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STATE OF COLORADO  
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POLITICAL ADVERTISING “DEEPPAKES”

- Issued September 9, 2024 -

Attorney General Phil Weiser issues this Public Advisory on Colorado’s new law regulating the use of “deepfakes” in political messaging. Deepfakes are defined in the law as “an image, video, audio, or multimedia AI-generated content that falsely appears to be authentic or truthful and which features a depiction of an individual appearing to say or do something the individual did not say or do.” Enacted through the passage of House Bill 24-1147, the law prohibits the inclusion of deepfakes in certain communications concerning candidates for political office without proper disclosure. This Public Advisory outlines the provisions of the new law.

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***Covers a broad range of political communications.*** The law applies to any visual or audio communication regarding a candidate for political office that is disseminated—with knowledge of or reckless disregard of the fact that the communication’s depiction of the candidate is untruthful—to any members of the electorate for the office that the candidate is seeking.<sup>1</sup> The inclusion of a deepfake in such a communication is prohibited unless the deepfake is properly disclosed.

***Disclosures must be clear and conspicuous.*** To satisfy the disclosure requirements, a communication must clearly and conspicuously display a message stating that “This (image/audio/video/multimedia) has been edited and depicts speech or conduct that falsely appears to be authentic or truthful.”<sup>2</sup> The disclosure must meet certain requirements, including the size of the disclosure’s text in visual communications and the manner in which the disclosure is stated in audio communications.<sup>3</sup> The metadata of the communication must also include the disclosure, and the disclosures in the communication and in the metadata must be permanent or not easily removable, when feasible.<sup>4</sup>

***Protections apply in late stages of election cycles.*** The law’s disclosure requirements apply only to political communications that include deepfakes within

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<sup>1</sup> COLO. REV. STAT. § 1-46-103(1).

<sup>2</sup> *Id.* at § 103(2)(a).

<sup>3</sup> *Id.* at § 103(2)(b)(I), (II).

<sup>4</sup> *Id.* at § 103(2)(b)(III), (IV).

sixty days of a primary election or within ninety days of a general election.<sup>5</sup> As the 2024 general election is less than ninety days away, the requirements are presently in effect until the general election concludes.


***Exceptions to the communications covered.*** Various types of communications are not subject to the law’s requirements. For example, radio and television broadcast stations that show political communications with deepfakes in news reporting need not display disclosures in the communications themselves as long as the broadcast clearly acknowledges that the communication includes a deepfake.<sup>6</sup> Radio and television broadcast stations are also exempt if they are paid to broadcast a political communication with a deepfake.<sup>7</sup> Additionally, the law does not apply to media content that is satire or parody.<sup>8</sup>

***Administration and enforcement authority.*** Violations of the law may result in an injunction or other relief to prevent the sharing of the communication to limit the harm done. Compensatory and punitive damages, attorney fees, and any other relief necessary to remedy the harm. Depending on the content of the communication, criminal penalties may be available as well.

#### **GENERAL GUIDANCE FOR CONSUMERS OF POLITICAL MEDIA**

The use of deepfakes in political messaging and on social media is increasingly common, especially with the development of sophisticated systems of artificial intelligence. Given the difficulty in discerning deepfakes, it is recommended that viewers and listeners of political advertisements take the following steps when viewing political communications:

- check to see or hear if the communication contains a disclosure of inclusion of a deepfake;
- verify through trusted sources whether any questionable visual or audio communication in fact includes a deepfake; and
- while the law only applies to communications related to candidates for office, deepfakes can be used in many other ways to influence the opinions of voters, and in general voters should be mindful that bad actors will find ways not protected by this law to influence public opinion using deepfakes, especially on the internet.

  
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<sup>5</sup> *Id.* at § 103(1).

<sup>6</sup> *Id.* at § 103(3)(b).

<sup>7</sup> *Id.* at § 103(3)(c).

<sup>8</sup> *Id.* at § 103(3)(e).