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February 21, 2024

Senate of Maryland
Education, Energy, and the Environment Committee
The Hon. Brian Feldman, Chair
The Hon. Cheryl Kagan, Vice Chair
Annapolis, Maryland 21401

Dear Members of the Committee:

On behalf of our 15,880 supporters in Maryland, Public Citizen submits this testimony in strong support of S.B. 978 – “Synthetic Media – Disclosure and Regulation.”

The 2024 election is shaping up to become the “first serious deepfake election” in the United States, in which many campaign advertisements will be entirely fabricated by advanced computer technology depicting candidates saying and doing things in seemingly real-life voices and images that never really happened. These fabricated images and audios generated by generative “artificial intelligence” are known as deepfakes.

There are almost no disclosure requirements at the state or federal levels that would give voters a reasonable chance to discern the accuracy of these deceptive campaign communications.

S.B. 978 would change that for voters in Maryland. The legislative proposal would address head-on the dangers of deceptive and fraudulent AI-generated deepfakes in campaign communications by imposing disclosure requirements. The legislation proposes all the key elements necessary for mitigating the spread of misinformation among voters from otherwise highly convincing but entirely fabricated AI-generated content in political messages, all the while being protective of First Amendment concerns. S.B. 978 does not prohibit the use of synthetic media and deceptive deepfakes in campaign communications, but instead requires reasonable disclosure to voters that what they may be seeing or hearing on broadcast or social media is instead AI-generated content that is not real. With that information, voters are left to decide on their own the merits of the messages. This is transparency legislation.

S.B. 978 would require that campaign messages using images and voices intentionally created or manipulated through artificial intelligence disclose that fact in any messages disseminated within 90 days of an election. It would also require that the producers of deepfakes, whether a candidate or outside group, place such disclosures on their websites.

The legislation provides exemptions from liability for news media and other broadcasters that make a good faith effort to discern whether the advertisements are deepfakes, including social media news outlets, as well as exemptions for satire or parody.

BACKGROUND

Extraordinary advances in artificial intelligence now provide political operatives with the means to produce campaign ads and other communications with computer-generated fake images, audio or video of candidates that appear real-life, fraudulently misrepresenting what candidates say or do. Generative artificial intelligence and deepfake technology – a type of artificial intelligence used to create convincing images, audio and video hoaxes¹ – is evolving very rapidly. Every day, it seems, new and increasingly convincing deepfake audio and video clips are disseminated.

When AI-generated content makes a candidate or party representative say or do things they never did – for the explicit purpose of damaging that targeted candidate’s reputation or deceiving voters – these ads are known as “deepfakes.” The practice of disseminating deepfakes in political communications on social media or mainstream television and radio outlets is currently legal in federal elections and most states. These deceptive and fraudulent deepfakes are not even subject to a disclaimer requirement noting that the content never happened in real life.

In the recent mayoral election in Chicago, mayoral candidate Paul Vallas complained that AI technology was used to clone his voice in a fake news outlet on Twitter in a way that made him appear to be condoning police brutality.¹ It never happened. Vallas lost the race.

As the 2024 presidential election heats up, some campaigns are already testing AI technology to shape their campaign communications. The presidential campaign of Gov. Ron DeSantis, for example, posted deepfake images of former President Donald Trump hugging Dr. Anthony Fauci.² The hug never happened. The just concluded national elections in Slovakia were marred by late-breaking deepfake audio clips spread over social media,³ and which may have exerted a decisive influence over the results.⁴

Altogether, the stakes of an unregulated and undisclosed Wild West of AI-generated campaign communications are far more than the impact on candidates; it will further erode the public’s confidence in the integrity of the electoral process itself. If voters cannot discern fact from fiction in campaign messages, they will increasingly doubt the value of casting a ballot – or the value of ballots cast by others.

¹ Megan Hickey, “Vallas campaign condemns deepfake posted to Twitter,” CBS News (Feb. 27, 2023), available at: <https://www.cbsnews.com/chicago/news/vallas-campaign-deepfake-video/>

² Nicholas Nehamas, “DeSantis campaign uses apparently fake images to attack Trump on Twitter, New York Times (June 8, 2023), available at: <https://www.nytimes.com/2023/06/08/us/politics/desantis-deepfakes-trump-fauci.html?auth=login-googleItap&login=googleItap>

³ Olivia Solon, “Trolls in Slovakian Election Tap AI Deepfakes to Spread Disinfo,” Bloomberg (Sept. 29, 2023), available at: <https://www.bloomberg.com/news/articles/2023-09-29/trolls-in-slovakian-election-tap-ai-deepfakes-to-spread-disinfo>

⁴ Morgan Meaker, “Slovakia’s Election Deepfakes Show AI is a Danger to Democracy,” Wired (Oct. 3, 2023), available at: <https://www.wired.co.uk/article/slovakia-election-deepfakes>

CONCLUSION: PROTECT THE INTEGRITY OF ELECTIONS BY PASSING S.B. 978

Currently, there are no regulations of deepfakes at the federal level – and there is not likely to be any federal regulations in place for the 2024 elections. Only five states – California, Minnesota, Michigan, Texas and Washington – have laws on the books designed to mitigate the damage of deceptive and fraudulent deepfakes in campaign communications. Though New Mexico is about to join the ranks. However, 34 other states, including Maryland, are considering similar legislation.⁵

In state after state, the idea of transparency of deepfakes in campaign communications has gained bipartisan support in state legislatures and overwhelming support among the public. In a recent survey conducted by Data for Progress, after being provided with a short description of how deepfakes are used to create convincing images, audio, and videos to represent someone saying or doing something that they never said or did, a strong majority of voters (80%) say they are concerned with the use of deepfakes of candidates and political figures during the November 2024 election. This sentiment is shared among voters across party lines, with Democrats (82%), Independents (80%), and Republicans (79%) saying they are concerned about the use of this form of synthetic media in the upcoming election.⁶

Public Citizen strongly urges the Maryland Senate Education, Energy, and Environment Committee to move S.B. 978 forward for final passage in order to put in place much-needed regulations to protect voters, our elections and our democracy from the harms of deepfakes.

Respectfully Submitted,

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⁵ Public Citizen, Tracker of State Legislation on Deepfakes in Elections (Feb. 12, 2024), available at: <https://www.citizen.org/article/tracker-legislation-on-deepfakes-in-elections/>

⁶ Data for Progress, Voters Overwhelmingly Believe in Regulating Deepfakes and the Use of Artificial Intelligence (Feb. 8, 2024), <https://www.dataforprogress.org/blog/2024/2/8/voters-overwhelmingly-believe-in-regulating-deepfakes-and-the-use-of-artificial-intelligence>