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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 24-S 2456, RELATING TO ELECTIONS -- DECEPTIVE AND FRAUDULENT SYNTHETIC MEDIA IN ELECTION COMMUNICATIONS March 7, 2024

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, 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 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, automatically deems any image or recording that meets the definition of “synthetic media” to be deceptive or fraudulent. But the First Amendment does not allow such a facile determination. The bill inappropriately fails to require either an intent to deceive or a reasonable likelihood that the image or recording actually does deceive persons of ordinary prudence. Importantly, the fact that an image or recording could reasonably be interpreted as deceptive should not establish a presumption that the defendant published it with intent to deceive. The Supreme Court established in *New York Times Co. v. Sullivan* that any legal presumption of actual malice in cases involving speech about public officials or public figures is inconsistent with the First Amendment.

While the bill creates an exception for “satire or parody,” many non-deceptive images or recordings would not necessarily fit into that category. Consider a recording that consists of a speech given by an elected official but that a person, using AI, has him doing so in an artificial background that depicts a version of Hell. There may be no satire or parody intended – or, if there is, it is still one that the official could challenge and seek an injunction to halt its dissemination.

Again, we don’t wish to minimize the concerns that have generated this legislation, but we believe it requires much greater consideration in order to avoid harming and infringing upon fundamental First Amendment principles. Thank you for considering our views.