

# PRESERVING TRUTH ON THE PRAIRIE: NAVIGATING DEEPFAKE CHALLENGES TO SELF-AUTHENTICATING EVIDENCE IN NORTH DAKOTA COURTS

## ABSTRACT

In today's digital age, the convergence of law and technology presents both opportunities and challenges. Deepfakes, deceptive digital manipulations created by Artificial Intelligence ("AI"), pose a significant risk to the integrity of courtroom evidence. Like many jurisdictions, North Dakota faces growing threats from artificial intelligence and deepfakes.

While the existing North Dakota Rules of Evidence establish fundamental safeguards for admissible evidence, they inadequately address the vulnerability exposed by deepfakes, particularly for self-authenticating evidence under Rule 902. With limited guidance available to legal practitioners and judges, there is a pressing need for legislative and judicial collaboration to define deepfakes and establish standards for ensuring evidentiary authenticity.

This Note contends that North Dakota's Century Code must not remain silent while deepfakes jeopardize perceptions of evidence. As North Dakota navigates these challenges, it exemplifies a microcosm of the broader American legal system grappling with the disruptive potential of deepfakes and AI. This Note suggests that the starting point in confronting this issue is for the legislatures and the judiciary to work together by etching AI and deepfakes into the Century Code and modifying authenticity standards and procedures. By confronting this issue, our state's leaders can protect North Dakota's citizens and preserve truth on the prairie.

I. INTRODUCTION .....	658
II. A DEEP DIVE INTO DEEPPAKES AND EVIDENCE .....	659
A. DEEPPAKES: A FICTITIOUS, YET CONVINCING PRODUCT OF AI. ....	659
B. ADMISSIBILITY AND SELF-AUTHENTICATING EVIDENCE .....	661
III. HOW DEEPPAKES THREATEN THE LEGAL SYSTEM.....	662
A. DEEPPAKES’ ABILITY TO PRODUCE FRAUDULENT EVIDENCE ...	662
B. DEEPPAKES AS A BASIS FOR IMPROPER CLAIMS .....	663
IV. PROCEDURAL SAFEGUARDS .....	665
V. PROPOSED MEASURES FOR NORTH DAKOTA TO BRIDGE THE GAP .....	667
A. ADDING DEEPPAKES TO NORTH DAKOTA’S LEGAL LEXICON....	668
B. AMENDING AUTHENTICATION STANDARDS FOR NORTH DAKOTA COURTROOMS.....	671
VI. CONCLUSION.....	674

## I. INTRODUCTION

In an era marked by the rapid convergence of law and technology, North Dakota, like many jurisdictions, finds itself at the forefront of the challenges posed by AI and deepfake technology.<sup>1</sup> Deepfakes, realistic and deceptive digital manipulations created by AI, introduce a formidable threat to the sanctity of courtroom evidence.<sup>2</sup> This technology, while a groundbreaking innovation, may jeopardize the foundational principles of authenticity and trustworthiness the legal system relies on to ensure fair and just proceedings.<sup>3</sup> Deepfakes are the modern-day doublespeak, where truth becomes a malleable illusion, and reality bends to the whims of manipulation.<sup>4</sup>

In this evolving landscape, the North Dakota Rules of Evidence, specifically Rules 901 and 902, may be in jeopardy.<sup>5</sup> The bedrock of a fair legal

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1. David Dorfman, *Decoding Deepfakes: How Do Lawyers Adapt When Seeing Isn’t Always Believing?*, OR. STATE BAR BULL., Apr. 2020, at 18, 20.

2. *Id.*

3. *Id.*

4. Derived from the works of dystopian author George Orwell, *doublespeak* or *double-talk* refers to “[c]omplicated, subtle, often equivocal speech cunningly used to engender confusion or perpetrate deceit.” *Double-talk*, BLACK’S LAW DICTIONARY (11th ed. 2019).

5. See Dorfman, *supra* note 1, at 22.

process lies in the assurance that evidence is genuine and reliable.<sup>6</sup> As deepfakes challenge the very essence of authenticity, legal practitioners, judges, and legislators must confront the implications of such technological advancements.<sup>7</sup> This Note delves into the intricate issue of how deepfakes and AI are poised to undermine evidence authentication, and explores its imminent threats, while proposing legal and procedural solutions.

## II. A DEEP DIVE INTO DEEPPFAKES AND EVIDENCE

### A. DEEPPFAKES: A FICTITIOUS, YET CONVINCING PRODUCT OF AI

Deepfakes are synthetic pieces of media such as photos, images, and audio, created by artificial intelligence to convincingly alter or completely manipulate a person's likeness and voice.<sup>8</sup> The name *deepfake* is derived from the deep learning technology used to create it and the fictitious results that follow.<sup>9</sup> To comprehend the nature and creation of deepfakes, it is helpful to recognize that a video is essentially a sequence of still images.<sup>10</sup> In some ways, deepfakes resemble the product of highly advanced Photoshop.<sup>11</sup> Deepfake technology employs a sophisticated algorithm, known as deep learning, to manipulate still images, which, when strung together, produce a video.<sup>12</sup> AI refers to systems that simulate human intelligence by recognizing patterns and drawing conclusions from datasets using machine learning techniques.<sup>13</sup> AI systems improve themselves by continuously "learning," by consuming more data.<sup>14</sup>

Deepfakes can be an innovative source of entertainment, such as when rapper Kendrick Lamar used deepfake technology in his music video to turn himself into Kobe Bryant as a tribute to the late basketball star.<sup>15</sup> However,

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6. JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW §8a, 621 (Peter Tillers ed., vol. 1 1983). "The rules of evidence are mainly aimed at guarding the jury from the overweening effect of certain kinds of evidence. The whole fabric is kept together by that purpose . . . ."

7. See Nikola Datzov, *Artificial Intelligence is Transforming Our World – Are We Ready?* DAKOTA DIGIT. REV., Fall-Winter 2022-23, at 26.

8. While there is no formally agreed-upon definition of *deepfake*, it generally refers to media created from artificial intelligence "sampling" a piece of media and then distorting it in such a way as to produce new or altered content. See generally Anna Yamaoka-Enkerlin, Comment, *Disrupting Disinformation: Deepfakes and the Law*, 22 N.Y.U. J. LEGIS. & PUB. POL'Y 725, 726-27 (2020).

9. *Id.*

10. Danielle C. Breen, *Silent No More: How Deepfakes Will Force Courts to Reconsider Video Admission Standards*, 21 J. HIGH TECH. L. 122, 136 (2021).

11. Photoshop software allows users to digitally alter images. Photoshopped images are an example of such modified media. See *id.* at 133.

12. *Id.* at 136-37.

13. See HENRY A. KISSINGER ET AL., THE AGE OF AI 57-58 (1st ed. 2021).

14. *Id.* at 57.

15. Kendrick Lamar, *The Heart Part 5*, YOUTUBE (May 8, 2022), <https://www.youtube.com/watch?v=uAPUkgeiFVY> [<https://perma.cc/G8S9-SFV6>].

the inherently unsettling nature of deepfake technology lies in its capacity to manipulate a person's likeness, enabling them to act and speak according to the deepfake creator's will.<sup>16</sup> In other words, deepfakes create non-consensual digital manipulations of our bodies, voices, and likenesses.<sup>17</sup> The danger of deepfakes catapulted into public consciousness after sexually explicit deepfakes of celebrity popstar Taylor Swift were released on social media, sparking outrage and disgust from fans.<sup>18</sup> Unfortunately, the vast majority of deepfakes are explicit.<sup>19</sup> Ninety-six percent of deepfakes on the Internet are pornographic; almost all involve fabricating a young woman's likeness.<sup>20</sup> Deepfakes, especially non-consensual and sexually explicit ones, can have "devastating repercussions on victims' lives," reputations, and dignity.<sup>21</sup>

Placing original and AI-manipulated videos side-by-side shows just how realistic and believable deepfakes can be.<sup>22</sup> The likeness of Bill Gates, for example, was featured in a deepfake video from Lip Synthesis software company.<sup>23</sup> The video boasts that it only took seventy-two hours to produce, and expresses confidence that, with additional time, the quality will improve.<sup>24</sup>

In an interview with University of North Dakota President Andrew Armacost, Greg Brockman, co-creator of ChatGPT, pointed out that AI has an inherent capacity for self-improvement.<sup>25</sup> Brockman emphasized that current

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16. Yamaoka-Enkerlin, *supra* note 8, at 730.

17. *Id.*

18. Bill Chappell, *Deepfakes Exploiting Taylor Swift Images Exemplify a Scourge with Little Oversight*, NAT'L PUB. RADIO, (Jan. 26, 2024, 6:01 PM), <https://www.npr.org/2024/01/26/1227091070/deepfakes-taylor-swift-images-regulation> [<https://perma.cc/RDG9-8JXP>].

19. Emily Pascale, Note, *Deeply Dehumanizing, Degrading, and Violating: Deepfake Pornography and the Path to Legal Recourse*, 73 SYRACUSE L. REV. 335, 336 (2023).

20. *Id.* at 337-38. The vast majority of deepfake videos on the Internet are pornographic, almost all involve contorting a female celebrity or politician's likeness.

21. *Id.* at 340. See Danielle Keats Citron, *Sexual Privacy*, 128 YALE L. J. 1870, 1924-28 (2019) (discussing the harmful repercussions from sexual exploitation on victim's psyche, relationships, and overall well-being after experiencing such an intimate violation of privacy and bodily autonomy). Deepfakes were also a major focus during the 2023 SAG-AFTRA strike, as Hollywood writers and actors were concerned over AI and deepfakes violating their name-image-likeness protections. Using deepfakes to manipulate actors' likenesses could render their jobs obsolete, greatly diminish bargaining power, or violate rights to own their likenesses. Alexandra Curren, Note, *Digital Replicas: Harm Caused by Actors' Digital Twins and Hope Provided by the Right of Publicity*, 102 TEX. L. REV. 155, 161 (2023).

22. See LipSynthesis, *Deepfake Example. Original/Deepfake Elon Musk*, YOUTUBE (Mar. 13, 2023), <https://www.youtube.com/watch?v=Wfc6t-c892A> [<https://perma.cc/68C6-ESLU>].

23. LipSynthesis, *Deepfake Example. Original/Deepfake Close Shot Bill Gates*, YOUTUBE (Mar. 13, 2023), <https://www.youtube.com/watch?v=WzK1MBEpkJ0> [<https://perma.cc/J9ZN-7U37>].

24. *Id.*

25. See UofNorthDakota, *Conversation with ChatGPT Co-creator Greg Brockman*, YOUTUBE (Sept. 26, 2023), <https://www.youtube.com/watch?v=LSWy7nLDKRo> [<https://perma.cc/Z7JD-L347>]. Greg Brockman was born and raised in Thompson, North Dakota, and attended the

AI systems are “the least good [they] will ever be,” with its current capabilities representing merely a baseline of its future capabilities.<sup>26</sup> Brockman notes AI technology “is so desirable, [that] it will be built with or without us.”<sup>27</sup>

The accessibility of AI and deepfake technology causes ubiquity.<sup>28</sup> Programs like ChatGPT are user-friendly and offer free versions, making them easily accessible.<sup>29</sup> Creating deepfakes requires minimal time and financial investment.<sup>30</sup> This ease of access significantly contributes to the pervasive nature of deepfake technology.<sup>31</sup> However, “[a] central paradox of our digital age,” writes former statesman Henry Kissinger, “is that the greater a society’s digital capacity, the more vulnerable it becomes.”<sup>32</sup>

## B. ADMISSIBILITY AND SELF-AUTHENTICATING EVIDENCE

Evidence is the “medium by which truth is established” in the legal system to make adjudications fair, accurate, and conclusive.<sup>33</sup> Evidence submitted to the court must be logically relevant to its intended proposition.<sup>34</sup> Generally, evidence must be authenticated by providing *sufficient* proof to support a finding the evidence “is what the proponent claims it is.”<sup>35</sup>

Under North Dakota Rule of Evidence 902, some evidence is classified as self-authenticating and does not require extrinsic proof to be admissible.<sup>36</sup> Rule 902 does not completely obviate the authentication requirement, rather, it changes the authentication methods a proponent may use.<sup>37</sup> Authentication methods include official publications, newspapers, periodicals, and trade

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University of North Dakota. In 2023, Brockman returned to the U.N.D. campus to discuss ChatGPT and the role of AI with President Armacost.

26. *Id.* at 17:40.

27. *Id.* at 15:28.

28. See Blake Klinkner, *What Attorneys Should Know About Deepfakes*, DAKOTA DIGIT. REV., Fall-Winter 2023-24, at 24.

29. *ChatGPT*, OPEN AI, <https://openai.com/chatgpt> (last visited Jan. 15, 2024).

30. Morning Edition, *It Takes a Few Dollars and 8 Minutes To Create A Deepfake. And That’s Only the Start*, NAT’L PUB. RADIO (Mar. 23, 2023, 5:00 AM), <https://www.npr.org/2023/03/23/1165146797/it-takes-a-few-dollars-and-8-minutes-to-create-a-deepfake-and-thats-only-the-sta> [<https://perma.cc/WE8V-T34K>].

31. Shannon Sylvester, *Don’t Let Them Fake You Out: How Artificially Mastered Videos Are Becoming the Newest Threat in the Disinformation War and What Social Media Platforms Should Do About It*, 73 FED. COMM’NS L. J. 369, 373 (2021).

32. KISSINGER ET AL., *supra* note 13, at 153-54.

33. *State v. Sogge*, 161 N.W. 1022, 1024 (N.D. 1917).

34. N.D.R.Ev. 402.

35. N.D.R.Ev. 901(a).

36. N.D.R.Ev. 902. This rule represents the common law presumption that certain documents and records are authentic and shifts the burden to the opponent to show impropriety.

37. Daniel J. Crothers, *The Wrong Road Taken: Social Media Content, Self-Authentication and Misapplication of the Business Records Rule*, 96 N.D. L. REV. 133, 180 (2021).

inscriptions, including signs, tags, and labels.<sup>38</sup> North Dakota courts have held that under Rule 902, evidence of a vehicle estimate from the *Kelley Blue Book*, evidence of a mortgage note, and a file containing driving disciplinary information does not require extrinsic evidence to authenticate.<sup>39</sup> The reason for the presumption of authenticity is that the risk of falsification is slight because of the perceived difficulty of forging items in this category.<sup>40</sup> Rule 902 even includes self-authenticating evidence found online, for example, a government agency posting a pamphlet or press release on its official website.<sup>41</sup>

### III. HOW DEEPFAKES THREATEN THE LEGAL SYSTEM

Advancing AI technology, in conjunction with the proliferation of deep-fakes, presents an escalating threat to the credibility of self-authenticating evidence.<sup>42</sup> This technology produces extremely convincing falsified materials, leading to two inherent risks: first, the potential admission and consideration of fictitious AI-generated evidence;<sup>43</sup> second, the possibility of deep-fakes as a basis for unwarranted claims against legitimate evidence.<sup>44</sup> Lawyers who seek to admit or challenge AI, and judges who must rule on its admissibility, must educate themselves about AI, its capabilities, and limits, to competently carry out justice.<sup>45</sup>

#### A. DEEPFAKES' ABILITY TO PRODUCE FRAUDULENT EVIDENCE

The danger of deepfakes entering the courtroom becomes especially pronounced when judges and juries adhere to the notion that seeing is believing.<sup>46</sup> In legal proceedings where visual evidence holds significant weight, the potential for AI-manipulated content to sway perceptions and to influence verdicts is self-evident.<sup>47</sup> Deepfakes, as compared to photo editing, are considerably more harmful because “[t]he audiovisual congruence of deepfakes

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38. N.D.R.Ev. 902(7).

39. *State v. Erickstand*, 2000 ND 202, ¶ 34, 620 N.W.2d 136, 146; *Midwest Fed. Sav. & Loan Ass'n of Minot v. Kouba*, 335 N.W.2d 780, 785 (N.D. 1983); *Hewitt v. Henke*, 2020 ND 102, ¶ 14, 942 N.W.2d 459, 462.

40. PAUL R. RICE, *ELECTRONIC EVIDENCE: LAW AND PRACTICE*. 381, 383, 385 (2d ed. 2008).

41. *Id.* at 384-85.

42. Paul W. Grimm et al., *Artificial Intelligence as Evidence*, 19 NW. J. TECH. & INTELL. PROP. 9, 94 (2021).

43. Matthew F. Ferraro, *The Other Side Says Your Evidence Is a Deepfake. Now What?*, L. 360, Dec. 21, 2022.

44. *Id.*

45. Grimm et al., *supra* note 42, at 13.

46. John P. LaMonaca, Comment, *A Break from Reality: Modernizing Authentication Standards for Digital Video Evidence in the Era of Deepfakes*, 69 AM. U. L. REV. 1945, 1958-59 (2020).

47. *Id.*

. . . increases their persuasive effect on the viewer.”<sup>48</sup> Witnesses, judges, and juries, may find it exceptionally challenging to identify subtle, yet crucial, alterations in deepfake materials.<sup>49</sup>

Psychological research indicates when a deepfake is introduced in evidence, the falsehoods embedded in the manipulated content permeate other aspects of the proceeding.<sup>50</sup> Deepfakes may even influence the testimony of witnesses regarding their recollection of an event.<sup>51</sup> Merely presenting witnesses with “fabricated evidence—or perhaps even genuine evidence that is somehow misleading—might induce them to testify about entire experiences they have never actually had.”<sup>52</sup> Experimental studies suggest individuals are willing to sign a statement attesting to “providing (false) eyewitness testimony in response to a compelling yet [unknowingly] false 10-20-second video-clip,” even when aware their actions may punish a peer.<sup>53</sup> The impact of deepfakes in the courtroom can be devastating and transcend the deceptive nature of the evidence.<sup>54</sup>

## B. DEEPPFAKES AS A BASIS FOR IMPROPER CLAIMS

As deepfake technology becomes increasingly prevalent, certain defendants are leveraging this uncertainty to raise questions about the credibility and the admissibility of adverse evidence.<sup>55</sup> Some legal scholars argue it may be more likely that as AI proliferates, courts will be confronted with more improper claims against real evidence than fake evidence.<sup>56</sup> Under this premise, it may be insinuated that AI digitally manipulated the evidence, thereby introducing a novel dimension of doubt into legal proceedings.<sup>57</sup> This produces a “liar’s dividend,” the practice of using the existence of deepfakes to

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48. Katrina Geddes, Article, *Ocularcentrism and Deepfakes: Should Seeing Be Believing?*, 31 FORDHAM INTELL. PROP., MEDIA & ENT. L. J. 1042, 1071 (2021) (explaining that “deepfakes test the limits of society’s tolerance for visual manipulation, they force us to confront our history of ocularcentrism and to interrogate the utility of the normative claim that *seeing is believing*”).

49. *See id.*

50. *See* Kimberly A. Wade et al., *Can Fabricated Evidence Induce False Eyewitness Testimony?*, 24 APPLIED COGNITIVE PSYCH., 899, 907 (2010).

51. *Id.*

52. *Id.*

53. *Id.* at 906.

54. *See id.*

55. *See* Soderberg v. Carrión, 645 F. Supp. 3d 460, 483-84 (D. Md. 2022) (holding that the State’s concern over disseminating alleged deepfakes amounts to mere speculation and fails to show a tangible concern).

56. All Things Considered, *People Are Trying to Claim Real Videos are Deepfakes. The Courts are Not Amused*, NAT’L PUB. RADIO, at 5:01 AM (May 8, 2023), <https://www.npr.org/2023/05/08/1174132413/people-are-trying-to-claim-real-videos-are-deep-fakes-the-courts-are-not-amused> [<https://perma.cc/6XXJ-GEWR>].

57. *Id.*

cast doubt on the authenticity of legitimate evidence.<sup>58</sup> The presence of a liar’s dividend poses a significant concern for courtroom proceedings and the public’s trust in the legal system.<sup>59</sup>

This phenomenon has manifested in high-profile cases.<sup>60</sup> When Joshua Christopher Doolin faced criminal charges linked to his involvement in the January 6, 2021 riots in Washington D.C., he claimed the open-source videos showing him at the Capitol were inauthentic and must be suppressed.<sup>61</sup> In response, “[t]he government sought a motion in limine to authenticate [the] videos” under Federal Rule of Evidence 901(a).<sup>62</sup> “Doolin argued that the ‘widely available and insidious’ technology used to create deepfakes ‘allow[s] people to appear to say just about anything.’”<sup>63</sup> The government, unable to deny the technology exists and has such capabilities, countered that Doolin’s argument goes to the video’s weight with the jury, not its admissibility.<sup>64</sup> Further, Doolin did not provide any evidence to support his deepfake claim, whereas the government could.<sup>65</sup> The United States District Court for the District of Columbia was not convinced, and the video was admitted into evidence.<sup>66</sup> Doolin was subsequently sentenced to jail.<sup>67</sup>

Inventor and businessman, Elon Musk has made similar claims.<sup>68</sup> In a wrongful death lawsuit, Musk claimed that a video of him speaking at a tech conference boasting about his Tesla vehicles’ self-driving capabilities was a deepfake.<sup>69</sup> This claim arose when the family of a deceased Tesla driver sought to admit the video.<sup>70</sup> Judge Evette Pennypacker condemned Musk’s

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58. Bobby Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security*, 107 CALIF. L. REV. 1753, 1785-86 (2019) (coining the term “liar’s dividend” which refers to how bad actors can weaponize the skepticism and misinformation surrounding deepfakes).

59. Ferraro, *supra* note 43.

60. *See id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Following the January 6<sup>th</sup> attack on the federal capitol, Chief Judge Beryl Howell issued a district-wide Standing Order to allow public access to video footage and photos taken of and by defendants like Christopher Doolin. *See In re Press & Pub. Access to Video Exhibits in Capitol Riot Cases*, No. 21-46 (BAH), 2021 WL 1946378 (D.D.C. May 14, 2021).

67. *See* U.S. Att’y’s Off., D.C., *Florida Man Sentenced on Felony and Misdemeanor Charges for Actions During Jan. 6 Capitol Breach*, U.S. DEP’T OF JUST., (Oct. 19, 2023), <https://www.justice.gov/usao-dc/pr/florida-man-found-guilty-felony-and-misdemeanor-charges-related-jan-6-capitol-breach> [<https://perma.cc/B54F-HF3D>].

68. All Things Considered, *supra* note 56.

69. *Id.*

70. *Id.*



allegation as “deeply troubling,” and ordered him to testify under oath to clarify whether he made such statements.<sup>71</sup>

In *Project Veritas v. Schmidt*, a judge from the Ninth Circuit Court of Appeals observed that deepfakes heighten the stakes in cases involving improper audio recordings.<sup>72</sup> This observation is well-founded because of the potential for recordings to be morphed, manipulated, and incorporated into a harmful deepfake.<sup>73</sup> In her dissent, Judge Morgen Christen noted “the self-authenticating character of audio recordings is rapidly eroding as modern technology renders ‘deepfakes’ ever more accessible and difficult to distinguish from actual recordings.”<sup>74</sup>

Unleashing powerful AI to the public raises the concern that “as the technology becomes more prevalent, it will become easier to claim that anything is fake.”<sup>75</sup> In response to the rise of the “deepfake defense,” lawyers may find themselves compelled to furnish additional layers of proof to convince juries of authenticity.<sup>76</sup> This shift has the potential to create a strategic imbalance, as attorneys seeking to downplay or dismiss incriminating evidence could demand the other party present superfluous evidence to ensure authenticity.<sup>77</sup> The unfortunate outcome is a legal environment in which substantiating authenticity becomes a prolonged and expensive process.<sup>78</sup> This shift emphasizes the need for a legal framework and strategy capable of navigating the intersection of advanced AI technology while preserving evidential integrity.<sup>79</sup>

#### IV. PROCEDURAL SAFEGUARDS

Ensuring that proper evidence is presented in court is not a new or novel concern.<sup>80</sup> Defending the authenticity of evidence, and the public’s confidence in the justice system, is of paramount importance.<sup>81</sup> As such, certain

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71. *Id.*

72. *Project Veritas v. Schmidt*, 72 F.4th 1043, 1075 (9th Cir. 2023) (Christen, J., dissenting), vacated, 95 F.4th 1152 (9th Cir. 2024) (Mem).

73. *Id.*

74. *Id.* at 1083 n.16.

75. All Things Considered, *supra* note 56.

76. *Id.*

77. *Id.*

78. Ferraro, *supra* note 43.

79. See Eric Kocsis, Comment, *Deepfakes, Shallowfakes, and the Need for a Private Right of Action*, 126 DICK. L. REV. 621, 637 (2022).

80. Rebecca A. Delfino, *Deepfakes on Trial: A Call to Expand the Trial Judge’s Gatekeeping Role to Protect Legal Proceedings from Technological Fakery*, 74 HASTINGS L.J. 293, 306-07 (2023) (“At its essence, the common-law adversarial system depends upon legal advocates’ pursuit of their clients’ interests by presenting competing versions of their respective cases through the presentation of evidence.”).

81. *Id.* at 307.

safeguards already exist, including the jury's role as factfinder, and ethical guidelines for attorneys offering evidence.<sup>82</sup> However, it remains doubtful these protections are adequate in the face of AI and deepfakes.<sup>83</sup>

In an adversarial system, juries are entrusted to determine findings of fact.<sup>84</sup> In other words, the jury decides what facts the evidence establishes.<sup>85</sup> Professor Paul R. Rice pointed out that even if a piece of evidence is admitted, "the lack of any independent verification of reliability will be considered by the jury when determining the weight of the evidence."<sup>86</sup> Allowing a jury to hear a piece of evidence is not the same as successfully persuading the jury.<sup>87</sup> The mere survival of a piece of AI-fabricated evidence through authenticity standards does not guarantee the jury will regard it as gospel truth.<sup>88</sup> After all, getting evidence admitted, and therefore heard by the fact finder, is different from successfully persuading a judge or the jury.<sup>89</sup> For instance, how useful would a videotaped confession of the defendant be if the jury does not even believe it is actually the defendant in the video?<sup>90</sup> Professor Rice argued that admitting evidence is merely the first bite at the apple and "[t]he same arguments that did not convince the presiding judge to exclude the evidence can be presented to jurors to convince them to ignore it."<sup>91</sup> Even when the evidence is admitted, the burden of persuasion lies with the proponent of the evidence to convince the jury.<sup>92</sup>

Another layer of protection lies in a lawyer's ethical duties.<sup>93</sup> North Dakota Rule of Professional Conduct 3.3 states "[a] lawyer shall not knowingly . . . offer evidence that the lawyer knows to be false."<sup>94</sup> Thus, the rule imposes

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82. *Gronneberg v. Hoffart*, 466 N.W.2d 809, 813 (N.D. 1991) (noting juries, not the court, are the finders of fact, and are tasked with the responsibility and authority to determine what evidence to accept and how to view it); N.D.R. Prof. Conduct 3.3(a)(3).

83. Delfino, *supra* note 80, at 332. Specifically, issues persist for authenticating evidence, responding to allegations of deepfake use, and overcoming juror skepticism remain concerns that current evidentiary rules and common-law theories fail to address and remedy.

84. *How Courts Work: Courts and Legal Procedure: The Role of Juries*, AM. BAR ASS'N, (Sept. 9, 2019), [https://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/jury\\_role/](https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/jury_role/).

85. *Id.*

86. *See* RICE, *supra* note 40, at 400.

87. *See id.* at 386.

88. Dorfman, *supra* note 1, at 21 (noting how deepfakes sow jury distrust and skepticism).

89. *Id.*

90. *Id.* at 21.

91. *See* RICE, *supra* note 40, at 400.

92. *Id.* at 385.

93. The Preamble to the North Dakota Rules of Professional Conduct asserts that as a member of the legal profession in North Dakota, a lawyer is "a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." N.D.R. Prof. Conduct Preamble[1].

94. N.D.R. Prof. Conduct 3.3(a)(3).

a special duty as officers of the court to avoid conduct that would undermine the integrity of the adjudicative process.<sup>95</sup> While the rules establish a crucial ethical foundation by prohibiting lawyers from knowingly submitting false evidence, issues remain to address the intricacies of AI-enhanced evidence.<sup>96</sup> When encountering potentially false evidence, a lawyer's ethical obligation turns on whether she *knows* or *believes* the evidence is false.<sup>97</sup> However, the believability of AI may make it challenging for legal practitioners to definitively ascertain the authenticity of manipulated content.<sup>98</sup>

The co-creator of ChatGPT, Greg Brockman, recognized that although AI may seem like an unstoppable force, we can all “help decide how we want this to integrate with society, how we want to work with it, how we want this to integrate with our lives.”<sup>99</sup> Therefore, there is a growing need for further safeguards to effectively scrutinize and mitigate the potential impact of AI-enhanced evidence. This will ensure the integrity of North Dakota courtroom proceedings.

## V. PROPOSED MEASURES FOR NORTH DAKOTA TO BRIDGE THE GAP

Although the threats posed by AI and deepfakes are evident, the solution to mitigate these risks is not as apparent.<sup>100</sup> Courts and legislatures must proactively address these issues to safeguard the integrity of the judicial system.<sup>101</sup> The legislative process is intended to benefit society, but because of the rapid development of AI, courts and legislators have not yet caught up with AI's innovation.<sup>102</sup> Further, AI will likely enter into an arms race with itself, and “we will need to rely upon AI to detect the works of other AIs.”<sup>103</sup>

This is not to say that AI and deepfakes should never be admitted evidence.<sup>104</sup> “[S]ome litigation will revolve around deepfakes themselves, with

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95. This rule reflects that of the Model Rules of Professional Conduct 3.3 Candor Toward the Tribunal.

96. *See State v. Hagen*, 1998 ND 36, ¶¶ 7-9, 574 N.W.2d 585, 587 (applying N.D.R. Prof. Conduct 3.3).

97. *See* N.D.R. Prof. Conduct 3.3 cmts. 7, 9.

98. Delfino, *supra* note 80, at 307, 309.

99. UofNorthDakota, *supra* note 25, at 15:34.

100. Dorfman, *supra* note 1, at 23.

101. *See* Morris Wilner, *Artificial Intelligence and Its Usage in the Business and Practice of Law*, 50 W. ST. L. REV. 125, 126 (2023).

102. *Id.* In the author's view, “the practical use of AI in different jurisdictions and disciplines will create the law and order that people seek in AI[.]” Wilner predicts that “AI may be used to enforce those very laws and serve as a foundation for future regulation.”

103. Klinkner, *supra* note 28, at 26.

104. Grimm et al., *supra* note 42, at 13, 38. For example, AI's facial recognition systems have proved useful to law enforcement. “[I]f AI applications now dominate our lives, it is unavoidable

falsely depicted individuals lodging defamation, libel, false light, extortion and right of publicity claims against deepfake creators or distributors.”<sup>105</sup> In cases involving manipulated evidence, deepfakes would likely be relevant and imperative in deciding the action.<sup>106</sup> This argument advocates for establishing authentication procedures and properly identifying potentially AI-manipulated evidence, namely deepfakes, in court.<sup>107</sup>

North Dakota’s former Chief Data Officer, Dorman Bazzell, recognized the future importance of AI and similar technologies in the state.<sup>108</sup> Bazzell perceived the technology as straightforward but emphasized that difficulty lies in the challenges associated with implementing machine learning outcomes.<sup>109</sup> During his tenure, Bazzell observed that North Dakota’s government should not hinder technological innovation; instead, it “should enable confidence and adoption of it.”<sup>110</sup> Thus, implementing AI successfully will require the combined efforts of state actors, legislators, agencies, and information technology experts.<sup>111</sup>

The first step for North Dakota to stand up against deepfakes is to define AI and articulate its role in North Dakota. The second step will be to take specific action to address the threats posed by deepfakes in courtroom evidence.

#### A. ADDING DEEPFAKES TO NORTH DAKOTA’S LEGAL LEXICON

The first step for North Dakota legislators to take in addressing the AI and deepfake crisis is to define it in the Century Code. As of May 2024, North Dakota is among several state legislatures yet to address the risks stemming from artificial intelligence.<sup>112</sup> The only mention of AI is in the definition section of North Dakota’s Century Code, where the term *person* is differentiated

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that the evidence that will be needed to resolve civil litigation and criminal trials will include facts that are generated by this enigmatic technology.”

105. Dorfman, *supra* note 1, at 23.

106. For instance, in a lawsuit about the unlawful distribution of nonconsensual pornographic material using AI, the fabricated images and videos would be relevant and necessary evidence for the court to consider.

107. See discussion *infra* Section V.B Amending Authentication Standards for North Dakota Courtrooms.

108. Ron Schmelzer, *Perspectives on AI From The North Dakota Chief Data Officer*, FORBES (Jan. 24, 2021, 10:01 AM), <https://www.forbes.com/sites/cognitiveworld/2021/01/24/perspectives-on-ai-from-the-north-dakota-chief-data-officer/> [https://perma.cc/2DD4-Y8DX].

109. *Id.*

110. *Id.*

111. *Id.*

112. Ilana Beller, *Tracker: State Legislation on Deepfakes in Elections*, PUB. CITIZEN (May 16, 2024), <https://www.citizen.org/article/tracker-legislation-on-deepfakes-in-elections/> [https://perma.cc/2Q7B-2HJL] (tracking legislation targeting deepfakes used in political elections; North Dakota has not yet introduced legislation targeting deepfakes for any purpose).

from artificial intelligence.<sup>113</sup> This brief mention leaves North Dakotans in the dark, without explanation of AI's role in the state's legal system.<sup>114</sup>

Further, the United States Supreme Court has yet to grant certiorari to a case directly involving AI.<sup>115</sup> Neither the Federal Rules of Evidence,<sup>116</sup> nor the Federal Rules of Criminal Procedure mention AI.<sup>117</sup> Thus, even at the federal level, judges and practitioners are left without guidance.<sup>118</sup> Not only do government institutions need to catch up to AI, but also reference and scholarly materials. Black's Law Dictionary, an oft relied on source, fails to define AI.<sup>119</sup>

Articulating legal definitions is the responsibility of our elected representatives, and constituents look to them for appropriate action.<sup>120</sup> For instance, Louisiana already defined deepfake to mean:

any audio or visual media in an electronic format, including any motion picture film or video recording, that is created, altered, or digitally manipulated in a manner that would falsely appear to a reasonable observer to be an authentic record of the actual speech or conduct of the individual or replace an individual's likeness with another individual and depicted in the recording.<sup>121</sup>

California defined deepfakes as "audio or visual content that has been generated or manipulated by artificial intelligence which would falsely appear to be authentic or truthful and which features depictions of people

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113. N.D. CENT. CODE § 1-01-49(10) (2023). The term *person* is defined as "an individual, organization, government, political subdivision, or government agency or instrumentality. The term does not include environmental elements, artificial intelligence, an animal, or an inanimate object." By these definitions, artificial intelligence, and entities created by artificial intelligence, do not have personhood status in North Dakota.

114. *Id.*

115. Wilner, *supra* note 101, at 126.

116. Many of North Dakota's Rules of Evidence are taken from the Uniform Rules of Evidence, which conform "to the Federal Rules of Evidence for purposes of uniformity between State and Federal evidence law." *State v. Farzaneh*, 468 N.W.2d 638, 641 (N.D. 1991).

117. Grimm et al., *supra* note 42, at 104. Because there is no requirement to disclose AI evidence as such according to the relied upon Federal Rules of Civil and Criminal Procedure, "there is a risk that [AI evidence] may not be disclosed soon enough for disputes about its admissibility to be determined before trial."

118. Wilner, *supra* note 101, at 126. "The constitution does not expressly address AI and the Supreme Court has yet to provide robust precedent on how we should view AI." It should come as no surprise that AI, or any related technology for that matter is not addressed in the United States Constitution, ratified in 1788, centuries before the technology was developed. The only seeming reference to technology governs patent and copyright protections in U.S. CONST. art. I, § 8, cl. 8.

119. Wilner, *supra* note 101, at 126. Black's Law Dictionary does, however, define artificial as: "Made or produced by a human or human intervention rather than by nature." *Artificial*, BLACK'S LAW DICTIONARY (11th ed. 2019).

120. KISSINGER ET AL., *supra* note 13, at 218-19.

121. LA. STAT. ANN. § 73:13(C)(1) (2023).

appearing to say or do things they did not say or do without their consent.”<sup>122</sup> While the United States Code recognizes the term as simply a colloquial name for machine-manipulated media.<sup>123</sup> By borrowing from these definitions, North Dakota’s legislature can define and describe deepfakes; putting it in the state’s legal lexicon is the first step to protect citizens.<sup>124</sup> After all, “[p]olicy makers need to accurately define what is and what is not a deepfake to properly remedy the injuries caused by deepfakes.”<sup>125</sup>

Another preliminary step for state governments addressing concerns related to emerging technology is establishing a task force for further study and reporting.<sup>126</sup> Wisconsin, Illinois, and Massachusetts are among those that established task forces targeting deepfake and AI technology.<sup>127</sup> North Dakota has yet to take action.<sup>128</sup> Moreover, some states have gone further by enacting laws prohibiting specific types of deepfakes.<sup>129</sup> However, these laws do not specifically target deepfakes as a threat to evidence.<sup>130</sup>

North Dakota would be wise to heed these actions by introducing similar legislation and policies to protect North Dakotans from harmful deepfakes in our community and courtrooms. As AI develops, it will be crucial for community leaders to introduce regulations and procedures that allow AI to thrive, while mitigating its inherent risks.<sup>131</sup> Through these choices, “a new human identity for the AI age will . . . manifest.”<sup>132</sup>

122. CAL. GOV’T CODE § 11547.5(a)(1) (West 2023).

123. 50 U.S.C § 3369(a)(1)(A).

124. Kocsis, *supra* note 79, at 626.

125. *Id.*

126. Scott J. Shackelford & Rachel Dockery, *Governing AI*, 30 CORNELL J.L. & PUB. POL’Y 279, 302 (2020) (explaining how task forces are among the main avenues states use as they begin to legislate on AI).

127. Wis. Exec. Order No. 211 (2023) (creating the Governor’s task force on Workforce and Artificial Intelligence); H.B. 3563, 103rd Gen. Assemb., Reg. Sess. (Ill. 2023) (establishing a generative AI and natural language processing task force); H.B. 72, 193rd Gen. Ct., Reg. Sess. (Mass. 2023) (creating the Deepfake and Digital Provenance Task Force).

128. Beller, *supra* note 112.

129. The only regulated content-based deepfakes are election misinformation and sexually explicit depictions. See Jack Langa, Note, *Deepfakes, Real Consequences: Crafting Legislation to Combat Threats Posed by Deepfakes*, 101 B.U. L. REV. 761, 777 (2021) (discussing how states have used legislation to combat election misinformation); see also Pascale, *supra* note 20 (discussing the need for regulation surrounding non-consensual pornographic deepfakes).

130. See Trisha Ahmed, *Minnesota Advances Deepfakes Bill to Criminalize People Sharing Altered Sexual, Political Content*, ASSOCIATED PRESS (May 10, 2023, 5:10 PM), <https://apnews.com/article/deepfake-minnesota-pornography-elections-technology-5ef76fc3994b2e437c7595c09a38e848> [<https://perma.cc/TLL6-24NN>] (discussing legislation targeting election misinformation and pornography); S.B. 553, 2023-2024 Leg., 106th Sess. (Wis. 2023).

131. See KISSINGER ET AL., *supra* note 13, at 196.

132. *Id.* Kissinger and other thought leaders encourage elected representatives to embrace AI technology, rather than fight against its pervasiveness.

## B. AMENDING AUTHENTICATION STANDARDS FOR NORTH DAKOTA COURTROOMS

To preserve courtroom integrity, the North Dakota Rules of Evidence should be amended to heighten authentication standards for self-authenticating digital evidence. Despite the scarcity of case law discussing AI and its admissibility, experts emphasize AI is destined to become a focal point in disputes.<sup>133</sup> These disputes will inevitably make their way into courtrooms.<sup>134</sup>

The risk of deepfakes masquerading as proper evidence could be mitigated through enhanced authentication standards. The North Dakota legislature must act soon because “video and audio recordings are an indispensable element of many criminal and civil actions, but a shadow of uncertainty may linger over each of these proceedings until the implications of deepfakes are addressed.”<sup>135</sup>

Presently, evidence in North Dakota courtrooms is authenticated using Rule 901’s sufficiency standard.<sup>136</sup> The sufficiency standard requires the proponent to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.”<sup>137</sup> Recall, however, some forms of evidence are deemed self-authenticating and do not require extrinsic evidence for authentication, thus bypassing the sufficiency standard.<sup>138</sup>

Deepfakes are particularly harmful to self-authenticating evidence because they are easily fabricated by AI technology.<sup>139</sup> Newspapers are categorized as self-authenticating evidence.<sup>140</sup> Using image-manipulating technology, creating a deepfake of a Bismarck Tribune headline would be a simple and affordable task.<sup>141</sup> Further, in response to the growing practice of equipping law enforcement officers with body cameras, and recording depositions and interrogations, tech companies have developed tools that can upload authenticating data at the time of the video’s capture.<sup>142</sup> This process relies on

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133. Grimm et al., *supra* note 42, at 105. “[T]here are few court decisions that have squarely addressed the admissibility of AI evidence in proceedings governed by the Federal Rules of Evidence or their state-law equivalents. But this will change, in due course, as it is inevitable that AI technology will be at the heart of disputes that will increasingly find their way into court.”

134. *Id.*

135. Dorfman, *supra* note 1, at 21.

136. N.D.R.Ev. 901(a).

137. *Id.*

138. *See supra* text accompanying notes 37-43; N.D.R.Ev. 902.

139. *See supra* text accompanying notes 29-31 (discussing the pervasiveness of deepfakes and the accessible means for their production).

140. FED. R. EVID. 902(6) (“Printed material purporting to be a newspaper or periodical” is self-authenticating and “require[s] no extrinsic evidence of authenticity in order to be admitted.”).

141. *See supra* notes 29-31 and accompanying text. As previously discussed, creating deepfakes is widely accessible and is a non-resource-intensive endeavor.

142. Dorfman, *supra* note 1, at 22.

generating hashes to a blockchain so that if the content is altered, the data will not match the hashes on the blockchain.<sup>143</sup> This process is categorized as a self-authenticating procedure by allowing for “a record [to be] generated by an electronic process or system that produces an accurate result,”<sup>144</sup> which removes the requirement to provide extrinsic evidence.<sup>145</sup>

Therefore, videos and other digital evidence, are susceptible to deepfake manipulation because of their authentication process.<sup>146</sup> Included in this category of self-authenticating evidence, could be “GPS data, cell phone photos, text messages, and other electronic evidence, if the proponent introduced an authentication certificate . . . showing that the ESI [electronically stored information] was obtained from systems that produced reliable results.”<sup>147</sup> The problem lies in deepfake’s ability to digitally manipulate the authentication certificate, thus potentially tainting the evidence, and the trial’s outcome.<sup>148</sup>

Rules 901 and 902 must be amended to bring North Dakota’s evidentiary rules in sync with modern technology. A proposed addition to Rule 901 is as follows: “(Proposed New) Rule 901(b)(11): Before a court admits photographic evidence under this rule, a party may request a hearing requiring the proponent to corroborate the source of information by additional sources.”<sup>149</sup> By codifying an existing authentication method,<sup>150</sup> this proposed rule would provide parties an avenue to address deepfake allegations.<sup>151</sup> Upon the allegation of a deepfake, a preliminary evidentiary hearing could be granted so parties can present additional evidence from approved categories to support or debunk the deepfake allegation.<sup>152</sup> Categories of additional evidence may

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143. *Id.* Hashes are cryptographic representations of data.

144. *Id.* (quoting FED. R. EVID. 902(13)).

145. N.D.R.Ev. 902(13).

146. Dorfman, *supra* note 1, at 21-22.

147. Gregory N. Heinen, *New Federal Rules of Evidence 902(13) and 902(14)*, NAT’L L. REV. (Dec. 1, 2017), <https://www.natlawreview.com/article/new-federal-rules-evidence-90213-and-90214> [<https://perma.cc/NC6F-78FY>] (discussing the introduction of rules 902(13) and 902(14), from which the North Dakota Rules of Evidence are based on). Electronic evidence encompasses any “probative information that has been produced, stored, or transmitted in electronic form and might be usable at trial.” *Evidence, Digital Evidence*, BLACK’S LAW DICTIONARY (11th ed. 2019).

148. Heinen, *supra* note 147.

149. LaMonaca, *supra* note 46, at 1985.

150. Subsection (b) of the rule provides examples of evidence that already satisfies the requirement, such as FED. R. EVID. 901(b)(5) Opinion About a Voice, “[a]n opinion identifying a person’s voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.”

151. LaMonaca, *supra* note 46, at 1985.

152. *Id.* at 1986-87.



include metadata<sup>153</sup> or a digital certificate,<sup>154</sup> testimony from a records custodian or expert on identifying deepfakes,<sup>155</sup> and relevant circumstantial evidence.<sup>156</sup> Following the hearing, the court would determine sufficiency, which is “merely a preliminary question of conditional relevancy” that the evidence truly is what it is claimed to be.<sup>157</sup> The “jury still ultimately determines credibility and weight of the evidence that is admitted.”<sup>158</sup> Codifying a procedure addressing deepfakes can mitigate the potential harm caused by fraudulent evidence.<sup>159</sup>

Further, the North Dakota Rules of Evidence provide a mechanism to modify authentication standards.<sup>160</sup> Rule 901(b)(10) provides “[a]ny method of authentication or identification allowed by a statute or a rule prescribed by the North Dakota Supreme Court” may satisfy the authenticity standard.<sup>161</sup> The dangers of deepfakes could be remedied by enhancing authenticity standards to establish more stringent guidelines for authenticating digital, audio, and video recordings.<sup>162</sup>

Judges need to make sure that experts summoned to verify AI evidence either have direct experience with the facts they’re authenticating or are qualified to use information from reliable sources beyond their personal knowledge in their testimony.<sup>163</sup> Courts could also delegate tasks such as determining the admissibility of a proposed deepfake to a judicial referee.<sup>164</sup>

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153. Metadata are “[s]econdary data that organize, manage, and facilitate the use and understanding of primary data. Metadata are evaluated when conducting and responding to electronic discovery. If privileged documents or final versions of computer files may contain metadata, they might be ‘scrubbed’ before release.” *Metadata*, BLACK’S LAW DICTIONARY (11th ed. 2019). By examining metadata, courts will be able to view the source of the digital evidence and details of modifications that have been made to it.

154. A digital certificate is “[a] publicly available computer-based record that identifies the certifying authority and the subscriber who was issued a digital signature for electronically transmitted documents and that also provides the person’s public key for decrypting the digital signature.” *Digital Certificate*, BLACK’S LAW DICTIONARY (11th ed. 2019).

155. Grimm et al., *supra* note 42, at 92-93. Experts could then help educate the court on the nuances of deepfake technology and assist judges and jurors in evaluating its authenticity, and the corresponding persuasiveness of the contested evidence.

156. LaMonaca, *supra* note 46, at 1985 (“A starting point for elements for the court to consider at this [preliminary hearing] stage is the presence of additional corroborating evidence. . .”).

157. N.D.R.Ev. 901 Explanatory Note.

158. LaMonaca, *supra* note 46, at 1987.

159. *Id.* (noting “[a] preliminary hearing to consider circumstantial authentication factors does not solve the deepfakes evidentiary crisis—but it does mitigate it”).

160. N.D.R.Ev. 901(b)(10).

161. *Id.*

162. Grimm et al., *supra* note 42, at 83-84.

163. *Id.* at 93.

164. A referee is “[a] master appointed by a court to assist with certain proceedings.” *Referee*, BLACK’S LAW DICTIONARY (11th ed. 2019).

Determining the admissibility of AI-involved evidence is “not the type of issue that is well suited to be resolved in the middle of a trial, or on the fly.”<sup>165</sup> To compensate for the time-intensive inquiry in discerning allegedly AI-manipulated evidence, the modified rule should include a timing requirement.<sup>166</sup> For instance, parties alleging the opponent’s evidence is fabricated by AI may challenge the evidence through pre-trial motions; this would avoid delay or misleading the jury.<sup>167</sup> A specified amount of time before the trial should be allowed so the judge can hear competing arguments, review the materials, and render a decision.<sup>168</sup>

By amending the rules of evidence to include enhanced authentication standards or using specially appointed experts to decipher an alleged deepfake, courts may add another layer of security to ensure the admitted evidence is properly authenticated and not manipulated.<sup>169</sup> While there are no easy solutions, it is crucial to “develop procedures to reliably litigate the provenance of disputed content.”<sup>170</sup> North Dakota legislators must work with the judiciary “to consider the application of our existing legal framework to this new AI frontier before the unanswered legal issues impact our society on a larger scale.”<sup>171</sup>

## VI. CONCLUSION

“[H]owever much you deny the truth, the truth goes on existing, as it were, behind your back.” – George Orwell.<sup>172</sup>

With deepfake’s increased pervasiveness and believability, it becomes imperative to strike a balance between embracing technology’s benefits and preserving the fundamental principles of justice underpinning North Dakota’s legal system. North Dakota’s legislature and judiciary must work together to identify deepfakes and establish procedures to mitigate their risks. Deepfakes must be added to the legal lexicon, so practitioners and courts are aware of its existence and dangers. An amendment to North Dakota’s authentication procedures should be made so allegations of deepfake evidence can be tested at a preliminary hearing to determine its authenticity. By proactively addressing these challenges, North Dakota can protect its courtrooms from

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165. Grimm et al., *supra* note 42, at 104.

166. *Id.*

167. *Id.*

168. *Id.* Preparation is critical for the proponent and opponent of the evidence, as well as the judge.

169. *See id.* at 83.

170. Dorfman, *supra* note 1, at 22.

171. Datzov, *supra* note 7, at 36.

172. GEORGE ORWELL, *Looking Back on the Spanish War*, in *FACING UNPLEASANT FACTS: NARRATIVE ESSAYS*, 143, 155 (George Packer ed., 2008).

the harmful effects of digitally manipulated evidence to preserve truth on the prairie.

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