

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Steven P. Lehotsky*
Scott A. Keller*
Jeremy Evan Maltz*
LEHOTSKY KELLER COHN LLP
200 Massachusetts Avenue, NW, Suite 700
Washington, DC 20001
(512) 693-8350
steve@lkcfirm.com
scott@lkcfirm.com
jeremy@lkcfirm.com

Bradley A. Benbrook (SBN 177786)
Stephen M. Duvernay (SBN 250957)
BENBROOK LAW GROUP, PC
701 University Avenue, Suite 106
Sacramento, CA 95825
Telephone: (916) 447-4900
brad@benbrooklawgroup.com
steve@benbrooklawgroup.com

Joshua P. Morrow*
LEHOTSKY KELLER COHN LLP
408 W. 11th Street, 5th Floor
Austin, TX 78701
(512) 693-8350
josh@lkcfirm.com

* *Pro hac vice* forthcoming.
Attorneys for Plaintiff NetChoice

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

CHRISTOPHER KOHLS, *et al.*,

Plaintiffs,

v.

ROBERT A. BONTA, *et al.*,

Defendants.

Case No. 2:24-cv-02527-JAM-CKD

**NETCHOICE’S PROPOSED AMICUS
CURIAE BRIEF IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY
JUDGMENT**

Judge: Hon. John A. Mendez

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IDENTITY AND INTEREST OF AMICUS CURIAE..... 1

INTRODUCTION & SUMMARY OF THE ARGUMENT 2

ARGUMENT..... 3

 I. AB2655’s requirements for regulated websites to label and remove certain forms of political speech are unnecessary and unworkable..... 3

 A. Regulated websites provide their users with the opportunity to engage in a vast array of political speech and counter-speech..... 3

 B. Social media websites engage in content moderation—that is, determining whether and how to disseminate speech—including by regulating the dissemination of manipulated media. 5

 C. Content moderation can be difficult, and thus vague governmental demands to moderate content can chill the dissemination of speech..... 6

 D. AB2655 will make content moderation more difficult on regulated websites..... 7

 II. AB2655’s requirements violate the First Amendment by forcing websites to moderate content according to California’s preferences. 8

 A. AB2655’s requirements to remove certain political speech violate the First Amendment. 8

 B. The labeling requirements violate the First Amendment..... 12

 C. The reporting-and-response requirements violate the First Amendment..... 15

 III. AB2655’s removal and labeling requirements are preempted by 47 U.S.C. § 230..... 16

CONCLUSION..... 18

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 *Ams. for Prosperity Found. v. Bonta,*
594 U.S. 595 (2021).....10

5

6 *Ashcroft v. Free Speech Coal.,*
535 U.S. 234 (2002).....11

7 *Barnes v. Yahoo!, Inc.,*
570 F.3d 1096 (9th Cir. 2009)16, 17

8

9 *Bolger v. Youngs Drug Prods. Corp.,*
463 U.S. 60 (1983).....13

10

11 *Brown v. Ent. Merchs. Ass’n,*
564 U.S. 786 (2011).....10, 11

12 *City of Austin v. Reagan Nat’l Advert. of Austin, LLC,*
596 U.S. 61 (2022).....9

13

14 *Comput. & Comm’ns Indus. Ass’n & NetChoice, LLC v. Paxton,*
747 F. Supp. 3d 1011 (W.D. Tex. 2024).....8, 17

15

16 *Doe v. Grindr Inc.,*
128 F.4th 1148 (9th Cir. 2025)17

17 *Est. of Bride v. Yolo Techs., Inc.,*
112 F.4th 1168 (9th Cir. 2024)16, 17

18

19 *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC,*
521 F.3d 1157 (9th Cir. 2008)17

20

21 *HomeAway.com, Inc. v. City of Santa Monica,*
918 F.3d 676 (9th Cir. 2019)17

22 *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.,*
515 U.S. 557 (1995).....12

23

24 *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31,*
585 U.S. 878 (2018).....12

25

26 *Kohls v. Bonta,*
2024 WL 4374134 (E.D. Cal. Oct. 2, 2024).....2, 8, 9, 10, 11, 13, 14

27 *Moody v. NetChoice, LLC,*
603 U.S. 707 (2024).....1, 2, 3, 9

28

1 *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*,
585 U.S. 755 (2018).....14

2 *Nat’l Rifle Ass’n of Am. v. Vullo*,
3 602 U.S. 175 (2024).....9

4 *NetChoice, LLC v. Bonta*,
5 113 F.4th 1101 (9th Cir. 2024)2, 9, 13, 15

6 *NetChoice, LLC v. Bonta*,
7 2025 WL 807961 (N.D. Cal. Mar. 13, 2025).....3, 9

8 *NetChoice, LLC v. Fitch*,
9 738 F. Supp. 3d 753 (S.D. Miss. 2024)1, 8

10 *NetChoice, LLC v. Reyes*,
11 748 F. Supp. 3d 1105 (D. Utah 2024).....10

12 *N.Y. Times Co. v. Sullivan*,
13 376 U.S. 254 (1964).....10

14 *Reed v. Town of Gilbert*,
15 576 U.S. 155 (2015).....9, 10

16 *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*,
17 487 U.S. 781 (1988).....13, 15

18 *Rosenberger v. Rector & Visitors of Univ. of Va.*,
19 515 U.S. 819 (1995).....9

20 *United States v. Alvarez*,
21 567 U.S. 709 (2012).....10, 11

22 *United States v. Playboy Ent. Grp.*,
23 529 U.S. 803, 826 (2000).....12

24 *Whitney v. California*,
25 274 U.S. 357 (1927).....10

26 *Wozniak v. YouTube, LLC*,
27 100 Cal. App. 5th 893 (2024)17

28 *X Corp. v. Bonta*,
116 F.4th 888 (9th Cir. 2024)12, 13, 15, 16

Statutes

47 U.S.C. § 230.....3, 16, 17

Cal. Elec. Code § 205122, 5, 8, 11, 13, 14

1 Cal. Elec. Code § 205132, 3, 4, 5, 8, 9, 10, 13, 14, 15, 16

2 Cal. Elec. Code § 205148, 12, 13, 14, 15

3 Cal. Elec. Code § 2051515

4 Cal. Elec. Code § 2051714

5 Cal. Elec. Code § 205193, 8, 9, 11, 13, 14

6 **Other Authorities**

7 David Anderson et al., *5 everyday hand gestures that can get you in serious*

8 *trouble outside the US*, Business Insider (Jan. 5, 2019),

9 <https://perma.cc/8ZWT-JP5F>7

10 Meta Transparency Center, Misinformation, <https://tinyurl.com/5fk3bv7v>.....6

11 Nextdoor, Nextdoor’s misinformation policy, <https://tinyurl.com/taxu7hhn>6

12 Pinterest, Community guidelines, <https://perma.cc/J6JR-L6CY>6

13 X Help Center, Civic integrity policy, <https://tinyurl.com/2fcunxve>6

14 Yahoo!, Yahoo Community Guidelines, <https://perma.cc/YK6M-E9WB>6

15 YouTube, Elections misinformation policies, <https://perma.cc/WFH5-STCV>6

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IDENTITY AND INTEREST OF AMICUS CURIAE

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. For over a decade, 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. A full list of NetChoice’s members is included here: <https://perma.cc/6AXT-6PWG>.¹

Among other things, NetChoice advocates on behalf of its membership for free expression and free enterprise on the Internet, participating in litigation involving issues of vital concern to the online community. Particularly relevant here, NetChoice litigates to vindicate its members’ right to moderate the content on their services free from governmental interference. *See, e.g., Moody v. NetChoice, LLC*, 603 U.S. 707 (2024); *NetChoice, LLC v. Fitch*, 738 F. Supp. 3d 753 (S.D. Miss. 2024).

This Court’s determinations regarding California Assembly Bill No. 2655’s (“AB2655”) removal, labeling, and reporting requirements for political speech online will have a significant impact on online businesses whose services are accessed by individuals located in California. The law poses a grave First Amendment risk to both those services and their users. NetChoice is well-situated to explain both AB2655’s legal flaws and the practical difficulties that compliance with the law will impose on online services.

¹Plaintiff X Corp. is a member of NetChoice. But no counsel for a party authored this brief in whole or in part, and no party made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION & SUMMARY OF THE ARGUMENT

AB2655 requires some of the Internet’s largest websites to remove or label certain content-based categories of protected political speech, which the State has dubbed “materially deceptive.” §§ 20513-15.² But States cannot regulate “the content choices the major platforms make . . . free of the First Amendment’s restraints.” *Moody*, 603 U.S. at 726-27. Nor may they “deputize[] covered businesses into serving as censors for the State.” *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1118 (9th Cir. 2024). That is why this Court enjoined enforcement of a similar California law. *Kohls v. Bonta*, 2024 WL 4374134, at *4 (E.D. Cal. Oct. 2, 2024). The Court should do the same here by granting Plaintiffs’ motion for summary judgment and enjoining Defendants’ enforcement of AB2655 against all regulated services.

As this court has already found, the Act would unconstitutionally replace websites’ *private* content-moderation decisions with government compulsion to censor political speech. AB2655 singles out websites that disseminate a “staggering amount of content” created by their users. *Moody*, 603 U.S. at 719. In so doing, it targets websites that allow for speech and counter-speech on myriad topics. Yet, those websites do not disseminate *all* user-generated content. They have vigorous “content moderation” policies—that is, efforts “to filter, prioritize, and label the varied messages, videos, and other content their users wish to post.” *Id.* at 717. These content-moderation “choices rest on a set of beliefs about which messages are appropriate,” “they give the feed[s]” on the services and other aspects of these services “a particular expressive quality,” and they “constitute the exercise” of protected “editorial control.” *Id.* at 738. Among other things, many websites’ content-moderation policies govern “misinformation,” political satire, parody, and other forms of criticism. *See, e.g., id.* at 719-20.

Content moderation can be difficult. So governmental requirements to censor disfavored political speech risk trampling over the expressive rights of both websites and their users. The massive scale of regulated websites means that those websites must review millions, or even billions, of posts every day. To determine whether any individual piece of content violates websites’

² This brief collectively refers to any “public-facing internet website, web application, or digital application,” § 20512(h), as “websites” or “services.” Statutory citations in this brief refer to the California Elections Code.

1 private policies requires nuanced, fact-specific judgments about context, intent, and meaning.
2 Making these determinations about *political* speech is especially difficult. Political speech is often
3 deliberately provocative, exaggerated, or ambiguous. The potential for manipulation or error in
4 moderating political speech at the government’s behest is greatly increased, as moderators risk
5 inadvertently suppressing speech that is critical or satirical, yet constitutionally protected from
6 government incursion.

7
8 Consequently, AB2655 would make content moderation exponentially more difficult by
9 replacing individual websites’ unique and ever-evolving policies with the State’s one-size-fits-all
10 solution of removal and labeling. The Act also would impose vague governmental demands to
11 determine what political content is, for instance, “reasonably likely” to “undermine confidence”
12 in an election’s outcome or “harm the reputation or electoral prospects of a candidate”—as long
13 as it is not “parody” and “satire.” §§ 20513(a)(2), 20519. Websites that guess incorrectly face
14 countless lawsuits asking the courts to ensure that websites’ editorial practices match the State’s
15 mandates. In short, the Act “grants the State nearly unfettered discretion” to supervise websites’
16 content moderation decisions. *NetChoice, LLC v. Bonta*, 2025 WL 807961, at *23 (N.D. Cal. Mar.
17 13, 2025) (“*Bonta II*”). This will chill the dissemination of speech by the websites. *Id.* at *22.

18 Federal law prohibits this. Under the First Amendment, States cannot force websites to
19 adopt government-mandated content-moderation policies or enforce state-preferred speech rules.
20 *See, e.g., Moody*, 603 U.S. at 726-27. And under 47 U.S.C. § 230(c), States cannot impose liability
21 on websites for the decisions they make about whether and how to disseminate third-party speech.

22 Plaintiffs’ motion for summary judgment should be granted.

23 ARGUMENT

24 I. AB2655’s requirements for regulated websites to label and remove certain forms of political speech are unnecessary and unworkable.

25 A. Regulated websites provide their users with the opportunity to engage in a vast array of political speech and counter-speech.

26 People use social media and similar websites to access and discuss a wide array of political
27 content. This speech entails text, images, audio, and video from other voters, candidates, elections
28 officials, political organizations, and news outlets. The prevalence of such content is part of what

1
2 makes these websites useful outlets for political expression, voter education, and democratic par-
3 ticipation. Yet AB2655 regulates these websites by requiring them to identify, remove, and label
4 so-called “materially deceptive content” involving “candidate[s] for elective office,” “elections
5 official[s],” and “elected officials.” § 20513(a)(2). By doing that, AB2655 inevitably interferes
6 with users’ ability to engage in and access protected and valuable political speech on those topics.

7 For example, voters use these websites to directly engage in the political process. They
8 connect with like-minded citizens, organize grassroots campaigns, and coordinate political activi-
9 ties like voter registration drives or get-out-the-vote efforts. These websites also help all users—
10 and especially young and previously disengaged voters—to more easily participate in political
11 processes. This lowers the barrier to civic engagement. Meanwhile, these websites expose users to
12 opinions and discussions from beyond their immediate social spheres.

13 Similarly, candidates “for elective office” use social media. *See* § 20513(a)(2)(A). These
14 websites allow them to communicate directly with voters, articulate policy positions, and quickly
15 respond to an opponent’s claims. Candidates use these websites to share campaign content, recruit
16 volunteers, organize events, and solicit contributions as well. This offers cost-effective methods
17 for candidates to spread their message. In the same vein, candidates can humanize themselves by
18 sharing authentic and relatable content that allows them to connect personally with voters. Voters,
19 in turn, may benefit from this direct candidate interaction. By following candidates online, voters
20 receive real-time updates about campaigns, electoral developments, and policies.

21 Next, by allowing users to discuss “elected official[s],” § 20513(a)(2)(C), office holders,
22 and politicians in general, social media websites enable constituents to share information about
23 officials’ voting records, policy positions, public statements, and performance in office. This cre-
24 ates ongoing dialogue about how representatives are serving their communities. Social media al-
25 lows users to discuss legislative decisions, policy initiatives, and official actions taken by elected
26 representatives. All of this helps voters stay informed about their representatives’ activities and
27 engage with local issues. By using these websites, communities can have substantive discussions
28 about how elected officials are fulfilling their campaign promises and serving their constituents.

1
2 Likewise, “elections official[s]” use social media to facilitate dialogue about election ad-
3 ministration. § 20513(a)(2)(B). For example, voters can share their experiences at polling loca-
4 tions, discuss procedures, and provide feedback to election authorities. These conversations edu-
5 cate communities on election processes, enhance transparency, and allow officials to improve
6 voter experiences. Similarly, “elected official[s]” supervising elections benefit from robust online
7 discussion of their oversight roles. § 20513(a)(2)(C).

8 Some of this valuable political content can involve digitally created or modified audio or
9 visual media. Users rely on digital content to better understand candidates and elections, such as
10 edited videos highlighting candidate messages, interactive visualizations of campaign finance data,
11 digital timelines illustrating voting records, or video summaries of public events. Such media helps
12 voters evaluate candidates and policies. Similarly, some digitally modified content explicitly por-
13 trays candidates, election officials, or elected representatives saying or doing things they did not
14 literally say or do, but in helpful ways. For instance, computer-generated videos might show can-
15 didates speaking clearly in voters’ native languages or might convert written statements into audio
16 form for greater accessibility. Digital reenactments and multimedia adaptations of candidates’ or
17 officials’ written materials make political information more engaging, understandable, and acces-
18 sible, especially to voters with disabilities. Meanwhile, voters and political commentators also of-
19 ten use “audio or visual media that is digitally created or modified,” § 20512(g), to express a range
20 of messages—not only the messages just discussed, but also parody, satire, and the like.

21 **B. Social media websites engage in content moderation—that is, determining**
22 **whether and how to disseminate speech—including by regulating the**
23 **dissemination of manipulated media.**

24 That is not to say, however, that social media websites allow all content from all users.
25 Rather, social media websites engage in extensive efforts to moderate the vast amounts of content
26 that users create and post. Different websites approach moderation in varied ways. But all
27 NetChoice member websites (and those regulated by AB2655) use content-moderation policies
28 created by humans and designed to effectuate websites’ bespoke editorial policies. Some websites
rely more heavily on algorithms, which are programmed by humans, to identify, *e.g.*, misleading
posts. Others prioritize human judgment for evaluating sensitive topics, while using algorithms

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

secondarily. Many websites also use features like user-generated flags, community notes, fact-check labels, and content warnings to further improve moderation accuracy. Although methods differ, these combined efforts effectively limit the dissemination of content those websites consider harmful or misleading—while protecting speech that complies with the websites’ policies.

In particular, many social media websites’ moderation policies specifically address misleading manipulations, deceptive content, or media that falsely portrays public figures.³ At the same time, websites take care to avoid restricting political commentary, satire, and other beneficial, clearly labeled, or educational media. For example, videos and images that clarify candidate statements, facilitate accessibility, or aid voter understanding remain widely available. By balancing these competing considerations, social media websites protect users from what the websites regard as genuinely harmful misinformation while safeguarding the free exchange of valuable political content.

C. Content moderation can be difficult, and thus vague governmental demands to moderate content can chill the dissemination of speech.

Content moderation can be difficult, for multiple reasons. As an initial matter, content moderation requires websites to identify and manage content across diverse forms of media. Each medium presents its own challenge. For instance, as compared to text, it is especially time- and resource-intensive to moderate content containing images, audio, and video. These media types require advanced tools capable of analyzing visual and auditory elements. For example, automated systems must identify subtle manipulations, such as altered voices, synthesized imagery, or edited footage. Unlike text—which can be scanned for specific keywords or phrases—images and videos must be analyzed frame by frame, while audio requires transcription and contextual interpretation. The risk of error is higher because these systems must discern between legitimate alterations, such as filters or sound enhancements, and deceptive manipulations like deepfakes.

³ See, e.g., Meta Transparency Center, Misinformation, <https://tinyurl.com/5fk3bv7v>; Nextdoor, Nextdoor’s misinformation policy, <https://tinyurl.com/taxu7hhn>; Pinterest, Community guidelines, <https://perma.cc/J6JR-L6CY>; X Help Center, Civic integrity policy, <https://tinyurl.com/2fcunxve>; Yahoo!, Yahoo Community Guidelines, <https://perma.cc/YK6M-E9WB>; YouTube, Elections misinformation policies, <https://perma.cc/WFH5-STCV>.

1
2 In addition to varying forms of media, content can be in different languages or reflect dif-
3 ferent cultures. So content that could appear to violate a website’s content-moderation policies in
4 one context may be innocuous in another. For example, many common hand gestures have both
5 positive and negative connotations depending on cultural context. *See* David Anderson et al., *5 eve-*
6 *ryday hand gestures that can get you in serious trouble outside the US*, Business Insider (Jan. 5,
7 2019), <https://perma.cc/8ZWT-JP5F>. As a result, websites’ content-moderation policies must ac-
8 count for regional variations and nuances.

9 The sheer scale of social media websites compounds these challenges. Many regulated
10 websites disseminate billions of pieces of user-generated content daily. Automated tools are often
11 essential for websites to ensure conformance with their policies. But over-reliance on automated
12 tools can lead to both over-enforcement *and* under-enforcement if the tools lack the sophistication
13 to interpret complex nuances. And those who wish to spread violative content constantly innovate
14 their methods to evade detection. These tactics, such as minor alterations to deepfakes or using
15 obscure languages and codes, force social media websites to continually adapt their moderation
16 systems. This creates a dynamic and resource-intensive battle to define and enforce content-mod-
17 eration standards.

18 **D. AB2655 will make content moderation more difficult on regulated websites.**

19 AB2655 intensifies content moderation’s inherent difficulties in two key ways.

20 First, content moderation of political content can be especially difficult because it often
21 involves sensitive judgments about context and intent. What constitutes deceptive or harmful ma-
22 terial is frequently disputed, as political messaging can blur the lines between exaggeration and
23 satire versus outright manipulation. Political content often circulates rapidly, amplifying its impact
24 before websites can review it. Websites must also contend with the risk of perceived bias, as mod-
25 eration decisions may appear to favor one political ideology or candidate over another, even when
26 made in good faith. This perception can lead to public backlash and loss of user trust. The stakes
27 are particularly high in election contexts, where errors in moderating political content can them-
28 selves undermine confidence in the democratic process or stoke division.

1
2 Second, the Act’s requirements for how websites must implement their content moderation
3 practices are vague. For example, the Act’s overriding definition of “materially deceptive content”
4 sets unclear boundaries between regulated and unregulated speech. § 20512(i)(1). The line between
5 content that “would falsely appear to a reasonable person to be an authentic record of the content
6 depicted in the media” versus content that “contains only minor modifications that do not signifi-
7 cantly change the perceived contents or meaning of the content” is unclear. *Id.* The Act’s excep-
8 tions for “satire” and “parody” only heighten this confusion. § 20519. What constitutes satire can
9 often be in the eye of the beholder. Yet the Act would require covered websites to make those
10 distinctions under the threat of guessing incorrectly what Defendants’ after-the-fact judgments
11 might be. In addition, it is not clear how social media websites can reliably identify each piece of
12 content that is “reasonably likely” to “undermine confidence” in an election’s outcome or “harm
13 the reputation or electoral prospects of a candidate.” § 20513(a)(2). Yet those terms are central to
14 determining whether content must be removed or labeled. *See id.*; § 20514(a)(2)(A).

15 **II. AB2655’s requirements violate the First Amendment by forcing websites to moderate**
16 **content according to California’s preferences.**

17 **A. AB2655’s requirements to remove certain political speech violate the First**
18 **Amendment.**

19 The Act’s removal requirements violate core First Amendment protections for political
20 speech and cannot satisfy any form of heightened scrutiny. *See* § 20513 (a “large online platform
21 shall develop and implement procedures for the use of state-of-the-art techniques to identify and
22 remove materially deceptive content,” as defined by AB2655). This provision imposes content-
23 based and viewpoint-based requirements for private websites to remove political speech from their
24 services. Whatever interest the government may assert is already amply served by the opportunity
25 for counter-speech and social media websites’ existing content moderation. That is why this Court
26 has preliminarily enjoined a materially similar law. *Kohls*, 2024 WL 4374134, at *6. And it is why
27 other courts have enjoined other States’ requirements to remove content-based categories of
28 speech from their services. *E.g.*, *Comput. & Comm’n Indus. Ass’n & NetChoice, LLC v. Paxton*,
747 F. Supp. 3d 1011, 1042-43 (W.D. Tex. 2024) (“CCIA”); *Fitch*, 2024 WL 3276409, at *17.

1
2 The First Amendment prohibits state laws that “grant the State virtually unfettered discretion to
3 enforce as law a variety of subjective content policies.” *Bonta II*, 2025 WL 807961, at *23.

4 1. The Act requires social media websites to remove content-based and viewpoint-based
5 core political speech from their services, thus triggering strict scrutiny. States cannot regulate “the
6 content choices the major platforms make . . . free of the First Amendment’s restraints.” *Moody*,
7 603 U.S. at 726-27. Nor may the government command private websites to remove speech that the
8 government cannot regulate directly. *See Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175, 190
9 (2024). The Act’s removal requirements trigger First Amendment scrutiny because they “depu-
10 tize[] covered businesses into serving as censors for the State.” *Bonta*, 113 F.4th at 1118.

11 The removal requirements are content-based because they target content about or relating
12 to political “candidate[s],” “elections officials . . . in connection with the performance of their
13 elections-related duties,” and “elected official[s]” § 20513(a)(2). These regulated topics plainly
14 “appl[y] to particular speech because of the topic discussed or the idea or message expressed.”
15 *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (citation omitted);
16 *see Kohls*, 2024 WL 4374134, at *4 (Act “specifically targets speech within political or electoral
17 content pertaining to candidates, electoral officials, and other election communication, making it
18 a content-based regulation that seeks to limit public discourse”). Laws restricting access to or reg-
19 ulating speech based on content are subject to strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S.
20 155, 163-64 (2015).

21 These removal requirements are also viewpoint-based because they only affect content that
22 “is reasonably likely to *harm* the reputation or electoral prospects of a candidate” or “reasonably
23 likely to falsely *undermine confidence* in the outcome of one or more election contests.”
24 § 20513(a)(2) (emphases added). False content that benefits a candidate’s reputation or inspires
25 confidence in elections is left unregulated. Likewise, the Act excludes “satire” and “parody.”
26 § 20519(c). “When the government targets not subject matter, but particular views taken by speak-
27 ers on a subject, the violation of the First Amendment is all the more blatant.” *Rosenberger v.*
28 *Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). “Viewpoint discrimination is thus an

1
2 egregious form of content discrimination.” *Id.* And “[t]he government must abstain from regulat-
3 ing speech when the specific motivating ideology or the opinion or perspective of the speaker is
4 the rationale for the restriction.” *Id.*

5 2. Because these provisions target political speech and discriminate based on content,
6 speaker, and viewpoint, they must satisfy strict scrutiny. *See Reed*, 576 U.S. at 163-64. They can-
7 not. *See, e.g., Kohls*, 2024 WL 4374134, at *4-5. The government has no legitimate, much less
8 compelling, governmental interest in demanding that social media websites remove political
9 speech from their services. *See, e.g., NetChoice, LLC v. Reyes*, 748 F. Supp. 3d 1105, 1124-25 (D.
10 Utah 2024). The State cannot “specifically identify” how the Act’s scope responds to “an actual
11 problem in need of solving” by *government* mandate. *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786,
12 799 (2011) (cleaned up). That is because the State lacks a legitimate interest in legislating truth or
13 falsity, outside of narrow categories of unprotected speech that the Act does not regulate. *See*
14 *United States v. Alvarez*, 567 U.S. 709, 721 (2012). “It is essential to a healthy democracy that
15 ‘debate on public issues [] be uninhibited, robust, and wide-open’ which may create a necessary
16 sacrifice that such dialogue ‘include[s] vehement, caustic, and sometimes unpleasantly sharp at-
17 tacks on government and public officials.’” *Kohls*, 2024 WL 4374134, at *4 (alterations in origi-
18 nal) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)).

19 Nor are § 20513’s removal requirements “the least restrictive means” of furthering any
20 sufficient governmental interest. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021);
21 *see Kohls*, 2024 WL 4374134, at *1. Social media websites themselves already provide at least
22 two less restrictive means. First, Defendant “cannot show[] why counterspeech would not suffice
23 to achieve its interest.” *Alvarez*, 567 U.S. at 726; *see Whitney v. California*, 274 U.S. 357, 377
24 (1927) (“If there be time to expose through discussion the falsehood and fallacies, to avert the evil
25 by the processes of education, the remedy to be applied is more speech, not enforced silence.”).
26 Social media websites provide the means for the public to engage in a vast amount of counter-
27 speech on their services. *See supra* pp.3-5. Promoting *more* speech on these services furthers First
28 Amendment principles. Second, even if the government somehow could assert some legitimate
interest in *less speech*, NetChoice members engage in content moderation addressing much of the

1 same content the State has targeted for regulation. The Supreme Court has held that “voluntary,”
2 industry-led self-regulatory efforts are less restrictive means than government intervention. *Brown*,
3 564 U.S. at 803. And even if the State deems those private efforts insufficient, “government does
4 not have a compelling interest in each marginal percentage point by which its goals are advanced.”
5 *Id.* at 803 n.9.

6
7 In addition to these private alternatives, separate California law already addresses any *un-*
8 *protected* speech that the State may legitimately regulate: “Other statutory causes of action such
9 as privacy torts, copyright infringement, or defamation already provide recourse to public figures
10 or private individuals whose reputations may be afflicted by artificially altered depictions[.]”
11 *Kohls*, 2024 WL 4374134, at *5. “[P]rotected speech may [not] be banned as a means to ban un-
12 protected speech.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255 (2002). Otherwise, “[t]here
13 are broad areas in which any attempt by the state to penalize purportedly false speech would pre-
14 sent a grave and unacceptable danger of suppressing truthful speech.” *Kohls*, 2024 WL 4374134,
15 at *5 (alteration in original) (quoting *Alvarez*, 567 U.S. at 731 (Breyer, J., concurring in the judg-
16 ment)).

17 Regardless, the Act’s removal requirements are both “seriously underinclusive” and “seri-
18 ously overinclusive.” *Brown*, 564 U.S. at 805. The “overbreadth in achieving one goal is not cured
19 by the underbreadth in achieving the other.” *Id.* The Act is underinclusive because it regulates only
20 disfavored websites, leaving unregulated myriad potential sources of the kinds of content that the
21 State seeks to regulate. “Materially deceptive” political content (as defined by AB2655) can be
22 found on countless websites that fall short of the Act’s arbitrary 1-million-California-user thresh-
23 old. § 20512(h). Yet the Act would leave those websites untouched. The Act also expressly allows
24 “online newspaper[s]” and other Internet websites to disseminate the same speech that must be
25 removed from social media websites, § 20519, many of which count such “online newspaper[s]”
26 as registered users. Although these exempted sources must make disclosures about the authenticity
27 of the content, they are not required to remove the content—as social media websites are. At the
28 same time, the requirements for social media are vastly overinclusive. These websites already have
their own content-moderation policies that address much of the content that the Act targets. *See*

1
2 *supra* p.5. These policies are an existing private alternative to the Act’s overinclusive, one-size-
3 fits-all governmental mandate. See *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 826 (2000).

4 In addition to the Act’s over- and underinclusive range of regulated media, the Act’s defi-
5 nitions of prohibited speech are both overbroad and underinclusive. It is unclear why California
6 requires removal of a subset of political speech, but not other forms of manipulated media.

7 **B. The labeling requirements violate the First Amendment.**

8 The Act’s compelled-speech labeling requirements trigger First Amendment strict scrutiny
9 as content-based and viewpoint-based regulations of speech. § 20514 (a “large online platform
10 shall develop and implement procedures for the use of state-of-the-art techniques to identify ma-
11 terially deceptive content,” as defined by AB2655). Compelled speech violates the First Amend-
12 ment: The “freedom of speech includes both the right to speak freely and the right to refrain from
13 speaking at all.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 892
14 (2018) (cleaned up). This freedom from laws compelling speech applies “not only to expressions
15 of value, opinion, or endorsement, but equally to statements of fact.” *Hurley v. Irish-Am. Gay,*
16 *Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995).

17 **1.** Section 20514 compels speech in two ways that require regulated services to “opin[e]
18 on whether and how certain controversial categories of content should be moderated.” *X Corp. v.*
19 *Bonta*, 116 F.4th 888, 901 (9th Cir. 2024).

20 First, Section 20514 requires websites to label content by appending the content with the
21 State’s message: “This [video, audio, or image] has been manipulated and is not authentic.”
22 § 20514(c). In other words, the Act compels social media websites to speak about the “authen-
23 tic[ity]” of content in words specifically identified by the State. *Id.*

24 Second, Section 20514 mandates that the “label . . . shall permit users to click or tap on it
25 for additional explanation about the materially deceptive content in an easy-to-understand format.”
26 § 20514(d). Thus, websites ostensibly must separately explain *why* they concluded the content was
27 “not authentic” or how the content “has been manipulated.” § 20514(c). And critically, whether
28 explicitly or implicitly, these requirements also compel websites to speak about whether content

1 is “satire” or “parody.” § 20519. After all, if a social media website has labeled content pursuant
2 to the Act, it has necessarily determined that the content is not exempted “parody” or “satire.” *Id.*
3

4 2. These compelled-speech requirements trigger strict scrutiny for multiple reasons. Like
5 Section 20513’s removal requirements, Section 20514’s labeling provisions apply to content about
6 or relating to political “candidate[s],” “elections official[s] . . . in connection with the performance
7 of their elections-related duties,” and “elected official[s]” § 20514(a)(2) (incorporating
8 § 20513(a)(2)). These compelled speech regulations are thus content-based. They are also view-
9 point-based: They only apply to content “reasonably likely to *harm* the reputation or electoral pro-
10 spects of a candidate” or “reasonably likely to falsely *undermine confidence* in the outcome of one
11 or more election contests” and not “materially deceptive content” that may burnish reputations or
12 foster confidence positive content. § 20513(a)(2) (emphases added). Even assuming those lines
13 can be easily drawn at the government’s behest (they cannot be), they are nevertheless viewpoint-
14 based distinctions.

15 The labeling requirements apply to two more content-based categories of speech: (1) “ad-
16 vertisement[s],” which means content with “the purpose of supporting or opposing a candidate for
17 elective office,” § 20512(a); and (2) “election communication[s],” which include content that
18 “concerns,” *e.g.*, “candidate[s],” “[v]oting or refraining from voting,” “canvass of the vote,”
19 “[v]oting machines, ballots, voting sites,” and “[p]roceedings or processes of the electoral col-
20 lege,” § 20512(e). Even if the labeling requirements did not regulate speech based on content and
21 viewpoint, compelled-speech requirements always trigger strict scrutiny because they alter the
22 content of speech. *See Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988);
23 *see Kohls*, 2024 WL 4374134, at *5 (similar “disclosure requirement forces parodists and satirists
24 to speak a particular message that they would not otherwise speak, which constitutes compelled
25 speech that dilutes their message” (cleaned up)).

26 The commercial-speech doctrine, or some other lesser form of First Amendment scrutiny,
27 does not apply here. Opining on the *authenticity* of political speech does not “propose a commer-
28 cial transaction.” *Bonta*, 113 F.4th at 1119 (quoting *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S.
60, 66 (1983)); *see X Corp.*, 116 F.4th at 900 (similar). That is why this Court concluded that

1 similar labels were not commercial speech. *Kohls*, 2024 WL 4374134, at *5. This is true even
2 though the Act requires labels for “advertisement[s].” § 20514(a)(2)(B). As defined by the Act,
3 “advertisement[s]” are limited to *political speech* “with the purpose of supporting or opposing a
4 candidate for elective office.” § 20512(a) (emphasis added).
5

6 **3.** The labeling requirements fail strict scrutiny and any other form of First Amendment
7 scrutiny. All the tailoring flaws that apply to Section 20513’s removal requirements apply to Sec-
8 tion 20514’s labeling requirements. The Act’s heavy-handed speech regulations are not properly
9 tailored to achieve whatever sufficient interest the government might have. The government can-
10 not demonstrate why the potential for counter-speech and websites’ existing content moderation
11 are insufficient to address the State’s concerns. Nor is it clear why websites must make the State’s
12 prescriptive and burdensome disclosures, but a (1) “regularly published online newspaper, maga-
13 zine, or other periodical” must only make “a clear disclosure”; and (2) “broadcasting station” must
14 only “clearly acknowledge[] through content or a disclosure, in a manner that can be easily heard
15 or read.” § 20519(a), (b)(1).

16 Regardless, the labeling requirements are “unduly burdensome” because they have the po-
17 tential to “drown[] out” the message in the user-generated content. *Nat’l Inst. of Fam. & Life*
18 *Advocs. v. Becerra*, 585 U.S. 755, 778 (2018). For example, the Act creates an incentive for web-
19 sites to avoid liability by labeling satire and parody as “materially deceptive.” But that labeling
20 robs those formats of their value. Satire often works precisely because viewers initially mistake it
21 for genuine content. Its effectiveness comes from the moment audiences discover their error after
22 reacting sincerely. Labeling content “materially deceptive” from the outset removes that moment
23 of realization. It also shapes how they interpret the message, as they approach it already aware of
24 its intended irony or humor. Such mandated labels thus undercut the purpose and value of satire
25 itself. The labeling requirements are also unduly burdensome user-generated content that is in a
26 non-English language. For content that meets that description, websites must include two labels:
27 one in the content’s original language, and one in English. § 20517.

28 In addition to the effect on the user-generated speech on the services, these requirements
are burdensome to implement and manage. As the Plaintiffs have explained, the requirement to

1 label content within 72 hours of a report, § 20513(b), will be costly and difficult to implement. It
2 does not matter that some social media websites already append their own labels to a similar range
3 of content as regulated under the Act. Those services label content using their own words, accord-
4 ing to their own editorial policies, *not* the State’s preferred message. And they operate according
5 to the companies’ existing capacities and timelines—not according to the Act’s quick turnaround
6 times.

7
8 **C. The reporting-and-response requirements violate the First Amendment.**

9 The Act’s requirements for websites to establish a reporting-and-response procedure for
10 the prohibited categories of political speech—and respond to users within 36 hours—violate the
11 First Amendment. § 20515(a). These requirements purport to direct websites’ content moderation
12 by effectuating the removal and labeling requirements. They also compel speech by requiring web-
13 sites to “describe[e] any action taken or not taken . . . with respect to the content.” § 20515(a). The
14 36 hours that the Act mandates for responses will burden the dissemination of speech and require
15 snap decisions—providing incentives to be overinclusive in restricting speech.

16 **1.** This reporting-and-response requirement is a content-based and viewpoint-based regu-
17 lation of speech for the same reasons as the removal and labeling requirements: It allows people
18 to report content-based and viewpoint-based categories of speech they think “should be re-
19 moved . . . or labeled.” § 20515(a); *see supra* p.9. In turn, the Act intends for these reports to direct
20 social media websites’ content moderation, as only reported content must either be removed or
21 labeled. §§ 20513(a)(1), 20514(a)(1). Thus, this provision “deputizes covered businesses into serv-
22 ing as censors for the State.” *Bonta*, 113 F.4th at 1118.

23 This provision also compels speech—triggering strict scrutiny in yet another way. *See Ri-*
24 *ley*, 487 U.S. at 795. It requires websites to “describe[e] any action taken or not taken by the large
25 online platform with respect to the content.” § 20515(a). Whenever someone identifies content
26 through a report, the website must explain why it will (or will not) take a particular content-mod-
27 eration action. Accordingly, much like the labeling requirement above, this provision mandates
28 that websites must “opin[e] on whether and how certain controversial categories of content should

1
2 be moderated.” *X Corp.*, 116 F.4th at 901. And the “First Amendment’s guarantee of freedom of
3 speech” equally prohibits “compelled speech and compelled silence.” *Id.* at 900 (cleaned up).

4 2. These provisions cannot satisfy any form of heightened scrutiny. The only governmental
5 interest this provision serves is to effectuate the unconstitutional removal and labeling require-
6 ments. Because those are unlawful, so too is the reporting-and-response requirement. Moreover,
7 the 36-hour period to respond to these requests will be quite burdensome, as Plaintiff has ex-
8 plained. They will require social media websites to develop mechanisms to field numerous reports
9 about even more content and then come to a considered decision in less than two days.

10 **III. AB2655’s removal and labeling requirements are preempted by 47 U.S.C. § 230.**

11 Independent of the First Amendment violations, 47 U.S.C. § 230 preempts the Act’s re-
12 moval and labeling requirements (§§ 20513-14). These requirements command social media web-
13 sites to conform their private content moderation to the State’s standards. As the Ninth Circuit has
14 explained, “Section 230 prohibits holding companies responsible for moderating or failing to mod-
15 erate content.” *Est. of Bride v. Yolo Techs., Inc.*, 112 F.4th 1168, 1182 (9th Cir. 2024).

16 Section 230 protects a broad range of “publisher[s]’ traditional editorial functions.” *Barnes*
17 *v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009) (citation omitted). That includes “reviewing,
18 editing, and deciding whether to publish or to withdraw from publication third-party content.” *Id.*;
19 *see* 47 U.S.C. § 230(f)(4) (protecting websites’ right to “filter, screen, allow, [] disallow,” “pick,
20 choose,” “display,” “organize,” and “reorganize . . . content”). Specifically, no “interactive com-
21 puter service shall be treated as the publisher or speaker of any information provided by” someone
22 else. 47 U.S.C. § 230(c)(1). And websites cannot be held liable on account of “any action volun-
23 tarily taken in good faith to restrict access to” speech they or their users “consider[] to be . . . ob-
24 jectionable.” *Id.* § 230(c)(2)(A). Congress preempted “inconsistent” state laws, protecting web-
25 sites from “cause[s] of action” and “liability.” *Id.* § 230(e)(3).

26 AB2655, however, provides a “cause of action” and potential liability for alleged failures
27 to moderate content as the State requires. Social media websites must “develop and implement
28 procedures for the use of state-of-the-art techniques to *identify materially deceptive content* and”
“remove” and “label[]” such content. §§ 20513-14. That will require these websites to monitor

1 content and either remove or label content meeting the Act’s requirements. Section 230 preempts
2 all of this, as binding Ninth Circuit precedent makes clear.

3
4 “[S]ection 230 protects from liability ‘any activity that can be boiled down to deciding
5 whether to exclude material that third parties seek to post online.’” *Barnes*, 570 at 1103 (quot-
6 ing *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1170-
7 71 (9th Cir. 2008) (en banc)). And because of the requirement to “identify” content, the Act “nec-
8 essarily require[s]” social media websites “to monitor third-party content” so that users are not
9 exposed to prohibited content. *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682
10 (9th Cir. 2019). That is why the Western District of Texas recently enjoined a state requirement to
11 monitor for, and remove, content-based categories of speech. *CCIA*, 747 F. Supp. 3d at 1042-43.

12 Section 230 likewise bars any requirement that websites alternatively apply a label warning
13 the public of such prohibited content. *E.g., Yolo*, 112 F.4th at 1180 (“Similarly, the failure to warn
14 claim faults YOLO for not mitigating, in some way, the harmful effects of the harassing and bul-
15 lying content. This is essentially faulting YOLO for not moderating content in some way, whether
16 through deletion, change, or suppression.”); *Doe v. Grindr Inc.*, 128 F.4th 1148, 1154 (9th Cir.
17 2025) (“Grindr’s role as a publisher of third-party content does not give it a duty to warn users of
18 a general possibility of harm resulting from the App.” (cleaned up)); *Wozniak v. YouTube, LLC*,
19 100 Cal. App. 5th 893, 914-15 (2024) (“Plaintiffs’ argument would allow essentially every state
20 cause of action otherwise immunized by section 230 to be pleaded as a failure to warn of such
21 information published by a defendant.”).

22 AB2655 thus directly conflicts with Section 230, because it imposes liability on social me-
23 dia websites that fail to censor or label third-party content exactly as the State demands. By requir-
24 ing social media websites to remove or label speech according to state-imposed standards, AB2655
25 interferes with those websites’ protected editorial judgments. The whole point of Section 230 is to
26 broadly protect websites from such state attempts to dictate content moderation policies or impose
27 liability for third-party speech. Allowing California to enforce AB2655 would essentially nullify
28 the protections Congress created in Section 230. Section 230 therefore independently preempts
AB2655’s removal and labeling mandates.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

This Court should grant Plaintiffs’ motion for summary judgment and permanently enjoin enforcement of AB2655 against all regulated websites.

DATED: March 27, 2025

Steven P. Lehotsky*
Scott A. Keller*
Jeremy Evan Maltz*
LEHOTSKY KELLER COHN LLP
200 Massachusetts Avenue, NW, Suite 700
Washington, DC 20001
(512) 693-8350
steve@lkcfirm.com
scott@lkcfirm.com
jeremy@lkcfirm.com

Bradley A. Benbrook
Bradley A. Benbrook (SBN 177786)
Stephen M. Duvernay (SBN 250957)
BENBROOK LAW GROUP, PC
701 University Avenue, Suite 106
Sacramento, CA 95825
Telephone: (916) 447-4900
brad@benbrooklawgroup.com
steve@benbrooklawgroup.com

Joshua P. Morrow*
LEHOTSKY KELLER COHN LLP
408 W. 11th Street, 5th Floor
Austin, TX 78701
(512) 693-8350
josh@lkcfirm.com

* *Pro hac vice* forthcoming.

Attorneys for Amicus Curiae NetChoice