



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1717

Introduced 2/26/2021, by Sen. Cristina Castro

SYNOPSIS AS INTRODUCED:

10 ILCS 5/Art. 29D heading new
10 ILCS 5/29D-5 new
10 ILCS 5/29D-10 new
705 ILCS 35/28

from Ch. 37, par. 72.28

Amends the Election Code. Prohibits the distribution, with malice, of campaign material that contains a picture into which a candidate for public office or another person is superimposed. Prohibits, within 60 days of an election at which a candidate for elective office will appear on the ballot, the distribution, with actual malice, of 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. Provides remedies and exceptions for violating the provisions. Amends the Circuit Court Act. Provides that 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.

LRB102 15240 SMS 20595 b

1 AN ACT concerning elections.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Election Code is amended by adding Article
5 29D as follows:

6 (10 ILCS 5/Art. 29D heading new)

7 ARTICLE 29D. CAMPAIGN MATERIALS

8 (10 ILCS 5/29D-5 new)

9 Sec. 29D-5. Campaign material disclosures.

10 (a) As used in this Section:

11 "Actual malice" means the knowledge that the image of a
12 person has been superimposed on a picture or photograph to
13 create a false representation or a reckless disregard of
14 whether or not the image of a person has been superimposed on a
15 picture or photograph to create a false representation.

16 "Campaign material" includes, but is not limited to, any
17 printed matter, advertisement in a newspaper or other
18 periodical, television commercial, or computer image.

19 (b) Except as provided in subsection (c), a person, firm,
20 association, corporation, campaign committee, or organization
21 shall not, with actual malice, produce, distribute, publish,
22 or broadcast campaign material that contains (1) a picture or

1 photograph of a person or persons into which the image of a
2 candidate for public office is superimposed or (2) a picture
3 or photograph of a candidate for public office into which the
4 image of another person or persons is superimposed.

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

15 (d) Any registered voter may seek a temporary restraining
16 order and an injunction prohibiting the publication,
17 distribution, or broadcasting of any campaign material in
18 violation of this Section. Upon filing a petition under this
19 Section, the plaintiff may obtain a temporary restraining
20 order in accordance with Section 11-101 of the Code of Civil
21 Procedure.

22 (e) A candidate for public office whose likeness appears
23 in a picture or photograph prohibited by subsection (b) may
24 bring a civil action against any person, firm, association,
25 corporation, campaign committee, or organization that
26 produced, distributed, published, or broadcast the picture or

1 photograph prohibited by subsection (b). The court may award
2 damages in an amount equal to the cost of producing,
3 distributing, publishing, or broadcasting the campaign
4 material that violated this Section, in addition to reasonable
5 attorney's fees and costs.

6 (f) This Section does not apply to a holder of a license
7 granted pursuant to the federal Communications Act of 1934 (47
8 U.S.C. Sec. 151 et seq.) in the performance of the functions
9 for which the license is granted.

10 (g) This Section does not apply to the publisher or an
11 employee of a newspaper, magazine, or other periodical that is
12 published on a regular basis for any material published in
13 that newspaper, magazine, or other periodical. For purposes of
14 this subsection (g), a "newspaper, magazine, or other
15 periodical that is published on a regular basis" does not
16 include any newspaper, magazine, or other periodical that has
17 as its primary purpose the publication of campaign advertising
18 or communication.

19 (10 ILCS 5/29D-10 new)

20 Sec. 29D-10. Deceptive campaign materials.

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

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

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

10 (b) Except as provided in subsection (c), a person,
11 committee, or other entity shall not, within 60 days of an
12 election at which a candidate for elective office will appear
13 on the ballot, distribute, with actual malice, materially
14 deceptive audio or visual media of the candidate with the
15 intent to injure the candidate's reputation or to deceive a
16 voter into voting for or against the candidate.

17 (c) The prohibition in subsection (b) does not apply if
18 the audio or visual media includes a disclosure stating: "This
19 has been manipulated."

20 (d) The blank in the disclosure required by subsection (c)
21 shall be filled with whichever of the following terms most
22 accurately describes the media:

23 (1) Image.

24 (2) Video.

25 (3) Audio.

26 (e) For visual media, the text of the disclosure shall

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

8 (f) If the media consists of audio only, the disclosure
9 shall be read in a clearly spoken manner and in a pitch that
10 can be easily heard by the average listener, at the beginning
11 of the audio, at the end of the audio, and, if the audio is
12 greater than 2 minutes in length, interspersed within the
13 audio at intervals of not greater than 2 minutes each.

14 (g) A candidate for elective office whose voice or
15 likeness appears in a materially deceptive audio or visual
16 media distributed in violation of this Section may seek
17 injunctive or other equitable relief prohibiting the
18 distribution of audio or visual media in violation of this
19 Section. An action under this subsection (g) shall be entitled
20 to precedence in accordance with Section 28 of the Circuit
21 Courts Act.

22 (h) A candidate for elective office whose voice or
23 likeness appears in a materially deceptive audio or visual
24 media distributed in violation of this Section may bring an
25 action for general or special damages against the person,
26 committee, or other entity that distributed the materially

1 deceptive audio or visual media. The court may also award a
2 prevailing party reasonable attorney's fees and costs. This
3 subsection (h) shall not be construed to limit or preclude a
4 plaintiff from securing or recovering any other available
5 remedy.

6 (i) In any civil action alleging a violation of this
7 Section, the plaintiff shall bear the burden of establishing
8 the violation through clear and convincing evidence.

9 (j) This Section shall not be construed to alter or negate
10 any rights, obligations, or immunities of an interactive
11 service provider under Section 230 of Title 47 of the United
12 States Code.

13 (k) This Section does not apply to:

14 (1) a radio or television broadcasting station,
15 including a cable or satellite television operator,
16 programmer, or producer, that broadcasts materially
17 deceptive audio or visual media prohibited by this Section
18 as part of a bona fide newscast, news interview, news
19 documentary, or on-the-spot coverage of bona fide news
20 events if the broadcast clearly acknowledges through
21 content or a disclosure, in a manner that can be easily
22 heard or read by the average listener or viewer, that
23 there are questions about the authenticity of the
24 materially deceptive audio or visual media;

25 (2) a radio or television broadcasting station,
26 including a cable or satellite television operator,

1 programmer, or producer, when it is paid to broadcast
2 materially deceptive audio or visual media;

3 (3) an Internet website or a regularly published
4 newspaper, magazine, or other periodical of general
5 circulation, including an Internet or electronic
6 publication, that routinely carries news and commentary of
7 general interest and that publishes materially deceptive
8 audio or visual media prohibited by this Section if the
9 publication clearly states that the materially deceptive
10 audio or visual media does not accurately represent the
11 speech or conduct of the candidate; and

12 (4) materially deceptive audio or visual media that
13 constitutes satire or parody.

14 (1) The provisions of this Section are severable. If any
15 provision of this Section or its application is held invalid,
16 that invalidity shall not affect other provisions or
17 applications that can be given effect without the invalid
18 provision or application.

19 Section 10. The Circuit Courts Act is amended by changing
20 Section 28 as follows:

21 (705 ILCS 35/28) (from Ch. 37, par. 72.28)

22 Sec. 28. The said courts may, from time to time, make all
23 such rules for the orderly disposition of business before them
24 as may be deemed expedient, consistent with law.

1 Proceedings in cases involving the registration or denial
2 of registration of voters, the certification or denial of
3 certification of candidates, the certification or denial of
4 certification of ballot measures, and election contests shall
5 be placed on the calendar in the order of their date of filing
6 and shall be given precedence.

7 (Source: Laws 1933, p. 435.)