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Testimony from:
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Testimony in Opposition to SB 361, “An act concerning Election Law- Influence on a Voter’s Voting Decision by Use of Fraud- Prohibition.”

February 26, 2025

Senate Education, Energy and Environment Committee

Chairman Feldman and members of the committee:

My name is Chris McIsaac, and I conduct research on election reform for the R Street Institute, a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government across a variety of policy areas, including the intersection of artificial intelligence (AI) and election policy. This is why Senate Bill 361 is of particular interest.

Recent advances in artificial intelligence are impacting all aspects of modern life, including the way elections are administered and campaigns are run.¹ These advances have raised fears that technology will be used to deceive voters at scale and erode trust in elections, though the actual impacts on the 2024 election were minimal.² SB 361 attempts to mitigate these potential harms by criminalizing the use of “synthetic media” to knowingly influence voter decisions. While well intentioned, the bill is incredibly problematic. Rather than relying on Maryland’s existing laws against fraud, it creates a concerning new content – and technology – based restriction on election related speech.

Legislative attempts to regulate the use of AI to generate deceptive election content has accelerated in recent years and today there are 20 states with laws in place.³ Seventeen of these states require a label while the other three—California, Minnesota and Texas—place an outright prohibition on the use of AI. A federal judge recently blocked California’s prohibition law as a free speech violation and a similar lawsuit is pending in Minnesota.⁴ By putting forward a new content-based restriction on political speech, SB 361 exposes Maryland to a similar legal challenge on First Amendment grounds.

¹Chris McIsaac, “Impact of Artificial Intelligence on Elections,” *R Street Policy Study* No. 304, June 2024.
<https://www.rstreet.org/wp-content/uploads/2024/06/FINAL-r-street-policy-study-no-304.pdf>

²Chris McIsaac, “AI and the 2024 Election Part II: Many Uses and Minor Impacts,” R Street Institute, January 14, 2025.
<https://www.rstreet.org/commentary/ai-and-the-2024-election-part-iii-many-uses-and-minor-impacts/>

³Artificial Intelligence (AI) in Elections and Campaigns,” National Conference of State Legislatures, October 24, 2024.
<https://www.ncsl.org/elections-and-campaigns/artificial-intelligence-ai-in-elections-and-campaigns>

⁴“Election deepfakes prompt state crackdowns- and First Amendment concerns,” Wall Street Journal, October 5, 2024.
<https://www.wsj.com/us-news/law/election-deepfakes-prompt-state-crackdownsand-first-amendment-concerns-0b992e8e>



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In defining which types of election content will be regulated, SB 361 casts too wide a net. The definition of “synthetic media” includes false content generated not only by AI but also the catch-all term “other digital technology.” It also establishes a low threshold for the level of deception necessary to qualify as a regulated communication, particularly for images, audio and video of candidates. This sets the stage for broad regulation of deceptive election communications ranging from sophisticated AI-generated deepfake videos to crude photo-shopped “memes.” While many targets of misleading memes may wish such content were illegal, freedom of speech—particularly political speech—is a core American value that must be protected.

On the restriction itself, SB 361 bluntly states that any use of synthetic media qualifies as fraud by definition. Existing Maryland law prohibits the use of fraud to influence voter participation decisions so by extension SB 361 makes the use of any synthetic media for that same purpose a crime.⁵ However, there are both negative and positive forms of influence and the current law is not limited to the negative. That means SB 361 could inadvertently criminalize the use of photoshop or AI generated messages that encourage voter participation.

SB 361 is also unnecessary because Maryland’s existing technology-neutral fraud prohibition already covers the use of synthetic media and all other tools of deception. The relevant factor under the current law is whether the underlying activity is fraudulent, regardless of the technology used. For example, using a deepfake to fraudulently coerce a voter into not casting a ballot is illegal just the same as if the coercion occurred over the phone speaking with a real person. However, SB 361 abandons this framework for synthetic media and instead finds that the use of the technology to influence a voter decision automatically qualifies as fraud.

Finally, the bill expands the government’s role in policing political speech by banning the use of fraud— and by extension, synthetic media— to influence decisions about which candidate to support.⁶ This puts the government squarely in the position of being the arbiter of truth in political disputes. Instead, Maryland should rely on politicians and their supporters to correct the record with more speech when their opponents lie.

Overall, the push toward protecting the public from exposure to election related deceptions is well meaning but banning certain types of political speech based on both the content and technology used is unnecessary and creates a burden on free speech. For these reasons, we urge an unfavorable report on SB 361.

Thank you,

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⁵ Maryland Election Law §16–201(b)(6) and §16–201(c).

⁶ Maryland Election Law §16–201(b)(5).