No. 24-271

IN THE

United States Court of Appeals for the Ninth Circuit

X CORP.,

Plaintiff-Appellant,

v.

ROB BONTA, in his official capacity as Attorney General of California,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:23-cv-01939-WBS-AC (Hon. William B. Shubb)

BRIEF OF *AMICUS CURIAE* WASHINGTON LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLANT X CORP.

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INTEREST OF *AMICUS CURIAE* [1]

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WLF's Legal Studies Division, its publishing arm, regularly distributes papers about First Amendment limits on government-compelled speech. *See, e.g.*, Howard L. Dorfman, *CMS's DTC Drug Ad Price-Disclosure Mandate: An Ill-Conceived & Illegal Proposal*, WLF Legal Opinion Letter (Jan. 25, 2019), https://perma.cc/RXJ4-L63R; Bert W. Rein & Megan L. Brown, *Two First Amendment Appeals Will Test Impact of* NIFLA v. Becerra *On Commercial Speech Regulation*, WLF Legal Backgrounder (Sept. 7, 2018), https://perma.cc/E752-UU38.

[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than *amicus curiae* Washington Legal Foundation and its counsel contributed money that was intended to fund preparing or submitting this brief. All parties have consented to Washington Legal Foundation filing this *amicus* brief.

INTRODUCTION

Appellant X Corp. challenges California's AB 587, one of many recent efforts by governments and government officials to influence social media platforms' decisions about which posts of their users—who are mostly individuals—to disseminate, and how broadly; which to block, and how extensively; and which (if any) to flag or disclaim. These decisions can be quite important, affecting the information received by the public, encouraging or discouraging public debate, and shaping the agenda for the millions of discussions that take place every day on social media. Just like the decisions of newspaper editors that were once set in moveable type on manual presses, these decisions of social media platforms now viewed in pixels are inherently, even unavoidably, subjective decisions about which there can be many legitimate and widely varying viewpoints and on which the government should have no say.

But AB 587 seeks to regulate these editorial decisions, to hold them up to public scrutiny, and to establish an ostensible "transparency" requirement that will actually serve as a vehicle for enforcement by dozens of government officials and countless private individuals and advocacy organizations, each with their own views about what should and should not appear on social media. It is an open and avowed effort to chill the disfavored editorial decisions of social media platforms. If AB 587 applied to newspaper editors' decisions, its constitutional invalidity would be obvious. That it applies to the editorial decisions of social media companies, often implemented in electronic searches and algorithms, makes it no more valid.

The district court incorrectly considered AB 587 under the least rigorous of First Amendment standards, that for "purely factual and uncontroversial" commercial speech. But AB 587 regulates speech that is not commercial in nature, indeed speech that is at the heart of the First Amendment and the rights it secures to speakers and listeners alike. The Court should subject AB 587 to an appropriately

strict level of scrutiny and reverse the district court's denial of the preliminary injunction blocking the law's enforcement.

ARGUMENT

I. AB 587 Regulates Subjective Decisions, Chills Those Decisions, and "Manipulates the Marketplace of Ideas."

AB 587 is a quintessential example of unconstitutionally compelled speech. The Supreme Court has "held time and again that freedom of speech 'includes both the right to speak freely and the right to refrain from speaking at all.'" *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2468 (2018) (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)). But beyond the core compelled-speech problem, the editorial disclosures required by AB 587 also entangle the state with the editorial decisions of social media platforms, thereby impermissibly chilling the speech of both platforms and their users. Indeed, they are meant to affect platforms' content-moderation decisions and "manipulat[e] the marketplace of ideas." *Wash. Post v. McManus*, 944 F.3d 506, 515 (4th Cir. 2019).

The bill's author admits as much. His press releases reveal the government's intent to pressure platforms to alter their editorial decisions: "The reporting requirements outlined in the bill will put big tech's conduct under a bright light, and it is our hope that social media companies would [] respond by improving their corporate policies and the enforcement of those policies." Press Release, Assemblymember Jesse Gabriel, *California Legislators Introduce Bipartisan Effort to Hold Social Media Companies Accountable for Online Hate and Disinformation* (Mar. 29, 2021) (quotation omitted), https://perma.cc/S3QM-HU6E.

That type of pressure is why courts have held that compelled editorial disclosures unconstitutionally entangle the state in platforms' editorial decisions. As the Supreme Court explained in the seminal *Bantam Books v. Sullivan* decision, "[p]eople do not lightly disregard public officers' thinly veiled threats," which in the

free speech context can form "a system of informal censorship." 372 U.S. 58, 68, 71 (1963). That is why government encroachments on protected speech must be assiduously confronted and rejected by the courts. Here, the threat came in the tangible form of a letter from Attorney General Bonta to the heads of leading social media companies. *See* 6-ER-1069–74.

These sorts of state entanglements in protected speech have also been addressed by courts in the digital age. For example, in *Washington Post*, the Fourth Circuit considered a statute requiring some websites to publish lists of the purchasers of political ads. The sites were then required to keep the lists so the State could inspect them. The court found that the law contained "a compendium of traditional First Amendment infirmities," including impermissibly compelling speech. *Wash. Post*, 944 F.3d at 513-14.

These were not the only constitutional problems. The law's inspection requirement also brought "the state into an unhealthy entanglement with news outlets." *Id.* at 518. As the court explained, the law required the sites to make "no less than six separate disclosures, each assertedly justified by the state's interests in informing the electorate and enforcing its campaign finance laws. But with its foot now in the door, Maryland has offered no rationale for where these incursions might end." *Id.* at 519. That AB 587 similarly entangles the state of California with the editorial judgments of social media platforms is apparent from even a cursory review of the California Attorney General's webpage posting their Terms of Service Reports.[2]

[2] *See* https://perma.cc/DN8T-AMBS. Imagine if that list of social media companies—from Meta to TikTok, LinkedIn to YouTube—instead ran from the Sacramento Bee to the New York Times and the application of the *Washington Post* decision here becomes obvious.

Imagine a lawmaker who dislikes the opinions that a newspaper publishes. Recognizing the elementary First Amendment objection to imposing publishing requirements directly on the newspaper, that lawmaker enacts a law requiring the newspaper to provide the attorney general with detailed statistics regarding every submitted letter to the editor or opinion piece it chose not to run and the basis for each of those decisions (using a set of categories the law prescribes). A first-year law student would recognize that this hypothetical law serves not as a transparency measure but as an unconstitutional cudgel to pressure editors into making different editorial decisions.

AB 587 is just such a law. It requires a thorough detailing of platforms' editorial actions regarding the submissions ("posts") that its readers ("users") ask it to disseminate based on their subject matter and perspective ("content"). What's more, AB 587 dictates that platforms' policies include a list of potential actions that "includ[e], but [are] not limited to, removal, demonetization, deprioritization, or banning." Cal. Bus. & Prof. Code § 22676(b)(3). What if a platform does not want to consider deprioritization or content removal as potential actions? That would appear not to be an option under this law. Indeed, a platform that ardently refuses to mute ("deprioritize") or censor ("block") certain content in its users' posts will undoubtedly face government scrutiny. If a platform's editors ("content moderators") believe, as did Justices Brandeis and Holmes, that "the remedy to be applied" to "the evil" of "falsehoods and fallacies" is "more speech, not enforced silence," *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring), then AB 587 will parade them into the public square to be confronted by the mob for their apostasy.

The use of "transparency" laws to chill speech is a well-studied tactic for attacks on constitutionally protected speech. As two scholars have noted, "transparency laws might effectively reshape platforms' substantive rules for

content moderation, which could prompt First Amendment claims by both platforms and the affected users. This might happen as a byproduct of misguided standardization or as a consequence of burden and cost." Daphne Keller & Max Levy, *Getting Transparency Right*, Lawfare (July 11, 2022), https://perma.cc/4D92-7P2Y. In the name of "transparency," these laws put platforms "in an impossible position, because every editorial choice [they] make[] might simultaneously trigger disclosure [obligations to enforcers]. This has an unquestionably chilling effect." Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 Hastings L.J. 1203, 1227 (2022). So, "[t]hrough actual or threatened enforcement" of the editorial disclosure requirements, "regulators can influence what content Internet services publish—and punish Internet services for making editorial decisions the regulators disagree with." *Id.*

Lawmakers view that as a feature, not a bug, of AB 587. But under the First Amendment, the government cannot act as editorial overseer. *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974); *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 636 (1994). Compelled disclosure of platforms' content moderation policies and decisions effectively chills their constitutionally protected right to moderate their platforms as they see fit. For these reasons alone, AB 587's editorial disclosure requirements are plainly unconstitutional.

The district court, however, viewed AB 587 not as its author intended or as it works in practice but rather as a mere regulation on commercial speech to which it applied the least rigorous standard of First Amendment review under *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626 (1985). But just as a newspaper does not lose its First Amendment protections because it is sold for profit, *New York Times v. Sullivan*, 376 U.S. 254, 266 (1964), neither do social media platforms lose theirs. And although social media platforms—like newspapers—are commercial enterprises, that does not make all their speech, or decisions related to

others' speech, "commercial." Indeed, their editorial decisions do not resemble any form of commercial speech to which the courts have given less First Amendment protection. They do not "propose a commercial transaction" and certainly do not fit the "usual" definition of commercial speech: "speech that does *no more than* propose a commercial transaction." *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001) (emphasis added). They also are not "expression related *solely* to the economic interests of the speaker and its audience." *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 561 (1980) (emphasis added). Nor are AB 587's reporting requirements "purely factual and uncontroversial disclosures *about commercial products*." *CTIA-The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 848 (9th Cir. 2019) (citing *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2376 (2018) ("*NIFLA*")).

The content moderation decisions of platforms are inherently subjective. It is the "greater 'objectivity' of commercial speech [that] justifies" affording it a lower standard of First Amendment protection. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 499 (1996) (quoting *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 n.24 (1976)). Editorial decisions about what to publish, and how, are unavoidably subjective judgment calls. To burden platforms' editorial judgments, as AB 587 does, is to burden their subjective evaluations about contested norms.

If the First Amendment bars anything, it bars government attempts to manipulate the marketplace of ideas and to influence the information that the public receives. Today that information often comes from the collective posts of many speakers that are organized, moderated, curated, prioritized, and sometimes censored by digital platforms exercising their subjective editorial judgments. But the government, in the name of "transparency," may no more apply pressure to these decisionmakers than it can to traditional newspaper editors.

II. AB 587 Is Unconstitutionally Burdensome.

Even if *Zauderer* applies to AB 587, its compelled disclosures in the form of the Terms of Service Reports are "unduly burdensome" and "unjustified" under *Zauderer* because they chill protected speech. Appellant's Br. at 54 (citing *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 250 (2010)). These burdens arise in two distinct forms: public pressure and legal enforcement. Analysis of each form shows how neither *Zauderer* nor *Central Hudson* is the appropriate test for reviewing AB 587. Rather, the Court should apply strict scrutiny and strike AB 587 down as violating the First Amendment.

A. Because AB 587's Required Disclosures Are Intended to Facilitate Public Pressure that Will Alter Speech, the Law Is Subject to Strict Scrutiny.

First, as to public pressure, AB 587's use of forced disclosures to effect a policy goal is not by itself constitutionally suspect. Many state and federal laws require disclosures to prevent consumer deception—the precise goal of the law upheld in *Zauderer*—or to prevent corruption in the electoral process. *See generally, e.g.*, *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). The disclosures required by these laws directly advance the government's stated policy goal. Some of these laws may still violate the First Amendment, *see, e.g.*, *NIFLA*, 585 U.S. at 779, but they do not do so categorically.

Other laws' disclosure requirements seek to achieve the government's policy goal more indirectly, and often in ways that are not stated explicitly by policymakers. For example, laws that require businesses to identify and quantify the chemicals they maintain at their facilities directly assist emergency responders in the event of a fire or other emergency. But they also indirectly encourage businesses to use smaller quantities and less hazardous chemicals to reduce concerns from neighbors who are now aware of, and perceive risks from, the businesses' use of these chemicals. These laws make businesses think twice about their use of such chemicals and thereby

quietly carry out a secondary policy goal. *See generally* Jeanne Herb et al., *Harnessing the "Power of Information": Environmental Right to Know as a Driver of Sound Environmental Policy*, in New Tools for Environmental Protection: Education, Information, and Voluntary Measures (2002).

California has long been a pioneer in such public disclosure laws, particularly those addressing environmental issues. *See, e.g.*, Air Toxics 'Hot Spots' Information and Assessment Act;[3] Safe Cosmetics Act;[4] Cleaning Product Right to Know Act.[5] The most notorious of these is California's Safe Drinking Water and Toxic Enforcement Act, better known as Proposition 65,[6] which requires businesses to warn anyone before exposing them to even very low amounts of chemicals listed as causing cancer or reproductive harm. The most recent such laws—the Climate Corporate Data Accountability Act[7] and the Climate-Related Financial Risk Act[8]—require businesses to disclose their carbon emissions and climate-related financial risks.

These laws are not bans or restrictions but instead use forced disclosures—in reports to the government, in postings on government websites, or on labels of consumer products—to encourage businesses to avoid or reduce their use of chemicals or practices that California has found undesirable.[9] The First Amendment

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[3] Cal. Health & Safety Code § 44300 *et seq.*

[4] Cal. Health & Safety Code § 111791 *et seq.*

[5] Cal. Health & Safety Code § 108950 *et seq.*

[6] Cal. Health & Safety Code § 25249.6 *et seq.*

[7] S.B. 253 (enacted Oct. 7, 2023), Cal. Health & Safety Code § 38532.

[8] S.B. 261 (enacted Oct. 7, 2023), Cal. Health & Safety Code § 38533.

[9] *See, e.g.*, Sen. Jud. Comm., Analysis of S.B. 253 (2023-24 Reg. Sess.) Apr. 14, 2023, at 12 ("For companies, the knowledge" that their disclosures "will be publicly available might encourage them to take meaningful steps" to support

applies to these requirements, of course, and in some contexts they have been found to violate the First Amendment, *see generally, e.g.*, *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468 (9th Cir. 2022); *Nat'l Ass'n of Wheat Growers v. Becerra*, 85 F.4th 1263 (9th Cir. 2023), or are currently being challenged. *See, e.g.*, *Chamber of Com. of the U.S. v. Cal. Air Res. Bd.*, No. 2:24-cv-00801 (C.D. Cal., filed Jan. 30, 2024). But, like laws aimed directly at consumer deception or political corruption, not all such laws violate the First Amendment.

AB 587, however, is different. The policy goal it seeks to realize through its forced disclosures is altering speech. Of course, it does not restrict speech directly. Instead, like laws requiring disclosure of hazardous chemicals that make businesses think twice about their chemical usage policies because they will have to defend them publicly, AB 587 requires social media platforms to disclose the categories of speech they prohibit, mute, or allow so that they think twice about their editorial choices precisely because they will have to defend them publicly. But choices about chemical usage or other business practices differ fundamentally from choices about what speech to permit or restrict on a social media platform or in a newspaper. It is the effect on the free speech of the social media companies—and on the speech of individuals who disseminate their views on social media—that takes AB 587 out of the realm of plausible legitimacy and into the realm of constitutional infirmity. As Appellant notes, it is the effect on freedom of speech—which the drafters of AB 587 did not disguise—that removes it from the category of laws to which the less rigorous *Zauderer* and *Central Hudson* tests apply and moves it into the category of laws directed at core speech to which strict scrutiny applies. Appellant's Br. at 40.

The burden of public pressure on a business from a law that requires disclosure of information the business may wish to not disclose is not necessarily an

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California's policy goals).

unconstitutional burden. But when a law requires disclosure to generate public pressure on the *speech* of a business, and particularly on the speech of *individuals* that the business merely disseminates, that law is subject to strict scrutiny under the First Amendment.

B. The Burdens of AB 587's Required Disclosures Are Exacerbated by California's Broad Enforcement Regime.

AB 587's second burden, the burden of potential enforcement, is just as impermissible. Enforcement is of course an element of any law, but for AB 587 the obligations are so vague and the potential enforcers so numerous and disparate that the inevitable effect will be to restrict protected speech. No matter how the Court evaluates the rest of the statute, this provision makes it unconstitutional under any standard. Said differently, the law enforcement regime for AB 587 is "unduly burdensome" under even the least rigorous *Zauderer* test for compelled commercial disclosures.

First, as noted above and in Appellant's Brief (at 8), AB 587 has no clear compliance standard other than "materiality." A company that "materially omits or misrepresents required information in a" terms of service report is liable for penalties of up to $15,000 per violation per day. In an enforcement action, the plaintiff would presumably bear the burden of showing a "material" omission or misrepresentation. But the vagueness of this standard places a significant burden on social media companies. In *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781 (1988), the Supreme Court invalidated a statute that prohibited professional fundraisers from retaining an "unreasonable" fee because that term was too vague. This Court should hold the same for the vague term "materially" in AB 587. For unlike the statute in *Riley*, which at least included a concrete rebuttable standard (a fee of 35 percent of contributions received), AB 587 includes no such provision. Vague laws "allow arbitrary and discriminatory enforcement." *O'Brien v. Welty*, 818 F.3d 920, 930 (9th

Cir. 2016). And "[w]hen speech is involved, rigorous adherence to [the] requirement[]" that "parties should know what is required of them" "is necessary to ensure that ambiguity does not chill protected speech." *FCC v. Fox Television Stations*, 567 U.S. 239, 253-54 (2012).

Second, AB 587 explicitly allows enforcement by five government officials: the California Attorney General and the city attorneys of Los Angeles, San Diego, San Jose, and San Francisco. *See* Cal. Bus. & Prof. Code § 22678(b) (authorizing enforcement by city attorneys of cities with populations over 750,000 people). All but one of these are elected officials who face the voters periodically.[10] The city attorneys have the added incentive that half of any penalties paid goes to their city's coffers. *Id.* § 22678(c). For cases brought by the Attorney General, AB 587 directs half the penalties to the county in which the suit was filed, providing this statewide official with a special opportunity to enhance the treasury of a favored county for alleged violations mostly outside that county.

But in the broader scheme of California law, yet another phalanx of government officials may seek to impose penalties based on violations of AB 587 using the state's expansive Unfair Competition Law ("UCL"). Cal. Bus. & Prof. Code § 17200, *et seq*. "The UCL's scope is broad. By defining unfair competition to include any '*unlawful* . . . business act or practice,' the UCL permits violations of other laws to be treated as unfair competition that is independently actionable." *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 949 (2002) (emphasis added; citations omitted). "Virtually any law," including AB 587, "can serve as a predicate for an action under [the UCL]." *See Ticconi v. Blue Shield of Cal. Life & Health Ins. Co.*, 160 Cal. App. 4th 528, 539 (2008) (citation omitted) ("An 'unlawful' business activity includes

[10] Cal. Const. art. V, § 11; L.A. Charter, art. II, § 202; S.D. Charter, art. V, § 40; S.F. Charter, art. VI, § 6.100. The San Jose City Attorney is appointed by San Jose's City Council. S.J. Charter, art. IX, § 900.

anything that can properly be called a business practice and that at the same time is forbidden by law."). Indeed, AB 587 provides that its obligations are cumulative to those under other laws such as the UCL. *See* Cal. Bus. & Prof. Code § 22679(a).

These additional public officials include the elected district attorneys of all 58 counties and the appointed county counsels of Los Angeles, Santa Clara, and San Diego Counties. *Id.* § 17203. Any UCL remedies are expressly cumulative to those provided under AB 587. *Id.* §§ 17205, 22679(b). They include penalties of up to $2,500 per violation per day, *id.* § 17206(a), with an additional $2,500 per violation per day when aimed at senior citizens, disabled persons, service members, or veterans. *Id.* §§ 17206.1(a), 17206.2(a). And these funds similarly accrue to their local treasuries for the enforcement of consumer protection laws. *Id.* §§ 17206.1(c)-(d), 17206.2(a)(2).

Third, as if enforcement by these 66 government officials were not enough, the UCL can also be enforced by any individual or business that has "suffered injury in fact and lost money or property as a result of" a company's alleged noncompliance. *Id.* § 17204; *see also Ticconi*, 160 Cal. App. 4th at 542 n.13 ("[California's] Supreme Court has made clear that 'a private plaintiff may bring a UCL action even when the conduct alleged to constitute unfair competition violates a statute for the direct enforcement of which there is no private right of action.'") (quoting *Kasky*, 27 Cal. 4th at 949); *Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1048 (9th Cir. 2000) ("It does not matter whether the underlying statute also provides for a private cause of action; section 17200 can form the basis for a private cause of action even if the predicate statute does not.").

Therefore, countless individuals and businesses may seek to sue social media platforms under the UCL based on an allegedly "material" violation of AB 587, claiming an economic injury for purposes of standing. Indeed, these are not limited to users of a platform: a unanimous decision by the Supreme Court of California

recently held that an organization's diversion of staff time simply to *investigate* the alleged unfair business practice can qualify as an economic injury. *Cal. Med. Ass'n v. Aetna Health of Cal. Inc.*, 14 Cal. 5th 1075, 1082 (2023).

Such private claimants are not entitled to civil penalties but may obtain restitution of "any money or property . . . which may have been acquired by means of such unfair competition." Cal. Bus. & Prof. Code § 17203. And if their lawsuit "result[s] in the enforcement of an important right affecting the public interest," they may be awarded their attorneys' fees. Cal. Civ. Proc. Code § 1021.5. Although the law just came into effect six weeks ago, this broad enforcement regime's incentives for monetary recoveries will attract plaintiffs' attorneys in droves. It also invites activist groups to file lawsuits that are likely both to attract media attention to their causes and to survive motions to dismiss.

There is no requirement that these millions of potential enforcers coordinate their efforts or adhere to any consistent view of AB 587's requirements, much less what it may mean to "materially" omit or misrepresent required information. Indeed, they are likely to have disparate views on these issues. Certainly, in today's polarized political climate, activist groups will have *opposing* views about what constitutes "hate speech" or "misinformation," for example. And AB 587 will provide them all with a means to voice their views in court, putting social media companies at risk of crippling penalties and attorney fee awards.

In this way, the enforcement regime of AB 587 heavily burdens the speech at issue. As Justice Breyer observed, California's UCL "authorizes [] purely ideological plaintiff[s], convinced that [their] opponent is not telling the truth, to bring into the courtroom the kind of political battle better waged in other forums." *Nike, Inc. v. Kasky*, 539 U.S. 654, 679 (2003) (dissent from denial of certiorari). They "do so unencumbered by the legal and practical checks that tend to keep the energies of public enforcement agencies focused upon more purely economic harm."

Id. at 680; *see also Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal. 4th 553, 593, 598 (1998) (Brown, J., dissenting) (describing Section 17200 as a "standardless, limitless, attorney fees machine" where "enforcement under the UCL becomes random and out of control. Unelected, unaccountable private enforcers, unrestrained by established notions of concrete harm or public duty, seek to advance their own agendas or to deploy the Law as leverage to increase attorney fees.").[11]

The combination of AB 587's vague standards and enforcement regime, including California's preexisting regime for enforcing laws against businesses leads to one conclusion: AB 587 impermissibly burdens speech.

CONCLUSION

This Court should apply strict scrutiny and reverse the district court.

[11] *But see Arias v. Superior Ct. of San Joaquin Cnty.*, 46 Cal. 4th 969, 977-78 (2009) (noting amendments to the standing provisions of the UCL after *Stop Youth Addiction*).

Respectfully submitted,

Dated: February 21, 2024

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FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) and Ninth Circuit Rule 32-1 because it contains 4,559 words, including no words manually counted in any visual images, and excluding the items exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word for Office 365 in Times New Roman 14-point font.

3. I certify that this brief is an *amicus* brief and complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5).

Dated: February 21, 2024

s/ Trenton H. Norris
Trenton H. Norris

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 21, 2024. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

Dated: February 21, 2024

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