

No. 25-6138

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**THE BABYLON BEE, LLC, et al.,
*Plaintiffs-Appellees,***

v.

**ROB BONTA, in his official capacity as Attorney General of the
State of California, et al.,
*Defendants-Appellants.***

**On Appeal from the United States District Court for the Eastern
District of California**

Case No. 2:24-cv-02527-JAM-CKD | Hon. John A. Mendez

***BRIEF OF PROFESSOR JORDAN DORNEY AS
AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES***

**Jeffery J. Ventrella
jjventrella@tiu.edu
Of Counsel**

**Theodore J. Wold
theo@idahofamily.org
Senior Advisor for Litigation**

**A. Caleb Pirc
caleb@idahofamily.org
Legal Center Director**

**Isaac N. Helland
isaac@idahofamily.org
Litigation Counsel**

IFPC Legal Center
1116 S. Vista Avenue,
Suite 227
Boise, ID 83705
(208) 260-5844
info@idahofamily.org
Counsel for *Amicus*
Curiae

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STATEMENT OF INTEREST¹

Dr. Jordan Dorney serves as Fellow of History and Head of Humanities at New Saint Andrews College. He teaches the College's sophomore-year history colloquium and electives in intellectual history and historiography ranging from Xenophon to Machiavelli to the American founding. Dr. Dorney joined the faculty in 2022 after postdoctoral appointments at Arizona State University and the University of Notre Dame. He earned his PhD in Political Science from the University of Notre Dame.

As a history professor, *amicus* is familiar with the Anglo-American tradition of political speech and is concerned that California's AB 2655 upends it. He contends that history has been unkind to those who have attempted to suppress political speech—even where the state deems that speech to be harmful, distasteful, or even untrue—and he submits this brief to provide the Court with context for the rich tradition of nobly false and hyperbolic political discourse.

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), no party's counsel authored any part of this brief and no person other than *amicus* funded its preparation or submission. All parties consent to the filing of this brief pursuant to Fed. R. App. P. 29(a)(2).

INTRODUCTION

George III and George IV—targets of Revolutionary ire and domestic criticism—pioneered the art of suppressing unflattering political speech. Although censorship historically took the form of prohibitions or punishments, these kings devised a new method of dealing with political cartoons denigrating His Royal Majesty. With the royal purse at their disposal, they bought entire editions and even the printing plates of offending cartoons, effectively quashing their dissemination.² If it never reached an audience, a cartoon—even a published one—could do no harm to the royal reputation.

The State of California has taken a less original approach: deplatforming speech the State deems harmful because that speech is not strictly true. It ignores the American tradition of the *splendide mendax*, the “nobly false” hyperbolic, exaggerated, and satirical speech that has always been a critical part of political discourse in this country.³ Even as

² *Collection: Cartoon Prints, British*, Libr. of Cong., <https://www.loc.gov/collections/british-cartoon-prints/about-this-collection/> (last visited Mar. 13, 2026).

³ See Horace, *Odes and Epodes* 175 (Niall Rudd ed. & trans., Harvard Univ. Press 2004) for the origins of this phrase (“magnificently deceitful”).

lithographs and steel engravings have given way to internet memes, modern “fake” political content is nothing new. And neither are government attempts to quell it.

Throughout American history, “nobly false” speech—*especially* the kind with the potential for political consequences—has served an important political function. And it is not unique to the American tradition. The “nobly false” in prose, verse, and image is grounded in the earliest republican thought and practice. This brief highlights the prominent role of such speech in political discourse.

ARGUMENT

At its core, the First Amendment protects every citizen’s right to speak his views of government and its officials. *Brown v. Hartlage*, 456 U.S. 45, 52–53 (1982). This “constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.” *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971).

This protection extends even to false speech. “[E]rroneous statement is inevitable in free debate” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271 (1964). Laws that punish “error” risk chilling constitutionally protected speech, leading to “intolerable self-censorship.”

Gertz v. Robert Welch, Inc., 418 U.S. 323, 340 (1974). “The First Amendment requires that we protect some falsehood in order to protect speech that matters.” *Id.* at 341. In fact, “the point of all speech protection . . . is to shield just those choices of content that in someone’s eyes are misguided, or even hurtful.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 574 (1995). Laws that draw lines between acceptable and “false” speech encroach on constitutionally protected speech because “[u]nder the First Amendment there is no such thing as a false idea.” *Gertz*, 418 U.S. at 339–41.

The answer to false speech is not more regulation—it is more speech. *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) *overruled on other grounds by Brandenburg v. Ohio*, 395 U.S. 444 (1969). And any “robust political debate encouraged by the First Amendment is bound to produce speech that is critical of those who hold public office.” *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 51 (1988).

But rather than foster such debate, California seeks to quash it, censoring anything it deems “materially deceptive.” Cal. Elec. Code § 20513. California’s law makes private citizens its spies and large corporations its police force. “Large online platforms” must quickly

review political speech reported by users and then remove certain “deceptive” political speech that would hurt the reputation of politicians, candidates, or the election system close to the time of an election. Cal. Elec. Code §§ 20512–20513.

The law only targets certain large online platforms. Print media, some broadcasting stations, and small platforms are either not covered or exempted. *See, e.g.*, Cal. Elec. Code § 20519. The law perversely targets those places where audiences not only view but also interact with and share political speech—the modern-day public square. And while the law ostensibly exempts “satire or parody,” Cal. Elec. Code § 20519(c), it never defines these terms, *id.* § 20512 (definition section). The threat of lawfare incentivizes platforms to zealously remove content politicians find objectionable. *See* Cal. Elec. Code §§ 20515(b), 20516. This places California more in the tradition of George III and the Roman emperors than that of the American republic.

I. Political commentary has always included elements of the “nobly false,” including impersonation, hyperbole, and jest.

The use of “nobly false” political speech is nothing new. Political discourse has always had “fake” elements. California’s law is not

targeting new technology; it targets a deep and important political tradition.

A. Ancients to Early Moderns

The rhetorical devices of impersonation and realism (that which might plausibly be mistaken for reality itself) have always been a defining feature of “nobly false” speech.⁴ Such speech appears in the earliest ancient religious and classical literature, running the gamut from mild exaggerations to hyperbolic impersonations of political leaders.

Biblical writings, for example, contain numerous accounts of historical figures who confronted authorities with exaggerated speech. The prophet Elijah mocked the priests of the idol Baal at Mount Carmel, sarcastically suggesting Baal was “musing,” “relieving himself,” “on a journey,” or “asleep and must be awakened.”⁵ In another account, a prophet impersonates a wounded soldier to bait king Ahab of Israel into condemning his own behavior.⁶ In the New Testament, Jesus employs

⁴ For this emphasis on *personae* see generally Alvin Kernan, *The Cankered Muse: Satire of the English Renaissance* (1959); W.S. Anderson, *Essays on Roman Satire* (1982); Susanna Braund, *The Roman Satirists and Their Masks* (1996).

⁵ *1 Kings* 18:27 (ESV).

⁶ *1 Kings* 20:35–43 (ESV).

parable and satire.⁷ Jesus challenged the political leaders, even calling Herod “that fox.”⁸ And the Apostle John describes Imperial Rome as a “beast rising out of the sea” to characterize the Roman Empire’s oppression and demand for worship as monstrous rather than divine.⁹

Classical Greek culture also relied on exaggerated portrayals and impersonation to criticize public figures. The Greek playwright Aristophanes frequently mocked influential Athenians through hyperbolic stage performances. For example, he portrayed Cleon, an Athenian leader, in *The Babylonians* as a fraudulent demagogue—prompting Cleon to sue; Aristophanes’ answer was *more* speech in *The Knights* and *Wasps*.¹⁰ And *The Clouds* portrays Socrates as the head of a “Thinkery” where he teaches students how to make the weak argument appear stronger, mocking contemporary intellectual trends.¹¹ Aristophanes’s caricature of Socrates became notorious, with Plato’s

⁷ See *Mark* 4:11–12 (ESV).

⁸ *Luke* 13:32 (ESV).

⁹ *Revelation* 13:1–4 (ESV).

¹⁰ J.E. Atkinson, *Curbing the Comedians: Cleon Versus Aristophanes and Syracuse’s Decree*, 42 *Classical Q.* 56, 56–58 (1992).

¹¹ David Konstan, *Socrates in Aristophanes’ Clouds*, in *The Cambridge Companion to Socrates* 75, 76 (Donald R. Morrison ed., Cambridge Univ. Press 2011).

Apology appearing to cite *The Clouds* as contributing to the ultimate death of Socrates.¹² Yet Plato apparently blames the Athenians rather than “false speech,” putting arguments in Socrates’s voice to critique Athenian thought.¹³ Even Plato’s Kallipolis is founded on a noble or “well-born” lie.¹⁴

Roman writers continued the tradition of exaggerated political commentary even while imperial culture conspired to suppress it. Quintilian famously described satire as uniquely Roman, writing “*Satura quidem tota nostra est*”—“Satire, for its part, is entirely ours.”¹⁵ Roman satire proved an all-too-incisive method of indirect criticism. During Nero’s reign, a line mocking the emperor in the work of the satirist Persius was removed before publication.¹⁶ Tacitus observed in the opening of his *Agricola* that it had become dangerous to write freely about

¹² Plato, *Apology* *19c.

¹³ See generally Plato, *Apology*.

¹⁴ Plato, *Republic* *414a–15d.

¹⁵ 4 Quintilian, *The Orator’s Education* 302–03 (Donald A. Russell ed. & trans., Harvard Univ. Press 2002).

¹⁶ Suetonius, *Life of Aulus Persius Flaccus*, in 2 *Suetonius* 480–81 (Jeffrey Henderson ed., J.C. Rolfe trans., Harvard Univ. Press rev. ed. 1997) (1914) (“His verse on Nero read as follows: ‘King Midas has ass’s ears,’ but Cornutus by merely changing the name, and writing ‘Who has not an ass’s ears?’ so altered it that Nero might not think that it was said of him.”).

politics under emperor Domitian.¹⁷ Because of such fears, the historical record is largely devoid of political caricature in Roman images.

Throughout medieval Europe, writers used imaginative storytelling to comment on political and social institutions. Geoffrey Chaucer's works—including his masterpiece *The Canterbury Tales*—were rife with political commentary. He used fictional characters to play on the social understandings of the day, shifting the blame for societal ills away from the nobility and onto the peasants.¹⁸ The great humanist Erasmus satirically mocked human foolishness in his work *In Praise of Folly*, breathing life into the character Folly by narrating the work in her voice to point out contradictions in church practice.¹⁹

Beyond literature, medieval carnival traditions used parody to temporarily turn social hierarchy upside down, allowing commoners to mock kings and nobles and voice complaints about oppression.²⁰ These

¹⁷ Tacitus, *Agricola*, in 1 *Tacitus* 26–29 (R.M. Ogilvie et al. eds., M. Hutton & W. Peterson trans., Harvard Univ. Press, 1970).

¹⁸ See Alcuin Blamires, *Chaucer the Reactionary: Ideology and the General Prologue to The Canterbury Tales*, 51 *Rev. Eng. Stud.* 523 (2000).

¹⁹ Desiderius Erasmus, *The Praise of Folly* 7 (Hoyt Hopewell Hudson ed., Princeton Univ. Press 2015).

²⁰ Mark Truesdale, *The King and Commoner Tradition: Carnavalesque Politics in Medieval and Early Modern Literature* 2–3 (2018).

“King and Commoner feasts” depicted the commoner as a satirical mock king and the king as a foolish, uncivil ruler, using the reversal to expose abuses within aristocratic authority.²¹

Early modern English writers increasingly wielded impersonation as a rhetorical device. Literary critic John Dryden defended satire as a serious form of moral criticism—using wit and ridicule to expose vice while entertaining its audience.²² Clergyman Jonathan Swift believed that imaginative or exaggerated falsehoods were different from harmful lies like perjury or gossip.²³ Swift once delivered a fiery sermon against bearing false witness while also being comfortable employing harsh invective, anonymous satirizing, and other forms of impersonated speech to address relevant political, social, and moral questions.²⁴ His famous work *Gulliver’s Travels*, an allegory of early eighteenth-century English

²¹ *Id.*

²² *A Discourse on the Original and Progress of Satire*, The Imaginative Conservative (Jan. 21, 2020), <https://theimaginativeconservative.org/2020/01/a-discourse-on-the-original-and-progress-of-satire-john-dryden.html>.

²³ Jeanne Clegg, *Swift on False Witness*, 44 *Stud. Eng. Lit.* 1500–1900, at 461, 467 (2004).

²⁴ *Id.* at 466–67.

politics, seemed plausible enough to engender public and official backlash.²⁵

B. The Early Republic

The American colonies carried on the tradition of hyperbolic, satirical, and false political speech. Observers of the young United States, perhaps most famously Alexis de Tocqueville, noted that Americans had the freedom to criticize those in power.²⁶ And use that freedom they did.

Although he is best known for his famous “midnight ride,”²⁷ Paul Revere also created what was perhaps the most impactful visual political speech during the colonial period: “The Bloody Massacre on King Street.”²⁸

What *actually* occurred in Boston is now well known. A mob of irate Bostonians gathered around British troops stationed in the city, yelling

²⁵ *Id.* at 475.

²⁶ See, e.g., Alexis de Tocqueville, *Democracy in America* 486–92 (Harvey C. Mansfield & Delba Winthrop eds., 2000).

²⁷ Henry Wadsworth Longfellow, *Paul Revere’s Ride*, in *Paul Revere’s Ride, and Other Poems* 1 (1894).

²⁸ *The bloody massacre perpetrated in King Street Boston on March 5th 1770 by a party of the 29th Regt.*, Library of Congress, <https://www.loc.gov/resource/ppmsca.01657/> (last visited Mar. 17, 2026).

and pelting them with stones and debris. One soldier opened fire, and several Bostonians soon lay dead or injured.²⁹

But Revere's depiction differs wildly. The unruly mob become victims and the group of British soldiers clear aggressors. The Bostonians? Empty-handed and defenseless—a far cry from a mob pelting stones. The British soldiers are depicted as firing in military rank at the direction of a commanding



officer. Revere even falsely includes the barrel of a musket peeking out from an upper-story window, firing upon the seemingly unsuspecting Bostonians. Revere's engraving, published in bright color, earned the

²⁹ Peter Messer, "A Scene of Villainy Acted by a Dirty Banditti, as Must Astonish the Public": The Creation of the Boston Massacre, 90 *New Eng. Q.* 502, 502 (2017).

incident the moniker “the Boston Massacre,” igniting a public outcry and becoming “one of the canonical stepping stones along the American colonists’ gradual path to independence from Great Britain.”³⁰

After the Revolution, both the Federalists and Anti-Federalists used false personas to debate the ratification of the United States Constitution. The fictitious character Publius allowed three public figures—John Jay, James Madison, and Alexander Hamilton—to advocate for adoption of the Constitution as a single voice uncoupled from the notoriety or fame associated with their true identities.³¹ While Brutus’s true name is unknown, most scholars believe the pseudonym shrouded a New York state judge from the public eye, allowing him to criticize the proposed Constitution disconnected from his true identity.³²

Across the Atlantic, British caricaturist James Gillray pioneered a new kind of nobly false political commentary—the political cartoon.³³ Americans gleefully adopted the style. As the Supreme Court observed,

³⁰ *Id.* at 503.

³¹ See generally *The Federalist*.

³² *Essay No. 1 (1787)*, Nat’l Const. Ctr., <https://constitutioncenter.org/the-constitution/historic-document-library/detail/brutus-essay-no-1#> (last visited Mar. 10, 2026).

³³ Stephen Hess & Milton Kaplan, *The Ungentlemanly Art: A History of American Political Cartoons* 16 (rev. ed. 1975).

“From the viewpoint of history it is clear that our political discourse would have been considerably poorer without them.” *Hustler*, 485 U.S. at 55.

American history is replete with influential political cartoonists. Silversmith Amos Doolittle, known posthumously as “the Revere of Connecticut,” satirized the ratification debate between the Federalists and the Anti-Federalists in his cartoon *The Looking Glass*.³⁴



³⁴ *The looking glass for 1787. A house divided against itself cannot stand. Mat. chap. 13th verse 26, Libr. of Cong., <https://www.loc.gov/pictures/item/2008661778/> (last visited Mar. 18, 2026).*

South Carolinian engraver James Akin criticized President Thomas Jefferson for his covert negotiations to purchase West Florida in *The Prairie Dog*.³⁵ The cartoon depicts Jefferson as a scrawny dog coughing up “Two Millions” in gold coins after being stung by a Napoleonic hornet, much to the delight of a nearby Frenchman.



Three decades later, President Andrew Jackson also fell victim to a political cartoon depicting him as “King Andrew the First,” placing him

³⁵ James Akin, *The prairie dog sickened at the sting of the hornet or a diplomatic puppet exhibiting his deceptions*, <https://www.loc.gov/item/2002708977/> (last visited Mar. 18, 2026).

above the law and leaving the Constitution in tatters at his feet.³⁶ The cartoon criticized Jackson's veto of legislation to recharter the Bank of the United States and his order to remove federal deposits from the Bank.³⁷

C. The Gilded Age

During the Gilded Age, American political discourse incorporated new forms of satirical commentary, leaning heavily on exaggeration, fictional narratives, and symbolic imagery. Writers, journalists, and cartoonists routinely used hyperbolic descriptions and depictions of political figures, institutions, and social conditions to make political points. Writers such as Edgar Allen Poe fabricated fake news stories, Mark Twain fashioned fictitious political narratives, and cartoonists like



³⁶ *King Andrew the First*, Libr. of Cong., <https://www.loc.gov/pictures/item/2008661753/> (last visited Mar. 18, 2026).

³⁷ *Id.*

Thomas Nast, Joseph Keppler, and Clifford Berryman sketched political caricatures.³⁸

Samuel Clemens—better known as Mark Twain—remains America’s most famous literary mind of the era. His work used fictional narrators, exaggeration, parody, and absurd claims as a commentary on the social and political landscape of his time.³⁹ For example, in “Running for Governor,” Twain describes a fictional political campaign where newspapers have published absurd and false accusations about his character.⁴⁰ The humor of the piece rests on its increasingly obvious

³⁸ See, e.g., *Von Kempelen and His Discovery*, The Edgar Allen Poe Soc’y of Balt., <https://www.eapoe.org/works/tales/kmplna.htm> (last visited Mar. 12, 2026) (Edgar Allen Poe); *Running for Governor*, Library of America, <http://storyoftheweek.loa.org/2012/11/running-for-governor.html> (last visited Mar. 12, 2026) (Mark Twain); Fiona Deans Halloran, *Thomas Nast: The Father of Modern Political Cartoons* (Univ. of N.C. Press 2012) (Thomas Nast); Richard Samuel West, *Satire on Stone: The Political Cartoons of Joseph Keppler* (1988) (Joseph Keppler); Mary Hume Richardson, *The Drawings of Clifford Kennedy Berryman*, 3 Q.J. Current Acquisitions 6, 6–10 (1946) (Clifford Berryman).

³⁹ Larzer Ziff, *Mark Twain* 96–99 (2004); *Mark Twain*, Poetry Foundation, <https://www.poetryfoundation.org/poets/mark-twain> (last visited Mar. 12, 2026).

⁴⁰ See *Running for Governor*, *supra* note 38.

falsity, criticizing the norms of the time with fictional narratives and hyperbole.⁴¹

What Mark Twain was to prose, Thomas Nast was to the political cartoon.⁴² Published in *Harper's Weekly*, his cartoons reached millions of readers, shaping public perception of political corruption.⁴³ Nast's cartoons were widely distributed and central to political discourse, relevant even today.⁴⁴ See, e.g., *Soule v. Martin*, 214 So. 2d 538, 540 (La. 1968) (“[T]he Democratic Donkey, designed by cartoonist Thomas Nast . . . has remained [the symbol for the Democrat Party] to the present time.”).

Nast rose to fame through his *Harper's Weekly* cartoons targeting William “Boss” Tweed.⁴⁵ Tweed—the organizer of the New York Democratic party—held onto power through the “Tweed Ring,” his political machine built through voter fraud, stuffed ballots, and

⁴¹ See Ziff, *supra* note 39 at 59–61; Poetry Foundation, *supra* note 39.

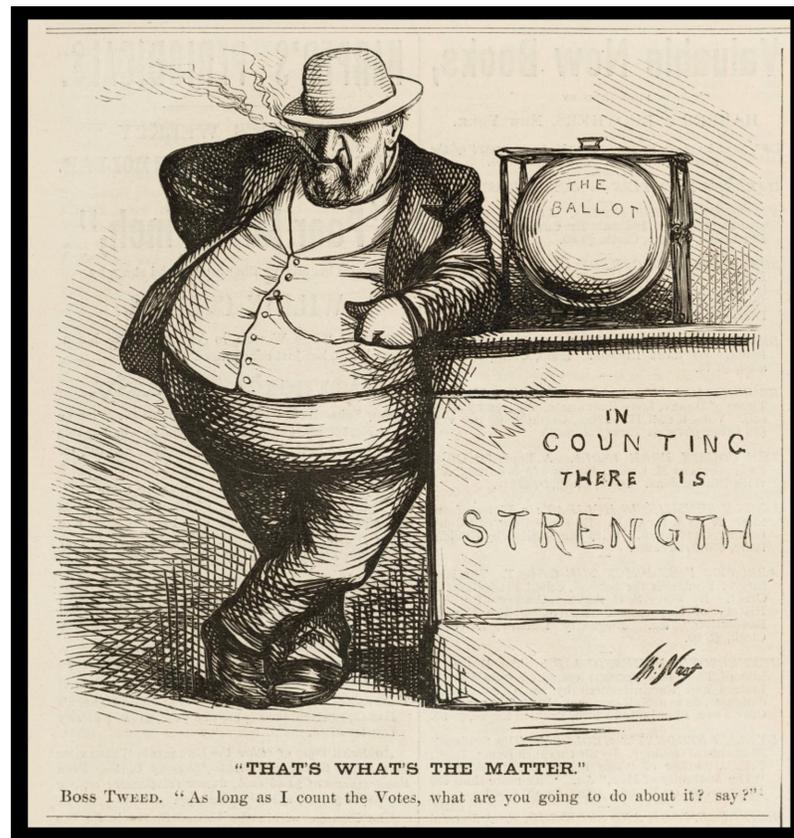
⁴² See Halloran, *supra* note 38 at 29–30.

⁴³ *Id.* at 33–35; *Thomas Nast: Political Cartoonist*, Mass. Hist. Soc’y, <https://www.masshist.org/features/thomasnast> (last visited Mar. 12, 2026).

⁴⁴ Halloran, *supra* note 38 at 96–98.

⁴⁵ Halloran, *supra* note 38 at 126–28.

controlled election officials.⁴⁶ Nast's cartoons depicted Tweed so realistically that Spanish police once arrested Tweed after recognizing him from Nast's cartoons.⁴⁷ Nast criticized Tweed in a cartoon depicting him saying, "As long as I count the votes, what are you going to do about it?"⁴⁸ It is uncertain that Tweed actually made the remark, a reality that



⁴⁶ Halloran, *supra* note 38 at 126–28; see William “Boss” Tweed and Political Machines, Bill of Rts. Inst., <https://billofrightsintstitute.org/essays/william-boss-tweed-and-political-machines/> (last visited Mar. 12, 2026).

⁴⁷ Hess & Kaplan, *supra* note 33, at 13–15.

⁴⁸ *That’s What’s the Matter*, Thomas Nast Cartoons, <https://thomasnast.com/cartoons/thats-whats-the-matter/> (last visited Mar. 12, 2026); see generally Halloran, *supra* note 38 at 134–35.

would have rendered even this cartoon potentially suspect under AB 2655.

Nast repeatedly criticized Tweed and his political machine in a series of biting caricatures, employing visual exaggeration and symbolic imagery to portray Tweed and his associates as the embodiments of corruption.⁴⁹ The public largely understood these images to be satirical, but their effect was powerful.⁵⁰ They were so powerful that Tweed allegedly complained: “Stop them damn pictures. I don’t care so much what the papers say



⁴⁹ See, e.g., *Who Stole the People’s Money?*, Mass. Hist. Soc’y, <https://www.masshist.org/database/5900> (last visited Mar. 12, 2026); *Boss Tweed and Tammany Hall*, Univ. of Tex. at Austin, [https://www.laits.utexas.edu/gov310/SL/Boss Tweed/](https://www.laits.utexas.edu/gov310/SL/Boss_Tweed/) (last visited Mar. 12, 2026).

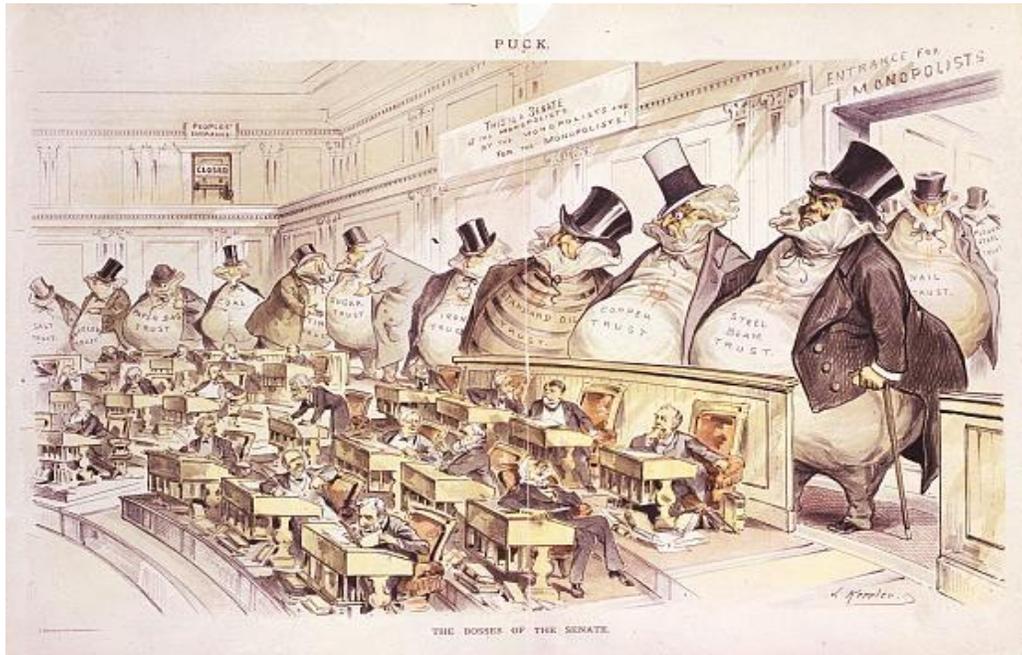
⁵⁰ J. Chalmers Vinson, *Thomas Nast: Political Cartoonist* (2014); *Thomas Nast: Political Cartoonist*, Mass. Hist. Soc’y, <https://www.masshist.org/features/thomasnast> (last visited Mar. 12, 2026).

Joseph Keppler built on this tradition, establishing *Puck*, one of the first successful magazines devoted to political satire in America.⁵⁴ Keppler's work was defined by its full-color political cartoons, exaggerated caricatures of politicians, and satirical commentary on political and monopolistic corruption.⁵⁵ Similar to Nast, Keppler's works routinely portrayed politicians as grotesque caricatures and corporations as literal giants dominating the government.

⁵⁴ *Puck Magazine*, U.S. Senate, <https://www.senate.gov/artifacts/historical-images/political-cartoons-caricatures/puck-intro.htm> (last visited Mar. 12, 2026).

⁵⁵ *Id.*

In his well-known cartoon *The Bosses of the Senate* (1889), Keppler depicted corporate monopolists towering over the small and subservient United States senators in their chambers.⁵⁶



In the cartoon, *Looking Backward*, inspired by Edward Bellamy's novel of the same name, Keppler utilized imagery to comment on the nation's pressing debates regarding immigration.⁵⁷ There, an immigrant

⁵⁶ *The Bosses of the Senate*, U.S. Senate, https://www.senate.gov/art-artifacts/historical-images/political-cartoons-caricatures/38_00392_001.htm (last visited Mar. 12, 2026).

⁵⁷ West, *supra* note 38 at 364–65.

is depicted as stepping off the ship and being shunned by those who were once in his very same position.

The Washington Post frequently featured the work of Clifford K. Berryman, another prominent cartoonist of the era.⁵⁸ One of Berryman's most famous cartoons, *Drawing the Line in Mississippi* (1902), depicted President Theodore Roosevelt refusing to shoot a small bear cub during a hunting trip.⁵⁹ The cartoon was inspired by a real event—meaning it



⁵⁸ Clifford K. Berryman *Political Cartoon Collection*, Nat'l Archives, <https://www.archives.gov/legislative/research/special-collections/berryman> (last visited Mar. 12, 2026).

⁵⁹ *Drawing the line in Mississippi*, Libr. of Cong., <https://www.loc.gov/pictures/item/2008678324/> (last visited Mar. 18, 2026); Douglas Brinkley, *The Wilderness Warrior: Theodore Roosevelt and the Crusade for America* 440–44 (2010).

could have “appear[ed] . . . to be an authentic record” under AB 2655—in which Roosevelt refused to shoot a bear that had been captured by hunting guides.⁶⁰ But Berryman dramatized the story, making it a commentary on Roosevelt’s upstanding moral restraint and sportsmanship.⁶¹ The cartoon circulated widely, contributing to Roosevelt’s positive reputation and inspiring the stuffed animal marketed as the now ubiquitous “Teddy Bear.”⁶² As the Supreme Court noted, “Teddy Roosevelt’s glasses and teeth . . . have been memorialized by political cartoons with an effect that could not have been obtained by the photographer or the portrait artist.” *Hustler*, 485 U.S. at 55.

Together, these cartoons demonstrate how Gilded Age political commentary routinely relied on fictionalized imagery and visual

⁶⁰ Brinkley, *supra* note 59; Sarah Holzmann, *Discover How President Theodore Roosevelt Inspired the World’s First Teddy Bear, Which Went on Sale on This Day in 1903*, Smithsonian Mag. (Feb. 15, 2025), <https://www.smithsonianmag.com/smart-news/discover-how-president-theodore-roosevelt-inspired-the-worlds-first-teddy-bear-which-went-on-sale-on-this-day-in-1903-180986052/>.

⁶¹ Brinkley, *supra* note 59; Holzmann, *supra* note 60.

⁶² Brinkley, *supra* note 59 at 442; see *History of Teddy Bears*, Carnegie Museum of Nat. Hist., <https://carnegiemnh.org/history-of-teddy-bears/> (last visited Mar. 18, 2026); *The Story of the Teddy Bear*, Nat’l Park Serv. <https://www.nps.gov/thrb/learn/historyculture/storyofteddybear.htm> (last visited Mar. 18, 2026).

hyperbole to affect social change. Although the medium used to communicate political messages evolved, the “nobly false” remained central to American political discourse.



D. *The Twentieth Century*

By the twentieth century, political cartoons were an essential part of American newspapers and magazines.⁶³ Syndication allowed cartoons and other content to reach far beyond what small, independent artists could have dreamed.⁶⁴ Here, too, artists

made clear efforts to undermine elected officials and candidates—sometimes with direct references to elections.

⁶³ Harry Katz, *An Historic Look at Political Cartoons*, Neiman Reports (Dec. 15, 2004), <https://niemanreports.org/an-historic-look-at-political-cartoons/>.

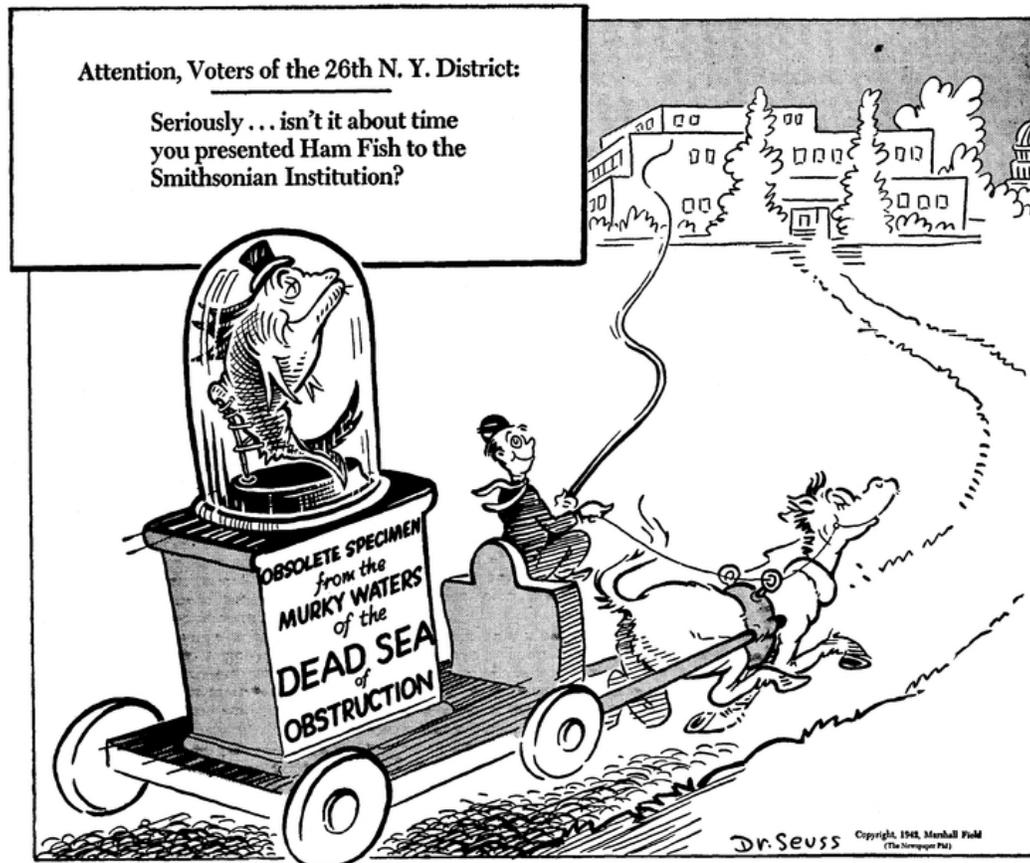
⁶⁴ Melissa Corcoran Hopkins, *Brief History of the Editorial Cartoon*, RIT Archives, <https://archives-exhibits.rit.edu/exhibits/show/editorial-cartoons/essays/history-cartoons> (last visited Mar. 18, 2026).

While Dr. Seuss (Theodore Seuss Geisel) is best known today for his children's literature, he was also a prominent political cartoonist leading up to World War II. He took strong pro-intervention, anti-Nazi, and pro-Roosevelt stances, lambasting anti-interventionists who opposed entry into the war. One of Seuss' recurring targets was U.S. Representative Hamilton Fish III, a staunch critic of the Roosevelt administration and intervention in the war. In one cartoon, Seuss appealed directly to the electorate: "Attention, Voters of the 26th N.Y. District: Seriously . . . isn't it about time you presented Ham Fish to the Smithsonian Institution?" Seuss depicted Fish as an unflattering, aged fish in a display case labeled "Obsolete Specimen from the Murky Waters of the Dead Sea of Obstruction."⁶⁵ This cartoon ran in May of 1942, when Fish was running for reelection. He scraped out a victory by just three thousand votes.⁶⁶

⁶⁵ *Attention, Voters of the 26th N.Y. District*, Libr. Digit. Collections & Archives, Univ. Cal. San Diego, <https://library.ucsd.edu/dc/object/bb5222709d> (last visited Mar. 18, 2026).

⁶⁶ Clayton Knowles, *\$250,000 LIBEL SUIT IS DROPPED BY FISH; Action Against Cutler, Begun in Primary, Ended Quietly in Newburgh on Aug. 17 FEAR OF PUBLICITY IS SEEN* Anderson, *Who Republished Offensive Advertisement, Is Not Sued by Representative*, *The New York Times* (Aug. 28, 1944), <https://www.nytimes.com/1944/08/26/archives/250000-libel-suit-is-dropped-by-fish-action-against-cutler-begun-in.html>.

Fish would lose his next reelection cycle in 1944, after an advertisement (not from Seuss) associated Fish with German-American Nazi Fritz Kuhn. Fish sued for libel when the advertisement ran but dropped the suit without settlement after losing the election.⁶⁷

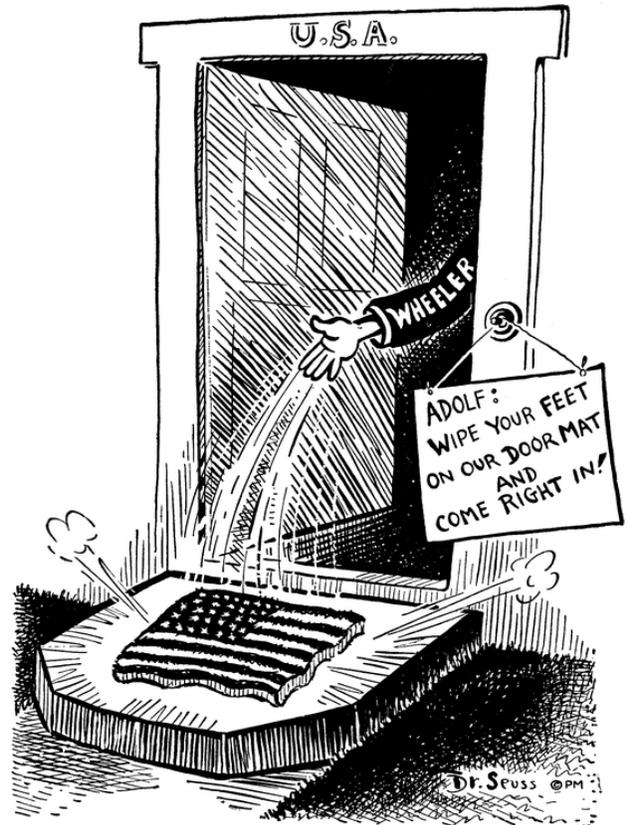


Seuss similarly targeted Senator Burton Wheeler, another anti-interventionist politician. One of Seuss's cartoons shows Wheeler inviting Adolf Hitler into America, asking him to wipe his feet on the flag on the

⁶⁷ *Id.*

way.⁶⁸ This of course was not a strictly true depiction of Wheeler, who never invited Hitler to America or supported the Nazi regime.

Herbert Block (known as “Herblock” in his cartoons) carried on the tradition. Like Seuss, Herblock frequently satirized political figures, making up statements to append to his depictions. For example, he once portrayed Nixon as asking the GOP: “Listen, are you going to be loyal to me or to that (expletive deleted) Constitution?”⁶⁹ The quotation was false—even though it was portrayed and received as something Nixon *could* have said in one of the Watergate tapes.



Here lies the cartoon’s cleverness—the quote attributed to Nixon so

⁶⁸ *Adolf: Wipe your feet on our door mat and come right in!*, Libr. Digit. Collections & Archives, Univ. Cal. San Diego, <https://library.ucsd.edu/dc/object/bb7168116x> (last visited Mar. 18, 2026).

⁶⁹ Herbert Block, “Listen, are you going to be loyal to me or to that (expletive deleted) Constitution?”, *The Washington Post*, May 3, 1974, at A30.

closely parodied what people could have believed Nixon to have actually said.

Even the print media of the day made use of exaggeration. The *New York Times* once ran an advertisement intended to raise funds for Martin Luther King, Jr. after he was incarcerated.⁷⁰ The ad stated that the leaders of a student civil rights protest had been expelled. That was true—though the expulsion was unrelated to the protest. And the



advertisement claimed the school padlocked the dining hall to starve student protestors and that police “ringed” the campus; the dining hall was not closed, and, though police were present, they did not surround the campus. This advertisement became the focus of the

⁷⁰ Advertisement, “Heed Their Rising Voices”, Documented Rights, <https://www.archives.gov/exhibits/documented-rights/exhibit/section4/detail/heed-rising-voices-transcript.html> (last visited Mar. 18, 2026).

Earth.⁷¹ Whether Welles should be praised or blamed for the substance of the political commentary, the medium certainly made “nobly false” speech more compelling.

E. The Modern Era

Online communication has only furthered the rich American tradition of “nobly false” content. Like other technological advances—mass printing, radio, and television—the internet allows content to be distributed more broadly. Additionally, digital tools have made more realistic fake images possible—even long before artificial intelligence (for example, “photoshopping” techniques). Convincing but less-than-true content has now engrained itself as a feature, not a bug, of online life.

A long-standing example of false online political content is *The Onion*. It publishes witty commentary in the form of exclusively false “news” stories—much like Plaintiff *The Babylon Bee*. And like *The*

⁷¹ A. Brad Schwartz, *The Infamous “War of the Worlds” Radio Broadcast Was a Magnificent Fluke*, Smithsonian Mag. (May 6, 2015), <https://www.smithsonianmag.com/history/infamous-war-worlds-radio-broadcast-was-magnificent-fluke-180955180/>.

Babylon Bee, *The Onion*'s content is often mistaken for actual news by unsuspecting readers.⁷²

In 2009, *The Onion* ran a “story” accompanied by a photoshopped image of a shirtless Joe Biden washing a Trans Am in the White House driveway.⁷³ But under AB 2655, this photo could appear to be an “authentic record” and would be considered

Politics

Shirtless Biden Washes Trans Am In White House Driveway



“materially deceptive” even though it long predates AI image generation.

⁷² It is worth noting that, despite *The Onion* convincing a Fox News reporter that it has 4.3 trillion readers every day, data suggests that *The Babylon Bee* has actually overtaken it in viewership. M.B. Mack, *Fox News Claims Satirical News Site 'The Onion' Has '4.3 Trillion Daily Readers' After Falling for Satirical Description*, *The Latin Times* (Nov. 14, 2024, 3:24 PM), <https://www.latintimes.com/fox-news-claims-satirical-news-site-onion-has-43-trillion-daily-readers-after-falling-565914>; Kevin Roose, *How The Babylon Bee, a Right-Wing Satire Site, Capitalizes on Confusion*, *The N.Y. Times* (Oct. 16, 2020), <https://www.nytimes.com/2020/10/16/technology/babylon-bee.html>.

⁷³ *Shirtless Biden Washes Trans Am in White House Driveway*, *The Onion*, <https://theonion.com/shirtless-biden-washes-trans-am-in-white-house-driveway-1819570732/> (last visited Mar. 13, 2026).

The online “false” political commentary is not limited to specialized satire shops. Memes—funny images shared online, usually accompanied by text—have become a staple in online communication.⁷⁴ Memes are increasingly an important part of political dialogue, tracing their origins to historical analogues like ancient Roman graffiti, early modern woodcuts of Luther or the Pope, or colonial-era lithographs.⁷⁵ Memes are powerful tools for speech because they are participatory; millions of people can edit reworked versions of each meme and share them instantly.⁷⁶ Like political cartoons, memes use caricature as a truncated form of commentary to “mak[e] concise points in the most effective manner possible” adding “witty social commentary on topics without providing lengthy explanatory background information.”⁷⁷

⁷⁴ Glenn Anderau & Daniel Barbarrusa, *The Function of Memes in Political Discourse*, 43 *Topoi* 1529, 1529 (2024).

⁷⁵ Harvard Law Review Assoc., *First Amendment-Social Media-Eastern District of New York Convicts Internet Meme Creator for Publishing False Voting Information. - United States v. Mackey, No. 21-Cr-80, 2023 U.S. Dist. Lexis 40796 (E.D.N.Y. Mar. 10, 2023)*, 137 *Harv. L. Rev.* 1509, 1514 (2024).

⁷⁶ *Id.*

⁷⁷ Anderau & Barbarrusa, *supra* note 74, at 1535.

One recent example is the “Fat JD” meme, depicting a pseudo-realistic, heavily overweight Vice President Vance.⁷⁸ It became so popular that Vance actually dressed as “Fat JD” for Halloween.⁷⁹



Online tools have enabled more than just deceiving images. Parody and satirical social media accounts have perpetuated the long-standing tradition of impersonation by adopting fictional personas to assume an appearance of legitimacy for humorous effect or to make a point.

One such account on X dubs itself “National Institute for Coordinated Experiments,” a reference to the infamous dystopian

⁷⁸ @FearedBuck, X (Oct. 31, 2025, 4:04 PM), <https://x.com/FearedBuck/status/1984381103831204165?s=20>.

⁷⁹ @JDVance, X (Oct. 31, 2025, 3:22 PM), <https://x.com/JDVance/status/1984370346204524803/photo/1>.

propaganda organization in C.S. Lewis’s science fiction novel *That Hideous Strength*. New York Times columnist David French once posted a “Thank you” in response to what appeared to be a flattering comment from the account, but which was actually intended as a satirical stab at French.⁸⁰

Perhaps nobody understands the powerful role of AI-generated images in politics as well as California Governor Gavin Newsom himself. Governor Newsom,

who signed AB 2655 into law and advocated for its passage, has a penchant for publishing “materially deceptive” content. His official press office account on X regularly posts unlabeled AI-generated images mocking other political figures. One recent post depicts Secretary of War

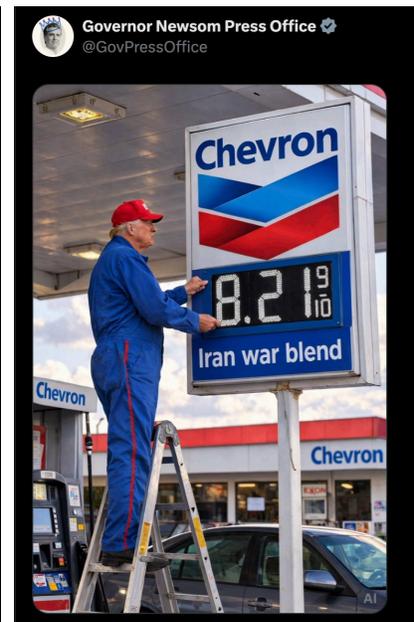
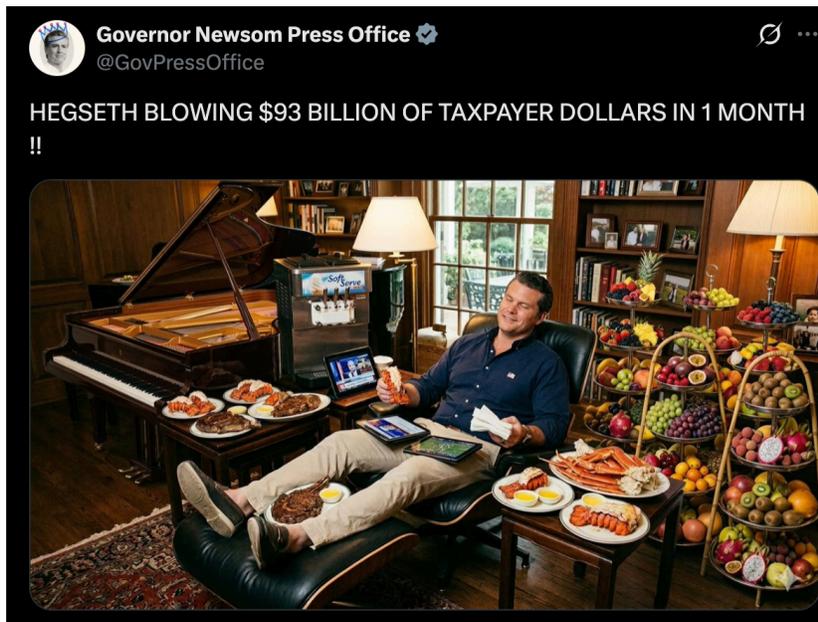


⁸⁰ Jon Brown, *Al Mohler, other Christians Excoriate David French for Pro-Talarico Op-Ed: 'Deception and Surrender,'* Christian Post (Mar. 11, 2026), <https://www.christianpost.com/news/al-mohler-others-excoriate-david-french-for-pro-talarico-op-ed.html>. French eventually realized his mistake and deleted his comment. *Id.*

Pete Hegseth lounging in a chair, feasting on lobster and other delicacies.⁸¹ Another shows President Donald Trump updating a Chevron sign with high gas prices labeled “Iran war blend.”⁸² Apparently, for Governor Newsom, it is “memes for me, but not for thee.”

II. Technological advances do not negate the value of the “nobly false” in American political discourse.

The American tradition of political speech and the nobly false has never been one of absolutely unfettered speech. It has instead been defined by the high tolerance for harsh criticism and mockery of public officials necessary to maintain a democratic republic and consequences



⁸¹ @GovPressOffice, X (Mar. 10, 2026, 12:46 PM), <https://x.com/GovPressOffice/status/2031441496801529864?s=20>.

⁸² @GovPressOffice, X (Mar. 8, 2026, 12:00 PM), <https://x.com/GovPressOffice/status/2030705270532575717?s=20>.

rather than censorship for imprudent or false speech. California’s AB 2655 exhibits no such tolerance and effectively censors political commentary it deems unfavorable.

A. AB 2655 silences the harsh criticism and mockery of public officials necessary to maintain a democratic republic.

“[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964)). The very point of political speech is to influence the course of an election by persuading others to vote for one’s candidate of choice. But AB 2655 dampens this persuasive process during the time when it matters most—election season. Political speech—regardless of the technology required to create it—definitionally must turn public opinion to be considered successful.

California’s law rubs against the grain of the American free-speech tradition by protecting politicians from citizens—not the other way around. The Anglo-American tradition maintained an “important distinction between libeling a human and libeling the government, with

the latter being more worthy of protection.”⁸³ While the old English common law broadly punished “seditious libel”—criticism that tended to undermine the government or its officials—American courts came to reject that expansive approach.⁸⁴

Whatever harm the state of California anticipates “materially deceptive” content will cause, “new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated.” *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 791 (2011). There are only a few “well-defined and narrowly limited classes” of speech that fall outside the protection of the First Amendment, *id.* (quoting *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942)), such as obscenity, defamation, fighting words, incitement, and child pornography, *id.*; *R.A.V. v. City of St. Paul*, 505 U.S. 377, 383–84 (1992). And while the State of course can proscribe libel, “it may not make the further content discrimination of proscribing only libel critical of the government.” *R.A.V.*, 505 U.S. at 384. California’s law goes far beyond the bounds of reasonable “time, place, or manner” restrictions

⁸³ Louis W. Hensler, *New York Times v. Sullivan Protects Seditious Libel, Not Personal Libel*, 77 Mercer L. Rev. (forthcoming 2026).

⁸⁴ *Id.*

into a regulation justified by “reference to the content of the regulated speech”: that is, whether it is considered “materially deceptive.” *See id.* (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)).

B. By passing AB 2655, California has placed itself amongst other notorious crusaders against political speech

The California legislature and Governor Newsom’s attempt to divest their countrymen of the right to share their ideas places them among history’s most infamous petty tyrants. The Roman emperor Nero prosecuted poets who satirized him.⁸⁵ England’s King George III and King George IV preemptively purchased cartoons perceived as harming their reputations.⁸⁶ Robespierre sent to the guillotine those who dared publish works criticizing his regime.⁸⁷ Senator Platt and “Boss” Tweed tried to quash the cartoons that criticized them.⁸⁸ Modern-day China refused to allow the release of the film *Top Gun: Maverick* because of a commemorative patch with the Taiwanese flag.⁸⁹ And California itself

⁸⁵ Vasily Rudich, *Navigating the Uncertain: Literature and Censorship in the Early Roman Empire*, 14 *Arion* 7, 15–16 (2006).

⁸⁶ *Collection: Cartoon Prints, British*, *supra* note 2.

⁸⁷ Jacques René Hébert, British Museum, <https://www.britishmuseum.org/collection/term/BIOG189778> (last visited Mar. 18, 2026).

⁸⁸ Dewey, *supra* note 53.

⁸⁹ Heidi Holz, *Combating Beijing’s Influence: Lessons from Top Gun: Maverick*, CNA (June 10, 2022), <https://www.cna.org/our->

once tried to ban “red flags” in the first state statute ever held by the United States Supreme Court to be an unconstitutional infringement on the freedom of speech. *See Stromberg v. California*, 283 U.S. 359 (1931).

No American statesman worthy of the calling of public service need fear contrary political speech. After all, a candidate must share his ideas and the *people* must decide if they want that person to govern them. What the true statesman should fear is to be numbered among the enemies of the freedom to speak one’s mind central to our American political tradition. Crusaders against “nobly false” speech form a sort of rogues gallery—ranging from the bumptious to the downright wicked—among whose ranks no one should wish to be counted. The First Amendment stands as a steadfast bulwark against such repression.

CONCLUSION

Free speech on matters of public importance—even the “nobly false”—is critical for the success of a republic. For that reason, *amicus*

[media/indepth/2022/06/combating-beijings-influence-lessons-from-top-gun-maverick](https://www.washingtonpost.com/media/indepth/2022/06/combating-beijings-influence-lessons-from-top-gun-maverick/).

urges this Court to affirm the District Court and protect the long tradition of the *splendide mendax*.⁹⁰

March 18, 2026.

Respectfully submitted,

s/A. Caleb Pirc

A. Caleb Pirc

Legal Center Director

IFPC Legal Center

Counsel for *Amicus Curiae*

⁹⁰ Counsel and *amicus* are thankful for the contributions of law students Dylan Mahoney (Regent Law '26) and Ann-Michal Dyer (Regent Law '27).

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2026, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit using the Appellate Case Management System (“ACMS”). I certify that all participants in the case are registered ACMS users and that service will be accomplished by the ACMS system.

s/ A. Caleb Pirc

A. Caleb Pirc