NO. H054687

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT**

GOOGLE LLC and YOUTUBE, LLC,
Petitioners,
v.
SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY,
Respondent;

RICHARD HAYNIE and CONSTANCE ADLER GALLOWAY,
Real Parties in Interest.

From an Order of the Superior Court of Santa Clara County
Case No. 24CV446330
The Honorable Beth McGowen
Department 22, (408) 882-2340

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND PROPOSED BRIEF OF AMICI CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC., AND CALIFORNIA BUSINESS ROUNDTABLE IN SUPPORT OF PETITIONERS

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, Rules 8.208 and 8.488, amici curiae certify that there are no interested entities or persons that must be listed in this certificate.

Dated: August 17, 2026

JENNER & BLOCK LLP

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APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF

The Chamber of Commerce of the United States of America, the California Chamber of Commerce, the National Federation of Independent Business Small Business Legal Center, Inc., and the California Business Roundtable respectfully request leave to file the attached amici curiae brief in support of petitioners Google LLC and YouTube, LLC, and ask that the Court direct the clerk to file the attached brief.[1]

This Court has the authority to accept the brief at this stage. Rule 8.487(e) of the California Rules of Court addresses amicus briefs after the court issues an alternative writ or order to show cause, and the Advisory Committee Comment states that the rule "do[es] not alter the court's authority to request or permit the filing of amicus briefs or amicus letters in

[1] No party or counsel for a party in this proceeding authored the proposed brief in whole or in part. No person or entity, aside from amici curiae, their members, or their counsel, made a monetary contribution intended to fund the preparation or submission of the brief.

writ proceedings in circumstances not covered by these subdivisions, such as before the court has determined whether to issue an alternative writ or order to show cause . . . .” Courts of Appeal, including this one, have exercised their authority to permit such briefs.[2] Amici submit this brief now to explain both why this petition warrants review and why the Superior Court’s decision is wrong.

The brief offers the Court a perspective the parties cannot supply. Amici’s members include the California businesses—most of them small businesses—that buy the advertising at issue. The brief draws on that perspective to describe what the order below would mean in practice to advertisers. Amici explain why age-tailored advertising is common and useful for businesses and consumers alike and why liability would lead businesses to advertise less rather than more broadly. These commonsense effects are relevant to the question presented because in construing the Unruh Civil Rights Act, “consideration must be given to the consequences that will flow from a particular interpretation.” (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165, *superseded by statute on other grounds as stated in Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661.)

INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America is the world’s largest business organization. As the nation’s leading advocate for

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[2] See *Espinoza v. Superior Court* (2d Dist., Sept. 6, 2022, No. B322665) [order granting application and directing clerk to file amicus brief in support of petition for writ of mandate]; see also *County of Santa Clara v. Public Employment Relations Board* (6th Dist., Nov. 25, 2025, No. H052154) [order granting application filed in support of petition in statutory writ proceeding].

business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The California Chamber of Commerce (CalChamber) is a non-profit business association with approximately 11,000 members, both individual and corporate, representing one quarter of the state's private sector workforce and virtually every economic interest in the state of California. While CalChamber represents several of the largest corporations in California, 70 percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory, and legal issues.

The National Federation of Independent Business Small Business Legal Center, Inc. (NFIB Legal Center) is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members.

The California Business Roundtable (CBRT) is a nonpartisan organization comprised of the senior executive leadership of major employers throughout California, with a combined workforce of over

750,000 employees. For 50 years, CBRT has identified the issues critical to a healthy business climate in California and provided the leadership needed to strengthen the state's economy and create jobs. Among other things, CBRT concerns itself with policies and conditions that undermine economic efficiency, diminish the total economic surplus created by California's economy for the collective benefit of all its participants, and place California at a competitive disadvantage in the U.S. and global economies.

Amici and their members have a substantial interest in this proceeding. Many of amici's members advertise their products and services using ordinary demographic criteria, including age. The Superior Court's order, if allowed to stand, threatens to expose amici's members throughout California to statutory damages of $4,000 per violation for that practice. The burden would fall most heavily on small businesses that make up a strong majority of amici's members. The breadth of this coalition—national, statewide, and small business organizations joining one brief at the petition stage—reflects the breadth of the order's consequences and need for this Court's review.

Dated: August 17, 2026

JENNER & BLOCK LLP

By *<u>/s/Peter E. Davis</u>*
Peter E. Davis

Counsel for Amici Curiae Chamber of Commerce of the United States of America, California Chamber of Commerce, National Federation of

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AMICI CURIAE BRIEF

INTRODUCTION

The Superior Court's order threatens businesses with ruinous liability for the ordinary and reasonable decision to account for age in choosing the audience for an advertisement. Consider a few commonplace examples. An insurance broker whose business focuses on Medicare supplement plans directs its message to Californians in their early 60s. A credit union advertises its youth accounts to Californians in their early 20s. A pharmacy promotes shingles vaccinations to adults over 50, the group for whom the vaccine is recommended. A Mom-and-Pop diner advertises its senior early-bird discount to the customers old enough to use it. Each is doing something useful to both parties: The business reaches the customers it is looking for, and customers find the service designed for them. Penalizing this match will not cause this information to reach more Californians. It will mean less of this information reaches the Californians who need it.

The order below holds that allegations challenging this kind of advertising state a claim under the Unruh Civil Rights Act (Civ. Code § 51), carrying statutory damages of no less than $4,000 per violation, with no showing of actual harm required. The decision is not limited to Google and YouTube. Its logic could reach any business that considers age in choosing whom an advertisement reaches, and suits applying the same theory to individual advertisers already have been filed.

Amici's members advertise their products and services using ordinary demographic criteria, including age—a longstanding and routine business practice. For many of them, especially small businesses, it is the only effective and realistic way to reach customers. A business threatened with statutory damages for this practice has two options, both leaving consumers with less information. It can advertise to everyone, paying to reach people who cannot use the product. This means that the people who need the information are less likely to receive it. Or it can advertise less, a logical choice for many businesses since their advertising can no longer efficiently reach its audience. Either way, the broker reaches fewer Californians approaching 65, the pharmacy promotes fewer vaccinations to those who need them, and the diner that cannot affordably tell older customers about its senior discount has less reason to offer one.

The Unruh Act does not require that result. The Act prohibits arbitrary discrimination; it leaves businesses free to adopt reasonable and nonarbitrary practices rationally related to what they sell. (*Javorsky v. Western Athletic Clubs, Inc.* (2015) 242 Cal.App.4th 1386, 1394–1395; *Starkman v. Mann Theatres Corp.* (1991) 227 Cal.App.3d 1491, 1496–1497.) There is nothing arbitrary about the broker's, the pharmacy's, or the diner's advertising choices. And in deciding whether the Act nonetheless condemns practices like theirs, "consideration must be given to the consequences that will flow from a particular interpretation," because the Legislature is presumed to have intended "reasonable results consistent with its expressed purpose, not absurd consequences." (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165–1166, *superseded by statute on other grounds as stated in Munson v. Del Taco, Inc.* (2009) 46 Cal.4th 661.) If left to stand, the order would produce exactly those absurd consequences, both for the businesses that rely on such advertising and for the California consumers who receive those advertisements.

ARGUMENT

I. AGE-TAILORED ADVERTISING SERVES THE BUSINESSES THAT BUY IT AND THE CONSUMERS WHO SEE IT.

Businesses have long chosen where or how to advertise, and age is a natural element of this choice. The practice is much older than the internet. A magazine for retirees sells advertising space because its readers are older. A hearing clinic buys space in a seniors' center newsletter for the same reason. Online advertising involves much the same practice carried forward. A business that once labored to select the right publication can now find its audience more easily.

Age matters to advertising because it matters to customers. For some products, the connection is built in: A Medicare supplement is built for someone about to turn 65, a term life policy designed for a young parent with decades of premiums ahead. Recognizing this link, the California Insurance Code imposes special protections on annuity transactions with consumers 65 and older. This reflects a judgment that both the relevance of these products and the risks of selling them track age. For other products, the connection relates to customers' life circumstances. First-home mortgages, estate planning, hearing aids, and early-bird specials each find most of their buyers in a particular stretch of life. An advertiser that recognizes those patterns is meeting customers where they are.

Small businesses depend on that ability most. Nearly three-quarters of small business owners report that losing access to targeted advertising would harm their businesses. (U.S. Chamber of Com., *Empowering Small Business: The Impact of Technology on U.S. Small Business* (4th ed. 2025) p. 31, https://www.uschamber.com/assets/documents/20251621-CTEC-Empowering-Small-Business-Report-2025-v1-r10-Digital-FINAL.pdf.) Targeted advertising does not require a multimillion-dollar budget, which is why it can help “small, new, or niche” brands compete with incumbents that can blanket the airwaves. (Sokol & Zhu, *Harming Competition and Consumers Under the Guise of Protecting Privacy* (2022) 107 Cornell L.Rev. Online 101, 106.) In California, this applies to nearly every business. Small firms make up 99.8 percent of the state’s businesses, and 97.9 percent of its finance and insurance employers. (U.S. Small Bus. Admin., Off. of Advocacy, *2025 Small Business Profile: California* (2025) pp. 1, 4, https://advocacy.sba.gov/wp-content/uploads/2025/06/California_2025-State-Profile.pdf.)

For many of these businesses, advertising to everyone is not a realistic alternative. One empirical study found that display advertising (the practice of promoting services, products, or brands on digital platforms through visual advertisements) became 65 percent less effective at changing stated purchase intent after European privacy rules restricted the data advertisers could use to select audiences. (See Goldfarb & Tucker, *Privacy Regulation and Online Advertising* (2011) 57 (1) Mgmt. Sci. 57, 57.) The alternative looks like the economics of the classic television commercial—paying to reach millions of viewers in the hope that a few thousand want the product. (See Sokol & Zhu, *supra*, at p. 106.) While a national brand might absorb that waste, most small businesses cannot.

Consumers, too, prefer the ability to receive relevant advertisements. In surveys, approximately 90 percent say they would rather see advertisements than pay a fee for internet services. (Akman, *A Web of Paradoxes* (2022) 16 (2) Va. L. & Bus. Rev. 217, 273–274.) Advertising aimed at the right audience means better matches between people and products, fewer ads overall, and cost savings passed on by firms. (Lau, Federal Trade Commission, Bureau of Economics, *A Brief Primer on the Economics of Targeted Advertising* (Jan. 2020), pp. 11–12, https://www.ftc.gov/system/files/documents/reports/brief-primer-economics-targeted-advertising/economic_issues_paper_-_economics_of_targeted_advertising.pdf.) And it pays for most free online content; as one FTC Commissioner put it, targeted advertising is the reason "so much of our online activity does not require the constant exchange of money." (Ferguson, Federal Trade Commission, *Concurring and Dissenting Statement Regarding the Social Media and Video Streaming Services Report* (Sept. 19, 2024), p. 4, https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-statement-social-media-6b.pdf.)

The Unruh Act guarantees every Californian full and equal access to a business's goods and services. Nothing in it suggests that every Californian must receive identical marketing, regardless of the product's relevance or applicability to their circumstances.

II. IMPOSING LIABILITY FOR AGE-TAILORED ADVERTISING WOULD NOT EQUALIZE ADVERTISING; IT WOULD CURTAIL IT.

The order below creates extraordinary exposure for businesses that engage in the ordinary practice of age-tailored advertising. Under the Unruh Act, each violation carries statutory damages of no less than $4,000, plus attorney's fees, with (on Plaintiffs' view) no proof of actual harm required. (Civ. Code, § 52, subd. (a).) The order holds that certain allegations of age-tailored advertising state a claim, so every person outside an advertisement's audience is a potential plaintiff, and a class of just one thousand persons, each of whom experienced just one violation, would mean a $4 million floor. Similar suits with similar theories are being filed in other California courts. In *Matthews v. Lemonade Insurance Co.* (S.D.Cal. 2025) 809 F.Supp.3d 1076, an insurer already faces an Unruh class action over age-targeted insurance advertising, on a class definition that tracks *Liapes v. Facebook, Inc.* (2023) 95 Cal.App.5th 910. And the theory is not specific to insurance; any California business that considers age in tailoring advertisements could face the same complaint.

Businesses facing liability for age-tailored advertising will not respond by advertising more, or even the same amount, to everyone. The realistic response is to retreat: pull back on advertising that, stripped of age, costs the same but reaches fewer actual customers. This is not speculation. Studies of certain online tracking restrictions, which likewise strip advertisers of the ability to select audiences, estimate that advertising revenues fall considerably when those tools are removed. (Miller & Skiera, *Economic Consequences of Online Tracking Restrictions*, (2024) 41 Int'l J. Rsch. Mktg. 241, 248 [collecting studies]). Businesses spend less on advertising that is meaningfully less successful. This serves no one because businesses lose customers and consumers lose the information they want.

The exposure would land hardest on the businesses least able to bear it. Studies show that limits on targeted advertising can lead the advertising revenues that fund the affected products to collapse. For example, developers have cut updates, released fewer products, and abandoned existing ones. (See Kircher & Foerderer, *Ban Targeted Advertising? An Empirical Investigation of the Consequences for App Development* (2024) 70 Mgmt. Sci. 1070, 1088–1089.) The costs are concentrated among young, undiversified, and advertising-dependent firms, which have no other way to reach their market. (*Id.*) The same would occur here. A large advertiser that loses one channel may in theory have others; the broker whose entire practice depends on reaching Californians approaching 65 may not. The likely result is that advertising concentrates in the few platforms large enough to absorb the risk. The Unruh Act was meant to protect Californians from discrimination, not to harm small businesses seeking to reach their customers.

For the businesses that continue advertising, the order below promises years of litigation. Under Plaintiffs' theory, the audience for every advertisement becomes a triable question. The Supreme Court has described analogous litigation and declined to bless it. "A trial in such a case would explore issues such as what general . . . selection criteria are the best predictors . . . ; what weight should be given to each criterion; what threshold criteria, if any, are permissible . . . . The trial would devolve into a battle of economic studies and experts . . . . [T]he issue . . . could be tried and retried across the state as an issue of fact, with no prospect of certainty or stability." (*Harris*, *supra*, 52 Cal.3d at p. 1166; accord *Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1402–1403.)

The Superior Court's reasoning underscores the problem. On the order's reasoning, the age-conscious statutes permit differential pricing but say nothing about advertising. (Order Overruling Defendants' Demurrer (June 11, 2026) p. 8.) Accordingly, an insurer may charge a 65-year-old a different premium while the broker who tells 65-year-olds about this product risks a class action; the diner may offer a senior discount, but it cannot affordably announce it. But common sense dictates that a statute that permits age-based pricing does not punish telling eligible customers about it.

These are the consequences *Harris* directs courts to weigh to understand the Unruh Act's scope. The statute exists "to create and preserve a nondiscriminatory environment in California business establishments." (*White v. Square, Inc.* (2019) 7 Cal.5th 1019, 1025 [internal quotation marks omitted].) The order below reads the Act to leave older Californians with less information about the products most relevant to them, with small businesses carrying the exposure. That is not a result the Legislature intended. California law takes account of age in numerous respects—in when benefits begin, in how age-based products may be sold, in the senior discounts courts have upheld—because age is often relevant to what customers need. A statute enacted to guard against arbitrary discrimination should not be read to punish businesses for telling Californians about products made for them.

CONCLUSION

For the foregoing reasons, and those stated in the petition, amici respectfully urge the Court to review and grant the petition for writ of mandate and direct respondent court to vacate its order overruling the demurrer and to enter a new order sustaining it.

Dated: August 17, 2026

Respectfully submitted,

JENNER & BLOCK LLP

By: */s/Peter E. Davis*

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CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c)(1) of the California Rules of Court, and in reliance on the word count of the computer program used to prepare this brief, counsel certifies that the attached brief is proportionately spaced, uses 13-point Times New Roman type, and contains 2092 including footnotes and excluding the cover, the tables, the application, the signature blocks, and this certificate.

Dated: August 17, 2026

Respectfully submitted,

JENNER & BLOCK LLP

By: */s/Peter E. Davis*

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PROOF OF SERVICE

I, Sarah Vuong, declare: I am over the age of eighteen years and not a party to this action. My business address is 515 S. Flower Street, Suite 3300, Los Angeles, CA 90071-2246. On August 17, 2026, I served on the parties and persons listed below, by the method indicated below, the following document: **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND PROPOSED BRIEF OF AMICI CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC., AND CALIFORNIA BUSINESS ROUNDTABLE IN SUPPORT OF PETITIONERS.**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 17, 2026, at Los Angeles, California.

/s/Sarah Vuong
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