

TESTIMONY OF MICHAEL KEBEDE, Esq.

LD 1988 – Ought Not to Pass

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

Joint Standing Committee on Veterans and Legal Affairs

January 29, 2020

Senator Luchini, Representative Schneck and members of the Joint Standing Committee on Veterans and Legal Affairs, good morning. My name is Michael Kebede, and I am policy counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. We write to oppose LD 1988, which threatens to erode our core constitutional freedoms.

Free speech is the core of our democracy. For this reason, the First Amendment creates a wide berth for political speech. Despite the sponsors' good intentions, this bill intrudes on that fundamental right. This bill would give politicians a new right to file a lawsuit against virtually anyone who distributes a video or audio recording or image the politician believes is deceptive, unless the distributor states that the recording is inaccurate. Such a statement would have to be nearly universal in order to avoid a lawsuit given how difficult it is with current technology to determine that an image or recording has been manipulated. While we appreciate the important governmental interest in promoting truth in the electoral process, election integrity cannot be attained by attaching a warning that every image or recording may have been altered.

The bill's journalism exemption also runs afoul of the First Amendment. The exemption requires the exempted outlet to distribute "news and commentary of general interest." This restriction is likely to depend the outlet's content – and First Amendment law generally prohibits content-based speech restrictions. Moreover, the bill's limitation of its

journalism exception to broadcasters and newspapers ignores others – such as independent bloggers – who also have rights to free speech.

Last May, a video of U.S. House Speaker Nancy Pelosi was manipulated to make it appear as if she was intoxicated. Speaker Pelosi did not need to sue everyone who distributed the video. She countered in the manner recommended by the Supreme Court: “The remedy for speech that is false is speech that is true.” *United States v. Alvarez* (2012) 567 U.S. 709. That is how it should be for political candidates given their ample means of calling attention to their rebuttal to false recordings. What is more, the goal of guarding against reputational harm to candidates is already protected by the law against defamation. *See generally Rippett v. Bemis*, 672 A.2d 82, 88 (Me. 1996) (describing the elements of defamation). This bill is unnecessary.

We urge you to vote *ought not to pass*. Thank you for your consideration.