

No. 20-16908

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

U.S. WECHAT USERS ALLIANCE, CHIHUO INC., BRENT COULTER, FANGYI DUAN,
JINNENG BAO, ELAINE PENG, XIAO ZHANG,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as the President of the United States,
WILBUR ROSS, in his official capacity as Secretary of Commerce,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California, No. 3:20-cv-05910-LB (Beeler, M.J.)

**BRIEF OF ASIAN AMERICANS ADVANCING JUSTICE –
ASIAN LAW CAUCUS AS *AMICUS CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLEES AND AFFIRMANCE**

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INTEREST OF AMICUS AND SUMMARY OF ARGUMENT¹

Amicus Curiae Asian Americans Advancing Justice—Asian Law Caucus (“Asian Law Caucus”) is the oldest legal and civil rights organization in the country serving Asian and Pacific-Islander communities. Its National Security and Civil Rights program advocates for those unjustly targeted by the government’s national security policies. The federal government’s decision to ban the WeChat app for reasons purportedly related to national security accordingly falls squarely into the category of government actions that the Asian Law Caucus was founded to defend against.

The crux of this appeal is whether the Executive Branch’s effective ban of the WeChat app in the United States likely violates the First Amendment. In particular, the government argues that the ban does not “restrict any speech at all” but instead “simply limit[s] the efficacy of one particular mobile app.” U.S. Br. 2. This casual dismissal of the WeChat app’s importance to the Chinese-American community disregards both the relevant facts and the law.

Beginning when Chinese laborers came to San Francisco during the gold rush to undertake the dangerous jobs that others were unwilling to do, Chinese-

¹ *Amicus* Asian Law Caucus submits this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2) and states that all parties have consented to its timely filing. *Amicus* further states, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), that no counsel for a party authored this brief in whole or in part, and no person other than the *amicus curiae* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

Americans have been the target of derogatory and often racist rhetoric. Sadly, this animus towards Chinese-Americans was adopted at the highest levels of the government, culminating in six decades of laws that made it first difficult and then impossible for Chinese abroad to immigrate to the United States and Chinese-Americans already here to become naturalized citizens. Indeed, the racist rhetoric of that period—which was unanimously denounced by the U.S. Senate just a decade ago—has found a new foothold in the wake of the COVID-19 pandemic, as the President of the United States has described the disease using discriminatory terms like “Chinese Virus” and “Kung Flu.”

Chinese-Americans have long relied on their own, specialized sources of media. Chinese-language newspapers, for example, have traditionally acted as the center of the Chinese-American community, serving up local news, advertising, and employment listings and assisting recent immigrants in better understanding their newly adopted country. In an era where newspapers across the country are gradually shuttering their presses, the Chinese-American community has looked to the WeChat app to serve the same basic functions as a newspaper. Among WeChat’s many purposes, it provides Chinese-Americans with a tool for news, advertising, communication, worship, and even basic information about local government and community services.

There is no reasonable argument that, consistent with the First Amendment, the government would be able to outright ban the publication of a Chinese-language newspaper. The Supreme Court has routinely recognized that the First Amendment protects both the right of the newspaper to exercise editorial discretion over its contents and the right of Americans to receive information and ideas. *See, e.g., Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974); *Board of Education v. Pico*, 457 U.S. 853, 867 (1982).

That same analysis should apply to the federal government's attempt to outright ban access to WeChat. Courts have routinely concluded that the First Amendment's protections should not vary simply because technology changes. *E.g., Brown v. Entertainment Merchs. Ass'n*, 564 U.S. 786, 790 (2011); *Bey v. Rasawehr*, 2020-Ohio-3301 at ¶ 27 (Ohio 2020). Indeed, the Supreme Court has squarely held that the First Amendment precludes the government from “enact[ing] [a] complete bar to the exercise of First Amendment rights on websites integral to the fabric of our modern society and culture.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1738 (2017).

ARGUMENT

I. THE UNITED STATES HAS A LONG HISTORY OF DISCRIMINATION AGAINST THE CHINESE COMMUNITY THAT ECHOES EVEN TODAY

Starting on March 16, 2020, the appearance and rapid spread of COVID-19 led state and local governments across the country to issue restrictive shelter-in-

place orders. In many places, normal life ground to a halt. Two days later, the President of the United States issued statements informing “out of work” Americans that “the Chinese Virus is not your fault” and that he would soon share “very important news from the FDA concerning the Chinese Virus!”²

Despite the concerns of “[m]edical historians and public health experts – including some of those in Mr. Trump’s administration” who “emphasized that pandemics have no ethnicity and ... that associating them with an ethnic group can lead to discrimination,” President Trump has continued to use similar rhetoric—including “Kung Flu”—for months.³ This terminology and the nationalist anger generated by it subsequently filtered down to individual interactions, leading to physical and verbal altercations and leaving many Asian-Americans “afraid ... to

² See <https://twitter.com/realDonaldTrump/status/1240226752447873027?s=20> (visited Dec. 3, 2020); <https://twitter.com/realDonaldTrump/status/1240234698053431305?s=20> (visited Dec. 3, 2020).

³ See Rogers, Jakes & Swanson, *Trump Defends Using ‘Chinese Virus’ Label, Ignoring Growing Criticism*, N.Y. Times, Mar. 18, 2020, available at <https://www.nytimes.com/2020/03/18/us/politics/china-virus.html>; Nakamura, *With ‘kung flu,’ Trump sparks backlash over racist language – and a rallying cry for supporters*, Wash. Post, June 24, 2020, available at https://www.washingtonpost.com/politics/with-kung-flu-trump-sparks-backlash-over-racist-language--and-a-rallying-cry-for-supporters/2020/06/24/485d151e-b620-11ea-aca5-ebb63d27e1ff_story.html.

go grocery shopping, to travel alone on subways or buses, [or] to let their children go outside.”⁴

Unfortunately, this level of animosity towards Asian-Americans in general and Chinese-Americans in particular is not new. It can be traced back at least as far as the 19th century, where Chinese men and women migrated to the United States to work as laborers building railroads and in back-breaking industries ranging from gold-mining to agriculture. The Chinese workers who performed this difficult and often dangerous work were convenient scapegoats for those looking for someone to blame for low wages and lack of jobs—particularly from those who were already making (in the words of the U.S. State Department) a more “overtly racist argument” that Chinese immigration damaged “the integrity of American racial composition.”⁵

This animus culminated in a series of exclusionary laws that the U.S. Senate subsequently recognized as unfairly “discriminatory.” *See* S. Res. 201, 112th Cong. at 1 (2011). In the 19th century alone, these included:

⁴ *See* Tavernise & Opiel, *Spit On, Yelled At, Attacked: Chinese-Americans Fear For Their Safety*, N.Y. Times, Mar. 23, 2020, available at <https://www.nytimes.com/2020/03/23/us/chinese-coronavirus-racist-attacks.html?action=click&module=RelatedLinks&pgtype=Article>.

⁵ U.S. Sec’y of State, Office of the Historian, *Chinese Immigration and the Chinese Exclusion Acts*, available at <https://history.state.gov/milestones/1866-1898/chinese-immigration> (visited Dec. 3, 2020).

- The 1875 Page Act, which “ostensibly barred the importation of women” from Asia for “purposes of prostitution” but in practice “was disproportionately enforced against Chinese women” and “prevent[ed] the formation of Chinese families in the United States.” *Id.* at 3.
- The 1882 Chinese Exclusion Act, which barred *all* new Chinese immigrants for ten years and made it impossible for those of Chinese descent to gain citizenship. *Id.* at 4.
- The 1892 Geary Act, which extended the duration of the Chinese Exclusion Act and denied Chinese immigrants basic rights—including the right to be released on bail and the right to be a witness in court. *Id.* at 6.

Subsequent legislation continued to unfairly target Asian immigrants. For example, the Naturalization Act of 1906 barred *all* Asian-Americans from becoming naturalized citizens. *See* Pub. L. No. 59-338, 34 Stat. 596 (1906); *see Takao Ozawa v. United States*, 260 U.S. 178, 189-190, 199 (1922) (Act did not permit naturalization of “a person of the Japanese race born in Japan”). And the Immigration Act of 1924 extended the Chinese Exclusion Act’s bar on Chinese immigrants to *all* immigrants from Asian countries—a law that was only repealed in 1943. Pub. L. No. 68-139, 43 Stat. 153 (1924); *see also* Pub. L. No. 78-199, 57 Stat. 600 (1943) (repeal).

As the unanimous U.S. Senate later summarized, the “6 decades of Federal legislation deliberately targeting Chinese by race” were a “deeply regret[table]” stain on America’s legacy that “fostered an atmosphere of racial discrimination that deeply prejudiced the civil rights of Chinese immigrants.” *See* S. Res. 201, 112th Cong. at 8. At root, these laws were fundamentally “incompatible with the basic founding principles recognized in the Declaration of Independence that all persons are created equal.” *Id.* at 9-10.

The effects of sixty years of government-sponsored discrimination against Asian-Americans and the Chinese-American community have lingered for decades. Asian-Americans have remained a fairly small minority group in the United States for much of American history. As of 1960, Asian-Americans made up just .5% of the U.S. population. *See* Asian Americans Advancing Justice, *Inside The Numbers: How Immigration Shapes Asian American and Pacific Islander Communities* at 20 (June 2019). Even today, sixty years later, Chinese-Americans in particular only represent about 1.5% of the U.S. population.⁶

⁶ Compare U.S. Census, *Asian Alone or In Combination By Selected Groups* (2018), available at <https://data.census.gov/cedsci/table?text=asian%20american&tid=ACSDT5Y2018.B02018&hidePreview=true> (roughly 5 million Chinese-Americans as of 2018), with U.S. Census, *Monthly Population Estimates For the United States* (2019), available at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-national-total.html> (roughly 327.4 million Americans as of December 2018).

II. CHINESE-AMERICANS HAVE LONG RELIED ON SPECIALIZED MEDIA—RANGING FROM CHINESE-LANGUAGE NEWSPAPERS TO WECHAT—TO LEARN AND CONNECT WITH EACH OTHER

A. Specialized Media—Like Chinese-Language Newspapers—Has Historically Played An Important Role In The Chinese Community

Because of the background animus described above and the relatively small size of the Chinese-American community, the community has often relied on its own specialized media. In particular, Chinese-language newspapers have provided a place where Chinese-Americans gain “know[l]edge about] current events, check[] ads for employment,” and “simply ... learn and inquire” about the world around them. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735, 1737 (2017).

The tradition of specialized newspapers dates back to “the rapid influx of Chinese immigrants after the Gold Rush” into San Francisco—“the key factor that contributed to the birth of Asian journalism.” *See Chui, Access to the Past of a Nation of Immigrants: Asian Language Newspapers in the United States*, Vol. 1997, No. 112, Art. 3, at 1 (1997). In more recent years, there have been “papers published in almost all metropolitan areas with Chinese communities[, with t]he main goal of ... address[ing] local issues and concerns.” *Id.* at 3. Such newspapers have traditionally carried both news and “reports and articles covering social and cultural phenomena of mainstream society and China.” *Id.*

In more recent years, newspapers have ““serve[d] as focal points for Chinese speakers in the geographic areas they cover.”” Yang, *Press, Community and Library: A Study of Chinese-Language Newspapers Published In North America*, *Chinese Librarianship: An International Electronic Journal*, Vol. 29 at 1 (2009) (quoting Kwong & Miscevic, *Chinese America* 402 (2005)). Because the newspapers ““dispens[e] information about the needs of their readers and the services and opportunities offered them, they make the otherwise disconnected Chinese immigrants feel that they in fact belong to a community.”” *Id.* For example, for Chinese-Americans ““who work in businesses or provide professional services, the newspapers provide a venue to reach potential ethnic customers.”” *Id.* at 2. For recent immigrants with professional training, ““Chinese newspapers may complement or supplement the English-language media they are able to access.”” *Id.* at 2-3. And for recent immigrants who are ““seniors” or ““unskilled workers,” they ““may rely on ... Chinese newspapers heavily and even exclusively for information about the outside world.”” *Id.* at 3.

B. WeChat’s Services Are The Modern Equivalent Of A Newspaper

WeChat is the modern-day version of the Chinese-language newspaper, in that it is ““a staple of the Chinese American community” and plays many of the

same roles that formerly fell to print newspapers.⁷ Even WeChat’s critics concede that the app is central to the life of Chinese-Americans—especially “first-generation immigrants.”⁸

First, WeChat gives Chinese-Americans a platform to write articles that encourage political activity (e.g., organizing Chinese-Americans to vote and support Black Lives Matter), much like a newspaper would allow for the publication of op-eds or editorials.⁹

Second, WeChat is a source for “articles published on the public accounts of Chinese media, content creators and businesses,” much like a traditional

⁷ Garsd, *The Wechat ban will have economic effects, too*, Minnesota Public Radio, Sept. 18, 2020, available at <https://www.marketplace.org/2020/09/18/wechat-ban-will-have-economic-effects-too/>; see also Hussain & Avery, *WeChat is a lifeline for the Chinese diaspora*, L.A. Times, Aug. 12, 2020 (“It’s hard to overstate how much of life for California’s Chinese diaspora unfolds on WeChat.”), available at <https://www.latimes.com/business/technology/story/2020-08-12/wechat-lifeline-chinese-diaspora-trump-ban>.

⁸ Wang, *WeChat is a Trap for China’s Diaspora*, Foreign Policy, Aug. 14, 2020, available at <https://foreignpolicy.com/2020/08/14/wechat-ban-trump-chinese-diaspora-china-surveillance/>.

⁹ Wang, *How Trump’s attempted WeChat ban would devastate Chinese American families like mine*, Vox, Oct. 1, 2020, available at <https://www.vox.com/first-person/21496967/trump-wechat-us-ban-tik-tok>; see also Ovide, *WeChat Unites and Divides in America*, N.Y. Times, Oct. 6, 2020, available at <https://www.nytimes.com/2020/10/06/technology/wechat-unites-and-divides-in-america.html> (“WeChat has ... been a huge force in [organizing] activism movements among Chinese people in the United States[.]”); 2-ER-499–500 (declaration of Plaintiff Elaine Peng stating “I am a member of multiple WeChat groups made up of WeChat users of similar political views for the purpose of facilitating discussions relating to local, state or national politics[.]”).

newspaper would publish articles in print.¹⁰ There are “whole publications that exist exclusively on WeChat,” and Chinese-Americans rely on the app for breaking news, like the locations of the California wildfires.¹¹ WeChat even has its own virtual food critics, who share “restaurant reviews [and] recipes” to a “thriving virtual community” of Chinese-Americans.¹²

Third, WeChat helps translate Chinese to English so that elderly and low-English-proficiency speakers from China can function in English-speaking communities—fulfilling one of the traditional purposes of Chinese-language newspapers. *See supra* p. 9.¹³

Fourth, U.S. businesses rely on WeChat in working with and advertising to Chinese customers, much as businesses would advertise in a newspaper. For example, “[r]eal estate agents list properties on the platform” and the app “supports Southern California’s underground cottage industry of home-cooked Chinese

¹⁰ Feng & Cheetham, *Trump WeChat ban ‘an unwelcome signal’ for Chinese community*, BBC, Aug. 10, 2020, <https://www.bbc.com/news/world-asia-china-53686507>.

¹¹ Hussain & Avery, *WeChat is a lifeline for the Chinese diaspora*; 2-ER-488 (“Chinese-speaking Californians ... rely[] on [WeChat] to receive live updates about the locations of wildfires currently raging in California.”).

¹² 2-ER-492.

¹³ *E.g.*, Wang, *How Trump’s attempted WeChat ban would devastate Chinese American families like mine*.

cuisine.”¹⁴ As a general matter, moreover, the COVID-19 pandemic has made “many Chinese restaurants ... heavily reliant on WeChat as a platform to advertise and promote their business.”¹⁵

Finally, some local officials have used “WeChat for official outreach to constituents,” much like a local official might publish crime reports in a local paper or rely on a newspaper to spread the word about community needs and resources.¹⁶ For example, in southern California, “the Alhambra Police Department ... us[es] the app to inform residents about law enforcement activities,” and “[t]he city of San Gabriel has a part-time worker who translates its regular communications into Chinese and posts them on the City’s WeChat ... accounts.”¹⁷ San Gabriel also has “community-service focused groups [who] use the app to gather personal protective equipment donations and organize seminars to spread crucial COVID assistance information.”¹⁸

¹⁴ *E.g.*, Hussain & Avery, *WeChat is a lifeline for the Chinese diaspora*.

¹⁵ 2-ER-484; *see also* Hussain & Avery, *WeChat is a lifeline for the Chinese diaspora* (“Since the start of the pandemic, more restaurant owners have created WeChat groups and communities[.]”).

¹⁶ Hussain & Avery, *WeChat is a lifeline for the Chinese diaspora*.

¹⁷ *Id.*

¹⁸ *Id.*

III. THE FIRST AMENDMENT PROTECTS WECHAT AND ITS USERS NO LESS THAN CHINESE-LANGUAGE NEWSPAPERS AND THEIR READERS

A. The First Amendment Clearly Protects The Right To Print And Read Chinese-Language Newspapers

There is no reasonable argument that the United States government would be able to simply ban the publication of a Chinese-language newspaper—or other printed media directed at the Chinese community—consistent with the First Amendment. Even the lesser act of interfering with “[t]he choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials ... constitute[s] the exercise of editorial control and judgment” protected by the First Amendment. *E.g., Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

Even setting aside the rights of the press, readers and/or viewers of information have a separate and powerful interest in having access to that information without government interference. As the Supreme Court has explained, “it is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences”—“a right [that] may not constitutionally be abridged by” either the legislative or executive branches. *See Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 389-390 (1969). This is because “the right to receive ideas is a necessary predicate to the *recipient’s* ...

own rights of speech, press, and political freedom.” *Board of Education v. Pico*, 457 U.S. 853, 867 (1982).

Taken together, these twin principles—the right of a publisher to speak and of an American to listen and learn—clearly bar the government from interfering with the right to publish newspapers, books, and other media except in the most exceptional of circumstances. In short, “the State may not, consistent[] with the spirit of the First Amendment, contract the spectrum of available knowledge.”

Pico, 457 U.S. at 866.

B. WeChat And Its Users Are Entitled To The Same First Amendment Protections As A Chinese-Language Newspaper And Its Readers

The same familiar First Amendment protections that apply to publishers of print media and their readers also apply to WeChat and its users. As the Supreme Court has observed, “whatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of freedom of speech and the press, like the First Amendment’s command, do not vary when a new and different medium for communication appears.” *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 790 (2011) (internal quotation marks omitted). *Brown* emphasizes that the same free speech principles governing books and newspapers extends to new media, like video games. *Id.* at 796-798; *see also Reno v. ACLU*, 521 U.S. 844,

870 (1997) (there is no “basis for qualifying the level of First Amendment scrutiny that should be applied to th[e] medium” of the Internet).

Other courts have come to similar conclusions when discussing the First Amendment’s application to online speech. The Supreme Courts of Texas, Ohio, and Colorado have all issued decisions that rest on the basic premise that “[t]he fact that expression may now occur in cyberspace ... does not mean that governmental regulation of that speech is beyond the reach of First Amendment analysis and scrutiny.” *Bey v. Rasaweher*, 2020-Ohio-3301 at ¶ 27 (Ohio 2020); *see also Kinney v. Barnes*, 443 S.W.3d 87, 100-101 (Tex. 2014) (“The Supreme Court has steadfastly refused to make free speech protections a moving target [and] ... ‘declin[ed] to draw, and then redraw constitutional lines based on the particular media or technology used[.]’”); *People in Interest of R.D.*, 464 P.3d 717, 733 (Colo. 2020) (emphasizing the First Amendment analysis should keep in mind “the vast temporal, geographic, and cultural distance current technology permits speech to travel”).

This Court, moreover, has recently held that the principle that the First Amendment applies only to government actors is still good law in the Internet age. *See, e.g., Prager Univ. v. Google LLC*, 951 F.3d 991, 996-997 (9th Cir. 2020). Specifically, *Prager* holds that social media platforms are not subject to First Amendment constraints when deciding whether to permit and/or limit access to

their websites. As this Court explained, the fact that a “private entity that operates its platform without any state involvement” is not subject to the First Amendment is “not [an] antiquated principle[] that ha[s] lost [its] vitality in the digital age.” *Id.* Rather, courts across the country “have uniformly concluded that digital Internet platforms that open their property to user-generated content do not become state actors.” *Id.*

Consistent with the principle that First Amendment protections do not change with the advent of new technology, the Supreme Court has concluded that a government bar on accessing social media websites violates the First Amendment. *See Packingham*, 137 S. Ct. at 1738. *Packingham* dealt with a North Carolina law that barred registered sex offenders from accessing ““a commercial social networking Web site,”” a term that included at least websites like Twitter, Facebook, and LinkedIn. *Id.* at 1733-1734, 1736-1737. The Supreme Court struck down the law, concluding that a law barring all access to social media is a “prohibition unprecedented in the scope of First Amendment speech it burdens.” *Id.* at 1737. To prevent individuals from using “perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard”—and one on which they can learn about “current events, check[] ads for employment ... and otherwise explor[e] the vast realms of human thought and knowledge”—is to

“prevent the user from engaging in the legitimate exercise of First Amendment rights.” *Id.*

It is impossible to square the government’s actions in this case with the fundamental holding of *Packingham*—i.e., that the government may “not enact [a] complete bar to the exercise of First Amendment rights on websites integral to the fabric of our modern society and culture.” *Packingham*, 137 S. Ct. at 1738; *see also United States v. Eaglin*, 913 F.3d 88, 97 (2d Cir. 2019) (*Packingham* recognizes “a First Amendment right to access certain social networking websites”). While the facts of this case are not identical to those of *Packingham*, those distinctions are without legal significance.¹⁹

The government has suggested, for example, that Chinese-Americans can at least rely on imperfect social media substitutes to WeChat in order to garner some of the speech-related benefits they previously received from using the WeChat app. *E.g.*, U.S. Br. 44-45. That does not change the legal calculus, however, because the government’s order essentially banning access to the entire WeChat platform still places an impermissible burden on WeChat users’ First Amendment rights. As the Second Circuit has explained in the context of ruling that President Trump

¹⁹ The *Packingham* Court did not resolve whether intermediate or strict scrutiny applied to a law that bars all access to a social media website. As Appellees have explained, the WeChat ban would not survive regardless of which standard applies. *See Appellees Br. 31-45.*

could not constitutionally block Twitter users from accessing his Twitter feed, the fact that Twitter users could still use “workarounds” to view his Tweets (e.g., creating a new account) did not avoid constitutional problems. *See Knight First Amendment Inst. at Columbia Univ. v. Trump*, 928 F.3d 226, 238 (2d Cir. 2019). This is because “burdens to speech as well as outright bans run afoul of the First Amendment.” *Id.*

Similarly, the government’s suggestion that WeChat has engaged in “censorship,” U.S. Br. 34, also does not change the First Amendment analysis. The decision in *Zhang v. Baidu.com Inc.*, 10 F. Supp. 3d 433 (S.D.N.Y. 2014), is instructive. There, the court held that the fact that a Chinese search engine was “conscious[ly] ... design[ed] ... to favor certain expression on core political subjects over other expression on those same political subjects” actually strengthened the argument for First Amendment protection, as it is “fundamental” under the First Amendment “that a speaker has the autonomy to choose the content of his own message.” *Id.* at 439-440. The same basic logic should apply to protect the rights of WeChat’s users, who rely on WeChat to speak, learn, and advertise their businesses, despite knowing about the limitations on the platform imposed by the Chinese government.

None of this requires this Court to close its eyes to the fact that WeChat as a platform may censor some speech at a foreign government’s behest. While this is

troubling as a policy matter, the fact that the speech on the platform (and the right of willing WeChat users to listen to that speech) is protected is a vindication—not a failure—of the American commitment to free speech. It is a “reaffirmation of the principles of freedom and inclusiveness that democracy best reflects, and of the conviction that our toleration of criticism is a sign and source of our strength.”

Zhang, 10 F. Supp. 3d at 443 (quoting *Texas v. Johnson*, 491 U.S. 397, 419 (1989)).

CONCLUSION

The magistrate judge’s ruling imposing a preliminary injunction should be affirmed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 4,041 words.

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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