

“[A]I Approve This Message.” AI, Deep Fakes and Political Ads

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With state and local election season in full swing and the 2024 presidential election just around the corner, political advertising spend continues to grow. And the advertising stakes continue to rise—not just because there are millions of dollars on the line, but because we’re starting to see what elections with AI-generated ads and deep fakes might look like.

As we’ve written about [previously](#), a number of federal and state political advertising laws govern how, and to what extent, political ads can appear online. In December 2022, the Federal Election Commission (FEC) adopted final rules addressing online political ads (“internet public communications”) and related disclosure requirements, stemming from a rulemaking it initiated in 2018. While the FEC’s rulemaking was pending, several states passed their own laws governing online political advertising. Generally, these laws place obligations on both the online platform on which the political ads run and the advertiser (or the party paying for the ad). These laws tend to regulate state (not federal) election ads and include various recordkeeping and ad disclosure requirements. In some states (California and Washington, for example), online platforms are required to collect and maintain certain information about both the content of the ad and the purchaser. The FEC’s new online political ad regulations impose somewhat similar requirements for online federal election ads.

However, one area where the states seem to be outpacing federal law is in regulating the use of AI or deep fakes in political advertising.

Washington recently passed [SB 5152](#), a new deep fake political ad law that became effective in July. Washington's law focuses on "synthetic media," which is defined as an audio or video recording of an individual's appearance, speech or conduct that has been 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. To be actionable under the law, the "synthetic media" (deep fake) must appear to depict a real person, action or speech and produce a fundamentally different understanding than a reasonable person would have from seeing the unaltered or original version of the image or recording. Interestingly, the law does not outright ban the use of synthetic media in political advertising, but it does require that synthetic media include a disclosure stating, "This (image/video/audio) has been manipulated." The sponsor of the electioneering communication can be held liable under the law (plaintiffs can also obtain an injunction or damages), but the law specifically states that the platform may only be liable if it transmits a communication subject to the FCC's "equal time" rules (47 U.S.C. Sec. 315) and the platform removes the required synthetic media disclosure or otherwise changes the ad such that it now qualifies as "synthetic media."

California

Until [AB 730](#) sunsetted on Jan. 1, 2023, California had a law that prohibited the distribution of materially deceptive audio or visual material within 60 days of an election unless the material included a disclosure stating, "This (image/video/audio) has been manipulated." Under the law, a "materially deceptive audio or visual media" meant an image or an audio or video recording of a candidate's appearance, speech or conduct that had been intentionally manipulated such that the image or recording would falsely appear to a reasonable person to be authentic and would cause a reasonable person to have a fundamentally different understanding had they heard or seen the unaltered, original version of the image or audio or video recording.

Looking Ahead to 2024

- **Implement policies and procedures for accepting and vetting online political ads—this includes assurances that the ads do not include altered images, audio or other deep fakes.**