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Education, Energy, and
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony in Support of SB0978- Election Law - Synthetic Media - Disclosure and Regulation

February 21, 2024

Chairman Feldman, Vice-Chair Kagan, and members of the Education, Energy, and the Environment Committee:

Thank you for your consideration of Senate Bill 0978- Election Law - Synthetic Media-Disclosure and Regulation, which will regulate the use of deep fakes throughout election cycles to retain the integrity of our elections.

The use of deepfakes in elections is a burgeoning threat that has already impacted the 2024 presidential election. The expansion of new video and image editing AI technology allows malicious actors to easily produce images, videos, and audio recordings that imitate electoral candidates. The rise of deepfakes used throughout campaigning and elections contributes to the spread of misinformation, leading to a lack of trust and the undermining of the truth for voters.

Already in this election cycle, we have seen the use of deepfakes for the purpose of election interference. Last year, a deepfake video purporting to depict Hillary Clinton endorsing Governor Ron DeSantis was shared on social media site X. Although the video is not entirely convincing, it presents a good indication of where AI-created videos are going and their potential to increase in quality and quantity during the upcoming election and any future elections.

More recently, AI-generated robocalls with President Biden's voice were used to discourage voters in the New Hampshire presidential primary election.¹ In response to this robocall, the FCC declared that calls made with AI-generated voices are “artificial” under the Telephone Consumer Protection Act (TCPA). The ruling, which takes effect immediately, makes voice

¹https://www.route-fifty.com/digital-government/2024/02/ai-misinformation-whole-new-area-elections-officials-dea/393962/?oref=rf-today-nl&utm_source=Sailthru&utm_medium=email&utm_campaign=Route%20Fifty%20Today:%20February%2008%2C%202024&utm_term=newsletter_rf_today

cloning technology used in common robocall scams targeting consumers illegal. However, this only covers telecommunications, not social media.

In response, we have seen a number of states begin to act:²

- Minnesota’s law prohibits using AI-generated content, such as manipulated photos, videos, and audio, if it's created without the consent of the person depicted and with the intent of hurting a candidate or influencing an election within 90 days of an election.
- California and Texas have passed laws that make it a criminal offense to generate and distribute a deceptive video with the intent to influence the outcome of an election.
- In Kentucky, lawmakers have introduced a comprehensive bill that establishes regulations on a wide range of emergent technologies. Within this bill, spreading “deep fakes” of people created without their consent would be a felony, punishable by up to five years in prison.
- New Mexico’s bill, passed in February 2024, newly defined “materially deceptive media” and created a crime violating their Campaign Reporting Act for someone who knowingly distributes or agrees to distribute materially deceptive media within 90 days of an election without the proper disclaimers.

SB978 takes a balanced approach to ensure honesty and transparency throughout Maryland’s election cycle. As amended, the bill grants the State Board of Elections the authority to identify manipulated content and requires that such content be clearly labeled as altered or manipulated. Specifically, the bill:

- Requires the incorporation of identification and disclaimer requirements for any political advertisement or communication.
- Requires the submission of the unaltered material to the state board of elections one business day before the altered material is disseminated to the public.
- Establishes a range of criminal and civil penalties for violations.
- Allows individuals harmed by violations to seek damages.

In closing, the emergence of deepfakes poses a substantial threat to Maryland’s electoral integrity, fostering uncertainty about the credibility of campaign content among voters. SB 978 is an essential first step towards regulating the use of deepfakes in state elections, striking a delicate balance by providing guardrails while upholding the First Amendment’s protection of free speech. For these reasons, I respectfully request a favorable report on SB0978.

Sincerely,



Senator Katie Fry Hester
Howard and Montgomery Counties

² <https://www.nytimes.com/2024/01/11/us/ai-election-ads-state-legislators.html>