No. 25-6138

IN THE 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
No. 2:24-cv-02527-JAM-CKD
Hon. John A. Mendez

MOTION OF THE LIBERTY JUSTICE CENTER AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Reilly Stephens
 Counsel of Record
LIBERTY JUSTICE CENTER
Liberty Justice Center
7500 Rialto Blvd. Suite 1-250
Austin, Texas 78735
512-481-4400
rstephens@ljc.org

March 18, 2026

1

MOTION

The Liberty Justice Center respectfully moves for leave to file the accompanying brief as *amicus curiae.*

This Court should grant leave to file the accompanying *amicus curiae* brief because it provides a perspective not fully addressed by the parties. Specifically, the proposed brief offers a detailed survey of how counterspeech mechanisms—including community notes, public response, and public debate and discourse—have developed alongside digital communication technologies to effectively combat false and misleading speech without government intervention.

The brief demonstrates, through concrete and recent examples, that the marketplace of ideas remains functional and effective online, and that the platforms themselves have increasingly adopted counterspeech models as less restrictive alternatives to centralized content moderation. This evidence bears directly on the strict scrutiny analysis applicable to AB 2655 and whether less restrictive means remain available and effective.

2

CONCLUSION

For the foregoing reasons, the Liberty Justice Center respectfully requests that this Court grant leave to file the accompanying brief as *amicus curiae*.

Respectfully submitted,

Reilly Stephens
Counsel of Record
LIBERTY JUSTICE CENTER
7500 Rialto Blvd. Suite 1-250
Austin, Texas 78735
512-481-4400
rstephens@ljc.org

March 18, 2026

No. 25-6138

IN THE 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
No. 2:24-cv-02527-JAM-CKD
Hon. John A. Mendez

BRIEF OF THE LIBERTY JUSTICE CENTER AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Reilly Stephens
LIBERTY JUSTICE CENTER
Liberty Justice Center
7500 Rialto Blvd. Suite 1-250
Austin, Texas 78735
512-481-4400
rstephens@ljc.org

March 18, 2026

i

DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 29(a)(4)(a), Liberty Justice Center states

that it is a nonprofit corporation registered in the State of Texas, and

has no parent company and no stockholders.

ii

TABLE OF CONTENTS

iii

TABLE OF AUTHORITIES

<u>Cases</u>

<u>Statutes and Rules</u>

<u>Legislation</u>

<u>Other Authorities</u>

iv

INTEREST OF THE *AMICUS CURIAE*[1]

The Liberty Justice Center is a nonprofit, nonpartisan, public-interest litigation firm that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. The Liberty Justice Center pursues its goals through strategic, precedent-setting litigation to protect core First Amendment rights.

---

[1] Fed. R. App. P. 29(a)(4)(E) statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission.

2

Summary of Argument

In 2024, California enacted AB 2655 which mandated that large online platforms police digitally created or modified political speech hosted on their platforms. Cal. Elec. Code § 20512 et seq. By imposing requirements on these platforms to censor certain speech that the law defined as "materially deceptive content." The law defined "materially deceptive content" as "digitally created or modified" media that "would falsely appear to a reasonable person to be an authentic record." § 20512(i)(1). Such censorship requirements, however, would violate the First Amendment.

Instead, counterspeech, not legislative censorship, is the preferred method of regulating false or disfavored speech. Under *United States v. Alvarez,* 567 U.S. 709 (2012), false statements are not categorically excluded from First Amendment protection. Rather, the remedy for false speech is more speech.

Even in the digital environment, the marketplace of ideas is still going strong. Controversial ideas are routinely debated and responded to online, via public outcry on social media, verification systems such as

3

"community notes,"—counterspeech remains the preferred means of exposing and refuting false speech without the need of legislative intervention. Past attempts to regulate false speech in the digital environment have repeatedly failed to achieve their stated goals. Counterspeech remains the least restrictive means available in such instances. Because counterspeech remains available and effective, legislative intervention fails to satisfy strict scrutiny. Such means undermine the First Amendment's and the Supreme Court's faith in the American public to discern what is true from what is false through the marketplace of ideas.

ARGUMENT

I. Counterspeech is the least restrictive means of combating the kinds of "bad speech" targeted by AB 2655.

When facing speech that is disfavored by the public, counterspeech is the remedy, not legislated censorship. G.S. Hans, *Changing Counterspeech*, 69 Clev. St. L. Rev. 749, 751 (2021) (defining counterspeech as "speech that counters existing speech; more broadly, theorists generally use it to describe the range of responses, critiques, rebuttals,

4

and disapproval that occurs after disfavored, unpopular, offensive, or hateful speech is uttered.") This is true even when the disfavored speech is provably false. The First Amendment reflects a commitment to open debate and a trust in the American public's ability to discern what is true from what is false without the legislature's guidance.

In *United States v. Alvarez*, the Supreme Court demonstrated this principle by rejecting the argument that false statements fall outside First Amendment protection. *United States v. Alvarez*, 567 U.S. 709, 718 (2012). The Court explained that "false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee." *Id*. Only in limited, historically recognized categories, may the government regulate false speech, and only when legally cognizable harm is present. *Id*. at 717-18. (Listing cases and the historical categories: advocacy intended, and likely, to incite imminent lawless action; obscenity; defamation; speech integral to criminal conduct, "fighting words";

5

child pornography; fraud; true threats; and speech presenting some grave and imminent threat the government has power to prevent).

In recognizing this fact, the Court expressly refused to make the government the arbiter of truth. Instead, it reaffirmed the marketplace of ideas: "the best test of truth is the power of the thought to get itself accepted in the competition of the market." *Id.* at 727–28 (citing *Abrams v. United States*, 250 U.S. 616, 630 (1919)). As Justice Brandeis once explained, "[i]f there be a time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence." *Whitney v. California*, 274 U.S. 357, 377 (1927). (Brandeis, J., concurring).

Even where the Government may have a compelling interest in regulating false speech outside of the recognized exceptions, strict scrutiny applies. *Alvarez*, 567 U.S. 709, 729. Content based restrictions must be the "least restrictive means among available, effective alternatives." *Id.* (citing *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004)). As this court recognized in *United States v. Swisher*,

6

"*Alvarez* clarified that lies do not fall into a category of speech that is excepted from First Amendment protection," and must be "analyzed under the same framework" as other content-based restrictions. *United States v. Swisher*, 811 F.3d 299, 317-38 (9th Cir. 2016). Where counterspeech remains available and effective, the government cannot satisfy its burden.

The Supreme Court has emphasized that "the dynamics of free speech, of counterspeech, of refutation, can overcome the lie" and that "the remedy for speech that is false is speech that is true." *Alvarez*, 567 U.S. 726-27; *see also Animal Legal Defense Fund v. Wasden*, 878 F.3d 1184, 1205 (9th Cir. 2018) ("Even still, as *Alvarez* points out, "[t]he remedy for speech that is false is speech that is true."). By choosing censorship over counterspeech, the California legislature undermines that trust. It fails to acknowledge the ability of the American public to discern what is true from what is false and instead acts as arbiter of truth.

7

II. In its many forms, counterspeech is still effective and preferred in the digital environment.

The principles recognized in *Alvarez* apply with just as much vigor online. While artificial intelligence and other digital methods admittedly make it much easier to create audio and photorealistic depictions of events that never occurred, the solution remains the same, counterspeech.

If anything, because these platforms use algorithms that promote content based on the interactions of the public, the digital environment can amplify the effect of counterspeech. *How the X Algorithm Works: A Guide to Increasing Your Reach*, AdLibrary.com[2] (explaining that positive and negative interactions impact the X algorithm's treatment of a post, ultimately determining whether a post will be recommended to more users or not). The same tools that may be used to spread falsehoods are also available for the spread of refutation, scrutiny, and verification. New User FAQ, X Help Center[3]. (Explaining that individuals

---

[2] https://adlibrary.com/guides/x-twitter-algorithm-explained
[3] https://help.x.com/en/resources/new-user-faq

8

can use the platform for messaging, sharing and responding to posts, and following content creators you want to see more content from. Tools available to all users). In this new environment where algorithms and the public determine content visibility, competing narratives are tested immediately in the open marketplace, where evidence, debate, and discussion determine what endures. Abrams, 250 U.S. 616, 630 ("[T]he best test of truth is the power of the thought to get itself accepted in the competition of the market.").

The First Amendment does not cease to protect the marketplace from government intervention merely because new technologies make falsehoods more sophisticated. Because *Alvarez* refuses to create a categorical ban for false speech, the question is not whether these new technologies make falsehoods more convincing, but whether less restrictive means remain available and effective. For as long as counterspeech exists to empower the public to expose falsities, correct inaccuracies, challenge narratives, and learn from those exchanges, legislative intervention is neither necessary nor constitutional.

9

Even in the digital environment, the Constitution does not require "handcuffs" or a "badge" for the protection and preservation of truth. *Alvarez*, 567 U.S. at 729. As demonstrated by the means below, the marketplace of ideas is still viable and effective and must be exhausted before legislative interventions.

A. Community notes are a form of online counterspeech widely used by major social media platforms

While there are new ways that false information can appear online, the methods of counterspeech have grown to meet the challenge. The marketplace of ideas is not in need of legislative defense against false statements. It has developed new methods of rejecting falsehoods while encouraging counterspeech. Three common methods of counterspeech illustrate this reality: community notes, public response, and public debate and discourse. Each of these methods rely on the public's ability to evaluate and call out false or misleading speech without the help of the legislature.

10

Community notes function as user-generated disclaimers attached to posts that might be misleading. Community Notes: Helping People Stay Informed, Meta (last visited Feb. 25, 2026)[4];*Civic Integrity Policy*, X Help Center (last visited Feb. 25,2026)[5]. On platforms such as X, Facebook, and Instagram, contributors (members of the community) draft and rate notes. A note is then published after a sufficiently diverse group of users agree that the note is helpful. This method of counter-speech has a minimal burden as the original post remains visible but is contextualized by the community note rather than a government mandated label. The result is more speech, not less speech. This is precisely the sort of remedy contemplated in *Alvarez*.

Consider a post from 2023 depicting Pope Francis wearing a white puffer coat. Although many people had originally been convinced of the Pope's stylish attire, community notes have since been attached to these

---

[4] https://www.meta.com/technologies/community-notes/?srsltid=Afm-BOop551qmuzG1Ci6QoFdu4t_jmao3cX_ZuoaQsE6jPI8b8z-dp4wS
[5] https://help.x.com/en/rules-and-policies/election-integrity-policy

11

images and are available to clarify their AI origin. Nikita S (@singareddynm), Post on X (Mar. 25, 2023)[6]; Leah Dolan & Jacqui Palumbo, *How the understated style of Pope Francis made him an unlikely fashion icon*, CNN (Apr. 24, 2025)[7]; David Ingram, *AI-generated images of Pope Francis fool the internet*, NBC News (Mar. 27, 2023)[8]. Also consider this video of flooding in Dubai. A since attached community note clarifies that the post contains audiovisual falsities. Mr Sinha (@Mrsinha), Post on X (Apr. 17, 2024)[9].

Recognizing the low burden and benefit of community notes, leading social media platforms that once relied on third-party factcheckers to moderate and censor false or disfavored speech have shifted towards using community notes. Dawn Carla Nunziato, *The Marketplace of Ideas Online*, 94 Notre Dame L. Rev. 1519 (2019); *Meta Says It Will Follow X, Replace Fact-Checking With Community Notes*, PBS NewsHour

---

[6] https://x.com/singareddynm/status/1639655045875507201
[7] https://www.cnn.com/style/article/pope-francis-puffer-coat-ai-fashion-lotw
[8] https://www.nbcnews.com/tech/pope-francis-ai-generated-images-fool-internet-rcna76838
[9] https://x.com/Mrsinha/status/1780501933046022399

12

(Jan. 7, 2025)[10]. Factchecker methods were criticized as flawed and overinclusive, often censoring undeserving accounts and eroding the public's trust in the platforms' ability to facilitate open and robust debate. Cato Institute, *Poll: 75% Don't Trust Social Media to Make Fair Content Moderation Decisions, 60% Want More Control over Posts They See*, Survey Reports (Dec. 15, 2021)[11]. In response to the feedback, platforms have shifted away from heavy-handed enforcement models and towards methods that elevate context, promote competing viewpoints, and encourage user engagement. *Id.* Ultimately, these platforms embrace counterspeech as the less restrictive means of moderation.

On X, (formerly known as twitter) Civic Integrity Labels and Community Notes illustrate this shift toward counterspeech. Community notes "add[] helpful, informative content to posts that may contain misleading information." *Civic Integrity Policy*, X Help Center (Nov.

---

[10] https://www.pbs.org/newshour/nation/meta-says-it-will-follow-x-replace-fact-checking-with-community-notes

[11] https://www.cato.org/survey-reports/poll-75-dont-trust-social-media-make-fair-content-moderation-decisions-60-want-more?utm_source=chatgpt.com#64-support-having-facebook-fact-check-information-users-share

13

2025)[12]. The community, not X creates these notes. Once a sufficiently

diverse group of contributors rate a note as helpful, it appears directly

on the post. Id. This means of moderation utilizes counterspeech by in-

viting the public to participate, encouraging scrutiny of false speech,

and relying on the community rather than an arbiter of truth.

Civic Integrity Labels, while more restrictive, are reserved for

posts that violate X's Civic Integrity policy. Id. (These posts include ma-

terially misleading information about a civic process or intimidation to

coerce others to refrain from participating in a civic process). Once a la-

bel is attached to a post, the visibility of the post is limited rather than

removed or censored. *Id.* This more restrictive measure specifically tar-

gets concrete harms while preserving space for debate.

Similar to X, Meta has adopted policies that prioritize community

notes and "provid[ing] resources to increase media and digital literacy

so people can decide what to read, trust, and share themselves." *Misin-*

formation, Meta Transparency Center – Community Standards (n.d.)[13].

---

[12] https://help.x.com/en/rules-and-policies/election-integrity-policy
[13] https://transparency.meta.com/policies/community-standards/misinformation/

14

Rather than telling the public what is "authoritative" or determining for the community what is right and wrong, Meta's approach emphasizes equipping users with tools to evaluate information independently. This shift away from factcheckers reflects a recognition that empowering users to participate in the marketplace of ideas better preserves both free expression and public trust. Mark Zuckerberg, the chairman and CEO of Meta Platforms, publicly admitted that this change was necessary as factcheckers had "destroyed more trust than they created," and emphasize the need to "reduce mistakes." Kaplan, More Speech and Fewer Mistakes, Meta Newsroom (Jan. 7, 2025)[14].

In addition to aligning with the principle articulated in *Alvarez*, by moving away from third-party fact-checkers and toward community notes, Meta noticed a 50% reduction in enforcement mistakes during the first quarter following the shift. Kaplan, More Speech and Fewer Mistakes, Meta Newsroom (Jan. 7, 2025)[15]. Most recently, in a December 11, 2025, transparency update, the platform stated that "about 1

---

[14] https://about.fb.com/news/2025/01/meta-more-speech-fewer-mistakes/
[15] https://about.fb.com/news/2025/01/meta-more-speech-fewer-mistakes/

15

out of every 10 pieces of content removed, and less than one out of every 1,000 pieces of content produced overall, was removed in error." Integrity Reports, Third Quarter 2025, Meta Transparency Center (updated Dec. 11, 2025)[16]. These figures demonstrate that systems build on authoritative determinations of falsity are prone to overreach. On the other hand, systems that allow the marketplace of ideas to function narrow enforcement to genuinely violative content while reducing collateral suppression of protected speech.

As demonstrated by both of these companies' policy shifts, counterspeech is the preferred remedy to bad speech. By encouraging "open and vigorous expression of views," both companies allow the public to discern what is false in pursuit of what is true. *Alvarez*, 567 U.S. at 718 (citation omitted). More restrictive means risk chilling legitimate expression and undermining the very marketplace of ideas the First Amendment protects. While critiques of community notes alone argue

---

[16] https://transparency.meta.com/reports/integrity-reports-q3-2025/

16

that the delay between the creation of a post and attachment of a community note enables false speech to spread, community notes are not these platforms' sole means of counterspeech. Instead, this method works in tandem with the following online methods as they remain available and effective during that time.

B. The counterspeech of public response acts swiftly and powerfully against online content.

Public response is the most like traditional offline counterspeech. Comment sections, shared posts, and independent responses allow virtually anyone to debate or expose false claims in real time. With the speed and visibility of online posts, refutation can travel just as quickly as the controversial statement.

Online content creators often face swift confrontation from their audiences. When Logan Moffit, an online food influencer, promoted a product as the first ever of its kind, users were quick to identify preexisting products and correct the claim. *TikTok Star Logan Moffitt Apologizes*

17

After Asian Food Partnership Backlash, People (Feb. 12, 2026)[17]. In response, Logan removed the post and uploaded an apology video. *Id*. Again, swift counterspeech revealed the truth and condemned the falsity.

Public response is also effective against synthetic and AI-generated content. Consider Andrew Cuomo's AI-generated advertisement depicting Zohran Mamdani eating rice with his hands, releasing criminals who claim, "I'm a criminal for Zohran Mamdani," and concludes with the city burning. *Andrew Cuomo AI Ad Attacking Zohran Mamdani*, YouTube (uploaded by ContentHub) (Oct 23, 2025)[18]. Although the post was available for just five minutes before the account deleted it, this advertisement prompted "fast and negative" public response. Ed Pilkington, Cuomo condemned over racist AI ad depicting 'criminals for Zohran Mamdani', The Guardian (Oct. 23, 2025)[19]; Shane

---

[17] https://people.com/tiktok-star-logan-moffitt-apologizes-after-asian-food-partnership-11905384?utm_source=chatgpt.com

[18] https://www.youtube.com/watch?v=cKlz4VzTyCY

[19] https://www.theguardian.com/us-news/2025/oct/23/cuomo-zohran-mamdani-ai-ad?utm_source=chatgpt.com

18

O'Brien, *Cuomo faces backlash after campaign releases, then deletes, AI-generated "Criminals for Zohran Mamdani" ad on social media*, PoliticsNY / amNewYork (Oct. 23, 2025)[20]. In as little time as five minutes, the public was able to identify, share, and condemn this disfavored content.

While community notes alone may not suffice to counter false messages or bad online speech, public response is an age tested means of countering such messages. As an immediately available and powerful tool, public response is effective to combat disfavored speech in the online environment. With public response as a means of instantaneous refutation and community notes as a community crafted label for future viewers, counter speech is already less restrictive and still effective in comparison to government mandated censorship. Nevertheless, counterspeech still appears in another common form alongside community notes and public response.

---

[20] https://www.amny.com/politics/cuomo-backlash-ai-generated-ad/?utm_source=chatgpt.com

19

C. The classic means of discourse and debate is a common form of counterspeech online

Public debate and discourse are central features of online counter-speech. This method is common in the realm of politics, on and offline. In fact, it is a traditional part of the process of electing candidates for office. In the modern realm, however, politicians have begun to use AI-content and false speech as a means of critiquing others or parodying current events. The synthetic means of creating content have themselves become a method of participating in the marketplace.

Consider the use of memes by current political figures such as Governor Gavin Newsom and President Trump. Both figures have reputations for using meme content as a means of critiquing others or parodying current events. Adam Wren & Alex Isenstadt, *How Gavin Newsom Trolled His Was to the Top of Social Media*, Politico (Aug. 20, 2025)[21]; *Trump Is America's First Meme President: How Trump has made his mark in politics and in our minds*, N.Y. Times (Sept. 23,

---

[21] https://www.politico.com/news/2025/08/20/gavin-newsom-twitter-trump-00515785

20

2025)[22]. For example, Governor Newsom's AI meme of President Trump and other cabinet officials in handcuffs as a response to a White House post showing individuals being cuffed as part of "CUFFING SZN." Gavin Newsom (@GavinNewsom), X (Dec. 11, 2025), https://x.com/GavinNewsom/status/1998898153131749714. Governor Newsom also posted an AI video depicting Vice President J.D. Vance on a couch discussing the history of the couch, a joke parodying an online rumor about J.D. Vance and a pointed jab at the administration's use of tariffs. Governor Newsom Press Office (@GovPressOffice), X (Oct. 1, 2025)[23].

Consider also, President Trump's use of AI-content. While often blatant jokes and satire, such as President Trumps meme of himself as the Pope or as a Character out of a Star Wars film, there have also been

---

[22] https://www.nytimes.com/2025/09/23/opinion/trump-meme-language-social-media.html

[23] https://x.com/GovPressOffice/status/1973167665075335449?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctw-term%5E1973167665075335449%7Ctwgr%5Ebb82aa63e974fafbb76dc20a564edac8f356b634%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fnotthebee.com%2Farticle%2Fnewsom-drops-new-ai-video-of-jd-vance-giving-the-history-of-couches

21

less obvious instances of his use of AI. The White House

(@WhiteHouse), X (May 3, 2025)[24]; The White House (@WhiteHouse), X

(May 4, 2025)[25]. For example, on August 18, 2024 President Trump

made a post boasting support from Taylor Swift and her fans. Ken Ten-

barge, The AI–Generated Taylor Swift Endorsement Trump Shared

Was Originally a Pro-Biden Facebook Meme, NBC News (Sept. 13,

2024)[26]. Although a quick look at this post may leave a viewer in shock

to see such a prominent cultural figure and her fans boasting support of

President Trump, a quick glimpse at the comments and posts from the

celebrity herself will demonstrate the falsity of the post.

Taken together, community notes, public response, and public de-

bate and discourse demonstrate that counterspeech methods have

grown alongside the methods of communicating false messages. By add-

ing context, correcting inaccurate messages, and scrutinizing falsities,

---

[24] https://x.com/WhiteHouse/status/1918502592335724809?lang=en

[25] https://x.com/WhiteHouse/status/1919053040734072844

[26] https://www.nbcnews.com/tech/tech-news/ai-taylor-swift-endorsement-trump-shared-was-originally-biden-meme-rcna170945

22

these tools preserve the truth without sacrificing First Amendment protections.

There is therefore no demonstrated need for legislated labels or suppression. Even when faced with synthetic content or false statements, by participating in the marketplace of ideas, the American public is quick to callout what is false, demand correction, and elevate what is true. All without relying on the legislature to act.

III. Despite its critiques, the use of counterspeech should continue to be recognized as an effective means of discerning truth without the need of legislated censorship.

As referenced above, some critics argue that counterspeech methods are ineffective to combat content that spreads rapidly before community notes are attached. Making Meta's Community Notes Work: Current Challenges and Opportunities, Center for Democracy & Technology (July 25, 2025)[27]. (Assessing the limitations of Meta's Community Notes system and recommending ways to improve). However, temporary virality does not render counterspeech ineffective. During the

---

[27] https://cdt.org/insights/making-metas-community-notes-work-current-challenges-and-opportunities/

23

time that community notes are being produced, public outcry, commentary, and posts from opposition often emerge immediately. This gives observers the opportunity to witness the exchange in real time and learn from the competing claims. In response to public outcry, creators may remove or amend posts. If they don't, community notes will be available for future viewers who are not present for the exchanges in real time.

Likewise, concerns that synthetic posts have become more misleading and dangerous do not justify abandoning counterspeech. While synthetic audiovisual technologies have developed drastically in previous years, it has been demonstrated that audiovisual disinformation is not perceived as more credible or believable than the same disinformation in textual format. Michael Hameleers, *Cheap Versus Deep Manipulation: The Effects of Cheapfakes Versus Deepfakes in a Political Setting, 36 Int'l J. Pub.* Opinion Rsch. Edae004 (2024)[28] (Finding that,

---

[28] https://academic.oup.com/ijpor/article/36/1/edae004/7617425?utm_source=chatgpt.com&login=false

24

"[a]t the least, this study offers tentative evidence that highly sophisti-
cated modes of visual disinformation are not clearly more effective than
less sophisticated and more accessible forms of deception."). Including
the White House, there are agencies and private organizations that
have taken on the challenge to identify synthetic posts and provide edu-
cational materials for identifying synthetic information. U.S. Dep't of
Homeland Sec., Increasing Threats of Deepfake Identities 1 (2021)[29];
U.S. Gov't Accountability Off., Science & Tech Spotlight: Combating
Deepfakes, GAO-24-107292 (Mar. 11, 2024)[30]; Media Offenders, The
White House (last visited Feb. 25, 2026)[31]; Political Deepfakes Incident
Database, Governance and Responsible AI Lab, GRAIL,[32] (last visited
Feb. 25, 2026) (In footnote five, you are able to access the database's
airtable[33]). If anything, these efforts mirror those identified in *Alvarez*.

---

[29] https://www.dhs.gov/sites/default/files/publications/increasing_threats_of_deep-
fake_identities_0.pdf

[30] https://www.gao.gov/products/gao-24-107292

[31] https://www.whitehouse.gov/mediabias/

[32] http://www.grail-lab.org/publications/political-deepfakes-incident-database

[33] https://airtable.com/appOU03dlKuBdbmty/shrEkrI-
YINbrcKQ3z/tbleGYjNLn2D4Xfzs

25

Alvarez, 567 U.S. at 729. ("Were a database accessible though the internet, it would be easy to verify and expose false claims.").

While these concerns should be taken into consideration for the developers of online platforms, it is not sufficient to dismiss the success of existing counterspeech methods. Where counterspeech has proven capable of narrowing mistakes, preserving trust, and correcting falsehoods, it remains the less restrictive and constitutionally preferred alternative.

CONCLUSION

This Court should rule for Plaintiffs-Appellees.

Respectfully submitted,

> Reilly Stephens
> *Counsel of Record*
> LIBERTY JUSTICE CENTER
> Liberty Justice Center
> 7500 Rialto Blvd. Suite 1-250
> Austin, Texas 78735
> 512-481-4400
> rstephens@ljc.org

March 18, 2026

26

CERTIFICATE AS TO LENGTH

Pursuant to Fed. R. App. P. 32(g)(1), counsel of record certifies that

the body of this brief, including footnotes, contains 3,630 words.