UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER KOHLS, THE BABYLON BEE, LLC, and KELLY CHANG RICKERT,

Plaintiffs,

v.

ROB BONTA, in his official capacity as Attorney General of the State of California, and SHIRLEY N. WEBER, in her official capacity as California Secretary of State,

Defendants.

No. 2:24-cv-02527-JAM-CKD

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (AB 2839)

I. INTRODUCTION AND BACKGROUND

Plaintiffs Christopher Kohls (aka "Mr. Reagan"), The Babylon Bee, LLC ("The Bee") and Kelly Chang Rickert are parodists and humorists who create digital content about politics on various internet platforms and social media websites. See P. Statement of Undisputed Facts ("PSUF") ¶¶ 14-17, 53-54, 69-80, ECF. No. 47. Plaintiffs' posts contain demonstrably false, exaggerated, and hyperbolic information. Id. ¶¶ 26, 29, 62, 100. They contend

that their videos, posts, and articles are part of a long-held American tradition of ridiculing and criticizing candidates and elected officials across the political spectrum. However, their satirical media poses a challenge of first impression to courts: how to grapple with content that is synthetically edited or digitally generated using artificial intelligence ("AI"). Compl., ¶ 5, ECF No. 1.

Motivated to combat the potential dangers associated with the type of artificially manipulated media procured by Plaintiffs, California passed AB 2839. AB 2839 regulates a broad spectrum of election-related content that is "materially deceptive" and permits any recipient of this content to sue for general or special damages. Cal. Elec. Code §§ 20012(b)(1), 20012(d). AB 2839 defines "materially deceptive" content as "audio or visual media that is intentionally digitally created or modified, . . . such that the content would falsely appear to a reasonable person to be an authentic record of the content depicted in the media." Id. § 20012(f)(8)(A). AB 2839 includes exceptions for candidates who make and share deepfake content of themselves and for satire or parody. Id. §§ 20012(b)(2), 20012(b)(3). In both these cases, the content must include a disclaimer that meets AB 2839's formatting requirements and must state that the content has been digitally manipulated. Id. §§ 20012(b)(2)(B), 20012(b)(3).

In a written order on October 2, 2024, the Court enjoined AB 2839 on a preliminary basis. See Order Granting P.'s Mot. Prelim. Inj. ("Order"), ECF No. 14. The Court found that AB 2839 likely facially violated the First Amendment because the law was

not narrowly tailored enough and because the law impermissibly compelled speech.

After the Court granted the preliminary injunction, several cases were consolidated whereupon Plaintiffs The Babylon Bee and Kelly Chang Rickert joined the action. See ECF Nos. 20, 21. At this juncture, the relevant facts and legal issues remain the same. All three Plaintiffs (Christopher Kohls, The Babylon Bee, and Kelly Chang Rickert) and Defendants filed cross motions for summary judgment on whether AB 2839 violates the First and Fourteenth Amendments as well as Article 1, Section 2 of the California Constitution. See P. Mot. for Summary Judgment ("P. MSJ"), ECF No. 45; D. Mot. for Summary Judgment ("D. MSJ"), ECF No. 49. Both sides also submitted oppositions. See P. Opp'n, ECF No. 78; D. Opp'n, ECF No. 81. Plaintiffs seek a permanent injunction prohibiting California from enforcing AB 2839. See P. MSJ, ECF No. 45. For the reasons specified herein, the Court grants Plaintiffs' motion for summary judgment and denies Defendants' motion, finding that Plaintiffs are entitled to a permanent injunction.[1]

II. OPINION

A. Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ.

[1] A hearing on these cross motions was held on August 5, 2025.

Pro. 56(a). The moving party bears the initial burden of establishing that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The burden on the moving party is discharged by showing that there is an "absence of evidence to support the nonmoving party's case." Id. at 325. A factual dispute is genuine where "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation omitted).

B. Analysis

1. First Amendment Facial Challenge

a. Content, Viewpoint, and Speaker-Based Distinctions

Plaintiffs bring a facial attack against AB 2839, arguing that the statute is unconstitutional because it restricts core political speech while simultaneously discriminating based on content, viewpoint, and speaker. See P. MSJ at 11. California defends the statute by highlighting AB 2839's exemptions for parody and satire and arguing that the statute only regulates content that purports to be an authentic record of actual events. See D. MSJ at 2. The Court finds that AB 2839 discriminates based on content, viewpoint, and speaker and targets constitutionally protected speech.

The Court's preliminary injunction Order recognized that AB 2839 was likely unconstitutional because it was content-based.

See Order at 10. By its terms, AB 2839 prohibits "materially deceptive" (defined as content that would falsely appear to a reasonable person to be an authentic record) audio or visual communications that portray a candidate or elected official doing or saying things he or she didn't do or say and that are likely to harm a candidate's reputation or electoral prospects. Cal. Elec. Code § 20012(b)(1)(A). The statute also punishes such altered content that depicts an "elections official" or "voting machine, ballot, voting site, or other property or equipment" that is "reasonably likely" to falsely "undermine confidence" in the outcome of an election contest. Id. § 20012(b)(1)(B), (D). As evidenced by the statutory language, AB 2839 facially regulates based on content because the "law applies to particular speech because of the topic" — a political candidate, elected official, elections official, ballot, or voting mechanism. Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015). Moreover, it delineates acceptable and unacceptable speech based on its purported truth or falsity meaning that non-materially deceptive content is excluded. See Order at 11.

On top of the content-based distinctions, AB 2839 regulates speech based on viewpoint and speaker. The state law only punishes content that could "harm" a candidate's electoral prospects or content that could "undermine confidence" in the outcome of an election while leaving positive representations unregulated. See P. MSJ at 18. In other words, materially deceptive content that helps a candidate or promotes confidence would not be subject to penalty under AB 2839. These distinctions are the "essence of viewpoint discrimination." See

Iancu v. Brunetti, 588 U.S. 388, 393 (2019); Grimmett v. Freeman, 59 F.4th 689, 694–96 (4th Cir. 2023) (invalidating law prohibiting "derogatory reports" about political candidate).

Moreover, AB 2839 also engages in speaker-based discrimination because the law imposes different obligations on different speakers depending on who they are. Under AB 2839, candidates posting about themselves, broadcasters, and internet websites are subject to more lenient rules while other speakers, such as Plaintiffs, are categorically barred. Candidates and broadcasters can post "materially deceptive" content as long as they attach disclaimers. See Cal. Elec. Code §§ 20012(b)(2), 20012(e)(1). Additionally, broadcasters and internet sites are exempt from "general or special damages." Id. § 20012(d)(2)(B). AB 2839 treats different speakers dissimilarly, subjecting certain individuals to stricter rules and other speakers to more lenient rules. All together, these content, viewpoint, and speaker-based distinctions at minimum trigger strict scrutiny. Green v. Miss U.S. of Am., LLC, 52 F.4th 773, 791 (9th Cir. 2022) (explaining content-based speech compulsion warrants strict scrutiny); Boyer v. City of Simi Valley, 978 F.3d 618, 621–23 (9th Cir. 2020).

Attempting to avoid the content, viewpoint, and speaker-based problems with AB 2839, Defendants analogize the statute to narrow categories of historically recognized exceptions to the First Amendment such as defamation or fraud. See D. MSJ at 12-14. These "traditional categories [of expression] long familiar to the bar" are "well-defined and narrowly limited." United States v. Stevens, 559 U.S. 460, 468–69 (2010). However, AB

2839 goes beyond these historical categories. For example, the statute diverges from defamation law because it proscribes content that is merely "reasonably likely" to cause harm, which is speculative and prophylactic rather than remedial or concrete. Moreover, the statute also goes beyond reputational harms to include amorphous harms to the "electoral prospects" of a candidate. See P. MSJ at 13-15; P. Opp'n at 3-7.

So too do AB 2839's regulations go beyond the definition of fraud because unlike fraud, AB 2839 does not require reliance or actual injury. See United States v. Alvarez, 567 U.S. 709, 734 (2012) (Breyer, J., concurring) (citing Restatement (Second) of Torts § 525 (1976)). California responds that falsehoods "meant to deceive viewers and manipulate voters to change their voting behavior" do cause legally cognizable harm, but intent to "deceive and manipulate" alone is not sufficient under Alvarez, which recognized that even knowing falsehoods are constitutionally protected. 567 U.S. at 714. One of Defendants' *amicus curiae* points out that AB 2839 may resemble laws against impersonating government officials and misappropriating someone's image and likeness, but ultimately concedes that "AB 2839 sweeps more broadly." See Br. *Amicus Curiae* Elec. Privacy Info. Ctr. Supp. Defs.' Mot. S.J. on AB 2839 at 12-15, ECF No. 72.

Notably, the most significant manner in which AB 2839 goes beyond historically recognized exceptions to the First Amendment is by deputizing a much more expansive category of plaintiffs. Unlike defamation or other tort remedies that limit plaintiffs to persons actually harmed, the category of plaintiffs AB 2839

cognizes is almost boundless because it allows the government as well as any recipient of materially deceptive content to "seek injunctive or other equitable relief." Cal. Elec. Code § 20012(d)(1). Plus, these recipients can seek "general or special damages" and "attorney's fees and costs," even against a person who merely "republishe[s]" prohibited content. Id. § 20012(d)(2). Allowing almost any person to file a complaint creates the "real risk" of malicious lawsuits that could chill protected speech. Susan B. Anthony List v. Driehaus, 573 U.S. 149, 164 (2014).

Rather than targeting content that procures tangible harms or materially benefits a speaker, AB 2839 attempts to stifle speech before it occurs or actually harms anyone as long as it is "reasonably likely" to do so and it allows almost anyone to act as a censorship czar. See Animal Legal Def. Fund v. Wasden, 878 F.3d 1184, 1194–95 (9th Cir. 2018) (explaining that exceptions to the First Amendment "typically require proof of specific or tangible harm" or "a material benefit to the speaker"); Alvarez, 567 U.S. at 719 (Breyer, J., concurring) (same). The far-reaching prior restraints AB 2839 implements have not been recognized by First Amendment caselaw thus far and have no historically accepted analogs. Having found that AB 2839 goes beyond historical exceptions to the First Amendment and is a statute that discriminates based on content, the Court proceeds to conduct a strict scrutiny analysis.

b. Strict Scrutiny

Plaintiffs and Defendants both agree that at minimum, strict scrutiny is the appropriate standard for a content-based

restriction that implicates political expression like AB 2839. See D. MSJ at 10; P. MSJ at 22. The First Amendment affords the "broadest protection" to the "discussion of public issues" and "political expression in order to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." McIntyre v. Ohio Election Comm'n, 514 U.S. 334 (1997). To withstand strict scrutiny, AB 2839 must advance a compelling state interest through the least-restrictive means possible. Reed v. Town of Gilbert, 576 U.S. 155, 173 (2015). A content-based law is subject to strict scrutiny and "is justified only if the government demonstrates that [the law] is narrowly tailored to serve a compelling state interest." Twitter, Inc. v. Garland, 61 F.4th 686, 698 (9th Cir. 2023). California "bears the burden of proving the [law] meets this standard. Pierce v. Jacobsen, 44 F.4th 853, 862 (9th Cir. 2022).

(i) Compelling State Interest

The first step in a strict scrutiny analysis is for the Court to assess whether the State has a compelling interest in regulating the particular area it seeks to regulate. Reed, 576 U.S. at 173. Plaintiffs argue that AB 2839 does not advance a compelling state interest because its selective limitations upon speech do not further California's interest in "protecting free and fair elections." Cal. Elec. Code § 20012(a)(4). Defendants retort that the kind of deepfakes that AB 2839 prohibits pose a risk to California's interests in electoral integrity and preventing fraud on voters. See D. MSJ at 16.

The Court previously found that California's interests are

compelling. See Order at 11. Indeed, the U.S. Supreme Court has recognized that "[a] State indisputably has a compelling interest in preserving the integrity of its election process." Eu v. S.F. Cnty. Democratic Cent. Comm., 489 U.S. 214, 231 (1989). And "a State has a compelling interest in protecting voters from confusion and undue influence." Burson v. Freeman, 504 U.S. 191, 199 (1992) (plurality op.). For example, the State's legislative findings referenced actual examples of deepfakes that have deceived voters and impaired free and fair elections, such as the robocalls allegedly from former President Biden before the 2024 New Hampshire primary that explicitly encouraged voters not to go to the polls. See Liska Decl., Ex. 8, at 6-7; Ex. 11 at 8-9; see also Liska Decl., Ex. 14-19.

Research and studies confirm what California's legislative findings detail: political deepfakes have proliferated online and can influence voters' behavior, choices, and trust in the electoral process and electoral outcomes. See Alvarez Decl. ¶¶ 10-17, 21, ECF No. 49-3. Deepfakes online may alter voters' behavior and sow confusion that can lead voters to refrain from voting altogether. Id. ¶¶ 10-17. And those who encounter materially deceptive content about the voting process may find their confidence in the electoral process undermined erroneously — especially if the fraudulent content is a government official allegedly telling voters to doubt electoral outcomes. Id. ¶¶ 10-17. Thus, the Court finds that political deepfakes pose a risk to election integrity and that California has a compelling interest in regulating this arena.

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(ii) Least Restrictive Means

While the Court acknowledges that California may have a compelling interest in protecting election integrity, the tools it deploys to achieve its interest must be the least restrictive means of achieving such goal when significant speech issues are at stake. As Plaintiffs argue, the most glaring issue with AB 2839 is that the statute is not narrowly tailored because it captures even constitutional deepfakes and all "materially deceptive content." The First Amendment does not "permit speech-restrictive measures when the state may remedy the problem by implementing or enforcing laws that do not infringe on speech." IMDb.com, Inc. v. Becerra, 962 F.3d 1111, 1125 (9th Cir. 2020) (citing cases). "Because restricting speech should be the government's tool of last resort, the availability of obvious less-restrictive alternatives renders a speech restriction overinclusive" and unconstitutional. Id.

As the Court previously recognized in its preliminary injunction Order, existing statutory causes of action, including "privacy torts, copyright infringement, or defamation already provide recourse to public figures or private individuals whose reputations may be afflicted by artificially altered depictions peddled by satirists or opportunists on the internet." Order at 5; see also IMDb.com, Inc., 962 F.3d at 1126 ("Because the State 'has various other laws at its disposal that would allow it to achieve its stated interests while burdening little or no speech,' it fails to show that the law is the least restrictive means to protect its compelling interest. That failure alone dooms [the law].").

Indeed, several other narrower constructions might allow the statute to align with historically recognized First Amendment exceptions. See P. Opp'n at 14-15. For instance, California could limit AB 2839's reach to false speech that causes legally cognizable harms like false speech that actually causes voter interference, coercion, or intimidation. See Wasden, 878 F.3d at 1198 (suggesting similar narrowing). California could also limit the statute's reach to factual statements that are demonstrably false like the time, date, place, or manner of voting. See generally Eugene Volokh, When are Lies Constitutionally Protected?, 4 J. Free Speech L. 685, 704–09 (2024) (contrasting lies about "election procedures"— an area where a "narrower restriction[] might pose fewer problems" with lies about election campaigns and government officials— areas that should be "categorically immune from liability").

Another narrower construction might be for California to limit potential plaintiffs to political candidates actually harmed by unprotected false speech, which would mirror defamation law more closely. See Restatement (Second) of Torts § 564A (1977); P. MSJ at 25. Plaintiffs also suggest that California could encourage alternatives that are already working in the free market such as fact checking or counter speech. California could even fund its own AI educational campaigns or form committees on combatting false or deceptive election content. See P. MSJ at 23; P. Opp'n at 15. While California's expert explains that political deepfakes are "sticky" and this type of misinformation spreads too quickly for governments to counteract it, Alvarez Decl. at ¶¶ 22, 39, 53, Plaintiffs have

offered evidence from their expert that shows fact-checking alternatives like "Community Notes and Grok are already . . . scalable solutions being adopted" in the real world. Ayers Decl. ¶¶ 50–51, ECF No. 80-8. These misinformation flagging tools crowdsource identification and labeling to educate citizens rather than relying on censorship to eradicate potentially misleading content. Id. at ¶¶ 13–16. Thus, California provides no substantial evidence that other less restrictive means of regulating deceptive election content are not feasible or effective.

Under strict scrutiny, California must show that alternative methods "would fail to achieve the government's interests, not simply that the chosen route is easier." McCullen v. Coakley, 573 U.S. 464, 495 (2014). California has not shown that it has explored other alternative means of mitigating the potential harms of deepfakes or deceptive media before jumping to complete censorship. Because the First Amendment is "[p]remised on mistrust of governmental power," the Court affords minimal deference to California's choice to stifle speech at the outset rather than use less restrictive counter speech. Citizens United v. FEC, 558 U.S. 310, 340 (2010). The Court thus holds that California has failed to use the least restrictive means in its efforts to protect election integrity and that accordingly, AB 2839 fails constitutional muster under strict scrutiny.

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(iii) Constitutional and Unconstitutional Applications

Pointing to the Supreme Court's recent decision in Moody v. NetChoice, LLC, 603 U.S. 707, 723 (2024), Defendants suggest that the Court may uphold AB 2839 as valid if its constitutional applications outweigh its unconstitutional ones. See D. MSJ at 14. However, as Plaintiffs argue in their opposition at 10, the distinctions AB 2839 draws between certain subjects, viewpoints, and speakers infect the whole statute, making the statute unconstitutional in all of its applications. See P. Opp'n at 10, ECF No. 78. "As Moody clarified, a First Amendment facial challenge has two parts: first, the courts must 'assess the state laws' scope'; and second, the courts must 'decide which of the laws' applications violate the First Amendment, and . . . measure them against the rest.'" NetChoice, LLC v. Bonta, 113 F.4th 1101, 1115-1116 (9th Cir. 2024) (alteration in original) (quoting Moody, 603 U.S. at 724). However, when a challenged law restricts pure speech by the topics discussed or viewpoint expressed, it cannot be "salvage[d] by . . . constitutionally permissible applications." Iancu, 588 U.S. at 398. In fact, a law that regulates speech "based on the ideas or opinions it conveys" fails even when the law is not overbroad and even when the law regulates only unprotected speech. Id. at 393. Iancu instructs that when a law "distinguishes between . . . ideas," it is facially invalid regardless of overbreadth. 588 U.S. at 394.

Stated another way, a law that discriminates facially discriminates in each application. Id. at 395 ("The facial

viewpoint bias . . . results in viewpoint-discriminatory application."). AB 2839 "raise[s] the same First Amendment issues" "in every application" because it is content, viewpoint, and speaker based. X Corp. v. Bonta, 116 F.4th 888, 899 (9th Cir. 2024) (holding facial challenge appropriate because reporting requirements on "the face of the law" applied the same way to affected social media companies). While it is true that AB 2839 has constitutional applications to the extent that defamatory or fraudulent speech falls under its umbrella, this is only because its scope is so elastic that it penalizes wholesale categories of speech, sweeping in both protected and unprotected speech. Thus, the statute's potential unconstitutional applications would regularly outweigh its constitutional ones. See P. MSJ at 13.

2. First Amendment As Applied Challenge

In conjunction with their facial challenge, Plaintiffs also bring an as applied challenge against AB 2839. Defendants assert that AB 2839 is not unconstitutional as applied to the Plaintiffs because their humorous media constitutes parody or satire, which do not purport to be "an authentic record" and thereby do not fall under AB 2839's definition for materially deceptive media. See Cal. Elec. Code § 20012(f)(8)(A); D. MSJ at 14-20. Plaintiffs respond that AB 2839 does sweep in parody and satire and that the safe harbor provision implicates Plaintiffs' free speech rights because the disclaimer is a labelling requirement that constitutes impermissible compelled speech. See P. MSJ at 12, 19-22.

Contrary to Defendants' argument, the satirical and

humorous videos Plaintiffs create have been mistaken by ordinary people as authentic and therefore would fall under AB 2839's purview. For example, Plaintiffs Kohls and The Bee created fictitious ads parodying Kamala Harris, Gavin Newsom, and Elizabeth Warren during the 2024 election. See PSUF ¶¶ 21, 56, 59. Because these ads used generative-AI to reproduce the candidate or official's voice, they "falsely appear[ed] . . . authentic." Cal. Elec. Code § 20012(f)(8); see, e.g. PSUF ¶ 62. And because the videos portrayed these politicians saying things they did not say without the prescribed disclaimer, they would violate AB 2839. Cal. Elec. Code § 20012(b).

Defendants agree that some satirical videos can appear to be authentic within the meaning of AB 2839. California previously represented at the preliminary injunction stage that a "voter who encountered [the Harris Parody Video] . . . could have concluded . . . that it was real." See Opp'n P.s' Mot. Prelim. Inj. at 21, ECF No. 9. Thus, AB 2839's expansive terms capture even satire or parody videos since the law does not require that the parody in fact does fool or mislead someone. Content need only "falsely appear . . . authentic" in some respect to violate the law. Cal. Elec. Code § 20012(f)(8). Since parody "imitates the characteristic style of an author or a work for comic effect or ridicule," much digitally created parody would run afoul of the law. Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 580 (1994).

Moreover, the State's contention that parody and satire are excepted is unpersuasive because AB 2839's safe harbor codified at Cal. Elec. Code § 20012(b)(3) imposes a disclaimer

requirement on parody or satire that is independently suspect. The purported safe harbor provides no refuge at all because any creator of AI-generated political satire would feel compelled to include a disclosure stating "This [media] has been manipulated for purposes of satire or parody" to avoid risk of civil penalty. Id. § 20012(b)(3). Defendants ask the Court to construe Section 20012(b)(3) as simply requiring disclosure of political speech, which subjects the requirement to a lower level of scrutiny used in the campaign finance context, but the explicitly creative context humorists and satirists operate in necessarily renders any compelled speech product an imposition on creative expression. See D. MSJ at 20-21. Courts "presume that speakers, not the government, know best both what they want to say and how to say it." Riley v. Nat'l Fed'n of the Blind of N.C., Inc., 487 U.S. 781, 790-91 (1988).

As a legal matter, the potential speech at play is not similar to the campaign finance context and even if it were, transparency laws that compel speech still trigger strict scrutiny, not exacting scrutiny as the State maintains. Nat'l Inst. Of Fam. & Life Advocs. V. Becerra (NIFLA), 585 U.S. 755, 766 (2018) (licensing notices); Riley, 487 U.S. at 797 ("compelled statements of 'fact'" for fundraisers); X Corp., 116 F.4th at 902 ("Even a pure 'transparency' measure, if it compels non-commercial speech, is subject to strict scrutiny" (citing Riley, 487 U.S. at 796-97)). Thus, the Court agrees with Plaintiffs that strict scrutiny applies and the safe harbor requirement is impermissible because it drowns out Plaintiffs' message. See P. MSJ at 21; P. Opp'n at 13. As the Court

previously held in its preliminary injunction Order, the size requirement of the disclaimer would take up an entire screen in many instances and "effectively rules out the possibility of [plaintiffs' videos] in the first place." Order at 15; NIFLA, 585 U.S. at 778 (internal quotation omitted); accord Am. Beverage Ass'n v. City & Cnty. of San Francisco, 916 F.3d 749, 757 (9th Cir. 2019) (en banc) (cleaned up) (determining that labeling requirement that would occupy 20% of advertisement was "unjustified or unduly burdensome"). Put simply, a mandatory disclaimer for parody or satire would kill the joke.

Given that AB 2839 captures parody and satire and also enforces an overly burdensome disclaimer requirement, the Court finds that AB 2839 is unconstitutional as applied for the same reasons that it is unconstitutional facially: the statute does not use the least restrictive means to regulate misleading content. A "government-compelled disclosure that imposes an undue burden fails for that reason alone," even when the warning "is factually accurate and noncontroversial." Am. Beverage Ass'n, 916 F.3d at 757 (en banc).

3. California Constitutional Challenge

California's free speech clause, Article I, Section 2, of the California Constitution, is analytically similar to the First Amendment. See Beeman v. Anthem Prescription Management, LLC, 58 Cal. 4th 329, 341 (2013). It follows that AB 2839 violates California's Constitution for all of the same reasons that it violates the First Amendment of the United States Constitution. See Order at 16 ("Under current case law, the California state right to freedom of speech is at least as

protective as its federal counterpart."); City of Montebello v. Vasquez, 1 Cal. 5th 409, 421 n.11 (2016) ("[T]he California liberty of speech clause is broader and more protective than the free speech clause of the First Amendment."); Delano Farms Co. v. Cal. Table Grape Comm'n, 4 Cal. 5th 1204, 1221 (2018) ("[O]ur case law interpreting California's free speech clause has given respectful consideration to First Amendment case law for its persuasive value."). Therefore, the Court grants Plaintiffs' motion for summary judgment on their California Constitution claim as well.

4. Fourteenth Amendment Challenge

Having found that Plaintiffs prevail on their motion for summary judgment under the First Amendment, the Court next addresses Plaintiffs' Fourteenth Amendment claims. Plaintiffs argue that AB 2839 offends the Fourteenth Amendment because it is unconstitutionally vague. See P. MSJ at 35. The Court agrees. A law is unconstitutionally vague "if its prohibitions are not clearly defined." Grayned v. City of Rockford, 408 U.S. 104, 108 (1972). "[V]agueness concerns are more acute when a law implicates First Amendment rights" because of the risks of chilled speech and discriminatory enforcement. Butcher v. Knudsen, 38 F.4th 1163, 1169 (9th Cir. 2022).

Specifically, the standards AB 2839 employs such as content "reasonably likely to harm the reputation or electoral prospects of a candidate" and "reasonably likely to falsely undermine confidence in the outcome" of an election are too subjective and vague because they inherently rely on value judgments. Cal. Elec. Code § 20012(b)(1)(A), (C). What may harm a candidate's

electoral prospects versus help her is subjective because it depends on the recipient encountering the manipulated content. For example, whether a satirical AI-generated video that features a candidate calling for open borders and amnesty for undocumented immigrants helps or harms a campaign is entirely dependent on who sees the ad. See P. MSJ at 37. On one hand, the video may appeal to the candidate's base and boost favorability numbers. On the other, the video may offend those of differing political views and alienate certain voters to the candidate's detriment. The potential permutations associated with election strategy make any predication about what "likely . . . harm[s] electoral prospects" nebulous and intangible at best.

Moreover, when asked at oral argument about the statute's specific application to the Kamala Harris parody video which sparked this instant litigation, counsel for the State did not take a position as to whether or not that video would fall under AB 2839's ambit. While cases at the margin will always exist, the fact that the viral video at issue in this case and others similar to it cannot neatly be categorized as falling within or outside the law indicates that AB 2839's scope is too indeterminate and is thereby unconstitutional on its face. See United States v. Jae Gab Kim, 449 F.3d 933, 943 (9th Cir. 2006) (explaining a law is unconstitutional when citizens can't act based on "factual knowledge" to "avoid violating the law").

Laws like AB 2839 which provide "no principle for determining when" speech will "pass from the safe harbor . . .to the forbidden" do not fairly provide notice of conduct that is

prohibited. Gentile v. State Bar of Nev., 501 U.S. 1030, 1049 (1991); see Flomo v. Firestone Nat. Rubber Co., LLC, 643 F.3d 1013, 1022 (7th Cir. 2011) (observing that law prohibiting practices "likely to harm" was "pretty vague, in part because no threshold of actionable harm is specified"). "[A]n indeterminate prohibition carries with it the opportunity for abuse" and AB 2839's provisions would allow any government official or recipient of AI-manipulated content to decide what harms electoral prospects or undermines confidence in an election. Minn. Voters All., 585 U.S. 1, 21 (2018) (cleaned up). Reasonable people can disagree about electoral strategy or speculate about harm and without "objective, workable standards," AB 2839 cannot withstand Plaintiffs' vagueness challenge. Id.

5. Severability

Finally, the last issue the Court addresses is AB 2839's severability clause. Cal. Elec. Code § 20012(h). California law allows severance when a statutory provision is "functionally and volitionally separable," remains coherent, and the "remainder of the statute is complete in itself." Kohls v. Bonta, 752 F. Supp. 3d 1187, 1198–99 (E.D. Cal. 2024) (internal quotation omitted). The Court previously noted in its preliminary injunction Order that the audio only portion of AB 2839 codified at Cal. Elec. Code § 20012(b)(2)(B)(ii) might be severable. See Order at 19. Defendants also argue in their opposition that the Court can sever the font size requirement to save the safe harbor provision of AB 2839 codified at Cal. Elec. Code § 20012(b)(3) because without the font size requirement,

the disclaimer would no longer be overly burdensome. See D. Opp'n at 23.

In response, Plaintiffs contend that these two provisions would still be subject to strict scrutiny. See P. MSJ at 19-22; P. Opp'n at 10-12. Indeed, the audio only requirement is a speaker-based distinction because it falls under the section regulating candidates portraying themselves. See Cal. Elec. Code § 20012(b)(2)(B)(ii). Additionally, while Plaintiffs do not address whether removing the font requirement would make the safe harbor provision constitutional, the safe harbor requirement fails strict scrutiny because if severed, it would single out "satire or parody," meaning that arguably more harmful content like non-humorous media that is intentionally meant to deceive or impersonate would not be required to bear a label. California has not shown that it has a specific interest in labelling candidate-created content or humorous content more than it has an interest in disclaiming any other content that contains materially deceptive characteristics. Thus, the Court finds that these provisions, even if severed, would be underinclusive for singling out certain speakers rather than broadly requiring materially deceptive content to be labeled as a general matter.

Because the potentially severed parts of AB 2839 are underinclusive, this reveals that what remains of the law "[would] not actually advance a compelling interest." Williams-Yulee v. Fla. Bar, 575 U.S. 433, 449 (2015). At this stage, given the Court's findings that AB 2839's discriminates based on content, viewpoint, and speaker and the Courts determination

that no portions of AB 2839 are severable, the Court finds that AB 2839 fails strict scrutiny in its entirety. See Tollis Inc. v. Cnty. of San Diego, 505 F.3d 935, 943 (9th Cir. 2007) ("severance is inappropriate if the remainder of the statute would still be unconstitutional").

III. CONCLUSION

In sum, AB 2839 suffers from "a compendium of traditional First Amendment infirmities," stifling too much speech while at the same time compelling it on a selective basis. Washington Post v. McManus, 944 F.3d 506 (4th Cir. 2019). While there are serious concerns about deepfakes and AI affecting elections, California's AB 2839 represents a law that is well intentioned but constitutionally infirm. When it comes to political expression, the antidote is not prematurely stifling content creation and singling out specific speakers but encouraging counter speech, rigorous fact-checking, and the uninhibited flow of democratic discourse.

Novel mediums of speech and even low-brow humor have equal entitlement to First Amendment protection and the principles undergirding the freedom of expression do not waver when technological changes occur. See e.g., Moody, 603 U.S. at 734 (social media feeds); Brown v. Ent. Merch. Ass'n, 564 U.S. 786, 790 (2011) (videogames). The satirical videos and posts that Plaintiffs proliferate to critique public officials squarely constitute speech on public issues, which occupies the "highest rung of the hierarchy of First Amendment values," and is granted special protection. NAACP v. Claiborne Hardware Co., 458 U.S. 886, 913 (1982); Carey v. Brown, 447 U.S. 455, 467 (1980). Any

"speech concerning public affairs is more than self-expression; it is the essence of self-government." Garrison v. Louisiana, 379 U.S. 64, 74–75 (1964). To this end, California's AB 2839 strikes at the heart of the First Amendment and does not overcome the constitutional safeguards erected to protect Plaintiffs' right to speak. To be sure, deepfakes and artificially manipulated media arguably pose significant risks to electoral integrity, but the challenges launched by digital content on a global scale cannot be quashed through censorship or legislative fiat. Just as the government may not dictate the canon of comedy, California cannot pre-emptively sterilize political content. "...In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us." Meyer v. Grant, 486 U.S. 414, 419–20 (1988).

IV. ORDER

For the reasons set forth above, the Court GRANTS Plaintiff's motion for a summary judgment and DENIES Defendants' cross motion. Defendants Rob Bonta and Shirley N. Weber and their agents, employees, public servants, officers and persons acting in concert with them are HEREBY PERMANENTLY ENJOINED from enforcing AB 2839 against the named Plaintiffs.

IT IS SO ORDERED.

Dated: August 29, 2025

JOHN A. MENDEZ,
SENIOR UNITED STATES DISTRICT JUDGE