

## **Alert** | Political Law & Compliance



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### **NY Law Amended to Restrict AI Deceptive Practices in Elections**

In mid-April 2024, New York adopted legislation relating to the use of artificial intelligence (AI) in political communications. Recent technological advancements and broadening access to AI have been impacting New York elections, with voters sometimes struggling to decipher between original and AI-generated material. For example, earlier in 2024, an audio clip disseminated throughout New York City appeared to reflect the voice of a political party chairman espousing profanities and disdain for an incumbent member of Congress. Seemingly presenting the chairman’s voice, the viral clip turned out to be AI-generated, highlighting the way this technology may be used deceptively to impact politics and elections.

Sophisticated AI-generated deepfakes<sup>1</sup> have infiltrated election campaigns and are being used to spread false information. The newly adopted Election Law aims to combat misuse of this technology in the campaign context. When she first released the legislative proposal, Gov. Hochul **announced**, “This legislation will help to set important guardrails around the use of this cutting-edge technology and give law enforcement the tools it needs to go after bad actors.”

As part of the Fiscal Year 2025 state budget, New York amended the provisions of the Election Law pertaining to “political communications,” strengthening protections related to unlawful or unauthorized dissemination of false materials. Specifically, the amended Election Law 14-106 immediately requires that

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<sup>1</sup> Used to refer to images, videos, audio, or other media that has been digitally altered.

any “person, firm association, corporation, campaign, committee, or organization that distributes or publishes any political communication” that knows or should know the communication has been altered with AI technology, but still appears to a reasonable person to be authentic, disclose on that communication that it “has been manipulated.” No distribution of altered political communications is permissible without such disclaimer.

Although neither the preexisting statute nor the recently adopted legislation expressly defines “political communication,” it is generally understood to include advertisements (print, digital, or audio), pamphlets, circulars, flyers, brochures, letterhead, and other printed matter used by campaigns and/or committees. Campaign materials that incorporate “materially deceptive media,” whether being published or republished, must now include a disclaimer that is printed and easily readable on the communication, or in the case of audio communication, clearly spoken at both the beginning and the end of the communication. If the audio is longer than two minutes, the disclaimer must be made every two minutes.

The New York State Board of Elections has not yet had an opportunity to propose regulations or offer guidance, but it appears that the law exempts from the restriction media that is:

- Considered satire or parody;
- Created for bona fide news reporting purposes but contains the required disclosure; or
- Distributed by a platform or service that was not the creator of the content, and that platform or service made a good faith effort to establish that the communication was not materially deceptive.

If a candidate’s “voice or likeness” is used in a deepfake political communication without the appropriate disclaimer, the affected candidate may seek injunctive relief to prohibit the distribution and publication of the media, along with court costs and attorneys’ fees. That remedy may be sought through the filing of an application for an order to show cause in a state supreme court. The court is to hear such applications on an expedited basis.

As AI technology continues to improve, it has become increasingly difficult to determine whether media is real or digitally altered. This has resulted in the spread of misinformation and interference with elections. New York’s recent legislation may indicate a trend of AI regulation across the country.

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