CASE NO. 25-6173

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CALIFORNIA POLICY CENTER,
Plaintiff-Appellant,

v.

LILIA GARCIA-BROWER, ET AL.,
Defendants-Appellees.

On Appeal from the United States
District Court for the Central District of California (8:25-cv-00271-MWC-SK)

BRIEF OF AMICI CURIAE FIRST AMENDMENT SCHOLARS AND ADVOCATES IN SUPPORT OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P 26.1, Amici Curiae the Pelican Institute for Public Policy, the Rutherford Institute, and the Electronic Frontier Foundation are non-profit organizations. They have no parent corporations and do not issue stock.

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INTEREST OF AMICI CURIAE

Amici are scholars and advocates devoted to First Amendment protection and the sound development of First Amendment doctrine. Amici thus have an interest in ensuring that permissive standing requirements are applied to pre-enforcement statutory challenges based on alleged First Amendment violations. These issues are implicated by the appeal before this Court.[1]

The Electronic Frontier Foundation ("EFF") is a non-profit civil liberties organization that has worked for over 35 years to protect free speech, privacy, and innovation in the digital world. With over 30,000 members, EFF represents the rights and interests of technology users in court cases and broader policy debates surrounding the application of law to technology.

The Pelican Institute for Public Policy is a non-profit, non-partisan research institute whose mission is to research and develop policy solutions that advance individual liberty, free enterprise, and opportunity for all Louisianans. Founded in 2008, the Pelican Institute believes that every Louisianan should have the opportunity to flourish in communities where good opportunities abound and economic prosperity is achievable through hard work and ingenuity. To that end, the

[1] This brief is submitted under Federal Rule of Appellate Procedure 29 with the consent of all parties. Undersigned counsel for Amici Curiae certifies that this brief was not authored in whole or part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than Amici and their counsel has contributed money for this brief.

Pelican Institute advocates for the removal of government barriers to economic mobility.

The Rutherford Institute is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed by the Constitution and laws of the United States.

In addition, the following scholars join in their individual capacities:

Bruce Hamilton, Director and Clinical Associate Professor, First Amendment Clinic at Tulane University School of Law;

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Heidi Kitrosser, William W. Gurley Professor of Law, Northwestern – Pritzker School of Law;

Heather E. Murray, Associate Director, First Amendment Clinic, and Managing Attorney, Local Journalism Project, at Cornell Law School;

Amanda Reid, Associate Professor at the Hussman School of Journalism at the University of North Carolina at Chapel Hill and Adjunct Professor at the University of North Carolina School of Law;

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Eugene Volokh, Thomas M. Seibel Senior Fellow at the Hoover Institute at Stanford University and Gary T. Schwartz Distinguished Professor of Law at UCLA Law School.

INTRODUCTION

In pre-enforcement challenges to statutes that arguably violate the First Amendment, the Ninth Circuit applies permissive standing requirements to preserve constitutional rights and prevent the chilling effect of sweeping speech restrictions. Permissive standing requirements serve three essential purposes in pre-enforcement challenges. First, they allow litigants to obtain clarity on a statute's constitutionality without risking civil or criminal penalties. Second, they preserve access to judicial review by ensuring claimants with credible constitutional injuries can meaningfully develop the factual record. Third, they mitigate the risk that individuals will self-censor when their claims meet prohibitive procedural barriers. All this Court requires to establish standing in pre-enforcement challenges is 1) an intent to engage in conduct arguably affected with a constitutional interest; 2) that is proscribed by a statute; and 3) that there exists a credible threat of prosecution thereunder.

The district court deviated from this well-established standard, and its dismissal order should be reversed. Specifically, the district court failed to credit Plaintiff-Appellant's arguable interpretation that the statute proscribed its intended speech, as is required for a standing analysis. By supplanting Plaintiff-Appellant's arguable interpretation with its own, the district court impermissibly adjudicated a merits issue at the standing phase.

Arguments about the proper construction of the statute aside, Plaintiff-Appellant sufficiently alleged self-censorship based on a credible risk that the challenged law will be enforced against it. Dismissal will result in continued constitutional injury via self-censorship by Plaintiff-Appellant and other similarly situated entities. The district court's order of dismissal based on standing must therefore be reversed, and this case should be remanded for discovery and full consideration on the merits.

ARGUMENT

California Labor Code § 1137 ("the Act") broadly prohibits employers from requiring employees to attend meetings or receive communications in which the employer expresses views on "political" or "religious" matters.[2] Cal. Lab. Code § 1137 (West 2025). The Act defines "political matters" expansively to include speech about legislation, regulation, political parties, and labor organizations, and defines "religious matters" as issues relating to religious affiliation or practice. *Id.* §§ 1137(b)(3)–(b)(4). The Act authorizes enforcement through private civil actions or administrative enforcement by the Labor Commissioner. *Id.* § 1137(e).

[2] Amici take no position on the ultimate constitutionality of the statute at issue. Amici address the applicable threshold standing requirements because those standards govern access to judicial review and the adjudication of First Amendment claims, irrespective of whether the challenged law is ultimately upheld or invalidated. *See Cal. Chamber of Com. v. Bonta*, No. 2:24-CV-03798-DJC, 2025 WL 2779355 (E.D. Cal. Sept. 30, 2025) (finding standing in a pre-enforcement challenge to the statute at issue in this case).

This provision implicates a wide swath of employer speech arguably protected by the First Amendment. Plaintiff-Appellant alleged that its regular activities before the passage of the statute included mandatory meetings that discussed prohibited topics. ER-081–82. Plaintiff-Appellant also alleged that it ceased requiring employees to attend these meetings because it reasonably believed the statute proscribed such speech and there was a credible threat of enforcement. ER-081, ER-086–87. Absent clarification from federal courts, Plaintiff-Appellant will continue to self-censor rather than risk enforcement action. ER-087–88.

The district court found that Plaintiff-Appellant lacks standing to challenge the Act because, in its view, Plaintiff-Appellant is covered by a statutory exemption, such that the activities Plaintiff-Appellant now censors are not actually proscribed by the Act. *Cal. Pol'y Ctr., Inc. v. Garcia-Brower*, No. 8:25-CV-00271 MWC (SKX), 2025 WL 2235409, at *6–7 (C.D. Cal. June 24, 2025), *reconsideration denied*, No. 8:25-CV-00271-MWC-SK, 2025 WL 3050096 (C.D. Cal. Sept. 9, 2025). While the district court's decision seemingly exempts Plaintiff-Appellant from liability, because the case was dismissed on standing, the interpretation is non-binding and state officials are free to ignore it. *See Morgan v. United States*, 958 F.2d 950, 951–52 (9th Cir. 1992); *see also United States v. 5.935 Acres of Land, Tax Map Key (3)2-8-017-43, Honomu,* 752 F. Supp. 359, 362 (D. Haw. 1990) ("Since no court can rule on the merits of a case over which it has not exercised jurisdiction,

it follows that a court's statement of the law applicable to the merits of such a case is necessarily dictum." (citation omitted)). The district court's determination on standing does not preclude a future enforcement action, so Plaintiff-Appellant and similarly situated entities face risk and will continue to engage in self-censorship.

By dismissing this case for lack of standing, the district court has empowered California to restrict speech without any judicial decision on the merits finding the Act complies with the First Amendment. This impermissibly adds artificial barriers to the threshold standing requirements that determine whether plaintiffs may obtain judicial review of alleged First Amendment injuries and insulates speech-chilling laws from constitutional scrutiny, regardless of the statute's ultimate fate. Now, California can use the threat of enforcement to induce self-censorship while circumventing judicial review. This result is clearly wrong, conflicts with decades of binding precedent, and is an affront to the First Amendment.

I. The District Court Misapplied the Ninth Circuit's Permissive Standing Requirements for First Amendment Pre-Enforcement Challenges.

The district court erred in dismissing Plaintiff-Appellant's claim for lack of standing at the motion to dismiss stage, in which courts "must accept petitioner's allegations as true" and construe well-pled allegations in the non-moving party's favor. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). When considering a motion to dismiss, courts must accept as true all factual allegations in the complaint

and all reasonable inferences that may be drawn therefrom, construing the initial pleading in the light most favorable to the plaintiff. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *see also N. Highlands I, II, LLC v. Comerica Bank*, 328 F. App'x 358, 359–60 (9th Cir. 2009) (applying the *Twombly* and *Iqbal* pleading standards while reviewing dismissal for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1)). Having sufficiently alleged self-censorship and a credible fear of enforcement in their complaint, Plaintiff-Appellant's assertions provided a sufficient basis for jurisdiction, permitting their claim to proceed. ER-081–82.

"First Amendment cases raise unique standing considerations that tilt dramatically toward a finding of standing." *Lopez v. Candaele*, 630 F.3d 775, 781 (9th Cir. 2010) (internal quotation marks and citations omitted). "That is so because, as the Supreme Court has recognized, a chilling of the exercise of First Amendment rights is, itself, a constitutionally sufficient injury." *Libertarian Party of L.A. Cnty. v. Bowen*, 709 F.3d 867, 870 (9th Cir. 2013). A party "does not have to await the consummation of threatened injury to obtain preventive relief." *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 143 (1974) (internal quotation marks and citations omitted). A plaintiff's "allegation[s] of future injury may suffice if the threatened injury is certainly impending," or there is a "substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (emphasis deleted and

internal quotation marks omitted). This "hold your tongue and challenge now approach" allows for the preemptive adjudication of such claims, "rather than requiring litigants to speak first and take their chances with the consequences." *Ariz. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003) (internal quotation marks and citations omitted).

The United States Supreme Court best articulated this approach in *Virginia v. American Booksellers Association*:

> We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise. We conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them. Further, the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution.

484 U.S. 383, 393 (1988). In that case, the plaintiffs brought their suit before the statute had even become effective. *Id.* at 392.

Applying these principles, the Ninth Circuit evaluates standing in pre-enforcement challenges by looking "to whether the plaintiff has shown '[1] an intention to engage in a course of conduct arguably affected with a constitutional interest, but [2] proscribed by a statute, and [3] there exists a credible threat of prosecution thereunder.'" *Am. Encore v. Fontes*, 152 F.4th 1097, 1114 (9th Cir. 2025) (quoting *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Labrador*,

122 F.4th 825, 836 (9th Cir. 2024)). Importantly, "at the standing phase, when the parties dispute the correct construction of a statute—*e.g.*, one arguing that it applies and the other asserting it does not—and that dispute goes to the merits of the plaintiff's claim, we accept the plaintiff's construction so long as it is arguable." *Id.* at 1110–11.

A. Plaintiff-Appellant Sufficiently Alleged an Intent to Violate the Challenged Statute.

To satisfy the first prong, a plaintiff "need not plan to break the law. The concept of 'intention' is more counterfactual than practical. That is to say, courts must ask whether the plaintiff would have the intention to engage in the proscribed conduct, were it not proscribed." *Peace Ranch, LLC v. Bonta*, 93 F.4th 482, 488 (9th Cir. 2024). In *Bland v. Fessler*, this Court found standing where the plaintiff "chose to obey both the civil and utilities statutes and to bring a declaratory action challenging their constitutionality, rather than to violate the law, await an enforcement action against him, and raise the statutes' constitutionality as a defense." 88 F.3d 729, 737 (9th Cir. 1996). Under such circumstances, this Court found it appropriate that the plaintiff "should be allowed to test the law." *Id.*

Such circumstances are present in this case. The Act prohibits employers like Plaintiff-Appellant from holding mandatory meetings discussing "religious or political matters," and it defines political matters broadly to include speech "relating to elections for political office, political parties, legislation, regulation, and the

decision to join or support any political party or political or labor organization." Cal. Lab. Code §§ 1137(b)(3), 1137(c). Plaintiff-Appellant's Complaint alleged that "[b]efore the Act went into effect, [Plaintiff-Appellant] regularly conducted mandatory staff meetings at which the organization's views on issues of legislation, regulation, and the decision to join a labor union, among other things, were discussed." ER-087–88. Plaintiff-Appellant further asserted that "[b]ut for the Act, [Plaintiff-Appellant] would continue its practice of holding such mandatory meetings that include political matters," and that the restriction on Plaintiff-Appellant's "ability to speak to its employees about the very subject matter of the organization's mission violates [Plaintiff-Appellant's] right to free speech under the First Amendment." ER-081–82.

Taken together, these allegations sufficiently show an "inten[t] to engage in a course of conduct arguably affected by a constitutional interest—namely, political and election-related speech." *Am. Encore*, 152 F.4th at 1116.

B. The District Court Impermissibly Dismissed Plaintiff-Appellant's Arguable Construction of the Challenged Statute.

The second prong asks whether Plaintiff-Appellant's "intended future conduct is '*arguably* . . . proscribed by [the] statute' [it wishes] to challenge." *Susan B. Anthony List*, 573 U.S. at 162 (quoting *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979) (emphasis added)). "[W]hen the parties dispute the correct

construction of a statute—*e.g.*, one arguing that it applies and the other asserting it does not—and that dispute goes to the merits of the plaintiff's claim, we accept the plaintiff's construction so long as it is arguable." *Am. Encore*, 152 F.4th at 1110–11. In *American Encore*, this Court found sufficient a "reasonable interpretation" that the challenged provision proscribed the plaintiffs' intended speech. *Id.* at 1116. Further, the Court found that even if the challenged provision "is not backed by criminal prohibition, it likely still creates a chilling effect on First Amendment conduct." *Id.* at 1117. Given that election officials relied on the challenged provision to identify conduct that could be viewed as voter intimidation, "Plaintiffs may be dissuaded from engaging in their intended speech even if there is no threat of criminal prosecution, because election officials may nonetheless report them to police or remove them from the polling location" based on the challenged provision. *Id.* at 1117–18. Because the intended conduct was "arguably proscribed," the self-censorship was reasonable. *Id.* at 1118.

Similar to *American Encore*, the Act provides enforcement mechanisms to employees, who may sue employers for perceived violations, seek punitive damages, and obtain temporary injunctions. Thus, even if California does not share Plaintiff-Appellant's arguable interpretation of the Act, Plaintiff-Appellant's employees may still bring lawsuits against Plaintiff-Appellant based on a reasonable interpretation

that the law proscribes the intended speech. Thus, Plaintiff-Appellant is still forced to self-censor to avoid enforcement actions by private actors.

Here, Plaintiff-Appellant's reading of the statute is at least arguable, which is all the standing analysis requires. The district court's dismissal decision largely hinges on a finding that Plaintiff-Appellant falls under the Act's "political-organization exemption," *Cal. Pol'y Ctr., Inc.*, 2025 WL 2235409, at *4–7, despite acknowledging that the Labor Commissioner "does not affirmatively argue that [Plaintiff-Appellant] is a political organization under the Act," *Id.* at *6, n.3. To support this conclusion, the district court engages in extended statutory analysis more typical of a decision on the merits. *Id.* In fact, the district court specifically rejects Plaintiff-Appellant's reasonable argument that the definition of "political organization" should be gleaned from other sources of California law, like the Tax Code, the Education Code, and the Code of Judicial Ethics. *Id.* at *4.

Whether Plaintiff-Appellant's contentions are correct is a question better suited for a decision on the merits. "[F]or the purposes of standing, we accept [Plaintiff-Appellant's] interpretation of the statute so long as it is an arguable interpretation." *Am. Encore*, 152 F.4th at 1116. Because the Ninth Circuit is "careful to avoid adjudicating merits issues at the standing phase" and the dispute in this case about the correct construction of the statute "goes to the merits of [Plaintiff-

Appellant's] claim," Plaintiff-Appellant's arguable construction, supported by legitimate sources of California law, must be accepted. *Id.* at 1110–11.

C. Plaintiff-Appellant Alleged a Credible Threat of Prosecution Under the Challenged Statute that Reasonably Led to Self-Censorship.

The third prong asks whether Plaintiff-Appellant has demonstrated a credible or substantial threat of prosecution. The Ninth Circuit examines "a number of factors that may support the reasonableness of a plaintiff's fear of prosecution," including: "(1) whether the enforcement authorities have communicated a specific warning or threat to initiate proceedings; (2) whether the enforcing authority has disavowed enforcement; and (3) whether there is a history of past prosecution or enforcement." *Am. Encore*, 152 F.4th at 1118 (internal quotation marks and citations omitted). These factors demonstrate "whether Plaintiffs have adduced enough evidence to show that there is a realistic threat that the law in question may be enforced against them." *Id.* Among the three factors, "the enforcing authority's willingness to disavow enforcement" stands out as the most compelling. *Peace Ranch*, 93 F.4th at 490; *Cal. Trucking Ass'n v. Bonta*, 996 F.3d 644, 653 (9th Cir. 2021) ("Here, the state's refusal to disavow enforcement . . . is strong evidence that the state intends to enforce the law and that [the plaintiffs] face a credible threat.").

First, the presence of threats, or lack thereof, is not dispositive. In *American Encore*, the Ninth Circuit held that the Arizona Secretary of State's "failure to modify the Speech Provision in response to Arizona assembly members' concerns

that, as written, the Provision runs afoul of the First Amendment, reasonably indicates an intent to enforce the Provision." 152 F.4th at 1118. The California legislature, like the Arizona Secretary of State, was aware of potential First Amendment violations and chose not to address them. *See* Senate Floor Analysis, S.B. 399, 2024 Gen. Assemb., Reg. Sess., at 10 (2024) (acknowledging that S.B. 399, which was codified as the Act, may be both a viewpoint and content-based restriction on employer speech, violating the First Amendment).[3] This Court should again find that ignoring potential First Amendment violations "indicates an intent to enforce" a law. *Am. Encore*, 152 F.4th at 1118. The first factor therefore weighs in favor of Plaintiff-Appellant.

The second factor also favors Plaintiff-Appellant. This inquiry turns to "the enforcing authority's willingness to disavow enforcement." *Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 60 (9th Cir. 2024); *see also LSO, Ltd. v. Stroh*, 205 F.3d

[3] The opposition to the passage of the Act stated the following: "According to a coalition of employer organizations, SB 399 violates the First Amendment arguing that it is a content based restriction on speech. Among other things, they argue, 'it is clear that the motive behind SB 399's prohibition on employers discussing their opinions about unionization or pending bills is the assumption that employers will talk to their employees about the downsides of unionization and union-sponsored efforts, which the proponents of this bill disagree with. That is clear viewpoint-based discrimination, which also runs afoul of the First Amendment.' Additionally, they argue, 'employees are already protected by law against coercion, discrimination, retaliation, and hostile environment harassment. Within those boundaries, employers have the same First Amendment right as any person, natural or corporate, to state their views.'" Senate Floor Analysis, S.B. 399, 2024 Gen. Assemb., Reg. Sess., at 10.

1146, 1155 (9th Cir. 2000) ("While we cannot go so far as to say that a plaintiff has standing whenever the Government refuses to rule out use of the challenged provision, failure to disavow is an attitudinal factor the net effect of which would seem to impart some substance to the fears of [plaintiffs]." (internal quotation marks and citations omitted)). In the present case, the Labor Commissioner, the enforcing authority, has not disavowed enforcement of the Act. Instead, the Labor Commissioner's response leaves Plaintiff-Appellant in limbo. By stating that Plaintiff-Appellant "may constitute a 'political organization'" subject to "fact-specific" inquiry, the Commissioner neither disavows enforcement nor adopts a definitive interpretation of the statutory term. *Cal. Pol'y Ctr., Inc.*, 2025 WL 2235409, at *6 n.3; ER-049. This equivocal stance fails to satisfy this Court's precedents and perpetuates the threat of prosecution that compels Plaintiff-Appellant's ongoing self-censorship.

Moreover, the Ninth Circuit "look[s] to 'the threat posed *collectively* by the entire universe of potential complainants.'" *Am. Encore*, 152 F.4th at 1118–19 (9th Cir. 2025) (quoting *Matsumoto v. Labrador*, 122 F.4th 787, 798 (9th Cir. 2024) (emphasis in original) (internal quotation marks and citations omitted)). The Act permits "any employee who has suffered a violation" to bring "a civil action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages." Cal. Lab. Code § 1137(f)(1). An employee may also seek

"appropriate temporary or preliminary injunctive relief" for any violation. *Id.* § 1137(f)(2) The combined threat from the Labor Commissioner and private claimants poses a real, non-speculative imminent future injury. *See Isaacson v. Mayes*, 84 F.4th 1089, 1101 (9th Cir. 2023); *see also Tingley v. Ferguson*, 47 F.4th 1055, 1068 (9th Cir. 2022) ("And in the context of pre-enforcement challenges to laws on First Amendment grounds, a plaintiff 'need only demonstrate that a threat of potential enforcement will cause him to self-censor.'" (quoting *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 839 (9th Cir. 2014))). For these reasons, the second factor strongly weighs in Plaintiff-Appellant's favor.

The third factor, which looks at the history of enforcement, also weighs in Plaintiff-Appellant's favor in this case. *See Tingley*, 47 F.4th 1055, 1069 (9th Cir. 2022); *see also LSO, Ltd.*, 205 F.3d at 1155. When the challenged law is relatively new and the record contains little information as to enforcement, the third factor carries little weight. *See Tingley*, 47 F.4th at 1069. Appellees' counterarguments, at this stage, are to no avail. A "lack of enforcement under the [statute] . . . does little to diminish a fear of enforcement given how new the law is. Indeed, a new law's 'existence alone may create a threat that is credible enough to create standing.'" *Bella Health & Wellness v. Weiser*, 699 F. Supp. 3d 1189, 1208 (D. Colo. 2023) (quoting *Brown v. Herbert*, 850 F. Supp. 2d 1240, 1248 (D. Utah 2012)). Therefore,

the recent passage of the Act makes the third factor weigh in Plaintiff-Appellant's favor.

In sum, Plaintiff-Appellant's self-censorship is due to a credible threat of enforcement such that it has standing to challenge the law.

CONCLUSION

This case presents a consequential question: whether courts may short-circuit pre-enforcement First Amendment challenges by resolving disputed statutory interpretations at the standing stage. Binding precedent has already answered that question in the negative. This is because making a non-binding decision on statutory interpretation at the standing stage gives no protection to a plaintiff from the challenged law later being enforced against them. Given that Plaintiff-Appellant plausibly alleged an intent to engage in protected speech, an arguable statutory prohibition, and a credible threat of enforcement that has already resulted in self-censorship, its claim should be permitted to proceed. Allowing dismissal on standing grounds here would not only undermine access to litigants with well-pled constitutional injuries, but also insulate government action from review on the merits, resulting in chilled speech across a wide range of First Amendment contexts. A ruling affirming dismissal on standing grounds in this case would reverberate far beyond employer-speech disputes, undermining pre-enforcement challenges involving protest and permitting schemes, licensing regimes for expressive conduct,

campaign finance restrictions, and a host of other laws regulating expression—contexts in which speakers routinely self-censor to avoid enforcement rather than risk punishment. It would empower the government to significantly chill disfavored speech by simply passing a vague law without ever having to enforce it. This Court should reaffirm that First Amendment pre-enforcement standing doctrine exists precisely to prevent that result, reverse the district court's dismissal, and remand so that the constitutionality of California Labor Code § 1137 may be assessed on a full factual record.

Dated: January 12, 2026

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 12, 2026, an electronic copy of this brief was filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system and that service of the brief will be accomplished by the electronic filing system.

Dated: January 12, 2026

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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