

AMENDED IN ASSEMBLY MAY 2, 2024

AMENDED IN ASSEMBLY APRIL 11, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2839**

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**Introduced by Assembly Members Pellerin and Berman**  
**(Principal coauthor: Assembly Member Cervantes)**  
**(Coauthors: Assembly Members Bennett, Jackson, *Quirk-Silva*,**  
**Ting, Valencia, Weber, and Wood)**  
**(Coauthors: Senators Becker and Dodd)**

February 15, 2024

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An act to amend Section 35 of the Code of Civil Procedure, and to add Section 20012 to the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 2839, as amended, Pellerin. Elections: deceptive media in advertisements.

Existing law prohibits certain distribution of materially deceptive audio or visual media of a candidate within 60 days of an election at which the candidate will appear on the ballot, unless the media includes a disclosure stating that the media has been manipulated, subject to specified exemptions. Existing law authorizes a candidate whose voice or likeness appears in audio or visual media distributed in violation of these provisions to file specified actions, and it requires a court to place such proceedings on the calendar in the order of their date of filing and give the proceedings precedence.

This bill would prohibit a person, committee, or other entity from knowingly distributing an advertisement or other election communication, as defined, that contains certain materially deceptive

and digitally altered or digitally created images or audio or video files, as defined, with the intent to influence an election or solicit funds for a candidate or campaign, subject to specified exemptions. The bill would apply this prohibition within 120 days of an election and, in specified cases, 60 days after an election. The bill would authorize a recipient of a materially deceptive and digitally altered or digitally created image or audio or video file distributed in violation of this section, candidate or committee participating in the election, or officer holding an election or conducting a canvass to file a civil action to enjoin the distribution of the media and to seek damages against the person, committee, or other entity that distributed it. The bill would require a court to place such proceedings on the calendar in the order of their date of filing and give the proceedings precedence.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 35 of the Code of Civil Procedure, as  
2 amended by Section 1 of Chapter 343 of the Statutes of 2023, is  
3 amended to read:

4 35. (a) Proceedings in cases involving the registration or denial  
5 of registration of voters, the certification or denial of certification  
6 of candidates, the certification or denial of certification of ballot  
7 measures, election contests, actions under Section 20010 or 20012  
8 of the Elections Code, and actions under Chapter 2 (commencing  
9 with Section 21100) of Division 21 of the Elections Code shall be  
10 placed on the calendar in the order of their date of filing and shall  
11 be given precedence.

12 (b) This section shall remain in effect only until January 1, 2027,  
13 and as of that date is repealed, unless a later enacted statute, that  
14 is enacted before January 1, 2027, deletes or extends that date.

15 SEC. 2. Section 35 of the Code of Civil Procedure, as amended  
16 by Section 2 of Chapter 343 of the Statutes of 2023, is amended  
17 to read:

18 35. (a) Proceedings in cases involving the registration or denial  
19 of registration of voters, the certification or denial of certification  
20 of candidates, the certification or denial of certification of ballot  
21 measures, election contests, actions under Section 20012 of the  
22 Elections Code, and actions under Chapter 2 (commencing with

1 Section 21100) of Division 21 of the Elections Code shall be placed  
2 on the calendar in the order of their date of filing and shall be given  
3 precedence.

4 (b) This section shall become operative January 1, 2027.

5 SEC. 3. Section 20012 is added to the Elections Code, to read:  
6 20012. (a) The Legislature finds and declares as follows:

7 (1) California is entering its first-ever artificial intelligence (AI)  
8 election, in which disinformation powered by generative AI will  
9 pollute our information ecosystems like never before. Voters will  
10 not know what images, audio, or video they can trust.

11 (2) In a few clicks, using current technology, bad actors now  
12 have the power to create a false image of a candidate accepting a  
13 bribe, or a fake video of an elections official “caught on tape”  
14 saying that voting machines are not secure, or generate an artificial  
15 robocall in the Governor’s voice telling millions of Californians  
16 their voting site has changed.

17 (3) In the lead-up to the 2024 presidential elections, candidates  
18 and parties are already creating and distributing deepfake images  
19 and audio and video content. These fake images or files can skew  
20 election results, even if they use older methods of distribution,  
21 such as mail, television, telephone, and text, and undermine trust  
22 in the ballot counting process.

23 (4) In order to ensure California elections are free and fair,  
24 California must, for a limited time before and after elections,  
25 prevent the use of deepfakes and disinformation meant to prevent  
26 voters from voting and deceive voters based on fraudulent content.  
27 *The provisions of this bill are narrowly tailored to advance*  
28 *California’s compelling interest in protecting free and fair*  
29 *elections.*

30 (5) The labeling information required by this bill is narrowly  
31 tailored to provide consumers with factual information about the  
32 inauthenticity of particular images, audio, ~~video~~ *video*, or text  
33 content in order to prevent consumer deception.

34 (b) (1) A person, committee, or other entity shall not, during  
35 the time period set forth in subdivision (c), with the intent to  
36 influence an election or solicit funds for a candidate or campaign,  
37 knowingly distribute an advertisement or other election  
38 communication containing a materially deceptive and digitally  
39 altered or digitally created image or audio or video file of any of  
40 the following:

1 (A) A candidate portrayed as doing or saying something that  
2 the candidate did not do or say.

3 (B) An officer holding an election or conducting a canvass  
4 portrayed as doing or saying something in connection with the  
5 election that the officer holding an election or conducting a canvass  
6 did not do or say.

7 (C) An elected official portrayed as doing or saying something  
8 in connection with the election that the elected official did not do  
9 or say.

10 (D) A voting machine, ballot, voting site, or other  
11 elections-related property or equipment portrayed in a materially  
12 false way.

13 (2) Notwithstanding subparagraph (A) of paragraph (1), a  
14 candidate may portray himself as doing or saying something that  
15 the candidate did not do or say, but only if the image or audio or  
16 video file includes a disclosure stating “This \_\_\_\_ has been  
17 manipulated.” and complies with the following requirements:

18 (A) The blank in the disclosure required by paragraph (2) shall  
19 be filled with whichever of the following terms most accurately  
20 describes the media:

21 (i) Image.

22 (ii) Audio.

23 (iii) Video.

24 (B) (i) For visual media, the text of the disclosure shall appear  
25 in a size that is easily readable by the average viewer and no  
26 smaller than the largest font size of other text appearing in the  
27 visual media. If the visual media does not include any other text,  
28 the disclosure shall appear in a size that is easily readable by the  
29 average viewer. For visual media that is video, the disclosure shall  
30 appear for the duration of the video.

31 (ii) If the media consists of audio only, the disclosure shall be  
32 read in a clearly spoken manner and in a pitch that can be easily  
33 heard by the average listener, at the beginning of the audio, at the  
34 end of the audio, and, if the audio is greater than two minutes in  
35 length, interspersed within the audio at intervals of not greater than  
36 two minutes each.

37 (c) The prohibition in subdivision (b) applies only during the  
38 following time periods:

39 (1) One hundred twenty days before any election.

1 (2) For people and items set forth in subparagraphs (B) and (D)  
2 of paragraph (1) of subdivision (b), 120 days before any election  
3 through 60 days after the election, inclusive.

4 (d) (1) A recipient of a materially deceptive and digitally altered  
5 or digitally created image or audio or video file distributed in  
6 violation of this section, candidate or committee participating in  
7 the election, or officer holding an election or conducting a canvass  
8 may seek injunctive or other equitable relief prohibiting the  
9 distribution of the materially deceptive and digitally altered or  
10 digitally created image or audio or video file in violation of this  
11 section. The court shall also award a prevailing plaintiff reasonable  
12 attorney's fees and costs. An action under this paragraph shall be  
13 entitled to precedence in accordance with Section 35 of the Code  
14 of Civil Procedure.

15 (2) A recipient of a materially deceptive and digitally altered  
16 or digitally created image or audio or video file distributed in  
17 violation of this section, candidate or committee participating in  
18 the election, or officer holding an election or conducting a canvass  
19 may bring an action for general or special damages against the  
20 person, committee, or other entity that distributed the materially  
21 deceptive and digitally altered or digitally created image or audio  
22 or video file in violation of this section. The court shall also award  
23 a prevailing party reasonable attorney's fees and costs. This  
24 subdivision shall not be construed to limit or preclude a plaintiff  
25 from securing or recovering any other available remedy at law or  
26 equity.

27 (3) In any civil action alleging a violation of this section, the  
28 plaintiff shall bear the burden of establishing the violation through  
29 clear and convincing evidence.

30 (e) (1) This section does not apply to a radio or television  
31 broadcasting station, including a cable or satellite television  
32 operator, programmer, or producer, that broadcasts any materially  
33 deceptive and digitally altered or digitally created image or audio  
34 or video file prohibited by this section as part of a bona fide  
35 newscast, news interview, news documentary, or on-the-spot  
36 coverage of bona fide news events, if the broadcast clearly  
37 acknowledges through content or a disclosure, in a manner that  
38 can be easily heard or read by the average listener or viewer, that  
39 the materially deceptive audio or visual media does not accurately

1 represent any actual event, occurrence, appearance, speech, or  
2 expressive conduct.

3 (2) This section does not apply to a regularly published  
4 newspaper, magazine, or other periodical of general circulation,  
5 including an internet or electronic publication, that routinely carries  
6 news and commentary of general interest, and that publishes any  
7 materially deceptive and digitally altered or digitally created image  
8 or audio or video file prohibited by this section, if the publication  
9 clearly states that the materially deceptive and digitally altered or  
10 digitally created image or audio or video file does not accurately  
11 represent any actual event, occurrence, appearance, speech, or  
12 expressive conduct.

13 (3) This section does not apply to a materially deceptive and  
14 digitally altered or digitally created image or audio or video file  
15 that constitutes satire or parody.

16 (f) For purposes of this section, the following definitions apply:

17 (1) "Advertisement" means any general or public  
18 communication that is authorized or paid for the purpose of  
19 supporting or opposing a candidate for elective office or a ballot  
20 measure and that is broadcast by or through television, radio,  
21 telephone, or text, or disseminated by print media, including  
22 billboards, video billboards or screens, and other similar types of  
23 advertising.

24 (2) "*Artificial intelligence*" means an engineered or  
25 machine-based system that varies in its level of autonomy and that  
26 can, for explicit or implicit objectives, infer from the input it  
27 receives how to generate outputs that can influence physical or  
28 virtual environments.

29 ~~(2)~~

30 (3) "Committee" means a committee as defined in Section 82013  
31 of the Government Code.

32 ~~(3)~~

33 (4) "Election communication" means any general or public  
34 communication not covered under "advertisement" that is broadcast  
35 by or through television, radio, telephone, or text, or disseminated  
36 by print media, including billboards, video billboards or screens,  
37 and other similar types of communications, that concerns any of  
38 the following:

39 (A) A candidate for office or ballot measure.

40 (B) Voting or refraining from voting in an election.

1 (C) The canvass of the vote.

2 ~~(4)~~

3 (5) (A) “Materially deceptive and digitally modified or created  
4 image or audio or video file” means an image or an audio or video  
5 file that has been intentionally manipulated in a manner such that  
6 all of the following conditions are met:

7 (i) The image or audio or video file is the product of digital  
8 manipulation, artificial intelligence, or machine learning, including  
9 deep learning techniques, that merges, combines, replaces, or  
10 superimposes content onto an image or an audio or video file,  
11 creating an image or an audio or video file *manipulation or*  
12 *artificial intelligence* that appears authentic, ~~or generates an~~  
13 ~~inauthentic image or an audio or video file that appears authentic.~~  
14 *but that contains a false portrayal of any of the following:*

15 (I) *Candidate for elective office.*

16 (II) *Elected official.*

17 (III) *Elections official.*

18 (IV) *Voting machine.*

19 (V) *Ballot.*

20 (VI) *Voting site.*

21 (VII) *Other property or equipment related to an election or*  
22 *elections process.*

23 (ii) ~~(I) The image or audio or video file represents a false~~  
24 ~~portrayal of a candidate for elective office, an elected official, an~~  
25 ~~elections official, or a voting machine, ballot, voting site, or other~~  
26 ~~elections property or equipment.~~

27 (H)

28 (ii) For the purposes of this clause, “a false portrayal of the  
29 candidate for elective office, an elected official, an elections  
30 official, or a voting machine, ballot, voting site, or other elections  
31 property or equipment” means the image or audio or video file  
32 would cause a reasonable person *to believe that the content is*  
33 *authentic and* to have a fundamentally different understanding or  
34 impression of the expressive content of the image or audio or video  
35 file than that person would have if the person were hearing or  
36 seeing the ~~unaltered, original~~ *authentic* version of the image or  
37 audio or video file.

38 (iii) The person, committee, or other entity distributed the image  
39 or audio or video file knowing the portrayal of the candidate for  
40 elective office, the elected official, the elections official, or the

1 voting machine, ballot, voting site, or other elections property or  
 2 equipment was false or with a reckless disregard for the true  
 3 portrayal of the candidate, the elected official, the elections official,  
 4 or the voting machine, ballot, voting site, or other elections  
 5 property or equipment. This clause is presumed when an image or  
 6 audio or video file has been intentionally manipulated to represent  
 7 a false portrayal of the candidate for elective office, the elected  
 8 official, the elections official, or the voting machine, ballot, voting  
 9 site, or other elections property or equipment, but may be rebutted.

10 (B) “Materially deceptive and digitally modified or created  
 11 image or audio or video file” does not include any image or audio  
 12 or video file that contains only minor modifications that do not  
 13 lead to significant changes to the perceived contents or meaning  
 14 of the content. Minor changes include changes to brightness or  
 15 contrast of images, removal of background noise in audio, and  
 16 other minor changes that do not impact the content of the image  
 17 or audio or video file.

18 ~~(5)~~

19 (6) “Officer holding an election or conducting a canvass” has  
 20 the same meaning as in Section 18502.

21 ~~(6)~~

22 (7) “Recipient” includes a person who views, hears, or otherwise  
 23 perceives an image or audio or video file that was initially  
 24 distributed in violation of this section.

25 (g) The provisions of this section apply regardless of the  
 26 language used in the advertisement or solicitation. If the language  
 27 used is not English, the disclosure required by paragraph (2) of  
 28 subdivision (a) shall appear in the language used in the  
 29 advertisement or solicitation.

30 (h) The provisions of this section are severable. If any provision  
 31 of this section or its application is held invalid, that invalidity shall  
 32 not affect other provisions or applications that can be given effect  
 33 without the invalid provision or application.