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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER KOHLS,  
  
Plaintiff,  
  
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 PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

I. INTRODUCTION

Plaintiff Christopher Kohls (aka "Mr. Reagan") is an individual who creates digital content about political figures. His videos contain demonstrably false information that include sounds or visuals that are significantly edited or digitally generated using artificial intelligence ("AI"). Complaint, ¶ 5, ECF No. 1. Plaintiff's videos are considered by him to be parody or satire. In response to videos posted by Plaintiff parodying

1 presidential candidate Kamala Harris and other AI generated  
2 "deepfakes,"<sup>1</sup> the California legislature enacted AB 2839.  
3 AB 2839, according to Plaintiff, would allow any political  
4 candidate, election official, the Secretary of State, and  
5 everyone who sees his AI-generated videos to sue him for damages  
6 and injunctive relief during an election period which runs 120  
7 days before an election to 60 days after an election. Motion for  
8 Prelim. Inj. ("Mot."), p. 2, ECF No. 6-1.

9 On September 17, 2024 - the day AB 2839 was signed by the  
10 Governor - Plaintiff filed this lawsuit and the instant motion  
11 for a preliminary injunction. See Mot., ECF Nos. 1, 6.  
12 Plaintiff seeks an Order enjoining Defendants from enforcing  
13 AB 2839. Plaintiff contends that AB 2839 violates the First and  
14 Fourteenth Amendments, both facially and as applied.  
15 Specifically, Plaintiff argues that the statute infringes on his  
16 right to free speech and is unconstitutionally vague.  
17 Defendants, on the other hand, contend that AB 2839 is  
18 constitutional under the First Amendment as a restriction on  
19 knowing falsehoods that cause tangible harm. See Defendant's  
20 Opposition ("D. Opp'n"), ECF No. 9. They argue that this statute  
21 meets the strict scrutiny standard, contains a safe harbor  
22 provision for parody and satire that is constitutional, and is  
23 not unconstitutionally vague. Plaintiff filed a Reply brief ("P.  
24 Reply") responding to the State's counterarguments. See  
25 Plaintiff's Reply Brief, ECF No. 10.

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26 <sup>1</sup> Defendants define "deepfake" as a "manipulated piece of media  
27 where a person's likeness, image or voice is digitally created or  
28 swapped with another person's." Opposition to Prelim. Injunction  
Motion, p. 3, fn. 5. ECF No. 9.

1 AB 2839 does not pass constitutional scrutiny because the  
2 law does not use the least restrictive means available for  
3 advancing the State's interest here. As Plaintiffs persuasively  
4 argue, counter speech is a less restrictive alternative to  
5 prohibiting videos such as those posted by Plaintiff, no matter  
6 how offensive or inappropriate someone may find them.

7 "Especially as to political speech, counter speech is the tried  
8 and true buffer and elixir," not speech restriction.' Motion for  
9 Prelim. Inj., p. 13 (citations omitted), ECF No. 6-1.

10 While California has a valid interest in protecting the  
11 integrity and reliability of the electoral process, AB 2839 is  
12 unconstitutional because it lacks the narrow tailoring and least  
13 restrictive alternative that a content based law requires under  
14 strict scrutiny. Motion for Prel. Inj., pp. 12-13, ECF No. 6-1.  
15 For all the reasons discussed below, the Court finds that  
16 Plaintiff is entitled to a preliminary injunction.<sup>2</sup>

## 17 II. BACKGROUND

### 18 A. Plaintiff

19 Plaintiff Kohls is a social media influencer with roughly  
20 80,000 followers on X and 360,000 subscribers on YouTube. Compl.  
21 ¶¶ 4, 17, ECF No. 1. Kohls owns accounts on various platforms,  
22 including the X account "@MrReaganUSA" and the screen name "Mr.  
23 Reagan" on YouTube and Facebook, where he posts (what he alleges  
24 is) humorous political content often featuring politicians  
25 mocking their own candidacies. Mot. at 4. For example, on July  
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27 <sup>2</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for September 30, 2024.

1 26, 2024, Kohls posted a video titled "Kamala Harris Campaign Ad  
2 PARODY" to X and YouTube which depicts Vice President Kamala  
3 Harris in her campaign ad with artificially altered audio. Id.  
4 Significantly, Vice President Harris's voice has been manipulated  
5 to say things she has not said including that she is "the  
6 ultimate diversity hire," and that she has spent "four years  
7 under the tutelage of the ultimate deep state puppet." Id. That  
8 same day, Elon Musk shared the video to his X account where his  
9 post generated over 100 million views. Compl., ¶ 8. On July 28,  
10 2024 California Governor Gavin Newsom responded to the video on X  
11 stating that "[m]anipulating a voice in an 'ad' like  
12 [Plaintiff's] should be illegal." Compl., ¶ 9. Following this  
13 incident, the California legislature passed two bills addressing  
14 artificially manipulated election content, which the Governor  
15 signed into law on September 17, 2024. Compl. ¶ 11. One of  
16 these bills, AB 2839 "Elections: deceptive media in  
17 advertisements," is the focus of Plaintiff's Complaint and the  
18 motion for injunctive relief pending before this Court.

19 B. Overview of AB 2839

20 AB 2839 aims to regulate a broad spectrum of election-  
21 related content that is "materially deceptive." Cal. Elec. Code  
22 § 20012(b)(1). In relevant part, AB 2839 provides that "[a]  
23 person, committee, or other entity shall not . . . with malice,  
24 knowingly distribute an advertisement or other election  
25 communication containing materially deceptive content" of a  
26 candidate for office "portrayed as doing or saying something that  
27 the candidate did not do or say if the content is reasonably  
28 likely to harm the reputation or electoral prospects of a

1 candidate.” Id. § 20012(b)(1)(A). Distribution of materially  
2 deceptive content of “[a]n elections official” or “[a]n elected  
3 official . . . doing or saying something in connection with an  
4 election in California that the elected official did not do or  
5 say” is also restricted “if the content is reasonably likely to  
6 falsely undermine confidence in the outcome of one or more  
7 election contests.” Id. § 20012(b)(1)(B), (C).

8       Materially deceptive content is defined as content that has  
9 been “digitally created or modified” such that it “would falsely  
10 appear to a reasonable person to be an authentic record of the  
11 content depicted in the media.” Id. § 20012(f)(8). These  
12 restrictions apply for the 120 days before any election in  
13 California and, except for depictions of a candidate, for 60 days  
14 after the election. Id. § 20012(c). The statute permits any  
15 recipient of the specified election-related materially deceptive  
16 content to bring suit against the distributor for general or  
17 special damages. Id. § 20012(d).

18       In terms of carveouts, the statute contains a safe harbor  
19 for candidates portraying themselves as long as these videos are  
20 labelled with a disclosure “no smaller than the largest font size  
21 of other text appearing in the visual media.” Id. § 20012(b)(2).  
22 This safe harbor also exempts deceptive content that constitutes  
23 satire or parody as long as these media are labelled in  
24 compliance with the same aforementioned disclosure requirement.  
25 Id. § 20012(b)(3).

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1 C. Motion for Preliminary Injunction

2 Because AB 2839 is the subject of the motion before this  
3 Court, the Court analyzes this motion for preliminary injunction  
4 based on the relevant allegations contained in Counts IV through  
5 VIII of Plaintiff's Complaint. The Court finds that Plaintiff  
6 has sufficiently met the standard for preliminary injunction  
7 based on the free speech claims in Count IV (First Amendment  
8 facial challenge), Count VII (First Amendment compelled speech  
9 claim), and Count VIII (state constitutional challenge).  
10 Accordingly, the Court need not reach the remaining as applied  
11 challenge (Count V) or the Fourteenth Amendment void for  
12 vagueness challenge (Count VI).

13 III. OPINION

14 A. Legal Standard

15 Plaintiff seeks a preliminary injunction of the statute  
16 because it violates his First and Fourteenth Amendment rights by  
17 suppressing his speech or compelling unduly burdensome speech.  
18 "A party can obtain a preliminary injunction by showing that  
19 (1) it is 'likely to succeed on the merits,' (2) it is 'likely  
20 to suffer irreparable harm in the absence of preliminary  
21 relief,' (3) 'the balance of equities tips in [its] favor,' and  
22 (4) 'an injunction is in the public interest.'" Disney  
23 Enterprises, Inc. v. VidAngel, Inc., 869 F.3d 848, 856 (9th Cir.  
24 2017) ("VidAngel") (quoting Winter v. Nat. Res. Def. Council,  
25 Inc., 555 U.S. 7, 20 (2008)).

26 Because Plaintiff's content is subject to the threat of  
27 AB 2839's enforcement and Defendants do not dispute Plaintiff's  
28 standing to challenge the statute, the Court finds that

1 Plaintiff has standing to challenge AB 2839 and proceeds to the  
2 preliminary injunction analysis. See Mot. at 9.

3 B. Likelihood of Success on the Merits

4 1. Kohls is Likely to Succeed in Showing that  
5 AB 2839 Facially Violates the First Amendment

6 “To provide breathing room for free expression,” the  
7 Supreme Court has “substituted a less demanding though still  
8 rigorous standard” for facial challenges. Moody v. NetChoice,  
9 LLC, 144 S.Ct. 2383, 2397 (2024) (cleaned up) (quoting United  
10 States v. Hansen, 599 U.S. 762, 769 (2023)); see also Tucson v.  
11 City of Seattle, 91 F.4th 1318, 1327 (9th Cir. 2024). “[I]f the  
12 law’s unconstitutional applications substantially outweigh its  
13 constitutional ones,” then a court may sustain a facial  
14 challenge to the law and strike it down. Moody, 144 S. Ct. at  
15 2397. As Moody sets forth, a First Amendment facial challenge  
16 has two parts: first, the courts must “assess the state laws’  
17 scope”; and second, the courts must “decide which of the laws’  
18 applications violate the First Amendment, and . . . measure them  
19 against the rest.” Id. at 2398.

20 Plaintiff argues that AB 2839 is unconstitutional because  
21 it discriminates against political speech based on content and  
22 is overbroad. See Mot. at 11. Defendants argue that AB 2839 is  
23 a restriction on knowing falsehoods that fall outside of the  
24 category of false speech protected by the First Amendment as  
25 articulated in United States v. Alvarez, 567 U.S. 709 (2012).  
26 See D. Opp’n at 9.

27 While Defendants attempt to analogize AB 2839 to a  
28 restriction on defamatory statements, the statute itself does

1 not use the word "defamation" and by its own definition, extends  
2 beyond the legal standard for defamation to include any false or  
3 materially deceptive content that is "reasonably likely" to harm  
4 the "reputation **or** electoral prospects of a candidate." Cal.  
5 Elec. Code § 20012(b) (emphasis added). At face value, AB 2839  
6 does much more than punish potential defamatory statements since  
7 the statute does not require actual harm and sanctions any  
8 digitally manipulated content that is "reasonably likely" to  
9 "harm" the amorphous "electoral prospects" of a candidate or  
10 elected official, Id. § 20012(b)(1)(A), (C).

11 Moreover, all "deepfakes" or any content that "falsely  
12 appear[s] to a reasonable person to be an authentic record of  
13 the content depicted in the media" are automatically subject to  
14 civil liability because they are categorically encapsulated in  
15 the definition of "materially deceptive content" used throughout  
16 the statute. Id. § 20012(f)(8). Thus, even artificially  
17 manipulated content that does not implicate reputational harm  
18 but could arguably affect a candidate's electoral prospects is  
19 swept under this statute and subject to civil liability.

20 The statute also punishes such altered content that depicts  
21 an "elections official" or "voting machine, ballot, voting site,  
22 or other property or equipment" that is "reasonably likely" to  
23 falsely "undermine confidence" in the outcome of an election  
24 contest. Id. § 20012(b)(1)(B), (D). On top of these provisions  
25 lacking any objective metric and being difficult to ascertain,  
26 there are many acts that can be "do[ne] or [words that can be]  
27 sa[id]" that could harm the "electoral prospects" of a public  
28 official or "undermine confidence" in an election. Id.



1 § 20012(b)(1)(A)-(D). Almost any digitally altered content,  
2 when left up to an arbitrary individual on the internet, could  
3 be considered harmful. For example, AI-generated approximate  
4 numbers on voter turnout could be considered false content that  
5 reasonably undermines confidence in the outcome of an election  
6 under this statute. On the other hand, many “harmful”  
7 depictions when shown to a variety of individuals may not  
8 ultimately influence electoral prospects or undermine confidence  
9 in an election at all. As Plaintiff persuasively points out, AB  
10 2839 “relies on various subjective terms and awkwardly-phrased  
11 *mens rea*,” which has the effect of implicating vast amounts of  
12 political and constitutionally protected speech. Mot. at 16.

13 Defendants further argue that AB 2839 falls into the  
14 possible exceptions recognized in Alvarez for lies that involve  
15 “some . . . legally cognizable harm.” 567 U.S. 709, 719 (2012).  
16 However, the legally cognizable harms Alvarez mentions does not  
17 include the “tangible harms to electoral integrity” Defendants  
18 claim that AB 2839 penalizes. See D. Opp’n at 2. Instead, the  
19 potentially unprotected lies Alvarez cognized were limited to  
20 existing causes of action such as “invasion of privacy or the  
21 costs of vexatious litigation”; “false statements made to  
22 Government officials, in communications concerning official  
23 matters”; and lies that are “integral to criminal conduct,” a  
24 category that might include “falsely representing that one is  
25 speaking on behalf of the Government, or . . . impersonating a  
26 Government officer.” 567 U.S. at 719-722 (2012). AB 2839  
27 implicates none of the legally cognizable harms recognized by  
28 Alvarez and thereby unconstitutionally suppresses broader areas

1 of false but protected speech.

2 Even if AB 2839 were only targeted at knowing falsehoods  
3 that cause tangible harm, these falsehoods as well as other  
4 false statements are precisely the types of speech protected by  
5 the First Amendment. In New York Times v. Sullivan, the Supreme  
6 Court held that even deliberate lies (said with “actual malice”)  
7 about the government are constitutionally protected. 376 U.S.  
8 254, 283 (1964). The Supreme Court further articulated that  
9 “prosecutions for libel on government” – including civil  
10 liability for such libel – “have [no] place in the American  
11 system of jurisprudence.” 376 U.S. 254, 291 (1964) (quoting  
12 City of Chicago v. Tribune Co. 307 Ill. 595 (Sup. Ct. 1923));  
13 see also Rosenblatt v. Baer, 383 U.S. 75, 81 (1966) (holding that  
14 “the Constitution does not tolerate in any form” “prosecutions  
15 for libel on government”). These same principles safeguarding  
16 the people’s right to criticize government and government  
17 officials apply even in the new technological age when media may  
18 be digitally altered: civil penalties for criticisms on the  
19 government like those sanctioned by AB 2839 have no place in our  
20 system of governance.

21 a. AB 2839 Does Not Pass Strict Scrutiny and is  
22 Not Narrowly Tailored

23 AB 2839 specifically targets speech within political or  
24 electoral content pertaining to candidates, electoral officials,  
25 and other election communication, making it a content-based  
26 regulation that seeks to limit public discourse. A content-  
27 based regulation “target[s] speech based on its communicative  
28 content,” restricting discussion of a subject matter or topic.

1 Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015). “As a  
2 general matter,” a content-based regulation is “presumptively  
3 unconstitutional and may be justified only if the government  
4 proves that [it is] narrowly tailored to serve compelling state  
5 interests.” Nat’l Inst. of Fam. & Life Advoc., 585 U.S. at 766  
6 (quoting Reed, 576 U.S. at 163). Here, AB 2839 delineates  
7 acceptable and unacceptable content based on its purported truth  
8 or falsity and is an archetypal content-based regulation that  
9 our constitution considers dubious and subject to strict  
10 scrutiny.

11 Under strict scrutiny, a state must use the “least  
12 restrictive means available for advancing [its] interest.”  
13 NetChoice, LLC v. Bonta, 113 F.4th 1102, 1121 (9th Cir. 2024)  
14 (internal quotation omitted). The First Amendment does not  
15 “permit speech-restrictive measures when the state may remedy  
16 the problem by implementing or enforcing laws that do not  
17 infringe on speech.” IMDb.com, Inc. v. Becerra, 962 F.3d 1111,  
18 1125 (9th Cir. 2020) (citing cases).

19 While the Court gives substantial weight to the fact that  
20 the California Legislature has a “compelling interest in  
21 protecting free and fair elections,” this interest must be  
22 served by narrowly tailored ends. Cal. Elec. Code  
23 § 20012(a)(4). One of the First Amendment’s core purposes is  
24 “to preserve an uninhibited marketplace of ideas in which truth  
25 will ultimately prevail.” McCullen v. Coakley, 573 U.S. 464,  
26 476 (2014) (quoting FCC v. League of Women Voters of Cal., 468  
27 U.S. 364, 377 (1984)). It is essential to a healthy democracy  
28 that “debate on public issues [] be uninhibited, robust, and

1 wide-open" which may create a necessary sacrifice that such  
2 dialogue "include[s] vehement, caustic, and sometimes  
3 unpleasantly sharp attacks on government and public officials."  
4 New York Times v. Sullivan, 376 U.S. 254, 270 (1964). "If there  
5 be time to expose through discussion the falsehood and  
6 fallacies, to avert the evil by the processes of education, the  
7 remedy to be applied is more speech, not enforced silence."  
8 Whitney v. California, 274 U.S. 357, 377 (1927).

9 Supreme Court precedent illuminates that while a well-  
10 founded fear of a digitally manipulated media landscape may be  
11 justified, this fear does not give legislators unbridled license  
12 to bulldoze over the longstanding tradition of critique, parody,  
13 and satire protected by the First Amendment. YouTube videos,  
14 Facebook posts, and X tweets are the newspaper advertisements  
15 and political cartoons of today, and the First Amendment  
16 protects an individual's right to speak regardless of the new  
17 medium these critiques may take. Other statutory causes of  
18 action such as privacy torts, copyright infringement, or  
19 defamation already provide recourse to public figures or private  
20 individuals whose reputations may be afflicted by artificially  
21 altered depictions peddled by satirists or opportunists on the  
22 internet. Additionally, AB 2839 by its own terms proposes other  
23 less restrictive means of regulating artificially manipulated  
24 content in the statute itself. The safe harbor carveouts of the  
25 statute attempt to implement labelling requirements, which if  
26 narrowly tailored enough, could pass constitutional muster.  
27 Ultimately, as Plaintiff's motion points out, despite AB 2839's  
28 attempts at a limited construction, the statute encompasses a

1 broad range of election-related content that would be  
2 constitutionally protected even if false and cannot withstand  
3 First Amendment scrutiny.

4 In addition to encumbering protected speech, there is a  
5 more pressing reason to meet statutes that aim to regulate  
6 political speech, like AB 2839 does, with skepticism. To quote  
7 Justices Breyer and Alito in Alvarez, “[t]here are broad areas  
8 in which any attempt by the state to penalize purportedly false  
9 speech would present a grave and unacceptable danger of  
10 suppressing truthful speech” 567 U.S. 709, 731 (2012) (Breyer,  
11 J., concurring in the judgment). In analyzing regulations on  
12 speech, “[t]he point is not that there is no such thing as truth  
13 or falsity in these areas or that the truth is always impossible  
14 to ascertain, but rather that it is perilous to permit the state  
15 to be the arbiter of truth” in certain settings. Id. at 751-52  
16 (Alito, J., dissenting).

17 The political context is one such setting that would be  
18 especially “perilous” for the government to be an arbiter of  
19 truth in. AB 2839 attempts to sterilize electoral content and  
20 would “open[] the door for the state to use its power for  
21 political ends.” Id. “Even a false statement may be deemed to  
22 make a valuable contribution to public debate, since it brings  
23 about ‘the clearer perception and livelier impression of truth,  
24 produced by its collision with error.’” Id. (quoting New York  
25 Times Co., supra, at 279, n. 19). When political speech and  
26 electoral politics are at issue, the First Amendment has almost  
27 unequivocally dictated that Courts allow speech to flourish  
28 rather than uphold the State’s attempt to suffocate it.

1           Upon weighing the broad categories of election related  
2 content both humorous and not that AB 2839 proscribes, the Court  
3 finds that AB 2839's legitimate sweep pales in comparison to the  
4 substantial number of its applications, as in this case, which  
5 are plainly unconstitutional. Therefore, the Court finds that  
6 Plaintiff is likely to succeed on a First Amendment facial  
7 challenge to the statute.

8                   b. AB 2839's Disclosure Requirement Constitutes  
9                                 Compelled Speech that is Unduly Burdensome

10           For parody or satire videos, AB 2839 requires a disclaimer  
11 to air for the entire duration of a video in text that is no  
12 smaller than the largest font size used in the video. Cal.  
13 Elec. Code § 20012(b). In Plaintiff Kohls' case, this  
14 requirement renders his video almost unviewable, obstructing the  
15 entirety of the frame. Compl. ¶ 98. The obstructiveness of  
16 this requirement is concerning because parody and satire have  
17 relayed creative and important messages in American politics.  
18 As the Supreme Court has noted, "[d]espite their sometimes  
19 caustic nature, from the early cartoon portraying George  
20 Washington as an ass down to the present day, graphic depictions  
21 and satirical cartoons have played a prominent role in public  
22 and political debate." Hustler Magazine v. Falwell, 485 U.S.  
23 46, 54 (1988).

24           Defendants do not argue that Plaintiff Kohls' video  
25 qualifies as commercial speech and the Court does not find  
26 Plaintiff's parody to be an actual advertisement. While an  
27 argument could be made that some parodies or satire are in  
28 effect commercial speech, a vast majority of these creations are

1 simply humorous artistic endeavors which are not subject to  
2 commercial speech regulations. In a non-commercial context like  
3 this one, AB 2839's disclosure requirement forces parodists and  
4 satirists to "speak a particular message" that they would not  
5 otherwise speak, which constitutes compelled speech that dilutes  
6 their message. See Nat'l Inst. Of Family and Life Advocates v.  
7 Becerra, 585 U.S. 755, 766 (2018); X Corp. v. Bonta, 2024 WL  
8 4033063, at \*6 (9th Cir. Sept. 4, 2024).

9 Even if some artificially altered content were subject to a  
10 lower standard for commercial speech or "exacting scrutiny"  
11 instead of strict scrutiny as the Defendants argue (D. Opp'n at  
12 20) AB 2839 could not meet its "burden to prove that the . . .  
13 notice is neither unjustified nor unduly burdensome" under  
14 NIFLA, 585 U.S. at 776, or that the disclosure is "narrowly  
15 tailored" pursuant to the standard articulated for political  
16 speech disclosures in Smith v. Helzer, 95 F.4th 1207, 1214 (9th  
17 Cir. 2024). AB 2839's size requirements for the disclosure  
18 statement in this case and many other cases would take up an  
19 entire screen, which is not reasonable because it almost  
20 certainly "drowns out" the message a parody or satire video is  
21 trying to convey. Thus, because AB 2839's disclosure  
22 requirement is overly burdensome and not narrowly tailored, it  
23 is similarly unconstitutional. Id. at 778.

24 2. Kohls is Likely to Succeed on His California  
25 State Constitutional Free Speech Claim

26 Art. 1 Section 2(a) of California's Constitution states  
27 that "[e]very person may freely speak, write and publish his or  
28 her sentiments on all subjects," and "[a] law may not restrain

1 or abridge liberty of speech. . . .” Cal. Const. art I, § 2(a).  
2 Federal courts in California considering state and federal free  
3 speech claims have interpreted these rights as largely  
4 coextensive, with California's Liberty of Speech Clause  
5 providing broader protections than the First Amendment. See  
6 e.g., Bolbol v. City of Daly City, 754 F. Supp. 2d 1095, 1105  
7 (N.D. Cal. 2010) (citing Kuba v. 1-A Agr. Ass’n, 387 F.3d 850,  
8 856 (9th Cir. 2004) and Los Angeles Alliance for Survival v.  
9 City of Los Angeles, 22 Cal.4th 352, 366 (2000)); Campbell v.  
10 City of Milpitas, 2015 WL 1359311 at \*13 (N.D. Cal. 2015);  
11 Citizens for Free Speech, LLC v. Cnty. of Alameda, 114 F. Supp.  
12 3d 952, 971-72 (N.D. Cal. 2015).

13 Under current case law, the California state right to  
14 freedom of speech is at least as protective as its federal  
15 counterpart. Given that Plaintiff is likely to succeed on the  
16 federal First Amendment facial challenge, it follows that  
17 Plaintiff is also likely to succeed on his state free speech  
18 claim. In accordance with the First Amendment facial analysis  
19 discussed above, the Court finds that AB 2839 is also  
20 unconstitutional under California's free speech provision and  
21 finds that Plaintiff is likely to succeed on his state  
22 constitutional claim.

23 C. Remaining Preliminary Injunction Factors

24 Plaintiff asserts that the remaining Winter factors -  
25 irreparable harm, balance of equities, and the public interest -  
26 weigh in favor of granting the motion for preliminary  
27 injunction. Mot. at 21, 22. Defendants argue that the burden  
28 to Plaintiff is minimal and that a balance of the equities and



1 public interest factors would only weigh in favor of injunctive  
2 relief if Plaintiff were able to show a constitutional  
3 violation. See D. Opp'n at 24. Once again, Plaintiff's  
4 arguments carry the day.

5 As set forth in the initial analysis, Plaintiff has shown a  
6 likelihood of success in mounting a First Amendment  
7 constitutional challenge to AB 2839. In terms of irreparable  
8 harm, Plaintiff Kohls has also demonstrated that his content is  
9 a target of AB 2839 which exposes him to potential civil  
10 liabilities and that he faces an imminent and ongoing First  
11 Amendment constitutional violation. Compl. ¶¶ 99-102; Mot. at  
12 21. Both the Ninth Circuit and the Supreme Court "have  
13 repeatedly held that the loss of First Amendment freedoms, for  
14 even minimal periods of time, unquestionably constitutes  
15 irreparable injury." Klein v. City of San Clemente, 584 F.3d  
16 1196, 1207-08 (9th Cir. 2009) (internal quotation omitted;  
17 citing cases). Thus, the Court finds that Plaintiff Kohls would  
18 experience irreparable harm because his speech would be  
19 unconstitutionally chilled if the motion for preliminary  
20 injunction were not granted.

21 Once Plaintiff satisfies the first two factors (likelihood  
22 of success on the merits and irreparable harm), the traditional  
23 injunction test calls for assessing the harm to the opposing  
24 party and weighing the public interest. Winter, supra, at 20.  
25 Defendants seem to hedge their analysis of these remaining  
26 factors on the assertion that Plaintiff Kohls has not shown a  
27 likelihood of success on the merits and do not address whether a  
28 balancing of the equities or public interest analysis in the

1 alternative case where a constitutional violation is found would  
2 weigh in their favor. See D. Opp'n at 24. Thus, the Court is  
3 not persuaded that a balance of equities or public interest  
4 analysis does not weigh in favor of a preliminary injunction.  
5 While a preliminary injunction is pending, there may be some  
6 hardship on the State. The record demonstrates that the State  
7 of California has a strong interest in preserving election  
8 integrity and addressing artificially manipulated content.  
9 However, California's interest and the hardship the State faces  
10 are minimal when measured against the gravity of First Amendment  
11 values at stake and the ongoing constitutional violations that  
12 Plaintiff and other similarly situated content creators  
13 experience while having their speech chilled.

14 Even though these last two injunctive factors may merge  
15 when the Government is the opposing party," Nken v. Holder, 556  
16 U.S. 418, 435 (2009), because Plaintiff Kohls has demonstrated  
17 that he is likely to succeed on a facial challenge to AB 2839,  
18 it follows that the public interest weighs in favor of a  
19 preliminary injunction since "it is always in the public  
20 interest to prevent the violation of a party's constitutional  
21 rights." Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir.  
22 2012) (internal quotations omitted); accord Sammartano v. First  
23 Jud. Dist. Court, 303 F.3d 959, 974 (9th Cir. 2002). As a  
24 general matter, the Court recognizes the "significant public  
25 interest in upholding free speech principles" where "the ongoing  
26 enforcement of [a] potentially unconstitutional regulation[]  
27 would infringe not only the free expression interests of  
28 plaintiffs, but also the interests of other people subjected to

1 the same restrictions.” Klein, 584 F.3d at 1208 (cleaned up).

2 D. Severability

3 Defendants argue that AB 2839’s severability clause allows  
4 the Court to salvage portions of the statute. However, a  
5 severability clause only saves portions of a statute that pass  
6 constitutional muster and under California law, the Court can  
7 only sever provisions if they are (1) “grammatically  
8 functionally and volitionally separable,” (2) the “invalid parts  
9 can be removed as a whole without affecting the wording or  
10 coherence of what remains,” and (3) if the “remainder of the  
11 statute is complete in itself.” Vivid Ent., LLC v. Fielding,  
12 774 F.3d 566, 574 (9th Cir. 2014).

13 As discussed above, critical portions of AB 2839 are  
14 invalid because Cal. Elec. Code § 20012(b)(1)(A)-(D) penalizes  
15 constitutionally protected speech. In this instance, the Court  
16 finds that the only provision of AB 2839 that could survive  
17 constitutional scrutiny or would “have been adopted by the  
18 legislative body had the [body] foreseen the partial  
19 invalidation of the statute,” Vivid Ent., LLC at 576, is the  
20 portion of AB 2839 not raised explicitly by either party: the  
21 audio only disclosure requirement codified at Cal. Elec. Code  
22 § 20012(b)(2)(B)(ii). This audio only requirement may  
23 constitute compelled speech, but under the factors in Helzer, a  
24 verbal disclosure at the outset and conclusion of a recording  
25 combined with interspersed disclosures in two-minute intervals  
26 is on its face reasonable and not unduly burdensome. 95 F.4th  
27 1207, 1214 (9th Cir. 2024).

28 Nevertheless, the Court has preliminarily determined that

1 the rest of AB 2839 is still unconstitutional. Contrary to  
2 Defendants assertions, Plaintiff contends that he is impacted by  
3 the other prohibitions in AB 2839 outside of the "candidate"  
4 prong which are codified at Cal. Elec. Code § 20012(b)(1)(B)-  
5 (D). Plaintiff alleges that because he has already posted a new  
6 video "lampoon[ing] an elected official," he is also impacted by  
7 the "elected official" prong of AB 2839. See P. Reply at 10.  
8 The only portion of AB 2839 Plaintiff might arguably not yet be  
9 impacted by is § 20012(b)(1)(B) or (D), but even those  
10 provisions are constitutionally suspect on their face because  
11 they contain the same content-based language that restricts the  
12 mere false depiction of elections officials or voting machines,  
13 ballots, voting sites, or other property or equipment. As  
14 Plaintiff points out, "severance is inappropriate if the  
15 remainder of the statute would still be unconstitutional,"  
16 Tollis Inc. v. County of San Diego, 505 F.3d 935, 943 (9th Cir.  
17 2007), and the Court finds that no other parts of AB 2839,  
18 except for the audio only disclosure requirement, pass  
19 constitutional muster.

#### 20 IV. CONCLUSION

21 The Court acknowledges that the risks posed by artificial  
22 intelligence and deepfakes are significant, especially as civic  
23 engagement migrates online and disinformation proliferates on  
24 social media. Against this backdrop, the Court does not enjoin  
25 the state statute at issue in this motion lightly, even on a  
26 preliminary basis. However, most of AB 2839 acts as a hammer  
27 instead of a scalpel, serving as a blunt tool that hinders  
28 humorous expression and unconstitutionally stifles the free and

1 unfettered exchange of ideas which is so vital to American  
2 democratic debate.

3 Just as the Court is mindful that legislative leaders  
4 enacted AB 2839 and that the State may have a legitimate  
5 interest in protecting election integrity, it is equally mindful  
6 that the First Amendment was designed to protect citizens  
7 against prior restraints and encroachments of speech by State  
8 governments themselves. “[W]hatever the challenges of applying  
9 the Constitution to ever-advancing technology, the basic  
10 principles” of the First Amendment “do not vary” and Courts must  
11 ensure that speech, especially political or electoral speech, is  
12 not censored for its ideas, subject matter, or content. Brown  
13 v. Entertainment Merchants Assn., 564 U.S. 786, 790 (2011).

14 V. ORDER

15 For the reasons set forth above, the Court GRANTS  
16 Plaintiff’s Motion for a Preliminary Injunction (ECF No. 6-1).  
17 Defendants Rob Bonta and Shirley N. Weber and their agents,  
18 employees, public servants, officers and persons acting in  
19 concert with them are HEREBY ENJOINED from enforcing AB 2839  
20 except for the audio only severed portion of the statute. The  
21 bond requirement under Federal Rule 65(c) is waived.

22 IT IS SO ORDERED.

23 Dated: October 2, 2024

24  
25   
26 JOHN A. MENDEZ  
27 SENIOR UNITED STATES DISTRICT JUDGE  
28