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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

20 U.S. WECHAT USERS ALLIANCE,
CHIHUO INC., BRENT COULTER,
21 FANGYI DUAN, JINNENG BAO,
ELAINE PENG, and XIAO ZHANG,

22 Plaintiffs,

23 v.

24 DONALD J. TRUMP, in his official
capacity as President of the United States,
25 and WILBUR ROSS, in his official
capacity as Secretary of Commerce,

26 Defendants.

27

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Case No. 3:20-cv-05910-LB

**DECLARATION OF ERWIN
CHEMERINSKY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. Laurel Beeler

Trial Date: None Set

1 I, Erwin Chemerinsky, declare:

2 1. I have personal knowledge of the matters set forth herein, and if called as a witness,
3 I could and would competently so testify. I make this declaration in support of Plaintiffs' Motion
4 For Preliminary Injunction.

5 2. I am Dean of the University of California Berkeley School of Law, where I am also
6 the Jesse H. Choper Distinguished Professor of Law. Before assuming this position in 2017, I was
7 the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First
8 Amendment Law, at the University of California, Irvine School of Law, with a joint appointment
9 in Political Science. I previously taught at Duke Law School, the University of Southern
10 California School of Law (where I served for four years as director of the Center for
11 Communications Law and Policy), UCLA School of Law, and DePaul University College of Law.
12

13 3. My areas of expertise are constitutional law including the First Amendment, federal
14 practice, civil rights and civil liberties, and appellate litigation. I am the author of eleven books,
15 including leading treatises about constitutional law, criminal procedure, and federal jurisdiction,
16 and more than 200 law review articles. In 2016, I was named a fellow of the American Academy
17 of Arts and Sciences. I frequently argue appellate cases, including 7 in the U.S. Supreme Court, ,
18 and also serve as a commentator on legal issues for national and local media.
19

20 4. I have reviewed the "Executive Order on Addressing the Threat Posed by
21 WeChat," E.O. No. 13943, issued on August 6, 2020. The Executive Order prohibits any
22 "transaction" that is related to a messaging and social-media platform called WeChat, which is
23 widely used by Chinese Americans and others. Yet there is no definition of the term "transaction."
24 The Executive Order also prohibits any transaction that evades or avoids the prohibition on
25 transactions related to WeChat. The President purported to issue the Executive Order pursuant to
26 the International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act
27
28

1 (NEA). The IEEPA authorizes civil and criminal penalties for the violation of the Executive
2 Order. *See* 50 U.S.C. § 1705.

3 5. The Executive Order’s prohibition on the use of WeChat is the equivalent of a
4 complete ban of a newspaper, a TV channel, or a website used by the tens of millions of U.S.
5 citizens who regularly use the WeChat platform to communicate ideas and to conduct business
6 every day in the United States. Historically, the government has repeatedly attempted to censor or
7 suppress certain “offensive” content on newspapers or other media. But never has the government
8 tried to shut down entirely a public forum used by millions of Americans. Such a broad restriction
9 on speech, as is done by this Executive Order, is unprecedented in the modern history of this
10 country.

11 6. The public evidence gathered in the Complaint also strongly suggests that the
12 Executive Order is motivated by anti-Chinese animus, which suggests that the Executive Order
13 violates the Equal Protection Clause of the Fifth Amendment.

14 7. I am also deeply troubled by the fact that a violation of the Executive Order can
15 result in civil and criminal penalties. I am unaware of any law in this country that criminalizes
16 speech regardless of its content or the speakers’ intent. The chilling effect on the exercise of free
17 speech caused by the Executive Order is profound and constitutionally unsupportable.

18
19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct, and that this declaration is executed at 4:22 p.m., this 27th day of
21 August, 2020.

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24 _____
25 Dean Erwin Chemerinsky
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