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January 30, 2024

The House of Representatives
State of Hawaii
Comm. On Judiciary and Hawaiian Affairs
The Hon. David Tarnas, Chair
The Hon. Gregg Takayama, Vice Chair

Dear Members of the Committee:

Public Citizen submits this testimony in strong support of H.B. 1766 – Relating to Elections.

On behalf of our 3,237 members and activists in the State of Hawaii, and more than 500,000 supporters nationwide, Public Citizen encourages the Committee on Judiciary and Hawaiian Affairs to advance H.B. 1766, a legislative proposal to address the dangers of deceptive and fraudulent computer-generated deepfakes in campaign communications.

The legislation proposes all the key elements necessary for mitigating the damages to the electoral process and the public's confidence in fair and open elections, all the while being protective of First Amendment concerns. H.B. 1766 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. 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 of H.B. 1766 also:

- Focuses only on deceptive and fraudulent AI-content intended to harm the reputation of a candidate or political party or otherwise deceive voters;
- Remains limited to only deepfakes that occur within 90 days of an election;
- 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.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 ELECTIONS BY PASSING H.B. 1766

Currently, 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. More than a dozen other states have introduced or are considering comparable legislation before the 2024 elections.

Public Citizen strongly urges the Committee on Judiciary and Hawaiian Affairs to move H.B. 1766 forward for final passage. The measure provides reasonable transparency requirements to inform voters of deceptive and fraudulent deepfakes and narrowly tailored to protect First Amendment rights when it comes to the content of speech.

Respectfully Submitted,

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