STATE OF NEW YORK

9678--B

IN SENATE

May 17, 2024

Introduced by Sen. GONZALEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to materially deceptive media in political communications

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (b) of subdivision 5 of section 14-106 of the election law, as added by section 1 of subpart B of part MM of chapter 58 of the laws of 2024, is amended and a new subdivision 7 is added to read as follows:

(b) (i) A person, firm, association, corporation, campaign, committee, or organization that distributes or publishes any political communication that was produced by or includes materially deceptive media and [~~knows or should know~~] **has actual knowledge** that it is materially deceptive shall be required to disclose this use.

(ii) (1) For visual media the disclosure shall be printed or typed in a legible font size easily readable by the average viewer that is no smaller than other text appearing in the visual media and in the same language used on the communication to read as follows: "This (image, video, or audio) has been manipulated".

(2) For communication that is auditory, such as radio or automated telephone calls, clearly speaking the statement at the beginning of the audio, at the end of the audio, and, if the audio is greater than two minutes in length, interspersed within the audio at intervals of not greater than two minutes each and in the same language as the rest of the audio used in the communication, and in a pitch that can be easily heard by the average listener satisfies the requirements of clause one of this subparagraph.

(iii) This paragraph shall not apply to the following:

(1) materially deceptive media that constitutes satire or parody;

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(2) materially deceptive media [~~created for the purposes of~~] distributed by a bona fide news [~~reporting when the required disclosure is included~~] reporting entity for the purpose of news reporting or coverage, if the reporting clearly acknowledges through content or a disclosure, in a manner that can be easily read or heard by the average listener or viewer, that there are questions about the authenticity of the materially deceptive media; [~~or~~]

(3) a radio or television broadcasting station, including a cable television, satellite television or streaming service operator, programmer, producer or other similar entity, that broadcasts a political communication when the station or streaming service is paid to broadcast the political communication if the station or streaming service can show that it has disclaimer requirements that are consistent with the requirements provided in this paragraph and that it provided those disclaimer requirements to each person or entity that purchased the broadcast or streaming of the advertisement; or

(4) initial dissemination by a platform or service including, but not limited to, a website, regularly published newspaper, or magazine, where the content disseminated is materially deceptive media provided by another information content provider [~~when a good faith effort has been made to establish that the depiction is not materially deceptive media~~].

(iv) A candidate whose voice or likeness appears in materially deceptive media in violation of this subdivision may seek reasonable court costs and attorneys' fees and injunctive relief prohibiting the distribution, publication or broadcasting of any materially deceptive media in violation of this subdivision against such individual or entity who disseminated or published such media without the consent of the person depicted and who knew or should have known that it was materially deceptive. An action under this paragraph shall be initiated by filing an application for an order to show cause in the supreme court where the materially deceptive media at issue could deceive and influence electors in an upcoming election. Such action shall be entitled to an automatic calendar preference and be subject to expedited pretrial and trial proceedings.

(v) In any action alleging a violation of this subdivision in which a plaintiff seeks preliminary relief with respect to an upcoming election, the court shall grant relief if it determines that:

(A) plaintiffs are more likely than not to succeed on the merits; and

(B) it is possible to implement an appropriate remedy that would resolve the alleged violation in the upcoming election.

(vi) In any action commenced under this subdivision, the plaintiff bears the burden of establishing the use of materially deceptive media by clear and convincing evidence.

7. Nothing in this section shall be construed to require entities to cancel, edit, or insert video or audio labels into political communications where such action is inconsistent with federal law.

§ 2. This act shall take effect immediately.