

Testimony on S. 23, An act relating to the use of synthetic media

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To the Vermont Senate Committee on Government Operations:

Thank you for your attention to the matter of unethical influences on our elections, including the creation and distribution of manipulated media, and on behalf of the League of Women Voters of Vermont, thank you for this opportunity to share our concerns.

Regarding the definition of “synthetic media,” the League urges the state to consider a broader range of images than just those of political candidates. Instead of considering what has already happened in high-profile cases, please consider other situations that can easily happen. As a minimum, the candidate, the candidate’s family members and campaign surrogates, and anyone that the synthetic media under scrutiny portrays as either supporting or opposing a candidate should not be altered without the consent of the individual involved.

Example: Video of a candidate’s spouse or other individual (maybe not covered by “family member”) is altered to falsely portray the person describing acts of domestic or sexual violence purported to have been committed by the candidate, which never happened. The altered video is distributed 45 days before an election. This could reasonably be considered an attempt to alter the results of an election.

In addition, the League urges the state to consider the falsification of the environment portrayed in audio, images, or video when the alteration is to harm the reputation or influence the outcome of an election.

Example: A video of a candidate, smiling and speaking positively about great things happening in the background, is altered to indicate the candidate is happy about something in the false background that the candidate would NOT be happy about, repulsing some voters.

The League supports the addition of “without the consent of the candidate,” but **Section 2031 (1) is the wrong place**. The media can be synthetic whether the candidate consents or not. The more appropriate place for this is at the end of Section 2031 (2), such that it would read:

(1) “Deceptive and fraudulent synthetic media” means synthetic media that appears to a reasonable person to be a representation of a political candidate and that injures the reputation of the candidate or attempts to unduly influence the outcome of an election, **without the consent of the candidate.**

In Section 2032, the League supports the inclusion of “or should have known.” This is common legal language that is necessary because it may be difficult to prove that someone “knew” something, even if they clearly should have known. If it can be proven that the defendant did KNOW, the addition of “or should have known” will not harm the outcome of the case. When it is hard to prove the defendant definitely knew, omission of this language makes it harder for the victim to pursue a remedy.

Regarding font size, we appreciate that “as large as the largest font” is too restrictive, but are concerned about the House’s version, which only requires that it appear “in a size that is readable by the average viewer.” “Average viewer” includes a younger population than just voting age. This skews the requirement to a size that may be too small for an unacceptable number of older voters to read. We appreciate Senator Vyhovsky’s concerns about people with disabilities, as well.

Regarding audio, we believe the average listener should be able to hear AND UNDERSTAND the disclosure. This would be more protective of election integrity in a court if the defendant argued that the message could be HEARD by the average listener, even if it was too fast, or the language was too difficult, to be easily comprehended.

We are concerned with the exception in Section 2032, (b) (1) B, that so long as the distributor (radio or television station, etc.) is paid, they can distribute false material that could impact an election without the disclosure. We are wondering whether that renders the entire bill useless, if someone can just pay the distributor.

We welcome the addition of “or distributes” satire or parody.

The penalties are insufficient to prevent the harm the bill intends to prevent. If the maximum penalty is only \$1,000 and they might throw the election, that is a tiny price. Even for the third violation, \$15,000 is a small price to pay if the violator achieves their objective in influencing our elections, so may have little deterrent value.

Thank you for your work to protect our elections.

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