Ahead of first 'AI election,' California lawmakers push to limit technology's influence

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This Pro Bill Analysis covers three bills: [AB 2839](#), [AB 2655](#) *and* [AB 2355](#).

As the possibility of disruption from artificial intelligence continues to linger across many sectors, California lawmakers are looking to take preemptive measures to ensure the technology doesn't affect elections.

Election integrity is already in the spotlight ahead of November, and concern over deepfakes undermining candidates and skewing races have stakeholders [sounding the alarm](#) of an "AI election." Earlier this year, an AI-generated robocall pretending to be President Joe Biden [attempted to suppress](#) voter turnout in New Hampshire during the March primary.

Three California bills currently making their way through the Assembly would target AI-generated misinformation. [AB 2839](#), by Assemblymember [Gail Pellerin](#) (D-Santa Cruz), would ban misleading political communications created by AI such as calls, mailers and advertisements, and [AB 2655](#), by Assemblymember [Marc Berman](#) (D-Menlo Park), would require platforms to take down or label certain material created by AI deemed "materially deceptive." Both bills would only apply during a certain time frame around elections. The third measure, [AB 2355](#), by Assemblymember [Wendy Carrillo](#) (D-Boyle Heights), would require a disclosure if AI was used in producing a political advertisement.

The measures are just a few of a slew of AI-related proposals put forth in the California Legislature this year as lawmakers attempt to regulate the burgeoning technology.

Pellerin, chair of the Assembly Elections Committee, said during an April 10 hearing that the three bills address the potential harms that AI can cause for elections, noting that the "American public remains ill-prepared for this evolving threat."

"This is the first tool in human history that can create new ideas by itself," Pellerin said. "We are learning to use AI, and it is learning to use us. Its potential to disrupt human society is immense, from economics to democracy."

WHAT'S IN THE BILL?

This Pro Bill Analysis is based on the [text of AB 2839](#) *as amended on May 2.*

The bill states in its declarations that, in order to ensure California elections are free and fair, the state must ban deepfakes and disinformation that decrease voter turnout and deceive voters around election time. It notes that the labeling requirements in the measure would be narrowly tailored to pointing out inauthentic images, audio, video and text to prevent consumer deception (Sec. 3).

The measure would add language to the [California Elections Code](#) to prohibit any entity from distributing an advertisement or other election communication containing a "materially deceptive" and digitally altered or created image, audio or video intended to influence an election or raise money for a candidate (Sec. 3).

The regulation would apply 120 days before any election. Deceptive information about election officials and equipment such as voting machines, ballots and voting sites would be banned 60 days following the election, as well.

The provisions would also ban other forms of misinformation like content that portrays a candidate or elected official as doing or saying something that they didn't actually do or say.

An image, audio or video would be considered "materially deceptive and digitally modified or created" if it meets all of the following criteria:

— It is created by digital manipulation or artificial intelligence

— It falsely portrays a candidate, elected official, election office or voting equipment or site, such that a "reasonable person" would both believe it is authentic and have a "fundamentally different understanding or impression" of the content

— It was distributed with the knowledge that the content contained false material. This particular standard would be presumed if the image, audio or video was intentionally manipulated to create a false portrayal.

The measure would define artificial intelligence as a system that can "infer from the input it receives how to generate outputs that can influence physical or virtual environments."

However, the definition of materially deceptive and digitally modified or created content would exclude content that goes through only minor, insignificant changes — such as adjustments to brightness or background noise (Sec. 3).

The bill would make an exception for candidates who portray themselves as doing something they didn't do or say — as long as they include a disclosure clearly stating that the image, audio or video has been manipulated. In a video, the text of the disclosure would have to be easily readable and the same size as other text in the video for the duration of the video. For audio, the disclosure would need to be clearly spoken in pitch that can be easily heard and at both the beginning and end.

The proposal would not apply to radio, TV stations or print publications that broadcast or publish content prohibited under the measure if it is shown as part of a newscast, interview, documentary or live coverage — again, as long as there is a disclosure that the content is not real.

There would also be an exception for satire or parody.

AB 2839 would allow eligible individuals to seek injunctive relief to prohibit the distribution of the content, including:

— Anyone who views, hears or otherwise perceives the content

— A candidate or committee participating in the election

— An election official

Additionally, they would be able to sue the creator of the deceptive material for damages, along with attorney's fees.

The measure would apply across any language, and would require disclosures to be in the language used in the content. The bill would contain a severability clause (Sec. 3).

This Pro Bill Analysis is based on the [text of AB 2655](#) as amended on April 24.

The first two sections and declarations of AB 2655 are similar to that of AB 2839 (Secs. 1-3). The measure — the Defending Democracy from Deepfake Deception Act of 2024 — would require large online platforms to block and prevent content that is "materially deceptive" and digitally modified or created around election time.

Such content would include false portrayals of a candidate for office, election official, elected official or voting equipment. If a candidate chooses to manipulate an image, audio or video of themselves, they would have to provide a disclosure — that is clearly audible or readable — noting that the content has been manipulated (Sec. 3).

The proposal would apply to websites and apps with over 1 million users in California — including social media sites, video sharing platforms, advertising networks and search engines.

Content created using AI would be applicable as "materially deceptive and digitally modified or created content," and artificial intelligence would be defined in the measure — similar to AB 2839 — as a system that can "infer from the input it receives how to generate outputs that can influence physical or virtual environments."

Platforms would need to scrub content if it has been manipulated by AI and appears authentic, but falsely portrays someone or something related to elections. Additionally, in order to be considered materially deceptive and digitally modified or created content, the creator of the content would have to have known that the portrayal is false, or have acted with reckless disregard. However, the measure would allow a "rebuttable presumption" that intentionally manipulated content containing a false portrayal means that the creator acted with "reckless disregard."

The bill would define a "false portrayal" as causing a "reasonable person to have a fundamentally different understanding or impression of the content" compared to an "authentic" version.

Likewise, the platform would have to know — or reasonably should know — that the election official being targeted by the content is an election official, before being required to remove the content.

As with AB 2839, there would be exceptions for content that goes through only minor, insignificant changes like adjustments to brightness or background noise. There would also be an exception for news publications that publish content subject to the bill, as long as the publication includes a disclosure that the content does not represent a real event. Content deemed "satire or parody" would be exempt, too.

The regulations would apply beginning 120 days before the election, up through the day of the election. Content related to elections officials or voting equipment — such as elections sites or ballots — would need to be blocked until 60 days after the election.

For content that is materially deceptive about elections but does not meet the aforementioned standard, large platforms would have to label the content as inauthentic, fake or false for the year prior to the election process — with an additional 60 day extension for content related to election officials. The label would have to include data about the digitally modified content in a format that is easily understood.

The bill defines "elections processes" as anything related to elections, candidates, vote counting, redistricting and electoral college proceedings.

Any California resident would be able to report a violation, and platforms would need to respond within 36 hours with what action they did or did not take. If they did not receive a response, residents would then be permitted to file a lawsuit against the platform for injunctive or other equitable relief — but there would be no monetary damages owed by a platform due to Section 230 of the Communications Act. The Attorney General or local prosecutor could also file lawsuits against platforms.

The measure would apply regardless of the language used in the content, and if the language is one other than English, the disclosure would have to appear in both that language and English.

Platforms that block content would be required to maintain a copy of the content for at least five years, and make it publicly available.

The bill would specifically note that platforms can block or label materially deceptive content outside of the measure's parameters, and that smaller platforms not subject to the bill could also block or label content.

The measure would contain a severability clause (Sec. 3).

This Pro Bill Analysis is based on the text of AB 2355 as amended on April 18.

The bill would add a section to the California Elections Code titled "Artificial Intelligence in Political Advertisements," which would require any entity that creates a political advertisement that has been "generated or substantially altered using artificial intelligence" to include a clear disclosure (Sec. 1). For video, the disclosure must be easily readable and as large as other text, and for audio, it must be clearly spoken and easily heard by the average listener.

The measure would cover any paid advertisement related to a candidate running for office or a ballot measure that contains images, audio or video generated by AI. The ad would have to either be created entirely using AI and appear falsely authentic to a reasonable person, or altered by AI in a way that a reasonable person would have a fundamentally different understanding of the content compared to the unaltered version. However, the bill would not apply to media that goes through "immaterial" edits using AI — such as a color change, cosmetic adjustment or images that are cropped or resized.

Artificial intelligence — like in AB 2655 and AB 2839 — would be defined in the measure as a system that can "infer from the input it receives how to generate outputs that can influence physical or virtual environments."

The measure states that it would not interfere with Section 230 of the Communications Act, which protects online platforms against lawsuits for third-party content. The bill would exempt media — be it print or broadcast — that publishes and broadcasts a political advertisement during a newscast, interview, documentary or live coverage that would be subject to the regulation.

It would also create an exemption for political advertisements that contain satire or parody.

Any registered voter would be able to sue over a violation of the act, and a court could impose a temporary or permanent restraining order or injunction against the entity from distributing the ads. The bill would note that such cases would be prioritized in the court process (Sec. 1).

WHO ARE THE POWER PLAYERS?

Assemblymember **Gail Pellerin** (D-Santa Cruz), who chairs the Assembly Elections Committee, introduced AB 2839 targeting AI in political communications. Assemblymember **Marc Berman** (D-Menlo Park) introduced AB 2655 on requiring platforms to scrub or label misleading elections-related content using AI, and Assemblymember **Wendy Carrillo** (D-Boyle Heights) authored AB 2355 on disclosing AI-generated political advertisements.

Neither Berman nor Carrillo's bills have co-authors. Berman is a joint author on Pellerin's AB 2839, and Assemblymember **Sabrina Cervantes** is the principal co-author. Other co-authors on that measure include: Assemblymembers **Steve Bennett** (D-Ventura), **Corey Jackson** (D-Moreno Valley), **Phil Ting** (D-San Francisco), **Avelino Valencia** (D-Anaheim), **Akilah Weber** (D-La Mesa), **Sharon Quirk-Silva** (D-Fullerton) and **Jim Wood** (D-Healdsburg), and Sens. **Josh Becker** (D-Menlo Park) and **Bill Dodd** (D-Napa).

The **California Initiative for Technology and Democracy** — a project of **California Common Cause** — is sponsoring both AB 2839 and AB 2655. **Jonathan Mehta Stein**, California Common Cause's executive director, said in a statement that the legislation "gets at the heart of what is shaping up to be one of the great issues of our lifetime, while upholding free speech and respecting technological innovation."

"AI and disinformation are an existential threat to our democracy, and we've reached a point of no return," Stein said. "Now is the time to act."

Of the three bills, AB 2655 has drawn the most opposition, namely from business and tech interests and notably, the **ACLU California Action** over First Amendment-related concerns. **Jose Torres**, **Technet's** deputy executive director for California, said at the April 23 Assembly Judiciary Committee hearing that platforms wouldn't be able to accurately determine whether every piece of elections-related content is true or false.

"A platform cannot accurately adjudicate reports on those types of content, and will instead resort to over-removing information in order to avoid liability and the penalties in this bill," Torres said. "Removing information that is only suspected of being false is clearly not a good outcome."

Speaking against AB 2839, the **Electronic Frontier Foundation** also pointed to First Amendment concerns over the republication exceptions being too narrow. By requiring a disclaimer, EFF argued in an opposition letter that the bill "does not reflect the full First Amendment protection due the republication of speech pertaining to matters of public interest by those not connected with the creation of the offending material."

The group is also opposing AB 2355, which is backed by **Oakland Privacy**. The **Chamber of Commerce** and tech trade groups **Computer and Communications Industry Association**, **Software and Information Industry Association** and **Technet** have said they would support the bill if amended.

Representatives for the CCIA and Technet both said during the April 10 Elections Committee hearing they were willing to work with Carrillo further on the bill. In a letter, the groups requested an amendment to exempt internet service providers, websites and generative AI systems that don't further publish or distribute the content beyond providing the user with it.

Tracy Rosenberg, executive director at Oakland Privacy, told the committee that the proposal is structured similarly to existing state laws that require a disclosure for paid political advertisements.

"So it's a familiar model that is being reused to meet with this new technology," Rosenberg said.

WHAT'S HAPPENED SO FAR?

All three bills have cleared multiple committees in the Assembly and are now awaiting hearings in the Appropriations Committee before facing a floor vote.

AB 2839 received intraparty pushback in the Assembly Judiciary Committee from a key Democrat, Assemblymember Rebecca Bauer-Kahan (D-Orinda). Bauer-Kahan, who chairs the Privacy Committee and abstained on the measure, raised concerns about Pellerin's measure potentially banning political speech and encouraged her to re-focus on the bill to specifically target digital replicas.

"I know you wouldn't want to stop political speech," Bauer-Kahan said. "But I think there's so much work that needs to be done on the definitions to get there."

A bill in the Senate, SB 1228 — which would require large platforms to seek anonymous influential social media users to disclose their identities — passed the Senate Judiciary Committee with bipartisan support on April 23. But it was later amended on April 10 to scrub a provision that would specifically target users who primarily depend on AI to generate content.

In 2019, Berman authored the first bill in the nation to target election political deepfakes. Its passage banned deceptive audio or video of political candidates within 60 days of an election that is intended to harm the candidate's reputation or deceive voters. Berman's bill amended California's initial "Truth in Political Advertising Act" in 1998, which prohibited superimposing photos in campaign material.

With the emergence of artificial intelligence, Beman said it's clear to him that more needs to be done.

"To be honest, by the time that was signed into law, it was already too weak — and it's only gotten weaker since then," Berman said at the April 23 hearing. "Just a few short years after that bill passed, the technology is better, cheaper and widely accessible. As a result, we're seeing deepfakes used to undermine elections across the globe."

WHAT'S NEXT?

All three bills will be heard next in the Assembly Appropriations Committee, which has a May 17 deadline to send bills to the full chamber. The measures are part of dozens of bills introduced this year in an attempt to clamp down on artificial intelligence and that span across various business sectors.

Even if they pass, the three bills could face constitutional challenges in court, as trade groups have not hesitated to file lawsuits over regulations they see as clamping down on free speech. Committee analyses for the measures are ambiguous over whether the measures would hold up in court.

Assembly Privacy and Consumer Protection Committee staff encouraged Carrillo to tighten the scope of AB 2355, "given the exacting standard this bill must meet." Likewise, the Assembly Elections committee analysis questioned AB 2839's constitutionality, and opponents have jumped all over AB 2655's provisions as unconstitutional.

Pellerin, during the April 30 Assembly Judiciary Committee hearing, said she would continue to work on refining the definitions of AB 2839 and would consider suggestions raised in the committee analysis regarding amending the bill's timeline to include various post-election scenarios. Staff wrote that "the constitutional questions posed by this bill present an exceedingly difficult decision for this committee."

Berman said he is in active discussions with the opposition and other stakeholders to narrow his bill, noting that "everything is still very much up for discussion."

WHAT ARE SOME STORIES ON THE BILL?

Read POLITICO news on AB 2839, AB 2655 and AB 2355.