

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 1988

S.P. 690

In Senate, January 8, 2020

**An Act To Prohibit the Distribution of Deceptive Images or Audio
or Video Recordings with the Intent To Influence the Outcome of an
Election**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MILLETT of Cumberland.
Cosponsored by Representative FECTEAU of Biddeford and
Senators: CARPENTER of Aroostook, DESCHAMBAULT of York, LIBBY of Androscoggin,
LUCHINI of Hancock, Representatives: BERRY of Bowdoinham, HICKMAN of Winthrop,
McCREIGHT of Harpswell, STOVER of Boothbay.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 21-A MRSA §34** is enacted to read:

3 **§34. Materially deceptive audio or visual media**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Materially deceptive audio or visual media" means an image or an audio or video
7 recording of a candidate's appearance, speech or conduct that has been intentionally
8 manipulated in a manner that would cause a reasonable person:

9 (1) To mistakenly believe that the image or audio or video recording is authentic;
10 and

11 (2) To have a fundamentally different understanding or impression of the
12 expressive content of the image or audio or video recording than that person
13 would have if the person were hearing or seeing the unaltered, original version of
14 the image or audio or video recording.

15 "Materially deceptive audio or visual media" does not include any image or audio or
16 video recording that constitutes satire or parody.

17 B. "Person" means an individual, committee, firm, partnership, corporation,
18 association or organization.

19 **2. Prohibition.** Except as provided in subsection 3 or 4, a person may not, with
20 actual malice and within 60 days of an election at which a candidate will appear on the
21 ballot, publish or distribute materially deceptive audio or visual media of the candidate
22 with the intent to injure the candidate's reputation or to deceive a voter into voting for or
23 against the candidate.

24 **3. Exception; disclosure.** Notwithstanding subsection 2, a person may, within 60
25 days of an election at which a candidate will appear on the ballot, publish or distribute an
26 image or an audio or video recording that would otherwise qualify as materially deceptive
27 audio or visual media of the candidate if the image or audio or video recording is
28 accompanied by a disclosure as described in this subsection.

29 A. If the material is an image, the following disclosure must be printed immediately
30 adjacent to the image in a font size that is easily readable by the average viewer and
31 that is no smaller than the largest font size of other text, if any, published or
32 distributed with the image: "This image has been manipulated."

33 B. If the material is a video recording, the following disclosure must appear for the
34 duration of the video recording in a font size that is easily readable by the average
35 viewer and that is no smaller than the largest font size of other text, if any, included
36 in the video recording: "This video has been manipulated."

37 C. If the material is an audio recording, the following disclosure must be read in a
38 clearly spoken manner and in a pitch that can be easily heard by the average listener,
39 at the beginning and end of the audio recording and, if the audio recording is greater

1 than 2 minutes in length, interspersed within the audio recording at intervals of no
2 greater than 2 minutes each: "This audio has been manipulated."

3 **4. Persons exempt.** Notwithstanding subsection 2, the following persons may
4 publish or distribute materially deceptive audio or visual media in the following
5 circumstances:

6 A. A radio or television broadcasting station, including a cable or satellite television
7 operator, programmer or producer, may broadcast materially deceptive audio or
8 visual media as part of a bona fide newscast, news interview or news documentary or
9 on-the-spot coverage of a bona fide news event if the broadcast includes in a clear
10 statement that can be easily heard or read by the average listener or viewer that there
11 are questions about the authenticity of the materially deceptive audio or visual media;

12 B. A radio or television broadcasting station, including a cable or satellite television
13 operator, programmer or producer, may broadcast materially deceptive audio or
14 visual media if it is paid to do so; and

15 C. The owner of a publicly accessible website or the publisher or printer of a
16 regularly published newspaper, magazine or other periodical of general circulation,
17 including an Internet or electronic publication, that routinely carries news and
18 commentary of general interest may publish materially deceptive audio or visual
19 media if the media is accompanied by a clear statement that the materially deceptive
20 audio or visual media does not accurately represent the speech or conduct of the
21 candidate whose appearance, speech or conduct is manipulated in the media.

22 **5. Injunctive relief.** A candidate whose voice or image appears in a materially
23 deceptive audio or visual media published or distributed in violation of this section may
24 seek a temporary restraining order and injunction prohibiting publication or distribution
25 of the materially deceptive audio or visual media. The candidate bears the burden of
26 proving a violation of this section by clear and convincing evidence.

27 **6. Monetary damages.** A candidate whose voice or image appears in a materially
28 deceptive audio or visual media published or distributed in violation of this section may
29 bring a civil action against the person that published or distributed the materially
30 deceptive audio or visual media for the recovery of general or special damages as well as
31 reasonable attorney's fees and court costs. The candidate bears the burden of proving a
32 violation of this section by clear and convincing evidence. Nothing in this subsection
33 may be construed to preclude a candidate from seeking monetary or equitable relief
34 through other actions as permissible by law.

35 **7. Laws unaffected.** This section may not be construed to alter any rights,
36 obligations or immunities of an interactive computer service under 47 United States
37 Code, Section 230.

38 SUMMARY

39 This bill prohibits a person from publishing or distributing, with actual malice and
40 within 60 days of the date of an election, materially deceptive audio or visual media of a
41 candidate who will appear on the ballot with the intent to injure the candidate's reputation

1 or to deceive a voter into voting for or against the candidate. The bill defines "materially
2 deceptive audio or visual media" as an image or an audio or video recording of a
3 candidate that has been intentionally manipulated in a way that would cause a reasonable
4 person to mistakenly believe that the image or recording is authentic and that would cause
5 the person to have a fundamentally different understanding or impression of the content
6 of the image or recording than the person would have if the image or recording was
7 unaltered. An image or audio or video recording that constitutes satire or parody is not
8 considered materially deceptive audio or visual media. The bill authorizes a candidate
9 whose voice or image appears in materially deceptive audio or visual media to bring a
10 civil action seeking injunctive relief or monetary damages. In such an action, the
11 candidate bears the burden of proving the violation by clear and convincing evidence.

12 The bill's prohibition against the distribution of materially deceptive audio or visual
13 media does not apply if the materially deceptive audio or visual media is accompanied by
14 a disclosure indicating that the image or audio or video recording has been manipulated;
15 distributed as part of a news broadcast that includes a clear statement that there are
16 questions about the authenticity of the image or audio or video recording; broadcast by a
17 radio or television broadcasting station that has been paid to broadcast the materially
18 deceptive audio or visual media; or published by an Internet website or regularly
19 published newspaper, magazine or other periodical, as long as the materially deceptive
20 audio or visual media is accompanied by a statement that it does not accurately represent
21 the speech or conduct of the candidate.

22 This bill is based on a recently enacted California law.