AB 502 (Pellerin)
Version: June 16, 2025
Hearing Date: July 15, 2025
Fiscal: No
Urgency: No
CK

SUBJECT

Elections: deceptive media in advertisements

DIGEST

This bill narrows the scope of the law prohibiting knowingly distributing an advertisement or other election communication containing materially deceptive content.

EXECUTIVE SUMMARY

Certain forms of media – audio recordings, video recordings, and still images – can be powerful evidence of what truly took place. While such media have always been susceptible to some degree of manipulation, until recently, fakes were relatively easy to detect. The rapid advancement of AI technology, specifically generative AI (GenAI) models, has made it drastically cheaper and easier to produce synthetic content – audio, images, text, and video that are not real, but that are so realistic that they are virtually impossible to distinguish from authentic content, including so-called "deepfakes." In the context of election campaigns, such deepfakes can be weaponized to deceive voters into thinking that a candidate said or did something which the candidate did not.

In an attempt to prevent deepfakes and other materially deceptive content from altering elections, AB 2839 (Pellerin, Ch. 262, Stats. 2024) prohibited the knowing distribution, with malice, of advertisements containing materially deceptive content of specified material, including specified portrayals of candidates, elections officials, and elections property or equipment. Subsequent to passage, the law was challenged in a federal District Court and enjoined. This bill seeks to tighten the law in response by, in part, clarifying the prescribed details of the relevant disclosure, narrowing standing to bring actions pursuant to the law, and expanding the scope of the exception for satire. No support for the bill was timely received by the Committee. It is opposed by the Electronic Frontier Foundation and the First Amendment Coalition. This bill passed out of the Senate Elections and Constitutional Amendments Committee on a vote of 4 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Prohibits a person, committee, or other entity, during the time period of 120 days before an election to, in some specified instances, 60 days after the election in California, from knowingly distributing, with malice, an advertisement or other election communication containing materially deceptive content of any of the following:
   a) A candidate for any federal, state, or local elected office in California portrayed as doing or saying something that the candidate did not do or say if the content is reasonably likely to harm the reputation or electoral prospects of a candidate.
   b) An elections official portrayed as doing or saying something in connection with an election in California that the elections official did not do or say if the content is reasonably likely to falsely undermine confidence in the outcome of one or more election contests.
   c) An elected official portrayed as doing or saying something in connection with an election in California that the elected official did not do or say if the content is reasonably likely to harm the reputation or electoral prospects of a candidate or is reasonably likely to falsely undermine confidence in the outcome of one or more election contests.
   d) A voting machine, ballot, voting site, or other property or equipment related to an election in California portrayed in a materially false way if the content is reasonably likely to falsely undermine confidence in the outcome of one or more election contests. (Elec. Code § 20012(b)(1), (c).)

2) Provides that the above does not apply to an advertisement or other election communication containing materially deceptive content that constitutes satire or parody if the communication includes a disclosure stating: "This ____ has been manipulated for purposes of satire or parody." (Elec. Code § 20012(b)(3).)

3) Provides that the above does not apply to a candidate portraying themselves as doing or saying something that the candidate did not do or say, if the content includes a disclosure stating "This [category of content] has been manipulated." and complies with the following requirements:
   a) For visual media, the text of the disclosure shall appear in a size that is easily readable by the average viewer and no smaller than the largest font size of other text appearing in the visual media. If the visual media does not include any other text, the disclosure shall appear in a size that is easily readable by the average viewer. For visual media that is video, the disclosure shall appear for the duration of the video.
   b) If the media consists of audio only, the disclosure shall be read in a clearly spoken manner and in a pitch that can be easily heard by the average

listener, at the beginning of the audio, at the end of the audio, and, if the audio is greater than two minutes in length, interspersed within the audio at intervals of not greater than two minutes each. (Elec. Code § 20012(b)(2).)

4) Authorizes a recipient of materially deceptive content distributed in violation hereof, a candidate or committee participating in the election, or an elections official to seek injunctive or other equitable relief prohibiting the distribution of the violative content. Such an action is entitled to precedence in accordance with Section 35 of the Code of Civil Procedure. Such parties may also bring an action for general or special damages against the person, committee, or other entity that distributed or republished the materially deceptive content. The court shall also award a prevailing party reasonable attorney's fees and costs. (Elec. Code § 20012(d).)

5) Requires plaintiffs in the actions outlined above to establish violations by clear and convincing evidence. (Elec. Code § 20012(d)(3).)

6) Defines the relevant terms, including:
   a) "Advertisement" means any general or public communication that is authorized or paid for the purpose of supporting or opposing a candidate for elective office in California or a ballot measure that appears on a California ballot and that is broadcast by or through television, radio, telephone, or text, distributed through the internet, or disseminated by print media, including billboards, video billboards or screens, and other similar types of advertising.
   b) "Deepfake" means audio or visual media that is digitally created or modified such that it would falsely appear to a reasonable person to be an authentic record of the actual speech or conduct of the individual depicted in the media.
   c) "Materially deceptive content" means audio or visual media that is intentionally digitally created or modified, which includes deepfakes, such that the content would falsely appear to a reasonable person to be an authentic record of the content depicted in the media. (Elec. Code § 20012(f).)

7) Provides that if a committee, as defined, creates, originally publishes, or originally distributes a qualified political advertisement, the qualified political advertisement shall include, in a clear and conspicuous manner, the following disclosure: "Ad generated or substantially altered using artificial intelligence." (Gov. Code § 84514(a).)

This bill:

1) Allows a candidate to portray themselves as doing or saying something they have not if the content includes, in lieu of the disclosure already provided, the disclosure required by Section 84514 of the Government Code. The bill also updates the requirements for the existing disclosure option based on the type of content involved as follows:
   a) For visual media, the text of the disclosure shall be in a color that contrasts with the background so as to be easily readable by the average viewer.
   b) For visual media that is video, the disclosure shall appear for the duration of the video and shall be in standard Arial Regular type that is at least 4 percent of the height or width of the television or video display advertisement, whichever is less.
   c) For visual print media that is designed to be individually distributed, including, but not limited to, mailers, flyers, and door hangers, the disclosure shall be in standard Arial Regular type that is at least 14 point.
   d) For visual print media that is larger than those designed to be individually distributed, including, but not limited to, yard signs or billboards, the disclosure shall be in standard Arial Regular type with a total height of at least 5 percent of the height of the advertisement.
   e) For visual electronic media that is a graphic, image, animated graphic, or animated image, the disclosure shall be in standard Arial Regular type with a type size of at least 11 point.
   f) For any other type of visual media, the disclosure shall be in standard Arial Regular type with a size that is easily readable by the average viewer.
   g) The disclosure shall not have its type condensed or have the spacing between characters reduced to be narrower than a normal noncondensed standard Arial Regular type.

2) Recasts the exemption for satire to provide that the prohibition of the law does not apply to an advertisement or other election communication containing materially deceptive content if either of the following criteria is satisfied:
   a) A reasonable person would understand that the content was satire or parody.
   b) The materially deceptive content includes a disclosure stating "This ____ has been manipulated for purposes of satire or parody." and the disclosure complies with the disclosure requirements above.

3) Strips standing for recipients of materially deceptive content to bring actions and instead grants such standing to "depicted individuals." "Depicted individual" means an individual who is falsely represented in materially deceptive content.

4) Provides, that for content depicting candidates and elected officials, the prohibition applies 120 days before any election in California in which the candidate is running.

5) Adds additional findings.

COMMENTS

1. Blurring reality: AI-generated content

GenAI can create new content, including text, images, code, or music, by learning from existing data. GenAI models can produce realistic and novel artifacts that resemble the data they were trained on, but do not copy it. For example, GenAI can write a poem, draw a picture, or compose a song based on a given prompt or theme. It enables users to quickly generate new content based on a variety of inputs.

The world has been in awe of the powers of this new technology, but the capabilities of these advanced systems leads to a blurring between reality and fiction. The Brookings Institution lays out the issue:

> Over the last year, generative AI tools have made the jump from research prototype to commercial product. Generative AI models like OpenAI's ChatGPT and Google's Gemini can now generate realistic text and images that are often indistinguishable from human-authored content, with generative AI for audio and video not far behind. Given these advances, it's no longer surprising to see AI-generated images of public figures go viral or AI-generated reviews and comments on digital platforms. As such, generative AI models are raising concerns about the credibility of digital content and the ease of producing harmful content going forward.
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> Against the backdrop of such technological advances, civil society and policymakers have taken increasing interest in ways to distinguish AI-generated content from human-authored content.[1]

The problematic applications are seemingly infinite, whether it be deepfakes to blackmail or shame victims, misinformation in elections, false impersonations to commit fraud, or other nefarious purposes.

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[1] Siddarth Srinivasan, *Detecting AI fingerprints: A guide to watermarking and beyond* (January 4, 2024) Brookings Institution, https://www.brookings.edu/articles/detecting-ai-fingerprints-a-guide-to-watermarking-and-beyond/#:~:text=Google%20also%20recently%20announced%20SynthID,model%20to%20detect%20the%20watermark. All internet citations are current as of July 8, 2025.

Relevant here, AI and specifically GenAI can spread misinformation regarding elections with ease, both in California and across the world. In the run up to last year's presidential election, warning bells were sounded:

> Artificial intelligence is supercharging the threat of election disinformation worldwide, making it easy for anyone with a smartphone and a devious imagination to create fake – but convincing – content aimed at fooling voters.
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> It marks a quantum leap from a few years ago, when creating phony photos, videos or audio clips required teams of people with time, technical skill and money. Now, using free and low-cost generative artificial intelligence services from companies like Google and OpenAI, anyone can create high-quality "deepfakes" with just a simple text prompt.
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> A wave of AI deepfakes tied to elections in Europe and Asia has coursed through social media for months, serving as a warning for more than 50 countries heading to the polls this year.
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> "You don't need to look far to see some people ... being clearly confused as to whether something is real or not," said Henry Ajder, a leading expert in generative AI based in Cambridge, England.
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> The question is no longer whether AI deepfakes could affect elections, but how influential they will be, said Ajder, who runs a consulting firm called Latent Space Advisory.
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> As the U.S. presidential race heats up, FBI Director Christopher Wray recently warned about the growing threat, saying generative AI makes it easy for "foreign adversaries to engage in malign influence."[2]

Infamously, voters in New Hampshire received robocalls during last year's election that used an AI voice resembling President Joe Biden advising them against voting in the presidential primary and saving their vote for the November general election.[3] The examples are endless:

> Former President Donald Trump, who is running in 2024, has shared AI-generated content with his followers on social media. A manipulated

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[2] Ali Swenson & Kelvin Chan, *Election disinformation takes a big leap with AI being used to deceive worldwide* (March 14, 2024) Associated Press, https://apnews.com/article/artificial-intelligence-elections-disinformation-chatgpt-bc283e7426402f0b4baa7df280a4c3fd.

[3] Em Steck & Andrew Kaczynski, *Fake Joe Biden robocall urges New Hampshire voters not to vote in Tuesday's Democratic primary* (January 22, 2024) CNN, https://www.cnn.com/2024/01/22/politics/fake-joe-biden-robocall/index.html.

video of CNN host Anderson Cooper that Trump shared on his Truth Social platform on Friday, which distorted Cooper's reaction to the CNN town hall this past week with Trump, was created using an AI voice-cloning tool.

A dystopian campaign ad released last month by the Republican National Committee offers another glimpse of this digitally manipulated future. The online ad, which came after President Joe Biden announced his reelection campaign, and starts with a strange, slightly warped image of Biden and the text "What if the weakest president we've ever had was re-elected?"

A series of AI-generated images follows: Taiwan under attack; boarded up storefronts in the United States as the economy crumbles; soldiers and armored military vehicles patrolling local streets as tattooed criminals and waves of immigrants create panic.

"An AI-generated look into the country's possible future if Joe Biden is re-elected in 2024," reads the ad's description from the RNC.

The RNC acknowledged its use of AI, but others, including nefarious political campaigns and foreign adversaries, will not, said Petko Stoyanov, global chief technology officer at Forcepoint, a cybersecurity company based in Austin, Texas. Stoyanov predicted that groups looking to meddle with U.S. democracy will employ AI and synthetic media as a way to erode trust.[4]

Legislatures across the country are pushing legislation that would address this looming threat.

2. <u>Materially deceptive content in political advertisements</u>

Last year a series of bills looked to address these issues. As referenced above, AB 2839 (Pellerin, Ch. 262, Stats. 2024) focused on "materially deceptive content" in elections communications. "Materially deceptive content" means audio or visual media that is intentionally digitally created or modified, such that the content would falsely appear to a reasonable person to be an authentic record of the content depicted in the media, including deepfakes. AB 2839 prohibits any person, committee, or entity from knowingly distributing such advertisements or elections communications with this

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[4] David Klepper & Ali Swenson, *AI-generated disinformation poses threat of misleading voters in 2024 election* (May 14, 2023) PBS News, https://www.pbs.org/newshour/politics/ai-generated-disinformation-poses-threat-of-misleading-voters-in-2024-election.

deceptive content when it portrays candidates, elected officials, elections officials, and elections property or equipment, as specified.

The bill was signed into law on September 17, 2024 and because of the urgency clause went into immediate effect. That same day it was challenged in federal court. The Federal Court granted the plaintiffs' motion for a preliminary injunction, thereby freezing the operation of the bill.

In the opinion granting the injunction, the court casts scorn on the scope of the prohibited content in the law:

> At face value, AB 2839 does much more than punish potential defamatory statements since the statute does not require actual harm and sanctions any digitally manipulated content that is "reasonably likely" to "harm" the amorphous "electoral prospects" of a candidate or elected official.
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> Moreover, all "deepfakes" or any content that "falsely appear[s] to a reasonable person to be an authentic record of the content depicted in the media" are automatically subject to civil liability because they are categorically encapsulated in the definition of "materially deceptive content" used throughout the statute. Thus, even artificially manipulated content that does not implicate reputational harm but could arguably affect a candidate's electoral prospects is swept under this statute and subject to civil liability.[5]

The court ultimately found the First Amendment facial challenge to the law was likely to succeed:

> While the Court gives substantial weight to the fact that the California Legislature has a "compelling interest in protecting free and fair elections," this interest must be served by narrowly tailored ends. One of the First Amendment's core purposes is "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." It is essential to a healthy democracy that "debate on public issues [] be uninhibited, robust, and wide-open" which may create a necessary sacrifice that such dialogue "include[s] vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

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[5] *Kohls v. Bonta*, (2024) 752 F. Supp. 3d 1187, 1193-1194 (internal citations omitted).

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

In addition to encumbering protected speech, there is a more pressing reason to meet statutes that aim to regulate political speech, like AB 2839 does, with skepticism. To quote Justices Breyer and Alito in *Alvarez*, "[t]here are broad areas in which any attempt by the state to penalize purportedly false speech would present a grave and unacceptable danger of suppressing truthful speech." In analyzing regulations on speech, "[t]he point is not that there is no such thing as truth or falsity in these areas or that the truth is always impossible to ascertain, but rather that it is perilous to permit the state to be the arbiter of truth" in certain settings. The political context is one such setting that would be especially "perilous" for the government to be an arbiter of truth in. AB 2839 attempts to sterilize electoral content and would "open[] the door for the state to use its power for political ends." "Even a false statement may be deemed to make a valuable contribution to public debate, since it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error.'" When political speech and electoral politics are at issue, the First Amendment has almost unequivocally dictated that Courts allow speech to flourish rather than uphold the State's attempt to suffocate it.

Upon weighing the broad categories of election related content both humorous and not that AB 2839 proscribes, the Court finds that AB 2839's legitimate sweep pales in comparison to the substantial number of its

applications, as in this case, which are plainly unconstitutional. Therefore, the Court finds that Plaintiff is likely to succeed on a First Amendment facial challenge to the statute.[6]

3. Attempting to respond to alleged legal infirmities

In response, this bill, as stated by the author, "seeks to strengthen AB 2893 in several small but important ways to better withstand constitutional challenge."

First, the current law provides several exceptions from its prohibitions. It does not apply to an advertisement or other election communication containing materially deceptive content that constitutes satire or parody if the communication includes a specified disclosure stating that it has been manipulated for purposes of satire or parody. The court found "AB 2839's disclosure requirement forces parodists and satirists to 'speak a particular message' that they would not otherwise speak, which constitutes compelled speech that dilutes their message."[7] It concluded:

> AB 2839's size requirements for the disclosure statement in this case and many other cases would take up an entire screen, which is not reasonable because it almost certainly "drowns out" the message a parody or satire video is trying to convey. Thus, because AB 2839's disclosure requirement is overly burdensome and not narrowly tailored, it is similarly unconstitutional.[8]

This bill expands this exception and provides that the bill does not apply if a "reasonable person would understand that the content was satire or parody." It is unclear whether this is enough to insulate the bill from challenge as it still places conditions on speech that could qualify as parody or satire.

The law also does not apply to a candidate that portrays themself as doing or saying something that the candidate did not do or say, if the content includes a clear disclosure, as specified, that states "This [category of content] has been manipulated." and complies with specified requirements based on the type of content. This bill also allows an additional disclosure stating that that advertisement was "generated or substantially altered using artificial intelligence" also suffices. The bill also amends the details of the disclosures for the various types of content in this context.

Finally, the law currently provides standing to, among others, recipients of materially deceptive content distributed in violation of the law. This bill eliminates this standing

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[6] *Id.* at 1195-1196.
[7] *Id.* at 1197.
[8] *Ibid.*

and instead provides it to depicted individuals, defined as individuals who are falsely represented in materially deceptive content.

According to the author:

> AI-fueled disinformation can skew specific election results by deceiving voters or impacting voter turnout, call results into question, and more generally undermine faith in our elections, their security, and democratic systems.

> Although last year, the Governor signed AB 2839 which prohibited the distribution of digitally altered, materially deceptive campaign advertisements and other election communications close to an election, several entities challenged the law alleging First Amendment violations, particularly the provisions related to satire; and a federal district court in Sacramento issued a preliminary injunction enjoining enforcement of most of the law. AB 502 seeks to strengthen AB 2893 in several small but important ways to better withstand constitutional challenge. These changes will make it easier for a court to uphold key provisions of last year's AB 2839 and better protect election integrity in California.

The Electronic Frontier Foundation and First Amendment Coalition write in joint opposition to the bill:

> We respectfully oppose AB 502, authored by Assemblymember Pellerin, which seeks to address the constitutional deficiencies of AB 2839. Unfortunately, it fails to do so. Meanwhile, a federal district court has stayed enforcement of AB 2839, and the language to be amended by AB 502 is subject to active federal litigation.

> Moreover, AB 502 is unconstitutional on its own merits. AB 502 seeks to amend existing disclosure requirements and to narrow the scope of who can sue for violations of the statute. In doing so, AB 502 would still impose disclosure requirements to otherwise protected speech.

> AB 502 would reach some entities who did not create the content of concern and thus does not reflect the full First Amendment protection due republication of speech pertaining to matters of public interest by those not connected with the creation of the offending material. The First Amendment requires distinguishing between those who create synthetic media and those not directly involved in it. The Fourth Circuit relied on this distinction in striking down a Maryland law that extended the reach of campaign finance law to include "online platforms," thus imposing disclosure requirements on them when they ran online ads. Courts find

the disclosure requirements within AB 2839 burdensome and its statutory requirements in violation of the First Amendment.

Also, the provisions relating to parody and satire are inconsistent with the First Amendment. Parody and satire are protected speech regardless of whether a person gets the joke, and disclaimers are not necessary to establish that expression is satire or parody.

AB 502 does not pass constitutional muster on its own or as a revision to AB 2839, which is currently mired in active litigation.

SUPPORT

None known

OPPOSITION

Electronic Frontier Foundation
First Amendment Coalition

RELATED LEGISLATION

Pending Legislation: AB 853 (Wick, 2025) establishes requirements on large online platforms, capture device manufacturers, and GenAI system hosting platforms to embed and disclose provenance data in content generated or altered by GenAI systems, as provided. AB 853 is currently in this Committee and is set to be heard the same day as this bill.

Prior Legislation:

AB 2355 (Wendy Carrillo, Ch. 260, Stats. 2024) required committees that create, publish, or distribute a political advertisement that contains any image, audio, or video that is generated or substantially altered using AI to include a disclosure in the advertisement disclosing that the content has been so altered.

AB 2655 (Berman, Ch. 261, Stats. 2024) established the Defending Democracy from Deepfake Deception Act of 2024, which requires a large online platform to identify and remove materially deceptive content related to elections, during specified periods before and after an election. It required these platforms to label certain additional content during specified periods before and after an election and to provide mechanisms to report content.

AB 2839 (Pellerin, Ch. 262, Stats. 2024) *See* Executive Summary and Comment 2.

AB 730 (Berman, Ch. 493, Stats. 2019) prohibited the use of deepfakes depicting a candidate for office within 60 days of the election unless the deepfake is accompanied by a prominent notice that the content of the audio, video, or image has been manipulated. Additionally, AB 730 authorized a candidate who was falsely depicted in a deepfake to seek rapid injunctive relief against further publication and distribution of the deepfake.

PRIOR VOTES:

Senate Elections and Constitutional Amendments Committee (Ayes 4, Noes 0)
Other prior votes not relevant to the current version of the bill
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