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January 22, 2025

The House of Representatives
State of Maine
Joint Standing Committee on the Judiciary
Augusta, ME 04333

Public Citizen Testimony in Support of the Amendment to LD 517

Dear Members of the Committee:

Public Citizen submits this testimony in strong support of the amendment to LD 517 provided by Chairperson Amy Kuhn designed to address potentially deceptive practices by Artificial Intelligence “deepfakes” in political communications.

On behalf of our 5,629 activists in Maine, and more than 500,000 supporters nationwide, Public Citizen encourages the Maine House Judiciary Committee to move forward with the submitted amendment to LD 517 by Chairperson Amy Kuhn. The amendment is a legislative proposal to address the dangers of deceptive and fraudulent computer-generated deepfakes in campaign communications.

The legislation includes the key elements necessary for mitigating the damage to the electoral process and the public’s confidence in fair and open elections, all the while being protective of First Amendment concerns.

The proposal does not prohibit the use of synthetic media and deceptive deepfakes in electioneering communications, but instead requires reasonable disclosure to voters of the use of “artificial intelligence” (AI) technology in electioneering communications that fabricates in seemingly real-life images and voices candidates or parties doing or saying something that never happened *with the intent to cause harm to candidates or parties or to defraud voters*.

This is a transparency measure and not a restriction on the content of speech. In order to be particularly protective of First Amendment rights, the transparency requirements also:

- Focuses only on deceptive and fraudulent AI-content intended to harm the reputation of a candidate or political party or otherwise deceive voters;
- Does not capture routine and minor manipulations of images or voices made for clarity purposes;

- Carves out appropriate exemptions for legitimate news media, including for internet or electronic news publications; and
- Specifically excludes AI-content intended as 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. It never happened. Vallas lost the race.¹

The 2024 presidential campaign of Gov. Ron DeSantis posted deepfake images of former President Donald Trump hugging Dr. Anthony Fauci. The hug never happened.²

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.

CONCLUSION: VOTERS HAVE A RIGHT TO PROTECTION FROM FRAUDULENT DECEPTION

While the courts are very protection of Free Speech rights in political discourse – and they most definitely should be – the courts have stopped at the point of fraud. It is not a constitutional right to deliberately and fraudulently deceive voters with the intent to cause harm.

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-google1tap&login=google1tap>

This legislative proposal strikes the proper balance between allowing candidates and committees to produce their own campaign messages, delivered in whatever form they deem appropriate – including through the use of Artificial Intelligence. However, if those messages are intended to cause harm or to deceive voters, they are still permissible under this proposal as long as voters are appropriately informed when those messages are computer-generated deepfakes and did not occur in real life.

Not only do voters have a right to know when and if they are being fraudulently deceived, the very integrity of fair and open elections relies on that knowledge.

Sincerely,

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