



April 3, 2024

Assembly Committee on Elections
Room 365, Legislative Office Building
1020 N Street
Sacramento, CA 95814

RE: AB 2655, “Defending Democracy from Deepfake Deception Act of 2024” (Oppose)

Dear Chair Pellerin and Members of the Assembly Committee on Elections:

The above five co-signed organizations understand lawmakers’ and constituents’ valid concerns about election dis- and misinformation online, however, are opposed to the bill in its current form. We are continuing to review the most recent amendments and look forward to working with Assemblymember Berman’s office for a solution that ensures California’s elections remain free and fair within a framework that covered businesses can comply with, while also allowing for open expression online to thrive.

Responsible digital services providers take aggressive steps to moderate dangerous and illegal content, consistent with their terms of service. The companies deliver on the commitments made to their user communities with a mix of automated tools and human review. In 2021, a number of online businesses announced that they had been voluntarily participating in the Digital Trust & Safety Partnership (DTSP) to develop and implement best practices to ensure a safer and more trustworthy internet, and have recently reported on the efforts to implement these commitments.¹

AB 2655 appears to be based on the false assumption that online platforms definitively know whether any particular piece of content has been manipulated in such a way that is defined

¹ Margaret Harding McGill, *Tech giants list principles for handling harmful content*, Axios (Feb. 18, 2021), <https://www.axios.com/techgiants-list-principles-for-handling-harmful-content-5c9cfba9-05bc-49ad-846a-baf01abf5976.html>.

under the bill. While digital services may employ tools to identify and detect these materials with some degree of certainty, it is an evolving and imperfect science in its current form. AB 2655 also presumes that online platforms are an appropriate arbiter of deciding what constitutes accurate election information. However, most digital services are not equipped with the tools or expertise to make such judgments.

AB 2655 would impose significant operationally and practically challenging requirements on large online platforms who may not be best suited to achieve the bill's laudable and important goal of ensuring California's elections remain free and fair.

Definitions under AB 2655 risk minimizing its intended impact.

AB 2655 applies to a "large online platform" which is defined to specify a minimum user threshold of 1,000,000 California users during the preceding 12 months. This threshold could prevent lawmakers from achieving the intended goal of limiting election disinformation online, because the scope is likely to not encompass other services on which election mis- and disinformation may appear, such as Truth Social or Parler, which is rumored to relaunch this year. We would encourage lawmakers to reconsider a statutory definition gerrymandered around particular businesses with user thresholds and instead craft compliance obligations that are manageable by all entities operating in the relevant sector.

AB 2655's enforcement provisions could have broadly sweeping consequences.

AB 2655 allows any California resident who has reported content that has not been "blocked or labeled as required" to bring a civil action against a large online platform if the platform has not responded within 36 hours or if the reporting resident disagrees with the platform's response. This is a significant departure from other existing California law, including under the recently enacted 2023 AB 1394. Under that newly established law, a social media platform must provide written confirmation to a user within 36 hours of the user reporting child abuse sexual material (CSAM), but requires a final written determination to be issued to the reporting user within 30 days after the date on which the material was first reported. Under AB 2655, a covered platform must respond to the user under a similarly condensed timeline and allows a user to bring a civil action even before there is an opportunity to appeal a covered platform's response. Given this broad liability and short timeline, this would likely incentivize covered platforms to remove significantly more content, including content that contains *accurate* election information and content that is not materially deceptive.

Finally, because AB 2655 is focused on enforcement against covered platforms and not the actors who are intentionally seeking to materially deceive other consumers, it is unlikely to

meaningfully reduce the amount of election mis- and disinformation hosted online. As previously stated, leading online businesses invest significant resources in moderating online content, including the specific types of content AB 2655 intends to address. However, if the actors who intentionally create and disseminate materially deceptive content are not held accountable, online platforms will be subject to an endless cycle addressing such content without ever being able to prevent the issue from occurring in the first place. It is therefore important to tailor liability to the parties who knowingly and intentionally cause the harm.

Other states have pursued other models to achieve this same goal without the aforementioned pitfalls.

California is understandably not alone in seeking to reduce the amount of materially deceptive election content available online. This year, lawmakers in other states are advancing legislation to address this very same issue but have adopted different approaches. For example, in other states, like 2023 Washington SB 5152, the law would require the sponsor of an “electioneering campaign” to include certain disclosure statements regarding whether the media was manipulated and would hold such sponsors liable if in violation of the new law’s provisions. Importantly, any intermediaries who might be involved in disseminating the content are not held liable unless they remove a disclosure statement on the communication they disseminate.

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We appreciate the consideration of our comments and look forward to working with Assemblymember Berman’s office on a workable solution. We understand the urgency in ensuring elections remain free and fair but encourage lawmakers to dedicate adequate time to examining and addressing the nuances of this issue.

Respectfully submitted,

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On behalf of:

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