



NEW HAMPSHIRE SECRETARY OF STATE
David M. Scanlan

Testimony of David Scanlan, New Hampshire Secretary of State
Before the U.S. Senate Committee on the Judiciary, Subcommittee on
Privacy, Technology, and the Law

April 16, 2024

Chairperson Blumenthal, Ranking Member Hawley, and Members of the Committee:
Thank you for inviting me to testify at today's important hearing.

These are challenging times for secretaries of state, election administrators and voters. Over the past decade, there have been a series of rapid-fire events that have had a significant impact on the conduct of elections.

Prior to and including the 2016 election cycle, misinformation and disinformation were on the rise along with an increasing decline in faith and confidence in the election outcomes. Social media was a growing source of election-related information.

In 2018, cybersecurity was the major concern. Intrusion into electronic voting systems and databases by foreign actors and malicious individuals was the great fear. The federal government designated these state-run systems as critical infrastructure and appropriated funding to the states through the Help America Vote Act (HAVA) to secure and harden the states' election systems.

The pandemic arrived before the 2020 elections and forced the states to be innovative in finding ways to conduct an election in the middle of a public health crisis.

A dramatic increase in public scrutiny of the election process along with renewed concerns over foreign actor intrusion and misinformation and disinformation were the primary issues in 2022.

Now in 2024, we are faced with artificial intelligence (AI) that can create convincing election related deepfakes, and New Hampshire may be the first state to have been challenged by this technology during its January 23rd Presidential Primary.

The New Hampshire Robocall Using an AI Deepfake

On January 21, 2024, just two days before the New Hampshire Presidential Primary, the NH Attorney General and Secretary of State began getting complaints from voters about

a telephone robocall they received with President Biden’s voice asking the voter not to participate in the upcoming Primary Election and to save their vote for the General Election in November when it would be more important. The message was clearly meant to deceive and was a form of voter suppression.

Interestingly, the robocall also “spoofed” a prominent NH democrat and former state party chair by linking a phone number associated with her on the caller ID. Voters began calling her asking for clarification, and she forwarded the complaints to the Attorney General, who, in turn, opened a criminal investigation.

Given the proximity of this event to the Presidential Primary, the state and national media were on top of the story. The Secretary of State, Attorney General and the Governor were able to promptly deliver a unified message alerting voters of the AI-generated robocall, informing them that it was an illegal attempt to confuse voters about their participation in the Presidential Primary.

It is believed that somewhere between 5,000 and 25,000 democratic voters received the robocall. While it is hard to know if any voters declined to vote because of the robocall, New Hampshire did experience a record voter turnout in a Democratic Presidential Primary when an incumbent president was running for a second term.

After the election, the Attorney General quickly tracked down the source of the robocall, and the company utilized to generate the fake voice of the President using AI. The criminal investigation is still pending.

While the crime was an attempt at voter suppression, AI was only a tool to accomplish the goal. A live voice impersonator could have accomplished the same thing. What is concerning was the ease with which the suspect was able to use AI to generate a deceptive message. Imagine adding a video component to the robocall to create an image of the target person making a statement or engaging in a compromising act that, in fact, never happened. The question then becomes at what point does the AI-generated presentation cross the line from being parody or satire protected under free speech to something more malicious and illegal?

NH Legislation Addressing AI Election Deepfakes

House Bill 1596 is currently making its way through the New Hampshire Legislature. The bill would statutorily define terms such as artificial intelligence, deepfake, generative AI and synthetic media. Deepfakes targeting candidates for office would be prohibited within 90 days of an election unless a prominent disclosure appears with the deepfake communication. While not currently a provision in this bill, election officials should be similarly protected to help maintain their credibility as individuals who maintain free and fair elections.

The Broader Picture

Secretaries of State and elections administrators have been challenged with addressing misinformation and disinformation related to the conduct of elections. There are many potential sources of misinformation including foreign actors, opposing candidates attacking each other, or special interest groups manufacturing a crisis or issue to raise money and generate support. The National Association of Secretaries of State organized a campaign that has been in place now for several election cycles promoting election officials as the “Trusted Source” of election-related information. In New Hampshire, we encourage voters to contact their local or state election officials for accurate information on election processes. We accomplish this with a heavy social media presence and with the generous help of news media outlets.

After becoming New Hampshire Secretary of State in January of 2022, I created the Special Committee on Voter Confidence made up of a diverse group of politically accomplished New Hampshire citizens from the two major political parties. They travelled around the state hearing presentations from party leaders, academics, pollsters, and poll workers. Most importantly, each meeting was open to input from the public. The public testimony received was civil and reflected the full range of political viewpoints. There was a general appreciation from the voters that they had an opportunity to speak to the government through a sounding board. The exercise was productive, and it was clear that despite our polarized electoral politics, there is common ground in areas like training poll workers and post-election audits of ballot counting devices.

My basic take-away from the Special Committee on Voter Confidence is that we need to make the election process as transparent as possible, and we need to do a much better job of educating the voting population on how our elections are run, informing them of the many checks and balances at work in every polling place.

Final Thoughts

Attempts to impact the outcome of elections through misinformation and disinformation are nothing new. We experience this all the time when hotly contested political races resort to negative campaigns. However, over time, the tactics change, and rapidly changing technology that is easily accessible is our new reality. AI deepfakes are just the latest significant challenge facing election administrators.

Malicious and illegal attempts to suppress the vote or manipulate the outcome of an election need to be quickly recognized, stopped, and prosecuted.

Any messaging targeting voters that contain AI-generated content should include a disclosure, so voters know exactly what they're looking at. The ability to respond quickly to false messaging is necessary to temper the impact on voters and election outcomes.

Finally, we must focus resources on voter education to help voters recognize when they may be receiving inaccurate election information and let them know where they can obtain trusted and accurate information related to elections.