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February 13, 2024

State of Oregon
Senate Committee on Rules
Chairman Kate Lieber
Vice Chairman Tim Knopp

Dear Members of the Committee:

Public Citizen submits this testimony in strong support of SB 1571.

On behalf of our over 17,200 members and activists in Oregon, Public Citizen encourages the Senate Committee on Rules to advance SB 1571, a legislative proposal regulating deepfakes in election communications. Deepfakes are fabricated content (videos, images, or audio) created with the use of generative artificial intelligence (A.I.) that depict a person saying or doing things that they never actually said or did in real life. In an election context, 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.

Recent advances in the realm of A.I. have made it such that tools needed to create deepfakes are now widely accessible. Meanwhile, the quality of deepfake technology is improving rapidly, making it harder for the average person to detect a deepfake. Audio deepfakes are already of extremely high quality and video deepfakes can easily convince a casual viewer. In the months ahead, this problem will grow much worse, with technologists expressing concern that soon they will also not be able to identify what is real content versus a deepfake.

The rapid advances in deepfake technology have deeply concerning implications for the upcoming elections in the United States. The 2024 election cycle is being called “the first AI election” in the United States¹. We are already seeing the beginnings of just how dangerous this technology can be in an election context. Just two days before Slovakia’s recent elections, a fraudulent audio deepfake was disseminated on social

¹ Druke, G. (2023, December 1). 2024 is the 1st ‘AI Election.’ What does that mean? Retrieved from ABC News: <https://abcnews.go.com/538/2024-1st-ai-election/story?id=105312571>

media of a party leader purportedly discussing ways to rig the election². It is believed that this deepfake influenced the outcome of the Slovakian election. There was also rampant use of deepfakes in recent major elections in Argentina and Turkey^{3,4}. Candidates from both sides created deepfakes of both themselves and their opponents in order to enrich their own reputations and harm those of their opponents.

As the 2024 presidential election heats up, we are seeing increased use of A.I. deepfakes in the United States as well. Recently, voters in New Hampshire received a robocall from an A.I.- generated audio deepfake of President Joe Biden⁵. The Deepfake had President Biden encouraging voters to not vote in the Presidential Primary Election. A few months ago, Governor Ron DeSantis's presidential campaign disseminated deepfake images of former President Donald Trump hugging Dr. Anthony Fauci, which never happened⁶.

Deepfake technology poses a major threat to our democracy and our elections. It is not hard to envision a nightmare scenario where a well-timed fraudulent deepfake swings the outcome of an election.

The rapid development of deepfake technology also threatens to weaken social trust. As deepfakes become more common, it will become more difficult for people to determine what is real and what is fabricated content. Additionally, it will become easier for bad actors to refute real visual or audio evidence of their bad behavior, by claiming it is a deepfake. All of this will serve to undermine public trust in news, information, and our elections.

Deepfakes pose very real and present threats to our democracy. New legislation like SB 1571, which regulates the use of deepfakes in election communications is critical.

² Meaker, M. (2023, March 10). Slovakia's Election Deepfakes Show AI Is a Danger to Democracy. Retrieved from Wired: <https://www.wired.co.uk/article/slovakia-election-deepfakes>

³ Nicas, J., & Cholokian Herrera, L. (2023, November 15). Is Argentina the First A.I. Election? Retrieved from The New York Times: <https://www.nytimes.com/2023/11/15/world/americas/argentina-election-ai-milei-massa.html?smid=nytcore-ios-share&referringSource=articleShare>

⁴ Wilks, A. (2023, May 25). Turkey Elections: Deepfakes, disinformation 'misdirect' voters ahead of runoff. Retrieved from AI-Monitor: <https://www.ai-monitor.com/originals/2023/05/turkey-elections-deepfakes-disinformation-misdirect-voters-ahead-runoff>

⁵ Seitz-Wald, A., & Memoli, M. (2024, January 22). Fake Joe Biden robocall tells New Hampshire Democrats not to vote Tuesday. Retrieved from NBC News: <https://www.nbcnews.com/politics/2024-election/fake-joe-biden-robocall-tells-new-hampshire-democrats-not-vote-tuesday-rcna134984>

⁶ Nehamas, N. (2023, June 8). DeSantis Campaign Uses Apparently Fake Images to Attack Trump on Twitter. Retrieved from The New York Times: <https://www.nytimes.com/2023/06/08/us/politics/desantis-deepfakes-trump-fauci.html?auth=login-google1t ap&login=google1tap>

In order to be particularly protective of First Amendment rights, the transparency requirements of HB 2628 also:

- Carves out appropriate exemptions for legitimate news media, including for internet or electronic news publications; and
- Specifically excludes A.I. content intended as satire or parody.

Texas, Minnesota, California, Washington, and Michigan have already passed legislation regulating the use of deepfakes in elections, and 33 other states have introduced legislation on this issue across the country⁷. This legislation has had broad bipartisan support - with Republicans and Democrats alike introducing these bills to regulate political deepfakes in states across the country. This legislation is also overwhelmingly popular among voters. In a survey conducted by Data for Progress, 80% of voters expressed their concerns with the use of deepfakes of candidates in the upcoming election⁸.

Public Citizen strongly urges the Senate Committee on Rules to move SB 1571 forward in order to put in place much needed regulations to protect the voters, our elections, and our democracy from the harms of deepfakes. We would make one recommendation to clearly define the necessary disclosure. Many states are adopting language along the lines of the following:

(1) The prohibition in subdivision does not apply if the audio or visual media includes a disclosure stating: "This _____ has been manipulated or generated by artificial intelligence."

(2) The blank in the disclosure required by sub-paragraph (1) shall be filled with whichever of the following terms most accurately describes the media:

(A) Image.

(B) Video.

(C) Audio.

(3) For visual media, the text of the disclosure shall appear in a size that is easily readable by the average viewer and no smaller than the largest font size of other

⁷ Public Citizen. (2023, November 20). Tracker: State Legislation on Deepfakes in Elections. Retrieved from Public Citizen: <https://www.citizen.org/article/tracker-legislation-on-deepfakes-in-elections/>

⁸ Fairclough II, T., & Blank, L. (2024, February 8). Voters overwhelmingly believe in regulating deepfakes and the use of Artificial Intelligence. Retrieved from Data For Progress: <https://www.dataforprogress.org/blog/2024/2/8/voters-overwhelmingly-believe-in-regulating-deepfakes-and-the-use-of-artificial-intelligence>

text appearing in the visual media. If the visual media does not include any other text, the disclosure shall appear in a size that is easily readable by the average viewer. For visual media that is video, the disclosure shall appear for the duration of the video.

(4) If the media consists of audio only, the disclosure shall be read in a clearly spoken manner and in a pitch that can be easily heard by the average listener, at the beginning of the audio, at the end of the audio, and, if the audio is greater than two minutes in length, interspersed within the audio at intervals of not greater than two minutes each.

Thank you again for the opportunity to testify in support of SB 1571. I am happy to answer any questions.

Respectfully Submitted,

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