

FLOOR ALERT: AB 2481 (Lowenthal) - OPPOSE

The above three co-signed organizations take seriously the shared responsibility of protecting online users from cyberbullying threats. Responsible digital service providers have already taken aggressive steps to moderate dangerous and illegal content, consistent with their terms of service. AB 2481, however, raises significant concerns surrounding compliance requirements and impacts to open, online expression.

Just last year, California passed AB 1394 to create a priority reporting mechanism for child sexual abuse material (CSAM). **Treating additional broad categories of content as “priority” would inhibit platform efforts to effectively prevent the proliferation of other objectionable content, such as CSAM.**

Key compliance definitions remain undefined and subjective. AB 2481 includes undefined and subjective terms that would pose significant challenges for covered platforms to comply. For example, AB 2481 lacks clear definitions for “severe risk,” “as quickly as necessary,” and “imminent threat”. And while AB 2481 was amended to define “substantively respond”, the new language renders the bill more difficult to implement at scale.

AB 2481 raises significant First Amendment concerns. Due to AB 2481’s vague and subjective definitions as well as the requirement to “substantively respond”, platforms are likely to adopt an overly broad takedown approach to avoid penalties. This could incentivize the removal of lawful speech. The response requirement would subject covered platforms to short, strict timelines for issuing determinations and raises additional concerns about over-blocking or over-removing content under threat of litigation with AB 2481’s broad private right of action.

AB 2481 creates a special mechanism for government employees to report and request platforms to remove content. The U.S. Supreme Court is currently considering this issue in *Murthy v. Missouri*. In that case, the Biden Administration contends that their communications with social media companies regarding user generated content were not coercive and did not violate the First Amendment because their reports were treated the same as any other report and did not receive priority treatment. In contrast, AB 2481 would create a streamlined process and elevate reports from K-12 principals and school counselors. While the decision in *Murthy* is still pending, AB 2481 appears to be at odds with arguments made by the Biden Administration.

We have serious concerns regarding the provisions surrounding “verified reporters”. AB 2481 does not explain how a covered platform is expected to confirm the employment status claimed by these individuals. Our research indicates that approximately 146,000 persons in California could qualify under AB 2481’s definition of “verified reporter”. Platforms cannot feasibly track these individuals through career changes or other interruptions of their eligibility. In fact, AB 2481 limits platforms to verifying their qualifications once every two years.

The private right of action is unnecessarily punitive. AB 2481 allows a civil action to be filed by anyone, not just a minor or their parent, for any violation. A covered platform could face liability for something as simple as responding to a priority reporter one hour or day late. Attaching these types of penalties to the reporting mechanism for failure to “substantively respond” will create an incentive for platforms to take down speech that touches these broad, subjective categories of content identified as “social media-related threats”.

For the above reasons, we urge you to vote “no” on AB 2481.