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18  
19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 SAN JOSE DIVISION

22 NETCHOICE, LLC d/b/a NetChoice,

23 Plaintiff,

24 v.

25 ROB BONTA, ATTORNEY GENERAL  
26 OF THE STATE OF CALIFORNIA, in his  
official capacity,

27 Defendant.  
28

Case No. 5:22-cv-08861-BLF

**BRIEF OF AMICUS CURIAE  
COMPUTER & COMMUNICATIONS  
INDUSTRY ASSOCIATION**

Judge: Honorable Beth Labson Freeman  
Action Filed: December 14, 2022

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## INTRODUCTION

1  
2 The Computer & Communications Industry Association (“CCIA”) submits this amicus brief  
3 in support of Plaintiff’s motion for a preliminary injunction. Though cloaked in the garb of  
4 protecting children’s privacy, California’s new Assembly Bill 2273 (“AB 2273”) is in reality a broad  
5 and unconstitutional attempt to restrict speech and control the information that can be provided to  
6 minors. In the past, such laws tended to focus on children’s “moral development,” while today’s  
7 censorship efforts often speak in terms of “well-being” and mental health. But this is a familiar  
8 story. As the Supreme Court explained when it struck down California’s previous attempt to  
9 proscribe speech in the name of protecting children—a law banning the sale or rental of “violent”  
10 video games to minors:

11 In the 1800’s, dime novels depicting crime and “penny dreadfuls” (named for their  
12 price and content) were blamed in some quarters for juvenile delinquency. When  
13 motion pictures came along, they became the villains instead. ... Radio dramas  
14 were next, and then came comic books. Many in the late 1940’s and early 1950’s  
blamed comic books for fostering a “preoccupation with violence and horror”  
among the young, leading to a rising juvenile crime rate. And, of course, after comic  
books came television and music lyrics.

15 *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 797 (2011) (citations omitted). Now California has  
16 turned its attention from video games to the Internet, and enacted a vague and sweeping law that  
17 prohibits online services from presenting a broad range of lawful speech to minors. The First  
18 Amendment invalidates this blunderbuss law, just as it barred similar past efforts to censor online  
19 speech. *See, e.g., Reno v. ACLU*, 521 U.S. 844, 870 (1997).

20 This brief focuses on two central points. *First*, AB 2273 impermissibly restricts online  
21 service providers’ speech. The statute forbids disseminating amorphous and expansive categories  
22 of content—including those that may be “materially detrimental to the physical health, mental  
23 health, or well-being of a child” (that is, anyone under 18 years old)—using a child’s “personal  
24 information” (defined very broadly). To the extent these provisions are even discernable, they  
25 unlawfully restrict core publication and editorial choices of online services. They unduly limit how  
26 online services ranging from search engines, social media websites, news publishers, and libraries  
27 help users quickly find the information most relevant, interesting, or enjoyable to them. And they  
28 do so using key terms that are all but impossible to understand, much less apply in any consistent or



1 predictable way, which will inevitably lead to self-censorship. The First Amendment prohibits  
2 California’s overbroad effort to limit the dissemination of lawful speech to minors.

3 *Second*, AB 2273 impermissibly compels speech. The statute requires online services to  
4 prepare onerous “Data Protection Impact Assessments” about controversial topics and to disclose  
5 those assessments to state law enforcement officials. Nearly every provider of online services is  
6 now obligated to speak about how its “algorithms” and “design features” could “expos[e] children  
7 to harmful, or potentially harmful, content,” “contacts,” or “conduct,” or otherwise “harm children.”  
8 And they must do so separately for every existing feature of their services—and every future feature.  
9 This wildly burdensome compelled-speech mandate, which effectively requires publishers to  
10 condemn their own services and incant the State’s preferred dogma about contentious social and  
11 scientific questions, cannot be squared with the First Amendment. *See, e.g., Volokh v. James*, 2023  
12 WL 1991435 (S.D.N.Y. Feb. 14, 2023) (preliminarily enjoining enforcement of state law requiring  
13 social media platforms to publish policies detailing their response to “hateful content” as  
14 unconstitutional compelled-speech mandate).

## 15 ARGUMENT

### 16 I. AB 2273 VIOLATES SERVICE PROVIDERS’ CORE FIRST AMENDMENT 17 RIGHTS TO DISPLAY AND RECOMMEND CONTENT.

18 Although AB 2273 masquerades as a law designed to protect children’s privacy, it does far  
19 more than regulate how businesses can use children’s personal data. With its broad language,  
20 undefined provisions, and invocations of ill-defined concepts like “detriment,” AB 2273 is in fact  
21 an unprecedented, sweeping regulation of core First Amendment activity: the presentation of lawful  
22 speech to people who have a protected right to receive information without government restriction.

#### 23 A. The First Amendment Protects The Rights Of Online Services To Distribute 24 And Receive Information, And It Applies Even When The Government’s 25 Stated Objective Is Protecting Minors.

26 *Protections for Distributing Speech.* The First Amendment protects “the acts of ‘disclosing’  
27 or ‘publishing’ information.” *Bartnicki v. Vopper*, 532 U.S. 514, 527 (2001). Because “publishing”  
28 and “distributing” materials is “*itself* expressive activity,” publishers and distributors “have  
freestanding rights under the First Amendment to communicate with others through such protected

1 activity.” *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 688 (9th Cir. 2017). “An individual’s right to  
2 speak is implicated when information he or she possesses is subjected to ‘restraints on the way in  
3 which the information might be used’ or disseminated.” *Sorrell v. IMS Health Inc.*, 564 U.S. 552,  
4 568 (2011).

5 As the Supreme Court has explained, therefore, a state’s attempt to inhibit “the publication  
6 of truthful information seldom can satisfy constitutional standards.” *Bartnicki*, 532 U.S. at 527. That  
7 includes efforts to target tools used to distribute speech. In *Bolger v. Youngs Drug Products Corp.*,  
8 463 U.S. 60, 61 (1983), for example, the Court held that a law prohibiting advertisements for  
9 contraceptives from being sent via U.S. Mail violated the First Amendment. A decade later, the  
10 Court struck down a statute prohibiting the distribution of publications through freestanding  
11 newsracks on public property as “an impermissible means of responding to the city’s admittedly  
12 legitimate interests.” *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 424, 431 (1993).

13 Relatedly, the First Amendment protects “the exercise of editorial control and judgment”—  
14 the choices that publishers make about what material to include and how to present it. *Miami Herald*  
15 *Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974); accord *Turner Broad. Sys., Inc. v. FCC*, 512 U.S.  
16 622, 636-37 (1994) (“‘by exercising editorial discretion over which stations or programs to include  
17 in its repertoire,’ cable programmers and operators ‘see[k] to communicate messages on a wide  
18 variety of topics and in a wide variety of formats’” and are protected by the First Amendment)  
19 (citation omitted). As the Court put it in *Hurley v. Irish-American Gay, Lesbian & Bisexual Group*  
20 *of Boston, Inc.*, 515 U.S. 557, 570 (1995), “the presentation of an edited compilation of speech  
21 generated by other persons ... fall[s] squarely within the core of First Amendment security.”

22 ***Protections for Online Distribution and Curation of Speech.*** These bedrock protections  
23 apply fully to the Internet. As the Supreme Court has explained, “[t]hrough the use of chat rooms,  
24 any person with a phone line can become a town crier with a voice that resonates farther than it  
25 could from any soapbox,” and “[t]hrough the use of Web pages, mail exploders, and newsgroups,  
26 the same individual can become a pamphleteer.” *Reno*, 521 U.S. at 870. In short, “the content on  
27 the Internet is as diverse as human thought,” and precedent “provide[s] no basis for qualifying the  
28 level of First Amendment scrutiny that should be applied to this medium.” *Id.* (citation omitted);

1 accord *Clement v. Cal. Dep't of Corr.*, 364 F.3d 1148, 1151 (9th Cir. 2004) (“[The] First  
2 Amendment ... protects material disseminated over the internet.”).

3 Just like newspapers and other publishers, therefore, online services have robust First  
4 Amendment rights to make choices “about what content to include, exclude, moderate, filter, label,  
5 restrict, or promote.” *O’Handley v. Padilla*, 579 F. Supp. 3d 1163, 1186-87 (N.D. Cal. 2022) (citing  
6 *Tornillo*, 418 U.S. at 257-58). These “acts are expressive,” and where a law “directly targets the  
7 way a content provider chooses to deliver, present, or publish news content on matters of public  
8 interest, that action is based on conduct in furtherance of free speech rights.” *Id.* (citation omitted);  
9 accord *NetChoice, LLC v. Att’y Gen., Fla.*, 34 F.4th 1196, 1203 (11th Cir. 2022) (online services  
10 “are engaged in constitutionally protected expressive activity when they moderate and curate the  
11 content that they disseminate on their platforms”) (hereinafter “*Moody*”); *Volokh*, 2023 WL  
12 1991435, at \*6 (same); *Zhang v. Baidu.Com, Inc.*, 10 F. Supp. 3d 433, 439 (S.D.N.Y. 2014) (search  
13 engine’s decision to “select and arrange others’ materials” protected by First Amendment).

14 ***Protections for Receiving Speech.*** The First Amendment protects from government restraint  
15 not only the right to share information, but also the right to access or receive it. The “protection  
16 afforded is to the communication, to its source and to its recipients both.” *Va. State Bd. of Pharmacy*  
17 *v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756-57 (1976) (collecting cases). As the  
18 Supreme Court explained, the choice that the “First Amendment makes for us” is that “information  
19 is not in itself harmful, that people will perceive their own best interests if only they are well enough  
20 informed, and that the best means to that end is to open the channels of communication rather than  
21 to close them.” *Id.* at 770. This “right to receive information and ideas, regardless of their social  
22 worth, is fundamental to our free society.” *Thunder Studios, Inc. v. Kazal*, 13 F.4th 736, 743 (9th  
23 Cir. 2021) (citation omitted), *cert. denied*, 142 S. Ct. 1674 (2022).

24 ***Protections for Minors’ Rights to Receive and Access Speech.*** Importantly, the “values  
25 protected by the First Amendment are no less applicable when government seeks to control the flow  
26 of information to minors.” *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213 (1975). “[O]nly in  
27 relatively narrow and well-defined circumstances may government bar public dissemination of  
28 protected materials to them.” *Id.* Thus, “[e]ven where the protection of children is the object, the

1 constitutional limits on governmental action apply.” *Brown*, 564 U.S. at 804-05; *accord Reno*, 521  
 2 U.S. at 875 (“[T]he mere fact that a statutory regulation of speech was enacted for the important  
 3 purpose of protecting children ... does not foreclose inquiry into its validity.”).

4 Applying these principles, the courts have not hesitated to strike down laws enacted to  
 5 safeguard minors from material that the government believes to be harmful—whether because it is  
 6 violent, sexually explicit, or otherwise thought to interfere with children’s well-being:

- 7 • In *Brown*, the Supreme Court held unconstitutional a California law “prohibit[ing] the  
 8 sale or rental of ‘violent video games’ to minors.” 564 U.S. at 789, 805. To allow a  
 9 legislature to “create a wholly new category of content-based regulation that is  
 10 permissible only for speech directed at children” would be “unprecedented and  
 11 mistaken” because the State does not have “a free-floating power to restrict the ideas to  
 12 which children may be exposed.” *Id.* at 794.
- 13 • In *Reno*, the Supreme Court struck down a federal statute “enacted to protect minors  
 14 from ‘indecent’ and ‘patently offensive’ communications on the Internet.” 521 U.S. at  
 15 849. Similar state laws were invalidated in *American Booksellers Foundation v. Dean*,  
 16 342 F.3d 96 (2d. Cir. 2003), and *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999).
- 17 • In *Erznoznik*, the Supreme Court held that the First Amendment barred a law banning  
 18 the exhibition of movies with nudity in drive-through theaters to “protect[] minors from  
 19 this type of visual influence.” 422 U.S. at 212.
- 20 • In *Powell’s Books, Inc. v. Kroger*, 622 F.3d 1202, 1207 (9th Cir. 2010), the Ninth Circuit  
 21 struck down a law that prohibited providing children with sexually explicit material or  
 22 “visual, verbal, or narrative descriptions of sexual conduct for the purpose of sexually  
 23 arousing the minor or the furnisher.” The court held that “the statutes limit minors’ access  
 24 to expressive material that the state may not legitimately proscribe.” *Id.* at 1215.

25 ***Limitations on Government’s Ability to Suppress Lawful Adult Speech Through Statutes***  
 26 ***Aimed at Protecting Minors.*** These cases also recognize that broad government efforts to limit  
 27 content directed at minors can impermissibly infringe on *adults’* First Amendments rights to access  
 28 and distribute lawful speech. “[T]he government may not ‘reduce the adult population ... to reading  
 only what is fit for children.’” *Bolger*, 463 U.S. at 73 (citation omitted). In *Sable Communications*  
*of California, Inc. v. FCC*, for example, the Court held that a statute banning indecent commercial  
 telephone communications violated the First Amendment, notwithstanding the government’s  
 contention that it was necessary to protect children—an occasion of “burning the house to roast the  
 pig.” 492 U.S. 115, 131 (1989) (citation omitted); *accord Powell’s Books*, 622 F.3d at 1215 (“the

1 statutes also restrict adults from providing minors with materials that are entirely anodyne for First  
2 Amendment purposes”).

3       These principles have repeatedly been applied to invalidate laws aimed at protecting children  
4 from potentially harmful communications on the Internet. In *Reno*, the Supreme Court held that “the  
5 CDA lacks the precision that the First Amendment requires when a statute regulates the content of  
6 speech” because “[i]n order to deny minors access to potentially harmful speech, the CDA  
7 effectively suppresses a large amount of speech that adults have a constitutional right to receive and  
8 to address to one another.” 521 U.S. at 874; *accord ACLU v. Ashcroft*, 322 F.3d 240, 260-61 (3d  
9 Cir. 2003) (statute limiting dissemination of “material harmful to minors” was an “unnecessarily  
10 broad suppression of speech addressed to adults”) (citation omitted); *Dean*, 342 F.3d at 101-02 (state  
11 law restricting online “access to material considered harmful to minors” unconstitutionally  
12 “burden[ed] adult expression”); *Johnson*, 194 F.3d at 1152, 1160 (statute regulating  
13 “[d]issemination of material that is harmful to a minor by computer” unconstitutionally “burden[ed]  
14 otherwise protected adult communication on the Internet”).

15       **B. AB 2273 Will Infringe Bedrock First Amendment Protections Because It**  
16       **Regulates How A Wide Variety Of Lawful Speech Can Be Presented And**  
17       **Disseminated On The Internet.**

18       AB 2273 directly encroaches upon these bedrock First Amendment principles. The statute  
19 effectively forbids a wide range of protected online communications or makes those  
20 communications fraught with legal peril. In the name of children’s privacy or protecting minors  
21 from an undefined array of supposedly “harmful” content, AB 2273 significantly limits online  
22 service providers’ editorial judgments when it comes to displaying, disseminating, and  
23 recommending speech, which has the effect of censoring lawful speech that minors and adults alike  
24 may wish to share and access.

25       1.     The “Material Detriment” Provision Broadly Prohibits Dissemination Of  
26             Lawful Content To Those Under 18.

27       We focus here on AB 2273 section 31(b)(1), which forbids providers of any online “service,  
28 product or feature” from using “the personal information of any child in a way that the business  
knows, or has reason to know, is materially detrimental to the physical health, mental health, or

1 well-being of a child.” Cal. Civ. Code § 1798.99.31(b)(1). When this provision is read together with  
2 the statutory definitions, it is plain that it aims at speech.

3 AB 2273 applies to virtually every online service—including search engines, online  
4 publications (including newspapers, magazines, and blogs), social media platforms, and the  
5 publishers of books, photographs, videos, music, games, recipes, podcasts, and countless other  
6 forms of speech. *Id.* § 1798.99.30(b)(5) (exempting only “broadband internet access service[s],”  
7 “telecommunications service[s],” and tangible product delivery services). And though it ostensibly  
8 limits its application to services “likely to be accessed by children,” *id.* § 1798.99.31(a), that phrase  
9 includes services “routinely accessed by a significant number of children,” “substantially similar”  
10 services, services where children are a “significant amount of the audience,” and even services with  
11 “design elements ... of interest to children.” *Id.* § 1798.99.30(b)(4)(B), (D)-(F). None of these terms  
12 are defined, but virtually any website or online service (save for those offering pornography,  
13 gambling, or the like) could arguably meet those criteria.

14 “[P]ersonal information” is likewise capacious, defined as “information that identifies,  
15 relates to, describes, *is reasonably capable of being associated with, or could reasonably be linked,*  
16 directly or indirectly, with a particular consumer or household.” Cal. Civ. Code § 1798.140(v)(1)  
17 (emphasis added); *see also id.* § 1798.99.30(a) (incorporating § 1798.140). That includes a person’s  
18 “[IP] address,” “email address,” “account name,” “online identifier,” and “internet or other  
19 electronic network activity information,” including “browsing history, search history, and  
20 information regarding a consumer’s interaction with an internet website application.” *Id.*  
21 § 1798.140(v)(1)(A), (F). This expansive provision does not simply cover the use of a child’s private  
22 information for targeted advertising or the sale of that information to data aggregators. It sweeps  
23 well beyond that to regulate the use of a wide range of information, such as IP address and browsing  
24 and search history, to deliver tailored information for almost any purpose.

25 Displaying content on the Internet necessarily requires the “use” of a person’s IP address:  
26 any time someone visits a website, their browser uses their IP address to receive and display the  
27 content on the website, be it search results, an online newspaper, or a photographer’s online  
28 portfolio. *See, e.g., Rus Shuler, How Does the Internet Work?* (2002),

1 <https://web.stanford.edu/class/msande91si/www-spr04/readings/week1/InternetWhitepaper.htm>.  
2 Likewise, efforts to tailor information to users based on where they are located—for example, search  
3 results for nearby restaurants—typically rely on IP addresses. *See, e.g., Dan Rafter, What Is an IP*  
4 *Address? A Definition + How to Find It*, NortonLifeLock (July 25, 2022),  
5 <https://us.norton.com/blog/privacy/what-is-an-ip-address>. Similarly, when someone is logged into  
6 their account on a particular online platform—be it a video streaming service, a social media  
7 platform, or an online store—the service often uses their email address, account name, or browsing  
8 history to show them personalized content, such as content they have saved, content they have  
9 searched for in the past, or content similar to other content they have viewed. *See, e.g., Microsoft*  
10 *Edge Browsing Activity for Personalized Advertising and Experiences* (2023),  
11 [https://support.microsoft.com/en-us/microsoft-edge/microsoft-edge-browsing-activity-for-](https://support.microsoft.com/en-us/microsoft-edge/microsoft-edge-browsing-activity-for-personalized-advertising-and-experiences-37aa831e-6372-238e-f33f-7cd3f0e53679)  
12 [personalized-advertising-and-experiences-37aa831e-6372-238e-f33f-7cd3f0e53679](https://support.microsoft.com/en-us/microsoft-edge/microsoft-edge-browsing-activity-for-personalized-advertising-and-experiences-37aa831e-6372-238e-f33f-7cd3f0e53679). In short,  
13 virtually any effort to tailor the delivery or presentation of online content to a given user—whether  
14 by a search engine, social media service, website, mobile application, news or entertainment service,  
15 or streaming video or music provider—is implicated by this provision.

16 To be sure, the provision applies only where the provider knows “or has reason to know”  
17 that the display “is materially detrimental to the physical health, mental health, or well-being of a  
18 child.” Cal. Civ. Code § 1798.99.31(b)(1). But this is not a meaningful limitation for several reasons.  
19 *First*, the language of the statute suggests that the relevant “detriment” is not to the specific child  
20 presented with the content, but rather “a child.” In other words, this provision may be triggered if  
21 the material or display at issue is potentially detrimental to *any* child anywhere. Even setting aside  
22 that different parents, guardians, and others have widely varying views on whether and when online  
23 content (itself widely varied) is “detrimental” to children, the statute effectively allows the potential  
24 that one child might suffer a detriment to set policy and restrict the speech available to all children.

25 *Second*, the statute defines “children” as anyone under 18, so if the material might be deemed  
26 detrimental to a 5-year-old, the statute would apply even if the content were displayed to a 17-year-  
27 old, based on information associated with that 17-year-old. The generic child referenced in this  
28 provision may well be the youngest and most vulnerable minor imaginable, even if the business has

1 not used any information associated with such a child to display content. That is all the more  
 2 incongruous, given that AB 2273 departs from the federal definition of “child” as “an individual  
 3 under the age of 13” in the Children’s Online Privacy Protection Act. 15 U.S.C. § 6501(1). That  
 4 mismatch highlights not only the novelty of California’s approach, but also its lack of nuance and  
 5 the massive new burdens it imposes—both on providers and teenagers, whose right to receive  
 6 potentially lawful information without government restraint will now be substantially curtailed.

7 *Third*, the provision is not limited to physical health or even actual diagnosable mental health  
 8 outcomes. It also extends to the vague and totally undefined concept of “well-being.” What material  
 9 might be considered “detrimental” (also an undefined term) to the “well-being” of a minor is  
 10 anyone’s guess, meaning under AB 2273 “regulated parties [do not] know what is required of them  
 11 so they may act accordingly.” *Butcher v. Knudsen*, 38 F.4th 1163, 1168 (9th Cir. 2022) (citation  
 12 omitted). And while a service provider “might perhaps make some educated guesses as to the  
 13 meaning of these regulations, one could never be confident that the [state] would agree.” *Bullfrog*  
 14 *Films, Inc. v. Wick*, 847 F.2d 502, 513 (9th Cir. 1988). Thus, these “[u]ncertain meanings” will  
 15 “inevitably lead citizens to ‘steer far wide of the unlawful zone,’” *Grayned v. City of Rockford*, 408  
 16 U.S. 104, 109 (1972), leading to self-censorship that will suffocate the “delicate,” “vulnerable,” and  
 17 “supremely precious” First Amendment freedoms that “need breathing space to survive,” *NAACP*  
 18 *v. Button*, 371 U.S. 415, 433 (1963). Perhaps the only thing that is clear is that AB 2273 has no  
 19 exception for material that is newsworthy, culturally or politically relevant, educational, or of artistic  
 20 or scientific value. So long as a personalized display of information might be deemed contrary to  
 21 the “well-being” of someone under 18, it is flatly forbidden by California law.

## 22 2. The “Material Detriment” Provision Violates The First Amendment.

23 To put it mildly, the reach of this restriction is immense, potentially proscribing the display  
 24 to any minor of all manner of entirely lawful—and indeed socially valuable—speech. *Cf. Grayned*,  
 25 408 U.S. at 115 (a statute is unconstitutionally overbroad if it “sweeps within its prohibitions what  
 26 may not be punished under the First ... Amendment[.]”). Examples abound:

- 27 ● An online news service displays articles to minors, similar to stories they have previously  
 28 viewed, about recent school shootings, leading some minors to feel anxious, depressed,  
 and afraid.



- 1           ● An Internet search engine provides search results, based in part on a minor user’s IP  
2 address, about local skate parks where children frequently get injured.
- 3           ● An online newsletter uses a minor’s email to send articles about the existence of God  
4 that certain religious or secular parents or their children consider to be harmful to their  
5 well-being because they cause minors to question their beliefs.
- 6           ● A photography-sharing website uses a minor’s account name to display images from  
7 users that minor has chosen to follow, which include photographs of skinny models that  
8 might encourage minors to have unhealthy body images.
- 9           ● A music streaming service suggests, based on other music a 17-year-old has streamed  
10 on the service, a playlist including songs with profanity or references to violence.
- 11           ● An online educational platform offers a high-school student content about the  
12 transatlantic slave trade that causes some students to feel traumatized.
- 13           ● Yelp uses IP address information to display to teenagers favorable reviews of fast food  
14 restaurants notorious for deep-fried foods and heavy use of saturated fats.
- 15           ● Based on the user’s prior interactions with the service, a podcasting platform suggests  
16 that a 16-year-old listen to a podcast in which survivors of sexual or violent assaults tell  
17 their stories, which might be traumatizing for some listeners.
- 18           ● Based on other videos they had watched about global affairs, YouTube recommends  
19 videos about the war in Ukraine to a 17-year-old, but those videos include depictions of  
20 bombings and death that could negatively affect an 8-year-old.
- 21           ● A popular online video game service displays lists of games that 14-year-old users have  
22 requested through their accounts, but the service might have reason to know that playing  
23 those games could arguably be detrimental to the health or well-being of a child who  
24 should be doing their homework or getting more exercise.

25           As these examples confirm, AB 2273 strikes at the heart of the First Amendment, with none  
26 of the “narrow specificity” or “[p]recision of regulation” that is required “in an area so closely  
27 touching our most precious freedoms.” *Button*, 371 U.S. at 433, 438. A statute that prohibited  
28 knowingly distributing to minors material that the government deemed “detrimental” to their well-  
being would plainly be unconstitutional. In *Butler v. State of Michigan*, 352 U.S. 380, 383 (1957),  
for example, the Supreme Court struck down a law banning distribution of materials found “to have  
a potentially deleterious influence upon youth.” Likewise, the government could not bar magazines  
aimed at teenagers (say, *Teen Vogue*) from putting articles on the cover that they have reason to

1 know could be harmful to minors, or prohibit bookstores or libraries from recommending “harmful”  
2 books to minors. Though cloaked in the language of “personal information” and privacy, AB 2273  
3 effectively does the same thing. The statute sweeps in large swaths of lawful speech that could not  
4 be directly forbidden by the government, that minors have every right to view, and that publishers  
5 equally have a right to make available to them.

6        Couching such a law as a regulation of how “personal information” can be used makes no  
7 difference; the State cannot use formal labels to circumvent the First Amendment’s prohibitions on  
8 proscribing protected speech. While California may safeguard children’s privacy through an  
9 appropriately tailored law, it cannot use privacy as a stalking horse to prohibit core acts of speech—  
10 disseminating and presenting lawful information to the public, including minors, who want it or may  
11 find it useful. *Cf. Sorrell*, 564 U.S. at 580 (“Privacy is a concept too integral to the person and a  
12 right too essential to freedom to allow its manipulation to support just those ideas the government  
13 prefers.”); *Tornillo*, 418 U.S. at 256 (“Governmental restraint on publishing need not fall into  
14 familiar or traditional patterns to be subject to constitutional limitations on governmental powers.”).

15        AB 2273’s coverage plainly is not limited to material that is “obscene as to youths” or  
16 “subject to some other legitimate proscription.” *Erznoznik*, 422 U.S. at 213; *accord Brown*, 564 U.S.  
17 at 794-95. Instead, California apparently “wishes to create a wholly new category of content-based  
18 regulation that is permissible only for speech directed at children” (*Brown*, 564 U.S. at 794)—speech  
19 that someone may deem “detrimental” to the “well-being” of children. That is just as “unprecedented  
20 and mistaken” as it was in *Brown*, which reaffirmed that, outside narrow categories, “speech ...  
21 cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks  
22 unsuitable for them.” *Id.* at 795 (quoting *Erznoznik*, 422 U.S. at 213-14); *accord Powell’s Books*,  
23 622 F.3d at 1213-15 (statutes restricting minors from accessing material not legally “obscene” or  
24 designed to “predominantly appeal[] to minors’ prurient interest” violated First Amendment because  
25 they “limit minors’ access to expressive material that the state may not legitimately proscribe”).

26        In short, the government does not have “a free-floating power to restrict the ideas to which  
27 children may be exposed,” *Brown*, 564 U.S. at 794—and using the vague language of “detriment”  
28 cannot change that. In fact, it makes it worse. By offering no clear or fixed notion of what material

1 might be “detrimental” to minors, the statute exposes virtually all online content to potential  
 2 proscription. Such vagueness “raises special First Amendment concerns because of its obvious  
 3 chilling effect on free speech,” *Reno*, 521 U.S. at 871-72 (citing *Gentile v. State Bar of Nev.*, 501  
 4 U.S. 1030, 1048-51 (1991)), as it “enable[s] ... officials to ‘act in an arbitrary and discriminatory  
 5 manner’ ... and still be completely within the scope of” the law. *Bullfrog Films*, 847 F.2d at 514.  
 6 The State also overlooks that the basic “point of all speech protection” is to “shield just those choices  
 7 of content that in someone’s eyes are misguided, or even hurtful.” *Hurley*, 515 U.S. at 574; *accord*  
 8 *Snyder v. Phelps*, 562 U.S. 443, 461 (2011) (“even hurtful speech on public issues to ensure that we  
 9 do not stifle public debate” is protected). The First Amendment does not countenance California’s  
 10 latest effort to suppress legitimate speech in the name of protecting children.

## 11 **II. AB 2273 COMPELS SPEECH IN VIOLATION OF THE FIRST AMENDMENT.**

12 In addition to provisions that operate as unconstitutional *restrictions* on protected speech,  
 13 AB 2273 also *compels* speech in violation of the First Amendment.

### 14 **A. The Data Protection Impact Assessment Requirement Forces Service 15 Providers To Speak In Ways They Would Not Otherwise Speak.**

16 AB 2273 imposes a new compelled speech regime: the statute mandates that online service  
 17 providers “complete a Data Protection Impact Assessment [(DPIA)] for any online service, product,  
 18 or feature likely to be accessed by children.” Cal. Civ. Code § 1798.99.31(a)(1). A DPIA is “a  
 19 systematic survey to assess and mitigate risks that arise from the data management practices of the  
 20 business to children.” *Id.* § 1798.99.30(a)(2). Service providers must complete a DPIA for both *any*  
 21 *existing* service, product, or feature, *id.* § 1798.99.33(a), and *any new* service, product, or feature,  
 22 before launching it to the public, *id.* § 1798.99.31(a)(1)(A) (emphases added). DPIAs must address  
 23 numerous topics, including whether the design of the service, product, or feature “could harm  
 24 children, including by exposing children to harmful, or potentially harmful, content,” “contacts,” or  
 25 “conduct”; whether the service, product, or feature uses “algorithms” that could harm children; and  
 26 “[w]hether and how” the service, product, or feature “uses system design features to increase,  
 27 sustain, or extend” children’s “use of” the service, product, or feature. *Id.* § 1798.99.31(a)(1)(B).  
 28 And confirming that AB 2273 is a serious attack on dissemination of speech, the DPIA provisions

1 further require each provider to “[d]ocument any risk of material detriment to children” that their  
2 services or features may entail and “create a timed plan to mitigate or eliminate the risk” before the  
3 feature can be accessed by anyone under 18. *Id.* § 1798.99.31(a)(2). Service providers must make  
4 DPIAs available to the Attorney General within five days upon request. *Id.* § 1798.99.31(a)(4)(A).

5 The DPIA requirement plainly “force[s] elements of civil society to speak when they  
6 otherwise would have refrained.” *Wash. Post v. McManus*, 944 F.3d 506, 514 (4th Cir. 2019). That  
7 triggers constitutional scrutiny, as the First Amendment covers “the decision of both what to say  
8 and what *not* to say.” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988).  
9 “By compelling [individuals] to speak a particular message,” the state necessarily “alters the content  
10 of [their] speech.” *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2377 (2018)  
11 (hereinafter “*NIFLA*”) (quoting *Riley*, 487 U.S. at 795). Compelled speech requirements are  
12 therefore “content-based regulation[s] of speech” that are “subject to exacting First Amendment  
13 scrutiny.” *Riley*, 487 U.S. at 795, 798. Whether they involve “compelled statements of opinion” or  
14 “compelled statements of ‘fact,’” such regulations are “presumptively unconstitutional,” *NIFLA*,  
15 138 S. Ct. at 2371, as both “form[s] of compulsion burden[] protected speech,” *Riley*, 487 U.S. at  
16 797-98. Either way, the First Amendment directs that “government not dictate the content of speech  
17 absent compelling necessity, and then, only by means precisely tailored.” *Id.* at 800.

18 A recent case applied these principles in preliminarily enjoining a state law similarly  
19 compelling the speech of online services. *See Volokh*, 2023 WL 1991435. In *Volokh*, the court  
20 considered a New York law that “compel[led] social media networks to speak about the contours of  
21 hate speech,” specifically by “requir[ing] that social media networks devise and implement a written  
22 policy—*i.e.*, speech” that “detail[ed] how the network w[ould] respond to a complaint of hateful  
23 content.” *Id.* at \*1, \*5. In crafting their policies, the online services were “force[d] ... to weigh in  
24 on the debate about the contours of hate speech when they may otherwise choose not to speak.” *Id.*  
25 at \*6. “Even though the Hateful Conduct Law ostensibly does not dictate what a social media  
26 website’s response to a complaint must be and does not even require that the networks respond to  
27 any complaints or take down offensive material, the dissemination of a policy about ‘hateful  
28 conduct’ forces Plaintiffs to publish a message with which they disagree.” *Id.* at \*7. That speech

1 mandate triggered strict scrutiny, which the law failed. *Id.* at \*8; *see also, e.g., McManus*, 944 F.3d  
2 at 510 (invalidating Virginia law that required online platforms “to publish on their websites, as well  
3 as retain for state inspection, certain information about the political ads they decide to carry”).

4         The DPIA requirement suffers from similar First Amendment problems. Any entity offering  
5 an online service, product, or feature must now prepare an onerous written account of how it “could  
6 harm children including by exposing children to harmful, or potentially harmful, content.” Cal. Civ.  
7 Code § 1798.99.31(a)(1)(B)(i). The law thus requires that online service providers “devise and  
8 implement a written policy—*i.e.*, speech.” *Volokh*, 2023 WL 1991435, at \*5. And they must do so  
9 even if the provider believes that its service actually *benefits* children or *protects* them from harm—  
10 and even if it fundamentally disagrees with the idea that exposing children to a wide variety of  
11 lawful speech is harmful. Like the Hateful Conduct Law in *Volokh*, therefore, AB 2273 requires  
12 services “to endorse the state’s message” about “harmful content”; a service that “devises its own  
13 definition of [‘harmful content’] would risk being in violation of the law and thus subject to its  
14 enforcement provision.” *Volokh*, 2023 WL 1991436, at \*5. “Clearly, the law, at a minimum,  
15 compels Plaintiffs to speak” about harmful content, and thereby “forces them to weigh in on the  
16 debate about the contours of [harmful] speech when they may otherwise choose not to speak. In  
17 other words, the law deprives Plaintiffs of their right to communicate freely on matters of public  
18 concern without state coercion.” *Id.* at \*6 (citation and internal quotation marks omitted).

19         It is actually worse than that. Service providers here are effectively forced by the State to  
20 confess their alleged and potential sins, to effectively endorse the State’s underlying assumption that  
21 lurking everywhere is “harmful, or potentially harmful, content” and “conduct” that children might  
22 be allowed to “witness, participate in, or be subject to.” Cal. Civ. Code § 1798.99.31(a)(1)(B)(i),  
23 (ii). This mandate is no less an impermissible compelled-speech provision than a requirement that  
24 newspapers or television news networks prepare regular written statements describing what  
25 information that they disseminate might be harmful or potentially harmful to minors and what efforts  
26 they are making to mitigate those harms in the way they publish or broadcast content. *Cf. Tornillo*,  
27 418 U.S. at 256 (any “compulsion” on newspapers “to publish that which reason tells them should  
28 not be published is unconstitutional”).

1 To be sure, providers required to create DPIAs are not obligated to post them to the world at  
2 large. But that does not save the statute, because AB 2273 requires covered entities to “make the  
3 [DPIA] available, within five business days, to the Attorney General pursuant to a written request.”  
4 Cal. Civ. Code § 1798.99.31(a)(4). The law thus compels entities to speak and then to disseminate  
5 that speech to the state’s chief law enforcement officer. In the related context of compelled  
6 disclosure laws (which compel private entities to reveal information about their members or donors),  
7 the Supreme Court has made clear that such “requirements can chill association ‘even if there is no  
8 disclosure to the general public.’” *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2388 (2021)  
9 (quoting *Shelton v. Tucker*, 364 U.S. 479, 486 (1960)).

10 One reason is that, in reality, it is highly likely that the DPIAs will at some point become  
11 public. For one thing, as the Supreme Court noted in *Americans for Prosperity*, California’s  
12 assurances of confidentiality “are not worth much.” 141 S. Ct. at 2381 n.\*; *see also id.* at 2381  
13 (“During the course of litigation, the Foundation identified nearly 2,000 confidential Schedule Bs  
14 that had been inadvertently posted to the Attorney General’s website ... ‘the amount of careless  
15 mistakes made by the Attorney General’s Registry is shocking.’”). For another, even assuming no  
16 fault by California, there is no protection against producing the DPIAs in litigation; Congress could  
17 demand them; other states (or countries) could decide that they are not confidential. Even though  
18 this law does not explicitly require that online services post the DPIAs publicly, by commanding  
19 their creation, it effectuates their exposure.

20 As in *Volokh*, therefore, the DPIA provisions are content-based regulations that trigger, and  
21 cannot survive, strict scrutiny. 2023 WL 1991435, at \*8-9; *accord Riley*, 487 U.S. at 795, 798-800;  
22 Notice of Motion and Motion for Preliminary Injunction, *NetChoice, LLC v. Bonta*, No. 5:22-cv-  
23 08861-BLF (N.D. Cal. Feb. 17, 2023), ECF No. 29. And because even trying to comply with these  
24 requirements would necessitate immediate action by providers to assess their services along the lines  
25 demanded by the statute, the Court should not hesitate to act now, especially when the law targets  
26 such an important set of First Amendment protections.

1           **B.       The DPIA Requirement Cannot Be Saved As A Routine Commercial**  
 2           **Disclosure Requirement Under *Zauderer*.**

3           It is no answer for the State to rely on *Zauderer v. Office of Disciplinary Counsel of the*  
 4 *Superior Court*, 471 U.S. 626 (1985), to argue that the DPIA requirements are subject to something  
 5 less than strict scrutiny. “*Zauderer* provides the appropriate framework to analyze a First  
 6 Amendment claim involving compelled commercial speech” where the required “notice is (1) purely  
 7 factual, (2) noncontroversial, and (3) not unjustified or unduly burdensome.” *Am. Beverage Ass’n*  
 8 *v. City & Cnty. of S.F.*, 916 F.3d 749, 756 (9th Cir. 2019) (en banc); accord *NIFLA*, 138 S. Ct. at  
 9 237 (explaining that *Zauderer* applied more deferential review to compelled-speech requirements  
 10 that “governed only ‘commercial advertising’ and required the disclosure of ‘purely factual and  
 11 uncontroversial information’”). That standard does not apply here, for a host of reasons.

12           1.       DPIAs Do Not Regulate Commercial Speech.

13           First, and most importantly, the DPIAs do not regulate purely “commercial speech,” which  
 14 the Supreme Court has defined as “speech that does no more than propose a commercial  
 15 transaction.” *Harris v. Quinn*, 573 U.S. 616, 648 (2014) (citation omitted). “If speech is not ‘purely  
 16 commercial’—that is, if it does more than propose a commercial transaction—then it is entitled to  
 17 full First Amendment protection.” *Nissan Motor Co. v. Nissan Comput. Corp.*, 378 F.3d 1002, 1017  
 18 (9th Cir. 2004). The DPIAs do not propose a commercial transaction—indeed, they are not even  
 19 designed to be seen by the purchasing public. Cal. Civ. Code § 1798.99.31(a)(4)(A).

20           In some instances, “speech that does not propose a commercial transaction on its face can  
 21 still be commercial speech.” *Ariix, LLC v. NutriSearch Corp.*, 985 F.3d 1107, 1115 (9th Cir. 2021).  
 22 But that is true at most where the speech is “related solely to the economic interests of the speaker  
 23 and its audience,” *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557,  
 24 561 (1980)—which is not the situation here. Describing whether an online service, product, or  
 25 feature may expose “children to harmful, or potentially harmful, content” is not purely, or even  
 26 predominantly, an economic issue. It is a matter that involves subjective moral, cultural, social,  
 27 psychological, political, and religious considerations. It can cover matters of pure political speech  
 28 and judgment—such as whether 16-year-olds would be harmed by seeing information about the

1 Holocaust, or the 9/11 attacks, or school shootings. And it may often have nothing to do with  
 2 commercial consideration at all. The DPIA requirements, after all, apply to services and features  
 3 that are provided for free or with no financial motivation, such as by non-profits like Wikipedia.

4 Here too, *Volokh* is illustrative. The court there held that compelling online service providers  
 5 to prepare a written hate speech policy was not commercial speech because it compelled them “to  
 6 speak about the range of protected speech it will allow its users to engage (or not engage) in.”  
 7 *Volokh*, 2023 WL 1991435, at \*7. Similarly here, service providers that must prepare a DPIA are  
 8 compelled to speak about what speech (including all manner of protected, lawful speech) their  
 9 services allow users to access, how those services control or regulate access to such speech, and  
 10 how that speech might affect users. “This is different in character and kind from commercial speech  
 11 and amounts to more than mere disclosure of factual information.” *Id.* at \*8.

12 2. DPIAs Do Not Regulate “Purely Factual And Uncontroversial”  
 13 Information.

14 Second, *Zauderer* does not save AB 2273, because even if the compelled speech were  
 15 *commercial* speech, it is far from “factual and uncontroversial.” The Supreme Court considered the  
 16 “compelled disclosure of commercial speech” in *NIFLA*, and its decision there “stands for the  
 17 proposition that the *Zauderer* standard applies only if the compelled disclosure involves ‘purely  
 18 factual and uncontroversial’ information.” *CTIA - The Wireless Ass’n v. City of Berkeley*, 928 F.3d  
 19 832, 845 (9th Cir. 2019). In *NIFLA*, the Court held that a law requiring clinics to state that California  
 20 “has public programs that provide immediate free or low-cost access to comprehensive family  
 21 planning services (including ... contraception), prenatal care, and abortion for eligible women” did  
 22 not meet that requirement. 138 S. Ct. at 2369, 2372 (observing that abortion is “anything but an  
 23 uncontroversial topic”); accord *Volokh*, 2023 WL 1991435, at \*7 (disclosure of social media  
 24 services’ hate speech policies “conveys more than a ‘purely factual and uncontroversial’ message”).

25 The same is true here. A DPIA requires a business to evaluate and disclose a highly  
 26 subjective, controversial, and contentious set of issues—including whether particular product  
 27 features, designs, or algorithms may be “harmful, or potentially harmful” to children or whether  
 28 they might expose them to harmful or potentially harmful content. Cal. Civ. Code



1 § 1798.99.31(a)(1)(b). Even beginning to make such assessments requires complex and nuanced  
2 judgments about matters of psychology, medical science, and cultural politics. Reasonable people  
3 can disagree about whether all manner of content—*e.g.*, political rhetoric, images of skinny fashion  
4 models, violent video games, material about the LGBTQ community, critical race theory, material  
5 about firearms or drug use, and information about obtaining contraception and abortion services—  
6 is harmful to children. There are also ongoing debates about whether various techniques for curating,  
7 recommending, and presenting such lawful speech to minors are beneficial or detrimental. *See, e.g.*,  
8 Monica Anderson et al., *Connection, Creativity and Drama: Teen Life on Social Media in 2022*,  
9 Pew Research Center (Nov. 16, 2022),  
10 [https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-](https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022)  
11 [social-media-in-2022](https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022) (the majority of teens say social media use has a “mostly positive” impact on  
12 them); Daniel Kardefelt Winther, *How Does the Time Children Spend Using Digital Technology*  
13 *Impact Their Mental Well-being, Social Relationships and Physical Activity? An Evidence-focused*  
14 *Literature Review*, Innocenti Discussion Papers, no. 2017-02, UNICEF Office of Research -  
15 Innocenti, Florence (2017) (evidence suggests digital technology is beneficial for children’s social  
16 relationships and moderate use has a positive impact on their mental well-being).

17 But what the State is now attempting is to force online service providers to wade into those  
18 controversies and to repeatedly voice their view on these highly fraught issues. The DPIA  
19 requirements compel online service providers to take sides in a “heated political controversy.” *CTIA*,  
20 928 F.3d at 848. Not only that, providers must state that their own “products are ethically tainted”—  
21 even when they heatedly dispute that idea. *Nat’l Ass’n of Mfrs. v. SEC*, 800 F.3d 518, 530 (D.C. Cir.  
22 2015) (hereinafter “*NAM*”) (striking down SEC regulation requiring companies to state that their  
23 products are “not ‘DRC conflict free’”). This is worlds apart from *Zauderer*. Indeed, what the D.C.  
24 Circuit said in *NAM* applies equally here: “requiring a company to publicly condemn itself is  
25 undoubtedly a more effective way for the government to stigmatize and shape behavior than for the  
26 government to have to convey its views itself, but that makes the requirement more constitutionally  
27 offensive, not less so.” *Id.* at 530. In short, by “compelling an issuer to confess blood on its hands,  
28 the statute interferes with that exercise of the freedom of speech under the First Amendment.” *Id.*

1                   3.       The DPIA Requirement Is Unjustified And Unduly Burdensome.

2                   Finally, the DPIA requirement would be unconstitutional even if *Zauderer* did apply. For a  
3 compelled speech requirement to survive scrutiny under *Zauderer*, the State must prove that the  
4 requirement “is neither unjustified nor unduly burdensome”—*i.e.*, that it remedies “a harm that is  
5 potentially real not purely hypothetical” and extends “no broader than reasonably necessary.”  
6 *NIFLA*, 138 S. Ct. at 2377. Indeed, the “Supreme Court made clear in *NIFLA* that a government-  
7 compelled disclosure that imposes an undue burden fails for that reason alone.” *Am. Beverage Ass’n*,  
8 916 F.3d at 757. In *NIFLA*, the Court held that a requirement that unlicensed clinics post a notice  
9 “that California has not licensed the clinics to provide medical services” failed this standard. 138 S.  
10 Ct. at 2368. California failed to show that its concern was “more than ‘purely hypothetical,’” and  
11 “[e]ven if [California] had presented a nonhypothetical justification,” its law “targets speakers, not  
12 speech, and imposes an unduly burdensome disclosure requirement that will chill their protected  
13 speech.” *Id.* at 2377, 2378.

14                   Similarly, in *American Beverage*, the Ninth Circuit invalidated as unduly burdensome a San  
15 Francisco ordinance that “require[d] health warnings on advertisements for certain sugar-sweetened  
16 beverages.” 916 F.3d at 753. The court considered the size of the required warnings and found that  
17 the city had not shown that a smaller warning would not “accomplish [d]efendant’s stated goals.”  
18 *Id.* at 757. And in *Moody*, the Eleventh Circuit held that Florida’s requirement that large social  
19 media platforms “provide notice and a detailed justification for every content-moderation action” is  
20 likely “unconstitutional under *Zauderer* because it is unduly burdensome and likely to chill  
21 platforms’ protected speech.” 34 F.4th at 1230. The court especially noted the “potentially  
22 significant implementation costs” and threat of liability “if a Florida court were to determine that [a  
23 platform] didn’t provide sufficiently ‘thorough’ explanations when removing posts.” *Id.* at 1230-31.

24                   The DPIA requirements at issue here are no less burdensome. AB 2273 mandates a detailed  
25 assessment, with at least eight broad and vaguely defined categories of mandated evaluations, ***for***  
26 ***every single service, product, or feature*** that the business has introduced—or wishes to introduce.  
27 Preparing such detailed evaluations is entirely different from posting a simple notice drafted by the  
28 state. *Cf. CTIA*, 928 F.3d at 845-49. It will require teams of lawyers, product managers,

1 psychologists, and other experts. The implementation costs of these DPIAs are staggering. *Cf.*  
2 Lauren Feiner, *California's New Privacy Law Could Cost Companies a Total of \$55 Billion to Get*  
3 *in Compliance*, CNBC (Oct. 5, 2019), [https://www.cnbc.com/2019/10/05/california-consumer-](https://www.cnbc.com/2019/10/05/california-consumer-privacy-act-ccpa-could-cost-companies-55-billion.html)  
4 [privacy-act-ccpa-could-cost-companies-55-billion.html](https://www.cnbc.com/2019/10/05/california-consumer-privacy-act-ccpa-could-cost-companies-55-billion.html) (discussing report commissioned by  
5 California Attorney General estimating that initial compliance with the 2018 California Consumer  
6 Privacy Act would cost \$55 billion).

7 Moreover, these requirements are likely to deter the development of new features that  
8 facilitate the publication, curation, creation, and distribution of speech—further chilling online  
9 services' First Amendment rights. *See, e.g., Moody*, 34 F.4th at 1230-31. Indeed, that would appear  
10 to be the point of the requirements: to make it so cumbersome and expensive to launch new features  
11 that may appeal to minors that most service providers will simply give up and take steps to avoid  
12 allowing anyone under 18 to use or receive information through their services. The First Amendment  
13 does not allow the State to deter protected expression in this way. “Lawmakers may no more silence  
14 unwanted speech by burdening its utterance than by censoring its content.” *Sorrell*, 564 U.S. at 566.

15 That rule is especially apt here, because there is no apparent justification for imposing these  
16 massive burdens. The statute's stated goal of “[e]nsuring robust privacy protections for children”  
17 (AB 2273, Ch. 320, § 1(9) (legislative findings)) cannot carry this much weight. Much of the DPIA  
18 requirements have little to do with actual privacy, but instead seem crafted to limit the amount and  
19 kind of speech that is presented or made available to minors. This backhanded way of second-  
20 guessing or restricting the publication and editorial choices of private online services simply is not  
21 the kind of legitimate state objective that warrants imposing an unprecedentedly onerous set of  
22 compelled speech requirements on online publishers. “While the law is free to promote all sorts of  
23 conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than  
24 promoting an approved message or discouraging a disfavored one, however enlightened either  
25 purpose may strike the government.” *Hurley*, 515 U.S. at 579.

## 26 CONCLUSION

27 For these reasons, the Court should grant Plaintiff's motion for a preliminary injunction  
28 enjoining enforcement of AB 2273 in its entirety.

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Dated: March 3, 2023

Respectfully submitted,

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