



July 31, 2024

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Molly C. Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
PO Box 193939
San Francisco, CA 94119-3939

Re: Matsumoto, et al. v. Labrador, Case No. 23-3787
Response to Appellant’s Notice of Supplemental Authority Pursuant to Fed. R. App.
P. 28j and Circuit R. 28-6

Dear Ms. Dwyer:

On July 25, 2024, Appellants filed a notice of supplemental authority under Federal Rule of Appellate Procedure 28j and Circuit Rule 28-6 asserting that the United States Supreme Court’s decision in *Moody v. NetChoice, LLC*, 144 S.Ct. 2383, 2398 (2024), clarifies the scope of facial challenges under the First Amendment and therefore undermines Appellees facial challenge in this case.

Appellants are incorrect; *Moody* supports Appellees’ position because the district court here used the same standard set out in *Moody*. 1-ER-62-66. As applied to this case, *Moody* breaks no new ground. The district court applied the appropriate standard here: “The first step in the overbreadth analysis is to construe the challenged statute.” 1-ER-62; *see Moody*, 144 S.Ct. at 2398. The District Court then examined which applications violated the First Amendment. 1-ER-62-63 (“The Court finds that Idaho Code Section 18-623 is a content-based regulation of protected speech and expression.”); *see Moody*, 144 S.Ct. at 2398. The district court then measured those infringing applications against the rest of the statute’s applications. 1-ER-64-65; *see Moody*, 144 S.Ct. at 2398. And the Court concluded that the burden on Plaintiffs’ protected speech is disproportionate to any legitimate sweep of the statute. 1-ER-66; *see Moody*, 144 S.Ct. at 2397.

The body of this letter contains 202 words.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Wendy J. Olson", is written over a light blue horizontal line.

Wendy J. Olson