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September 3, 2024

Office of the Honorable Gavin Newsom
Attn: Chief of Staff, Dana Williamson
State Capitol, Suite 1173
1303 - 10th Street
Sacramento, CA 95814

RE: AB 2655 - "Defending Democracy from Deepfake Deception Act of 2024" (Veto Request)

Dear Governor Newsom:

On behalf of the five cosigned organizations, we write to respectfully request a veto on AB 2655.

Our organizations acknowledge the legitimate concerns raised by lawmakers and constituents regarding online election disinformation and misinformation. However, we believe this bill falls short of effectively addressing these issues. We fully support the importance of maintaining free and fair elections in California. Throughout the legislative session, we have actively participated in discussions to explore frameworks that balance compliance for businesses with the promotion of open online expression.

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 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.

Because covered platforms are not privy to the intent and context behind each piece of content, they may inadvertently over-block or over-label material. This could lead to user frustration and the suppression of political speech. Political speech is fundamental to the First Amendment's purpose. Therefore, AB 2655 raises concerns about how its provisions could have a chilling effect on online speech and whether it can withstand constitutional scrutiny.

Additionally, AB 2655 would impose significant operationally and practically challenging requirements on large online platforms that 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 likely will not encompass other services on which election mis- and disinformation may appear, such as Truth Social or Parler. Prior to AB 2655's passage, we encouraged 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.

We appreciate that the enforcement provisions have been narrowed, allowing only a candidate for elective office, elected official, or elections official to bring a civil action against a large online platform under specific conditions: if the platform fails to respond within 36 hours, if the reporting resident disagrees with the platform's response, or if the platform fails to take action within 72 hours. Additionally, it is specified that the plaintiff must prove the violation with 'clear and convincing evidence.' However, many of our concerns remain.

The proposed time frame under AB 2655 marks a significant departure from other existing California laws, 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 sexual abuse 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 the bill allows for 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. It's important to note that detecting and identifying CSAM is facilitated by the use of established hash values. In contrast, the content targeted by AB 2655 is likely to be far more subjective, and online platforms are already facing heightened scrutiny for perceived political biases and censorship. The mandates and restrictions imposed by AB 2655 could further exacerbate these concerns regarding political speech.

Other bills passed by the Legislature this session achieve the same goal without encountering the same pitfalls.

Finally, because AB 2655 is focused on enforcement against covered platforms and not the actors who are intentionally seeking to materially deceive other users, it is unlikely to meaningfully reduce the amount of election mis- and disinformation hosted online. AB 2355¹ will ensure that covered committees provide clear disclosures for content generated or 'substantially altered' by AI. The approach employed under AB 2355 still allows for other beneficial uses of AI without imposing requirements that otherwise risk chilling online political speech. We believe this bill should serve as the key mechanism for addressing harmful election-related content at its source and holding those responsible accountable, ensuring such content does not continue to proliferate.

While we understand the concerns regarding online election disinformation and misinformation, we encourage you to resist signing legislation that imposes technically infeasible requirements that may simultaneously chill online expression surrounding political speech. For these reasons, we respectfully request a veto of AB 2655.

We appreciate your consideration of these comments and stand ready to provide additional information related to technology policy.

Respectfully submitted,



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On behalf of:

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Carl Szabo, NetChoice
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¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB2355.