

Matthew G. Monforton (Montana Bar No. 5245)
Monforton Law Offices, PLLC
32 Kelly Court
Bozeman, Montana 59718
Phone: (406) 570-2949
Email: matthewmonforton@yahoo.com

Adam E. Schulman (DC Bar No. 1001606*)
HAMILTON LINCOLN LAW INSTITUTE
1629 K Street, NW Suite 300
Washington, DC 20006
Phone: (610) 457-0856
Email: adam.schulman@hlli.org
* *admitted pro hac vice*

**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
HELENA DIVISION**

ACCOUNTABILITY IN STATE
GOVERNMENT, a Montana independent
political committee; DAN BARTEL

Plaintiffs,

v.

AUSTIN KNUDSEN, in his official
capacity as Montana Attorney General;
KEVIN DOWNS, in his official capacity as
Lewis and Clark County Attorney; CHRIS
GALLUS, in his official capacity as
Montana Commissioner of Political
Practices,

Defendants.

Case No. 26-CV-00038-H-SPW

**Reply Brief in Support of Plaintiffs' Motion
for Preliminary Injunction**

TABLE OF CONTENTS

Table of Contents.....	ii
Introduction	1
Argument	2
I. Plaintiffs have standing to challenge Montana’s Digital Censorship Act. ..	2
II. Plaintiffs are likely to succeed on the merits of their claims.....	6
A. The Act unconstitutionally infringes free speech.....	6
B. The Act is unconstitutionally vague	9
C. At minimum, plaintiffs have shown success on their as-applied constitutional claims.	11
III. Plaintiffs face irreparable harm; the public interest supports a preliminary injunction	12
Conclusion	13
Certificate of Compliance	15
Certificate of Service	16

INTRODUCTION

Montana has longstanding speech-neutral tools for maintaining election integrity. Mot. 13-14, 17.¹ However well-intentioned the goal of protecting “free and fair elections,” Mont. Code Ann. §§ 13-35-801 (“the Act”) self-defeats that goal by “perpetuat[ing] the very fraud it is allegedly designed to prohibit.” 281 *Care Committee v. Arneson*, 766 F.3d 774, 789 (8th Cir. 2014). It does so by criminalizing core speech integral to free and fair elections and weaponizing the political process.

Knudsen ignores the only cases addressing whether states may prohibit political deepfakes. As both determined, such laws violate the Free Speech Clause. *See Kohls v. Bonta*, 797 F. Supp. 3d 1177 (E.D. Cal. 2025) (“*Kohls II*”); *The Babylon Bee, LLC v. Lopez*, 818 F. Supp. 3d 1181 (D. Haw. 2026). Knudsen asks this Court to depart from those decisions without ever explaining why those decisions were incorrect. Not only that, he asks the Court to find that Bartel’s self-censorship is unreasonable even as Bartel faces three separate complaints that threaten to impose criminal sanctions on him.

Finally, on the merits, Knudsen reads from the same playbook that the Ninth Circuit repudiated earlier this year for pointing “in the wrong direction.” *See Imperial Sovereign Ct. v. Knudsen*, 170 F.4th 820, 844 (9th Cir. 2026). *Moody v.*

¹ “Mot.” refers to the Brief in Support of Plaintiffs’ Motion for Preliminary Injunction (Dkt. 7), “Opp.” refers to Defendants’ Response in Opposition (Dkt. 14).

NetChoice “d[oes] not displace the longstanding and myriad precedents setting forth a tiered scrutiny analysis...to a facial claim challenging a law on the ground that it is an unconstitutional content-based restriction on speech.” *Id.* at 845. “[I]f a court concludes that a content-based restriction fails strict scrutiny, the analysis ends. The law is facially invalid and cannot be enforced against anyone.” *Id.*

Knudsen does not dispute that the Act is viewpoint and content based. With respect to strict scrutiny, everyone acknowledges that election integrity is a compelling governmental interest. As *Babylon Bee* and *Kohls* (among other authorities) recognize, however, direct speech regulations like the Act are not narrowly tailored to that interest; political misinformation can be addressed through less restrictive alternatives.

ARGUMENT

I. Plaintiffs have standing to challenge the Act.

“When an individual is subject to [the] threat” of a law’s enforcement, an “actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). A plaintiff has standing if he intends to engage in a course of conduct affected with a constitutional interest, arguably proscribed by statute, and there exists a credible threat of enforcement. *Id.* at 161-64. Courts “have long recognized that First Amendment cases raise unique considerations that tilt dramatically toward a finding of standing.” *Am. Encore v. Fontes*, 152 F.4th 1097, 1113 (9th Cir. 2025)

(simplified). This is because self-censorship premised on a reasonable fear of enforcement is itself a constitutional injury. *Id.* at 1114; *Babylon Bee*, 818 F. Supp. 3d at 1193-99 (determining satirical news publication and individual political commentator had standing to challenge Hawaii’s political deepfake law). To avoid such chill, courts must “apply the requirements of ripeness and standing less stringently.” *Imperial Sovereign Ct.* 170 F.4th at 834.

Here, the Act chills Plaintiffs’ speech. *See* Bartel Decl. (Dkt. 8) ¶¶18-20. The Act authorizes political adversaries to shut down opposition speech, thus “bolster[ing]” the threat from the statute. *SBA List*, 573 U.S. at 164. Indeed, Plaintiffs face three separate complaints related to three different mailers distributed in the primary election cycle earlier this year. That itself “is good evidence” of the threat. *SBA List*, 573 U.S. at 164 (internal quotation omitted); *accord Flaxman v. Ferguson*, 151 F.4th 1178, 1186 (9th Cir. 2025). Notwithstanding Montana’s current “litigation position”² in its opposition, it has not dismissed or disavowed any of the three complaints pending before the Commissioner of Political Practices. With a statute “of recent vintage,” “either a ‘general warning of enforcement’ or a ‘failure to *disavow* enforcement’ is sufficient to establish a credible threat of prosecution.” *Matsumoto v. Labrador*, 122 F.4th 787, 797 (9th Cir. 2024) (internal quotation omitted); *Imperial Sovereign Ct.*, 170 F.4th at 835-36

² *Lopez v. Candaele*, 630 F.3d 775, 788 (9th Cir. 2010). *Lopez* holds that “preliminary efforts to enforce” represent “strong evidence” of a credible threat. *Id.* at 786.

(same). Here, both are present, in the form of the multiple private complaints, the warning letter from Commissioner Gallus (Complaint ¶¶47-50), and the lack of government disavowal. Thus, there exists a credible threat of enforcement.³

While Knudsen may think it “clear[]” (Opp. 13, 15, 25) that Plaintiffs’ speech “fit[s] squarely within the exception for satire or parody” (Opp. 14), multiple sitting members of the Montana legislature, who have lodged complaints against Plaintiffs, evidently disagree. Even if those legislators are “misreading...the statute,” Bartel’s injury is still “traceable to the [Act] and an injunction would redress that injury.” *GLBT Youth in Iowa Schools Task Force v. Reynolds*, 114 F.4th 660, 669 (8th Cir. 2024); *cf. also Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1173 (9th Cir. 2018) (considering threat of private enforcement actions in standing analysis).

Moreover, Knudsen’s view does not follow from the plain language of the statute. As he acknowledges, the Act does not define “satire” or “parody.” Opp. 13. Though he seeks to import definitions from a different context (copyright), the problem remains that those definitions—whether a work imitates “for comic effect or ridicule”; whether a subject is “assailed with ridicule” or “attacked through irony, derision, or wit”—lie in the eye of the beholder. Mot. 23. Again, this carveout “simply exchanges [some] overbreadth for [more] vagueness.” *Id.*

³ Knudsen cites no case to the contrary. *Doctors for a Healthy Montana v. Fox* (cited at Opp. 15) did not involve a similar procedural posture, and affirmatively found standing. It simply refused to grant an injunction when plaintiff would “be in the same position with or without an injunction.” 460 F. Supp. 3d 1023, 1030 (D. Mont. 2020).

(quoting *Zarate v. Younglove*, 86 F.R.D. 80, 104 (C.D. Cal. 1980) (quoting L. Tribe, *AMERICAN CONSTITUTIONAL LAW* § 12-26 at 716 (1978))).

Bartel's mailers are symbolic "visual metaphors"⁴ created with "the intent...to comment on and criticize...voting records." Bartel Decl. ¶9. It is entirely unclear whether that qualifies as imitation "for comic effect or ridicule." But even if Bartel subjectively conceives his political messages to be "satire," that still "misses the point" because those enforcing the law, including private complainants like Representatives Carlson and Albus, could disagree. *SBA List*., 573 U.S. at 163; accord *Imperial Sovereign Ct.*, 170 F.4th at 839.

Kohls v. Ellison, (cited by Opp. 12-13), actually supports Bartel's standing here. It concluded that a speaker who reposted humorous political commentary on social media had standing to challenge Minnesota's political deepfake law, even without any administrative complaints filed against her. 166 F.4th 728, 732 (8th Cir. 2026). It held that the originator of that commentary lacked standing because he "label[ed] his videos as parody," thus bringing them outside the ambit of the statute. *Id.* at 731. Like the republisher there, Bartel does not include any disclaimer that his content is AI-generated. In fact, he strenuously objects to the Act's requirement to do just that. *See* Bartel Decl. ¶15.

Bartel intends to engage in speech that is "arguably proscribed" by the Act. That is the test of *SBA List*; not "certainly proscribed," "definitely proscribed," or even just "proscribed." 573 U.S. at 162; *Cerame v. Slack*, 123 F.4th 72, 80 (2d Cir.

⁴ This is Knudsen's characterization of the content. Opp. 2, 12.

2024) (“*Arguably* proscribed” does not mean “*in fact* proscribed”). Plaintiffs need not “admit to violating a law in order to have standing to challenge it.” *Arizona v. Yellen*, 34 F.4th 841, 849 (9th Cir. 2022). This is not a case where the “plain language”⁵ of the law excludes Bartel’s speech from its ambit. Because Knudsen’s interpretation of the Act—under which Bartel’s mailers “clearly” qualify for satire/parody protection—is at best arguable, it cannot preclude Plaintiffs from standing to challenge the law. *See Am. Encore*, 152 F.4th at 1116 (citing *Yellen*, 34 F.4th at 850).

In addition to creating content, Bartel wishes to view political commentary that uses AI-deepfake technology but the Act chills others from creating and posting it. Bartel Decl. ¶21. Thus, Plaintiffs have two independent justiciable injuries.

II. Plaintiffs are likely to succeed on the merits of their claims.

A. The Act unconstitutionally infringes free speech.

Montana’s substantive defense of the Act immediately veers awry by attempting to shoehorn Plaintiffs’ claims into an overbreadth framework. *Imperial Sovereign Ct.*, 170 F.4th at 844. When plaintiffs challenge a statute as impermissibly content-based, and especially viewpoint-based, a failure to withstand strict scrutiny means that the Act is “facially invalid and cannot be enforced against anyone.” *Id.* at 845. “The analysis ends” without any need to consider an

⁵Opp. 16, quoting *Lopez*, 630 F.3d at 788.

overbreadth analysis. *Id.* (citing cases); *accord Kohls II*, 797 F. Supp. 3d at 1187-88.⁶ The law cannot be “salvage[d] by virtue of its constitutionally permissible applications.” *Iancu v. Brunetti*, 588 U.S. 388, 398 (2019).

The Act discriminates based on content and viewpoint. Mot. 9-11. Knudsen does not dispute that. Knudsen asserts a compelling interest in free elections and election integrity. Opp. 18-19. Again, Bartel agrees. Mot. 13. As *Kohls II* and *Babylon Bee* held, the problem is not the compelling interest; it is the lack of tailoring. 797 F. Supp. 3d at 1186-87; 818 F. Supp. 3d at 1203-05.

A state’s interest in electoral integrity does not authorize restricting political speech beyond falsehoods about voting procedures that jeopardize individuals’ right to vote. Case after case draws this line. *See, e.g.*, Mot. 14 (citing cases); *accord McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345 (1995) (contrasting regulations of “pure speech” with regulations of “the mechanics of the electoral process”); *Commonwealth v. Lucas*, 34 N.E.3d 1242 (Mass. 2015); *Rickert v. State Pub. Disclosure Comm’n*, 168 P.3d 826, 829-31 (Wash. 2007).

Defendants’ focus on the Biden Robocall incident underscores the Act’s lack of tailoring. New Hampshire indicted the alleged perpetrator of that scheme on felony voter suppression charges. David Shepardson, *US political consultant*

⁶ The Act is overbroad, in fact. *See Babylon Bee*, 818 F. Supp. 3d at 1205-07. Knudsen also erroneously asks this Court to apply the “very high bar” *Salerno* formulation that the Supreme Court has “lowered” “in First Amendment cases.” *Compare* Opp. 16, *with Moody*, 603 U.S. at 723.

indicted over AI-generated Biden robocalls, REUTERS (May 23, 2024).⁷ Montana, like New Hampshire and perhaps every state, criminalizes such efforts to interfere with another person's franchise. Mot. 17 (citing Mont. Code Ann. § 13-25-218). Such a content-neutral (indeed speech-neutral) law is a less restrictive means of achieving its aim. *Kohls II*, 797 F. Supp. 3d at 1186.

So too is the usual remedy for false political speech: counterspeech. Mot. 15-16. Knudsen does not argue otherwise. In fact, Knudsen's contention (Opp. 22) that "in the vast majority of cases, it will be clear to reasonable people whether a creation is a deepfake" offers good reason to think that counterspeech would be a highly effective remedy.

Knudsen mentions that many other states have passed similar prohibitions on AI-generated political speech, but that is no constitutional defense. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570, 577 (2023) (noting that "many states" had the same type of law); *McIntyre*, 514 U.S. at 371 (1995) (Scalia, J., dissenting) ("the Court invalidates a species of protection for the election process that exists, in a variety of forms, in every State except California"). Knudsen neglects to mention those many state legislatures voting down such prohibitions, nor that the only courts to yet weigh in on the constitutionality of such statutes have held them infirm. *Kohls II*; *Babylon Bee*.

⁷ <https://www.reuters.com/world/us/us-political-consultant-indicted-over-ai-generated-biden-robocalls-2024-05-23/>.

Knudsen offers no defense for the viewpoint discrimination under the law that permits AI-generated content that would boost a candidate's reputation. Mot. 10-11, 18-19. Nor does he offer any defense for the other underinclusive speaker preferences. Mot. 19. Nor does he respond to the problem of political actors wielding the Act as a sword to silence opponents. Mot. 18; *see also United States v. Alvarez*, 567 U.S. 709, 736 (2012) (Breyer, J., concurring in the judgment) (explaining that "the risk of censorious selectivity by prosecutors is . . . high" when a law permits the prosecution of lies "in political contexts").

Knudsen does argue that the Act's speech compulsion (Mot. 19-21) is "akin to the disclosure provisions" upheld in *Citizens United*. Opp. 18. That is not so. Requiring identification of the speaker or sponsor of an advertisement serves an anti-corruption rationale by allowing observers "to follow the money." *Hum. Life of Washington Inc. v. Brumsickle*, 624 F.3d 990, 997 (9th Cir. 2010). But here, the Act would compel commentary on the content itself, thus altering, and for Bartel's speech, undermining, the original message. Mot. 21. Without action by this Court, Bartel will be forced into saying simultaneously that Senator Dunwell "voted to raise the gas tax" and that his own ad "depicts...conduct that falsely appears to be authentic or truthful." Dkt. 8-1; § 13-35-802(1)(b).

Plaintiffs are likely to succeed on their First Amendment challenge.

B. The Act is unconstitutionally vague.

According to Knudsen, the meaning of "Deepfake" will be clear in the "vast majority of situations." Opp. 21. The Commissioner's legislative witness disagrees

with this assessment. Mot. 22-23 (citing Complaint ¶¶24). That witness was correct; whether content appears different than what occurred in reality or provides a fundamentally different understanding or impression is an inherently subjective and thus vague standard. Mot. 22. These concepts have no “settled usage or tradition.” *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1049 (1991).

And it is no answer to point to the well-rooted “reasonable person” standard. What appears “realistic” or “authentic” will vary from one reasonable person to the next. Mot. 21-22. The First Amendment thus often requires more than invoking a “reasonable person” standard. *See, e.g., Counterman v. Colorado*, 600 U.S. 66, 76-78 (2023) (state’s “reasonable person” standard did not sufficiently protect First Amendment rights in a true-threats prosecution). Presumably, Knudsen would not call the Montana legislators who have filed complaints against Bartel “unreasonable” for their different impression of Bartel’s speech. Just as presumably AG Ellison would not call the “senior public officials, including a sitting governor and a sitting United States Senator” “unreasonable” for believing that Christopher Kohls’s AI-generated political video “was realistic.” *Kohls v. Ellison*, 166 F.4th at 732.

The scienter requirement cannot resolve vagueness problems either because the object of that intent (whether particular content counts as a “Deepfake”) is vague. *See NetChoice, LLC v. Bonta*, 170 F.4th 744, 765-66 (9th Cir. 2026); *Baggett v. Bullitt*, 377 U.S. 360, 369 (1964) (“knowing” mens rea qualification did not save statute from vagueness challenge); *Cramp v. Bd. of Pub. Instruction*,

368 U.S. 278, 286-87 (1961) (same). “First Amendment freedoms need breathing space to survive. An intent test provides none.” *Wisconsin Right to Life v. FEC*, 551 U.S. 449, 468-69 (2007); *cf. also SBA List*, 573 U.S. at 163 (repudiating notion that plaintiff could feel secure under “knowing” falsehood standard).

Plaintiffs are likely to succeed on their vagueness challenge.

C. At minimum, Plaintiffs have shown success on their as-applied constitutional claims.

Plaintiffs bring both facial and as-applied claims against enforcement of the Act. *See* Complaint ¶¶61-73, 83; Mot. 21 (discussing First Amendment infringement as applied to Bartel’s speech); Mot. 23 (discussing vagueness as applied to Bartel’s speech). But Knudsen rests his entire merits defense against the preliminary injunction motion on Bartel’s facial claims. Opp. 16-24.⁸ Thus, if the Court agrees that Plaintiffs have standing (*see* Section I, *supra*), it should at a minimum enjoin enforcement of the law as against Plaintiffs for their past and intended future speech. *See Italian Colors Rest.*, 878 F.3d at 1179 (limiting scope of injunction to the particular unconstitutional applications). Bartel requests an injunction to overcome the chill of a vague law that has already subjected him to multiple complaints. *See* Bartel Decl. ¶20. Even if the Court declines at this stage to resolve Plaintiffs’ facial challenge, the un rebutted as-applied showing independently supports preliminary relief protecting Plaintiffs’ speech.

⁸ For reasons discussed in Sections II.A-B, *supra*, this facial defense ultimately fails.

III. Plaintiffs face irreparable harm; the public interest supports a preliminary injunction

Continuing the theme from his standing section, Knudsen argues that Bartel's intended upcoming mailer would not "clearly violate" the Act. Opp. 25. But "clearly violate" is not the standard for an injunction in the context of a First Amendment claim. The point of a protective injunction is eliminating the chill arising from a vague, broadly-worded statute that has already been used as a tool of retaliation by Plaintiffs' political opponents. Such a chilling effect makes "case-by-case adjudication intolerable." *Bd. of Airport Commrs. v. Jews for Jesus*, 482 U.S. 569, 575-76 (1987).

Knudsen asserts (Opp. 25-26) that Bartel has unreasonably delayed seeking preliminary injunctive relief, but there was no reason for Bartel to move earlier. The Act only proscribes speech within a 60-day pre-election window and Bartel only has plans to continue engaging in covered speech when the November 2026 general election window opens. Bartel Decl. ¶18. In the Ninth Circuit, delays are not "determinative" in cases concerning irreparable harms to First Amendment rights, and courts are appropriately "loath to withhold relief solely on that ground." *Cuviello v. City of Vallejo*, 944 F.3d 816, 833 (9th Cir. 2019) (plaintiff moved for preliminary injunction five months after being threatened with prosecution, seventeen months after actual knowledge of violating protest permit code, and seventeen *years* after the code was enacted). The presumption of irreparable injury exists because the "loss of First Amendment freedoms, for even minimal periods

of time, unquestionably constitutes irreparable injury.” *Id.* “[T]ardiness is not particularly probative in the context of ongoing, worsening injuries.” *Id.*

Because Bartel has shown likelihood of success on his constitutional claims, “the remaining...factors favor enjoining the likely unconstitutional law.” *Imperial Sovereign Ct.*, 170 F.4th at 876. “This is especially so because the [statute] under scrutiny imposes criminal sanctions for failure to comply.” *Doe v. Harris*, 772 F.3d 563, 583 (9th Cir. 2014). Thus, “[t]here is a potential for extraordinary harm and a serious chill upon protected speech.” *Id.* “No public interest is served by maintaining an unconstitutional policy when constitutional alternatives are available to achieve the same goal.” *Harvest Rock Church, Inc. v. Newsom*, 985 F.3d 771, 774 (9th Cir. 2021) (O’Scannlain, J. concurring) (internal quotation omitted).

CONCLUSION

For these reasons, the Court should grant Plaintiffs’ motion for a preliminary injunction.

Dated: August 17, 2026

/s/ Matthew G. Monforton

Matthew G. Monforton (Montana Bar # 5245)

Monforton Law Offices, PLLC

32 Kelly Court

Bozeman, Montana 59718

Phone: (406) 570-2949

Email: matthewmonforton@yahoo.com

Adam E. Schulman (DC Bar No. 1001606*)

HAMILTON LINCOLN LAW INSTITUTE

1629 K Street, NW Suite 300

Washington, DC 20006

Phone: (610) 457-0856

Email: adam.schulman@hlli.org

** admitted pro hac vice*

*Attorneys for Plaintiffs Accountability in State
Government and Dan Bartel*

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Local Civil Rule 7.1(d) because this brief is 3165 words long, excluding the caption, tables of contents and authorities, signature blocks, and certificates.

Dated: August 17, 2026

/s/ Matthew Monforton

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August, 2026, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF system.

/s/ Matthew Monforton