

STATE OF NEW YORK

9678--A

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

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:

1 Section 1. Paragraph (b) of subdivision 5 of section 14-106 of the
2 election law, as added by section 1 of subpart B of part MM of chapter
3 58 of the laws of 2024, is amended and a new subdivision 7 is added to
4 read as follows:

5 (b) (i) A person, firm, association, corporation, campaign, committee,
6 or organization that distributes or publishes any political communi-
7 cation that was produced by or includes materially deceptive media and
8 [~~knows or should know~~] has actual knowledge that it is materially decep-
9 tive shall be required to disclose this use.

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

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

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

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

25 (2) materially deceptive media [~~created for the purposes of~~] distrib-
26 uted by a bona fide news [~~reporting when the required disclosure is~~

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

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1 ~~included~~] magazine, bona fide news broadcaster, or bona fide news wire
2 service for the purpose of news reporting or coverage, if the reporting
3 clearly acknowledges through content or a disclosure, in a manner that
4 can be easily read or heard by the average listener or viewer, that
5 there are questions about the authenticity of the materially deceptive
6 media; [ex]

7 (3) a radio or television broadcasting station, including a cable
8 television, satellite television or streaming service operator, program-
9 mer or producer, that broadcasts an advertisement when the station or
10 streaming service is paid to broadcast the advertisement if the station
11 or streaming service can show that it has disclaimer requirements that
12 are consistent with the requirements provided in this paragraph and that
13 it provided those disclaimer requirements to each person or entity that
14 purchased the broadcast or streaming of the advertisement; or

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

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

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

36 (A) plaintiffs are more likely than not to succeed on the merits; and
37 (B) it is possible to implement an appropriate remedy that would
38 resolve the alleged violation in the upcoming election.

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

42 7. Nothing in this section shall be construed to require broadcast
43 service providers to cancel, edit, or insert video or audio labels into
44 political communications where such action is inconsistent with federal
45 law.

46 § 2. This act shall take effect immediately.