Deepfakes in Elections

Wendy Underhill, Director, Elections & Redistricting

Adam Kuckuk, Policy Associate, Elections & Redistricting

How NCSL Strengthens Legislatures

Policy Research

NCSL provides trusted, nonpartisan policy research and analysis

State Voices in D.C.

NCSL represents and advocates on behalf of states on Capitol Hill

Connections

NCSL links legislators and staff with each other and with experts

Training

NCSL delivers training tailored specifically for legislators and staff

Meetings

NCSL meetings facilitate information exchange and policy discussions

NCSL

NATIONAL CONFERENCE OF STATE LEGISLATURES

Today's Agenda

- Background on AI/deepfakes in campaigns
- Scope of laws on AI/deepfakes in campaigns
- Approaches to regulation
- Court challenges
- Research and resources

What are Deepfakes

- Deepfakes are images, video or audio created by a system that uses neural networks.

- Common tools to create deepfakes include Midjourney, Open AI's Sora and Adobe's Firefly.

- For today's conversation, we are referring to deepfakes used to influence elections.

When States Enacted Laws on Deepfakes in Campaigns and Elections

Enacted 2018
Enacted 2023
Enacted 2024
Enacted 2025

NCSL
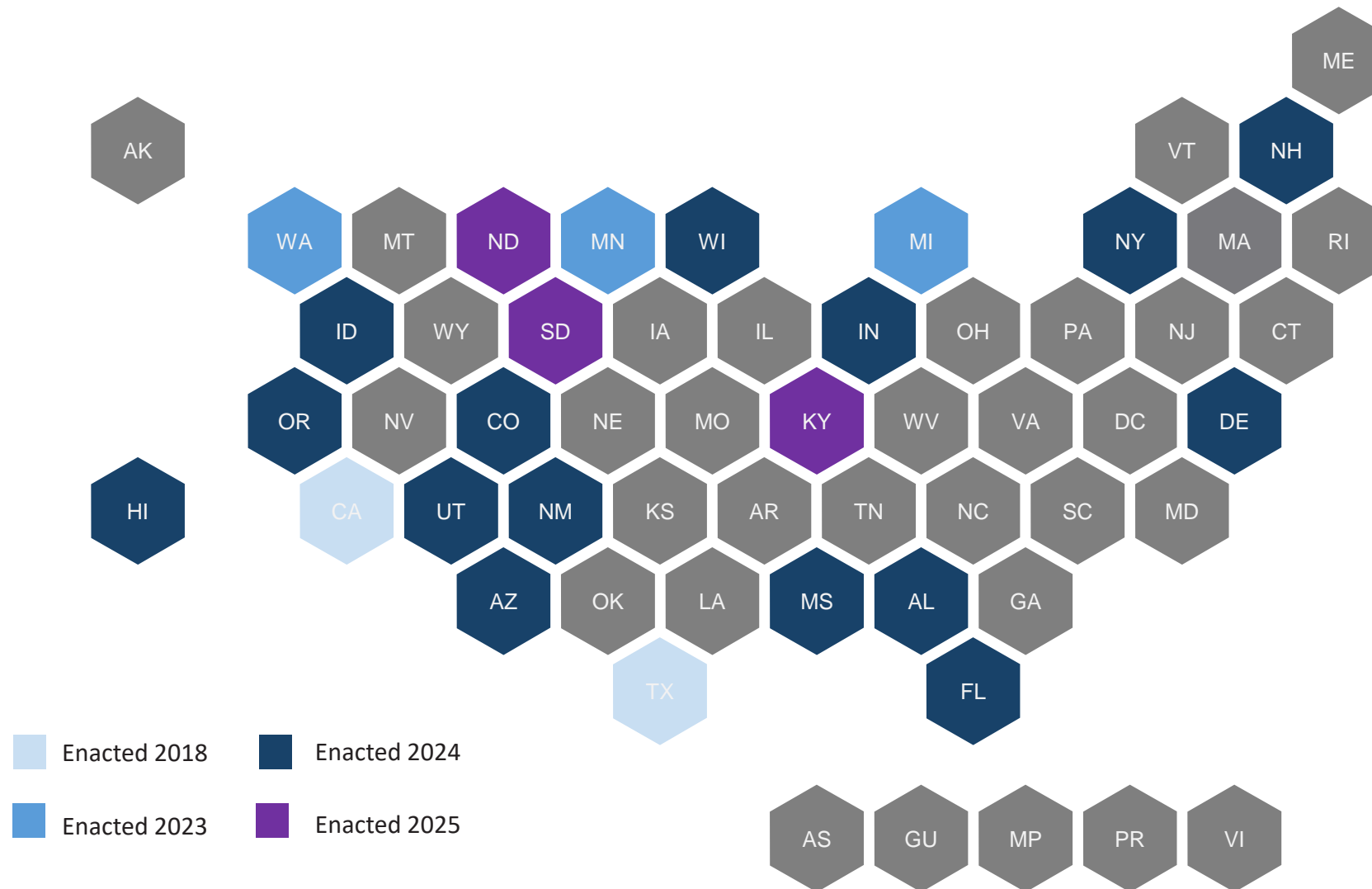
Terms for Deepfakes

States have used several different terms

- Synthetic media
- Materially deceptive media
- Doctored media
- Fabricated media
- Deepfake

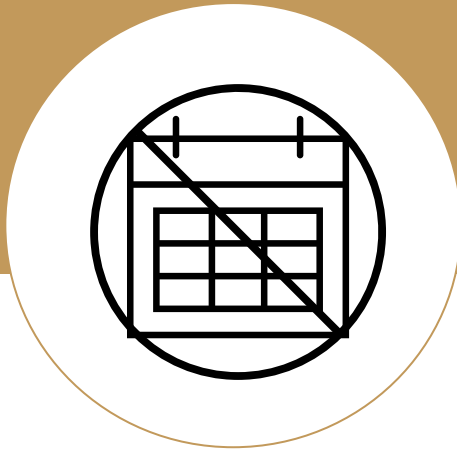## Some states use multiple terms

Scope of Deepfake Laws

Media mentioned: audio, images, video

Some mention certain types of technology

Some states don't mention AI specifically

Common Types of Provisions

Durational Prohibitions

- Prohibits the publication of AI- generated content related to an election "x" days prior to an election.

- *MN, TX*

Disclosure Requirements

- Requires a disclosure statement on media generated by AI.

- *AL, AZ, CA, CO, DE, FL, HI, ID, ID, KY, MI, MS, NM, NH, NY, ND, OR, SD, UT, WA, WI*
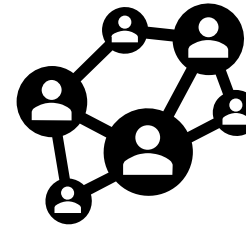
Other Provisions

Digitally Embedded Disclosures

- Requires a file's metadata to include information on whether it was created with AI.

- *Colorado, Utah*

Social Media Moderation

- Requires online platforms to create guidelines for dealing with deepfakes related to campaigns and elections.

- *California*

Civil Remedies/Penalties

Injunctive Relief

Candidates, officials and others depicted may request the media be taken down.

Civil Action

Opportunities for those depicted to recuperate damages and attorney costs/fees.

Civil Fines

- New Mexico: $1,000 penalty for each violation.
- Colorado: a penalty of 10% of the dollar amount used to promote a deepfake.

Criminal Penalties

Criminal Fines

Ranges from $500-$10,000.

Prison time

- Texas: Maximum of one year per violation.

- Mississippi: Maximum of five years for intending to incite violence.

Legal Action

Kohls v. Bonta 752 F.Supp.3d 1187 (Calif. 2024)

- Digital content creator created what he argued were parody deepfakes.
- Content creator argued CA's prohibition on that type of content violated his 1st Amendment right to free speech.
- The court said that CA had a compelling interest in protecting the integrity of and confidence in elections, but the law was not narrowly tailored enough.

Deepfake Databases

- Spitting Images: Tracking Deepfakes and Generative AI in Elections (German Marshall Fund)

- 2024 AI Elections Tracker (Rest of World)

- Political Deepfakes Incident Database (Purdue University)

What Research Says About AI Content Labels

- Deepfakes are not used much in campaigns—yet.

- Research isn't clear that disclosure labels work.

  - Effects are small.
  - Wording matters.
  - May hurt the campaign that uses it.

- In Disclaimers We Trust (NYU Center on Tech Policy)

NCSL

Final Thoughts and Resources

- Adoption by 23 in just a handful of years is fast.
- Unclear what administrative work is required.
- Who (or what) is governed vary—of course.
- NCSL Resources:
  - [AI in Elections: A Look at the Federal and State Legislative Landscape](#)
  - [Artificial Intelligence (AI) in Elections and Campaigns](#)
  - [Artificial Intelligence Policy Toolkit](#)

Thank you for having us today!

Wendy Underhill

Program Director

Wendy.Underhill@ncsl.org

303.856.1379

Adam Kuckuk

Policy Associate

Adam.Kuckuk@ncsl.org

303.856.1343

www.ncsl.org

Elections-Info@ncsl.org

Denver
7700 East First Place,
Denver CO 80230

Washington D.C.
444 North Capitol Street, N.W.
Washington, D.C. 20001