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

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

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

[1] Defendants define "deepfake" as a "manipulated piece of media where a person's likeness, image or void is digitally created or swapped with another person's." Opposition to Prelim. Injunction Motion, p. 3, fn. 5. ECF No. 9.

AB 2839 does not pass constitutional scrutiny because the law does not use the least restrictive means available for advancing the State's interest here. As Plaintiffs persuasively argue, counter speech is a less restrictive alternative to prohibiting videos such as those posted by Plaintiff, no matter how offensive or inappropriate someone may find them. '"Especially as to political speech, counter speech is the tried and true buffer and elixir," not speech restriction.' Motion for Prelim. Inj., p. 13 (citations omitted), ECF No. 6-1.

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

II. BACKGROUND

A. Plaintiff

Plaintiff Kohls is a social media influencer with roughly 80,000 followers on X and 360,000 subscribers on YouTube. Compl. ¶¶ 4, 17, ECF No. 1. Kohls owns accounts on various platforms, including the X account "@MrReaganUSA" and the screen name "Mr. Reagan" on YouTube and Facebook, where he posts (what he alleges is) humorous political content often featuring politicians mocking their own candidacies. Mot. at 4. For example, on July

[2] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for September 30, 2024.

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

B. Overview of AB 2839

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

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

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

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

///

///

///

C. Motion for Preliminary Injunction

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

III. OPINION

A. Legal Standard

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

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

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

B. Likelihood of Success on the Merits

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

"To provide breathing room for free expression," the Supreme Court has "substituted a less demanding though still rigorous standard" for facial challenges. Moody v. NetChoice, LLC, 144 S.Ct. 2383, 2397 (2024) (cleaned up) (quoting United States v. Hansen, 599 U.S. 762, 769 (2023)); see also Tucson v. City of Seattle, 91 F.4th 1318, 1327 (9th Cir. 2024). "[I]f the law's unconstitutional applications substantially outweigh its constitutional ones," then a court may sustain a facial challenge to the law and strike it down. Moody, 144 S. Ct. at 2397. As Moody sets forth, 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." Id. at 2398.

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

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

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

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

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). On top of these provisions lacking any objective metric and being difficult to ascertain, there are many acts that can be "do[ne] or [words that can be] sa[id]" that could harm the "electoral prospects" of a public official or "undermine confidence" in an election. Id.

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

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

of false but protected speech.

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

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

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

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

Under strict scrutiny, a state must use the "least restrictive means available for advancing [its] interest." NetChoice, LLC v. Bonta, 113 F.4th 1102, 1121 (9th Cir. 2024) (internal quotation omitted). 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).

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

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

Supreme Court precedent illuminates that while a well-founded fear of a digitally manipulated media landscape may be justified, this fear does not give legislators unbridled license to bulldoze over the longstanding tradition of critique, parody, and satire protected by the First Amendment. YouTube videos, Facebook posts, and X tweets are the newspaper advertisements and political cartoons of today, and the First Amendment protects an individual's right to speak regardless of the new medium these critiques may take. Other statutory causes of action such as 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. Additionally, AB 2839 by its own terms proposes other less restrictive means of regulating artificially manipulated content in the statute itself. The safe harbor carveouts of the statute attempt to implement labelling requirements, which if narrowly tailored enough, could pass constitutional muster. Ultimately, as Plaintiff's motion points out, despite AB 2839's attempts at a limited construction, the statute encompasses a

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Remaining Preliminary Injunction Factors

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

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

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

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

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

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

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

D. Severability

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

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

Nevertheless, the Court has preliminarily determined that

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

IV. CONCLUSION

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

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

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

V. ORDER

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

IT IS SO ORDERED.

Dated: October 2, 2024

JOHN A. MENDEZ,
SENIOR UNITED STATES DISTRICT JUDGE