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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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

March 26, 2024

Chairman Atterbeary, Vice-Chair Wilkins, and members of the Ways and Means 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 to retain the integrity of our elections.

The use of deepfakes in elections is a growing threat that has already impacted the 2024 presidential election. The expansion of new video and image editing Artificial Intelligence (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 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 Federal Communications Commission (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 cloning technology used in common robocall scams targeting consumers illegal. However, this only covers telecommunications, not social media.

¹https://www.route-fifty.com/digital-government/2024/02/ai-misinformation-whole-new-area-elections-officials-deal/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

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.

SB 978 passed the Senate Education, Energy and Environment Committee and the Senate Floor unanimously. As amended, the bill does 5 things:

1. Requires those regulated by the State Board of Elections (candidates, campaign finance entities, and persons required to register because they make independent expenditures or electioneering communications, and participating organizations) to disclose when they publish, distribute, or disseminate “synthetic media.”
2. Establishes specific disclosure requirements based on whether the synthetic media is a still image, audio recording, or a video recording.
3. Requires those regulated to publish the original content that was manipulated to generate the synthetic media on their website.
4. Enables the State Board of Elections to seek an injunction of the publication and distribution of synthetic media that violates the requirements of the bill.
5. Adds violation of this bill to existing election law violations established under (13-602.)

In summary, SB 978 takes a balanced approach toward regulating the use of deepfakes in state elections, which otherwise will undermine the credibility of campaign content among voters. This bill is an essential first step, 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 as amended.

Sincerely,



Senator Katie Fry Hester
Howard and Montgomery Counties

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