

Testimony on behalf of Common Cause Rhode Island in Support of H 7387--An Act Relating to Elections--Deceptive and Fraudulent Synthetic Media in Election Communications

Position: Support

Common Cause Rhode Island supports H 7387 would regulate the use of synthetic media (a.k.a. "deepfakes") in election advertisements.

This legislation does two things; it prohibits the use of deepfakes within 90 days of an election if the person or entity distributing it knows or should know it contains "deceptive and fraudulent" synthetic media, but it allows the use of deepfakes if they are properly labeled.

Now is the time to regulate this new technology. We are already starting to see the technology used in campaigns in the United States and elsewhere. Recently a robocall in New Hampshire ahead of that state's primary featured a synthetic copy of President Biden's voice featuring disinformation for voters. Last year then-Republican presidential candidate Governor Ron DeSantis posted a deepfake of former President Donald Trump hugging Dr. Anthony Fauci.

In 2012 the General Assembly passed legislation to regulate independent expenditures in the wake of the 2010 *Citizens United* decision. We hadn't yet seen large expenditures of dark money, but we knew we soon would. In 2014 that prediction came true and the state was ready to respond because of the General Assembly's foresight.

Similar to S 2456, the 2012 legislation contained heightened disclosure requirements closer to the election. It was challenged and was upheld as constitutional by federal courts. A 90-day timeframe extends from the filing period to the primary and includes all of the general election.

At least seven states (CA, MN, TX, WA, MI, NM, UT) have passed similar legislation. Rhode Island should join that list of states. According to a University of Chicago poll, a clear majority of Americans (58%) believe artificial intelligence will lead to an increase in the spread of misinformation in the upcoming election.¹ An even larger percentage (66%) supports a federal ban on the use of deepfakes. In the absence of action by Congress, the General Assembly needs to regulate the use of this technology.

One notable difference between this legislation and what the Assembly enacted to regulate independent expenditures is the mechanism for enforcement. Instead of empowering the Board of Elections, the typical regulator in Rhode Island election law, it creates a right of action to go to court. In elections time is of the essence and seeking relief from a court in this manner may be a more efficient mechanism.

¹ <https://news.uchicago.edu/story/poll-finds-bipartisan-concern-about-use-artificial-intelligence-2024-elections>