Mis- and Disinformation: An Emerging Concern for Democracy

Over the past several years, America has witnessed a sharp increase in the amount of mis- or disinformation widely available. While harmful in any context, this phenomenon is especially pernicious when targeted bad information impacts local, state, or national democratic processes. As a result, finding ways to combat misinformation is quickly becoming a topic of legislative debate among leaders across the political spectrum as states move to prepare for the 2022 midterm elections and beyond.

Given the relative novelty of electoral misinformation as a cause for legislative concern, the existing body of legislative examples on this topic is still limited. However, the bills that have been introduced represent potential avenues through which state legislators can address misinformation in the near future. Listed below are five bills demonstrating this opportunity:

- **OR HB2323**: This bipartisan legislation was proposed by Oregon Future Caucus co-chair Rep. Julie Fahey (D) and member Rep. Jack Zika (R). It specifically outlaws the dissemination of misinformation to voters regarding the date of an election, deadlines for voting procedures, and other election requirements or qualifications. The specific timeframe for these limits would be 30 days before a primary or special election, and 60 days before a general election. Reps. Fahey and Zika share more about their impetus for this bill in their joint op-ed.

- **FL SB658**: This bill is intended to address growing concerns over manipulated videos and images, wherein public figures or elected officials are deceptively edited in order to present misleading information. SB658 would require a manipulated medium that contains a manipulation of any political candidate's likeness to include an audible and visual disclaimer clearly labeling the medium as being edited for a specific purpose. Though this bill died in committee, it demonstrates the growing legislative concern over “deepfakes,” or deceptively edited media products, proliferating in political discourse.

- **VA SB1395**: Signed into law in 2021, SB1395 would, among other provisions, prohibit misinforming voters that cannot understand the language with which a ballot is printed as to the contents of that ballot. The intent of this legislation is to tackle the dissemination of misinformation in a manner that harms racial and linguistic minorities. With the population of nonwhite and non-English speaking residents continuing to grow in all 50 states, political misinformation disseminated in non-English mediums could represent a growing challenge in the election process.

- **TN HB2203**: With foreign interference in American elections having received increased attention in recent years, this bill from Tennessee offers a potential state legislative response. HB2203 would prohibit non-US organizations from providing financial support
in ballot initiatives or referendums, including a prohibition on the use of social media advertisements to disseminate misinformation.

- **OR HB4144:** One major downstream impact of political misinformation has been an increase in threats of violence toward election workers. HB4144 represents a major attempt to mitigate this by allowing identified election workers to have their residences exempt from public disclosure. This bill would also officially establish the harassment of election workers as a crime, punishable by up to 364 days imprisonment or a fine of $6,250.

While political misinformation has not yet resulted in a wide-ranging legislative response at the state level, bills such as these demonstrate a growing concern among policymakers that could presage further developments in the coming years. In the meantime, policymakers are combatting mis- and disinformation outside of traditional legislative forums by using what they have at their disposal: their own voices.