Texas House Bill 366: An Effort to Start a New Era of Transparency in Political Advertising

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On May 1, 2025, the Texas House of Representatives passed House Bill 366 (HB 366), a significant piece of legislation aimed at addressing the growing influence of altered media in political advertising. Sponsored by former House Speaker Dade Phelan, the bill seeks to enhance transparency by requiring disclosures for political advertisements that contain manipulated images, audio, or video, particularly those generated or altered using artificial intelligence (AI). This blog provides an in-depth exploration of HB 366, its passage, implications, controversies, and broader context, offering a comprehensive understanding of its significance in the evolving landscape of political communication.

Background: The Rise of Altered Media in Politics

The rapid advancement of AI technologies, particularly generative AI, has transformed the creation and dissemination of media. Tools like deepfake generators and image-editing software have made it easier to produce highly convincing manipulated content that can misrepresent reality. In political campaigns, such altered media—ranging from deepfake videos to edited images—can be used to mislead voters, damage reputations, or sway elections. The accessibility and affordability of these technologies have amplified concerns about their potential to undermine democratic processes.

In Texas, these concerns were brought to the forefront during recent election cycles, including former Speaker Dade Phelan's own reelection campaign. Phelan faced attacks through altered media, such as mailers from the Club for Growth that superimposed his head onto the body of House Minority Leader Hakeem Jeffries, falsely depicting him in a compromising political context. These incidents underscored the need for regulatory measures to ensure voters can distinguish between authentic and manipulated content. HB 366 emerged as a response to these challenges, aiming to protect the integrity of political discourse while navigating the delicate balance between regulation and free speech.

What is Texas House Bill 366?

HB 366, formally titled "Relating to required disclosures on certain political advertising that contains altered media; creating a criminal offense," establishes a framework for regulating political advertisements that include manipulated content. The bill targets media—images, audio, or video recordings—of a candidate or officeholder that "did not occur in reality." This includes content altered through AI, deepfake technology, or traditional editing tools like Photoshop, unless the alterations are superficial (e.g., color or brightness adjustments).

Key Provisions of HB 366

1. Disclosure Requirement: Political advertisements containing altered media must include a clear disclaimer stating that the content is not real. The Texas Ethics Commission (TEC) is tasked with defining the specifics of this disclosure, including font, size, and color, to ensure visibility and consistency.

2. Scope of Application: The bill applies to:

- Officeholders, candidates, or political committees
- Entities or individuals spending more than $100 on political advertising during a reporting period (excluding basic technology costs).
- Those who publish or distribute such content for compensation

3. Criminal Penalties: Failure to include the required disclosure is classified as a Class A misdemeanor, punishable by up to one year in jail and/or a fine of up to $4,000. Phelan justified the severity of the penalty, arguing that fines alone may not deter wealthy organizations or individuals.

4. Exemptions: The bill explicitly protects internet service providers, broadcasters, telecommunications networks, and commercial sign owners from liability for distributing altered media created by others.

5. Effective Date: If signed into law, HB 366 will take effect on September 1, 2025, giving political entities time to adapt to the new requirements.

Legislative Journey

HB 366 was introduced by Rep. Dade Phelan (R-Beaumont) and heard by the State Affairs Committee on March 12, 2025. The bill progressed through the Texas House with significant debate, reflecting its contentious nature. On April 29, 2025, it passed its second reading with a vote of 106-39. The following day, April 30, 2025, it cleared its third reading with a vote of 102-40, marking its passage in the House. The bill now awaits consideration by the Texas Senate, where its fate remains uncertain given the polarized reactions it has elicited.

The Case for HB 366: Enhancing Transparency

Proponents of HB 366 argue that it addresses a critical gap in election integrity by ensuring voters are informed about the authenticity of political advertisements. The bill's supporters, including Phelan, emphasize several key benefits:

- **Protecting Voters:** By requiring disclosures, HB 366 empowers voters to critically evaluate political content, reducing the risk of misinformation. Phelan noted on the House floor, "This is the beginning of a new era in ethics where the voters need to know what is real and what is not." The bill aligns with existing political advertising regulations, such as the requirement to disclose funding sources, extending these principles to the digital age.

- **Deterring Deceptive Practices:** The criminal penalties serve as a deterrent against the deliberate use of misleading media, particularly in the final days of a campaign when false content can sway undecided voters. Phelan highlighted the potential for a "stolen election" if deceptive ads change voter perceptions in the critical 72 hours before Election Day.

- **Adapting to Technological Advances:** The bill acknowledges the rapid evolution of AI, which Phelan described as becoming "better and more inexpensive every single day." By establishing guidelines now, Texas positions itself as a leader in addressing the ethical challenges posed by emerging technologies.

- **Bipartisan Support:** Despite opposition, HB 366 garnered widespread Democratic support and backing from many Republicans, reflecting a broad consensus on the need to address manipulated media. Rep. Giovanni Capriglione (R-Southlake) clarified that the bill targets deceptive advertising by candidates and campaigns, not the general public's right to create memes.

The Case Against HB 366: Free Speech Concerns

Despite its intentions, HB 366 has faced fierce opposition, particularly from hardline conservatives and free speech advocates who argue that it overreaches and threatens First Amendment rights. Critics, including state Rep. Shelley Luther and organizations like the Foundation for Individual Rights and Expression (FIRE), have raised several concerns:

- **Criminalizing Political Speech:** Opponents argue that the bill's criminal penalties—up to a year in jail for failing to include a disclaimer—could chill political expression. Luther described the legislation as "banning political memes and giving people up to a year in jail for failing to attach a disclosure to a cartoon," suggesting it could criminalize harmless satire.

- **Broad and Vague Language:** The bill's definition of altered media as content that "did not occur in reality" is seen as overly broad, potentially encompassing parody, Photoshop edits, or humorous memes. Critics argue that the $100 spending threshold is unclear, raising questions about whether individuals who boost posts on social media or use paid design tools could be liable.

- **Government Overreach:** The delegation of authority to the Texas Ethics Commission to define disclosure requirements has sparked fears of bureaucratic overreach. Conservative activist Carlos Turcios warned that the bill could enable "government-controlled narratives," with the TEC acting as "speech police."

- **Impact on Political Discourse:** Some conservatives, including Rep. Brian Harrison, contend that public scrutiny is an inherent part of political life. Harrison argued, "We signed up to be scrutinized by our constituents when we do something that either goes against the will of the people or goes against their perception of what the will of the people is." Criminalizing such scrutiny, they argue, undermines the robustness of political debate.

The Broader Context: AI and Political Advertising

HB 366 is part of a broader national and global conversation about the role of AI in politics. In recent years, deep-fakes and manipulated media have raised alarms worldwide, prompting regulatory responses in various jurisdictions:

- **United States:** Several states, including California and Florida, have introduced laws requiring disclosures for AI-generated political content. At the federal level, the Federal Election Commission has considered guidelines for regulating deepfakes in campaign ads, though progress has been slow.

- **International Efforts:** Countries like the European Union have implemented the Digital Services Act, which includes provisions for combating misinformation, including AI-generated content. China and India have also introduced regulations targeting deepfakes, though their approaches often prioritize state control over transparency.

- **Texas' Unique Position:** As a major political and technological hub, Texas' response to altered media carries significant weight. HB 366 positions the state as a pioneer in addressing AI's impact on elections, but its success will depend on its implementation and reception in the Senate.

The bill also reflects broader societal anxieties about technology's role in shaping truth. As Phelan noted, "This AI technology gets better every single day. It gets more inexpensive every single day; it's going to become the norm." HB 366 represents an attempt to adapt legal frameworks to this reality, but its critics argue that it risks overcorrecting at the expense of free expression.

Implications of HB 366

If HB 366 is passed by the Senate and signed into law by Governor Greg Abbott, it could have far-reaching implications for Texas' political landscape:

- **Campaign Strategies:** Candidates and political committees will need to carefully review their advertising materials to ensure compliance, particularly as the 2026 election cycle approaches. The disclosure requirement may discourage the use of altered media, but it could also push campaigns to find creative ways to comply while still leveraging AI tools.

- **Voter Trust:** By increasing transparency, HB 366 could bolster voter confidence in the authenticity of political ads. However, its success will depend on the TEC's ability to craft clear, enforceable guidelines that balance visibility with practicality.

- **Legal Challenges:** Given the opposition from free speech advocates, HB 366 is likely to face legal scrutiny if enacted. Organizations like FIRE may challenge the bill on First Amendment grounds, arguing that its penalties and vague language infringe on protected speech.

- **National Influence:** Texas' approach could serve as a model for other states grappling with similar issues. If successful, HB 366 may inspire similar legislation elsewhere, shaping the national conversation on AI and elections.

Controversies and Misconceptions

The passage of HB 366 has sparked significant controversy, fueled by misconceptions about its scope and intent. Some critics, particularly on social media, have claimed that the bill "criminalizes political memes" or targets everyday Texans. These claims have been debunked by supporters clarifying that HB 366 applies to paid political advertising, not casual social media posts. However, the bill's broad language and criminal penalties have lent credence to these fears.

The Road Ahead: Senate Consideration and Beyond

As of May 2, 2025, HB 366 awaits consideration in the Texas Senate, where its passage is uncertain. The Senate, also Republican-controlled, may face pressure from conservative factions to amend or reject the bill due to free speech concerns. If the Senate passes HB 366, it will go to Governor Abbott for approval. Abbott's stance on the bill is unclear.

Should HB 366 become law, the Texas Ethics Commission will play a critical role in its implementation. The TEC's rulemaking process will determine the practicality and enforceability of the disclosure requirements, shaping how campaigns and advertisers adapt to the new landscape.

Conclusion: Balancing Transparency and Freedom

Texas House Bill 366 represents a bold attempt to address the challenges posed by altered media in political advertising. By requiring disclosures and imposing penalties for non-compliance, the bill seeks to protect voters and maintain the integrity of elections in an era of rapidly evolving technology. However, its broad language and criminal penalties have sparked legitimate concerns about free speech, highlighting the delicate balance between regulation and liberty.

As HB 366 moves to the Senate, its fate will depend on lawmakers' ability to address these concerns while preserving the bill's core objectives. Regardless of the outcome, the debate surrounding HB 366 underscores the urgent need for thoughtful, forward-looking policies that adapt to the realities of AI without stifling political discourse or the many advantages that the technology brings with it.
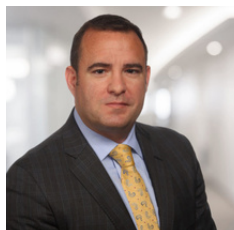
About the Author

For more than twenty years, Richard L. Hathaway has assisted business in numerous industries to navigate substantial obstacles with an aim at protecting and preserving its intellectual property. He has successfully enforced his business client's agreements and protected their rights in arbitration and in Texas state and federal courts. He and his team are available to assist your business in meeting its compliance requirements and safeguarding its intellectual and tangible assets. If you have questions about this blog or how he can help you and your business, you can reach him via email at: Rhathaway@krcl.com and via phone at 214-777-4270.