LEAGUE OF WOMEN VOTERS® OF MASSACHUSETTS

Testimony in support of
S.2730 An Act relative to deceptive and fraudulent deepfakes in election communications
Submitted to the
Joint Committee on Advanced Information Technology, the Internet and Cybersecurity
By Nancy Brumback, LWVMA Elections and Voting Legislative Specialist
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The Leagues of Women Voters of the United States and of Massachusetts believe that democratic government depends upon informed and active participation at all levels of government. Without accurate information, such informed and active participation is impossible. This bill is a first step in combating a new and disturbing challenge in false advertising prior to elections. If there was ever a timely bill, this is it. The Massachusetts League urges this committee to favorably and quickly report S.2730 out of committee.

The bill would restrict the use of "synthetic media," often called "AI-generated" or "deepfakes," and defined as "an image, audio recording or video recording of an individual's appearance, speech or conduct that has been created or intentionally manipulated with the use of generative adversarial network techniques or other digital technology in a manner to create a realistic but false image, audio or video" depicting a candidate or political party within 90 days of an election. To avoid First Amendment challenges, the bill spells out disclaimer statements that must be included in the material if deepfake material is used within that 90-day period. We defer to the judgement of Sen. Finegold's staff that an outright ban on such material may raise First Amendment issues.

LWVMA would encourage the committee to add "ballot question" to the list of protected subjects in the bill, as noted here: Section 1, (b)(1) A person shall not distribute a synthetic media message that the person knows or reasonably should have known is a deceptive or fraudulent deepfake depicting a candidate or political party or ballot question within 90 days of an election in which said candidate or political party or ballot question will appear on the state or local ballot.

The national League, in a statement in December 2023, said: "The League's positions on a citizen's right to know, citizen participation, and campaign finance apply to the issue of deceptive AI; voters deserve access to true and complete information about elections and the candidates seeking their votes. The League is concerned that deliberately false, AI-generated content in campaign ads or other communications will undermine the role of voters and corrupt the election process by attempting to deceitfully sway voters' opinions or suppress voter turnout through misinformation about election rules."

For those reasons, the national League has urged the Federal Elections Commission (FEC) to act. In October 2023, the League submitted a statement to the FEC, arguing that the FEC should regulate deceptive AI campaign communications like other deceptive campaign communications. LWVUS urged the Commission to issue explicit guidance that deceptive AI campaign communications meet the definition of "fraudulent misrepresentation" according to the United States legal code. The League's statement is here.

The bill before you will start to address this critical issue at the state level as well.

The League of Women Voters of Massachusetts, on behalf of our 43 local Leagues from Cape Cod to the Berkshires, urges you to bring this bill quickly to the floor for a vote, ideally in time to preserve the integrity of our election process as we move through the current election season. There is no time to waste to make campaign advertising in the 2024 election and all subsequent ones fair and accurate.

Thank you for your consideration.