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AB-730 Elections: deceptive audio or visual media. (2019-2020)

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Assembly Bill No. 730

CHAPTER 493

An act to amend, repeal, and add Section 35 of the Code of Civil Procedure, and to amend, add, and repeal Section 20010 of the Elections Code, relating to elections.

[Approved by Governor October 03, 2019. Filed with Secretary of State October 03, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 730, Berman. Elections: deceptive audio or visual media.

Existing law prohibits a person or specified entity from, with actual malice, producing, distributing, publishing, or broadcasting campaign material, as defined, that contains (1) a picture or photograph of a person or persons into which the image of a candidate for public office is superimposed or (2) a picture or photograph of a candidate for public office into which the image of another person or persons is superimposed, unless the campaign material contains a specified disclosure.

This bill would, until January 1, 2023, instead prohibit a person, committee, or other entity, within 60 days of an election at which a candidate for elective office will appear on the ballot, from distributing with actual malice materially deceptive audio or visual media of the candidate with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate, unless the media includes a disclosure stating that the media has been manipulated. The bill would restore the existing provisions described above on January 1, 2023. The bill would define "materially deceptive audio or visual media" to mean an image or audio or video recording of a candidate's appearance, speech, or conduct that has been intentionally manipulated in a manner such that the image or audio or video recording would falsely appear to a reasonable person to be authentic and would cause a reasonable person to have a fundamentally different understanding or impression of the expressive content of the image or audio or video recording than that person would have if the person were hearing or seeing the unaltered, original version of the image or audio or video recording.

The bill would authorize, until January 1, 2023, a candidate for elective office whose voice or likeness appears in audio or visual media distributed in violation of this section to seek injunctive or other equitable relief prohibiting the distribution of the deceptive audio or visual media. It would also authorize a candidate whose voice or likeness appears in the deceptive audio or visual media to bring an action for general or special damages against the person, committee, or other entity that distributed the media, and would authorize the court to award a prevailing party reasonable attorney's fees and costs.

The bill would provide exemptions for all of the following: (1) a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, when it is paid to broadcast materially deceptive audio or visual media, (2) materially deceptive audio or visual media that constitutes satire or parody, (3) a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, that broadcasts materially deceptive audio or visual media as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of bona fide news events, if the broadcast clearly acknowledges through content or a disclosure that there are questions about the authenticity of the materially deceptive audio or visual media, and (4) an internet website, or a regularly published newspaper, magazine, or other periodical of

general circulation, including an internet or electronic publication, that routinely carries news and commentary of general interest, and that publishes the materially deceptive audio or visual media, if the publication clearly states that the materially deceptive audio or visual media does not accurately represent the speech or conduct of the candidate.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 35 of the Code of Civil Procedure is amended to read:

35. (a) Proceedings in cases involving the registration or denial of registration of voters, the certification or denial of certification of candidates, the certification or denial of certification of ballot measures, election contests, and actions under Section 20010 of the Elections Code shall be placed on the calendar in the order of their date of filing and shall be given precedence.

(b) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

SEC. 2. Section 35 is added to the Code of Civil Procedure, to read:

35. (a) Proceedings in cases involving the registration or denial of registration of voters, the certification or denial of certification of candidates, the certification or denial of certification of ballot measures, and election contests shall be placed on the calendar in the order of their date of filing and shall be given precedence.

(b) This section shall become operative January 1, 2023.

SEC. 3. Section 20010 of the Elections Code is amended to read:

20010. (a) Except as provided in subdivision (b), a person, firm, association, corporation, campaign committee, or organization shall not, with actual malice, produce, distribute, publish, or broadcast campaign material that contains (1) a picture or photograph of a person or persons into which the image of a candidate for public office is superimposed or (2) a picture or photograph of a candidate for public office into which the image of another person or persons is superimposed. "Campaign material" includes, but is not limited to, any printed matter, advertisement in a newspaper or other periodical, television commercial, or computer image. For purposes of this section, "actual malice" means the knowledge that the image of a person has been superimposed on a picture or photograph to create a false representation, or a reckless disregard of whether or not the image of a person has been superimposed on a picture or photograph to create a false representation.

(b) A person, firm, association, corporation, campaign committee, or organization may produce, distribute, publish, or broadcast campaign material that contains a picture or photograph prohibited by subdivision (a) only if each picture or photograph in the campaign material includes the following statement in the same point size type as the largest point size type used elsewhere in the campaign material: "This picture is not an accurate representation of fact." The statement shall be immediately adjacent to each picture or photograph prohibited by subdivision (a).

(c) (1) Any registered voter may seek a temporary restraining order and an injunction prohibiting the publication, distribution, or broadcasting of any campaign material in violation of this section. Upon filing a petition under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure.

(2) A candidate for public office whose likeness appears in a picture or photograph prohibited by subdivision (a) may bring a civil action against any person, firm, association, corporation, campaign committee, or organization that produced, distributed, published, or broadcast the picture or photograph prohibited by subdivision (a). The court may award damages in an amount equal to the cost of producing, distributing, publishing, or broadcasting the campaign material that violated this section, in addition to reasonable attorney's fees and costs.

(d) (1) This section does not apply to a holder of a license granted pursuant to the federal Communications Act of 1934 (47 U.S.C. Sec. 151 et seq.) in the performance of the functions for which the license is granted.

(2) This section does not apply to the publisher or an employee of a newspaper, magazine, or other periodical that is published on a regular basis for any material published in that newspaper, magazine, or other periodical. For purposes of this subdivision, a "newspaper, magazine, or other periodical that is published on a regular basis" does not include any newspaper, magazine, or other periodical that has as its primary purpose the publication of campaign advertising or communication, as defined by Section 304.

(e) This section shall become operative on January 1, 2023.

SEC. 4. Section 20010 is added to the Elections Code, to read:

20010. (a) Except as provided in subdivision (b), a person, committee, as defined in Section 82013 of the Government Code, or other entity shall not, within 60 days of an election at which a candidate for elective office will appear on the ballot, distribute, with actual malice, materially deceptive audio or visual media, as defined in subdivision (e), of the candidate with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate.

(b) (1) The prohibition in subdivision (a) does not apply if the audio or visual media includes a disclosure stating: "This _____ has been manipulated."

(2) The blank in the disclosure required by paragraph (1) shall be filled with whichever of the following terms most accurately describes the media:

(A) Image.

(B) Video.

(C) Audio.

(3) (A) For visual media, the text of the disclosure shall appear in a size that is easily readable by the average viewer and no smaller than the largest font size of other text appearing in the visual media. If the visual media does not include any other text, the disclosure shall appear in a size that is easily readable by the average viewer. For visual media that is video, the disclosure shall appear for the duration of the video.

(B) If the media consists of audio only, the disclosure shall be read in a clearly spoken manner and in a pitch that can be easily heard by the average listener, 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.

(c) (1) A candidate for elective office whose voice or likeness appears in a materially deceptive audio or visual media distributed in violation of this section may seek injunctive or other equitable relief prohibiting the distribution of audio or visual media in violation of this section. An action under this paragraph shall be entitled to precedence in accordance with Section 35 of the Code of Civil Procedure.

(2) A candidate for elective office whose voice or likeness appears in a materially deceptive audio or visual media distributed in violation of this section may bring an action for general or special damages against the person, committee, or other entity that distributed the materially deceptive audio or visual media. The court may also award a prevailing party reasonable attorney's fees and costs. This subdivision shall not be construed to limit or preclude a plaintiff from securing or recovering any other available remedy.

(3) In any civil action alleging a violation of this section, the plaintiff shall bear the burden of establishing the violation through clear and convincing evidence.

(d) (1) This section shall not be construed to alter or negate any rights, obligations, or immunities of an interactive service provider under Section 230 of Title 47 of the United States Code.

(2) This section does not apply to a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, that broadcasts materially deceptive audio or visual media prohibited by this section as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of bona fide news events, if the broadcast clearly acknowledges through content or a disclosure, in a manner that can be easily heard or read by the average listener or viewer, that there are questions about the authenticity of the materially deceptive audio or visual media.

(3) This section does not apply to a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, when it is paid to broadcast materially deceptive audio or visual media.

(4) This section does not apply to an internet website, or a regularly published newspaper, magazine, or other periodical of general circulation, including an internet or electronic publication, that routinely carries news and commentary of general interest, and that publishes materially deceptive audio or visual media prohibited by this section, if the publication clearly states that the materially deceptive audio or visual media does not accurately represent the speech or conduct of the candidate.

(5) This section does not apply to materially deceptive audio or visual media that constitutes satire or parody.

(e) As used in this section, "materially deceptive audio or visual media" means an image or an audio or video recording of a candidate's appearance, speech, or conduct that has been intentionally manipulated in a manner such that both of the following conditions are met:

(1) The image or audio or video recording would falsely appear to a reasonable person to be authentic.

(2) The image or audio or video recording would cause a reasonable person to have a fundamentally different understanding or impression of the expressive content of the image or audio or video recording than that person would have if the person were hearing or seeing the unaltered, original version of the image or audio or video recording.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(g) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.