

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

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

8 Motivated to combat the potential dangers associated with
9 the type of artificially manipulated media procured by
10 Plaintiffs, California passed AB 2839. AB 2839 regulates a broad
11 spectrum of election-related content that is "materially
12 deceptive" and permits any recipient of this content to sue for
13 general or special damages. Cal. Elec. Code §§ 20012(b)(1),
14 20012(d). AB 2839 defines "materially deceptive" content as
15 "audio or visual media that is intentionally digitally created or
16 modified, . . . such that the content would falsely appear to a
17 reasonable person to be an authentic record of the content
18 depicted in the media." Id. § 20012(f)(8)(A). AB 2839 includes
19 exceptions for candidates who make and share deepfake content of
20 themselves and for satire or parody. Id. §§ 20012(b)(2),
21 20012(b)(3). In both these cases, the content must include a
22 disclaimer that meets AB 2839's formatting requirements and must
23 state that the content has been digitally manipulated. Id.
24 §§ 20012(b)(2)(B), 20012(b)(3).

25 In a written order on October 2, 2024, the Court enjoined AB
26 2839 on a preliminary basis. See Order Granting P.'s Mot.
27 Prelim. Inj. ("Order"), ECF No. 14. The Court found that AB 2839
28 likely facially violated the First Amendment because the law was

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

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

20 II. OPINION

21 A. Legal Standard

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

27
28 ¹ A hearing on these cross motions was held on August 5, 2025.

1 Pro. 56(a). The moving party bears the initial burden of
2 establishing that there is no genuine issue of material fact.
3 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The burden
4 on the moving party is discharged by showing that there is an
5 "absence of evidence to support the nonmoving party's case."
6 Id. at 325. A factual dispute is genuine where "the evidence is
7 such that a reasonable jury could return a verdict for the non-
8 moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
9 252 (1986). "Where the record taken as a whole could not lead a
10 rational trier of fact to find for the nonmoving party, there is
11 no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v.
12 Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citation omitted).

13 B. Analysis

14 1. First Amendment Facial Challenge

15 a. Content, Viewpoint, and Speaker-Based
16 Distinctions

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

27 The Court's preliminary injunction Order recognized that AB
28 2839 was likely unconstitutional because it was content-based.

1 See Order at 10. By its terms, AB 2839 prohibits “materially
2 deceptive” (defined as content that would falsely appear to a
3 reasonable person to be an authentic record) audio or visual
4 communications that portray a candidate or elected official
5 doing or saying things he or she didn’t do or say and that are
6 likely to harm a candidate’s reputation or electoral prospects.
7 Cal. Elec. Code § 20012(b)(1)(A). The statute also punishes
8 such altered content that depicts an “elections official” or
9 “voting machine, ballot, voting site, or other property or
10 equipment” that is “reasonably likely” to falsely “undermine
11 confidence” in the outcome of an election contest. Id.
12 § 20012(b)(1)(B), (D). As evidenced by the statutory language,
13 AB 2839 facially regulates based on content because the “law
14 applies to particular speech because of the topic” – a political
15 candidate, elected official, elections official, ballot, or
16 voting mechanism. Reed v. Town of Gilbert, 576 U.S. 155, 163
17 (2015). Moreover, it delineates acceptable and unacceptable
18 speech based on its purported truth or falsity meaning that non-
19 materially deceptive content is excluded. See Order at 11.

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

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

4 Moreover, AB 2839 also engages in speaker-based
5 discrimination because the law imposes different obligations on
6 different speakers depending on who they are. Under AB 2839,
7 candidates posting about themselves, broadcasters, and internet
8 websites are subject to more lenient rules while other speakers,
9 such as Plaintiffs, are categorically barred. Candidates and
10 broadcasters can post “materially deceptive” content as long as
11 they attach disclaimers. See Cal. Elec. Code §§ 20012(b)(2),
12 20012(e)(1). Additionally, broadcasters and internet sites are
13 exempt from “general or special damages.” Id. § 20012(d)(2)(B).
14 AB 2839 treats different speakers dissimilarly, subjecting
15 certain individuals to stricter rules and other speakers to more
16 lenient rules. All together, these content, viewpoint, and
17 speaker-based distinctions at minimum trigger strict scrutiny.
18 Green v. Miss U.S. of Am., LLC, 52 F.4th 773, 791 (9th Cir.
19 2022) (explaining content-based speech compulsion warrants
20 strict scrutiny); Boyer v. City of Simi Valley, 978 F.3d 618,
21 621-23 (9th Cir. 2020).

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

1 2839 goes beyond these historical categories. For example, the
2 statute diverges from defamation law because it proscribes
3 content that is merely “reasonably likely” to cause harm, which
4 is speculative and prophylactic rather than remedial or
5 concrete. Moreover, the statute also goes beyond reputational
6 harms to include amorphous harms to the “electoral prospects” of
7 a candidate. See P. MSJ at 13-15; P. Opp’n at 3-7.

8 So too do AB 2839’s regulations go beyond the definition of
9 fraud because unlike fraud, AB 2839 does not require reliance or
10 actual injury. See United States v. Alvarez, 567 U.S. 709, 734
11 (2012) (Breyer, J., concurring) (citing Restatement (Second) of
12 Torts § 525 (1976)). California responds that falsehoods “meant
13 to deceive viewers and manipulate voters to change their voting
14 behavior” do cause legally cognizable harm, but intent to
15 “deceive and manipulate” alone is not sufficient under Alvarez,
16 which recognized that even knowing falsehoods are
17 constitutionally protected. 567 U.S. at 714. One of
18 Defendants’ *amicus curiae* points out that AB 2839 may resemble
19 laws against impersonating government officials and
20 misappropriating someone’s image and likeness, but ultimately
21 concedes that “AB 2839 sweeps more broadly.” See Br. *Amicus*
22 *Curiae Elec. Privacy Info. Ctr. Supp. Defs.’ Mot. S.J. on AB*
23 *2839 at 12-15, ECF No. 72.*

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

1 cognizes is almost boundless because it allows the government as
2 well as any recipient of materially deceptive content to "seek
3 injunctive or other equitable relief." Cal. Elec. Code
4 § 20012(d)(1). Plus, these recipients can seek "general or
5 special damages" and "attorney's fees and costs," even against a
6 person who merely "republiche[s]" prohibited content. Id.
7 § 20012(d)(2). Allowing almost any person to file a complaint
8 creates the "real risk" of malicious lawsuits that could chill
9 protected speech. Susan B. Anthony List v. Driehaus, 573 U.S.
10 149, 164 (2014).

11 Rather than targeting content that procures tangible harms
12 or materially benefits a speaker, AB 2839 attempts to stifle
13 speech before it occurs or actually harms anyone as long as it
14 is "reasonably likely" to do so and it allows almost anyone to
15 act as a censorship czar. See Animal Legal Def. Fund v. Wasden,
16 878 F.3d 1184, 1194-95 (9th Cir. 2018) (explaining that
17 exceptions to the First Amendment "typically require proof of
18 specific or tangible harm" or "a material benefit to the
19 speaker"); Alvarez, 567 U.S. at 719 (Breyer, J., concurring)
20 (same). The far-reaching prior restraints AB 2839 implements
21 have not been recognized by First Amendment caselaw thus far and
22 have no historically accepted analogs. Having found that AB
23 2839 goes beyond historical exceptions to the First Amendment
24 and is a statute that discriminates based on content, the Court
25 proceeds to conduct a strict scrutiny analysis.

26 b. Strict Scrutiny

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

1 restriction that implicates political expression like AB 2839.
2 See D. MSJ at 10; P. MSJ at 22. The First Amendment affords the
3 “broadest protection” to the “discussion of public issues” and
4 “political expression in order to assure the unfettered
5 interchange of ideas for the bringing about of political and
6 social changes desired by the people.” McIntyre v. Ohio
7 Election Comm’n, 514 U.S. 334 (1997). To withstand strict
8 scrutiny, AB 2839 must advance a compelling state interest
9 through the least-restrictive means possible. Reed v. Town of
10 Gilbert, 576 U.S. 155, 173 (2015). A content-based law is
11 subject to strict scrutiny and “is justified only if the
12 government demonstrates that [the law] is narrowly tailored to
13 serve a compelling state interest.” Twitter, Inc. v. Garland,
14 61 F.4th 686, 698 (9th Cir. 2023). California “bears the burden
15 of proving the [law] meets this standard. Pierce v. Jacobsen,
16 44 F.4th 853, 862 (9th Cir. 2022).

17 (i) Compelling State Interest

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

28 The Court previously found that California’s interests are

1 compelling. See Order at 11. Indeed, the U.S. Supreme Court
2 has recognized that “[a] State indisputably has a compelling
3 interest in preserving the integrity of its election process.”
4 Eu v. S.F. Cnty. Democratic Cent. Comm., 489 U.S. 214, 231
5 (1989). And “a State has a compelling interest in protecting
6 voters from confusion and undue influence.” Burson v. Freeman,
7 504 U.S. 191, 199 (1992) (plurality op.). For example, the
8 State’s legislative findings referenced actual examples of
9 deepfakes that have deceived voters and impaired free and fair
10 elections, such as the robocalls allegedly from former President
11 Biden before the 2024 New Hampshire primary that explicitly
12 encouraged voters not to go to the polls. See Liska Decl., Ex.
13 8, at 6-7; Ex. 11 at 8-9; see also Liska Decl., Ex. 14-19.

14 Research and studies confirm what California’s legislative
15 findings detail: political deepfakes have proliferated online
16 and can influence voters’ behavior, choices, and trust in the
17 electoral process and electoral outcomes. See Alvarez Decl.
18 ¶¶ 10-17, 21, ECF No. 49-3. Deepfakes online may alter voters’
19 behavior and sow confusion that can lead voters to refrain from
20 voting altogether. Id. ¶¶ 10-17. And those who encounter
21 materially deceptive content about the voting process may find
22 their confidence in the electoral process undermined erroneously
23 – especially if the fraudulent content is a government official
24 allegedly telling voters to doubt electoral outcomes. Id.
25 ¶¶ 10-17. Thus, the Court finds that political deepfakes pose a
26 risk to election integrity and that California has a compelling
27 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].”).

1 Indeed, several other narrower constructions might allow
2 the statute to align with historically recognized First
3 Amendment exceptions. See P. Opp'n at 14-15. For instance,
4 California could limit AB 2839's reach to false speech that
5 causes legally cognizable harms like false speech that actually
6 causes voter interference, coercion, or intimidation. See
7 Wasden, 878 F.3d at 1198 (suggesting similar narrowing).
8 California could also limit the statute's reach to factual
9 statements that are demonstrably false like the time, date,
10 place, or manner of voting. See generally Eugene Volokh, When
11 are Lies Constitutionally Protected?, 4 J. Free Speech L. 685,
12 704-09 (2024) (contrasting lies about "election procedures"— an
13 area where a "narrower restriction[] might pose fewer problems"
14 with lies about election campaigns and government officials—
15 areas that should be "categorically immune from liability").

16 Another narrower construction might be for California to
17 limit potential plaintiffs to political candidates actually
18 harmed by unprotected false speech, which would mirror
19 defamation law more closely. See Restatement (Second) of Torts
20 § 564A (1977); P. MSJ at 25. Plaintiffs also suggest that
21 California could encourage alternatives that are already working
22 in the free market such as fact checking or counter speech.
23 California could even fund its own AI educational campaigns or
24 form committees on combatting false or deceptive election
25 content. See P. MSJ at 23; P. Opp'n at 15. While California's
26 expert explains that political deepfakes are "sticky" and this
27 type of misinformation spreads too quickly for governments to
28 counteract it, Alvarez Decl. at ¶¶ 22, 39, 53, Plaintiffs have

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

11 Under strict scrutiny, California must show that
12 alternative methods "would fail to achieve the government's
13 interests, not simply that the chosen route is easier."
14 McCullen v. Coakley, 573 U.S. 464, 495 (2014). California has
15 not shown that it has explored other alternative means of
16 mitigating the potential harms of deepfakes or deceptive media
17 before jumping to complete censorship. Because the First
18 Amendment is "[p]remised on mistrust of governmental power," the
19 Court affords minimal deference to California's choice to stifle
20 speech at the outset rather than use less restrictive counter
21 speech. Citizens United v. FEC, 558 U.S. 310, 340 (2010). The
22 Court thus holds that California has failed to use the least
23 restrictive means in its efforts to protect election integrity
24 and that accordingly, AB 2839 fails constitutional muster under
25 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

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

15 2. First Amendment As Applied Challenge

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

28 Contrary to Defendants' argument, the satirical and

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

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

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

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

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

1 previously held in its preliminary injunction Order, the size
2 requirement of the disclaimer would take up an entire screen in
3 many instances and “effectively rules out the possibility of
4 [plaintiffs’ videos] in the first place.” Order at 15; NIFLA,
5 585 U.S. at 778 (internal quotation omitted); accord Am.
6 Beverage Ass’n v. City & Cnty. of San Francisco, 916 F.3d 749,
7 757 (9th Cir. 2019) (en banc) (cleaned up) (determining that
8 labeling requirement that would occupy 20% of advertisement was
9 “unjustified or unduly burdensome”). Put simply, a mandatory
10 disclaimer for parody or satire would kill the joke.

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

20 3. California Constitutional Challenge

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

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

11 4. Fourteenth Amendment Challenge

12 Having found that Plaintiffs prevail on their motion for
13 summary judgment under the First Amendment, the Court next
14 addresses Plaintiffs' Fourteenth Amendment claims. Plaintiffs
15 argue that AB 2839 offends the Fourteenth Amendment because it
16 is unconstitutionally vague. See P. MSJ at 35. The Court
17 agrees. A law is unconstitutionally vague "if its prohibitions
18 are not clearly defined." Grayned v. City of Rockford, 408 U.S.
19 104, 108 (1972). "[V]agueness concerns are more acute when a
20 law implicates First Amendment rights" because of the risks of
21 chilled speech and discriminatory enforcement. Butcher v.
22 Knudsen, 38 F.4th 1163, 1169 (9th Cir. 2022).

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

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

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

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

1 prohibited. Gentile v. State Bar of Nev., 501 U.S. 1030, 1049
2 (1991); see Flomo v. Firestone Nat. Rubber Co., LLC, 643 F.3d
3 1013, 1022 (7th Cir. 2011) (observing that law prohibiting
4 practices “likely to harm” was “pretty vague, in part because no
5 threshold of actionable harm is specified”). “[A]n
6 indeterminate prohibition carries with it the opportunity for
7 abuse” and AB 2839’s provisions would allow any government
8 official or recipient of AI-manipulated content to decide what
9 harms electoral prospects or undermines confidence in an
10 election. Minn. Voters All., 585 U.S. 1, 21 (2018) (cleaned
11 up). Reasonable people can disagree about electoral strategy or
12 speculate about harm and without “objective, workable
13 standards,” AB 2839 cannot withstand Plaintiffs’ vagueness
14 challenge. Id.

15 5. Severability

16 Finally, the last issue the Court addresses is AB 2839’s
17 severability clause. Cal. Elec. Code § 20012(h). California
18 law allows severance when a statutory provision is “functionally
19 and volitionally separable,” remains coherent, and the
20 “remainder of the statute is complete in itself.” Kohls v.
21 Bonta, 752 F. Supp. 3d 1187, 1198–99 (E.D. Cal. 2024) (internal
22 quotation omitted). The Court previously noted in its
23 preliminary injunction Order that the audio only portion of AB
24 2839 codified at Cal. Elec. Code § 20012(b)(2)(B)(ii) might be
25 severable. See Order at 19. Defendants also argue in their
26 opposition that the Court can sever the font size requirement to
27 save the safe harbor provision of AB 2839 codified at Cal. Elec.
28 Code § 20012(b)(3) because without the font size requirement,

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

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

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

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

6 III. CONCLUSION

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

18 Novel mediums of speech and even low-brow humor have equal
19 entitlement to First Amendment protection and the principles
20 undergirding the freedom of expression do not waver when
21 technological changes occur. See e.g., Moody, 603 U.S. at 734
22 (social media feeds); Brown v. Ent. Merch. Ass'n, 564 U.S. 786,
23 790 (2011) (videogames). The satirical videos and posts that
24 Plaintiffs proliferate to critique public officials squarely
25 constitute speech on public issues, which occupies the "highest
26 rung of the hierarchy of First Amendment values," and is granted
27 special protection. NAACP v. Claiborne Hardware Co., 458 U.S.
28 886, 913 (1982); Carey v. Brown, 447 U.S. 455, 467 (1980). Any

1 "speech concerning public affairs is more than self-expression;
2 it is the essence of self-government." Garrison v. Louisiana,
3 379 U.S. 64, 74-75 (1964). To this end, California's AB 2839
4 strikes at the heart of the First Amendment and does not
5 overcome the constitutional safeguards erected to protect
6 Plaintiffs' right to speak. To be sure, deepfakes and
7 artificially manipulated media arguably pose significant risks
8 to electoral integrity, but the challenges launched by digital
9 content on a global scale cannot be quashed through censorship
10 or legislative fiat. Just as the government may not dictate the
11 canon of comedy, California cannot pre-emptively sterilize
12 political content. "...In this field every person must be his
13 own watchman for truth, because the forefathers did not trust
14 any government to separate the true from the false for us."
15 Meyer v. Grant, 486 U.S. 414, 419-20 (1988).

16 IV. ORDER

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

23 IT IS SO ORDERED.

24 Dated: August 29, 2025

25
26 
27 JOHN A. MENDEZ
28 SENIOR UNITED STATES DISTRICT JUDGE