

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 565

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO ELECTIONEERING COMMUNICATIONS; AMENDING SECTION 67-6602, IDAHO
2 CODE, TO REVISE THE DEFINITION OF ELECTIONEERING COMMUNICATION; AMEND-
3 ING CHAPTER 66, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
4 67-6628A, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO
5 PROVIDE FOR RELIEF PROHIBITING THE PUBLICATION OF SYNTHETIC MEDIA IN
6 ELECTIONEERING COMMUNICATIONS, TO ESTABLISH PROVISIONS REGARDING AN
7 ACTION PROHIBITING THE PUBLICATION OF SYNTHETIC MEDIA IN ELECTIONEER-
8 ING COMMUNICATIONS, AND TO PROVIDE EXCEPTIONS; PROVIDING SEVERABILITY;
9 AND DECLARING AN EMERGENCY.
10

11 Be It Enacted by the Legislature of the State of Idaho:

12 SECTION 1. That Section 67-6602, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 67-6602. DEFINITIONS. As used in this chapter, the following terms
15 have the following meanings:

16 (1) "Candidate" means an individual who seeks nomination, election, or
17 reelection to public office and who has taken any of the following actions:

18 (a) Announced the individual's candidacy publicly;

19 (b) Filed for public office;

20 (c) Received a contribution for the purpose of promoting the individ-
21 ual's candidacy for office; or

22 (d) Made an expenditure, contracted for services, or reserved space
23 with the intent of promoting the individual's candidacy for office.

24 For purposes of this chapter, an incumbent shall be presumed to be a candi-
25 date in the subsequent election for his or her office until the incumbent has
26 failed to file a declaration of candidacy by the statutory deadline.

27 (2) "Compensation" includes any advance, conveyance, forgiveness of
28 indebtedness, deposit, distribution, loan, payment, gift, pledge or trans-
29 fer of money or anything of value, and any contract, agreement, promise or
30 other obligation, whether or not legally enforceable, to do any of the fore-
31 going, for services rendered or to be rendered, but does not include reim-
32 bursement of expenses if such reimbursement does not exceed the amount ac-
33 tually expended for such expenses and is substantiated by an itemization of
34 such expenses.

35 (3) "Contractor" means a person who receives compensation from another
36 person for either full-time or part-time work based on a contract or compen-
37 sation agreement, but who is not an employee of that person.

38 (4) "Contribution" includes any advance, conveyance, forgiveness of
39 indebtedness, deposit, distribution, loan, payment, gift, pledge, sub-
40 scription or transfer of money or anything of value, and any contract, agree-
41 ment, promise or other obligation, whether or not legally enforceable, to
42 make a contribution, in support of or in opposition to any candidate, polit-

1 ical committee or measure. Such term also includes personal funds or other
 2 property of a candidate or members of his household expended or transferred
 3 to cover expenditures incurred in support of such candidate but does not
 4 include personal funds used to pay the candidate filing fee. Such term also
 5 includes the rendering of personal and professional services for less than
 6 full consideration, but does not include ordinary home hospitality or the
 7 rendering of "part-time" personal services of the sort commonly performed
 8 by volunteer campaign workers or advisors or incidental expenses not in ex-
 9 cess of twenty-five dollars (\$25.00) personally paid for by any volunteer
 10 campaign worker. "Part-time" services, for the purposes of this definition,
 11 means services in addition to regular full-time employment, or, in the case
 12 of an unemployed person or persons engaged in part-time employment, services
 13 rendered without compensation or reimbursement of expenses from any source
 14 other than the candidate or political committee for whom such services are
 15 rendered. For the purposes of this act, contributions, other than money or
 16 its equivalent shall be deemed to have a money value equivalent to the fair
 17 market value of the contribution.

18 (5) "Election" means any state or local general, special, recall, or
 19 primary election.

20 (6) "Election campaign" means any campaign in support of or in opposi-
 21 tion to a candidate for election to public office and any campaign in support
 22 of, or in opposition to, a measure.

23 (7) (a) "Electioneering communication" means any communication broad-
 24 cast by television or radio, printed in a newspaper or on a billboard,
 25 directly mailed or delivered by hand to personal residences, or tele-
 26 phone calls made to personal residences, or otherwise distributed that:

- 27 (i) Unambiguously refers to any candidate; and
- 28 (ii) Is broadcasted, printed, mailed, delivered, made or dis-
 29 tributed within ~~thirty (30)~~ sixty (60) days before a primary
 30 election or ~~sixty (60) days~~ before a general election; and
- 31 (iii) Is broadcasted to, printed in a newspaper, distributed to,
 32 mailed to or delivered by hand to, telephone calls made to, or
 33 otherwise distributed to an audience that includes members of the
 34 electorate for such public office.

35 (b) "Electioneering communication" does not include:

- 36 (i) Any news articles, editorial endorsements, opinion or com-
 37 mentary, writings, or letter to the editor printed in a newspaper,
 38 magazine, or other periodical not owned or controlled by a candi-
 39 date, political committee, or political party;
- 40 (ii) Any editorial endorsements or opinions aired by a broadcast
 41 facility not owned or controlled by a candidate, political commit-
 42 tee, or political party;
- 43 (iii) Any communication by persons made in the regular course and
 44 scope of their business or any communication made by a membership
 45 organization solely to members of such organization and their fam-
 46 ilies;
- 47 (iv) Any communication that refers to any candidate only as part
 48 of the popular name of a bill or statute;
- 49 (v) A communication that constitutes an expenditure or an inde-
 50 pendent expenditure under this chapter.

1 (8) "Employee" means an individual who performs a service for wages or
2 other compensation from which the individual's employer withholds federal
3 employment taxes under a contract for hire, written or oral.

4 (9) "Executive official" means:

5 (a) The governor, lieutenant governor, secretary of state, state con-
6 troller, state treasurer, attorney general, superintendent of public
7 instruction and any deputy or staff member of any of those individuals
8 who, within the course and scope of his or her employment, is directly
9 involved in major policy-influencing decisions for the office;

10 (b) A state department or agency director, deputy director, division
11 administrator or bureau chief as established and enumerated in sections
12 67-2402 and 67-2406, Idaho Code;

13 (c) The membership and the executive or chief administrative officer
14 of any board or commission that is authorized to make rules or conduct
15 rulemaking activities pursuant to section 67-5201, Idaho Code;

16 (d) The membership and the executive or chief administrative officer
17 of any board or commission that governs any of the state departments
18 enumerated in section 67-2402, Idaho Code, not including public school
19 districts;

20 (e) The membership and the executive or chief administrative officer
21 of the Idaho public utilities commission, the Idaho industrial commis-
22 sion, and the Idaho state tax commission; and

23 (f) The members of the governing board of the state insurance fund and
24 the members of the governing board and the executive or chief adminis-
25 trative officer of the Idaho housing and finance association, the Idaho
26 energy resources authority, and the Idaho state building authority.

27 (10) "Expenditure" includes any payment, contribution, subscription,
28 distribution, loan, advance, deposit, or gift of money or anything of value,
29 and includes a contract, promise, or agreement, whether or not legally en-
30 forceable, to make an expenditure. The term "expenditure" also includes a
31 promise to pay, a payment or a transfer of anything of value in exchange for
32 goods, services, property, facilities or anything of value for the purpose
33 of assisting, benefiting or honoring any public official or candidate, or
34 assisting in furthering or opposing any election campaign.

35 (11) "Independent expenditure" means any expenditure by a person for
36 a communication expressly advocating the election, passage or defeat of a
37 clearly identified candidate or measure that is not made with the coopera-
38 tion or with the prior consent of, or in consultation with, or at the consent
39 of, or in consultation with, or at the request of a suggestion of, a candidate
40 or any agent or authorized committee of the candidate or political committee
41 supporting or opposing a measure. As used in this subsection, "expressly ad-
42 vocating" means any communication containing a message advocating election,
43 passage or defeat including, but not limited to, the name of the candidate
44 or measure, or expression such as "vote for," "elect," "support," "cast your
45 ballot for," "vote against," "defeat" or "reject."

46 (12) "Lobby" and "lobbying" each means attempting through contacts
47 with, or causing others to make contact with, members of the legislature or
48 legislative committees or an executive official to influence the approval,
49 modification or rejection of any legislation by the legislature of the state
50 of Idaho or any committee thereof or by the governor or to develop or main-

1 tain relationships with, promote goodwill with, or entertain members of the
2 legislature or executive officials. "Lobby" and "lobbying" shall also mean
3 communicating with an executive official for the purpose of influencing the
4 consideration, amendment, adoption or rejection of any rule or rulemaking as
5 defined in section 67-5201, Idaho Code, or any ratemaking decision, procure-
6 ment, contract, bid or bid process, financial services agreement, or bond
7 issue. Neither "lobby" nor "lobbying" includes an association's or other
8 organization's act of communicating with the members of that association
9 or organization; and provided that neither "lobby" nor "lobbying" includes
10 communicating with an executive official for the purpose of carrying out
11 ongoing negotiations following the award of a bid or a contract, communica-
12 tions involving ongoing legal work and negotiations conducted by and with
13 attorneys for executive agencies, interactions between parties in litiga-
14 tion or other contested matters, or communications among and between members
15 of the legislature and executive officials and their employees, or by state
16 employees while acting in their official capacity or within the course and
17 scope of their employment.

18 (13) "Lobbyist" includes any person who lobbies.

19 (14) "Lobbyist's client" means the person on whose behalf the lobbyist
20 is acting, directly or indirectly, as a contractor, and by whom the lobbyist
21 or lobbyist's employer is compensated for acting as a lobbyist.

22 (15) "Lobbyist's employer" means the person or persons for whom a lob-
23 byist is an employee, and by whom the lobbyist is compensated for acting as a
24 lobbyist.

25 (16) "Local government office" means any publicly elected office for
26 any political subdivision of the state or special district that is not a leg-
27 islative, judicial, statewide, or federal office.

28 (17) "Measure" means any proposal submitted to the people for their ap-
29 proval or rejection at an election, including any initiative, referendum,
30 recall election, or revision of or amendment to the state constitution. An
31 initiative or referendum proposal shall be deemed a measure when the attor-
32 ney general, county prosecutor, or city attorney, as appropriate, reviews it
33 and gives it a ballot title. A recall shall be deemed a measure upon approval
34 of the recall petition as to form pursuant to section 34-1704, Idaho Code.

35 (18) "Nonbusiness entity" means any group of two (2) or more individ-
36 uals, a corporation, association, firm, partnership, committee, club or
37 other organization that:

38 (a) Does not have as its principal purpose the conduct of business ac-
39 tivities for profit; and

40 (b) Received during the preceding or current calendar year contribu-
41 tions, gifts or membership fees, which in the aggregate exceeded ten
42 percent (10%) of its total receipts for such year.

43 (19) "Person" means an individual, corporation, association, firm,
44 partnership, committee, political party, club or other organization or
45 group of persons.

46 (20) "Political committee" means:

47 (a) Any person specifically designated to support or oppose any candi-
48 date or measure; or

49 (b) Any person who receives contributions and makes expenditures in
50 an amount exceeding one thousand dollars (\$1,000) in any calendar year

1 for the purpose of supporting or opposing one (1) or more candidates or
 2 measures. Any entity registered with the federal election commission
 3 shall not be considered a political committee for purposes of this chap-
 4 ter.

5 (c) A county, district or regional committee of a recognized politi-
 6 cal party shall not be considered a political committee for the purposes
 7 of this chapter unless such party committee has expenditures exceeding
 8 five thousand dollars (\$5,000) in a calendar year.

9 (21) "Political treasurer" means an individual appointed by a candi-
 10 date or political committee as provided in section 67-6603, Idaho Code.

11 (22) "Public office" means any local, legislative, judicial, or state
 12 office or position that is filled by election but does not include the office
 13 of precinct committeeman.

14 SECTION 2. That Chapter 66, Title 67, Idaho Code, be, and the same is
 15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 16 ignated as Section 67-6628A, Idaho Code, and to read as follows:

17 67-6628A. ELECTIONEERING COMMUNICATIONS -- USE OF SYNTHETIC ME-
 18 DIA. (1) This section shall be known and may be cited as the "Freedom From
 19 AI-Rigged (FAIR) Elections Act."

20 (2) For purposes of this section:

21 (a) "Information content provider" means any person or entity that is
 22 responsible, in whole or in part, for the creation or development of in-
 23 formation provided through the internet or any other interactive com-
 24 puter service.

25 (b) "Interactive computer service" means any information service, sys-
 26 tem, or access software provider that provides or enables computer ac-
 27 cess by multiple users to a computer server, including specifically a
 28 service or system that provides access to the internet and such systems
 29 operated or services offered by libraries or educational institutions.

30 (c) "Synthetic media" means an audio recording or a video recording of
 31 an individual's speech or conduct that has been created through the use
 32 of generative adversarial network techniques or other digital technol-
 33 ogy in a manner to create a realistic but false audio or video that:

34 (i) To a reasonable individual is of a real event, action, or
 35 speech that did not actually occur in reality; and

36 (ii) Provides a fundamentally different understanding or impres-
 37 sion of the event, action, or speech than a reasonable person would
 38 have from the unaltered, original version of the audio recording
 39 or video recording.

40 (3) A candidate whose action or speech is deceptively represented
 41 through the use of synthetic media in an electioneering communication may
 42 seek injunctive or other equitable relief prohibiting the publication of
 43 such synthetic media.

44 (4) A candidate whose action or speech is deceptively represented
 45 through the use of synthetic media in an electioneering communication may
 46 bring an action for general damages, special damages, or both against the
 47 information content provider. The court may also award a prevailing party
 48 reasonable attorney's fees and costs. The provisions of this subsection

1 do not limit or preclude a plaintiff from securing or recovering any other
2 available remedy.

3 (5) It shall be an affirmative defense for any action brought pursuant
4 to this section that the electioneering communication containing synthetic
5 media includes a disclosure stating, "This (video/audio) has been manipu-
6 lated" in the following manner:

7 (a) If the media is a video, the text of the disclosure must be promi-
8 nently displayed and appear in a size easily readable by the average
9 viewer, and the disclosure must appear for the duration of the video; or

10 (b) If the media consists of audio only, the disclosure must be read in
11 a clearly spoken manner and in a pitch that can be easily heard by the
12 average listener at the beginning of the audio, at the end of the au-
13 dio, and, if the audio is greater than two (2) minutes in length, in-
14 terspersed within the audio at intervals of no more than two (2) minutes
15 each.

16 (6) In any action commenced pursuant to this section, the plaintiff
17 bears the burden of establishing the use of synthetic media by clear and
18 convincing evidence.

19 (7) Courts are encouraged to determine matters pursuant to this section
20 expediently.

21 (8) For an action brought pursuant to this section, the information
22 content provider of the electioneering communication may be held liable and
23 not the medium disseminating the electioneering communication, except as
24 provided in subsection (9) of this section.

25 (9) Except when a licensee, programmer, or operator of a federally li-
26 censed broadcasting station transmits an electioneering communication that
27 is subject to 47 U.S.C. 315, a medium may be held liable in a cause of action
28 brought pursuant to this section if:

29 (a) The medium removes any disclosure described in subsection (5) of
30 this section from the electioneering communication it disseminates; or

31 (b) Subject to affirmative defenses described in this section, the
32 medium changes the content of an electioneering communication such that
33 it qualifies as synthetic media.

34 (10) No provider or user of an interactive computer service shall be
35 treated as the publisher or speaker of any information provided by another
36 information content provider. However, an interactive computer service may
37 be held liable in accordance with subsection (9) of this section.

38 SECTION 3. SEVERABILITY. The provisions of this act are hereby declared
39 to be severable, and if any provision of this act or the application of such
40 provision to any person or circumstance is declared invalid for any reason,
41 such declaration shall not affect the validity of the remaining portions of
42 this act.

43 SECTION 4. An emergency existing therefor, which emergency is hereby
44 declared to exist, this act shall be in full force and effect on and after its
45 passage and approval.