Artificial Intelligence and Elections
Initial Steps To Protect Democracy

In the past 12 months, AI, and particularly generative AI, has exploded in use and popularity. For all its upside potential, generative AI has the ability to drastically increase the spread of election mis- and disinformation and cause confusion among voters. For instance, the use of "deepfakes" (AI-generated images, voices, or videos) could be used to portray a candidate saying or doing things that never happened.

AI is already playing a role in the 2024 election. In the New Hampshire primary, a robocall using AI technology to impersonate President Biden sought to mislead voters, discouraging them from voting. Following this activity, the Federal Communications Commission issued a declaratory ruling that restricted robocalls containing voices generated by AI.

Much more needs to be done. States and localities are on the front lines when it comes to elections, and their elected leaders must address concerns about this growing technology.

As Minnesota's Secretary of State Steve Simon recently said at a NewDEAL Forum convening on the subject, voter suppression in America is not new. In today's environment, generative AI has the potential to amplify existing threats, and officials must adapt their efforts to combat misinformation. The *how* changes, but the *what* remains the same.

In order to assist state and local elected officials in preparing for the 2024 election, the NewDEAL Forum compiled five best practices for mitigating the negative impacts of AI in the near term, as well as six principles for AI-focused legislation to protect our democracy.

Five Best Practices to Address Generative AI in the 2024 Election

1. Legislation: State legislatures should pass laws regarding the use of AI for campaigns, requiring the clear labeling of certain kinds of AI-generated campaign material (see more below). It is unlikely that Congress will pass legislation before the 2024 election. As New York Assemblymember Alex Bores told our recent convening, states have the Constitutional authority to run their elections, and thus states should take the lead on addressing AI as it relates to campaigns and elections.

2. Regulate AI-Powered Bots: Mekela Panditharatne, Democracy Counsel for the Brennan Center for Justice, notes that AI, including generative AI, has the potential to assist more voters more efficiently. However, generative AI chatbots are notorious for "hallucinating" false information, sometimes including in response to basic election

questions. And bad faith actors could use the technology underlying such chatbots to spread misinformation targeting all voters or a specific demographic of voters. Policies are needed to ensure operatives, campaigns, PACs, and official sites using bots and generative AI are not misleading voters.

- Voter Roll Challenges: Some groups are already seemingly using AI tools to challenge voter registrations en masse. States should restrict frivolous voter registration challenges, particularly from AI-based tools.

3. Be Prepared: Tabletop exercises, or role-playing through potential scenarios around the election, including the use of generative AI to disrupt voting, can help all of those involved in elections, from public officials to law enforcement officers, become familiar with generative AI. In Arizona, Secretary of State Adrian Fontes is leading tabletop exercises not only for state and local officials, but also one exercise specifically to work with the media in Arizona, so that they, too, are prepared.

4. Rapid Response Capability: The fake robocall during the New Hampshire primary was flagged quickly by both state officials and the media. Such rapid response will be needed moving forward in both the remaining primary elections and November's general election. In Arizona, Sec. Fontes has set up a rapid response alert from his office to immediately flag misleading AI material as soon as it is identified, so both voters and the media are aware. Fast, aggressive responses can help limit the reach and impact of misleading information.

5. Public Information Campaign: Though it is becoming more common, many voters are still unaware of the reach and sophistication of AI-generated content. Therefore, it is critical that elected officials do all they can to educate the general public, and especially communities that may be particularly vulnerable. In New Mexico, Secretary of State Maggie Toulouse Oliver's office is engaging in a widespread public information campaign to raise awareness about what generative AI is, and how residents can find accurate information. Her office is specifically targeting populations most likely to see AI-generated material. In Michigan, Secretary of State Jocelyn Benson is addressing the same issue by working closely with faith leaders, the business community, and other trusted voices to help voters "cut through the noise" and find accurate information.

Six Principles for AI-focused Legislation to Protect Democracy

The NewDEAL Forum has identified six broad principles that should be incorporated into any legislation regulating generative-AI and campaigning. These recommendations follow a review of dozens of proposed and enacted pieces of legislation as well as discussions with issue-area experts.

Any policy or legislation dealing with AI and elections should, at a minimum, include the following six components:

1. Definition: A clear definition of AI-generated content. Terms can include "deepfake," "materially deceptive media," "synthetic media," and/or similar terms.

2. Coverage: Cover all synthetic content, not just AI-generated content, across different types of media. Recent efforts to regulate deepfakes have sometimes been designed to cover only images and video produced by generative AI tools. But non-generative AI tools such as Photoshop and CGI can be as effective, and some of the most harmful deepfakes consist of synthetic audio content.

3. Mandatory Disclaimers: Mandate disclaimers or institute a prohibition on deepfakes with an exemption for

communications that contain appropriately worded disclaimers.

4. Meaningful Targets: Provide voters with meaningful disclaimers by limiting the reach of any new rules to content that a reasonable person would perceive to accurately depict a candidate saying something that they did not say or events that did not occur, or that depict speech and events in a way that is substantially changed from how they occurred.

5. Exceptions: Exceptions should be made for satire, in order to protect freedom of speech and for bona fide news coverage of deepfake incidents.

6. Remedy: Laws must provide a clear, expeditious way for candidates to obtain an injunction against illegal material, as well as potential civil penalties for campaigns, PACs, and individuals paid by such entities.

Longer-Term Considerations

Issue-area experts and elected officials partnering with the NewDEAL Forum have agreed on three additional areas that are still critical as AI technology advances:

1. Verification: Policymakers should support ways to verify content as quickly as possible. This could be a "digital marker" of some sort that is indelible for official communications, in order to give people confidence in their trustworthiness.

2. Funding: There is broad consensus that more funding is needed for state and local election officials to administer safe, secure, and fair elections. In particular, more funding is needed to counter AI-generated cyber threats aimed at elections and election officials, as well as additional technical assistance.

3. Adaptation: Because of the dynamic nature of generative AI, and its exponential growth potential, policymakers will need a mechanism to regularly re-evaluate laws and policies in light of advancements. Regulations should both protect voters and citizens as well as ensure AI can achieve beneficial applications.

The recommendations above are not intended to be comprehensive. As AI is a fast-growing field, the NewDEAL Forum will continue to explore the topic with experts and policymakers. We hope that future meetings highlight the positive ways AI-fueled technology can improve government functions as well as improve our society as a whole. Yet as we explore these topics, we will also note the key role regulation plays in ensuring AI is not used to harm or deceive.

NewDEAL Forum would like to thank the Democracy Working Group for hosting a virtual convening on this issue. In particular, we would like to thank Secretary of State Jocelyn Benson (MI), Secretary of State Adrian Fontes (AZ), Secretary of State Maggie Toulouse Oliver (NM), Secretary of State Steve Simon (MN), Assemblymember Alex Bores (NY), and Mekela Panditharatne, the Democracy Counselor for the Brennan Center for Justice, for sharing their insights on this topic. In addition, NewDEAL Forum Fellow Emma Vonder Haar made significant contributions on research into state legislation.

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