MDCD
MARYLAND DC DELAWARE
BROADCASTERS ASSOCIATION

To: House Ways and Means Committee

From: Maryland-DC-Delaware Broadcasters Association
Tim Nelson, Counsel (tnelson@brookspierce.com)

Re: Senate Bill 361 – Election Law – Influence on a Voter's Voting Decision By Use of Fraud – Prohibition

Date: March 21, 2025

The Maryland-DC-Delaware Broadcasters Association ("MDCD" or the "Association"),[1] on behalf its Members, which include approximately 20 television stations and 110 radio stations, submits these comments regarding Senate Bill 361, "Election Law – Influence on a Voter's Voting Decision By Use of Fraud – Prohibition."

MDCD's Members—local television and radio stations—are the most trusted source of news and information here in Maryland and across the country; that role for local broadcasters is all the more important in light of the rampant increase in the use of generative AI in spreading misinformation and disinformation. As is the case in newsrooms across America, MDCD's television and radio stations are working diligently to protect against generative artificial intelligence distorting the news reporting and informational content that they source, produce, and freely deliver to the public.

While MDCD is supportive of the goals Senate Bill 361 appears intended to achieve, MDCD has concerns regarding the legislation as currently drafted. Specifically:

- Senate Bill 361 does not provide an exception for liability for broadcasting "Synthetic Media" either (1) when a broadcaster is paid to distribute the Synthetic Media, or (2) when the broadcaster distributes the Synthetic Media as part of bona fide news reporting. While MDCD believes that SB 361, as written, would likely not impose liability on a broadcaster in such instances (because such a broadcast would not be made with fraudulent intent on the part of the broadcaster), MDCD nonetheless believes that an express exemption for liability in such situations is necessary. A broadcaster in receipt of paid advertising/programming containing Synthetic Media of which the broadcaster is unaware should not be held criminally responsible for airing such content, nor should broadcasters be forced to carry the burden of investigating each paid advertisement/program for content that appears to be realistic but is in fact Synthetic Media. And, a broadcaster's important reporting on the use of Synthetic Media (particularly when such use is designed to defraud the public and improperly influence an election) should not be chilled because the broadcaster fears potential criminal liability.

[1] The Maryland-DC-Delaware Broadcasters Association is a voluntary, non-profit trade association that advocates for the interests of its member radio and television stations and, more generally, the interests of broadcasting in Maryland, Delaware, and Washington, D.C.

- Moreover, with respect to advertising, MDCD notes that under federal law (47 U.S.C. § 315(a)), broadcasters are prohibited from censoring (including editing by way of addition or removal) the content of an advertisement that is paid for by a legally qualified candidate for public office and/or such candidate's authorized campaign committee (unless such content is legally obscene). MDCD respectfully submits that the language of SB 361 must account for this provision of federal law; even if, for example, a broadcaster knows that a paid candidate ad uses "Synthetic Media," the broadcaster is, generally, required by law to broadcast such advertisement without modification. A broadcaster should not be held liable for its compliance with federal law; SB 361 should harmonize with the federal statute.

To reiterate, MDCD supports efforts to harness the power of generative artificial intelligence and to reduce the spread of misinformation and disinformation, particularly in the context of free and fair elections. It is important that such efforts, however, do not inadvertently sweep up broadcasters and other news media entities that are already working tirelessly to provide trusted local journalism and information—and to root out deceptive uses of AI. MDCD hopes the Committee will amend the legislation accordingly, and we welcome the opportunity to work with the Committee on such amendatory language.

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