No. 25-6138

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE BABYLON BEE, LLC, et al.

Plaintiffs-Appellees

v.

BONTA, 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
The Honorable John A. Mendez

BRIEF OF *AMICUS CURIAE* LIBERTY LEGAL FOUNDATION IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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INTEREST AND IDENTITY OF *AMICUS CURIAE*

Liberty Legal Foundation is a Delaware corporation exempt from income tax under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). Liberty Legal Foundation is a non-profit public interest legal organization whose mission is to promote the rule of law, protect due process, and defend equal protection under the Constitution for all Americans.

As such, Liberty Legal Foundation has a significant interest in state laws that use governmental authority and the threat of punishment to coerce private parties into punishing or suppressing speech that the government disfavors; bar and chill speech based on content and viewpoint; burden substantially more speech than is necessary to further any government interest; target speech based on its content; vest unfettered discretion in state officials to define the terms "deepfake," "materially deceptive content," "harm the reputation or electoral prospects of a candidate," "falsely undermine confidence in the outcome of one or more election contests," "something that influences the election," "satire or parody;" and coerce large online platforms to remove content in accordance with the official's own subjective ends for election regulations.

Liberty Legal Foundation and its supporters, particularly those in California, are vitally concerned with the outcome of this case because of its deleterious effect on freedom of speech and expression. Liberty Legal Foundation writes to

encourage the Ninth Circuit to protect the right to free speech and expression in California.

Amicus files this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure and all parties to the appeal have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part. No person or entity, other than *amicus curiae* and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

In the United States, the government must not use its power to conscript private actors into punishing speech it disfavors. Yet California's Assembly Bill 2655 ("AB 2655") does just that. AB 2655's provisions are codified in sections 20510 through 20520 of the California Elections Code. AB 2655 uses governmental authority and the threat of punishment to coerce large social media platforms into policing speech according to the state's own ideological preferences, in the name of combating "deepfakes" and other "materially deceptive" election-related content. A vague and overbroad law, AB 2655 bars and chills speech based on content and viewpoint, burdens substantially more speech than necessary to further any legitimate government interest, and vests state officials with unfettered discretion to define core operative terms. In doing so, it threatens to wrap an entire state as well as global social media platforms in a pall of orthodoxy, subordinating

the free exchange of ideas among citizens to the sensibilities and policy aims of those in power.

BACKGROUND

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 § 20510 *et seq.* The statute targets election-related expression, purporting to regulate "deepfakes" and "materially deceptive content" that may "harm the reputation or electoral prospects of a candidate," "falsely undermine confidence in the outcome of one or more election contests," or otherwise "influence the election." Cal. Elec. Code § 20513.

The statute would impose three main burdens on covered platforms. First, there is a removal requirement, demanding that covered platforms identify and remove certain "materially deceptive content" about "candidate[s] for elective office," "elections official[s]," and "elected "official[s]." Cal. Elec. Code § 20513. Second, there is a labeling requirement, forcing platforms to label certain "materially deceptive content." Cal. Elec. Code § 20514. Third, it imposes a reporting requirement compelling covered platforms to provide a mechanism to report content for removal or labeling. Cal. Elec. Code § 20515.

The statute defines "materially deceptive content" as "audio or visual media that is digitally created or modified, and that includes, but is not limited to,

deepfakes and the output of chatbots, such that it would falsely appear to a reasonable person to be an authentic record of the content depicted in the media." Cal. Elec. Code § 20512(i)(1). The statute defines "deepfake" as "audio or visual media that is digitally created or modified such that it would falsely appear to a reasonable person to be an authentic record of the actual speech or conduct of the individual depicted in the media." Cal. Elec. Code § 20512(d).

The statute does not directly criminalize user speech; instead, it operates by pressuring social media platforms — under threat of investigation, enforcement actions, and onerous regulatory scrutiny — to remove or label content state officials disfavor. It thus empowers the state's enforcement and investigative machinery to accomplish indirectly what the First Amendment largely forbids the state to do directly.

In this consolidated case[1], the district court granted summary judgment to Plaintiffs under Section 230 and permanently enjoined California from enforcing the law against any interactive computer service. It held, in an oral ruling from the bench, that AB 2655 violates Section 230. It ruled, "Here, the conduct that the removal, labeling, and reporting requirements regulate can be understood as

[1] This matter was originally four separate actions consolidated into a single case below. *See* ECF Nos. 20, 32, & 37 (consolidation orders). Plaintiffs additionally challenged AB 2655's companion statute, AB 2839, and the lower court held that AB 2839 violates the First Amendment. *See* ECF No. 101 (ruling on AB 2839). AB 2839 and its validity are not at issue on this appeal.

traditional publishing activity that Section 230 immunizes" and that taking down content is "quintessential publishing conduct." 1-ER-24. Similarly, "[a]dding labels to posts is similar to editing posts because it does transform how content may appear on the website." *Id.* at 25. The reporting requirement failed because it "hinge[d] on the removal and labeling requirements which both treat platforms as publishers." *Id.* at 26. The reporting requirement also violated section 230(c)(2) by "infringing on the immunity that platforms enjoy in filtering their own content." *Id.* at 27. The district court declined to reach the First and Fourteenth Amendment claims.

Even though the formal issue on appeal is the permanent injunction based on Section 230 preemption, it is proper for an *amicus* to address the constitutional problems with AB 2655 because the scope of the appeal opens the door. Defendants-Appellants are asking this Circuit Court to reverse a permanent injunction and to hold that AB 2655 is a valid and enforceable law, not just to resolve an abstract Section 230 question in a vacuum. Once Defendants-Appellants seek reversal of the injunction and reinstatement of the statute, the practical consequence of this Court's ruling is whether AB 2655 can be enforced at all against platforms. This necessarily implicates the serious constitutional defects the district court did not reach.

ARGUMENT

I. AB 2655 Arms a Heckler's Veto

The First Amendment protects speech on matters of public concern even when it offends, disturbs, or angers listeners. Courts have long recognized not only that speech often "stirs people to anger" and "strikes at prejudices and preconceptions," but also that these very qualities justify the constitutional protection of free discussion. *Terminiello v. City of Chicago,* 337 U.S. 1, 4 (1949). Yet AB 2655 effectively allows the most hypersensitive or politically motivated listeners to convert their outrage into a veto on others' speech. Whenever a controversial audio/video post about an election provokes complaints that it "undermines confidence" in the outcome or "harms" a candidate's reputation, state officials may pressure platforms to suppress that content under the statute's vague standards. Outraged and triggered visitors may use the "reporting" feature under AB 2655 to put the platforms under pressure.

In practice, this structure rewards performative offense-taking. The more loudly a group claims that a piece of content is deceptive, harmful, or confidence-undermining, the more likely it is that state regulators will deem it actionable under AB 2655 and demand its removal. This dynamic is especially dangerous in the context of elections, where robust, wide-open debate is essential and where partisan passions run high. If politically aligned officials can leverage AB 2655

whenever their allies complain loudly enough, they can skew the public conversation by privileging "positive or benign" messages about favored candidates and suppressing sharp criticism or dissenting narratives through AB 2655's tools of censorship. That is viewpoint discrimination.

II. Dangers of Vague, Overbroad Anti-Speech Laws

AB 2655 suffers from the same defects that have plagued vague speech restrictions throughout American history. Laws regulating speech with subjective, broad, and elastic terms like such those used in AB 2655 have repeatedly been used as partisan weapons to hound dissenters and suppress unpopular ideas. The Sedition Act, for example, made it a crime to "write, print, utter or publish…any false, scandalous and malicious writing or writings against the government of the United States…with intent to defame…or to bring them…into contempt or disrepute; or to excite against them…the hatred of the good people of the United States." Sedition Act of 1798, Ch. 74, 1 Stat. 596-597 (Sec. 2) (1798). Vague, subjective terms like "scandalous" and "disrepute" helped the Adams Administration engage in vicious partisan enforcement, sweeping up legitimate political dissent and even the occasional drunken joke about the President.[2]

[2] *See* Jacob Mchangama, *Free Speech: A History from Socrates to Social Media,* 200 (2022).

Similarly, nineteenth century anti-obscenity laws provide examples of the abuses that result from subjective and vague speech restrictions. Such laws served as partisan weapons most notably under the prudery of postmaster general Anthony Comstock. The notorious Comstock Act empowered officials to bar from the mails any publication subjectively deemed "obscene, lewd, lascivious, or filthy." That statute was used as a political weapon to censor advocates of women's suffrage and birth control, as well as major literary works, reflecting not neutral standards but the moral sensibilities of those in power against unpopular viewpoints.[3]

AB 2655 replicates this pattern in digital form. It vests state officials with broad discretion to define and apply terms such as "deepfake," "materially deceptive content," "harm the reputation or electoral prospects of a candidate," "falsely undermine confidence in the outcome of one or more election contests," "something that influences the election," and "satire or parody." Each of these phrases is inherently subjective and context-dependent. Reasonable people can and do disagree over whether a particular video is satire or parody, whether an edited clip is "materially deceptive," or whether sharp criticism of election procedures "falsely" undermines confidence in the outcome.

[3] Margaret A. Blanchard & John E. Semonche, *Anthony Comstock and His Adversaries: The Mixed Legacy of This Battle for Free Speech,* 11 Commc'n. L. & Pol'y 317, 327 (2006).

In electoral contexts, speech that "undermines confidence" is usually: harsh criticism (e.g., "the election was rigged," "the courts are corrupt"), accusatory narratives about fraud or misconduct, or deeply cynical depictions of officials. That speech is often perceived by government officials as dangerous or destabilizing precisely because it is highly critical—i.e., it is "offensive" to institutional legitimacy and to the reputations of those in power. "Reasonably likely to harm reputation or electoral prospects" and "undermine confidence" require decisionmakers to forecast audience reactions and political effects, which are inherently contestable. The combination authorizes state officials to act on their own prejudices about what kind of speech is too corrosive or disruptive — and those are essentially judgments about offensiveness or political propriety.

When a statute punishes "deepfakes" or "misinformation" only when they cut against certain interests (against candidates, against confidence in elections) but not when they favor those same interests, it effectively privileges one side's narrative. That makes enforcement sensitive to whether officials find the message acceptable, constructive, and "confidence-building," or unacceptable, undermining, and "offensive" to democratic legitimacy.

When government actors wield this kind of open-ended authority, two constitutional problems arise. First, ordinary speakers and platforms lack fair notice of what speech is prohibited or disfavored. They cannot reliably predict

when the state will deem content sufficiently "harmful," "deceptive," or "confidence-undermining" to trigger enforcement. Second, and more troubling, vague standards enable arbitrary and discriminatory enforcement. Officials can aggressively target disfavored speakers and viewpoints while ignoring similar conduct by allies, all under the guise of neutral application of the statute.

Because the law operates in the core area of political speech — communications about candidates, elections, and public affairs — these vagueness concerns carry special weight. The prospect of costly investigations, reputational damage, and potential penalties will push platforms to err on the side of removing controversial content, thereby chilling speech before it occurs. That chilling effect is not a bug but a predictable feature of a regime that makes legal consequences turn on the subjective sensibilities of regulators.

III. AB 2655 as a Political Weapon Against Dissent

The anti-speech regime imposed by AB 2655 imposes a structure wherein the process itself discourages others from speaking on contentious issues. With the digital public square as its target, state enforcement agencies, acting on complaints or their own initiative, can treat unpopular or dissenting election speech as "materially deceptive" or as "falsely undermining confidence" in the election. Once that label is applied, regulators can pressure platforms to take down the content or risk being deemed noncompliant with state law. The statutory

uncertainty ensures that risk-averse platforms will go beyond the statute's core and remove any content that might plausibly irritate regulators or a mobilized constituency.

The danger is not limited to fringe conspiracy theories. Strong criticism of election administration, investigative journalism highlighting irregularities, or satirical videos lampooning candidates could all be portrayed as undermining confidence or harming reputational interests. Because AB 2655 allows state officials to define what counts as "satire or parody," speakers cannot safely rely on that label as a shield.[4] The more politically salient or controversial the content, the more likely it is to attract regulatory scrutiny and prompt platform self-censorship.

IV. Overbreadth and the First Amendment

To be compatible with the First Amendment, restrictions on speech — particularly in the realm of elections — must be narrowly tailored to serve a compelling government interest and must not sweep in a substantial amount of protected expression. Even where the state has a genuine interest in combating fraud or protecting voters from intentionally fabricated media, that interest does

[4] The terms "satire" and "parody" appear only once in AB 2655 without any definition whatsoever: Cal. Elec. Code § 20519(c) provides that the chapter of the law does not apply to "[m]aterially deceptive content that constitutes satire or parody."

not justify a sweeping regime that burdens a wide swath of ordinary political speech.

Contrary to the finding and declaration by the California Legislature that the provisions of the law "are narrowly tailored to support California's compelling interest in protecting its free and fair elections," AB 2655 is overbroad because a substantial portion of the speech it chills is fully protected. Cal. Elec. Code § 20511(e). Communications that merely cast doubt on the integrity of an election, question official narratives, or criticize candidates in harsh terms are central to democratic self-government, not peripheral to it. By conditioning the regulatory burden on content categories such as "deepfake," "materially deceptive," or "confidence-undermining," the statute is content-based on its face. By allowing officials to distinguish between acceptable and unacceptable criticisms — between messages that allegedly "falsely" undermine confidence and those that supposedly bolster it — it veers into viewpoint discrimination.

The statute also burdens more speech than necessary to further any legitimate interest. Less restrictive alternatives abound: the state can engage in robust counter-speech, publish accurate information, support independent fact-checking, or prosecute actual fraud under existing laws that require proof of intent and material falsity. Instead, AB 2655 adopts the blunt instrument of coercing platforms to police communications under vague and malleable standards. That

choice suggests that the statute's true purpose is not simply to combat fraud but to manage the contours of public debate itself.

V. Viewpoint-Based Enforcement

AB 2655 also functions as a viewpoint-based regulation that punishes offense. Its central concept is that certain election-related messages — those deemed "materially deceptive" or "confidence-undermining" — are presumptively harmful, causing offense, and therefore must be suppressed or labeled. Yet governments cannot constitutionally discriminate against speech merely because it is perceived as offensive or destabilizing. As the Supreme Court has recognized in other contexts, giving offense is itself a viewpoint: laws that permit speakers to praise certain values while forbidding others to mock or challenge those values are viewpoint-discriminatory.

While "materially deceptive" or "confidence-undermining" speech is not inherently the same thing as "offensive" speech, laws using these terms often end up operating like restrictions on offensive or disfavored viewpoints because of how the standards are framed. When the government favors whatever acceptable viewpoint it chooses to favor over another viewpoint on the same subject matter, it has engaged in classic viewpoint discrimination, which is patently unconstitutional.

"Content-based regulations [of speech] are presumptively invalid." *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992). Therefore, even within an unprotected

category of speech (fighting words), the Supreme Court has held that the government may not regulate use based on hostility – or favoritism – toward the underlying message expressed." That preference for one side of certain debates is viewpoint discrimination. 505 U.S. at 386. Therefore, a St. Paul ordinance that applied only to "fighting words" on "disfavored subjects" was facially unconstitutional viewpoint discrimination. 505 U.S. at 391. In *Matal v. Tam*, 582 U.S. 218, 223, 243 (2017), the Supreme Court held that the Lanham Act disparagement clause, 15 U.S.C. § 1052(a), which barred registration of trademarks that disparaged persons or groups, but allowed positive or neutral marks, was unconstitutional because it banned speech on the ground that it offends. That was impermissible viewpoint discrimination because "[g]iving offense is a viewpoint." 582 U.S.C. at 243.

In *Iancu v. Brunetti*, 588 U.S. 388, 390 (2019), the Supreme Court extended *Matal* to the Lanham Act's prohibition of the registration of trademarks that were "immoral or scandalous." The Supreme Court held that this bar was an impermissible viewpoint restriction because it allowed marks aligned with conventional moral views, but refused registration to marks expressing contrary, "immoral," or shocking views on the same subject matter. 588 U.S. at 394-395, 397-398. In *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995), the Supreme Court held that "When the government targets not subject

matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant." Therefore, it held that the decision by the University of Virginia to exclude student publications that expressed religious perspectives from the student publications that were funded was impermissible viewpoint discrimination. 515 U.S. at 845-846.

Applying these principles to AB 2655, elements such as "reasonably likely to harm the reputation or electoral prospects of a candidate" or "undermine confidence in the outcome of an election," import judgments about harm and political impact. When AB 2655 singles out speech that could "undermine confidence" in an election or institution, it is not just targeting lies. Instead, it targets a direction of impact (negative, skeptical), while leaving "confidence-bolstering" speech untouched. Under AB 2655, state officials may treat speech that affirms the legitimacy of an election as benign while targeting speech that harshly criticizes that same election as deceptive or destabilizing. Therefore, AB 2655 impermissibly treats different viewpoints on the same subject differently. Likewise, they may tolerate flattering portrayals of favored candidates while condemning critical or satirical depictions as "deepfakes" that "harm" reputational interests. In each case, the operative distinction is not an objective measure of truth or falsity but the alignment of the speech with official narratives and sensibilities. That is precisely what the First Amendment forbids.

The statute's impact is amplified by its structure of delegated censorship. Because it acts through private platforms rather than direct criminal prohibition of user speech, the state may argue that it is merely regulating platform conduct. Yet when government uses threats, penalties, or regulatory leverage to coerce platforms into suppressing specific categories of speech, it effectively extends its own censorial arm into what should remain a space for private editorial discretion and citizen discourse. The constitutional injury lies not only in the speech removed but in the power the state claims to direct the conditions of public debate.

VI. Section 230 Analysis

This section primarily addresses and responds to the Defendants-Appellants' opening brief (hereinafter "opening brief") and the core logical tension between it and the district court's Order and Final Judgment and Permanent Injunction (hereinafter "judgment") as to AB 2655. (ECF No. 98.) Independent of and in addition to the First Amendment violations, *supra*, 47 U.S.C. § 230 preempts AB 2655's removal and labeling requirements. Cal. Elec. Code §§ 20513-14. As the Ninth Circuit has explained, "Section 230 prohibits holding companies responsible for moderating or failing to moderate content." *Est. of Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1182 (9th Cir. 2024). The judgment holds that, as applied to X and Rumble, AB 2655 "violates and is preempted by 47 U.S.C. § 230(c)(1), § 230(c)(2)(B), and § 230(e)(3)," and permanently enjoins its enforcement.

AB 2655's removal, labeling, and reporting duties necessarily target platforms' editorial decisions about user content and thus fall within Section 230(c)(1) and (c)(2) preemption. These requirements command social media websites to conform their private content moderation to the State's standards. Further, the Act deputizes covered businesses into serving as censors for the State and forces them to respond to user reports and label or remove content on state-dictated timelines.

By contrast, the opening brief insists AB 2655 "does not treat platforms as publishers"[5] and "does not obligate platforms to monitor third-party content,"[6] attempting to cabin the statute as imposing only neutral, non-publisher duties. The lack of logic arises because the opening brief audaciously re-labels the same obligations the district court correctly identifies as editorial (reporting interface, "state-of-the-art" detection, removal and labeling upon reports and rediscovery, *infra*) as if they were external, non-publisher duties, without offering a convincing doctrinal distinction.

This Court has recognized the three-prong standard set by Section 230(c)(1) that "protects from liability (1) a provider or user of an interactive computer service (2) whom the plaintiff seeks to treat, under a state law causes of action, as a

[5] Dkt. 19.1 at 2, 18, 25, and 32.
[6] Dkt. 19.1 at 2, 25, 26, and 32.

publisher or speaker (3) of information provided by another information content provider," in *Calise v. Meta Platforms, Inc.* 103 F.4th 732, 740 (9th Cir. 2024). The second prong addresses a two-step test on the issue of duty and any concomitant corresponding responsibilities.

The opening brief invokes *Calise*'s two-step test (what duty is asserted; does satisfying it require monitoring or editorial control) and acknowledges that duties to remove or not remove user content, or to "monitor third-party content," are barred by Section 230(c)(1). The opening brief then describes AB 2655's duties:

- "…provide an easily accessible way for California residents to report to that platform content that should be removed . . . or labeled[,]" Cal. Elec. Code § 20515(a);

- "'…develop and implement procedures for the use of state-of-the-art techniques to identify and remove' specified materially deceptive content that is reported to it. *Id.* § 20513(a). A platform must also remove content 'upon discovering or being alerted to the posting or reposting of, any identical or substantially similar materially deceptive content that the platform had previously removed[,]'" Cal. Elec. Code § 20513(c); and

- "'[d]evelop and implement procedures for the use of state-of-the-art techniques to identify and remove' specified materially deceptive content that is reported, and to remove re-posted 'identical or substantially similar' content once discovered." Cal. Elec. Code § 20514(a).[7]

Those descriptions themselves show AB 2655 conditions liability on how the platform responds to and processes user content and user reports — precisely the

[7] Dkt. 19.1 at 25.

kind of editorial "monitoring" and removal decisions *Calise* treats as publishing conduct.[8] The opening brief's conclusion that AB 2655 "does not obligate platforms to monitor third-party content" is therefore a non sequitur: it simply asserts the opposite of what its own description of the duties (and the district court's declaratory judgment) entail.

The judgment declares that "application of AB 2655 to any such provider of an interactive computer service violates and is preempted by 47 U.S.C. § 230(c)(1), § 230(c)(2)(B), and § 230(e)(3)," *supra*, and permanently enjoins enforcement of AB 2655 "in its entirety" as to X and Rumble. The opening brief treats that as a simple legal error but does not grapple with the breadth of the declaration. If AB 2655 is preempted whenever applied to an "interactive computer service" provider, the statute by definition imposes duties that fall within Section 230's protected zone. Rather than explain why the district court misapplied Section 230(c)(1) (for example, by misidentifying the "duty" or misunderstanding *Calise*'s "monitor" prong), the opening brief largely reframes AB 2655's same obligations as if they resembled *Doe 1 v. Twitter*'s allowed claim about improving a reporting mechanism that did not require review or removal of content, even though AB 2655 expressly conditions duties on content reports and rediscovery. *Doe 1 v.*

[8] This Court has recognized taking down content is "quintessential publishing conduct." *Calise* at 744.

Twitter, Inc., 148 F.4th 635 (9th Cir. 2025). That selective characterization ignores the court's explicit finding that these duties are preempted as applied to the very entities — X and Rumble — who act as paradigmatic "interactive computer services," undermining the internal logic of the State's position.

AB 2655's removal, labeling, and reporting-and-response requirements directly target platforms' content moderation choices, compel speech (including labeling satire as "materially deceptive"), and create strong incentives to over-remove or over-label user political speech. AB 2655 sets 72-hour and 36-hour deadlines for labeling and responding and requires platforms to remove "identical or substantially similar" content upon discovery. Cal. Elec. Code § 20515(a). These are exactly the kind of ongoing monitoring and editorial intervention over user content that Section 230 protects from state regulation. The State's opening brief never meaningfully answers that factual and legal description. Instead, it abstracts AB 2655 into procedural obligations (reporting channels, "state-of-the-art techniques"[9]) without acknowledging that those procedures culminate in compelled removal and labeling of third-party political content, which is what the district court correctly identifies as the preempted core. The omission is not just advocacy; it creates a logical gap between how the statute actually operates and how the opening brief characterizes it in its effort to avoid Section 230 preemption.

[9] Cal. Elec. Code § 20514(a).

In summary, (1) AB 2655 regulates platforms as publishers of user content, (2) the relevant duties are content-based removal, labeling, and reporting obligations triggered by user content, and (3) such duties are preempted under Section 230 and cannot be enforced against X and Rumble. When a statute's operation looks like compelled, content-based editorial control of political speech, that fact strongly supports treating the statute as one that "treats platforms as publishers" under *Calise, Doe 1 v. Twitter,* and *Estate of Bride.* The opening brief's central premise — that AB 2655 neither treats platforms as publishers nor requires them to monitor third-party content, and thus falls outside Section 230 — is simply incompatible with those established facts and with its own description of the statutory scheme.

CONCLUSION

Under AB 2655, state officials decide what qualifies as "deepfake" or "materially deceptive" content and "satire or parody", as well as what it means to "harm" a candidate's reputation or "undermine confidence" in an election. The statute further requires platforms to remove or label such content in accordance with the state's directives, essentially delegating censorship authority to private companies while retaining the power to punish those that do not comply. The predictable result is that platforms will over-remove controversial or dissenting

expression to avoid the risk of enforcement, especially in the highly charged context of elections.

A state that does not protect freedom of speech in the digital public square will not long remain free, and it may not even recognize when that freedom has been lost. AB 2655 and laws like it transform social media platforms into instruments of state censorship, armed with vague standards and driven by the threat of punishment. They empower officials to penalize viewpoints about elections and public affairs, to reward ideological conformity, and to chill dissent at scale. California's citizens deserve a legal environment in which they can "think the unthinkable, discuss the unmentionable, and challenge the unchallengeable," rather than one in which their online expression depends on the grace of regulators.

Courts should recognize AB 2655 for what it is: a vague, overbroad, and viewpoint-based effort to control political speech by deputizing private platforms as state-censoring (state-acting) publishers in all but a name. The Constitution and Section 230 demand that such a statute be struck down and stay down, and that the state be reminded that guarding the marketplace of ideas is not a matter of discretionary policy, but a fundamental duty it owes to all its constituents.

DATED: March 18, 2026

Respectfully submitted,

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I hereby certify that on March 18, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate Case Management System (ACMS) system.

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DATED: March 18, 2026

/s/ C. Thomas Ludden
C. THOMAS LUDDEN

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9th Cir. Case Number: 25-6138

I am the attorney or self-represented party.

This brief contains 4,996 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

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DATED: March 18, 2026

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UNITED STATES COURT OF APPEALS
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LIBERTY LEGAL FOUNDATION

Under FRAP 26.1 and Circuit Rule 26.1-1, I make the following disclosures:

1. I disclose the following information required by FRAP 26.1(a) and/or Circuit Rule 26.1-1(b) for any nongovernmental corporation, association, joint venture, partnership, limited liability company, or similar entity[1] which is a party, prospective intervenor, or amicus curiae in any proceeding, or which the government identifies as an organizational victim below in section 2 of this form,[2] or which is a debtor as disclosed below in section 3 of this form.

   a. Does the party, prospective intervenor, amicus, victim, or debtor have any parent companies? Parent companies include all companies that control the entity directly or indirectly through intermediaries.
   ○ Yes ◉ No

   If yes, identify all parent corporations of each entity, including all generations of parent corporations *(attach additional pages as necessary)*:

   b. Is 10% or more of the stock of the party, prospective intervenor, amicus, victim, or debtor owned by a publicly held corporation or other publicly held entity?
   ○ Yes ◉ No

[1] A corporate entity must be identified by its full corporate name as registered with a secretary of state's office and, if its stock is publicly listed, its stock symbol or "ticker."

[2] To the extent it can be obtained through due diligence.

If yes, identify all such owners for each entity *(attach additional pages as necessary)*:

2. In a criminal case, absent good cause shown, the government must identify here any organizational victim of the alleged criminal activity:

N/A

3. In a bankruptcy case, the debtor, the trustee, or, if neither is a party, the appellant must identify here each debtor not named in the court of appeals caption:

N/A

4. Are you aware of any judge serving on this Court who participated at any stage of the case, either in district court, administrative proceedings, or in related state court proceedings?

○ Yes ◉ No

If yes, list the name of the judge and the case name, case number, and name of court of the related proceedings:

I certify that *(select only one)*:

◉ this is the first disclosure statement filed in the above-referenced case by the above-identified party/parties, prospective intervenor(s), or amicus/amici, and this disclosure statement complies with FRAP 26.1 and Circuit Rule 26.1-1.

○ the party/parties, prospective intervenor(s), or amicus/amici submitting this supplemental disclosure statement has previously filed a compliant disclosure statement in this case, and this updated disclosure statement discloses changed or additional information.

○ I have reviewed this form, FRAP 26.1, and Circuit Rule 26.1-1 and, to the best of my knowledge, have no information to disclose at this time.

Signature s/C. Thomas Ludden **Date** March 18, 2026

*(use "*s/[typed name]*" to sign electronically-filed documents)*