

1 CAHILL GORDON & REINDEL LLP
2 JOEL KURTZBERG (*pro hac vice pending*, SBN NY 1758184)
3 FLOYD ABRAMS (*pro hac vice pending*, SBN NY 2835007)
4 JASON ROZBRUCH (*pro hac vice pending*, SBN NY 5753637)
5 32 Old Slip
New York, New York 10005
Phone: 212-701-3120
Facsimile: 212-269-5420
jkurtzberg@cahill.com

6 DOWNEY BRAND LLP
7 WILLIAM R. WARNE (SBN 141280)
8 MEGHAN M. BAKER (SBN 243765)
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
Phone: 916-444-1000
Facsimile: 916-520-5910

9 *Attorneys for Plaintiff X Corp.*

10
11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13 SACRAMENTO DIVISION

14 X CORP.,

15 Plaintiff,

16 v.

17 ROBERT A. BONTA, Attorney
18 General of California, in his
19 official capacity, and
SHIRLEY N. WEBER, Secretary of
State of California, in her
official capacity,

20 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

21
22 Plaintiff X Corp., by and through its attorneys, Cahill Gordon
23 & Reindel LLP and Downey Brand LLP, alleges for its complaint
24 against the above-named Defendants, as follows:

COMPLAINT

NATURE OF THE ACTION

1
2 1. Plaintiff X Corp. brings this action challenging the
3 constitutionality and legal validity of California Assembly Bill
4 No. 2655 ("AB 2655"), which is codified in law at Cal. Elec. Code
5 §§ 20510–20520.

6 2. AB 2655 requires large online platforms like X, the
7 platform owned by X Corp. (collectively, the "covered platforms"),
8 to remove and alter (with a label) – and to create a reporting
9 mechanism to facilitate the removal and alteration of – certain
10 content about candidates for elective office, elections officials,
11 and elected officials, of which the State of California disapproves
12 and deems to be "materially deceptive." It has the effect of
13 impermissibly replacing the judgments of covered platforms about
14 what content belongs on their platforms with the judgments of the
15 State. And it imposes liability on the covered platforms to the
16 extent that their judgments about content moderation are
17 inconsistent with those imposed by the State. AB 2655 thus violates
18 the First and Fourteenth Amendments of the United States
19 Constitution; the free speech protections of Article I, Section 2,
20 of the California Constitution; and the immunity provided to
21 "interactive computer services" under Section 230 of the
22 Communications Decency Act, 47 U.S.C. § 230(c).

23 3. Worse yet, AB 2655 creates an enforcement system that
24 incentivizes covered platforms to err on the side of removing

1 and/or labeling any content that presents even a close call as to
2 whether it is "materially deceptive" and otherwise meets the
3 statute's requirements. This system will inevitably result in the
4 censorship of wide swaths of valuable political speech and
5 commentary and will limit the type of "uninhibited, robust, and
6 wide-open" "debate on public issues" that core First Amendment
7 protections are designed to ensure. *New York Times v. Sullivan*,
8 376 U.S. 254, 270 (1964). As the United States Supreme Court has
9 recognized, our strong First Amendment protections for such speech
10 are based on our nation's "profound national commitment" to
11 protecting such debate, even if it often "include[s] vehement,
12 caustic, and sometimes unpleasantly sharp attacks on government
13 and public officials." *Id.*

14 4. AB 2655's problematic enforcement system provides
15 expedited causes of action for injunctive and other equitable
16 relief to the California Attorney General, every California
17 district attorney, every California city attorney, and to
18 candidates for elective office, elections officials, and elected
19 officials, to force covered platforms to remove certain "materially
20 deceptive content," alter that content, and comply with the
21 statute's reporting requirement. Even if the covered platform has
22 a robust process for investigating reported content, it will be
23 subject to such lawsuits for injunctive relief if it does not
24 remove or label the reported content within 72 hours. Enforcement

1 actions may be brought for “injunctive or other equitable relief
2 against any large online platform” to remove or label content that
3 should have been removed or labeled under the statute. See
4 §§ 20515(b), 20516. In short, covered platforms may be sued if
5 governmental officials or candidates think they have not censored
6 or labeled enough content; but the platforms may not be sued by
7 anyone if they have arguably censored or labeled too much content
8 under the statute. The result is a system that highly incentivizes
9 covered platforms to remove or label any content that presents a
10 close call to avoid lawsuits altogether.

11 5. AB 2655 suffers from a compendium of serious First
12 Amendment infirmities. Primary among them is that AB 2655 imposes
13 a system of prior restraint on speech, which is the “most serious
14 and the least tolerable infringement on First Amendment rights.”
15 *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). The
16 statute mandates the creation of a system designed to allow for
17 expedited “take downs” of speech that the State has targeted for
18 removal from covered platforms in advance of publication. The
19 government is involved in every step of that system: it dictates
20 the rules for reporting, defining, and identifying the speech
21 targeted for removal; it authorizes state officials (including
22 Defendants here) to bring actions seeking removal; and, through
23 the courts, it makes the ultimate determination of what speech is
24 permissible. Rather than allow covered platforms to make their

1 own decisions about moderation of the content at issue here, it
2 authorizes the government to substitute its judgment for those of
3 the platforms.

4 6. It is difficult to imagine a statute more in conflict
5 with core First Amendment principles. As the United States Supreme
6 Court has held, "it is a central tenet of the First Amendment that
7 the government must remain neutral in the marketplace of ideas."
8 *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988). Even
9 worse, AB 2655's system of prior restraint censors speech about
10 "public issues and debate on the qualifications of candidates," to
11 which the "First Amendment affords the **broadest protection**" to
12 ensure the "unfettered interchange of ideas for the bringing about
13 of political and social changes desired by the people." *McIntyre*
14 *v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995).¹

15 7. AB 2655 imposes a prior restraint on speech because it
16 provides, pursuant to Sections 20515(b) and 20516, expedited causes
17 of action under Section 35 of the California Code of Civil Procedure
18 through which political speech can be enjoined before there occurs
19 a "final judicial determination" that the "speech is unprotected."
20 *Isaksen v. Mazu Publ'g Co.*, 2005 WL 8176605, at *3 (E.D. Cal. Mar.
21 29, 2005) (citing *Vance v. Universal Amusement Co.*, 445 U.S. 308
22 (1980)) (denying motion for preliminary injunction as to already

23
24

¹ Unless otherwise indicated, emphases in quotes are added and internal citations
and quotations are omitted.

1 published speech because it would have constituted a prior
2 restraint). Although the statute tasks plaintiffs with
3 demonstrating “through clear and convincing evidence” – see
4 §§ 20515(b), 20516) – that the speech is “materially deceptive”
5 content that otherwise meets the statute’s requirements, that
6 showing **does not** amount to proof that the speech is
7 constitutionally unprotected. See *Kohls v. Bonta*, 2024 WL 4374134,
8 at *3-5 (E.D. Cal. Oct. 2, 2024) (holding that a companion statute,
9 AB 2839, that provides a cause of action against individuals who
10 post “materially deceptive content” – defined nearly identically
11 as it is in AB 2655 – likely violated the First Amendment on its
12 face because the statute’s “legitimate sweep pales in comparison
13 to the substantial number of its applications . . . which are
14 plainly unconstitutional”); see also *Garcia v. Google, Inc.*, 786
15 F.3d 733, 747 (9th Cir. 2015) (forcing Google through “takedown
16 order” to remove content previously published on YouTube prior to
17 a final determination that the content was unprotected amounted to
18 a “classic prior restraint on speech”); *Living Vehicle, Inc. v.*
19 *Kelley*, 2023 WL 2347442, at *9 (C.D. Cal. Jan. 20, 2023)
20 (citing *Alexander v. United States*, 509 U.S. 544, 550 (1993);
21 *Garcia*, 786 F.3d at 746-47) (prior restraints “refer either to
22 injunctions that restrict future speech or require takedowns of
23 currently-published speech”); *SolarPark Korea Co. v. Solaria Corp.*,

1 2023 WL 4983159, at *11 (N.D. Cal. Aug. 2, 2023) (same), *appeal*
2 *dismissed*, 2023 WL 9860831 (9th Cir. Sept. 28, 2023).

3 8. Further evidencing that AB 2655 imposes a prior restraint
4 on speech is that, apart from the expedited suits for injunctive
5 and other relief authorized under Sections 20515(b) and 20516, (i)
6 nothing in AB 2655 prevents the enjoinder of speech through a
7 temporary restraining order or preliminary injunction alternative
8 to or in addition to such suits; (ii) AB 2655 mandates the immediate
9 removal of speech, without a determination that it is unprotected,
10 so long as it is "substantially similar" to speech "previously
11 removed" under the statute, § 20513(c); and (iii) the statute acts
12 as an overarching prior restraint by, in its pursuit of eliminating
13 certain speech altogether, imposing a system of censorship that
14 requires covered platforms that wish to avoid being sued to block
15 speech within 72 hours absent a final ruling that the speech is
16 unprotected.

17 9. Even if AB 2655 were not a prior restraint, it still
18 violates the First Amendment because it runs counter to the United
19 States Supreme Court's recent decision in *Moody v. NetChoice, LLC*,
20 in which the Court held, in no uncertain terms, that when a social
21 media platform "present[s] a curated and 'edited compilation of
22 [third party] speech,'" that presentation "is itself protected
23 speech." 144 S. Ct. 2383, 2409 (2024) (quoting *Hurley v. Irish-*
24 *Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 570

1 (1995)); see also *id.* at 2401 (“A private party’s collection of
2 third-party content into a single speech product (the operators’
3 ‘repertoire’ of programming) is itself expressive, and intrusion
4 into that activity must be specially justified under the First
5 Amendment.”); *id.* at 2405 (quoting *Miami Herald Pub. Co. v.*
6 *Tornillo*, 418 U.S. 241, 258 (1974)) (“‘The choice of material,’
7 the ‘decisions made [as to] content,’ the ‘treatment of public
8 issues’ – ‘whether fair or unfair’ – all these ‘constitute the
9 exercise of editorial control and judgment.’ . . . **For a paper,**
10 **and for a platform too.**”). Because AB 2655 impermissibly replaces
11 the judgments of the covered platforms about what speech may be
12 permitted on their platforms with those of the government, it
13 cannot be reconciled with the Supreme Court’s decision in *Moody*.

14 10. AB 2655 disregards numerous significant First Amendment
15 holdings by the Supreme Court in *Moody* – specifically, that (i) it
16 is not a “valid, let alone substantial” interest for a state to
17 seek “to correct the mix of speech” that “social-media platforms
18 present,” *id.* at 2407; (ii) a “State ‘cannot advance some points
19 of view by burdening the expression of others,’” *id.* at 2409
20 (quoting *Pac. Gas & Elec. Co. v. Pub. Utilities Comm’n of*
21 *California*, 475 U.S. 1, 20 (1986)); (iii) the “government may not,
22 in supposed pursuit of better expressive balance, alter a private
23 speaker’s own editorial choices about the mix of speech it wants
24 to convey,” *id.* at 2403; (iv) “it is no job for government to

1 decide what counts as the right balance of private expression – to
2 ‘un-bias’ what it thinks biased, rather than to leave such
3 judgments to speakers and their audiences. That principle works
4 for social-media platforms as it does for others,” *id.* at 2394;
5 and (v) “[h]owever imperfect the private marketplace of ideas,” a
6 “worse proposal” is “the government itself deciding when speech
7 [is] imbalanced, and then coercing speakers to provide more of some
8 views or less of others,” *id.* at 2403.

9 11. AB 2655 also runs counter to the First Amendment’s
10 staunch protection of core political speech. By imposing
11 unintelligible prohibitions on allowing a specific category of
12 speech under threat of enormous liability if it is not labeled
13 and/or removed to the government’s satisfaction, AB 2655 “acts as
14 a hammer instead of a scalpel,” *Kohls*, 2024 WL 4374134, at *8,
15 greatly incentivizing covered platforms to censor *all* content that
16 could reasonably fall within the statute’s purview to avoid
17 substantial enforcement costs. This, in turn, will severely chill
18 important political speech – specifically, the use of exaggerated
19 or unfavorable visual means to undermine and combat political
20 opponents, which, as the Supreme Court has recognized, is ingrained
21 in the historical fabric of U.S. political commentary and subject
22 to the strongest of First Amendment protections.

23 12. Whether it be “Walt McDougall’s characterization” in 1884
24 “of Presidential candidate James G. Blaine’s banquet with the

1 millionaires at Delmonico's as 'The Royal Feast of Belshazzar'" or
2 contemporary imaginings of Donald Trump's arrest² or what a second
3 term under President Biden would look like,³ "graphic depictions
4 and satirical cartoons have played a prominent role in public and
5 political debate," and "it is clear that our political discourse
6 would [be] considerably poorer without them." *Falwell*, 485 U.S.
7 at 54-55. Indeed, "YouTube videos, Facebook posts, and X tweets
8 are the newspaper advertisements and political cartoons of today,
9 and the First Amendment protects an individual's right to speak
10 regardless of the new medium these critiques may take." *Kohls*,
11 2024 WL 4374134, at *5. Contemporary commentators frequently use
12 artificial intelligence to generate this type of valuable
13 commentary. *Id.*

14 13. There is a long history of the strongest of First
15 Amendment protections for speech critical of government officials
16 and candidates for public office that includes tolerance for
17 potentially false speech made in the context of such criticisms.
18 And there is a long history of skepticism of any governmental
19 attempts to regulate such content, no matter how well-intentioned
20 they may be. As both the Supreme Court and Judge Learned Hand have

21
22 ² Ex. 1 (Eliot Higgins (@EliotHiggins), X (Mar. 20, 2023, 5:22 PM), formerly
available at <https://x.com/EliotHiggins/status/163792768173498777> (last
visited Nov. 5, 2024)).

23 ³ Ex. 2 (GOP, *Beat Biden*, YouTube (Apr. 25, 2023),
<https://www.youtube.com/watch?v=kLMMxgtxQ1Y> (last visited Nov. 14, 2024)); see
24 also Ex. 3 (S. Comm. on Judiciary, Analysis of Bill No. AB 2655, 2023-2024 Reg.
Sess. (Cal. June 28, 2024)) at 7, 9 (citing this video as an example of how
"generative AI can spread misinformation regarding elections with ease").

1 noted, “[t]he First Amendment” “presupposes that right conclusions
2 are more likely to be gathered out of a multitude of tongues than
3 through any kind of authoritative selection. To many, this is,
4 and always will be, folly; but we have staked upon it our all.”
5 *Sullivan*, 376 U.S. at 270 (quoting *United States v. Associated*
6 *Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943) (Hand, J.)). AB 2655
7 runs counter to these principles by attempting to impose by
8 “authoritative selection” the permissible content on covered
9 platforms, rather than allowing the “multitude of tongues” engaging
10 in political debate and commentary on those platforms to do so.
11 *See also, e.g., Beilenson v. Superior Ct.*, 44 Cal. App. 4th 944,
12 954 (1996) (“Hyperbole, distortion, invective, and tirades are as
13 much a part of American politics as kissing babies and distributing
14 bumper stickers and pot holders. Political mischief has been part
15 of the American political scene since, at least, 1800. . . . ‘Once
16 an individual decides to enter the political wars, he subjects
17 himself to this kind of treatment. . . . [D]eeply ingrained in our
18 political history is a tradition of free-wheeling, irresponsible,
19 bare knuckled, Pier 6, political brawls.’”).

20 14. Accordingly, AB 2655 violates the First Amendment of the
21 United States Constitution and Article I, Section 2, of the
22 California Constitution, both facially and as-applied to X Corp.
23 AB 2655 imposes a prior restraint on speech that forces platforms
24 to censor only certain election-related content of which the State

1 of California disapproves and also directly and impermissibly
2 interferes with the constitutionally protected content-moderation
3 speech rights of covered social media platforms, like X. And AB
4 2655 does so notwithstanding that less speech-restrictive
5 alternatives would serve California's interest in protecting its
6 free and fair elections.

7 15. AB 2655 also directly contravenes the immunity provided
8 to the covered platforms by 47 U.S.C. §§ 230(c)(1) and 230(c)(2),
9 which prohibit (i) treating interactive computer service providers
10 as the "publisher or speaker of any information provided by another
11 information content provider," § 230(c)(1); and (ii) liability "on
12 account" of "any action" "taken to enable or make available
13 to information content providers or others the technical means to
14 restrict access to [objectionable] material," § 230(c)(2)(B).

15 16. First, in violation of § 230(c)(1), by providing causes
16 of action for "injunctive or other equitable relief against" the
17 covered platform to remove or (by adding a label) to alter certain
18 content posted on the platform by its users (see §§ 20515(b),
19 20516), AB 2655 treats covered platforms "as the publisher or
20 speaker of information provided by another information content
21 provider." 47 U.S.C. § 230(c)(1).

22 17. Second, in violation of § 230(c)(2)(B)'s prohibition on
23 holding platforms liable for "action[s] taken to enable or make
24 available to information content providers or others the technical

1 means to restrict access to [objectionable] material," AB 2655
2 provides causes of action for "injunctive or other equitable relief
3 against" covered platforms that attempt to comply with the
4 statute's reporting requirement, but do so in a manner that, in
5 the government attorney's view, does not meet the reporting
6 "require[ments]" of "subdivision (a) of Section 20515." § 20516.
7 In other words, a covered platform's attempt to comply with the
8 statute's reporting requirement (i.e., by creating a reporting
9 requirement for users to report content covered by the statute) is
10 an action, as contemplated by § 230(c)(2)(B), to make available
11 the technical means to restrict access to objectionable content,
12 and, in contravention thereof, AB 2655 imposes liability on any
13 covered platform that takes such action in a manner deemed
14 insufficient by the California government.

15 18. So too does AB 2655 violate the First and Fourteenth
16 Amendments of the United States Constitution for vagueness. AB
17 2655's requirements are so vague and unintelligible that covered
18 platforms cannot understand how to comply with them; thus, those
19 subject to its language will be compelled to over-censor speech to
20 avoid costly litigation over countless judgment calls surrounding
21 whether the statute prohibits particular pieces of content.

22 19. In pursuing this action, X Corp. seeks declaratory relief
23 and preliminary and permanent injunctive relief on the grounds that
24 AB 2655 (i) violates the free speech rights of X Corp. and the

1 other covered platforms under the First Amendment of the United
2 States Constitution and Article I, Section 2, of the California
3 Constitution, both facially and as-applied to X Corp.; (ii)
4 directly conflicts with, and is thus preempted by, the immunity
5 afforded to X Corp. by 47 U.S.C. §§ 230(c)(1) and 230(c)(2); and
6 (iii) violates the First and Fourteenth Amendments of the United
7 States Constitution because its requirements are so vague and
8 unintelligible that the covered platforms cannot understand what
9 they permit and what they prohibit, which will lead to blanket
10 censorship, including of valuable political speech.

11 20. In pursuing this action, X Corp. seeks to vindicate the
12 deprivation of constitutional rights under color of state statute,
13 ordinance, regulation, custom, and/or usage. X Corp. is also
14 entitled to attorneys' fees and costs if it prevails on any of its
15 § 1983 claims. See 42 U.S.C. § 1988.

16 **PARTIES**

17 21. Plaintiff X Corp. is a corporation organized and existing
18 under the laws of the State of Nevada, with its principal place of
19 business in Bastrop, Texas. X Corp. provides the X service, which
20 is a real-time, open, public conversation platform, where people
21 can see every side of a topic, discover news, share their
22 perspectives, and engage in discussion and debate. X allows people
23 to create, distribute, and discover content and has democratized
24 content creation and distribution. X allows users to create and

1 share ideas and information instantly through various product
2 features, including public posts.

3 22. AB 2655 applies to X Corp. because X is a "large online
4 platform," as defined by the statute - i.e., a "public-facing
5 internet website," "video sharing platform," and "social media
6 platform as defined by Section 22675 of the Business and
7 Professions Code"⁴ that "had at least 1,000,000 California users
8 during the preceding 12 months." § 20512(h).

9 23. Defendant Robert Bonta is the Attorney General of the
10 State of California and is charged with enforcing AB 2655. X Corp.
11 sues Attorney General Bonta in his official capacity as the person
12 charged with enforcing AB 2655.

13 24. Defendant Shirley Weber is the Secretary of State of the
14 State of California and is also charged with enforcing AB 2655. X
15 Corp. sues Secretary Weber in her official capacity as the person
16 charged with enforcing AB 2655.

17 **JURISDICTION**

18 25. This Court has jurisdiction over X Corp.'s federal
19 claims pursuant to 28 U.S.C. §§ 1331 and 1343(a) and 42 U.S.C.

20 _____
21 ⁴ X is a "social media platform," as defined by Section 22675 of the Business
22 and Professions Code, because it is a public internet-based service or
23 application with users in California and (i) "[a] substantial function of the
24 service or application is to connect users in order to interact socially with
each other within the service or application" and (ii) it allows its users to
(a) "construct a public or semipublic profile for purposes of signing into and
using the service or application"; (b) "[p]opulate a list of other users with
whom an individual shares a social connection within the system"; and (c)
"[c]reate or post content viewable by other users, including but not limited to,
on message boards, in chat rooms, or through a landing page or main feed that
presents the user with content generated by other users."

1 § 1983, because X Corp. alleges violations of its rights under the
2 Constitution and laws of the United States. The Court has
3 jurisdiction over X Corp.'s state claim pursuant to 28 U.S.C.
4 § 1367.

5 26. This Court has authority to grant declaratory and
6 injunctive relief under the Declaratory Judgment Act, 28 U.S.C.
7 §§ 2201, 2202, and under the Court's inherent equitable
8 jurisdiction.

9 VENUE

10 27. Venue is proper in this Court under 28 U.S.C.
11 §§ 1391(b)(1) and 1391(b)(2) because the Defendants are located,
12 reside, and have offices in this judicial district and in the State
13 of California, and the violations of X Corp.'s rights are occurring
14 and will occur within this judicial district. AB 2655 was also
15 enacted in this judicial district.

16 FACTUAL ALLEGATIONS

17 **I. AB 2655's Statutory Scheme**

18 28. AB 2655, which applies to "large online platform[s],"
19 including "public-facing internet website[s]," "video sharing
20 platform[s]," and "social media platform[s] as defined in Section
21 22675 of the Business and Professions Code" that "had at least
22 1,000,000 California users during the preceding 12 months,"
23 §§ 20512(h), 20513-20516, has five main components.

24

1 29. First, a requirement that covered platforms “develop and
2 implement procedures for the use of state-of-the-art techniques to
3 identify and remove certain materially deceptive content”⁵ about
4 “candidate[s] for elective office,”⁶ “elections official[s],”⁷ and
5 “elected official[s]”⁸ (the “**Removal Requirement**”). See § 20513.

6 30. Second, a requirement that covered platforms “develop
7 and implement procedures for the use of state-of-the-art techniques
8 to identify materially deceptive content and for labeling such
9 content” meeting certain conditions (the “**Labeling Requirement**”).
10 See § 20514.

13 ⁵ “Materially deceptive content” means “audio or visual media that is digitally
14 created or modified, and that includes, but is not limited to, deepfakes and
15 the output of chatbots, such that it would falsely appear to a reasonable person
16 to be an authentic record of the content depicted in the media,” but “does not
17 include any audio or visual media that contains only minor modifications that
18 do not significantly change the perceived contents or meaning of the content,”
19 including “changes to the brightness or contrast of images, removal of background
20 noise in audio, and other minor changes that do not impact the content of the
21 image or audio or visual media.” § 20512(i).

22 ⁶ While AB 2655 does not define “elective office,” “[c]andidate” means any person
23 running for President or Vice President of the United States, any person running
24 for the office of Superintendent of Public Instruction, or any person running
for a voter-nominated office as defined in Cal. Elec. Code § 359.5 (see
§ 20512(c)), which means a “congressional or state elective office for which a
candidate may choose to have his or her party preference or lack of party
preference indicated upon the ballot” and includes the Governor, Lieutenant
Governor, Secretary of State, Controller, Treasurer, Attorney General, Insurance
Commissioner, Member of the State Board of Equalization, United States Senator,
Member of the United States House of Representatives, State Senator, and Member
of the Assembly.

22 ⁷ “Elections official” means (i) the California Secretary of State or (ii) an
23 elections official as defined by Cal. Elec. Code § 320 (§ 20512(g)), which is a
24 (a) “clerk or any person who is charged with the duty of conducting an election,”
or (b) “county clerk, city clerk, registrar of voters, or elections supervisor
having jurisdiction over elections within any county, city, or district within
the state.”

⁸ AB 2655 does not define “elected official.”

1 31. Third, a requirement that covered platforms “provide an
2 easily accessible way for California residents to report to that
3 platform content that should be removed pursuant to Section 20513
4 or labeled pursuant to Section 20514” and “respond to the person
5 who made the report within 36 hours” (the “**Reporting Requirement**”).
6 See § 20515(a).

7 32. Fourth, enforcement provisions, whereby candidates for
8 elective office, elected officials, election officials, the
9 California Attorney General, any California district attorney, and
10 any California city attorney may seek, under certain conditions,
11 “injunctive or other equitable relief against” the covered platform
12 to force it to comply with the Removal Requirement (i.e., to remove
13 particular content), the Labeling Requirement (i.e., to label
14 particular content), or the Reporting Requirement (the “**Enforcement**
15 **Provisions**”). See §§ 20515(b), 20516.

16 33. Fifth, exemptions for certain entities, including
17 broadcasting stations and online newspapers and magazines meeting
18 certain conditions, and certain content, including materially
19 deceptive content that constitutes “satire or parody” (which are
20 terms that the statute does not define). See §§ 20513(d), 20519.

21 **a. The Removal Requirement**

22 34. AB 2655’s Removal Requirement mandates that covered
23 platforms develop and implement procedures that use state-of-the-
24

1 art techniques to identify and remove materially deceptive content
2 if *all* of the following conditions are met, **§ 20513(a)** :

3 a. The content is reported pursuant to Section 20515(a),

4 **§ 20513(a) (1)** ;

5 b. The materially deceptive content is *any* of the following:

6 i. A candidate for elective office portrayed as doing or
7 saying something that the candidate did not do or say
8 and that is reasonably likely to harm the reputation or
9 electoral prospects of a candidate, **§ 20513(a) (2) (A)** ;

10 ii. An elections official portrayed as doing or saying
11 something in connection with the performance of their
12 elections-related duties that the elections official did
13 not do or say and that is reasonably likely to falsely
14 undermine confidence in the outcome of one or more
15 election contests, **§ 20513(a) (2) (B)** ; or

16 iii. An elected official portrayed as doing or saying
17 something that influences an election in California that
18 the elected official did not do or say and that is
19 reasonably likely to falsely undermine confidence in the
20 outcome of one or more election contests,
21 **§ 20513(a) (2) (C)** ;

22 c. The content is posted during the 120 days leading up to an
23 election and through the election day, or – if the content
24 depicts or pertains to elections officials – during the 120

1 leading up to an election, through the election day, and
2 until the 60th day following the election, §§ 20513(a)(3),
3 20513(e); and

4 d. The covered platform knows or acts with reckless disregard
5 for the fact that the content meets Section 20513's
6 requirements, § 20513(a)(4).

7 35. If content "is determined" to meet Section 20513(a)'s
8 requirements, the covered platform must remove the content "upon
9 that determination, but no later than 72 hours after a report is
10 made pursuant to" Section 20515(a). § 20513(b).

11 36. Covered platforms must also identify, using state-of-
12 the-art techniques, and remove, upon discovering or being alerted
13 to the posting or reposting of, any "identical or substantially
14 similar" materially deceptive content that the platform previously
15 removed pursuant to AB 2655, provided that the removal occurs
16 during the time period or periods set forth under Section 20513(e).
17 § 20513(c).

18 **b. The Labeling Requirement**

19 37. AB 2655's Labeling Requirement mandates that covered
20 platforms develop and implement procedures using state-of-the-art
21 techniques to identify materially deceptive content and for
22 labeling such content if *all* of the following conditions are met,

23 § 20514(a):
24

1 a. The content is reported pursuant to Section 20515(a),
2 **§ 20514(a)(1)**;

3 b. The materially deceptive content is either (i) encompassed
4 by Section 20513(a) but is posted outside Section 20513(e)'s
5 applicable time periods or (ii) appears within an
6 advertisement or election communication⁹ and is not subject
7 to Section 20513, **§ 20514(a)(2)**; and

8 c. The covered platform knows or acts with reckless disregard
9 for the fact that the materially deceptive content meets
10 Section 20514's requirements, **§ 20514(a)(3)**.

11 38. If content "is determined" to meet Section 20514(a)'s
12 requirements, the covered platform must label the content "upon
13 that determination, but no later than 72 hours after a report is
14 made pursuant to" Section 20515(a). **§ 20514(b)**.

15 39. The label required by Section 20514(b) must state: "This
16 [image, audio, or video (depending on the type of content at issue)]
17 has been manipulated and is not authentic." **§ 20514(c)**. The label
18 must also permit users to "click or tap on it for additional
19

20 ⁹ "Election communication" means a general or public communication that is not
21 an "advertisement" and that concerns (i) a candidate for elective office
22 (ii) voting or refraining from voting in an election in California, (iii) the
23 canvass of the vote for an election in California (meaning any election where a
24 "candidate" is on the ballot or where a statewide initiative or statewide
referendum measure is on the ballot), (iv) voting machines, ballots, voting
sites, or other property or equipment related to an election in California, or
(v) proceedings or processes of the electoral college in California.
§§ 20512(e), 20512(f). "Advertisement" means any general or public
communication that a large online platform knows is authorized or paid for with
the purpose of supporting or opposing a candidate for elective office.
§ 20512(a).

1 explanation about the materially deceptive content in an easy-to-
2 understand format.” § 20514 (d) .

3 40. The Labeling Requirement applies (i) during the period
4 beginning six months before an election in California and through
5 the day of the election; and (ii) if the content depicts or pertains
6 to elections officials, the electoral college process, a voting
7 machine, ballot, voting site, or other equipment related to an
8 election, or the canvass of the vote, during the period beginning
9 six months before an election in California, through the 60th day
10 following the election. § 20514 (e) .

11 **c. The Reporting Requirement**

12 41. AB 2655’s Reporting Requirement mandates that covered
13 platforms provide an “easily accessible way” for California
14 residents to report to the platform content that should be removed
15 pursuant to Section 20513 or labeled pursuant to Section 20514.
16 § 20515 (a) .

17 42. The covered platform must respond to the person who made
18 the report within 36 hours of the report, and the response must
19 describe “any action taken or not taken” by the platform with
20 respect to the reported content. *Id.*

21 **d. The Enforcement Provisions**

22 43. AB 2655 provides various methods of enforcement against
23 covered platforms that do not sufficiently comply with the
24 statute’s Removal, Labeling, and Reporting Requirements.

1 44. First, AB 2655 authorizes candidates for elective office,
2 elected officials, and elections officials to seek injunctive or
3 other equitable relief against a covered platform if they make a
4 report pursuant to Section 20515(a) and (i) do not receive a
5 response within 36 hours, (ii) disagree with the platform's
6 response or action taken, or (iii) if the platform does not act
7 within 72 hours. Upon any of those occurrences, AB 2655 authorizes
8 candidates for elective office, elected officials, and elections
9 officials to seek injunctive or other equitable relief against the
10 covered platform to compel (a) the removal of specific content
11 pursuant to Section 20513, (b) the labeling of specific content
12 pursuant to Section 20514, or (c) compliance with the reporting
13 process pursuant to Section 20515(a). There is no action
14 authorized that permits injunctive or equitable relief by any of
15 these parties against covered platforms to compel the platforms to
16 put content back online that was removed improperly or to take down
17 a label of content that was improperly added. **§ 20515 (b)**.

18 45. Second, AB 2655 authorizes the California Attorney
19 General, any California district attorney, and any California city
20 attorney to seek injunctive or other equitable relief against a
21 covered platform to compel (i) the removal of specific content
22 pursuant to Section 20513, (ii) the labeling of specific content
23 pursuant to Section 20514, or (iii) compliance with the reporting
24 process pursuant to Section 20515(a). There is no action

1 authorized that permits injunctive or equitable relief by any of
2 these parties against covered platforms to compel the platforms to
3 put content back online that was removed improperly or to take down
4 a label of content that was improperly added. **§ 20516.**

5 **e. Exemptions**

6 46. AB 2655 exempts certain entities and content from its
7 requirements.

8 47. First, AB 2655 does not apply to regularly published
9 online newspapers, magazines, or other periodicals of general
10 circulation that routinely carry news and commentary of general
11 interest, even if they publish materially deceptive content that a
12 covered platform would be required to remove or label, so long as
13 the publication of the newspaper, magazine, or other periodical
14 contains a "clear disclosure" that the materially deceptive content
15 does not accurately represent any actual event, occurrence,
16 appearance, speech, or expressive conduct. **§ 20519(a).**

17 48. Second, AB 2655 does not apply to broadcasting stations
18 that broadcast prohibited materially deceptive content as part of
19 a "bona fide newscast, news interview, news documentary, commentary
20 of general interest, or on-the-spot coverage of bona fide news
21 events," so long as the broadcast "clearly acknowledges," through
22 content or a disclosure and in a manner that can be "easily heard
23 or read by the average listener or viewer," that the materially
24 deceptive content does not accurately represent any actual event,

1 occurrence, appearance, speech, or expressive conduct.

2 **§ 20519(b)(1)**.

3 49. Third, AB 2655 does not apply to broadcasting stations
4 that are paid to broadcast materially deceptive content if (i) the
5 broadcasting station can show that it has "prohibition and
6 disclaimer requirements that are consistent" with those set forth
7 in the statute and has provided those requirements to each person
8 or entity that purchased the advertisement, or (ii) federal law
9 requires that the broadcasting station air advertisements from
10 legally qualified candidates or prohibits the broadcasting station
11 from censoring or altering the message. **§ 20519(b)(2)**.

12 50. Fourth, AB 2655 does not apply to materially deceptive
13 content that constitutes "satire or parody." **§ 20519(c)**.

14 51. Finally, AB 2655's Removal Requirement does not apply to
15 a candidate for elective office who, during the time period set
16 forth in Section 20513(e), "portrays themselves" as doing or saying
17 something that the candidate did not do or say, if the digital
18 content includes a disclosure stating: "This [image, audio, or
19 video (depending on the type of content at issue)] has been
20 manipulated." **§ 20513(d)**.

21 a. For visual media, the text of the disclosure must be in a
22 size that is "easily readable by the average viewer and no
23 smaller than the largest font size of other text appearing
24 in the visual media." If the visual media includes no other

1 text, the disclosure must be "in a size that is easily
2 readable by the average viewer." For visual media that is
3 video, the disclosure shall appear for the duration of the
4 video. § 20513(d)(2)(A).

5 b. If the media consists of audio only, the disclosure must be
6 read in a "clearly spoken manner and in a pitch that can be
7 easily heard by the average listener, at the beginning of
8 the audio, at the end of the audio, and, if the audio is
9 greater than two minutes in length, interspersed within the
10 audio at intervals of not greater than two minutes each."

11 § 20513(d)(2)(B).

12 **II. AB 2655 Imposes Content-Based Restrictions on Protected**
13 **Political Speech**

14 52. The legislative history of AB 2655 is riddled with
15 numerous references to the First Amendment problems raised by the
16 statute. As the legislative history makes clear, by explicitly
17 targeting derogatory political speech about candidates, AB 2655
18 imposes content-based speech restrictions that, under our
19 Constitution and precedents, must be given the "broadest
20 protection" to maintain a free-flowing marketplace of ideas for
21 the "bringing about of political and social changes desired by the
22 people." See *McIntyre*, 514 U.S. at 346. For instance:

23 53. The Assembly Committee on Judiciary's April 22, 2024
24 analysis acknowledges that

1 [AB 2655] would **interfere with both the expression and**
2 **reception of information based upon its content.**
3 Moreover, **not only does this bill single out particular**
4 **content, the content relates to political candidates and**
5 **elections.** This is potentially problematic because the
6 First Amendment affords the "**broadest protection**" to the
7 "discussion of public issues" and "political expression
8 in order to assure the unfettered interchange of ideas
9 for the bringing about of political and social changes
10 desired by the people." (*McIntyre v Ohio Election*
11 *Commission* (1997) 514 U.S. 334.) It is difficult to
12 imagine any content more related to "political
13 expression" and "discussion of public issues" than
14 content about candidates and elections. **The fact that**
15 **the bill restricts speech that is "materially deceptive"**
16 **or "false" does not matter,** for the U.S. Supreme Court
17 has been unequivocal that the First Amendment protects
18 even "false" speech. **The remedy for false speech is more**
19 **true speech, and false speech tends to call forth true**
20 **speech.** (*United States v Alvarez* (2012) 567 U.S. 709.)

21 Ex. 4 (Assemb. Standing Comm. on Judiciary, Analysis of Assemb.
22 Bill No. 2655, 2023–2024 Reg. Sess. (Cal. Apr. 22, 2024)) at 7.

23 54. The Senate Judiciary Committee's June 28, 2024 analysis
24 states that "**[l]aws that burden political speech are subject to**
25 **strict scrutiny . . . California courts have been clear that**
26 **political expression in the context of campaigns of any manner**
27 **should be given wide latitude[.]**" Ex. 3 at 14 (citing *Citizens*
28 *United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010); *Beilenson*
29 *v. Superior Ct.*, 44 Cal. App. 4th 944, 954–55 (1996)).

30 55. The Assembly Committee on Judiciary's April 22, 2024
31 analysis recognizes that "**[i]n reviewing the law, the Court would**
32 **apply strict scrutiny.**" Ex. 4 at 8.

33 56. California State Assembly member Rebecca Bauer-Kahan,
34 who supported AB 2655, stated, "**I think we all agree that strict**

1 **scrutiny would be applied.**" Ex. 5 (*Defending Democracy from*
2 *Deepfake Deception Act of 2024: Hearing on AB 2655 Before the*
3 *Assemb. Standing Comm. on Judiciary, 2023-2024 Reg. Sess. (Cal.*
4 *Apr. 23, 2024)*) at 6 (statements of Rebecca Bauer-Kahan, Assemb.
5 Member).¹⁰

6 57. The American Civil Liberties Union, which opposed AB
7 2655, explained that the

8 **"novelty of deepfake technology and the speed with which**
9 **it is improving" do not justify relaxing the stringent**
10 **protections afforded to political speech by the First**
11 **Amendment.** The Supreme Court has held that "whatever the
12 challenges of applying the Constitution to ever advancing
13 technology, **'the basic principles of freedom of speech**
14 **and the press, like the First Amendment's command, do**
15 **not vary' when a new and different medium for**
16 **communication appears."** The law has long made clear that
17 the First Amendment was intended to create a **wide berth**
18 **for political speech** because it is the core of our
19 democracy. The First Amendment provides robust
20 protection for speech of all kinds. Speech that is false,
21 confusing, or which presents content that some find
22 abhorrent, nevertheless maintains its constitutional
23 protections as a driver of free discourse. This remains
24 so no matter what the technology used to speak.
Unfortunately, the provisions of AB 2655 as currently
drafted threaten to intrude on those rights and deter
that vital speech.

Ex. 3 at 18-19.

¹⁰ Available at <https://digitaldemocracy.calmatters.org/hearings/257837?t=255&f=afb99536b82e1a34379ebbfd23fe84b1> (4:37-4:40) (last visited Nov. 14, 2024). All exhibit transcripts, which were downloaded directly from the websites, are auto-generated, uncertified, and may contain errors. To that end, all quotations herein are transcribed directly from the videos themselves.

1 **III. AB 2655 Will Result in Censorship of Substantial Amounts of**
2 **Valuable Political Speech**

3 58. Whether content is prohibited under AB 2655 hinges on
4 various undefined terms that render it impossible for covered
5 platforms to comply with the statute in a precise manner. Moreover,
6 because the Enforcement Provisions provide for causes of action
7 seeking to require the covered platforms to remove or label
8 “materially deceptive content” covered by the statute, but do *not*
9 provide for any consequences for improperly removing or labeling
10 content that should not have been removed or labeled, the covered
11 platforms are incentivized under the enforcement regime to err
12 significantly on the side of censorship to avoid the substantial
13 costs associated with defending lawsuits under the statute. And,
14 as AB 2655’s legislative history makes clear, this will result in
15 substantial censorship of content that lies at the heart of the
16 protections provided by the First Amendment – including important
17 commentary that invites vital discussion about election officials
18 and candidates.

19 59. The April 8, 2024 analysis of the Assembly Committee on
20 Elections aptly describes the difficulties that covered platforms
21 will encounter in attempting to comply with AB 2655:

22 [I]n order to determine whether it must block content
23 that *portrays a candidate for election as doing or saying*
24 *something that the candidate did not do or say,*¹¹ the
platform would need to know not only that the person
portrayed in the content was a candidate for office, but

¹¹ Emphasis in original.

1 also the date (or dates) of the election when the
2 candidate will appear on the ballot. Similarly, it would
3 need to determine whether the candidate had actually said
4 or done the thing that the candidate is portrayed as
5 doing. While some of that information will be widely
6 available and well known in some cases (e.g., the
7 identity of major party candidates for President of the
8 United States in presidential general elections and the
9 dates of federal elections), it will be more arcane in
10 other situations. Given the number of elections
11 (including standalone local and special elections) and
12 candidates (including write-in candidates and candidates
13 for local elections in smaller jurisdictions) in
14 California at any given time, **making the determinations
15 at scale about which content must be blocked or labeled
16 likely will be considerably more challenging than making
17 those determinations on a case-by-case basis in a court
18 of law.**

19 Ex. 6 (Assemb. Standing Comm. on Elections, Analysis of Assemb.
20 Bill No. 2655, 2023-2024 Reg. Sess. (Cal. Apr. 8, 2024)) at 8.

21 60. The statute's compressed timeframes for making these
22 determinations – covered platforms must respond to requests to
23 remove content pursuant to the statute “within 36 hours, describing
24 any action taken or not taken” with respect to the content,
§ 20515(a), and take action to remove any such content “no later
than 72 hours after a report is made,” § 20513(b) – only exacerbate
these problems. If these timeframes are not met, an enforcement
action may be filed against the covered platform. See §§ 20515(b),
20516.

21 61. Tracy Rosenberg of Oakland Privacy, which opposed AB
22 2655, similarly recognized that “**technology platform[s] can[not]
23 be expected to know everything that every candidate running for
24 office [has said] . . . So basically we’re using imprecise measures**

1 **to power a potentially broad censorship regime of blocking content.**
2 **And we really can't support that even under the guise of defending**
3 **democracy."** Ex. 7 (*Defending Democracy from Deepfake Deception*
4 *Act of 2024: Hearing on AB 2655 Before the Assemb. Standing Comm.*
5 *on Elections, 2023-2024 Reg. Sess. (Cal. Apr. 10, 2024)*) at 6
6 (statements of Tracy Rosenberg, Oakland Privacy).¹² At a hearing
7 in front of the Senate Committee on Judiciary, Rosenberg added that
8 "[t]his is not what people want." Ex. 8 (*Defending Democracy from*
9 *Deepfake Deception Act of 2024: Hearing on AB 2655 Before the S.*
10 *Standing Comm. on Judiciary, 2023-2024 Reg. Sess. (Cal. July 2,*
11 *2024)*) at 4 (statements of Tracy Rosenberg, Oakland Privacy).¹³

12 62. Difficult questions about the applicability of the
13 statute to any given political advertisement or video will be
14 commonplace and will put covered platforms in a bind; they can
15 either remove or label any content raising close calls (and avoid
16 entirely the risk of liability) or subject themselves to a high
17 likelihood of costly litigation.

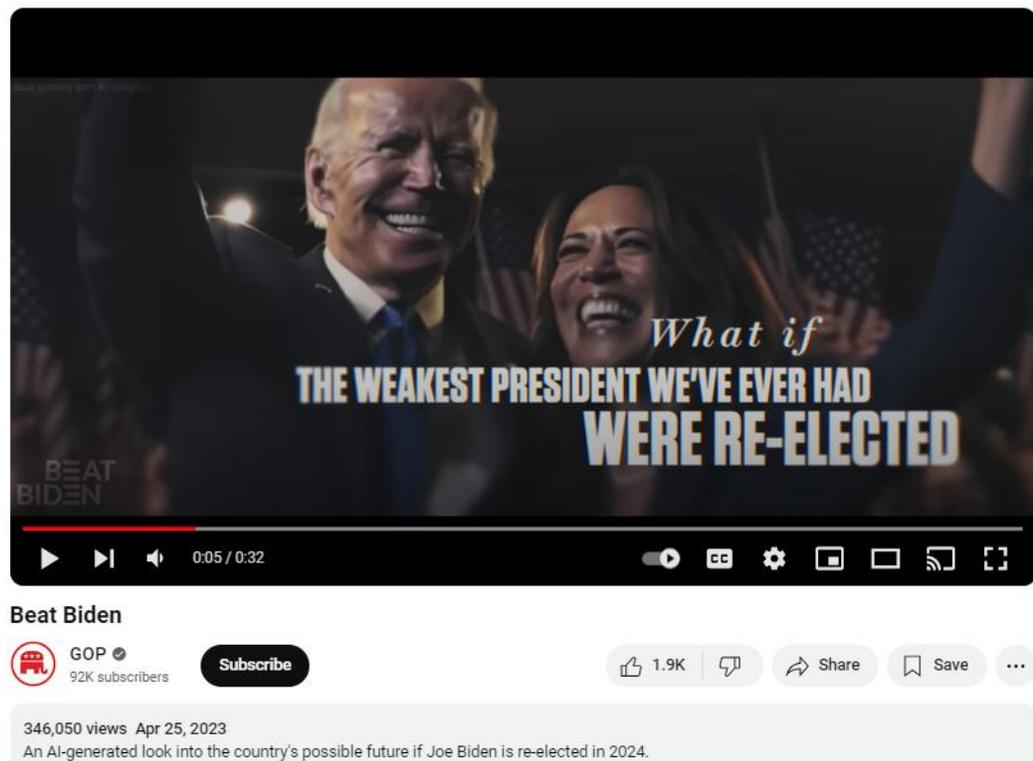
18 63. For instance, on April 25, 2023, the official Republican
19 National Committee YouTube channel posted a video titled "Beat
20 Biden" that, using artificial intelligence, imagined various
21 scenarios that would occur during a second presidential term under

22 _____
23 ¹² Available at
<https://digitaldemocracy.calmatters.org/hearings/257736?t=1986&f=da025f00cb70d1ea6196340ca76df63e> (33:23-34:12) (last visited Nov. 14, 2024).

24 ¹³ Available at
<https://digitaldemocracy.calmatters.org/hearings/258109?t=763&f=7421e586be4213e768ac887bce75f630> (12:54) (last visited Nov. 14, 2024).

1 Joe Biden, including that “international tensions [will] escalate,”
2 “financial systems [will] crumble,” and “crime [will] worsen[].”
3 Ex. 2. As shown below in Figure 1, the video’s description states
4 that it is “[a]n AI-generated look into the country’s possible
5 future if Joe Biden is re-elected in 2024.”

6 **FIGURE 1**



18 64. Does this video portray President Biden “doing or saying
19 something that” he “did not do or say,” and would it have been
20 “reasonably likely” that the video would have “harm[ed] [his]
21 reputation or electoral prospects?” Perhaps not, but this video
22 was cited in AB 2655’s legislative history as an example of how
23 “generative AI can spread misinformation regarding elections with
24 ease,” see Ex. 3 at 7, 9, seemingly indicating that, at least some

1 of the drafters think it would be prohibited under the statute.
2 Given that the video asks "what if the weakest president we've ever
3 had were re-elected," would the video fall within Section
4 20519(c)'s exemption for satire or parody? That is also unclear.
5 Adding to the confusion, moreover, is that the video's caption
6 clearly states that the video was "AI-generated," but this would
7 not bring the video within Section 20513(d)'s safe harbor because
8 it was posted by someone other than President Biden. See § 20513(d)
9 ("[T]his section does not apply to a candidate for elective office
10 who . . . **portrays herself** as doing or saying something that the
11 candidate did not do or say . . . "). Faced with this lack of
12 clarity, and while having to make this type of determination at
13 mass-scale, covered platforms would have no choice but to remove
14 the video or potentially face enforcement actions brought by highly
15 motivated political opponents or government officials.

16 65. Another example further demonstrates AB 2655's
17 unintelligibility. In March 2023, an X user named Eliot Higgins
18 (@EliotHiggins) used artificial intelligence to create a photo
19 depicting Donald Trump being forcefully arrested. Ex. 1; see
20 Figure 2, below. The same questions arise. Do these photos portray
21 Donald Trump "doing or saying something that" he "did not do or
22 say," and would it be "reasonably likely" that the photos would
23 "harm [his] reputation or electoral prospects?" Would these photos
24 be exempted as satire or parody under Section 20519(c)? As long

1 as colorable arguments can be made that this type of political
2 commentary is covered by the statute, covered platforms will be
3 faced with the choice of removing and/or labeling such content
4 (which would ensure no liability for them) or facing costly
5 enforcement actions.

6 **FIGURE 2**



19 66. To take another example, on August 29, 2024, the X user
20 Kamala HQ (@KamalaHQ) posted a five-second video on X where Vice
21 Presidential candidate JD Vance says, "Democrats want to attack
22 Republicans as being anti-union and sometimes the shoe fits."¹⁴ The
23 clip cuts out right before Vance says "but not me, and not Donald

24 ¹⁴ Ex. 9 (Kamala HQ (@KamalaHQ), X (Aug. 29, 2024, 12:57 PM), <https://x.com/KamalaHQ/status/1829201653175636390> (last visited Nov. 14, 2024)).

1 Trump.”¹⁵ How would the statute treat this edited snippet, which
2 arguably misleadingly changes the *meaning* of what JD Vance actually
3 said? AB 2655 defines “materially deceptive content” as “audio or
4 visual media that is digitally created *or modified* . . . such that
5 it would falsely appear to a reasonable person to be an authentic
6 record of the content depicted in the media.” § 20512(i)(1). In
7 the context of highly contested elections, candidates and
8 government officials (such as Defendants) would be incentivized to
9 issue take down requests for videos, like this one, that have even
10 arguably been modified in ways that change their meaning and
11 arguably give a misleading impression of what was actually said.
12 The results would be calamitous. To avoid liability, covered
13 platforms will be incentivized to remove and/or label such content
14 pursuant to the statute. If they fail to do so, they will likely
15 face costly enforcement actions.

16 67. Finally, AB 2655 purports to exempt “[m]aterially
17 deceptive content that constitutes satire or parody,” § 20519(c),
18 but it does not define “satire or parody.” When faced with
19 arguments about whether otherwise “materially deceptive content”
20 encompassed by the statute is “satire” or “parody,” AB 2655
21 incentivizes covered platforms to remove and/or label such content
22 whenever there is a debate about that highly contentious subject.

23 _____
24 ¹⁵ See the full video at Ex. 10 (The International Association of Fire Fighters,
57th IAFF Convention: Sen. JD Vance, YouTube (Aug. 29, 2024),
<https://www.youtube.com/watch?v=EGKTo5j3gl0&t=1081s> (last visited Nov. 14,
2024)).

1 This is because, under the Enforcement Provisions, removal and/or
2 labeling of flagged content results in complete immunity for the
3 covered platforms, while refusing to do so opens them up to
4 potential costly litigation.

5 68. Consider the video posted by Christopher Kohls, a content
6 creator who goes by the name Mr. Reagan, titled *Kamala Harris Ad*
7 *PARODY*, that was reposted on X by Elon Musk.¹⁶ The video uses AI
8 to create an "advertisement" by Vice President Harris that has her
9 saying things that she would never actually say. While some would
10 reasonably consider the video to be satire or parody – including
11 because, in the video, "Harris" states that she is a "diversity
12 hire," who "may not know the first thing about running the country"
13 and is a "deep state puppet" – public statements made by Governor
14 Newsom indicate that he believes that the statute would require
15 the video to be removed from any covered platform. See Ex. 13
16 (Gavin Newsom (@GavinNewsom), X (Sept. 17, 2024, 7:41 PM),
17 <https://x.com/GavinNewsom/status/1836188721663873324> (last
18 visited Nov. 14, 2024)) (stating that Mr Reagan's *Kamala Harris Ad*
19 *PARODY* video "should be illegal" and declaring, the same day that
20 AB 2655 was passed, that he "just signed a bill to make this illegal
21 in the state of California"). Under AB 2655, for covered platforms

23 ¹⁶ See Ex. 11 (Mr Reagan, *Kamala Harris Ad PARODY*, YouTube (July 26, 2024),
24 <https://www.youtube.com/watch?v=sVspeqNnoWM> (last visited Nov. 14, 2024)); see
also Ex. 12 (Elon Musk (@elonmusk), X (July 26, 2024, 7:11 PM),
<https://x.com/elonmusk/status/1816974609637417112> (last visited Nov. 14,
2024)).

1 to protect such speech, they will have to pay dearly by defending
2 their content-moderation decisions in court. And if they remove
3 such content, they will have no costs at all.

4 69. This combination of AB 2655's unintelligible
5 requirements and draconian and one-sided Enforcement Provisions –
6 which protect removal of content from any liability and impose
7 enforcement costs only on decisions not to remove content – will
8 lead to censorship at the direction of the State. Liability
9 regimes, set up by the State, that have a “tendency to inhibit
10 constitutionally protected expression” cannot survive First
11 Amendment scrutiny. *Smith v. California*, 361 U.S. 147, 155 (1959)
12 (striking down, on First Amendment grounds, city ordinance
13 providing for strict liability for possession of books later judged
14 to be obscene).

15 70. AB 2655's legislative history openly acknowledges the
16 serious First Amendment problems raised by the statute's incentive
17 structure and enforcement regime. For instance:

18 71. The Assembly Committee on Judiciary's April 22, 2024
19 analysis acknowledges that, “[c]onfronted with such a restricted
20 timeline and the threat of a civil action . . . **platforms will**
21 **'remove significantly more content, including content that has**
22 **accurate election information and content that is not materially**
23 **deceptive.'**” Ex. 4 at 12.

1 72. The analysis also recognizes that **"with no sure means to**
2 **determine what is 'materially deceptive,' the platforms will err**
3 **on the side of blocking content, thus burdening more speech than**
4 **is necessary."** *Id.* at 8.

5 73. Jose Torres Casillas of TechNet, which opposed AB 2655,
6 explained that AB 2655

7 **[R]equires online platforms to make determinations about**
8 **truth and falsity in an impossible way.** Instances where
9 content or information is clearly true or clearly false
10 are not [the] norm. Far more often, content falls into a
11 middle ground where it requires time and a fact-intensive
12 investigation to determine whether something is true or
13 false. Investigative journalists have challenges with
14 fact checking even the most high profile races or
15 candidates. It is difficult enough for a platform to know
16 whether something is false as it relates to a
17 presidential candidate or a high profile federal race,
18 and this is simply impossible for races lower down on
19 the ticket. **A platform cannot accurately adjudicate**
20 **reports on those types of content and will instead resort**
21 **to over removing information in order to avoid liability**
22 **and the penalties in this bill. Removing information that**
23 **is only suspected of being false is clearly not a good**
24 **outcome.**

Ex. 5 at 5 (statements of Jose Torres Casillas, TechNet).¹⁷

74. Khara Boender of the Computer Communications Industry
Association (CCIA), which also opposed AB 2655, similarly explained
that the content-moderation "tools that are currently available
[to covered platforms] are not always reliable or accurate," and

Because covered platforms are not privy to the intent
and context for which a piece of content is used, they
could **inadvertently over block or over label content.**

¹⁷ Available at <https://digitaldemocracy.calmatters.org/hearings/257837?t=145&f=afb99536b82e1a34379ebbfd23fe84b1> (2:39-3:38) (last visited Nov. 14, 2024).

1 ***This could result in user frustration and suppression of***
2 ***political speech.*** Political speech was at the core of
3 why our First Amendment was established, and it is
4 critical to maintain those protections. ***Responsibility***
5 ***for labeling AI generated election content and liability***
6 ***for the deceptive content should rest with the entity***
7 ***that puts forth such material,*** the one that is most aware
8 of the intent and context for which the content was
 created and shared. . . . And while the bill exempts
 satire and parody, it is unclear who gets to decide what
 constitutes those uses. ***Faced with individual users***
 seeking injunctive relief merely if they disagree with a
 covered platform's decision regarding reported content,
 a service may choose to prohibit all digitally altered
 content, cutting off many valuable and helpful uses.

9 *Id.* at 4–5 (statements of Khara Boender, CCIA).¹⁸

10 75. Boender explained that AB 2655 will have an effect
11 similar to that of the takedown regime under the Digital Millennium
12 Copyright Act (DMCA), which, like AB 2655, provides immunity from
13 liability if material is taken down but potential liability if it
14 is not. See 17 U.S.C. § 512(c)(1). As Boender correctly pointed
15 out, AB 2655 will “***result in platforms being required to block***
16 ***content almost constantly in order to ensure compliance,***” which
17 has been the outcome under the DMCA, where platforms “err in taking
18 down the content lest they face[] liability.” Ex. 14 (*Defending*
19 *Democracy from Deepfake Deception Act of 2024: Hearing on AB 2655*
20 *Before the S. Standing Comm. on Elections and Constitutional*
21 *Amends., 2023–2024 Reg. Sess. (Cal. June 18, 2024))* at 5
22 (statement of Khara Boender, CCIA);¹⁹ see also Ex. 15 (Wendy

23 _____
24 ¹⁸ Available at
 <https://digitaldemocracy.calmatters.org/hearings/257837?t=27&f=afb99536b82e1a34379ebbfd23fe84b1> (0:49–2:09) (last visited Nov. 14, 2024).

¹⁹ Available at

1 Seltzer, *Free Speech Unmoored in Copyright's Safe Harbor: Chilling*
2 *Effects of the DMCA on the First Amendment*, 24 Harv. J.L. & Tech.
3 171 (2010)) (asserting that the DCMA encourages internet service
4 providers to respond to copyright complaints by removing content
5 to ensure immunity from liability, leading to the censorship of
6 protected speech).

7 76. California Assembly Member Bill Essayli, who opposed the
8 bill, recognized that ABB 2655's requirements are "a very sticky
9 thing with the First Amendment and also with asking private
10 companies to be the enforcer," and expressed that a better
11 alternative is "***the Twitter model where they use the community to***
12 ***sort of regulate information on there. . . . where it's the public,***
13 ***it's the crowd sourcing, is kind of doing the moderating,"*** rather
14 ***than "making an individual, company, or person the arbiter of***
15 ***what's disinformation."*** Ex. 7 at 7-8 (statements of Bill Essayli,
16 Assemb. Member).²⁰

23 [https://digitaldemocracy.calmatters.org/hearings/258097?t=87&f=213a711036e0125](https://digitaldemocracy.calmatters.org/hearings/258097?t=87&f=213a711036e0125a7084c8b0dee7c131)
24 [a7084c8b0dee7c131](https://digitaldemocracy.calmatters.org/hearings/258097?t=87&f=213a711036e0125a7084c8b0dee7c131) (1:38-2:15) (last visited Nov. 14, 2024).

²⁰ Available at
[https://digitaldemocracy.calmatters.org/hearings/257736?t=2285&f=da025f00cb70d](https://digitaldemocracy.calmatters.org/hearings/257736?t=2285&f=da025f00cb70d1ea6196340ca76df63e)
[1ea6196340ca76df63e](https://digitaldemocracy.calmatters.org/hearings/257736?t=2285&f=da025f00cb70d1ea6196340ca76df63e) (38:10-38:51) (last visited Nov. 14, 2024).

1 **IV. AB 2655 Impermissibly Substitutes the Government's Judgment**
2 **About Content Moderation for That of the Covered Platforms**

3 77. X already has its own policy for regulating "synthetic"
4 or "manipulated media" on its platform. Under X's Synthetic and
5 Manipulated Media Policy, users "may not share synthetic,
6 manipulated, or out-of-context media that may deceive or confuse
7 people and lead to harm ('misleading media')." In addition, under
8 the policy X "may label posts containing misleading media to help
9 people understand their authenticity and to provide additional
10 context." Ex. 16 (*Synthetic and manipulated media policy, X,*
11 <https://help.x.com/en/rules-and-policies/manipulated-media> (last
12 visited Nov. 14, 2024)) at 3.

13 78. Under X's policy – which is publicly available to all
14 users of the platform as well as to the public generally – X uses
15 the following criteria when considering removal and/or labeling of
16 posts and media:

- 17 • 1. Is the content significantly and deceptively altered,
18 manipulated, or fabricated?
- 19 • 2. Is the content shared in a deceptive manner or with false
20 context?
- 21 • 3. Is the content likely to result in widespread confusion
22 on public issues, impact public safety, or cause serious
23 harm?

24 *See id.*

1 79. In addition, X's policy also makes clear that the
2 following are "generally not in violation of this policy":

- 3 • **Memes or satire**, provided these do not cause
4 significant confusion about the authenticity of the
5 media.
- 6 • **Animations, illustrations, and cartoons**, provided
7 these do not cause significant confusion about the
8 authenticity of the media.
- 9 • **Commentary, reviews, opinion, and/or reactions**.
10 Sharing media with edits that only add commentary,
11 reviews, opinions, or reactions allows for further
12 debate and discourse relating to various issues are
13 not in violation of this policy.
- 14 • **Counterspeech**. We allow for direct responses to
15 misleading information which seek to undermine its
16 impact by correcting the record, amplifying credible
17 information, and educating the wider community about
18 the prevalence and dynamics of misleading information.

19 See *id.* at 6.

20 80. Other covered platforms (e.g., Meta, YouTube, TikTok,
21 and Snapchat) all have their own policies designed to address
22 false, misleading, and/or manipulated media. See Ex. 17 (*How to*
23 *identify AI content on Meta products*, Meta,
24 <https://www.meta.com/help/artificial-intelligence/how-ai->

1 generated-content-is-identified-and-labeled-on-meta/ (last
2 visited Nov. 14, 2024)) at 2 ("Meta requires an AI label when
3 content has photorealistic video or realistic-sounding audio that
4 was digitally created, modified or altered, including with AI.");
5 Ex. 18 (*Disclosing use of altered or synthetic content*, YouTube,
6 <https://support.google.com/youtube/answer/14328491> (last visited
7 Nov. 14, 2024)) at 1 ("To help keep viewers informed about the
8 content they're viewing, we require creators to disclose content
9 that is meaningfully altered or synthetically generated when it
10 seems realistic."); Ex. 19 (*About AI-generated content*, TikTok,
11 [https://support.tiktok.com/en/using-tiktok/creating-videos/ai-](https://support.tiktok.com/en/using-tiktok/creating-videos/ai-generated-content)
12 [generated-content](https://support.tiktok.com/en/using-tiktok/creating-videos/ai-generated-content) (last visited Nov. 14, 2024)) at 5 ("We also
13 require creators to label all AI-generated content where it
14 contains realistic images, audio, and video, as explained in
15 our Community Guidelines."); Ex. 20 (*Generative AI on Snapchat*,
16 Snapchat, [https://help.snapchat.com/hc/en-](https://help.snapchat.com/hc/en-us/articles/25494876770580-Generative-AI-on-Snapchat)
17 [us/articles/25494876770580-Generative-AI-on-Snapchat](https://help.snapchat.com/hc/en-us/articles/25494876770580-Generative-AI-on-Snapchat) (last
18 visited Nov. 14, 2024)) at 1 ("We may indicate that a feature in
19 Snapchat is powered by generative AI in a number of ways . . . When
20 you see these contextual symbols or other indicators in Snapchat,
21 you should know that you are . . . viewing content that has been
22 produced using AI and does not depict real world scenarios.").

23 81. Each platform takes a different approach to these
24 content-moderation decisions, as is the right of each platform

1 under the First Amendment. See *Moody*, 144 S. Ct. at 2394, 2401,
2 2403, 2405, 2409.

3 82. AB 2655 impermissibly substitutes the State's content-
4 moderation policies in this important area for those of the covered
5 platforms' and impermissibly imposes liability on the covered
6 platforms for noncompliance with the State's preferred content-
7 moderation policies. This violates the First Amendment.

8 83. X also currently has a program called "Community Notes"
9 that allow users to flag, among other things, content that they
10 believe needs context, is "materially deceptive" and otherwise
11 covered by the statute, or has been digitally altered. Users are
12 free to provide additional context or information about the content
13 that will appear with the content if enough of the community's
14 "contributors," who otherwise hold diverse points of view, deem
15 the additional commentary to be helpful. And, in recognition of
16 the fast-paced nature of social media, X has accelerated Community
17 Notes and now indicates "Lightning Notes," which start appearing
18 on posts within an hour of being proposed, or within an hour of
19 the post itself going live.

20 84. The State has never explained why X's Synthetic and
21 Manipulated Media Policy, coupled with its "Community Notes"
22 program, are insufficient to address the "materially deceptive
23 content" targeted by AB 2655. In fact, they work very well.

24

1 85. Nor has the State explained why the policies of other
2 covered platforms, coupled with counterspeech from other users of
3 the platforms, are insufficient to address the “materially
4 deceptive content” targeted by AB 2655 in a less speech-restrictive
5 manner.

6 **V. AB 2839 & The Kohls Action**

7 86. On September 17, 2024, the same day Governor Newsom
8 signed AB 2655 into law, he also signed into law AB 2839 (codified
9 at Cal. Elec. Code § 20012), which institutes largely the same
10 requirements as AB 2655 but frames them in terms of potential
11 liability for content creators, rather than for platforms.

12 87. For instance, like AB 2655, AB 2839 prohibits “materially
13 deceptive content” (defined nearly identically across the statutes)
14 that is (i) a “candidate for any federal, state, or local elected
15 office in California portrayed as doing or saying something that
16 the candidate did not do or say if the content is reasonably likely
17 to harm the reputation or electoral prospects of a candidate,”
18 § 20012(b)(1)(A) (*compare with* § 20513(a)(2)(A)); (ii) an
19 “elections official portrayed as doing or saying something in
20 connection with an election in California that the elections
21 official did not do or say if the content is reasonably likely to
22 falsely undermine confidence in the outcome of one or more election
23 contests,” § 20012(b)(1)(B) (*compare with* § 20513(a)(2)(B)); or
24 (iii) an “elected official portrayed as doing or saying something

1 in connection with an election in California that the elected
2 official did not do or say if the content is reasonably likely to
3 harm the reputation or electoral prospects of a candidate or is
4 reasonably likely to falsely undermine confidence in the outcome
5 of one or more election contests," § 20012(b)(1)(C) (*compare with*
6 § 20513(a)(2)(C)).

7 88. As does AB 2655, AB 2839 institutes a *mens rea*
8 requirement. *Compare* § 20012(b)(1) (limiting prohibitions to those
9 that, "with malice, knowingly" violate § 20012(b)) with §§
10 20513(a)(4), 20514(a)(3) (limiting Removal and Labeling
11 Requirements to those that "know[] or act[] with reckless
12 disregard").

13 89. On September 17, 2024, Christopher Kohls, an individual
14 who creates digital content about political figures and who owns
15 the screen name "Mr Reagan" on YouTube, *see supra* ¶ 68, moved for
16 a preliminary injunction in the United States District Court for
17 the Eastern District of California to enjoin the enforcement of AB
18 2839, because it violated (i) the First Amendment of the United
19 States Constitution and Article I, Section 2, of the California
20 Constitution (both facially and as-applied) and (ii) the Fourteenth
21 Amendment of the United States Constitution for vagueness.

22 90. On October 2, 2024, the Honorable John A. Mendez granted
23 the motion, finding that Kohls was likely to succeed in showing
24 that AB 2839 facially violates the First Amendment and Article I,

1 Section 2, of the California Constitution, which is at least as
2 protective, because AB 2839 is a content-based speech restriction
3 that triggers and fails strict scrutiny. *Kohls*, 2024 WL 4374134,
4 at *3-6.

5 91. In *Kohls*, the Court held that AB 2839 triggered
6 constitutional review under strict scrutiny because it
7 “specifically targets speech within political or electoral content
8 pertaining to candidates, electoral officials, and other election
9 communication, making it a content-based regulation that seeks to
10 limit public discourse.” *Id.* at *4.

11 92. The Court held that AB 2839 failed strict scrutiny
12 because it was not the “least restrictive means available for
13 advancing [its] interest,” *id.* (quoting *NetChoice, LLC v. Bonta*,
14 113 F.4th 1101, 1121 (9th Cir. 2024)), since “[o]ther statutory
15 causes of action such as privacy torts, copyright infringement, or
16 defamation already provide recourse to public figures or private
17 individuals whose reputations may be afflicted by artificially
18 altered depictions peddled by satirists or opportunists on the
19 internet,” *id.* at *5.

20 93. The Court also rejected the arguments of defendants
21 Robert Bonta and Shirley Weber that AB 2839 only restricts
22 unprotected defamatory and/or false speech. *See id.* at *3-4. The
23 Court explained that AB 2839 “does not use the word ‘defamation’
24 and by its own definition, extends beyond the legal standard for

1 defamation to include any false or materially deceptive content
2 that is 'reasonably likely' to harm the 'reputation **or** electoral
3 prospects of a candidate,'" *id.* at *3 (quoting § 20012(b))
4 (emphasis in original), and "does much more than punish potential
5 defamatory statements" because it "does not require actual harm
6 and sanctions any digitally manipulated content that is 'reasonably
7 likely' to 'harm' the amorphous 'electoral prospects' of a
8 candidate or elected official," *id.* (quoting §§ 20012(b)(1)(A),
9 (C)).

10 94. The Court further explained that AB 2839 did not restrict
11 speech that was otherwise unprotected as "lies that involve 'some
12 . . . legally cognizable harm'" under *United States v. Alvarez*,
13 567 U.S. 709 (2012), and that AB 2839 imposed "civil penalties for
14 criticisms on the government" that "have no place in our system of
15 governance." *Kohls*, 2024 WL 4374134, at *4.

16 95. All of these arguments as to why AB 2839 fails to satisfy
17 First Amendment scrutiny apply equally to AB 2655.

18 **FIRST CAUSE OF ACTION**

19 **(Declaratory Relief and Preliminary and Permanent Injunctive**
20 **Relief for Violations of the First Amendment of the United States**
21 **Constitution (42 U.S.C. § 1983) and Article I, Section 2, of the**
22 **California Constitution – Facial and As-Applied)**

23 96. X Corp. realleges and incorporates herein by reference
24 each and every allegation set forth above.

97. AB 2655 violates the First Amendment of the United States
Constitution and Article I, Section 2, of the California

1 Constitution by forcing covered platforms like X, under threat of
2 injunctive and other equitable enforcement, to remove and alter
3 certain constitutionally protected election-related content of
4 which the State of California disapproves, and to create a
5 reporting procedure to facilitate such removal and alteration.²¹

6 98. First, AB 2655 imposes a prior restraint on speech, which
7 is the “most serious and the least tolerable infringement on First
8 Amendment rights,” *Stuart*, 427 U.S. at 559, and does so as to
9 speech concerning “public issues and debate on the qualifications
10 of candidates,” to which the “First Amendment affords the **broadest**
11 **protection**” to protect the “unfettered interchange of ideas for
12 the bringing about of political and social changes desired by the
13 people,” *McIntyre*, 514 U.S. at 346.

14 99. AB 2655 imposes a prior restraint on speech because
15 Sections 20515(b) and 20516 provide expedited causes of action
16 under Section 35 of the California Code of Civil Procedure through
17 which political speech will be enjoined before there occurs
18 a “final judicial determination” that the “speech is unprotected.”
19 *Isaksen*, 2005 WL 8176605, at *3 (citing *Vance*, 445 U.S. 308)

21 ²¹ AB 2655 violates Article I, Section 2, of the California Constitution for all
22 of the same reasons that it violates the First Amendment of the United States
23 Constitution. See, e.g., *Kohls*, 2024 WL 4374134, at *6 (“Under current case
24 law, the California state right to freedom of speech is at least as protective
as its federal counterpart.”); *City of Montebello v. Vasquez*, 1 Cal. 5th 409,
421 n.11 (2016) (“[T]he California liberty of speech clause is broader and more
protective than the free speech clause of the First Amendment.”); *Delano Farms*
Co. v. California Table Grape Com., 4 Cal. 5th 1204, 1221 (2018) (“[O]ur case
law interpreting California’s free speech clause has given respectful
consideration to First Amendment case law for its persuasive value.”).

1 (denying motion for preliminary injunction as to already published
2 speech because it would have constituted a prior restraint). Even
3 if a plaintiff demonstrates “through clear and convincing evidence”
4 that the speech meets the requirements of the statute, that showing
5 **does not** amount to proof that the speech is constitutionally
6 unprotected. See *Kohls*, 2024 WL 4374134, at *3-4; see also *Garcia*,
7 786 F.3d at 747 (forcing Google through “takedown order” to remove
8 content previously published on YouTube before a final
9 determination that the content was unprotected amounted to a
10 “classic prior restraint on speech”); *Kelley*, 2023 WL 2347442, at
11 *9 (citing *Alexander*, 509 U.S. at 550; *Garcia*, 786 F.3d at 746-47)
12 (prior restraints “refer either to injunctions that restrict future
13 speech or require takedowns of currently-published speech”);
14 *SolarPark Korea Co.*, 2023 WL 4983159, at *11 (same). AB 2655
15 cannot overcome the “historical and heavy presumption against such
16 restraints.” *Garcia*, 786 F.3d at 747.

17 100. In addition, AB 2655 imposes a prior restraint on speech
18 because (i) nothing in AB 2655 prevents the enjoinder of speech
19 through a temporary restraining order or preliminary injunction
20 alternative to or in addition to suits under Sections 20515(b) and
21 20516; (ii) AB 2655 mandates the immediate removal of speech,
22 without a determination that it is unprotected, so long as it is
23 “substantially similar” to speech “previously removed” under the
24 statute, see § 20513(c); and (iii) the statute acts as an

1 overarching prior restraint by, in its pursuit of eliminating
2 certain speech altogether, imposing a system of censorship that
3 requires platforms to remove the speech within 72 hours absent a
4 final ruling that it is unprotected.

5 101. Second, because AB 2655 imposes content-, viewpoint-,
6 and speaker-based speech restrictions, it triggers constitutional
7 review under strict scrutiny, which it cannot withstand.

8 102. Covered platforms “present[] a curated and ‘edited
9 compilation of [third party] speech,’” which “is itself protected
10 speech.” *Moody*, 144 S. Ct. at 2409 (quoting *Hurley*, 515 U.S. at
11 570); see also *id.* at 2401 (“A private party’s collection of third-
12 party content into a single speech product (the operators’
13 ‘repertoire’ of programming) is itself expressive, and intrusion
14 into that activity must be specially justified under the First
15 Amendment.”). Moreover, the First Amendment protects “both the
16 right to speak freely and the right to refrain from speaking at
17 all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

18 103. By forcing covered platforms to remove and modify
19 particular speech that they may not otherwise remove or modify –
20 i.e., certain election-related “materially deceptive content” –
21 and to create a reporting requirement to facilitate such removal
22 and modification, AB 2655 forces covered platforms to “‘speak a
23 particular message’ that they would not otherwise speak, which
24 constitutes compelled speech that dilutes their message.” *Kohls*,

1 2024 WL 4374134, at *5 (citing *Nat'l Inst. of Fam. & Life Advocs.*
2 *v. Becerra* ("NIFLA"), 585 U.S. 755, 766 (2018); *X Corp. v. Bonta*,
3 116 F.4th 888, 900–02 (9th Cir. 2024)); see also *Washington Post*
4 *v. McManus*, 944 F.3d 506, 511–13, 519 (4th Cir. 2019) (striking
5 down state law that required, in an effort to address foreign
6 interference in U.S. elections, "online platforms," within "48
7 hours of an ad being purchased," to "display somewhere on their
8 site the identity of the purchaser, the individuals exercising
9 control over the purchaser, and the total amount paid for the ad,"
10 and declaring the law "a compendium of traditional First Amendment
11 infirmities" that would "chill speech"); *id.* at 515 ("each banner
12 feature of the Act – the fact that it is content-based, targets
13 political expression, and compels certain speech – poses a real
14 risk of either chilling speech or manipulating the marketplace of
15 ideas"). AB 2655 also impermissibly substitutes the judgment of
16 the government for that of covered platforms as to what constitutes
17 "materially deceptive content" covered by the statute and whether
18 it should remain on their platforms.

19 104. In addition, the underlying content that AB 2655 targets
20 – i.e., the content delineated in §§ 20513(a) and 20514(a) – is
21 itself constitutionally protected. In other words, AB 2655 is not
22 merely a "restriction on knowing falsehoods that fall outside of
23 the category of false speech protected by the First Amendment as
24

1 articulated in” *Alvarez*, 567 U.S. 709. *Kohls*, 2024 WL 4374134, at
2 *3.

3 105. Accordingly, AB 2655 is a content-based law – that is,
4 it “target[s] speech based on its communicative content,” *Reed v.*
5 *Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) – and no exception
6 applies here to the longstanding rule that such regulations trigger
7 strict scrutiny. *NIFLA*, 585 U.S. at 767 (quoting *Brown v.*
8 *Entertainment Merchants Assn.*, 564 U.S. 786, 792 (2011)) (“This
9 Court’s precedents do not permit governments to impose content-
10 based restrictions on speech without persuasive evidence . . . of
11 a long (if heretofore unrecognized) tradition to that effect.”).
12 By “specifically target[ing] speech within political or electoral
13 content pertaining to candidates, electoral officials, and other
14 election communication,” AB 2655 “delineates acceptable and
15 unacceptable content based on its purported truth or falsity and
16 is an archetypal content-based regulation that our constitution
17 considers dubious and subject to strict scrutiny.” *Kohls*, 2024 WL
18 4374134, at *4.

19 106. AB 2655 triggers strict scrutiny for two additional
20 reasons. First, AB 2655 discriminates based on the identity of
21 the speaker; it applies only to certain speakers (i.e., to covered
22 platforms such as X), while exempting others (e.g., certain
23 broadcasting stations, online newspapers, and magazines). See,
24 e.g., *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 571 (2011) (laws

1 that interfere with the speech rights of only certain speakers
2 “justify application of heightened scrutiny” particularly when they
3 are aimed at specific content); see also *Moody*, 144 S. Ct. at 2405
4 (quoting *Tornillo*, 418 U.S. at 258) (“‘The choice of material,’
5 the ‘decisions made [as to] content,’ the ‘treatment of public
6 issues’ – ‘whether fair or unfair’ – all these ‘constitute the
7 exercise of editorial control and judgment.’ . . . **For a paper,
8 and for a platform too.**”). Second, AB 2655 discriminates based on
9 viewpoint, because it permits election-related content that is
10 “‘positive’ about a person,” while restricting such content if it
11 is “derogatory.” *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019)
12 (quoting *Matal v. Tam*, 582 U.S. 218, 249 (2017) (Kennedy, J.,
13 concurring)) (explaining that such differential treatment
14 “reflects the Government’s disapproval of a subset of messages it
15 finds offensive” and “is the essence of viewpoint discrimination”).

16 107. AB 2655 may stand, then, only if the government proves
17 that the statute is “narrowly tailored to serve compelling state
18 interests,” *NIFLA*, 585 U.S. at 766 (quoting *Reed*, 576 U.S. at 163),
19 and no “less restrictive alternative would serve the [g]overnment’s
20 purpose,” *X Corp.*, 116 F.4th at 903 (quoting *United States v.*
21 *Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 813 (2000)).

22 108. AB 2655 fails strict scrutiny because, even if California
23 has a compelling interest in protecting free and fair elections,
24 AB 2655 is not the “least restrictive means available for advancing

1 [that] interest," *Kohls*, 2024 WL 4374134, at *4 (quoting *NetChoice,*
2 *LLC*, 113 F.4th at 1121), and the "First Amendment does not 'permit
3 speech-restrictive measures when the state may remedy the problem
4 by implementing or enforcing laws that do not infringe on speech,'" *id.* (quoting *IMDb.com, Inc. v. Becerra*, 962 F.3d 1111, 1125 (9th
5 Cir. 2020)); see also *Ex parte Stafford*, 2024 WL 4031614, at *4-6
6 (Tex. Crim. App. Sept. 4, 2024) (applying strict scrutiny and
7 striking down on First Amendment grounds Texas statute prohibiting
8 "knowingly represent[ing] in a campaign communication that the
9 communication emanates from a source other than its true source"
10 because there were "narrower means of achieving the State
11 interests," including enforcing an existing statute). Moreover,
12 it is not a "valid, let alone substantial" interest for a state to
13 seek "to correct the mix of speech" that "social-media platforms
14 present." *Moody*, 144 S. Ct. at 2407; see also *id.* at 2409 (quoting
15 *Pac. Gas & Elec. Co.*, 475 U.S. at 20) ("[A] State 'cannot advance
16 some points of view by burdening the expression of others.'").²²

18 109. AB 2655 is facially invalid under the First Amendment
19 because "a substantial number of [the law's] applications are
20 unconstitutional, judged in relation to the statute's plainly
21 legitimate sweep." *Americans for Prosperity Foundation v. Bonta*,
22 594 U.S. 595, 615 (2021). It is also unconstitutional as-applied
23 to X Corp. specifically.

24 _____
²² Nor would AB 2655 survive under any lesser standard of review.

1 110. There is a *bona fide* and actual controversy between X
2 Corp. and Defendants because Defendants are charged with enforcing,
3 and intend to enforce, AB 2655, even though it violates the First
4 Amendment of the United States Constitution and Article I, Section
5 2, of the California Constitution, both facially and as-applied to
6 X Corp.

7 111. X Corp. maintains that AB 2655 is illegal and
8 unconstitutional. Defendants claim otherwise.

9 112. X Corp. requests a judicial determination regarding the
10 validity of AB 2655 to prevent the harm caused by its enactment.
11 Such a determination is both necessary and appropriate to avoid
12 the deprivation of X's and the other covered platforms'
13 constitutional rights, which would occur if AB 2655 is applied to
14 X Corp. or any other covered platform.

15 113. Given the violation of the First Amendment of the United
16 States Constitution and Article I, Section 2, of the California
17 Constitution, X Corp. seeks preliminary and permanent injunctive
18 relief against enforcement of AB 2655. X and the other covered
19 platforms would be irreparably harmed if they were forced to comply
20 with AB 2655's requirements and have no adequate remedy at law.

21
22
23
24

SECOND CAUSE OF ACTION

**(Declaratory Relief and Preliminary and Permanent Injunctive
Relief for Immunity Under and Preemption by 47 U.S.C.
§§ 230(c)(1) and 230(c)(2))**

114. X Corp. realleges and incorporates herein by reference each and every allegation set forth above.

115. 47 U.S.C. §§ 230(c)(1) and 230(c)(2) each directly conflict with, and thus preempt, AB 2655.

116. 47 U.S.C. § 230(e)(3) provides that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”

117. AB 2655 imposes liability on covered platforms by holding them responsible for the content of what is on their platforms, as if they were the publisher of that content. It requires removal and labeling of content that the State disfavors (i.e., “materially deceptive content” that is otherwise covered by the statute) and requires removal and labeling of such content if the covered platforms fail to comply. See §§ 20513–20516.

118. “Liability” under Section 230(e)(3) includes being subjected to the kind of injunctive and other equitable relief authorized by AB 2655’s Enforcement Provisions. See, e.g., *Hassell v. Bird*, 5 Cal. 5th 522, 544–45 (2018) (finding that Section 230 barred “cause[s] of action” directing Yelp to remove defamatory consumer reviews).

119. X is an “interactive computer service,” as that term is defined under 47 U.S.C. § 230(f)(2).

1 **Section 230(c)(1)**

2 120. AB 2655 directly contravenes the immunity provided to
3 the covered platforms by 47 U.S.C. § 230(c)(1), which prohibits
4 treating interactive computer service providers as the “publisher
5 or speaker of any information provided by another information
6 content provider.”

7 121. AB 2655’s Enforcement Provisions violate Section
8 230(c)(1) because they provide causes of action for “injunctive or
9 other equitable relief against” the covered platform to remove or
10 (by adding a disclaimer) alter certain content posted on the
11 platform by its users. See §§ 20515(b), 20516. AB 2655 thus
12 treats covered platforms “as the publisher or speaker of any
13 information provided by another information content provider.” 47
14 U.S.C. § 230(c)(1).

15 122. Section 230(c)(1) bars such liability where the alleged
16 duty violated derives from an entity’s conduct as a “publisher,”
17 including “reviewing, editing, and deciding whether to publish or
18 withdraw from publication third-party content.” See, e.g., *Barnes*
19 *v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009) (finding that
20 Yahoo! was entitled to immunity under Section 230(c)(1) from claims
21 concerning failure to remove offending profile), *as amended* (Sept.
22 28, 2009); *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 744 (9th
23 Cir. 2024) (finding that Meta was immune under Section 230(c)(1)

1 from claims that would require Meta to “actively vet and evaluate
2 third-party ads” in order to remove them).

3 **Section 230(c)(2)(B)**

4 123. AB 2655 also directly contravene the immunity provided
5 to the covered platforms by 47 U.S.C. § 230(c)(2)(B), which
6 prohibits holding interactive computer service providers “liable
7 on account of . . . any action taken to enable or make available
8 to information content providers or others the technical means to
9 restrict access to [objectionable] material.”

10 124. Section 20516 of AB 2655’s Enforcement Provisions
11 violates Section 230(c)(2)(B) because it provides causes of action
12 for “injunctive or other equitable relief against” covered
13 platforms that attempt to comply with the Reporting Requirement,
14 but do so in a manner that, in the government attorney’s view, does
15 not meet the reporting “require[ments]” of “subdivision (a) of
16 Section 20515.” § 20516.

17 125. A covered platform’s attempt to comply with the Reporting
18 Requirement (i.e., creating a reporting mechanism for users to
19 report content covered by the statute) is an action to make
20 available the technical means to restrict access to objectionable
21 content, as contemplated by Section 230(c)(2)(B), and covered
22 platforms will face enforcement if they do not comply to the
23 satisfaction of the California government.

24

1 126. There is a *bona fide* and actual controversy between X
2 Corp. and Defendants because Defendants are charged with enforcing,
3 and intend to enforce, AB 2655, even though such enforcement is
4 precluded and preempted by 47 U.S.C. §§ 230(c)(1) and 230(c)(2).

5 127. X Corp. maintains that AB 2655 is invalid and void as a
6 matter of law. Defendants claim otherwise.

7 128. X Corp. seeks a declaratory judgment that AB 2655 is
8 legally invalid and unenforceable because it is precluded and
9 preempted by 47 U.S.C. §§ 230(c)(1) and 230(c)(2).

10 129. Given the violation of 47 U.S.C. §§ 230(c)(1) and
11 230(c)(2), X Corp. seeks preliminary and permanent injunctive
12 relief against enforcement of AB 2655. X Corp. would be irreparably
13 harmed if it were forced to comply with, or litigate, AB 2655's
14 requirements and has no adequate remedy at law.

15 **THIRD CAUSE OF ACTION**

16 **(Declaratory Relief and Preliminary and Permanent Injunctive**
17 **Relief for Violations of the First and Fourteenth Amendments of**
18 **the United States Constitution (42 U.S.C. § 1983) for Vagueness)**

19 130. X Corp. realleges and incorporates herein by reference
20 each and every allegation set forth above.

21 131. AB 2655 is void for vagueness under the First and
22 Fourteenth Amendments of the U.S. Constitution because the
23 statute's requirements and prohibitions are so unintelligible that
24 X and the other covered platforms cannot understand what the law
prohibits.

1 132. X and the other covered platforms cannot understand what
2 would constitute a “[d]eepfake” under Section 20512(d) because they
3 cannot understand what “would falsely appear to a reasonable person
4 to be an authentic record of the actual speech or conduct of the
5 individual depicted in the media.”

6 133. X and the other covered platforms cannot understand what
7 would constitute “[m]aterially deceptive content” under Section
8 20512(i) because they cannot understand what “would falsely appear
9 to a reasonable person to be an authentic record of the content
10 depicted in the media.”

11 134. X and the other covered platforms cannot understand what
12 would constitute “state-of-the-art techniques” under Sections
13 20513(a), 20513(c), and 20514(a).

14 135. X and the other covered platforms cannot understand what
15 would be “reasonably likely to harm the reputation or electoral
16 prospects of a candidate” under Section 20513(a)(2)(A).

17 136. X and the other covered platforms cannot understand what
18 would be “reasonably likely to falsely undermine confidence in the
19 outcome of one or more election contests” under Sections
20 20513(a)(2)(B) and 20513(a)(2)(C).

21 137. X and the other covered platforms cannot understand what
22 would “influence[] an election in California” under Section
23 20513(a)(2)(C).

24

1 138. X and the other covered platforms cannot understand what
2 would constitute a candidate for elective office, an elections
3 official, or an elected official being “portrayed as doing or
4 saying something” that they “did not do or say” under Sections
5 20513(a)(2)(A), 20513(a)(2)(B), and 20513(a)(2)(C).

6 139. X and the other covered platforms cannot understand what
7 would constitute an “easy-to-understand format” under Section
8 20514(d).

9 140. Due to the vagueness and ambiguity of these terms and
10 phrases, AB 2655 fails to give X and the other covered platforms
11 “a reasonable opportunity to know what” the statute “prohibit[s].”
12 *Hunt v. City of Los Angeles*, 638 F.3d 703, 712 (9th Cir. 2011).

13 141. AB 2655 “impermissibly delegates basic policy matters to
14 policemen, judges, and juries for resolution on an *ad hoc* and
15 subjective basis, with the attendant dangers of arbitrary and
16 discriminatory application.” *Id.*; see also, e.g., *NAACP v. Button*,
17 371 U.S. 415, 432 (1963) (holding that the “standards of
18 permissible statutory vagueness are strict in the area of free
19 expression”).

20 142. There is a *bona fide* and actual controversy between X
21 Corp. and Defendants because Defendants are charged with enforcing,
22 and intend to enforce, AB 2655, even though it violates the First
23 and Fourteenth Amendments of the United States Constitution for
24 vagueness.

1 143. X Corp. maintains that AB 2655 is illegal and
2 unconstitutional. Defendants claim otherwise.

3 144. X Corp. requests a judicial determination regarding the
4 validity of AB 2655 to prevent the harm caused by its enactment.
5 Such a determination is both necessary and appropriate to avoid
6 the deprivation of X's and the other covered platforms'
7 constitutional rights, which would occur if AB 2655 is applied to
8 X or any other covered platform.

9 145. Given the violation of the First and Fourteenth
10 Amendments of the United States for vagueness, X Corp. seeks
11 preliminary and permanent injunctive relief against enforcement of
12 AB 2655. X and the other covered platforms would be irreparably
13 harmed if they were forced to comply with AB 2655's requirements
14 and have no adequate remedy at law.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, X Corp. respectfully requests that this Court
17 enter judgment in X Corp.'s favor and grant the following relief:

18 1. A declaration that AB 2655 violates the First Amendment
19 of the United States Constitution and Article I, Section 2, of the
20 California Constitution, both facially and as-applied to X Corp.;

21 2. A declaration that the injunctive and other equitable
22 relief provided by AB 2655 is precluded and preempted by 47 U.S.C.
23 §§ 230(c)(1) and 230(c)(2) and is therefore null and void and has
24 no legal effect;

1 Dated: November 14, 2024

2
3 By: /s/ William R. Warne
DOWNEY BRAND LLP
4 William R. Warne (SBN 141280)
Meghan M. Baker (SBN 243765)
5 621 Capitol Mall, 18th Floor
Sacramento, CA 95814
6 Phone: 916-444-1000
Facsimile: 916-520-5910

7 CAHILL GORDON & REINDEL LLP
Joel Kurtzberg (*pro hac vice pending*, SBN NY 1758184)
8 Floyd Abrams (*pro hac vice pending*, SBN NY 2835007)
Jason Rozbruch (*pro hac vice pending*, SBN NY 5753637)
9 32 Old Slip
New York, NY 10005
10 Phone: 212-701-3120
Facsimile: 212-269-5420
jkurtzberg@cahill.com