

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,"¹ 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.

26 ¹ Defendants define "deepfake" as a "manipulated piece of media
27 where a person's likeness, image or void 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.²

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
26

27 ² 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 Advocs., 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