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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA  
12 SACRAMENTO DIVISION

13 CHRISTOPHER KOHLS,

14 *Plaintiff,*

15 *v.*

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

20 *Defendants.*

No. 24-cv-02527-JAM-CKD

21 **MEMORANDRUM IN SUPPORT OF**  
22 **PLAINTIFF'S MOTION FOR A**  
23 **PRELIMINARY INJUNCTION**

24 DATE: September 30, 2024

25 TIME: TBD

26 JUDGE: Hon. John A. Mendez

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 The American people have been making fun of politicians—using hyperbole, mockery,  
4 gesticulation, and satire, amongst other means—since before this country was founded.

5 In modern America, Plaintiff Christopher Kohls has found fame and steady income  
6 creating videos from real clips and generative artificial intelligence (AI)<sup>1</sup> that pokes fun at  
7 politicians he opposes politically, including Vice President Kamala Harris, the Democratic  
8 nominee for President. Kohls posts these videos to his accounts on YouTube and X  
9 (commonly known as Twitter), where viewers can watch satire of “Harris” announcing  
10 outrageous policies and arguments for her candidacy (in an AI-generated voice) in the aesthetic  
11 of a political campaign ad. California Governor Gavin Newsom and the California Legislature  
12 won’t allow Plaintiff’s burlesque: The Governor replied to Kohls’s first Harris video on X with  
13 his own tweet, where he promised to sign a then-pending law that would make Kohls’s content  
14 illegal. Then, the Legislature passed that legislation in mere weeks—with urgency, meaning it’s  
15 enforceable today—doing just that. The full force of state power has been enlisted to take  
16 down harmless and constitutionally-protected parody.

17 More broadly, for the past few years California’s legislature has embarked on an  
18 unrelenting quest to combat “misinformation” by imposing content-based regulations of  
19 private speech. *See, e.g., X Corp. v. Bonta*, \_\_\_F.4th\_\_\_, 2024 U.S. App. LEXIS 22456 (9th Cir.  
20 Sept. 5, 2024) (holding unconstitutional a social media mandatory reporting law intended,  
21 among other things, to combat misinformation and disinformation); *McDonald v. Lawson*, 94  
22 F.4th 864 (9th Cir. 2024) (holding moot challenge to COVID misinformation statute when  
23

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25 <sup>1</sup> “Generative AI can be thought of as a machine-learning model that is trained to create  
26 new data, rather than making a prediction about a specific dataset. A generative AI system is  
27 one that learns to generate more objects that look like the data it was trained on.” Adam Zewe,  
28 *Explained: Generative AI*, MIT News (Nov. 9, 2023), <https://news.mit.edu/2023/explained-generative-ai-1109>. For example, a Generative AI trained on the voice of a person can be used to create new audio that resembles the voice of that person, as Kohls did.

1 California repealed it after unfavorable oral argument). The California legislature should stop  
 2 immediately because it does not possess “freewheeling authority to declare new categories of  
 3 speech outside the scope of the First Amendment.” *X Corp.*, 2024 U.S. App. LEXIS 22456, at  
 4 \*20 (quoting *United States v. Stevens*, 559 U.S. 460, 472 (2010)). And the Supreme Court has  
 5 clarified that misinformation is fully protected speech unless it causes a “legally cognizable  
 6 harm” to the interests of another. *United States v. Alvarez*, 567 U.S. 709, 719 (2012); *see generally*  
 7 Eugene Volokh, *When are Lies Constitutionally Protected*, 4 J. FREE SPEECH L. 685 (2024).<sup>2</sup> But for  
 8 now, California continues its crusade.

9 AB 2839 is the result, a patently unconstitutional law which allows any political  
 10 candidate, election official, the Secretary of State, and *everyone who sees* Kohls’s AI-generated  
 11 videos to sue him for damages and injunctive relief starting 120 days before an election, until  
 12 60 days *after* an election. While the bill’s sponsor pretended that the bill was “narrowly tailored,”  
 13 the First Amendment does not take a vacation for five months every year.

14 Liability under AB 2839 extends to satire and parody like Kohl’s July 26 video, where  
 15 an AI voiceover for “Harris” calls herself a “diversity hire” who follows “rule number one:  
 16 carefully hide your total incompetence.” Complaint ¶ 33. Confronting the lampooning video,  
 17 Gov. Gavin Newsom responded that “[m]anipulating voice in an ‘ad’ like this one should be  
 18 illegal. I’ll be signing a bill in a matter of weeks to make sure it is.” *Id.* at ¶ 35. True to his word,  
 19 Newsom collaborated with the bill’s sponsors to excise the bill’s carveout of parody and satire,  
 20 which originally read: “This section does not apply to materially deceptive content that  
 21 constitutes satire or parody.” *Id.* at ¶¶ 79-80.<sup>3</sup> Instead, of exempting parody, AB 2839 merely  
 22 provides a safe harbor for videos that satisfy restrictive labeling requirements.

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 24 <sup>2</sup> Available at: <https://www.journaloffreespeechlaw.org/volokh5.pdf>

25 <sup>3</sup> A similar carveout still exists in AB 2839’s companion bill, AB 2655, which does not  
 26 become effective until January 1, 2025, and is not the subject of this memorandum. The  
 27 carveout (part of Cal. Elec. Code § 20519) provides no defense against causes of action under  
 28 AB 2839, which may be brought by defendant Weber, any candidate or even any *recipient* of  
 political satire, codified at Cal. Elec. Code § 20012. Moreover, the carveout in AB 2655 is also  
 inadequate because it imposes liability on platforms that do not swiftly respond to removal

1 Kohls uploaded his video under the title “Kamala Harris Campaign Ad PARODY,” but  
2 this does not satisfy AB 2839’s labeling safe harbor, which requires a specific message that runs  
3 the *entire duration* of the video in a typeface no smaller than the largest text visible in the video.  
4 His video, dozens of others on his channel, and likely countless thousands of other videos,  
5 memes, and graphics online, became actionable upon the governors’ signature yesterday. Even  
6 if Plaintiff wished to comply with the onerous labelling requirement—which he does not—  
7 and even if he were willing to upload new labeled version of the video (which reduces his reach  
8 on platforms like YouTube), the required disclaimer literally could not fit on the video because  
9 the text would greatly exceed the space available on the screen. This is because the video  
10 includes prominent text to assist viewers watching it from a cellphone and it also includes a  
11 Kamala Harris logo at the end, and inclusion of large text makes it impossible to fit the required  
12 disclosure on the screen at equally-large font size, as the statute requires: “This [video] has been  
13 manipulated for purposes of satire or parody.” Cal. Elec. Code § 20012(b)(3). AB 2839  
14 therefore permits anyone to file suit against Kohls even though his videos are parody, and are  
15 labeled as such. This will harm Kohls in particular, whose videos are already in the cross-hairs  
16 for liberal activists thanks to the Governor calling out the video before Newsom’s two million  
17 X followers—twice!

18 AB 2839 is also an unconstitutional content regulation, since it seeks to regulate only  
19 AI-generated content that is directed at a Presidential or California candidate/election and that  
20 is “likely to harm the reputation or electoral prospects” of a candidate or is “likely to falsely  
21 undermine confidence in the outcome of” an election. Most importantly, the Government’s  
22 sole cited interest in passing AB 2839—ensuring “free and fair elections” by preventing AI  
23 deepfakes—does not justify, in any form, a government crackdown on political speech.

24  
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26  
27 requests, causing them to err on the side of removing potentially satirical content. Plaintiff  
28 intends to bring a motion for preliminary injunction of AB 2655 in due course, which will  
explain the problems of that bill in advance of its January 1 effective date.

1 As a result of AB 2839, Kohls suffers material harm: He wishes to continue making and  
2 distributing AI generated content that mocks Vice President Harris and other politicians with  
3 whom he disagrees—perhaps Governor Newsom and Defendants themselves are in the cards  
4 for future jokes. As to his current videos of Vice President Harris, it is likely that they may  
5 attract an activist lawsuit under the statute—especially given that the Governor has already  
6 observed they are unlawful under the Act. The chill on future speech and likely threat to current  
7 speech impairs his ability to earn an income, which he does by monetizing viewership of his  
8 videos. Moreover, AB 2839 robs Kohls of the ability to spread his political message. This is  
9 bread and butter irreparable harm.

10 In addition, because of the strong public interest and equities that favor protecting  
11 constitutional rights, a preliminary injunction is warranted here to preserve the *status quo ante*.  
12 Accordingly, this Court should grant Plaintiff’s Motion and enjoin AB 2839 for enforcement  
13 by Defendant Weber and her office.

#### 14 **FACTUAL BACKGROUND**

15 Plaintiff Christopher Kohls is a California resident currently traversing the world while  
16 living on income from monetizing digital content on his YouTube and X accounts. He posts  
17 under the moniker “@MrReaganUSA” on X and “Mr Reagan” on YouTube, a reference to  
18 both his own conservative views and the political nature of his content. Part of Kohls’s persona  
19 as “Mr Reagan” is creating fake political ads that mimic Democratic Party politicians, where—  
20 rather than flattering or supportive language—they feature the politician mocking their own  
21 candidacies. Kohls creates this content by relying on generative artificial intelligence, a new  
22 technological development that exposes high-powered and advanced computer algorithms to  
23 swaths of data—as relevant here, sound clips of a particular politician’s voice—to produce  
24 content that mimics the original speaker.

25 In late July, Kohls uploaded a video to his X and YouTube pages that featured Vice  
26 President and Democratic nominee Kamala Harris’s AI-generated voice. “Harris” was featured  
27 as saying:  
28

1 I, Kamala Harris, am your Democrat candidate for president because Joe  
2 Biden finally exposed his senility at the debate. Thanks Joe. I was selected  
3 because I am the ultimate diversity hire. I'm both a woman and a person  
4 of color. So if you criticize anything I say, you're both sexist and racist. I  
5 may not know the first thing about running the country, but remember,  
6 that's a good thing if you're a deep state puppet. I had four years under  
7 the tutelage of the ultimate deep state puppet; a wonderful mentor, Joe  
8 Biden. Joe taught me rule number one: carefully hide your total  
9 incompetence.

10 I take insignificant things and I discuss them as if they're significant. And  
11 I believe that exploring the significance of the insignificant is itself  
12 significant.

13 The video then features video and audio from a real Harris speech.<sup>4</sup> In the clip Harris  
14 says: "Talking about the significance of the passage of time, right? The significance of the  
15 passage of time. So when you think about it, there is great significance to the passage of time,"  
16 the real video cuts here with a "swish" sound effect and concludes: "and there is such great  
17 significance to the passage of time." The AI-generated narration then continues:

18 Another trick is trying to sound black. I pretend to celebrate Kwanzaa,  
19 and in my speeches, I always do my best Barack Obama impression.

20 The video again excerpts a real Harris speech:<sup>5</sup> "So hear me when I say, I now Donald  
21 Trump's type." The narration by "Harris" continues:

22 And okay, look, maybe my work addressing the root causes of the border  
23 crisis were catastrophic, but my knowledge of international politics is truly  
24 shocking.

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25 <sup>4</sup> The clip comes from a speech Harris gave on March 20, 2022 in Sunset, Louisiana  
26 concerning rural broadband access. <https://www.katc.com/news/st-landry-parish/vice-president-kamala-harris-to-visit-st-landry-parish-monday> (last visited August 30, 2024)  
(remarks about the "significance to the passage of time" at 8:32).

27 <sup>5</sup> Susan Davis, Ben Giles, *Harris says, as a former prosecutor, 'I know Donald Trump's type'*,  
28 NPR (Jul. 22, 2024) <https://www.npr.org/2024/07/22/g-s1-12690/democrats-rally-behind-vice-president-harris> (last visited August 30, 2024).

1 Again, the video illustrates the fake voiceover with a real speech,<sup>6</sup> where Harris said:  
2 “The United States [“swish” cut] shares a very important relationship, which is an alliance with  
3 the Republic of North Korea. [“swish” cut] It is an alliance that is strong and enduring.” The  
4 parody narration in the ad concludes:

5 And just remember, when voting this November, it is important to see  
6 what can be unburdened by what has been. And by what has been, I mean  
7 Joe Biden.

8 You think the country went to [beeped out expletive] over the past four  
9 years? You ain’t seen nothing yet. [Cackles].

10 Kohls entitled the ad “Kamala Harris Campaign Ad PARODY.” It quickly took off on social  
11 media, garnering hundreds of thousands of views. Governor Newsom decided Plaintiff’s  
12 political message was unacceptable—he replied to the tweet with a tweet of his own, to his  
13 more than two million followers on X. That message read, “Manipulating a voice in an ‘ad’ like  
14 this one should be illegal. I’ll be signing a bill in a matter of weeks to make sure it is.”  
15 Complaint ¶¶ 2, 35.

16 The Legislature heard the Governor’s message loud and clear, and the result is AB 2839,  
17 the statute at issue. In accordance with the Governor’s response to Kohls on X, the Legislature  
18 shepherded AB 2839—which had been in markup in the Senate—and passed it “with urgency”  
19 on August 30. Prior to the vote passing the amended bill, the bill’s co-sponsor Rep. Gail  
20 Pellerin confirmed Gov. Newsom’s direct involvement in amending the bill. She said: “We’ve  
21 worked with the Governor’s office on Senate amendments that require deep fake parody  
22 material to be labeled as being digitally manipulated for those purposes ... Additionally, recent  
23 amendments add an urgency clause—that was a great idea—so the bill can take effect before  
24  
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26 <sup>6</sup> *Remarks by Vice President Harris After Tour of the Korean Demilitarized Zone*, THE WHITE  
27 HOUSE (Sept. 29, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/29/remarks-by-vice-president-harris-after-tour-of-the-korean-demilitarized-zone/> (striking through Harris’s erroneous mention of “North” Korea).  
28

1 the November 5, 2024 general election.”<sup>7</sup> The amendments deleted the carveout for parody  
 2 and satire that previously existed and replaced it with the “disclosure” safe harbor that requires  
 3 “the disclosure shall appear in a size ... no smaller than the largest font size of other text  
 4 appearing in the visual media. ... for the duration of the video,” and added an urgency clause.<sup>8</sup>  
 5 “Urgency” means the law went into effect immediately upon Governor Newsom’s signature  
 6 on September 17, when he theatrically signed the bills on stage at the Dreamforce 2024  
 7 conference in San Francisco. On stage, Newsom characterized the bills as “surgical” unlike  
 8 other AI bills that could have a “chilling” effect on the development of AI. Chase  
 9 DiFeliciano, Sophia Bollag, *In Dreamforce ‘stunt,’ Newsom signs AI bills to rein in election*  
 10 *misinformation*, SAN FRANCISCO CHRONICLE (Sept. 17, 2024).<sup>9</sup> Newsom evidently expressed no  
 11 concern about the laws’ chilling effect on *speech*, which is of constitutional importance.

12 Within hours of the signing, Newsom reposted his earlier tweet targeting Kohls’ video,  
 13 this time declaring, “I just signed a bill to make this illegal in the state of California.”<sup>10</sup>

14 AB 2839 purports to ensure “California elections are free and fair” by “prevent[ing] the  
 15 use of deepfakes and disinformation meant to prevent voters from voting and to deceive voters  
 16 based on fraudulent content” “for a limited time before and after elections.” Cal. Elec. Code  
 17 § 20012(a)(4). The touted “limited time” turns out to be *almost all the time* during election years—  
 18 beginning 120 days before “any election in California” and extending to 60 days afterward,  
 19 while covering every “candidate for any federal, state, or local elected office in California,”  
 20 including “any person running for the office of President of the United States or Vice President

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21  
 22 <sup>7</sup> Remarks in support of Concurrence with Senate Amendments, Aug. 30, 2024,  
 23 [https://www.assembly.ca.gov/media/assembly-floor-session-20240830?time\[media-element-3753\]=16064.105438](https://www.assembly.ca.gov/media/assembly-floor-session-20240830?time[media-element-3753]=16064.105438).

24 <sup>8</sup> The relevant Senate amendments can be viewed at legislature.ca.gov:  
 25 [https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill\\_id=202320240](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=202320240AB2839&cversion=20230AB283994AMD)  
 26 [AB2839&cversion=20230AB283994AMD](https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=202320240AB2839&cversion=20230AB283994AMD).

27 <sup>9</sup> Available at: [https://www.sfchronicle.com/election/article/newsom-signs-new-](https://www.sfchronicle.com/election/article/newsom-signs-new-california-laws-rein-ai-election-19771932.php)  
 28 [california-laws-rein-ai-election-19771932.php](https://www.sfchronicle.com/election/article/newsom-signs-new-california-laws-rein-ai-election-19771932.php) [archive.ph/uYbdp].

<sup>10</sup> <https://x.com/GavinNewsom/status/1836188721663873324> [archive.ph/uYbdp].

1 of the United States who seeks to or will appear on a ballot issued in California.” *Id.*  
2 at (c)(3) & (b)(1)(A). For example, if the bill had been in effect last year, it would have begun  
3 prohibiting Plaintiff’s video on November 6, 2023 (120 days before California’s presidential  
4 primary, where Kamala Harris appeared on the ballot as Vice Presidential nominee), continued  
5 through May 4, then picked up again on July 8, 2024 and running through January 4, 2025—  
6 which is 60 days after the Presidential election. Thus, out of the 425 days between these dates,  
7 AB 2836 only permits videos like Kohls’s between May 5 and July 7—just 64 days in 2024!

8 Kohls intends to keep posting similar AI-generated content that makes fun of Vice  
9 President Harris’s campaign and other political officials.<sup>11</sup> AB 2839 attempts to deter Kohls  
10 from making the videos he wants through the imposition of monetary liability and because the  
11 terms of service for his accounts with YouTube and X require that he post lawful content. As  
12 to Kohls’s current material, Governor Newsom has twice targeted it as illegal under AB 2839.  
13 For this reason, left-leaning activists or state elections officials will likely challenge the content  
14 through the new cause of action furnished by AB 2839, thanks to the Governor’s amplification.  
15 Finally, as to both Kohls’s current and future postings implicated by the Act, Kohls is at serious  
16 risk of losing a source of his livelihood—if these posts are removed from his account, he loses  
17 out on monetization from engagement with these videos and his account. He is also precluded  
18 from sharing the political speech and thoughts that he wants to express on his social media  
19 accounts.

## 20 LEGAL STANDARD

21 Four factors determine whether a court should issue a preliminary injunction: (1)  
22 whether the plaintiff is likely to succeed in the litigation; (2) whether the plaintiff will suffer  
23 irreparable harm absent the injunction; (3) the balance of equities; and (4) the public interest.  
24 *Am. Bev. Ass’n v. City & Cty. of San Francisco*, 916 F.3d 749, 754 (9th Cir. 2019) (*en banc*). In the  
25 context of a First Amendment claim, the test generally turns on the first factor. Where plaintiffs  
26

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27 <sup>11</sup> Kohls posted additional videos poking fun at Vice President Harris in the time period  
28 between Newsom’s first tweet but before AB 2839 went into effect. Complaint ¶ 15.



1 “have a colorable First Amendment claim, they have demonstrated that they will suffer  
2 irreparable harm if the [law] takes effect.” *Id.* at 758. And “the fact that plaintiffs have raised  
3 serious First Amendment questions compels a finding that the balance of hardships tips sharply  
4 in plaintiffs’ favor.” *Id.* (cleaned up). Likewise, the Ninth Circuit “has consistently recognized  
5 the significant public interest in upholding First Amendment principles.” *Id.* (internal quotation  
6 omitted). “Indeed, it is always in the public interest to prevent the violation of a party’s  
7 constitutional rights.” *Id.* (internal quotation omitted).

8 To determine whether a First Amendment plaintiff can demonstrate a likelihood of  
9 success, the Ninth Circuit has framed a burden-shifting approach where “the moving party  
10 bears the initial burden of making a colorable claim that its First Amendment rights have been  
11 infringed, or are threatened with infringement, at which point the burden shifts to the  
12 government to justify the restriction.” *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1116 (9th  
13 Cir. 2011). “Because of the extraordinary nature of injunctive relief, including the potential for  
14 irreparable injury if not granted, a district court may consider evidence outside the normal rules  
15 of evidence, including: hearsay, exhibits, declarations, and pleadings.” *NRA of Am. v. City of Los*  
16 *Angeles*, 441 F. Supp. 3d 915, 926 (C.D. Cal. 2019) (citing *Johnson v. Couturier*, 572  
17 F.3d 1067, 1083 (9th Cir. 2009)). For example, a verified complaint like Plaintiff’s before the  
18 Court, Dkt.1, is evidence that may support injunctive relief. *Thalheimer*, 645 F.3d at 1116.

### 19 **I. Kohls has Article III standing to bring a suit to enjoin AB 2839.**

20 Kohls demonstrates sufficient Article III injury from AB 2839 to adjudicate his claims.  
21 “When an individual is subject to [the] threat” of a law’s enforcement, an “actual arrest,  
22 prosecution, or other enforcement action is not a prerequisite to challenging the law.” *Susan B.*  
23 *Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). It “is sufficient for standing purposes that  
24 the plaintiff intends to engage in a course of conduct arguably affected with a constitutional  
25 interest and that there is a credible threat that the challenged provision will be invoked against  
26 the plaintiff.” *ACLU of Nev. v. Heller*, 378 F.3d 979, 984 (9th Cir. 2004); *see also SBA List*, 573  
27 U.S. at 158; *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979). “[I]n the First Amendment  
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1 context” courts apply a relaxed standing analysis that “tilt[s] dramatically toward a finding of  
2 standing.” *Tingley v. Ferguson*, 47 F.4th 1055, 1066–67 (9th Cir. 2022) (internal quotation  
3 omitted); *accord Firearms Policy Coalition Second Amendment Defense Comm. v. Harris*, 192 F. Supp.  
4 3d 1120, 1125 (E.D. Cal. 2016).

5 Kohls alleges that he wants to keep his current AI-generated Harris ads on his YouTube  
6 and X channels, without risking monetary liability. Governor Newsom’s two tweets—both  
7 before and after the passage of the bill—directly target Kohls’s content as illegal under AB  
8 2839 and indicate that Kohls’s speech is, in the view of the head executive of the state, more  
9 than arguably proscribed. Indeed, it shows that he and other meme creators like him are the  
10 “very object” of the regulation, and so have standing to sue to enjoin its enforcement. Antonin  
11 Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881,  
12 894 (1983).

13 Because AB 2839 is new, there is no past enforcement history to carry weight in the “credible  
14 threat of enforcement” analysis. *Tingley*, 47 F.3d at 1069 (quoting *Cal. Trucking Ass’n v. Bonta*, 996  
15 F.3d 644, 653 (9th Cir. 2021)). Thus, absent evidence to the contrary, courts will presume that recently  
16 enacted legislation will be enforced. *Vitagliano v. Cnty. of Westchester*, 71 F.4th 130, 138 (2d Cir. 2023);  
17 *Speech First v. Fenves*, 979 F.3d 319, 335 (5th Cir. 2020). Yet again, the Newsom tweet bolsters the  
18 credibility of AB 2839 being used to enjoin and punish Kohls’s constitutionally protected  
19 political speech. *See Isaacson v. Mayes*, 84 F.4th 1089, 1099 (9th Cir. 2023) (noting among other  
20 factors, “whether the enforcement authorities have ‘communicated a specific warning or threat  
21 to initiate proceedings’”) (quoting *Thomas v. Anchorage Equal Rts. Comm’n*, 220 F.3d 1134, 1139  
22 (9th Cir. 2000) (*en banc*)); *see also SBA List*, 573 U.S. at 159 (giving such an example). Governor  
23 Newsom appointed Defendant Weber as California Secretary of State in December 2020, and  
24 AB 2839 authorizes her and other California elections officials to sue for damages and  
25 injunctive relief. AB 2839 also empowers an online army of volunteer commissars (Governor  
26 Newsom’s X followers) to sue Kohls for his speech, bolstering the threat from the statute.  
27 *ACLU of Nev.*, 378 F.3d at 984; *SBA List*, 573 U.S. at 164.

1 Independently, AB 2839 objectively chills Kohls and other speakers from making other  
2 AI-generated political content that they'd like to. AB 2839 threatens the direct imposition of  
3 monetary liability, but also puts Kohls's content in breach of YouTube and X's terms of service,  
4 thus risking sanctions or removal from platforms. "Where a plaintiff alleges that he or she  
5 engaged in self-censorship as a result of a speech-restricting statute," that alone sustains "the  
6 requisite level of injury necessary to confer standing." *Firearms Policy Coalition*, 192 F. Supp. 3d  
7 at 1125 (citing *Az. Right to Life Pol. Action Comm. v. Bayless*, 320 F.3d 1002, 1006–07 (9th  
8 Cir. 2003)). In addition to creating content, Kohls wishes to view political commentary that  
9 uses AI-deepfake technology but AB 2839 chills others from creating and posting it. Thus,  
10 Plaintiff has two independent Article III injuries to bring his claim.

11 The safe harbor label for satire and parody does not remedy Kohls's injury. Indeed, it  
12 compounds the First Amendment harm by compelling Kohls's speech and materially altering  
13 his underlying message by restricting his intended speech. *See* Complaint ¶ 98.

14 **II. Kohls is very likely to win his constitutional claims that AB 2839 violates the First**  
15 **and Fourteenth Amendments and the California Constitution's analogous free**  
16 **speech protections.**

17 For multiple independent reasons, Kohls's constitutional claims are likely to succeed.  
18 *First*, the State has no interest in preventing the videos at issue (or any AI-generated content)  
19 about elections. *Second*, the Act is unconstitutional because it discriminates against political  
20 speech based on content. *Third*, AB 2839 suffers from both overbreadth and vagueness issues  
21 which are fatal to regulation of core political speech. *Fourth*, AB 2839's demanding  
22 requirements to label AI-generated content over the *entire duration* of a video do not resolve the  
23 overbreadth and vagueness of the statute but instead exacerbate it while independently  
24 infringing Plaintiffs' First Amendment right against compelled speech. *Fifth*, AB 2839  
25 discriminates based on speakers, by allowing an exception for "candidates portraying  
26 themselves as doing or saying something the candidate did not do or say." Cal. Elec.  
27 Code § 20012(b)(2).  
28

1           **A. The State has no interest in preventing AI-generated political content**  
2           **about politicians or elections.**

3           The Supreme Court “has recognized only one permissible ground for restriction political  
4 speech: the prevention of ‘*quid pro quo*’ corruption or its appearance.” *FEC v. Ted Cruz for*  
5 *Senate*, 596 U.S. 289, 305 (2022); accord *Texans for Free Enter. v. Tex. Ethics Comm’n*, 732 F.3d 535,  
6 537 (5th Cir. 2013) (discussing *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 365  
7 (2010)). It has “consistently rejected attempts to restrict campaign speech based on other  
8 legislative aims” because, “[h]owever well intentioned,” they would “tamper with the right of  
9 citizens to choose who shall govern them.” *FEC v. Cruz*, 596 U.S. at 305–06 (internal quotation  
10 omitted); accord *Progressive Democrats for Soc. Justice v. Bonta*, 73 F.4th 1118, 1133 (9th Cir. 2023)  
11 (Ikuta, J., concurring in the result). But as AB 2839 announces, it is intended to ensure  
12 “California elections are free and fair” by “prevent[ing] the use of deepfakes and disinformation  
13 meant to prevent voters from voting and to deceive voters based on fraudulent content” “for  
14 a limited time before and after elections.” Cal. Gov. Code § 20012(a)(4). Thus, it targets political  
15 speech—but noticeably *not* for the purposes of “avoiding corruption or the appearance  
16 thereof.” *Texans for Free Enter.*, 732 F.3d at 537. However noble a cause, the State cannot justify  
17 regulating or protecting truth—this is a timeless constitutional principle. See *Whitney v.*  
18 *California*, 274 U.S. 357, 377 (1927) (“If there be time to expose through discussion the  
19 falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied  
20 is more speech, not enforced silence”); *United States v. Alvarez*, 567 U.S. 709 (2012). Because  
21 AB 2839 regulates political speech but not for avoiding corruption, it is unconstitutional.

22           This is not to say that states have no valid interest in protecting the integrity and  
23 reliability of the electoral process. They do. See, e.g., *Crawford v. Marion Cnty. Election Bd.*, 553  
24 U.S. 181, 204 (2008). It *is* to say that this generally valid interest in “free and fair elections” has  
25 no application to political speech that does not affect the mechanics of the election. See, e.g.,  
26 *FEC v. Cruz*. In other words, AB 2839 has no tailoring to its stated interest, let alone the narrow  
27 tailoring and least restrictive alternative that a content-based law requires under “demanding”  
28

1 strict scrutiny. *X Corp. v. Bonta*, 2024 U.S. App. LEXIS 22456, at \*26; *see also IMDB.com, Inc. v.*  
2 *Becerra*, 962 F.3d 1111, 1125–27 (9th Cir. 2020).

3 For example, on remand in *SBA List*, the Sixth Circuit held that Ohio’s law against false  
4 political statements could not survive strict scrutiny. 814 F.3d 466, 473–76 (6th Cir. 2016).  
5 Although the court recognized that the general interest in election integrity is compelling,  
6 Ohio’s law against speech was not narrowly tailored to that interest; “courts have consistently  
7 erred on the side of permitting more political speech than less.” *Id.* at 476. So too in *281 Care*  
8 *Committee v. Arneson*, where the Eighth Circuit allowed First Amendment claims to proceed  
9 against a Minnesota law that proscribed false electoral speech. 766 F.3d 774 (8th Cir. 2014).  
10 “Directly regulating what is said or distributed during an election, as [AB 2839] does, goes  
11 beyond an attempt to control the process to enhance the fairness overall so as to carefully  
12 protect the right to vote.” *Id.* at 787. Even if it served a compelling interest, it was neither  
13 necessary to nor the least restrictive means of achieving that interest. *Id.* at 787–96. “Especially  
14 as to political speech, counterspeech is the tried and true buffer and elixir,” not speech  
15 restriction. *Id.* at 793; *accord Commonwealth v. Lucas*, 34 N.E.3d 1242, 1244 n.1, 1252, 1256  
16 (Mass. 2015).

17 So too in *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002). There, the Eleventh Circuit  
18 invalidated a judicial canon that punished even negligently false speech, which the State of  
19 Georgia had justified, in part, on its compelling interest in electoral integrity. *Id.* at 1320. But,  
20 again, that stated interest could not justify the canon’s “dramatic chilling effect” on political  
21 speech. *Id.* And, again, the *Weaver* court noted that counterspeech, not proscription, was the  
22 correct solution: “The ability of an opposing candidate to correct negligent misstatements with  
23 more speech more than offsets the danger of a misinformed electorate that might result from  
24 tolerating negligent misstatements.” *Id.*

1 “Free and fair elections” require “preserv[ing] an uninhibited marketplace of ideas in  
2 which truth will ultimately prevail,”<sup>12</sup> not closing it to content that the state deems “materially  
3 deceptive.” It is exactly *for* the sake of free and fair elections, that we must live with  
4 “misinformation” (which is often nothing more than commentary or satire cavalierly branded  
5 by self-interested politicians as “misinformation”).

6 **B. AB 2839 is an unconstitutional content-based regulation.**

7 “Content-based regulations—those that target speech based on its topic, idea, or  
8 message—are presumptively invalid.” *Boyer v. City of Simi Valley*, 978 F.3d 618, 621 (9th Cir.  
9 2020). A law is content-based if it “draws distinctions based on the message a speaker conveys”  
10 through either “subject matter,” “function[,] or purpose.” *Reed v. Town of Gilbert*, 576 U.S. 155,  
11 163 (2015). In other words, if “enforcement authorities [need] to examine the content of the  
12 message that is conveyed to determine whether a violation has occurred,” then the law is facially  
13 content-based and presumptively unconstitutional. *McCullen v. Coakley*, 573 U.S. 464, 479 (2014)  
14 (internal quotation omitted).

15 AB 2839 only applies to two specific types of AI-generated content: that which is “likely  
16 to harm the reputation or electoral prospects” of a candidate, and that which is “likely to falsely  
17 undermine confidence in the outcome of” an election in California. § 20012(b). Furthermore,  
18 these depictions only apply to portrayals of candidates or portrayals in connected to an election  
19 in California of “elections officials,” “elected officials,” or a “voting machine, ballot, voting  
20 site, or other property or equipment.” *Id.* AB 2839 thus targets speech “based on its topic,”  
21 which is “presumptively invalid” as a content regulation. *Boyer*, 978 F.3d at 621. And illicit AI-  
22 generated content must portray the candidate or election official *themselves*; an AI-generated  
23 video of Taylor Swift endorsing Donald Trump, for example, does not implicate liability under  
24 the law. This type of arbitrary and underinclusive line drawing is plainly unconstitutional.  
25 *Grimmett v. Freeman*, 59 F.4th 689, 694–96 (4th Cir. 2023) (following *R.A.V. v. City of St.*  
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27 <sup>12</sup> *X Corp. v. Bonta*, 2024 U.S. App. LEXIS 22456, at \*18 (quoting *McCullen v. Coakley*,  
28 573 U.S. 464, 476 (2014)).

1 *Paul*, 505 U.S. 377 (1992)). And the content AB2839 targets—political speech—is the *most*  
2 *protected* form of expression under the First Amendment. See *Victory Processing, LLC v. Fox*, 937  
3 F.3d 1218, 1223 (9th Cir. 2019) (laws that single out political speech for disfavored treatment  
4 “strike[] at the heart of the First Amendment”).

5 A law is also a “non-neutral” content regulation if it has been “adopted by the  
6 government because of disagreement with the message the speech conveys.” *Reed*, 576 U.S. at  
7 164 (simplified); accord *Victory Processing*, 937 F.3d at 1226. Precisely this occurred to Kohls.  
8 Governor Newsom tweeted that Kohls’s AI-generated political content should not be allowed  
9 and promised to enact a bill to make it illegal. Within weeks the Legislature followed the  
10 Governor’s lead and did so; while the bill advanced the Legislature before Newsom’s tweet,  
11 lawmakers passed it “with urgency” after his public admonishing of Kohls’s work to ensure  
12 the law took effect upon Newsom’s signature. Worse, the bill’s sponsors, in cooperation with  
13 the governor’s office, deleted the exception for parody and satire. The passed version of  
14 AB 2839 instead confirms that parody and satire are targetable by the bill and actionable unless  
15 plastered with compelled labels no smaller than the largest text visible in the video. Then, after  
16 signing the bill, Governor Newsom tweeted again that the bill now makes Kohls’ video illegal.

17 The motivation behind the law as applied to Kohls only further confirms AB 2839 is  
18 not content-neutral.

19 **C. AB 2839’s failure to define its material terms makes the law**  
20 **unconstitutionally vague.**

21 To determine whether a law improperly regulates constitutionally protected conduct, “a  
22 court should evaluate the ambiguous as well as the unambiguous scope of the enactment.”  
23 *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 494 n.6 (1982). In the First Amendment  
24 context, vagueness and overbreadth often go hand-in-hand. Ordinarily “when a law is facially  
25 challenged on [both] grounds, the court’s first task is to determine whether the enactment  
26 reaches a substantial amount of constitutionally protected” speech. *Wis. Right to Life, Inc. v.*  
27 *Barland*, 751 F.3d 804, 835 (7th Cir. 2014) (citing *id.*). Because “political speech is at the core of  
28

1 the First Amendment right,” courts give no benefit of the doubt to the speech implicated by  
2 laws like AB 2839. *Id.* at 811.

3 AB 2839 relies on various subjective terms and awkwardly-phrased *mens rea* to implicate  
4 as much political speech as possible.

5 The law does not explain what might be meant by content that “would falsely appear to  
6 a reasonable person to be an authentic record of the content depicted in the media,” which is  
7 the definition of “materially deceptive content.” Does “authentic record” describe the  
8 candidate’s voice in the ad or the ad itself? Does “falsely appear” mean the video looks or  
9 sounds like Kamala Harris (or a Harris ad), but a reasonable person knows it isn’t, or does the  
10 reasonable person have to be tricked into believing it is a Harris ad? Governor Newsom  
11 apparently believes the former, because it’s hard to believe Plaintiff’s video could be taken as a  
12 genuine Harris ad, yet he said it the bill makes it illegal.

13 Next, consider what AB 2839 means in defining exemptions for “minor [AI-generated]  
14 modifications that do not significantly change the perceived contents or meaning of the  
15 content.” What’s a minor versus major modification? What does “not significantly” mean, if  
16 it’s not surplusage? At what point does a modification “change the perceived [] meaning” of  
17 the content? Did Governor Newsom’s endorsed candidate for President, Vice President  
18 Harris, make a “minor modification” or a “materially deceptive” one when her campaign  
19 manipulated media headlines with AI to appear to give her more favorable news coverage in  
20 advertisements?<sup>13</sup>

21 Perhaps the most damning example of vagueness is one of the prerequisites for liability,  
22 that AI-generated content be “reasonably likely to harm the reputation or electoral prospects  
23 of a candidate.” “Reasonably likely” according to whom? A generic Democrat will tell you  
24 Trump’s call for a border wall harms his electoral prospects; a generic Republican claims the  
25 opposite. The same concept applies to Harris’s recent “price gouging” proposal, or Trump’s  
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27 <sup>13</sup> David Bauder, *They look like — and link to — real news articles. But they’re actually ads from*  
28 *the Harris campaign*, ASSOCIATED PRESS (Aug. 16, 2024) <https://tinyurl.com/4kpx3erk>.



1 mass deportations, or Harris’s decriminalization of the border, and so on. Plaintiff can invent  
2 some hysterical policy examples his fans will find laughable—imagine a video where the voice  
3 of “Harris” announces that she will set the minimum wage to \$50/hour—but some of Harris’s  
4 supporters might very well be *more* inclined vote for the AI-generated Harris announcing them.

5         These are all classic terms of degree term that “vest[] virtually complete discretion in the  
6 hands of” those who bring suit against Kohls, whether it be an enforcement official like  
7 Defendants or a third party. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983); *see also Gentile v. State*  
8 *Bar of Nevada*, 501 U.S. 1030 (1991) (finding unconstitutionally vague the distinction between  
9 “general” description and “with elaboration”); *Butcher v. Knudsen*, 38 F.4th 1163, 1173–78 (9th  
10 Cir. 2022) (determining that a campaign finance exemption for “*de minimis* acts” was  
11 unconstitutionally vague). In the First Amendment context, the void-for-vagueness doctrine  
12 disallows even the “real possibility” of “discriminatory enforcement”—the mere “opportunity  
13 for abuse.” *Gentile*, 501 U.S. at 1051; *Minn. Voters All. v. Mansky*, 585 U.S. 1, 21 (2018) (internal  
14 quotation omitted).

15         The discretion provided by AB 2839 is especially broad because the “enforcement  
16 officials” include not only the Secretary of State, but *any* “recipient of materially deceptive  
17 content ..., candidate or committee participating in the election, or elections official.” §  
18 20012(d). Any person, activist, pundit, or delusional crank can file suit to seek injunction  
19 “prohibiting the distribution of the materially deceptive content” and “general or special  
20 damages,” plus “reasonable attorney’s fees and costs.” *Id.* Moreover, Kohls bears the cost of  
21 defending against such suits—in time and in money—even if he’s ultimately victorious.

22         Confusing, subjective, and broad language permeates AB 2839. The Legislature cast a  
23 wide net to regulate AI-generated speech which threatens “free and fair elections.” And then  
24 it exacerbated its existing overbreadth problems by applying unintelligible definitions to the  
25 covered speech. The law is a quintessential example of a statute unconstitutionally plagued by  
26 vagueness.

1           **D. AB 2839’s onerous “labeling” requirement for parody compels speech in**  
2           **violation of the First Amendment.**

3           Defendants may argue that AB 2839 exempts parody, but this is flatly untrue. The final  
4 amendment to the bill, made on August 23 with assistance from the governor’s office, *deleted*  
5 the draft carveout for satire and parody. Satire and parody are thus swept under the statute,  
6 which provides only an exacting safe harbor for labeled content. The statute reads:

7                   Notwithstanding paragraph (1), this section does not apply to ... election  
8 communication containing materially deceptive content that constitutes  
9 satire or parody if the communication includes a disclosure stating “This  
10 \_\_\_\_\_ has been manipulated for purposes of satire or parody.” The  
disclosure shall comply with the requirements set forth in subparagraphs  
(A) and (B) of paragraph (2).

11 § 20012(b)(3). Subparagraphs (A) and (B) in turn set forth unforgiving labeling requirements  
12 which in the case of video requires that “the text of the disclosure shall appear in a size that is  
13 easily readable by the average viewer and no smaller than the largest font size of other text  
14 appearing in the visual media,” and that “the disclosure shall appear for the duration of the  
15 video.” *Id.* at (b)(2)(B)(i).

16           The structure of the onerous safe harbor suggests that satire and parody do indeed run  
17 afoul of paragraph (b)(1) which sets forth the prohibition on distributing “materially deceptive  
18 content”—otherwise it would not be “notwithstanding.” This is made even more clear by  
19 subparagraph (b)(4)(A), which prohibits speakers from “[r]emov[ing] and disclosure required  
20 by paragraph (2) or (3)” and from knowingly “republishing any content subject to paragraph  
21 (2) or (3) without the required disclosure.” Subparagraph (b)(4)(B) says that “violation of  
22 subparagraph (A) is evidence of intent to knowingly distribute ... election communication  
23 containing materially deceptive content, as prohibited by paragraph (1).”

24           The disclaimer requirement unconstitutionally compels speech. *See, e.g., Nat’l Inst. of*  
25 *Family and Life Advocates v. Becerra*, 585 U.S. 755 (2018). It is not subject to the lessened standard  
26 for a commercial speech labeling requirement. *See X Corp. v. Bonta*, 2024 U.S. App.  
27 LEXIS 22456. But even if it were subject to a lower standard, AB 2839 could not meet its  
28

1 “burden to prove that the . . . notice is neither unjustified nor unduly burdensome.” *NIFLA*, 585  
2 U.S. at 776. The size requirements of the disclaimer “effectively rule[] out the possibility of  
3 [Kohl’s video] in the first place.” *Id.* at 778 (internal quotation omitted); *accord Am. Bev.*  
4 *Ass’n*, 916 F.3d at 757 (determining that labeling requirement that would occupy 20% of  
5 advertisement was “unjustified or unduly burdensome”). AB 2839’s disclaimer would invade  
6 far more of Kohls’s video than that. It would fully “drown out” his message. *Id.* at 757 (internal  
7 quotation omitted).

8       Moreover, while this disclaimer safe harbor provision is available to “satire or parody,”  
9 the statute does not define those terms. Thus, this exemption—which Plaintiff does not wish  
10 to adhere to given that it materially impacts his underlying message—“simply exchanges [some]  
11 overbreadth for [more] vagueness.” *Zarate v. Younglove*, 86 F.R.D. 80, 104 (C.D. Cal. 1980)  
12 (quoting Professor Lawrence Tribe, *American Constitutional Law* § 12-26); *see* Section II.C, *supra*.  
13 Even more so because Kohls will have to foot the costs to defend himself against any suit  
14 under AB 2839. As in *United States v. Stevens*, California’s “attempt to narrow the statutory ban  
15 [in AB 2839] . . . requires an unrealistically broad reading of the exceptions clause,” 559  
16 U.S. 460, 478 (2010), *and* it puts the burden on Kohls to use California’s preferred language.  
17 But the state can’t “use[]” one class of protected speech (here parody and satire) “as a general  
18 precondition to protecting *other* types of speech in the first place.” *Id.* at 479.<sup>14</sup> This is *especially*  
19 so because enforcement of the bill is outsourced to any recipient of allegedly misleading  
20 content who feels inspired to file suit.

21       Plus, Kohls labeled his first video at issue a “PARODY” and Governor Newsom  
22 responded by threatening to take it offline and then passing *this* law—enabling an army of  
23 commissars to bankrupt Kohls even without proving liability. *See 281 Care Committee*, 766 F.3d  
24 at 790, 796 (“it is immensely problematic that *anyone* may lodge a complaint” for violation of  
25 \_\_\_\_\_

26       <sup>14</sup> Justice Alito’s dissent in *Alvarez* also points out that the Stolen Valor Act there did  
27 “not reach dramatic performances, satire, parody, hyperbole, or the like.” 567 U.S. 709, 740  
28 (2012). Since the majority still found the law unconstitutional, a carveout for satire and parody  
alone is insufficient to justify First Amendment regulations of “misinformation.”

1 the statute; “[t]he statute itself actually opens a Pandora’s box to disingenuous politicking”);  
 2 *Lucas*, 34 N.E. 3d at 251 (noting “the statute may be manipulated easily into a tool for  
 3 subverting its own justification”).

4 **E. AB 2839 unconstitutionally discriminates based on speaker**

5 The First Amendment is “deeply skeptical of laws that ‘distinguish among different,  
 6 allowing speech by some but not others.’” *NIFLA*, 585 U.S. at 777–78 (quoting *Citizens United*  
 7 *v. FEC*, 558 U.S. 310, 340 (2010)). Such laws “run the risk that ‘the State has left unburdened  
 8 those speakers whose messages are in accord with its own views.’” *Id.* (quoting *Sorrell v IMS*  
 9 *Health Inc.*, 564 U.S. 552, 580 (2011)). “[A]ll too often” speaker-based discrimination is merely  
 10 “content-based discrimination in disguise.” *Boyer v. City of Simi Valley*, 978 F.3d 618, 621 (2020)  
 11 (quoting in part *Reed v. Town of Gilbert*, 576 U.S. 155, 170 (2015)). When it is, speaker-based  
 12 distinctions invoke strict scrutiny just as any other content-based regulation.

13 Here, AB 2839 effects a speaker preference by offering a special safe harbor to  
 14 candidates that use deepfakes to falsely portray themselves. *See* Cal. Elec. Code § 20012(b)(2).<sup>15</sup>  
 15 This is content-based discrimination in disguise. The statute prefers laudatory lies about  
 16 oneself—stolen valor, for example—over deprecatory lies about another. Yet a “free and fair  
 17 election” is equally endangered (Kohl thinks not at all) by positive lies as by negative lies.

18 Moreover, the exemption for candidate speech is completely at odds with that  
 19 purported aim of “free and fair elections” in another way. In an ideal world with a platonically  
 20 perfect and accurate information-scape, it is *most* crucial that the candidates themselves not be  
 21 purveyors of misinformation. Everything starts with them. After all, the candidates are the very  
 22 people that voters are deciding upon. Voters are not electing Joe Schmo, social media  
 23 Memeologist; they are electing the candidate. Yet, even though a candidate’s truthful speech is  
 24 most indispensable to a platonically “free and fair election,” AB 2839 privileges candidate  
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26  
 27 <sup>15</sup> Private citizens are only allowed the equivalent safe harbor if they engage in satire or  
 28 parody.

1 misinformation with a safe harbor that is not available to private speakers who are not engaged  
2 in parody or satire.

3 The speaker preference of AB 2839 is a further reason that the law violates the First  
4 Amendment.

### 5 **III. Plaintiff is irreparably harmed by AB 2839.**

6 “When an alleged deprivation of a constitutional right is involved, such as the right to  
7 free speech [], most courts hold that no further showing of irreparable injury is necessary.” 11A  
8 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE § 2948.1 (3d ed. Apr. 2020 update).  
9 Both the Ninth Circuit and the Supreme Court “have repeatedly held that the loss of First  
10 Amendment freedoms, for even minimal periods of time, unquestionably constitutes  
11 irreparable injury.” *Klein v. City of San Clemente*, 584 F.3d 1196, 1207–08 (9th Cir. 2009) (internal  
12 quotation omitted; citing cases). “[A]ny First Amendment infringement that occurs with each  
13 passing day is irreparable.” *Neb. Press Ass’n v. Stuart*, 423 U.S. 1327, 1329 (1975). The “chill on  
14 ... free speech rights—even if it results from a threat of enforcement rather than actual  
15 enforcement—constitutes irreparable harm.” *Cuviello v. City of Vallejo*, 944 F.3d 816, 833 (9th  
16 Cir. 2019). “A colorable First Amendment claim is irreparable injury sufficient to merit the  
17 grant of relief.” *Am. Bev. Ass’n*, 916 F.3d at 758 (quoting *Doe v. Harris*, 772 F.3d 563, 583 (9th  
18 Cir. 2014)).

19 Because of AB 2839, Kohls is chilled from providing and receiving the political  
20 commentary that he wants. This is because (a) he and other speakers will likely face suit for his  
21 videos under AB 2839 (b) the costs they’ll bear to defend themselves against such lawsuits  
22 deter their political speech; (c) their videos likely breach YouTube or X’s terms of service  
23 because the content is unlawful under AB 2839; and, (d) the content could result in sanctions  
24 such as deplatforming or temporary suspensions by YouTube or X. This chilling effect  
25 materially impedes Kohls’s ability to monetize his X and YouTube accounts and, more  
26 importantly for the purposes of a preliminary injunction, it inhibits him and others from  
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1 speaking their minds politically. While AB 2839 has not yet been enforced against Kohls, the  
2 *threat* of enforcement is clear and real. *See Cuiello*, 944 F.3d at 833.

3 **IV. The public interest and the balance of the equities weigh in favor of granting a**  
4 **preliminary injunction.**

5 The remaining two factors to be considered—the public interest and whether other  
6 interested persons would be benefited or harmed by an injunction—weigh in favor of granting  
7 Kohls’s Motion. AB 2839 deters the uninhibited political speech of all Californians through its  
8 regulation of AI generated videos, and so “the balance of equities and the public interest thus  
9 tip sharply in favor of enjoining the [law].” *Klein*, 584 F.3d at 1208. “[I]t is always in the public  
10 interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695  
11 F.3d 990, 1002 (9th Cir. 2012) (internal quotations omitted); *accord Sammartano v. First Jud. Dist.*  
12 *Court*, 303 F.3d 959, 974 (9th Cir. 2002).

13 On the other side of the equation and as discussed above, *supra* II.A, California lacks a  
14 valid interest in regulating Kohls’s political speech to ensure “free and fair elections,” however  
15 noble a cause that may be. Separately, if California is truly that concerned about Kohls’s videos  
16 and others like it delegitimizing elections, then the antidote to that is the truth. “The response  
17 to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the  
18 simple truth.” *Alvarez*, 567 U.S. at 727 (Plurality Op. of Kennedy, J.). That speech can be the  
19 government’s own, delivered through, for example, a “public-information campaign.”  
20 *NIFLA*, 585 U.S. at 775. California may promote its own content that points out Kohls’s  
21 videos are AI-generated; it might author a “community note” on X, for example, which  
22 provides the public with important user-generated comments that add context to tweets. Or  
23 Gavin Newsom might assign one of his staffers to reply to every tweet Kohls makes with a  
24 message like “this video is AI generated and not actually Vice President Harris,” to assist any  
25 California residents that might think otherwise. But the government may not “co-opt” private  
26 parties to act as the mouthpiece of the government’s preferred message. *Id.* “If there be a time  
27 to expose through discussion the falsehood and fallacies, to avert the evil by the processes of  
28

1 education, the remedy to be applied is more speech, not enforced silence.” *Whitney v.*  
2 *California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

3 **V. Kohls should not be required to post a Rule 65(c) bond.**

4 Federal Rule of Civil Procedure 65(c) “invest[s] the district court with the discretion as  
5 to the amount of security required, if any.” *Barabona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th  
6 Cir. 1999). “The district court may dispense with the filing of a bond when it concludes there  
7 is no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Jorgensen*  
8 *v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). A bond is not appropriate or necessary here:  
9 Plaintiff has a high probability of success on the merits, *People ex rel. van de Kamp v. Taboe Reg'l*  
10 *Plan*, 766 F.2d 1319, 1326 (9th Cir. 1985), the costs and damages from granting a preliminary  
11 injunction are insignificant, *U.S. v. State of Or.*, 675 F. Supp. 1249, 1253 (D. Or. 1987), and—  
12 most importantly—Kohls brings this claim to protect constitutional rights, both for himself  
13 and the people of California. *See, e.g., Smith v. Board of Election Comm'rs*, 591 F. Supp. 70, 72 (N.D.  
14 Ill. 1984) (constitutional rights at stake). This is a public-interest case seeking declaratory and  
15 injunctive relief and there is no risk of monetary loss to the Defendant from the injunction. *See*  
16 11A Charles Alan Wright, *et al.*, *Federal Practice and Procedure* § 2954 (3d ed. 2020) (collecting  
17 cases).

18 **CONCLUSION**

19 The court should enjoin defendant Weber from enforcement of AB 2839.

20 **LR 231(d)(3) STATEMENT RE ARGUMENT**

21 As LR 231(d)(3) requires, Kohls states he would be happy to present argument if the  
22 Court would find it helpful for whatever length of time most helpful to the Court.  
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1 Dated: September 18, 2024

Respectfully submitted,

2 /s/ Theodore H. Frank

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