

No. 25-6138

**In the United States Court of Appeals
for the Ninth Circuit**

THE BABYLON BEE, LLC; RUMBLE, INC.; KELLY CHANG RICKERT; X CORP.;
CHRISTOPHER KOHLS; RUMBLE CANADA, INC.,
Plaintiffs-Appellees,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA; SHIRLEY WEBER, IN HER
OFFICIAL CAPACITY AS CALIFORNIA SECRETARY OF STATE,
Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:24-cv-02527 (Mendez, J.)

**BRIEF OF NETCHOICE AS AMICUS CURIAE
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel of record states that, as a nonprofit entity organized under Section 501(c)(6) of the Internal Revenue Code, amicus curiae NetChoice has issued no stock. Consequently, no parent corporation nor any publicly held corporation could or does own 10% or more of its stock.

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INTEREST OF AMICUS CURIAE

NetChoice is a national trade association of e-commerce and online businesses that share the goal of promoting convenience, choice, and commerce on the internet.¹ For over two decades, NetChoice has worked to increase consumer access and options via the internet, while minimizing burdens on small businesses that are making the internet more accessible and useful.

NetChoice has an interest in the proper interpretation and application of 47 U.S.C. § 230's protections for all online services. This Court's determinations regarding California Assembly Bill No. 2655's removal, labeling, and reporting requirements for online political speech will have a significant impact on online businesses whose services are accessed by people located in California. NetChoice is well-situated to explain both this statute's legal flaws and the practical difficulties that compliance with the law will impose on online services.

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E). Although Plaintiff-Appellee X Corp. is a NetChoice member, X Corp. did not contribute money that was intended to fund preparing or submitting this brief. The parties have consented to the filing of this amicus brief. *See* Fed. R. App. P. 29(a)(2).

INTRODUCTION AND SUMMARY OF ARGUMENT

California Assembly Bill 2655 (2025) (“AB 2655”) imposes a blunt mandate for certain websites to censor content-based categories of political speech that California has dubbed “materially deceptive.” Cal. Elec. Code §§ 20513-15.² AB 2655 overrides private editorial judgments about content, threatens protected satirical and political expression, and is expressly preempted by 47 U.S.C. § 230 (“Section 230”). In particular, AB 2655 would conscript websites into enforcing government-defined speech standards, compelling removal and labeling decisions according to the State’s preferred criteria rather than websites’ own editorial judgments. The statute’s target (deceptive political media) may sound well-meaning. In practice, the line between a “materially deceptive” deepfake and a protected political parody is one of the hardest judgments in content moderation. Yet AB 2655 would force websites to continually draw that line under threat of civil liability—and on a deadline.

The resulting enforcement risk would pressure websites to resolve close calls in favor of removal. The predictable result is not a more trustworthy information environment. Rather, it is the systematic suppression of political satire, parody, and criticism. This, however, is exactly the speech protected jealously by the First Amendment.

² This brief collectively refers to any “public-facing internet website, web application, or digital application,” Cal. Elec. Code § 20512(h), as “websites” or “services.”

Congress enacted Section 230 to prevent States from imposing the kind of liability that AB 2655 creates. Section 230 generally preempts state-law claims that treat online services as “publisher[s] or speaker[s]” of third-party content. 47 U.S.C. § 230(c)(1). And it expressly preempts any “cause of action” or “liability” under state law “inconsistent with” those protections. *Id.* § 230(e)(3). AB 2655 cannot be reconciled with Section 230’s protections. It compels websites, under threat of state-imposed liability, to make removal and labeling decisions about third-party speech. These are quintessential acts of a publisher. Section 230 forbids this.

This Court should affirm the district court’s judgment.

ARGUMENT

I. Section 230 expressly preempts California AB 2655’s requirements to remove and label content-based categories of political speech.

AB 2655 commands covered websites to conform their private content moderation to the State’s standards. “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 district court correctly concluded that Section 230 preempts AB 2655.

A. Section 230 expressly preempts AB 2655’s mandates to conform websites’ private editorial decisions to the State’s standards.

Section 230 provides that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1). To ensure national uniformity, Congress reinforced that protection with an express preemption clause: “No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* § 230(e)(3). AB 2655 is expressly preempted, because it treats covered online services as publishers of third-party content—compelling websites to make editorial decisions about third-party content under threat of civil liability.

Section 230 protects a broad range of “publisher[s’] traditional editorial functions.” *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009) (citation omitted). “Any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230.” *Id.* at 1103 (citation omitted). Accordingly, any law implicating websites’ rights to “review[], edit[], [or] decid[e] whether to publish or to withdraw from publication third-party content” impermissibly “treat[s] [the website] as the publisher or speaker of third-party content” under Section 230. *Id.* at 1101-02; *see* 47 U.S.C. § 230(f)(4) (protecting websites’

right to “filter, screen, allow, [] disallow,” “pick, choose,” “display,” “organize,” and “reorganize . . . content”).

AB 2655 directly regulates these functions. It provides a cause of action and potential liability for alleged failures to moderate content as the State requires. Covered websites must “develop and implement procedures for the use of state-of-the-art techniques to identify materially deceptive content and” “remove” and “label[]” such content. Cal. Elec. Code §§ 20513-14. Worse, AB 2655 imposes a “72 hour[]” deadline to make the appropriate content-moderation action, or face liability. *Id.* §§ 20513(b), 20514(b).³ Each of those obligations requires a website to review third-party content; exercise editorial judgment about the character of that content; and decide whether to publish it, alter it with a label, or withdraw it from publication entirely under the threat of lawsuits and significant penalties. Those are quintessential activities protected by Section 230.

Just like AB 2655’s removal requirements, AB 2655’s labeling requirement is preempted. In *Yolo Technologies*, the plaintiffs sought to hold a website liable for a failure to disclose to users the risk of harm from content on their service. 112 F.4th at 1179. This Court explained that Plaintiffs’ claims “attempt to hold YOLO responsible for users’ speech or YOLO’s decision to publish it.” *Id.* at 1180. As that decision recognized, “Plaintiffs’ product liability theories [including the failure-to-warn theory] . . . attempt to hold

³ To respond to user reports, the deadline is even shorter: 36 hours. Cal. Elec. Code § 20515(a).

YOLO liable as a publisher of third-party content.” *Id.* Here, AB 2655’s requirement that websites add labels to third-party content necessarily requires websites to “mitigat[e] in some way, the harmful effects of [third-party] content.” *Id.* This “essentially fault[s] [the website] for not moderating content in some way, whether through deletion, change, or suppression.” *Id.*

Whether the required editorial intervention is removal or labeling, the website’s liability turns on its judgment about third-party speech. Section 230 preempts both. *E.g., Doe v. Grindr Inc.*, 128 F.4th 1148, 1154 (9th Cir. 2025) (“Grindr’s role as a publisher of third-party content does not give it a duty to warn users of a general possibility of harm resulting from the App.” (cleaned up)); *Wozniak v. YouTube, LLC*, 100 Cal. App. 5th 893, 914-15 (2024) (“Plaintiffs’ argument would allow essentially every state cause of action otherwise immunized by section 230 to be pleaded as a failure to warn of such information published by a defendant.”).

Defendants claim that AB 2655 does not impose “publisher” liability at all, but rather creates a generally applicable duty to comply with state law. *E.g.,* Defs.Br.27. But courts have rejected analogous arguments. This Court’s decision in *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019), explains how to identify situations in which the State is targeting publishing activity. That opinion held that an ordinance requiring platforms to collect and remit certain fees from transactions involving third-party listings was not preempted, because the obligation existed *independently of the platform’s publishing activity*. *Id.* at 682-83 (emphasis added). The Court explained

that Section 230’s application depends on “whether the duty would necessarily require an internet company to monitor third-party content.” *Id.* at 682. Here, AB 2655’s obligations require just that. A website must act—by removing content or adding labels—only because it published third-party content that the State has classified as deceptive. That is publisher liability with a different label.

The Western District of Texas correctly rejected a similar argument, recognizing it could undermine Section 230’s most basic protections:

Imagine that [a State] passed a law stating, “Social media websites must remove defamatory content.” [Defendant argues] the law would not be preempted because liability attaches based on whether a website complies with the law, not based on its content. That reasoning would altogether nullify Section 230 by having the same effect as directly imposing liability on the website for hosting third-party content.

Comput. & Commc’ns Indus. Ass’n & NetChoice v. Paxton, 747 F. Supp. 3d 1011, 1042-43 (W.D. Tex. 2024).

B. Section 230 preempts notice-and-takedown regimes like AB 2655.

Section 230 also forecloses Defendants’ theory that AB 2655 imposes merely “distributor” liability arising from notice, rather than “publisher” liability preempted by Section 230. *E.g.*, Defs.Br.18-19. This is a distinction without a difference. Distributor liability is a species of publisher liability, and Section 230 preempts both equally.

1. The Fourth Circuit’s *Zeran* decision rightly established, nearly three decades ago, that Section 230 protects against both publisher and distributor liability for online services.

The foundational decision interpreting Section 230, *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997), directly addressed and rejected the argument that an online service’s knowledge of potentially unlawful third-party content vitiates Section 230’s protections. This decision accords with Section 230’s plain text.

In *Zeran*, an anonymous AOL user posted defamatory messages falsely attributing offensive content to the plaintiff. *Id.* at 329. Despite repeated notifications from the plaintiff, AOL failed to remove the posts, and the plaintiff sued AOL for negligence. *Id.* The plaintiff argued that Section 230 preempts only “publisher” liability, but Section 230 should allow “distributor” liability—that is, online services should still be liable if they fail to take down known (*i.e.*, reported) third-party content. *Id.* at 331-32.

The Fourth Circuit squarely rejected that argument. It observed that distributor liability “is merely a subset, or a species, of publisher liability, and is therefore also foreclosed by § 230.” *Id.* at 332. Imposing liability for a website’s decision to retain or remove third-party content *after learning of it* necessarily treats the website as a publisher too. The moment a website receives notice of a complaint, “it is thrust into the role of a traditional publisher” — it “must decide whether to publish, edit, or withdraw the posting.” *Id.* at 332.

Imposing liability for that decision treats the service as a publisher, which is what Section 230 preempts. *Id.* at 332-33.

Zeran's holding accords with Section 230's plain text. Section 230(c)(1) protects websites from being "treated as the *publisher* or speaker of" speech created by others. 47 U.S.C. § 230(c)(1) (emphasis added). By using the term "publisher," Congress codified the pre-existing understanding of the scope of "publisher" liability, which included *distributor* liability.

At common law, distributor liability was a subset of publisher liability. To hold a distributor liable for, *e.g.*, defamation, plaintiffs must prove *publication*. *See, e.g.*, Restatement (Second) of Torts § 558(b) (explaining that, "[t]o create liability for defamation, there must be . . . an unprivileged publication to a third party"). The longstanding interpretation of "publishing" includes public distribution of speech. *See Publish*, Black's Law Dictionary 1268 (8th ed. 2004) ("[t]o distribute copies . . . to the public" and "[t]o communicate (defamatory words) to someone other than the person defamed").

"Publisher," in other words, includes all those "who take[] part in the publication"—which includes "editor[s]," "printer[s]," and "*vendor[s]*." Prosser & Keeton on the Law of Torts § 113 (5th ed. 1984) (emphasis added). Within that broad category, "primary" publishers subject to "publisher liability" include, *e.g.*, "the newspaper or book publisher that prints the statement, or the radio or television station that broadcasts it." Rodney A. Smolla, 1 Law of Defamation § 4:92 (2d ed.). And "distributors" ("*secondary publishers*")—such as bookstores—are subject to distributor liability. *Id.* (emphasis

added). The only relevant difference between a “publisher” and a “distributor” is the level of fault the common law required. For instance, distributor liability requires a higher level of fault: Distributors cannot be held liable unless the distributor knew or had reason to know the speech was defamatory. *See, e.g.*, Restatement (Second) of Torts § 581(1).

Congress has “ratified” *Zeran’s* consensus interpretation of Section 230 multiple times when amending Section 230. *See, e.g., Tex. Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 536 (2015). “Congress, with knowledge of the prevailing judicial understanding of section 230, has twice *expanded* its scope.” *In re Facebook, Inc.*, 625 S.W.3d 80, 92 (Tex. 2021) (discussing legislative expansions of Section 230 protections in 2002 and 2010). Similarly, Congress’s 2018 limitations of Section 230 protections for certain claims leads to the “conclusion . . . that the . . . amendments were deemed necessary because Congress presupposed” Section 230 protects distributor liability. *Inclusive Cmty.*, 576 U.S. at 537. Thus, in the multiple times that Congress has “amend[ed]” Section 230’s scope, it has declined to upset the consensus interpretation of Section 230’s protections against distributor liability. *Id.* This “is convincing support for the conclusion that Congress accepted and ratified the unanimous holdings of the Courts of Appeals.” *Id.* at 536. Similarly, the U.S. Supreme Court also recently left this consensus interpretation in place. *See Gonzalez v. Google, LLC*, 598 U.S. 617, 622 (2023).

Zeran’s holding also accords with Congress’s intent. A notice-based takedown rule would defeat Congress’s central purpose in passing Section

230. Online services cannot investigate every complaint with precision because they disseminate enormous volumes of user-generated content:

If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information’s defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context.

Zeran, 129 F.3d at 333.

If liability attached upon notice, websites would face overwhelming incentives to remove any reported speech immediately—regardless of legality—to avoid legal exposure. *Id.* The predictable result would be systematic over-removal of lawful expression. That would undermine Congress’ goal of preventing those pressures, while preserving “forum[s] for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.” 47 U.S.C. § 230(a)(3).

2. This Court’s decisions reaffirm that purported failure to remove content after notice is protected editorial conduct.

This Court has also long held that Section 230 protects websites’ decisions to not remove content, even after they receive notice of that content.

In *Barnes*, for instance, this Court adopted the Fourth Circuit’s *Zeran* holding that Section 230 preempts both publisher and distributor liability. The *Barnes* plaintiff argued “that the term ‘publisher’ in section 230(c)(1) refers only to primary publishers,” and “the statute does no more” than preempt “publisher liability.” 570 F.3d at 1104-05.

But *Barnes* noted that the Fourth Circuit had rejected that distributor-liability argument in *Zeran*, “concluding that so-called distributor liability is merely a subset of publisher liability for purposes of defamation law.” *Id.* at 1104 (citation omitted). Accordingly, Section 230 “shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties.” *Id.* at 1105. The negligent undertaking claim in *Barnes* thus failed, as the plaintiff’s claim was based on a website’s failure to remove specific content: “[R]emoving content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher of the content it failed to remove,” and Section 230 protects from liability “any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online.” *Id.* at 1103 (citations omitted).

Barnes and its progeny establish a settled rule in this Circuit: Section 230 forecloses liability turning on whether an online service removes, retains, or otherwise moderates third-party speech—even after receiving notice. AB 2655 is preempted by Section 230, because it imposes liability based precisely on those editorial decisions.

II. AB 2655’s requirements to moderate political speech will encourage systematic over-removal of fully protected speech—contrary to Congress’s design.

Congress enacted Section 230, in part, to eliminate the speech-chilling incentives to remove online speech:

The specter of tort liability in an area of such prolific speech would have an obvious chilling effect. . . . Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted. Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect.

Zeran, 129 F.3d at 331. History and other regulatory regimes confirm as much. And the pressure for over-moderation is especially acute in the context of political speech.

A. AB 2655 creates the potential for a heckler’s veto over political speech.

AB 2655’s notice-and-takedown structure creates a substantial risk of weaponized reporting of political speech, creating a system ripe for abuse by heckler’s veto. Faced with AB 2655’s requirements and strict response deadlines, websites may predictably err on the side of removal rather than risk a deluge of lawsuits for leaving disputed material online.

These incentives can be exploited by malicious actors. Organized actors—including political campaigns, hostile state actors, advocacy groups, and coordinated networks of users—can use these reporting systems to

suppress disfavored viewpoints. *E.g.*, Editorial Board, *The Bad Guys on Social Media are Learning New Tricks*, Wash. Post (Dec. 23, 2021), <https://tinyurl.com/yjk7h8sc> (describing “brigading” and “mass reporting” as efforts to silence other users by abusing reporting system). By submitting large numbers of complaints targeting particular speakers or narratives, such actors can trigger removal obligations or regulatory scrutiny.

Here, AB 2655 provides a direct legal mechanism through which such tactics can be operationalized. This creates state-enforced consequences for websites that fail to respond to reports—however pretextual—about political media. Online services must respond quickly under AB 2655’s deadlines and likely cannot thoroughly investigate each claim, so they may remove targeted content regardless of its legality. The practical effect is a heckler’s veto.

Experience with existing notice-and-takedown frameworks confirm the potential for over-removal. For example, the federal Digital Millennium Copyright Act provides an analogue to AB 2655:

The § 512(c) safe harbor contemplates that copyright owners will notify services of allegedly infringing user uploads. To obtain the safe harbor, the services then must expeditiously “remove[] or disable access to” user-uploaded files in response to the copyright owners’ notice. This provision is commonly called the “notice-and-takedown” provision.

Eric Goldman, *Content Moderation Remedies*, 28 Mich. Tech. L. Rev. 1, 12-13 (2021) (internal footnotes omitted).

Empirical research on DMCA enforcement demonstrates that takedown requests frequently target lawful material. Studies analyzing large datasets of DMCA takedown notices have found that many requests involve content that appears to constitute fair use—including criticism, commentary, news reporting, and parody. *E.g.*, Jennifer M. Urban, Joe Karaganis, & Brianna L. Schofield, Notice and Takedown in Everyday Practice 95, 108 (Mar. 2017) (U.C. Berkeley Pub. L. Rsch. Paper No. 2755628), <https://tinyurl.com/jfdfkmtj> (empirical study documenting high rates of potentially invalid DMCA takedown requests). Others involve simply mistaken claims or automated notices generated at scale without careful review. *Id.* at 34-35.

The risk of erroneous removals is equally great under AB 2655. Furthermore, AB 2655 also lacks even the basic safeguards the DMCA includes to limit abuse. *E.g.*, *Lenz v. Universal Music Corp.*, 572 F. Supp. 2d 1150, 1156 (N.D. Cal. 2008) (“the unnecessary removal of non-infringing material causes significant injury to the public where time-sensitive or controversial subjects are involved and the counter-notification remedy does not sufficiently address these harms”). The DMCA provides guidance on what constitutes a valid takedown notice, and it establishes a counter-notice process through which users whose content is removed may seek reinstatement. 17 U.S.C. § 512(g)(2)-(3). As flawed as those mechanisms can be, AB 2655 abandons all pretense of user protection. It instead creates a one-sided removal regime with no corresponding mechanism to protect lawful speech from erroneous or bad-faith reporting.

B. Satire, parody, and political art are especially difficult to moderate at scale.

Content moderation is often difficult. Content moderation of *political speech at scale* can be especially challenging.

The Act's definition of "materially deceptive content" sets unclear boundaries between regulated and unregulated speech. Cal. Elec. Code § 20512(i)(1). What constitutes deceptive material is frequently disputed, as political messaging can blur the lines between exaggeration, satire, parody, or rhetorical manipulation versus outright manipulation. Determining whether particular content is "materially deceptive" under AB 2655 often requires contextual and subjective judgments that cannot be made reliably under strict time constraints. Likewise, the line between content that "would falsely appear to a reasonable person to be an authentic record of the content depicted in the media" versus content that "contains only minor modifications that do not significantly change the perceived contents or meaning of the content" is unclear. *Id.* § 20512(i)(2). So too for content that is "reasonably likely" to "undermine confidence" in an election's outcome or "harm the reputation or electoral prospects of a candidate." *Id.* § 20513(a)(2). Yet those terms are also central to determining whether content must be removed or labeled. *See id.*; *id.* § 20514(a)(2)(A).

The Act's purported exceptions for "satire" and "parody" only heighten this confusion. *Id.* § 20519. What constitutes satire can often be in the eye of the beholder. "Defining satire, defining fake news, defining fiction—these

are all huge philosophical questions” that online services will be asked to resolve in short time periods. Angela Chen, *Three Threats Posed by Deepfakes that Technology Won't Solve*, MIT Tech. Rev. (Oct. 2, 2019), <https://tinyurl.com/tbvft2nb>. The Electronic Frontier Foundation has observed that “parodies and satires are already often silenced in error, and such takedowns will only increase if laws are passed that hold platforms liable for failing to takedown deepfakes content.” Hayley Tsukayama, India McKinney, & Jamie Williams, *Congress Should Not Rush to Regulate Deepfakes*, EFF Deeplinks Blog (June 24, 2019), <https://tinyurl.com/3jhvvjbw>.

Websites must also contend with the risk of perceived bias. Moderation decisions may appear to favor one political ideology or candidate over another, even when made in good faith and while trying to implement neutral content moderation policies. This perception can lead to public backlash and loss of user trust. The stakes are particularly high in election contexts, where errors in moderating political content can themselves undermine confidence in the democratic process or stoke division.

Compounding all of these problems, covered websites must make AB 2655’s content-moderation judgments at enormous scale. This includes “billions” of pieces of user-generated content across major online services. *Moody v. NetChoice, LLC*, 603 U.S. 707, 719 (2024). Automated tools are thus often essential for websites to ensure conformance with their policies. But over-reliance on automated tools can lead to both over-enforcement *and* under-enforcement, if the tools lack the sophistication to interpret complex

nuances. AI researchers have noted that “[t]echnical models cannot interpret the content of the faked video across cultural contexts or imagine how it could be further recontextualized.” Karen Hao, *The biggest threat of deepfakes isn’t the deepfakes themselves*, MIT Tech. Rev. (Oct. 10, 2019), <https://tinyurl.com/yxj7f8mk>.

Faced with uncertainty and the possibility of penalties, online services may rationally remove speech that might be lawful under AB 2655 (to say nothing of the First Amendment), rather than risk keeping it online. This is particularly damaging for time-sensitive political speech that loses its value if suppressed even briefly during a campaign.

* * *

Congress foresaw the practical difficulties of online content moderation. That is why it enacted Section 230’s protections. AB 2655 is expressly preempted by Section 230 because it creates penalties treating online services as publishers of third-party content. Allowing California to regulate online political speech in this manner would chill speech, which is what Congress sought to avoid in Section 230. Worse yet, AB 2655 will foreseeably cause the systematic suppression of lawful political speech, including the satire, parody, and political commentary that are indispensable to democratic discourse. This law is preempted.

CONCLUSION

The district court’s judgment should be affirmed.

Dated: March 18, 2026

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CERTIFICATE OF SERVICE

I certify that on March 18, 2026, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court.

/s/ Scott A. Keller

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CERTIFICATES OF COMPLIANCE

I certify that this brief: (1) complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 4132 words, excluding the parts of the brief exempted by Rule 32(f); and (2) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Palatino Linotype) using Microsoft Word (the same program used to calculate the word count).

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