USE OF AI IN ELECTIONS – "DEEPFAKE" AND "SYNTHETIC MEDIA" DEFINITION EXAMPLES

BACKGROUND AND INTRODUCTION

During the September 2023 State Administration and Veterans' Affairs (SAVA) Interim Committee meeting, members voted to allocate 0.25 FTE to member topics in the committee workplan. At the November 2023 meeting, committee members voted to conduct a study on election security in Montana and to create a list of items that make Montana elections secure. During the January 2024 SAVA meeting, committee members voted to add the use of AI in elections to the study plan. During the March 2024 SAVA meeting, committee members requested examples of definitions of "deepfake" in legislation and statutes related to the regulation of the use of AI in elections.

This paper includes examples from U.S. government agencies, model legislation from nonprofit organization Public Citizen, and statutes and bills from states around the county. Per NCSL, in 2023, legislation may use different terms such as "deepfake", "synthetic media" or "deceptive media" when referring to AI. These terms all refer to what people commonly think of as AI but may have different implications depending on what term is used and how statute defines it.

U.S. GOVERNMENT DEFINITIONS

Cybersecurity and Infrastructure Security Agency (CISA)

Deepfakes are a type of synthetic media—commonly generated using artificial intelligence/machine learning (AI/ML)—presenting plausible and realistic videos, pictures, audio or text of events which never happened.

Government Accountability Office (GAO) – Science, Technology Assessment, and Analytics Team (STAA)

A deepfake is a video, photo, or audio recording that seems real but has been manipulated with AI. The underlying technology can replace faces, manipulate facial expressions, synthesize faces, and synthesize speech. Deepfakes can depict someone appearing to say or do something that they in fact never said or did.

MODEL LEGISLATION FROM PUBLIC CITIZEN

(a) For purposes of this section, "synthetic media" means an image, an audio recording, or a video recording of an individual's appearance, speech, or conduct that has been created or intentionally manipulated with the use of generative adversarial network techniques or other digital technology in a manner to create a realistic but false image, audio, or video.

(b) For purposes of this section, "a deceptive and fraudulent deepfake" is synthetic media that depicts a candidate or political party with the intent to injure the reputation of the candidate or party or otherwise deceive a voter that:

    (1) Appears to a reasonable person to depict a real individual saying or doing something that did not actually occur in reality; or

    (2) Provides a reasonable person a fundamentally different understanding or impression of the appearance, action, or speech than a reasonable person would have from the unaltered, original version of the image, audio recording, or video recording."

STATUTES AND BILLS FROM OTHER STATES

Minnesota Statute §609.771

(c) "Deep fake" means any video recording, motion-picture film, sound recording, electronic image, or photograph, or any technological representation of speech or conduct substantially derivative thereof:

    (1) that is so realistic that a reasonable person would believe it depicts speech or conduct of an individual who did not in fact engage in such speech or conduct; and

    (2) the production of which was substantially dependent upon technical means, rather than the ability of another individual to physically or verbally impersonate such individual.

Washington Senate Bill 5152 (2023) (Passed)

(1) For purposes of this section "synthetic media" means an image, an audio recording, or a video recording of an individual's appearance, speech, or conduct that has been intentionally manipulated with the use of generative adversarial network techniques or other digital technology in a manner to create a realistic but false image, audio, or video that produces:

    (a) A depiction that to a reasonable individual is of a real individual in appearance, action, or speech that did not actually occur in reality; and

    (b) A fundamentally different understanding or impression of the appearance, action, or speech than a reasonable person would have from the unaltered, original version of the image, audio recording, or video recording.

Texas Senate Bill 1044 (2023) (Failed)

(1) "Altered image" means an image that has been manipulated to change the physical appearance of an individual or depict an individual performing an action that did not occur. The term does not include:

    (A) a cartoon, caricature, or any other image that a reasonable viewer would understand to be satirical representation of the individual; or

    (B) an image altered only to change the saturation, brightness, contract, color, or any other superficial quality of the image.

(2) "Deep fake video" means a video that appears to depict a real person performing an action that did not occur in reality.

New York Senate Bill S6859 (2023) (Active)

For purposes of this section, "synthetic media" means any human voice, photograph, image, video or other human likeness created, reproduced, or modified by computer, using artificial intelligence or software algorithm, to be indistinguishable to a reasonable viewer from a natural person.

LEGISLATIVE SERVICES DIVISION

New Jersey Senate Bill 1941 (2020) (Introduced)

"Deceptive audio or visual media" means any audio or visual media in an electronic format, including any motion picture film, video recording, or sound recording, which is created or altered in a manner that it would falsely appear to a reasonable listener or observer to be an authentic record of the actual speech or conduct of the individual depicted in the recording.

Indiana House Bill 1494 (2023) (Introduced)

As used in this chapter, "doctor" means, with regard to media, to alter the media for a purpose other than:
> (1) changing the dimensions, length, or recording format of the media; or
> (2) enhancing the clarity of the media.

As used in this chapter, "media" means:
> (1) recorded audio; or
> (2) a recorded still or moving image; regardless of the recording format.

Illinois Senate Bill 1742 (2023) (Introduced)

As used in this Section, "deep fake video" means a video created, with the intent to deceive, that appears to depict a real person performing an action that did not occur in reality.

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