinite range of endeavors.

This information plays an important role in our "predominantly free enterprise economy." *Va. Bd. of Pharm.*, 425 U.S. at 765. This Court has acknowledged that "the allocation of our resources in large measure will be made through numerous private economic decisions," and that "[i]t is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. . . . [through] the free flow of commercial information." *Id.* This is precisely why commercial actors have a right "to acquire useful knowledge," *Bd. of Regents v. Roth*, 408 U.S. 564, 572 (1972) (internal quotation marks omitted), and, once that information is at hand, they then have a right to convey it subject to the strictures of the First Amendment, *see Rubin*, 514 U.S. at 483-86 (analyzing under *Central Hudson* a statute restricting the conveyance of information in a

speaker's possession). By ruling that prescriber-linked prescription data sold for commercial purposes falls entirely outside the purview of the First Amendment, the court below has announced a novel proposition, at odds with the "natural right of the members of an organized society . . . to impart and acquire information about their common interests." *Grosjean*, 297 U.S. at 243.

CONCLUSION

For all of the foregoing reasons, *Amicus* Source Healthcare Analytics urges the Court to grant the Petition.

Respectfully submitted,

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