

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

The Babylon Bee, LLC,

Plaintiff,

v.

Celia Foy Castillo, in her official capacity as Chair of the State Ethics Commission;
Jeff Baker, in his official capacity as member of the State Ethics Commission;
Stuart M. Bluestone, in his official capacity as member of the State Ethics Commission;
Gary Clingman, in his official capacity as member of the State Ethics Commission;
Kasandra A. Gandara, in her official capacity as member of the State Ethics Commission;
Terry McMillan, in his official capacity as member of the State Ethics Commission; and
Judy Villanueva, in her official capacity as member of the State Ethics Commission,

Defendants.

Case No. 1:26-cv-02628-LF-JFR

**PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION
AND SUPPORTING
MEMORANDUM**

Oral Argument Requested

PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Under Fed. R. Civ. P. 65(a), Plaintiff The Babylon Bee, LLC respectfully requests that this Court enter a preliminary injunction prohibiting the Defendant Members of the State Ethics Commission from:

- A. Enforcing the provisions of HB 182, facially or as-applied to The Bee’s desired expression, that prohibit the creation of an “advertisement” containing “materially deceptive media” without a government-scripted

“disclaimer,” codified at N.M. Stat. Ann. §§ 1-19-26.4(D), 1-19-26.4(E), and 1-19-26.4(F), because they are unconstitutional under the First Amendment to the U.S. Constitution.

- B. Enforcing the provisions of HB 182, as-applied to The Bee, that fail to give The Bee adequate notice of the speech these provisions prohibit and empower Defendants to engage in discriminatory enforcement, codified at N.M. Stat. Ann. §§ 1-19-26(S) and 1-19-26.4(E), because they are unconstitutionally vague under the Fourteenth Amendment to the U.S. Constitution.

INTRODUCTION

The Babylon Bee (“The Bee”), popular purveyor of “fake news you can trust,” publishes satirical news articles to its audience of millions. But New Mexico has recently outlawed some of that expression. Because of amendments by HB 182, the state’s Campaign Reporting Act now prohibits using artificial intelligence to create what the state dubs “materially deceptive media”—content referring to candidates or ballot questions that depicts candidates doing or saying something they did not actually do or say. N.M. Stat. Ann. §§ 1-19-26(A), 1-19-26(S)(1). Because The Bee’s political satire uses hyperbole to convey a larger truth, The Bee often employs AI to depict politicians doing or saying things they did not literally say or do. HB 182, in turn, bans publishing this content without a large, government-scripted disclaimer. For parody and satire, this kills the joke. It also violates the First Amendment.

The government has no power to punish political speech solely because it deems it false. *See United States v. Alvarez*, 567 U.S. 709, 722 (2012) (plurality). When a law regulates speech solely based on content, the speaker's identity, or the speech's viewpoint—all of which HB 182 does—it's unconstitutional unless the government overcomes the highest constitutional standard, strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 168–69 (2015). Defendants cannot make that showing here. HB 182 does not advance a compelling interest, it regulates speech that does not threaten any legitimate interest, it leaves unregulated speech that does threaten its interest, and it ignores available alternatives that would not suppress speech about New Mexico elections. HB 182 is also facially overbroad and vague as applied to much of The Bee's desired expression. In fact, the New Mexico Attorney General has already admitted this law likely violates the First Amendment, and two other district courts have invalidated similar laws as well. *See* Compl., Ex. G at 6; *Babylon Bee, LLC v. Lopez*, 818 F. Supp. 3d 1181 (D. Haw. 2026); *Kohls v. Bonta*, 797 F. Supp. 3d 1177 (E.D. Cal. 2025).

But the New Mexico law remains on the books and can be enforced at any moment. In fact, The Bee recently posted a satirical travel advertisement for New Mexico with AI-generated content that violates HB 182. *See* Compl., Ex. B at 0:00:44–0:00:55. The Bee has not and will not use the disclaimers required by HB 182 on this video or any other. So The Bee is under imminent threat of enforcement for exercising

its First Amendment rights. The Bee, therefore, moves for a preliminary injunction to prevent enforcement of HB 182.

STATEMENT OF FACTS

I. The Bee creates satire and parody, communicating larger truths through literal falsehoods.

The Bee operates a website, www.babylonbee.com, along with associated accounts on YouTube, Facebook, X, Instagram, and Rumble, under the tagline, “Fake news you can trust.” Dillon Decl. ¶¶ 21, 25. It creates and publishes content that “exposes foolishness, mocks absurdity, and highlights hypocrisy in faith, politics, and culture through satire, humor, and parody.” *Id.* at ¶ 5. The Bee’s content is popular, attracting over “five million followers on X, over two million followers on Instagram, more than two million followers on Facebook, nearly half a million followers on Rumble, and nearly two million subscribers on YouTube.” *Id.* at ¶ 26.

The Bee has created material satirizing candidates who appear on ballots in New Mexico elections. Its satirical “content depicts its subjects saying things they did not actually say or doing things they did not actually do in order to communicate a larger truth.” *Id.* ¶ 22. For example, when New Mexico Governor Michelle Lujan Grisham issued an order suspending both open and concealed carry of firearms in two counties under the auspices of “public health,” The Bee penned a satirical article entitled, “New Mexico Criminals Excited to Hear No One Will Be Armed For Entire Month,” accompanied by an image of a criminal digitally combined with an image of the governor on a news broadcast. *Id.* at ¶ 33 & n.1. Four days later, The Bee struck

again, with an article headlined, “New Mexico Governor Suspends First Amendment to Silence Criticism Over Suspending Second Amendment.” *Id.* at ¶ 29.

The Bee uses artificial intelligence (“AI”) to create material satirizing candidates appearing on New Mexico ballots. *See id.* at ¶¶ 37–42. It recently produced and published a fake “travel advertisement” poking fun at New Mexico’s laws, culture, and policies. *Id.* at ¶ 37; Compl., Ex. B. The video features New Mexico’s Supreme Court Justice David Thomson, who appears on the ballot for the upcoming November election. Dillon Decl. ¶ 38–39. An AI-generated Justice Thomson proudly announces, “The New Mexico Supreme Court hereby rules against the Second Amendment, the First Amendment, or any other amendment that lets people do things.” *Id.* at ¶ 39; Compl., Ex. B at 0:00:44–0:00:55. Justice Thomson never said this; the video uses a hyperbolic statement about rejecting constitutional rights to communicate a true criticism about the treatment of those rights in New Mexico, whether by its executive officials or its courts. Dillon Decl. ¶¶ 37–40.

II. HB 182 makes it illegal for The Bee to create its content without including a government-scripted disclaimer.

HB 182 prohibits the creation of an “advertisement that contains materially deceptive media.” N.M. Stat. Ann. § 1-19-26.4(D). The law here uses the term “advertisement” for political (not commercial) speech: it’s any “communication referring to a candidate or ballot question that is published, disseminated, distributed, or displayed to the public” by virtually any means, including the “electronic media” used by The Bee. *Id.* § 1-19-26(A). And “materially deceptive

media” is any visual or audio content that (1) “depicts an individual engaged in conduct or speech in which the depicted individual did not engage,” (2) is “displayed to the public without the consent of the depicted individual,” and (3) “was produced in whole or in part by using artificial intelligence.” *Id.* § 1-19-26(S).

The law bans most speakers in New Mexico, including The Bee, from creating such content without attaching a state-scripted disclaimer. When The Bee creates parodic or satirical media using AI, HB 182 orders it to include a large disclaimer that reads, “This [image, video, or audio] has been manipulated or generated by artificial intelligence.” N.M. Stat. Ann. § 1-19-26.4(D). For images, the disclaimer must “appear in a size that is easily readable.” *Id.* § 1-19-26.4(E)(1). For video, the disclaimer must “appear for the duration of the video in a size that is easily readable.” *Id.* § 1-19-26.4(E)(2). HB 182 makes clear that, even for “an advertisement that reasonably constitutes satire or parody,” it is only lawful if it “includes a disclaimer consistent with the requirements” that apply to media in general. *Id.* § 1-19-26.4(G)(3).

While HB 182 restricts and compels The Bee’s speech, it exempts other content and speakers. The definition of “advertisement” excludes any “news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium.” N.M. Stat. Ann. § 1-19-26(A). In addition, if “a radio or television broadcasting station ... satellite television or streaming service operator” broadcasts material qualifying as an “advertisement as a part of a bona fide newscast, news interview, news

documentary, or on-the-spot coverage of a bona fide news event,” those speakers may display the restricted material subject to less stringent disclaimer requirements—they only have to give a disclaimer up front, instead of displaying it throughout the duration of the “advertisement.” *Id.* § 1-19-26.4(G)(1).

III. HB 182 threatens The Bee for its speech.

Each time The Bee or any other content-creator produces “an advertisement... that fails to meet the disclaimer requirements” of the law, it “constitutes a separate violation.” *Id.* § 1-19-26.4(F). Merely creating the content without the government-scripted disclaimer is an offense: there’s no requirement that the creator intends to cause confusion or injury, no requirement that the material is likely to deceive a reasonable viewer, and no requirement that the material is likely to cause reputational, electoral, or any other harm. Once a “person” produces and publishes the prohibited material, they are “subject to the civil penalties” that may be imposed in a lawsuit or administrative enforcement action brought by the Defendant members of the State Ethics Commission. *Id.* *See also id.* § 10-16G-9(F) (establishing the Commission’s authority to “file a court action to enforce the civil compliance provisions of” the law) *Id.* § 10-16G-5(C)(1) (establishing the Commission’s authority to initiate administrative complaints). Those include “permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of up to one thousand dollars (\$1,000) for each violation not to exceed a total of twenty thousand dollars (\$20,000).” *Id.* § 1-19-34.6(C).

The Bee’s existing “travel advertisement” video violates the law, exposing The Bee to these penalties. The video is an “advertisement,” because it is a “communication referring to a candidate” and has been “published” using “electronic media.” *Id.* § 1-19-26(A). The video contains “materially deceptive media,” as it depicts Justice Thomson “engaged in... speech in which the depicted individual did not engage,” (2) is “displayed to the public without the consent of the depicted individual,” and (3) “was produced in whole or in part by using artificial intelligence.” *Id.* § 1-19-26(S). And the video fails to meet the “disclaimer requirements” of the law and therefore “constitutes a ... violation.” *Id.* § 1-19-26.4(F). Despite the imminent threat of enforcement, The Bee is continuing to publish this content because it will not surrender its right to publish satire and parody on matters of public concern, including New Mexico candidates or ballot questions.

ARGUMENT

“To obtain a preliminary injunction,” The Bee must show: “(1) a likelihood of success on the merits; (2) a likelihood [it] will suffer irreparable harm if the injunction is not granted; (3) the balance of equities is in [its] favor; and (4) the preliminary injunction is in the public interest.” *Republican Party of N.M. v. King*, 741 F.3d 1089, 1092 (10th Cir. 2013). Likelihood of success “will often be the determinative factor” in First Amendment cases like this one. *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013), *aff’d sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (citation modified). That factor predominates “because of the

seminal importance of the interests at stake,” namely First Amendment interests. *Verlo v. Martinez*, 820 F.3d 1113, 1126 (10th Cir. 2016). By proving a likely First Amendment violation, The Bee also shows an irreparable injury, equity in The Bee’s favor, and a public interest in favor of protecting constitutional rights. *Id.* This Court should therefore preliminarily enjoin each Defendant from enforcing the provisions of HB 182 that violate the First Amendment on their face and from enforcing the provisions of HB 182 that violate the Fourteenth Amendment as applied to The Bee.

I. The Bee is likely to succeed on the merits.

The Bee is likely to show that HB 182 (A) unconstitutionally regulates speech facially and as-applied, (B) is facially overbroad, and (C) is vague as applied.

A. HB 182 unconstitutionally regulates protected speech.

The First Amendment presumptively protects speech, even false speech. *See Alvarez*, 567 U.S. at 722 (plurality). HB 182’s direct regulation of political speech referring to candidates or ballot questions triggers strict scrutiny because it restricts speech based on content, speaker, and viewpoint, *see Reed*, 576 U.S. at 170–71, and because it compels speech. *See Riley v. Nat’l Fed’n of the Blind of N. C., Inc.*, 487 U.S. 781, 795–97 (1988). HB 182 fails that rigorous standard.

1. Outside narrow categories, speech—even false speech—is protected by the First Amendment.

The First Amendment prohibits all state actors from “abridging the freedom of speech.” U.S. Const. amend. I. Outside of “historic and traditional categories” like

obscenity, incitement, defamation, fraud, fighting words, and true threats, speech is protected by the First Amendment. *Counterman v. Colorado*, 600 U.S. 66, 73 (2023).

The Supreme Court has rejected the claim that false speech constitutes unprotected expression. In *Alvarez*, the Supreme Court evaluated the constitutionality of the Stolen Valor Act, a federal statute criminalizing false claims about the receipt of military decorations. 567 U.S. at 715 (plurality). In defense of the statute, the government argued that “false statements have no value and hence no First Amendment protection.” *Id.* at 718 (plurality). The Court rejected that argument, with a plurality cautioning that the Court “has been careful to instruct that falsity alone may not suffice to bring the speech outside the First Amendment.” *Id.* at 719 (plurality).

The Tenth Circuit follows *Alvarez*. In *Animal Legal Def. Fund v. Kelly*, 9 F.4th 1219 (10th Cir. 2021), this Circuit considered a Kansas statute that prohibited obtaining “control over an animal facility” through deception—a measure intended to stop animal rights activists from concealing their identity to access and record ranches. *Id.* at 1224 (citation modified). Plumbing the opinions in *Alvarez*, the Tenth Circuit held that false speech receives less constitutional protection only when there is “legally cognizable harm ... imminently caused by the speech,” as distinct from “a measure, like the Stolen Valor Act, that targets falsity and nothing more.” *Id.* at 1234 (quoting *Alvarez*, 567 U.S. at 719 (plurality)). Applying this causation rule, the Court held that the law failed because it restricted false speech that did not directly cause

property damage; instead, it targeted false speech that might lead third parties to do property damage. *Id.* Thus, the law was “too attenuated from the false speech to be the sort of harm *Alvarez* is concerned with.” *Id.* Consequently, the Tenth Circuit applied strict scrutiny to the law, which it failed. *Id.* at 1235. *See also KetoNatural Pet Foods, Inc. v. Hill’s Pet Nutrition, Inc.*, No. 24-3185, 2026 WL 2024498, at *4 (10th Cir. July 14, 2026) (“speech on matters of public concern, even false speech, is protected”). As *Alvarez* and *Kelly* show, a content-based regulation on false speech must target legally cognizable harm and apply to speech that actually causes that harm. HB 182 does neither.

2. Strict scrutiny applies to HB 182.

HB 182’s regulation of political speech is subject to strict scrutiny, meaning it’s unconstitutional unless “the government proves that [it is] narrowly tailored to serve compelling state interests.” *Reed*, 576 U.S. at 163. HB 182 must meet this rigorous standard because: (1) it restricts speech based on content, (2) it restricts speech based on viewpoint, (3) it discriminates based on speaker, and (4) it compels speech.

(a) HB 182 restricts speech based on content.

“Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed*, 576 U.S. at 163. HB 182 only regulates speech that counts as an “advertisement,” which is a “communication referring to a candidate or ballot question.” N.M. Stat. Ann. § 1-19-26(A). If the speech doesn’t refer to someone or something that’s on the ballot, it’s

not regulated by HB 182. That’s content-based regulation, and it triggers strict scrutiny. *Reed*, 576 U.S. at 163.

HB 182 is also content based because it attempts to restrict false speech, like the laws condemned in *Alvarez* and *Kelly*. Again, whether the speech is allowed turns on “the idea or message expressed.” *Reed*, 576 U.S. at 163. HB 182 allows an “advertisement” if it depicts candidates doing or saying something they actually did or said, but prohibits creating advertisements (without the government-scripted disclaimer) if they show a candidate doing or saying something they didn’t really do or say, even for purposes of satire or parody. Thus, HB 182 “targets falsity and nothing more,” *Alvarez*, 567 U.S. at 719 (plurality), and is “subject to strict scrutiny.” *Kelly*, 9 F.4th at 1235. *See also* *Babylon Bee*, 818 F. Supp. 3d at 1200–01 (finding Hawaii’s restriction on “materially deceptive media” subject to strict scrutiny, citing *Alvarez*); *Kohls*, 797 F. Supp. 3d at 1184–85 (finding California’s restriction on “materially deceptive” content subject to strict scrutiny, citing *Alvarez*).

(b) HB 182 restricts speech based on viewpoint.

HB 182 also regulates speech based on viewpoint, an “egregious form of content discrimination,” and is thus subject to (at least) strict scrutiny. *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829–830 (1995). The statute does not apply at all when the “depicted individual” consented to the AI-generated content. N.M. Stat. Ann. § 1-19-26(S)(2). So a campaign can create “materially deceptive” ads favoring its candidate with no disclaimer, while those who wish to use “materially

deceptive media,” even to convey a true criticism, may not. “In other words, materially deceptive content that helps a candidate ... would not be subject to penalty.” *Kohls*, 797 F. Supp. 3d at 1183. Indeed, even independent organizations will likely have no trouble obtaining consent for AI-generated content painting a candidate or issue in a favorable light. But rivals—and satirists—cannot use AI-generated depictions of the same candidate to counter that message. That is viewpoint discrimination. *See Iancu v. Brunetti*, 588 U.S. 388, 394 (2019) (holding that law authorizing trademark protection to material “inducing societal nods of approval” while denying trademarks to material “provoking offense” discriminated based on viewpoint).

(c) HB 182 discriminates based on speaker.

HB 182’s multiple speaker-based distinctions likewise subject it to strict scrutiny since “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference.” *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 658 (1994). One speaker preference is the one just discussed: candidates can create all the “materially deceptive” advertisements about themselves they want, while critics may not. That calls for strict scrutiny. *See Kohls*, 797 F. Supp. 3d at 1183–84 (noting exemption for “candidates posting about themselves” was “speaker-based distinction[]” that “trigger[s] strict scrutiny”).

HB 182 also treats broadcasters and traditional news sources differently. If “a radio or television broadcasting station, including a cable television, satellite television or streaming service operator, programmer or producer” includes a

restricted “advertisement as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of a bona fide news event,” those speakers have less-burdensome disclaimer requirements than speakers like The Bee. N.M. Stat. Ann. § 1-19-26.4(G)(1). These speakers need only give an up-front disclaimer, while The Bee’s disclaimer must “appear for the duration of the video.” *Id.* § 1-19-26.4(E)(2). In addition, the definition of “advertisement” excludes *any* “news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium.” N.M. Stat. Ann. § 1-19-26(A).

To the extent these speakers produce a “news story or editorial,” their speech isn’t an “advertisement” and thus can include “materially deceptive media” without *any* disclaimer. This “speaker preference” for broadcasters “reflects a content preference” for whatever New Mexico deems traditional “news,” while newer online satirists like The Bee or other posters of cartoons or memes face higher standards. *Turner*, 512 U.S. at 658. That also subjects HB 182 to strict scrutiny. *See Kohls*, 797 F. Supp. 3d at 1183–84 (offering “broadcasters ... more lenient rules” also “trigger[]s strict scrutiny”).

(d) HB 182 compels speech.

HB 182 compels speakers to include the state’s mandatory disclaimer. The First Amendment protects against state compulsion to say something that affects the speaker’s message. *See Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 581 (1995) (holding the government has no “power to compel the

speaker to alter the message by including one more acceptable to others”). A speaker’s right to compose its speech applies “equally to statements of fact the speaker would rather avoid.” *Id.* at 573.

These principles apply to forced disclaimers and, absent specific circumstances inapplicable here (like commercial speech), forced disclaimers trigger strict scrutiny. The government cannot impose disclaimer requirements on speakers in general just by calling its order a “pure ‘transparency’ measure.” *X Corp. v. Bonta*, 116 F.4th 888, 902 (9th Cir. 2024).

Thus, in *Riley v. National Federation of the Blind*, the Supreme Court struck down a law requiring professional fundraisers to disclose the percentage of the money they raised in the past year that went to charity. 487 U.S. 781, 795 (1988). The Court rejected the government’s argument for a lower scrutiny standard based on the financial aspect of the fundraisers’ speech. *Id.* Since the regulated speech remained “inextricably intertwined with otherwise fully protected speech” and the compulsion “necessarily alters the content of the speech,” the Court held the rule should be treated “as a content-based regulation of speech.” *Id.* at 795–96.

HB 182’s forced disclaimer broader than the one the Supreme Court invalidated in *Riley*. Its application is not limited to speech (like commercial speech, or speech that accompanies a medical procedure) that might justify a lower standard of review. *See, e.g., Nat’l Inst. of Fam. & Life Advoc. v. Becerra*, 585 U.S. 755, 769–771 (2018) (*NIFLA*) (distinguishing compelled commercial and medical

disclosures from compelled speech in general). Nor does it stop at speech that has a financial component but that is “intertwined with otherwise fully protected speech.” *Riley*, 487 U.S. at 796. Rather, HB 182’s compulsion applies to *all* speech, including core political speech with no financial element, that (1) comments on a New Mexico candidate or ballot question and (2) contains “materially deceptive media.” *See* N.M. Stat. Ann. §§ 1-19.26(A); 1-19-26(S); 1-19-26.4(D). And, as in *Riley*, the disclaimer changes The Bee’s message.

Indeed, an up-front disclaimer would ruin The Bee’s satirical content, while imposing burdensome size, duration, and frequency requirements. N.M. Stat. Ann. § 1-19-26.4(E). For The Bee’s “travel advertisement,” for example, HB 182 would require a state-scripted disclaimer to appear in large font for the duration of the video. *See* Compl., ¶ 139. By requiring a label on satirical and parodic content—which often depends on drawing the audience’s credulity at first—HB 182’s “mandatory disclaimer for parody or satire would kill the joke.” *Kohls*, 797 F. Supp. 3d at 1189. Since HB 182’s disclaimer requirement applies to “otherwise fully protected speech” and “alters the content of the speech,” it triggers strict scrutiny for this reason as well. *Riley*, 487 U.S. at 795–96.

3. HB 182 fails strict scrutiny.

HB 182’s viewpoint discrimination is all that’s necessary for this Court to enjoin enforcement of the law facially and as-applied. *See Iancu*, 588 U.S. at 398–99 (rejecting government’s argument that viewpoint-discriminatory law can be saved by

“permissible applications”). At the very least, HB 182’s selective application to certain content, viewpoints, and speakers makes it “presumptively invalid.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 394 (1992). And the government bears the burden to show that it advances a compelling state interest through the least restrictive means possible. *See Reed*, 576 U.S. at 173. Defendants can’t meet that burden since HB 182 advances no compelling interest and fails narrow tailoring on multiple fronts.

(a) HB 182 does not advance a compelling interest.

The government has no compelling interest in policing *all* political discourse for what it deems “materially deceptive media.” “Political speech, of course, is ‘at the core of what the First Amendment is designed to protect.’” *Morse v. Frederick*, 551 U.S. 393, 403 (2007) (quoting *Virginia v. Black*, 538 U.S. 343, 365 (2003) (plurality)). A compelling interest cannot be stated “at a high level of generality”; rather, “the First Amendment demands a more precise analysis.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021).

The Supreme Court has described two interests in the electoral context as compelling, but neither serves as a justification for sweeping regulations on political speech like HB 182. First, the Supreme Court has said, “[a] State indisputably has a compelling interest in preserving the integrity of its election process.” *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989). But *Eu* involved a law prohibiting the governing bodies of political parties from making endorsements in the parties’ primaries, and the Court held this speech restriction “serv[ed] no

compelling governmental interest.” *Id.* at 229 (emphasis added). And in *Burson v. Freeman*, the Court referenced “a State ... compelling interest in protecting voters from confusion and undue influence.” 504 U.S. 191, 199 (1992) (plurality). But *Burson* was not about regulating the content of speech at all. Rather, it involved a prohibition on electioneering within 100 feet of a polling place. *Id.* at 193–94.

Strict scrutiny is “the most demanding test known to constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). “In the First Amendment context,” the Supreme Court has “held only once that a law triggered but satisfied strict scrutiny.” *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484 (2025). And since political speech “occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection,” it is the hardest speech to justify restricting. *Connick v. Myers*, 461 U.S. 138, 145 (1983) (citation modified). It is not true that, when directly regulating the content of such speech, the government gets to start “the most demanding test known to constitutional law,” *Flores*, 521 U.S. at 534, with its burden half-met just by invoking a general interest in “protecting voters from confusion.” *Burson*, 504 U.S. at 199. That would sanction the “highly paternalistic approach” to speech restriction the Court has always rejected. *Va. State Bd. of Pharm. V. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976). Defendants can invoke no compelling state interest in HB 182’s sweeping restrictions on core political speech.

(b) HB 182 is not narrowly tailored.

HB 182 fails narrow-tailoring because (1) it regulates more speech than any state interest requires, (2) it leaves unregulated speech that actually threatens the state’s interests, and (3) it ignores available, less-restrictive alternatives.

(1) HB 182 is overinclusive.

Overinclusivity—where a restriction “is substantially broader than necessary to” achieve a compelling interest—renders the restriction “unconstitutional.” *Chandler v. City of Arvada*, 292 F.3d 1236, 1244 (10th Cir. 2002). HB 182’s prohibition on advertisements containing “materially deceptive media” without a disclaimer is “substantially broader than necessary,” because it is not limited to speech that threatens any government interest. It has no requirement that the prohibited material actually deceive or be likely to deceive anyone. And it has no requirement that the prohibited material actually or even be likely to cause any “legally cognizable harm.” *Kelly*, 9 F.4th at 1234. Without any limitation to speech that actually causes harm, HB 182 sweeps far too broadly. *Id.*

HB 182 also sweeps too broadly because it is not limited to speech made with intent to deceive or confuse. Not only does false speech retain general protection under the First Amendment, *see supra* Part I.A.1, but even defamatory (normally unprotected) speech about *public figures* requires the state to meet a higher burden before restricting it. That is, the government may only restrict statements “made with ‘actual malice’—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–

80 (1964). Since HB 182 has *no* intent requirement for its restriction of speech about *public figures*, see N.M. Stat. Ann. § 1-19-26.4(F), it sweeps far beyond what the First Amendment permits.

(2) HB 182 is underinclusive.

HB 182 also leaves unrestricted speech that would undermine whatever interests it claims. Such underinclusion raises “doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 448 (2015) (citation modified). For example, via its definition of “advertisement,” the law exempts *any* “news story or editorial distributed through a print, broadcast, satellite, cable or electronic medium.” N.M. Stat. Ann. § 1-19-26(A). Yet, if there’s any setting where AI-generated “materially deceptive media” would do the *most* harm, it would be in those trusted, conventional news sources.¹ Yet this set of speakers and content—often the nerve center of electoral information—is left completely unrestricted while individual speakers, even self-admitted purveyors of “*Fake news you can trust*,” are closely regulated.

The underinclusion does not stop there. The definition of “materially deceptive media” excludes *all* media that is not “produced in whole or in part by using artificial

¹ See Hwayong Shin, *Where Americans Get and Trust Political Information: Traditional Media Leads, Social Media Grows, AI Emerges*, Weidenbaum Center Survey (WCS) Reports, 4 (Jan. 2026) (reporting that, while trust in social media and AI sources is increasing, Americans continue to report the most “trust in traditional media”) available at <https://perma.cc/UZ26-5RHF> (accessed Aug. 4, 2026).

intelligence.” N.M. Stat. Ann. § 1-19-26(S)(3). Thus, speakers remain free to create media that would otherwise qualify as “materially deceptive,” using any other means with no restriction. Decades-old digital technology already makes hyper-realistic deepfakes possible. HB 182 permits a wide array of expression that threatens any interest it asserts in restricting AI-generated “materially deceptive media.” It’s like the California law in *Brown v. Ent. Merchants Ass’n* that restricted violent video games but not other media like “Saturday morning cartoons,” 564 U.S. 786, 801 (2011). The Supreme Court called that law “wildly underinclusive.” *Id.* at 802. So is HB 182.

(3) HB 182 ignores available, less restrictive alternatives.

HB 182 also fails narrow tailoring because it ignores at least three less restrictive alternatives than suppressing speech.

First, New Mexico could engage in counter-speech to correct “materially deceptive media.” “[T]he ordinary course in a free society” is to remedy false speech with “speech that is true.” *Alvarez*, 567 U.S. at 727 (plurality). “Especially as to political speech, counter speech is the tried and true buffer and elixir.” *Kohls v. Bonta*, 752 F. Supp. 3d 1187, 1191 (E.D. Cal. 2024). Defendants, for example, could start a “Government-created database” that tracks “materially deceptive content” and “verif[ies] and expos[es] false claims.” *Alvarez*, 567 U.S. at 729 (plurality). *See also* *Babylon Bee*, 818 F. Supp. 3d at 1204 (“this Court finds that targeted counter speech appears to be a viable, less restrictive alternative” to similar Hawaii law).

Second, New Mexico could launch “educational campaigns” on how to spot deceptive content. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 507 (1996) (citing “educational campaigns” as an alternative to speech restriction); *NIFLA*, 585 U.S. at 775 (same). *See also Babylon Bee*, 818 F. Supp. 3d at 1204 (acknowledging “educational campaigns” as less restrictive means to combat “political deepfakes”).

Third, New Mexico could enforce its existing defamation laws and other provisions of the Campaign Reporting Act to restrict speech that actually threatens the state’s interest and that the government actually has power to restrict. New Mexico’s common law defamation standard would apply to AI-generated speech while conforming to the First Amendment, requiring “proof of actual malice (knowledge of the falsity of the statement or reckless disregard of the truth)” when discussing a “public figure” and a showing of “actual injury.” *Newberry v. Allied Stores, Inc.*, 773 P.2d 1231, 1236 (N.M. 1989). And the remaining provisions of the Campaign Reporting Act govern speech, primarily in connection with political expenditures, in a manner also more closely related to the government’s interest. *See Rio Grande Found. v. Oliver*, 154 F.4th 1213, 1228 (10th Cir. 2025) (rejecting First Amendment challenge to Campaign Reporting Act’s “disclosure [requirement] of major funders of significant election advertisements”).

“When a plausible, less restrictive alternative is offered to a content-based speech restriction, it is the Government’s obligation to prove that the alternative will be ineffective to achieve its goals.” *United States v. Playboy Ent. Grp., Inc.*, 529 U.S.

803, 816 (2000). To meet this burden, the government must show “that it seriously undertook to address the problem with less intrusive tools readily available to it.” *McCullen v. Coakley*, 573 U.S. 464, 494 (2014). The government has not shown *any* consideration of alternatives when it comes to addressing AI-generated media. Restricting speech “seems to have been the first strategy the Government thought to try,” even though “regulating speech must be a last—not first—resort.” *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 373 (2002). HB 182 thus fails narrow tailoring.

B. HB 182 is facially overbroad.

The Bee is also likely to succeed in showing HB 182 to be facially overbroad. The First Amendment protects against laws that “prohibit[] a substantial amount of protected speech relative to [the law’s] plainly legitimate sweep.” *United States v. Hansen*, 599 U.S. 762, 770 (2023) (citation modified). Such laws are held facially invalid to protect “society’s interest in free expression,” which “outweighs its interest in [a] statute’s lawful applications.” *Id.*

“The first step in the proper facial [overbreadth] analysis is to assess” the statute’s “scope.” *Moody v. NetChoice*, 603 U.S. 707, 724 (2024). Here, HB 182 “specifically targets speech” by facially regulating images, videos, and audio recordings about proscribed topics. It does not regulate any non-expressive conduct. As with California and Hawaii’s statutes, every application of the law regulates speech. *See Babylon Bee*, 818 F. Supp. 3d at 1206; *Kohls*, 797 F. Supp. 3d at 1177.

At step two, the “question is whether a substantial number of the law’s applications are unconstitutional, judged in relation to the statute’s ... legitimate sweep.” *Moody*, 603 U.S. at 723 (citation modified). Here, the answer is yes. Satire and parody are fictitious speech protected by the First Amendment. *Hustler Mag. Inc. v. Falwell*, 485 U.S. 46, 54–56 (1988). The law sweeps up The Bee’s satirical commentary on New Mexico, along with everyone else’s. The law also covers much exaggeration and “rhetorical hyperbole which has traditionally added much to the discourse of our Nation.” *Knievel v. ESPN*, 393 F.3d 1068, 1074 (9th Cir. 2005) (citation modified).

Indeed, only a narrow slice of HB 182’s applications could be constitutional—it “has constitutional applications to the extent that defamatory or fraudulent speech falls under its umbrella.” *Kohls*, 797 F. Supp. 3d at 1187. Since any legitimate applications are already covered by other laws, HB 182 has practically zero constitutional applications. Such a minuscule ratio of unprotected to protected speech does not save HB 182 from overbreadth. *See id.*; accord *Babylon Bee*, 818 F. Supp. 3d at 1207.

C. HB 182 is unconstitutionally vague.

Due process prevents the government from enacting a law so vague that “its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). And any law regulating speech “must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

Vague laws “raise[] special First Amendment concerns” because they empower the government to silence viewpoints with which it disagrees. *Reno v. ACLU*, 521 U.S. 844, 871–72 (1997). A law is unconstitutionally vague if it “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” or “if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1233 (10th Cir. 2023) (citation modified). Both situations apply here.

HB 182 uses unconstitutionally vague language that fails to provide adequate notice. *First*, the language “produced in whole or in part by using artificial intelligence.” N.M. Stat. Ann. § 1-19-26(S). HB 182 does not specify what “in whole or in part” means. It’s unclear whether an AI-generated background, like a landscape that appears behind an image of a candidate, would trigger the statute. It also isn’t clear whether AI must have been used to create the content “depict[ing] an individual engaged in conduct or speech in which the depicted individual did not engage,” or whether use of AI for another purpose (like creating a border or editing text) falls within the definition. N.M. Stat. Ann. § 1-19-26(S).

Second, phrases in the disclaimer provisions invite discriminatory enforcement. The mandated disclaimer must be written in “a size that is easily readable,” or spoken in a “pitch that can be easily heard.” N.M. Stat. Ann. § 1-19-26.4(E). The word “easily” lacks an apparent subject—easily read or heard by whom? Text that is easily read by some can be illegible to others. As for size, the definition

is vague, too. There are myriad formats for viewing content like The Bee’s satirical news articles, ranging from small mobile phones held in the hand to large television screens mounted on a wall. Font that is “easily read” in one format is not so in others. These provisions subject The Bee to arbitrary enforcement, especially when complying with a regulatory regime like HB 182 that already plays favorites based on speaker status.

II. The Bee satisfies the remaining preliminary injunction factors.

Irreparable harm. The Bee is injured by threatened enforcement of HB 182, and because that injury is to its First Amendment rights, it is irreparable as a matter of law. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (citation modified). First Amendment rights are so precious that merely demonstrating a “harm of a constitutional dimension” is sufficient to show irreparable injury. *Does 1-11 v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251, 1274 (10th Cir. 2024). Since HB 182 restricts The Bee from creating satire and parody discussing political candidates or ballot issues in New Mexico without its message-altering disclaimer, HB 182 is causing The Bee irreparable injury.

Equities and public interest. The balance of equities and the public interest also favor The Bee. When a law “is likely unconstitutional,” the state’s interests “do not outweigh” a plaintiff’s interest “in having his constitutional rights protected.” *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012). The state has no equitable

interest in censoring The Bee’s core political speech, which uses hyperbole and false statements that are not likely to deceive anyone—that is the whole point of satire and parody.

Given “our profound national commitment to ... uninhibited, robust, and wide-open” political debates, the public interest lies in protecting political speech. *Fed. Election Comm’n v. Cruz*, 596 U.S. 289, 302 (2022) (citation modified). Indeed, vindicating The Bee’s First Amendment rights cannot wait until final judgment because “[t]he timeliness of political speech is particularly important.” *Elrod v. Burns*, 427 U.S. 347, 374 n.29 (1976) (plurality). The 2026 election cycle is already underway, and every day The Bee is threatened with liability deprives it of its First Amendment right to speak on the important issues and the candidates put before the voters.

CONCLUSION

This Court should grant Plaintiff’s motion and enjoin Defendants from enforcing HB 182 facially and against The Bee during this litigation.

Dated: August 11, 2026

Respectfully submitted,

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** Application to practice by association
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CERTIFICATE OF SERVICE

I certify that on August 11, 2026, I electronically filed the foregoing using the CM/ECF system, and will serve the same with Plaintiff's Complaint on the following parties:

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