

SENATE FLOOR ALERT

AB 730 (Berman) – Deceptive audio or visual media

OPPOSE



August 22, 2019

To: Members of the California State Senate

From:

American Civil Liberties Union on California
California Cable and Telecommunications Association
Electronic Frontier Foundation

California Broadcasters Association
California News Publishers Association

The organizations listed above **OPPOSE**, and respectfully request your **NO** vote on AB 730 (Berman). AB 730 would result in political speech being suppressed by unfairly forcing content distributors – who have neither the first-hand knowledge of whether material is fake nor a basis for deciding how a reasonable person would “understand or experience” material that is altered – to police political speech and imposing significant new liability for making the wrong call.

Makes the Problem Worse

Creates a false expectation that voters can trust images and videos unless they are labeled as manipulated, when in fact the bill only applies to a fraction of the misleading images and recordings that could influence an election.

Discourages reporting by news media on alleged deepfakes by creating liability unless the media states that the content “does not accurately represent the speech or conduct of the candidate,” which may itself mislead voters.

Least likely to apply where voters are most likely to encounter deepfakes: Due to federal law, the bill is preempted and cannot apply to manipulated images and recordings shared on social media and many political ads on television.

Since courts will not be able to resolve claims before Election Day, the bill’s procedures can be weaponized to add legitimacy to claims that real images and recordings are “fake news.”

Attacks Protected Speech

Allows a candidate to obtain an injunction that prohibits the dissemination of political speech without requiring any proof of harm or even a showing that the message conveyed is actually false.

Targets core political speech without regard to its legitimacy: Commentary and criticism, parody and satire, and re-enactments of real events would all be subject to the bill’s requirements.

False speech – especially political speech – is protected by the constitution: *Susan B. Anthony List v. Driehaus* (6th Cir. 2016) 814 F.3d 466 struck down a political false speech law in Ohio.

Effective Remedies Already Exist

Existing defamation and false light laws can be used to recover for reputational harms caused by deepfakes without running afoul of the First Amendment.

Candidates can use their status as public figures to counter false information about them.