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18 *and Kelly Chang Rickert*

19 ** Local Counsel*

20 ***Pro hac vice application forthcoming*

21 **UNITED STATES DISTRICT COURT**

22 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

23 **The Babylon Bee, LLC, and Kelly**
24 **Chang Rickert,**

25 *Plaintiffs,*

26 v.

27 **Robert A. Bonta, et al.,**

28 *Defendants.*

Civil No. 2:24-cv-08377-FMO-DTB

Plaintiffs' Application for Temporary Restraining Order, or Alternative Motion for Expedited Preliminary Injunction

Date: October 10, 2024

Time: 10:00 A.M.

Courtroom: 6D

Judge: Fernando M. Olguin

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2 TO DEFENDANTS BONTA AND WEBER AND TO THEIR
3 ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE THAT before the Honorable Judge Fernando
5 M. Olguin at the United States Courthouse, 350 W. 1st Street, 6th Floor,
6 Courtroom 6D, Los Angeles, CA 90012, on Thursday, October 10 at 10:00
7 a.m., Plaintiffs The Babylon Bee, LLC and Kelly Chang Rickert will move for
8 an order for a temporary restraining order or, in the alternative, an
9 expedited motion for preliminary injunction under FED. R. CIV. P. 65 to stop
10 Defendants Bonta and Weber from violating the First and Fourteenth
11 Amendments to the United States Constitution.
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14 **I. Plaintiffs ask this Court to temporarily restrain or
15 preliminarily enjoin AB 2839.**

16 Plaintiffs ask that this Court temporarily restrain or preliminarily
17 enjoin Defendants Bonta and Weber, their officers, agents, servants,
18 employees, attorneys, and those persons in active concert or participation
19 with them who receive actual notice of this order from enforcing:

- 20
- 21 • Any provision of AB 2839 against anyone, including Plaintiffs,
22 because various provisions and terms of AB 2839 are facially
23 content- and viewpoint-based, vague, and overbroad, and these
24 provisions are not severable from the rest of AB 2839.

25 In the alternative, Plaintiffs ask that this Court to temporarily restrain
26 or preliminarily enjoin Defendants Bonta and Weber, their officers, agents,
27 servants, employees, attorneys, and those persons in active concert or
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1 participation with them who receive actual notice of this order from
2 enforcing:

- 3 • AB 2839 to prohibit Plaintiffs and similarly situated speakers
4 from posting or reposting the desired online posts identified in
5 Plaintiffs' Complaint, *see* Compl. ¶¶ 47, 52–66, 116–38, and
6 materially similar content that discuss candidates for elective
7 office, election officials, voting machines, ballots, voting sites, or
8 other property or equipment related to an election in California.
- 9 • AB 2839 to compel Plaintiffs and similarly situated speakers to
10 include the statutorily required disclosure in any satire or
11 parody materials, including online satirical or parodical posts
12 identified in Plaintiffs' Complaint, *see* Compl. ¶¶ 47, 52–66, 116–
13 17, 118 (bullets # 2, 4, and 6), 119–130, 136, and materially
14 similar content that discuss candidates for elective office,
15 election officials, voting machines, ballots, voting sites, or other
16 property or equipment related to an election in California.

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19 Absent a temporary restraining order or preliminary injunction,
20 Plaintiffs and other online speakers will suffer irreparable harm. *See also*
21 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th
22 Cir. 2001) (noting analysis for a temporary restraining order is “substan-
23 tially similar”).
24

25 They will suffer the continued violation of their rights guaranteed by
26 the United States Constitution. Plus, they face substantial risks of being
27 punished under AB 2839, of having their speech restricted and removed
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1 under AB 2839, or of being forced to self-censor to avoid punishment or
2 restriction under AB 2839. As a result, AB 2839 will dramatically curtail
3 their ability to express their views regarding the federal and state elections
4 on November 5, 2024. Indeed, California officials, including Governor
5 Newsom, accelerated passage and approval of AB 2839 precisely so it could
6 have this speech-suppressing effect right before this national election.
7 Compl. ¶¶ 153, 169. And they tailored its provisions so that it targets
8 election-related speech during the very time period such speech is likely to
9 have a demonstrable impact. *Id.* ¶¶ 169–71. Plaintiffs are also likely to
10 succeed on the merits; their requested injunction serves the public interests;
11 and the balance of the equities tips in their favor. *See Fellowship of*
12 *Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664,
13 683–84, 694–95 (9th Cir. 2023).

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16 In this request, Plaintiffs seek relief only against Defendants Bonta
17 and Weber and not Defendants Gascon or Soto because Defendants Bonta
18 and Weber are the primary enforcement officials with primary responsibility
19 to enforce AB 2839. *See* Compl. ¶¶ 14–15, 19–21; *Bland v. Fessler*, 88 F.3d
20 729, 738 (9th Cir. 1996) (allowing litigation to proceed against state official
21 that “has far and away the greatest resources, both economic and political”
22 to enforce statute even though others could also enforce challenged statute).
23 Counsel for Defendants Bonta and Weber have also recently appeared in
24 federal court in a similar case and defended their authority to enforce the
25 law challenged here. *See* Opposition to Plaintiff’s Motion for Preliminary
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1 Injunction, *Kohls v. Bonta*, No. 2:24-cv-02527 (E.D. Cal. Sept. 23, 2024), ECF
2 No. 9.

3 In support of their application and motion, Plaintiffs rely on the
4 following documents:

- 5 • Plaintiffs’ Verified Complaint and all attached exhibits;
- 6 • Plaintiffs’ Memorandum in Support of Plaintiffs’ Application for
7 Temporary Restraining Order, or Alternative Motion for
8 Expedited Preliminary Injunction;
- 9 • Declaration of Jonathan Scruggs in Support of Plaintiffs’
10 Application for Temporary Restraining Order, or Alternative
11 Motion for Expedited Preliminary Injunction;
- 12 • Any supplemental declaration in support of Plaintiffs’ Application
13 for Temporary Restraining Order, or Alternative Motion for
14 Expedited Preliminary Injunction and related documents; and
- 15 • Plaintiffs’ Reply Memorandum in Support of their Application for
16 Temporary Restraining Order, or Alternative Motion for
17 Expedited Preliminary Injunction and related documents (if filed)
18 and supporting documents (if any).

19 Plaintiffs also ask this Court to waive any bond because this requested
20 injunction serves the public interest by vindicating First Amendment rights
21 and causes no harm to California. *See Frankel v. Regents of Univ. of Cal.*, __
22 F. Supp. 3d __, 2024 WL 3811250, *8 (C.D. Cal. Aug. 13, 2024) (noting courts
23 have issued preliminary injunctions in First Amendment cases “without
24 requiring security”); *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)

1 (holding a district court “may dispense with the filing of a bond when it
2 concludes there is no realistic likelihood of harm to the defendant from
3 enjoining his or her conduct”).

4 **II. Plaintiffs’ need for immediate relief.**

5 As has long been recognized, “timing is of the essence in politics,” and
6 “it is often necessary to have one’s voice heard promptly, if it is to be
7 considered at all.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163
8 (1969) (Harlan, J., concurring). That is particularly true of election-related
9 speech during the weeks leading up to an election. If that speech is to have
10 any impact, it must be heard at that time.

11
12 Yet AB 2839 seeks to curtail election-related speech during a critical
13 six-month window—from one hundred and twenty days before an election to
14 either the day of or sixty days after the election. *See* Cal. Elec. Code
15 § 20012(c); *Boquist v. Courtney*, 32 F.4th 764, 783 (9th Cir. 2022) (faulting
16 restriction that “disproportionately burdens political speech that must
17 respond to changing current events”). Nor is this an accidental bug of AB
18 2839. Rather, Governor Newsom pushed for passage of this legislation
19 precisely so that it would impact the 2024 national election, and he did so
20 because he disliked a parody video about the presidential race. Compl.
21 ¶¶ 150–57. The legislature responded by passing it, adding an urgency clause
22 so that the law would take effect before the 2024 election, and tailoring its
23 provisions to apply only before and after an election. *Id.* ¶¶ 169–71.

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25 Because Plaintiffs desire to exercise their First Amendment right to
26 speak out on election-related matters—including candidates, elected
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1 officials, and voting—Plaintiffs respectfully request that this Court grant
2 their application for a temporary restraining order or alternatively expedite
3 consideration of their preliminary injunction motion. Otherwise, this Court
4 will inadvertently effectuate what California hopes to accomplish through
5 AB 2839: the silencing of the unfettered debate and exchange of ideas that
6 are the hallmark of a free people.
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8 As set forth in the Declaration of Jonathan Scruggs, counsel for
9 Plaintiffs has already reached out to counsel for Defendants Bonta and
10 Weber by email and agreed upon a proposed expedited briefing schedule that
11 is similar to the briefing schedule entered in *Kohls v. Bonta*, No. 2:24-cv-
12 02527 (E.D. Cal. 2024) for the expedited motion for preliminary injunction
13 recently filed in that case. Counsel for Plaintiffs and for Defendants Bonta
14 and Weber agreed here that Plaintiffs would file their motion on Tuesday
15 October 1; Defendants’ opposition would be due Monday, October 7;
16 Plaintiffs’ reply would be due Wednesday, October 9; and Plaintiffs would
17 notice the motion for October 10. Counsel for Plaintiffs and Defendants have
18 alerted the Courtroom Deputy Clerk to this proposed schedule, subject to
19 any change or different schedule that the Court may order.
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24 DATED: October 1, 2024

25 /s/ David A. Shaneyfelt
26 David A. Shaneyfelt
27 Counsel for Plaintiffs
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PROOF OF SERVICE

I, David A. Shaneyfelt, am over the age of 18 years and not a party to the within action. My business address is 24005 Ventura Blvd., Calabasas, CA 91302.

On October 1, 2024, I electronically filed Plaintiffs’ Application for Temporary Restraining Order, or Alternative Motion for Expedited Preliminary Injunction with the Clerk of Court using the CM/ECF system. Pursuant to L.R. 5-3.2.1, the CM/ECF system automatically generates a “Notice of Electronic Filing” (“NEF”) at the time a document is filed with the system; service with this electronic NEF constitutes service pursuant to the Federal Rules of Civil Procedure, and the NEF itself constitutes proof of service for individuals so served.

In addition, pursuant to L.R. 5-3.2.1, I will serve via process server the foregoing document as well as the Verified Complaint and attached exhibits by process server addressed to the following persons not registered for the CM/ECF system and notify the Court once these persons have been served:

| | |
|---|---|
| Rob Bonta, in his official capacity as Attorney General of the State of California State of California Dept. of Justice 1300 "I" Street, Sacramento, CA 95814-2919 | Shirley N. Weber, in her official ca- pacity as California Secretary of State 1500 11th Street Sacramento, CA 95814 |
|---|---|

In addition, my co-counsel will email the foregoing documents to counsel for Defendants Bonta and Weber as laid out in his declaration filed in support of this motion.

1 I declare under penalty of perjury that the foregoing is true and cor-
2 rect.

3 /s/ David A. Shaneyfelt
4 David A. Shaneyfelt
5 Counsel for Plaintiffs
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