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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 25-S 816,
RELATING TO DECEPTIVE AND FRAUDULENT SYNTHETIC MEDIA IN ELECTION COMMUNICATIONS
March 20, 2025

The ACLU of Rhode Island appreciates the intent behind this legislation, but we wish to urge caution in trying to quickly regulate this new world of artificial intelligence and its impact on the electoral process. By its very term, "synthetic media" involves core First Amendment activity – speech – and the bill's focus on "media in election communications" seeks to regulate speech in the sphere that the First Amendment most fundamentally applies to – the political process. In fact, the only court to substantively rule so far on the merits of a similar law found it unconstitutional.[1]

In order to ensure that debate on public issues is, in the words of the U.S. Supreme Court, "uninhibited, robust, and wide-open," the First Amendment provides special protection to even allegedly false statements about public officials and public figures. AI-generated campaign communications are entitled to these protections, for as the Supreme Court has also noted, "whatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary when a new and different medium for communication appears." *Brown v. Entertainment Merchants Association*, 564 U.S. 786, 790 (2011).

While we recognize that free speech standards in the political arena are not limitless, this legislation, as worded, suggests that any image or recording that meets the definition of "synthetic media" is deceptive or fraudulent and can therefore be regulated. But the First Amendment does not permit such a facile determination. To allow the government to regulate or ban political speech that some might view as misleading undermines the breathing space that robust political speech requires, whether generated with the help of artificial intelligence or not.

In order to appreciate the breadth of the type of "deceptive" political speech that this legislation would regulate, consider a political advertisement that strings together comments by a politician made at different times that somebody might claim provides a "deceptive" view of the candidate or their views. This is an activity that has taken place for years, and occasionally generated controversy, without the use of artificial intelligence. But under this bill, any such advertisement, if created using AI, could now be enjoined if the politician could successfully argue

[1] Kohls v. Bonta, 2024 WL 4374134 (E.D. Cal. 2024).

that it created a "fundamentally different impression" of the candidate. The person responsible for making the recording could also be subject to substantial financial penalties for failing to label their commentary as having been generated by AI.

Public officials could easily use this law to deter the exercise of free speech by individual citizens. Injunctions are particularly disfavored in the First Amendment arena because of their clear censorial impact, but damages actions can be just as chilling. While the bill creates an exception for "satire or parody," the use of AI to make images or recordings that are clearly protected speech could easily fit within the legislation's reach. Consider a visual recording that consists of a speech given by an elected official where a person, using AI, has the official speaking in an artificial background that depicts a version of Hell. There may be no satire or parody intended, but it would otherwise appear to meet the definition of "synthetic media" subject to this legislation's standards and penalties.

Again, we don't wish to minimize the concerns that have generated this legislation, but we believe that before rushing to regulate this technology in the political sphere, much greater consideration of the ramifications of doing so is needed in order to avoid infringing upon fundamental First Amendment principles.