Comments of

THE CENTER FOR AI AND DIGITAL POLICY (CAIDP)

To

FEDERAL ELECTION COMMISSION (FEC)

Regarding

ARTIFICIAL INTELLIGENCE (AI) IN CAMPAIGN ADS

We write to you, on behalf of the Center for AI and Digital Policy (CAIDP), in response to the Request for Comments (RFC) issued by the FEC Notification of availability of Petition for Rulemaking on Artificial Intelligence in campaign ads.[1]

CAIDP supports the petition for rulemaking submitted by Public Citizen. The Commission should amend its regulation on fraudulent misrepresentation of campaign authority to make clear that the related statutory prohibition applies to deliberately deceptive Artificial Intelligence campaign advertisements and public communications. We urge the FEC to exercise its statutory authority under 52 U.S.C.10101 §307 to amend §11 C.F.R. 110.16 as requested in the petition for rulemaking as well as 11 C.F.R. §110.11.[2] We further recommend that the FEC issue a policy statement pertaining to 52 U.S.C. §30124 in exercise of its authority under 52 U.S.C. 10101 §306.[3]

In our comment below we underscore the unique risks of generative AI and machine learning systems and how these unique risks set these techniques apart from other communications and social media technologies that may be used for campaign ads. We also describe established

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[1] Federal Election Commission, *Artificial Intelligence in Campaign Ads,* 11 CFR Part 112, Notice 2023-13, Federal Register Vol. 88, No. 157, Aug. 16, 2023, https://sers.fec.gov/fosers/showpdf.htm?docid=423639.
[2] Federal Election Campaign Act of 1971, Public Law 92-225 (as Amended Through P.L. 115–386), https://www.fec.gov/resources/cms-content/documents/legrec2022.pdf.
[3] *Id*.

governance frameworks for AI systems, all which stress transparency as a fundamental governance principle.

We recommend that:

(1) The FEC, in exercise of its powers set out in 52 U.S.C. 10101 §306, issue a policy statement in relation to 52 U.S.C. §30124 pertaining to "fraudulent misrepresentation" arising out of the use of generative AI systems. Such a policy statement would guide transparency obligations for the development, deployment, and use of AI systems for "public communications," campaign advertising, and other electioneering communications.[4]

(2) The FEC, in exercise of its powers set out in 52 U.S.C.10101 §307, amend 11 C.F.R. §110.11(b) and 11 C.F.R. §110.16 to assign legal liability to actors who use generative AI in "public communications,"[5] and campaign advertisements without attribution. Corresponding amendments should include a definition of "AI Actors."

About CAIDP

The Center for AI and Digital Policy (CAIDP) is an independent research organization based in Washington, DC.[6] We advise national governments and international organizations regarding artificial intelligence policy. We previously testified on AI policy before the House Oversight Committee.[7] Our landmark report *AI and Democratic Values*[8] assesses AI policies and practices around the world and emphasizes the importance of transparency in national AI

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[4] 52 U.S.C. 10101 § 301 (22), https://www.govinfo.gov/content/pkg/COMPS-985/pdf/COMPS-985.pdf.

[5] *Id*.

[6] CAIDP, https://www.caidp.org.

[7] Testimony and statement for the record of CAIDP President Merve Hickok, *Advances in AI: Are We Ready For a Tech Revolution?*, House Committee on Oversight and Accountability: Subcommittee on Cybersecurity, Information Technology, and Government Innovation, Mar. 8, 2023, https://oversight.house.gov/wp-content/uploads/2023/03/Merve-Hickok_testimony_March-8th-2023.pdf.

[8] CAIDP, *AI and Democratic Values* (2023), https://www.caidp.org/reports/aidv-2022/.

strategies.[9] (See attached image for digital download of the CAIDP report). Our Public Voice project seeks to promote public participation in comment opportunities concerning AI policy.[10] We have identified the Federal Election Commission Petition for Rulemaking on Artificial Intelligence in campaign as one of the most significant comment opportunities currently underway in the United States.[11]

Unique Risks of Generative AI Systems

Generative AI has a high propensity for producing indistinguishable falsehoods. In a complaint filed earlier this year with the Federal Trade Commission, CAIDP warned of the specific Risks to Democracy of generative AI products such as ChatGPT.[12] OpenAI notes that even a powerful model like GPT-4 "is not fully reliable."[13] In its own system card OpenAI has acknowledged that GPT-4 will generate targeted content "intended to mislead." In a section describing disinformation, Open AI has stated that "GPT-4 can generate <u>plausibly realistic and targeted content, including news articles, tweets, dialogue, and emails.</u>"[14] (emphasis added)

OpenAI has acknowledged the specific danger of disinformation and influence operations. As we explained in our complaint to the FTC, OpenAI has warned that "AI systems will have even greater potential to reinforce entire ideologies, worldviews, truths and untruths, and to cement them or lock them in, foreclosing future contestation, reflection, and improvement."[15]

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[9] *Id*. at 1132-33.
[10] CAIDP, Public Voice, https://www.caidp.org/public-voice/.
[11] CAIDP, Public Voice, Federal Election Commission – Artificial Intelligence and Campaign Ads, https://www.caidp.org/public-voice/fec-us-2023-1/.
[12] CAIDP, *In the Matter of OpenAI* (2023), https://www.caidp.org/cases/openai/.
[13] OpenAI, GPT-4 Technical Report, (Mar. 27, 2023), https://cdn.openai.com/papers/gpt-4.pdf.
[14] OpenAI, *The GPT-4 System Card*, Mar.15, 2023, https://cdn.openai.com/papers/gpt-4-system-card.pdf.
[15] *supra* note 12.

A March 2023 study of the Norwegian Consumer Council found that the next generation of Chat GPT, GPT-4, "is more likely than its predecessor [GPT-3] to generate misinformation when prompted, including false narratives concerning vaccines, conspiracy theories, and propaganda."[16]

Just last month, OpenAI launched the third version of DALL-E, a software for AI-generated art.[17] Now, DALLE-3 incorporates ChatGPT.[18] OpenAI has announced "voice and image capabilities in ChatGPT."[19] OpenAI has announced its vocal technology will be "capable of crafting realistic synthetic voices from just a few seconds of real speech."[20]

These techniques could be readily adopted in campaign advertising that will mislead and misinform voters and undermine democratic institutions. The Organization for Economic Cooperation and Development (OECD) has highlighted that the combination of AI language models and disinformation can lead to large-scale damage to public trust in democratic institutions.[21] A study found that Google's Bard AI tool generates persuasive misinformation content on 78 out of 100 tested narratives.[22] Moreover, the OECD notes that:

> Leading-edge generative AI models have multimodal capabilities that can exacerbate these [misinformation and disinformation] risks, for example by

[16] *Ghost in the machine – Addressing the consumer harms of generative AI*, NORWEGIAN CONSUMER COUNCIL, June 2023, https://storage02.forbrukerradet.no/media/2023/06/generative-ai-rapport-2023.pdf.

[17] Emilia David, *OpenAI releases third version of DALL-E*, The Verge, Sept. 20, 2023 https://www.theverge.com/2023/9/20/23882009/class-action-lawsuit-openai-privacy-dropped.

[18] Will Knight, *OpenAI's Dall-E 3 is an Art Generator Powered by ChatGPT*, Wired, Sept. 20, 2023, https://www.wired.com/story/dall-e-3-open-ai-chat-gpt/.

[19] OpenAI Blog, *ChatGPT can now see, hear and speak,* Sept. 25, 2023, https://openai.com/blog/chatgpt-can-now-see-hear-and-speak.

[20] TechCrunch, *OpenAI gives ChatGPT a voice for verbal conversations,* Sept. 25, 2023, https://techcrunch.com/2023/09/25/openai-chatgpt-voice/.

[21] Philippe Lorenz et al., *Initial policy considerations for generative artificial intelligence*, OECD, pp.13 (Sept. 18, 2023), https://www.oecd-ilibrary.org/science-and-technology/initial-policy-considerations-for-generative-artificial-intelligence_fae2d1e6-en.

[22] Center for Countering Digital Hate (CCDH), Misinformation on Bard, Google's New AI Chat, Apr. 5. 2023, https://counterhate.com/research/misinformation-on-bard-google-ai-chat/#:%7E:text=Google%E2%80%99s%20new%20%E2%80%98Bard%E2%80%99%20AI%20generates%20false%20and%20harmful%20narratives%20on%2078%20out%20of%20100%20topics.

combining text with image or video or even voices. Unintentional misinformation or intentional deception can cause material harm at an individual level (e.g., influencing decision-making about vaccines) and, on a larger scale, <u>erode societal trust in the information ecosystem</u> and the fact-based exchange of information that underpins science, evidence-based decision-making, and democracy.[23] (emphasis added)

Generative AI can mimic and manipulate human behavior. As Kreps and Kriner have explained, "Advances in machine learning have led to the creation of natural language models that can mimic human writing style and substance."[24]

As we said to the FTC in our complaint about OpenAI, "Many experts in the AI field have warned of the dangers of deploying machine learning (ML) systems that can mimic and manipulate human behavior."[25] Louis Rosenberg pointed to the specific problem with sophisticated chatbots: "The new danger is that conversational AI has finally advanced to a level where automated systems can be directed to draw users into what seems like casual dialogue but is actually intended to skillfully pursue targeted influence goals."[26]

In other words, these systems not only will adapt to your real-time emotions, but they will also get better and better at "playing you" over time, and "because conversational AI will be both individualized and easily deployed at scale, these person-by-person methods can be used to influence broad populations."[27]

AI can manipulate voters by the very nature of machine learning. "[AI] language models will allow the production of linguistically distinct messaging" in a way that humans can not

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[23] *Id*.

[24] Sarah Kreps, Douglas L. Kriner, *The potential impact of emerging technologies on democratic representation: Evidence from a field experiment,* New Media & Society, 0(0), Mar. 20, 2023, https://doi.org/10.1177/14614448231160526.

[25] CAIDP, *In Re Zoom,* Complaint to FTC, Aug. 30, 2023, pp. 15 https://www.caidp.org/app/download/8474113963/CAIDP-Complaint-Zoom-FTC-31Aug2023.pdf

[26] Louis Rosenberg, *The Creepiness of Conversational AI has been put on full display,* BigThink, February 16, 2023, https://bigthink.com/the-present/danger-conversational-ai/

[27] *Id.*

immediately detect as machine-generated.[28] Notably, the creator of ChatGPT, OpenAI, reported how its newest iteration, GPT-4, could "rival human propagandists" and generate propaganda tailored to the specifics of the target audience's language patterns and the propaganda's goals.[29]

According to Georgetown University Center for Security and Emerging Technology (CSET), in experiments with AI-generated news content and authentic news content, humans were able to guess which content was authentic "at a rate <u>only slightly better than random chance</u>."[30] Researchers also found that AI-generated news articles "were nearly as persuasive as articles from real world covert propaganda campaigns. "Language models could also be used to generate summary text of other articles, inflected for <u>ideological alignments</u>."[31] (emphasis added)

Another CSET study also warns that bots are evolving to seem more human-like to bot detection programs on websites like X, previously Twitter.[32] Bad faith actors can use bots to spread false information about a political candidate. Bots can create mass robocalls, social media posts, and e-mails. Chatbots can publish falsehoods about a political candidate. This includes a candidate's incorrect political message, criminal history, or their decision to drop out of the election.[33] As previously mentioned, these chatbots can seem human-like and convincing.[34]

Generative AI can amplify biases and political microtargeting. Because, large language models are trained on large amounts of data scraped from the internet, they can incorporate, reflect,

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[28] *supra* note 28; *see also supra* note 21.

[29] *supra* note 21.

[30] *supra* note 28.

[31] *Id*.

[32] Katerina Sedova et al., *AI and the Future of Disinformation Campaigns*, CSET, Dec. 2021, https://cset.georgetown.edu/wp-content/uploads/CSET-AI-and-the-Future-of-Disinformation-Campaigns-Part-2.pdf.

[33] David Klepper, Ali Swenson, *AI presents political peril for 2024 with threat to mislead voters*, AP News, https://apnews.com/article/artificial-intelligence-misinformation-deepfakes-2024-election-trump-59fb51002661ac5290089060b3ae39a0.

[34] *supra* note 32.

and potentially amplify biases in such data."[35] Generative AI language models like GPT-4 can target voters easily with its ability to cater to a voter's culture, linguistics, and political beliefs.

As the European Parliamentary Research Service has warned, "The network analysis capabilities of AI can also be used to better target an audience and establish the profile of voters, in what is known as political micro-targeting. AI can dramatically increase the speed at which content is made, while also offering access to a wealth of resources." [36] Consequently, this could give rise to entire fake-news websites posing as news outlets.

False AI-generated political content also has a greater chance of harming vulnerable populations– those of low-income, low formal education, and the elderly.[37] Vulnerable populations are already being targeted during elections. For example, during the 2020 elections, conservative provocateurs targeted racial minorities and low-income groups with robocalls.[38] These robocalls contained threats to deter these groups from voting.[39] Political actors have already begun to use generative AI for their agendas.[40] The photos are surprisingly realistic. As Presidential elections become closer, false AI generation will only increase.[41]

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[35] Congressional Research Services (CRS), *Generative Artificial Intelligence: Overview, Issues, and Questions for Congress,* In Focus, Jun. 9, 2023, https://crsreports.congress.gov/product/pdf/IF/IF12426.

[36] European Parliamentary Research Services (EPRS), Artificial Intelligence, Democracy, and Elections, Briefing, Sept. 2023, pp. 3, https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751478/EPRS_BRI(2023)751478_EN.pdf.

[37] Brian Kennedy et al., *Public Awareness of Artificial Intelligence in Everyday Activities*, Pew Research Center, Feb. 15, 2023, https://www.pewresearch.org/science/2023/02/15/public-awareness-of-artificial-intelligence-in-everyday-activities/.

[38] Charlene Richards, *Robocalls to voters before 2020 election result in $5 million fine*, NBC News, Jun. 8, 2023, https://www.nbcnews.com/politics/elections/robocalls-voters-2020-election-result-5-million-fine-rcna88391.

[39] *Id*.

[40] Tiffany Hsu and Steven Lee Myers, *A.I.'s Use in Elections Sets Off a Scramble for Guardrails*, N.Y. Times, Jun. 25, 2023, https://www.nytimes.com/2023/06/25/technology/ai-elections-disinformation-guardrails.html.

[41] *Id*.

Generative AI can be deployed in many levels of the election process. "According to media reports, campaigns are already using AI to perform large-scale data analysis, compile opposition research, or draft targeted fundraising appeals."[42] There are three key implications of generative AI use in election campaigns:

1) *Campaign Ads:* AI-generated content can be created at high volumes for a cheap price and can be convincing to the electorate. AI reduces the cost of running campaigns, by automating content production, reducing the overhead in persona creation, and generating culturally appropriate outputs that are less likely to carry noticeable markers of inauthenticity. These developments will expand the set of actors with the capacity to run influence operations.

2) *Interactive content or conversational capabilities:* Generative AI systems have the capability of dynamic content generation, like chats, —language models engaging in extended back-and-forth conversations. Actors could potentially deploy personalized chatbots that interact with targets one-on-one and attempt to persuade them of the campaign's message. This capability could materialize as interactive social media personas, back-and-forth email messaging, or faked support chat-bots.

3) *Dilution of content attribution:* Political actors are increasingly turning toward third-party influence-for-hire companies to conduct their campaigns, including firms that otherwise appear to be legitimate marketing or PR firms. Even if, AI companies place restrictions on who can access their models, this trend makes it harder to ensure that bad actors do not have access to generative models, as marketing firms will likely be granted access given their other legitimate uses.

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[42] Congressional Research Services, *Artificial Intelligence (AI) and Campaign Finance Policy: Recent Developments,* Insight, Aug. 16, 2023, https://crsreports.congress.gov/product/pdf/IN/IN12222.

Transparency is a fundamental obligation in Established AI Governance Frameworks

The Organisation for Economic Co-operation and Development (OECD) has highlighted that the combination of AI language models and disinformation can lead to large-scale public distrust and can damage public trust in democratic institutions.[43] The OECD AI Guidelines. Principle 1.3 for "Transparency and Explainability"[44] states:

> AI Actors should commit to transparency and responsible disclosure regarding AI systems. To this end, they should provide meaningful information, appropriate to the context, and consistent with the state of art:
> - to foster a general understanding of AI systems,
> - to make stakeholders aware of their interactions with AI systems, including in the workplace,
> - to enable those affected by an AI system to understand the outcome, and,
> - to enable those adversely affected by an AI system to challenge its outcome based on plain and easy-to-understand information on the factors, and the logic that served as the basis for the prediction, recommendation or decision."

The United States is signatory to the OECD AI Principles.[45] The Federal Election Commission is an agency of the U.S. government. The FEC should carry forward and implement the OECD AI Transparency Principle for campaign ads.

The UNESCO Recommendation on AI recognizes that as AI becomes prevalent, individuals need "access to independent, pluralistic, trusted sources of information, including as

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[43] CAIDP, *Supplement to the Original Complaint, In the Matter of Open AI* (2023), pp. 35, para. 138, https://files.constantcontact.com/dfc91b20901/72cccde7-44a7-44e4-bfee d6801b3891d2.pdf.

[44] *OECD AI Principles, Transparency and explainability (Principle 1.3)* (2023), https://oecd.ai/en/dashboards/ai-principles/P7.

[45] *U.S. Joins with OECD in Adopting Global AI Principles*, NTIA (May 22, 2019), https://www.ntia.doc.gov/blog/2019/us-joins-oecd-adopting-global-ai-principles.

part of efforts to mitigate risks of misinformation, disinformation and hate speech."[46] The United States has recently rejoined UNESCO, citing the important work of UNESCO on artificial intelligence.[47] Again the FEC, an agency of the federal government, should carry forward the commitment of the United States government and implement strong transparency procedures for the use of AI in campaign ads.

The Commission must implement established AI governance principles. It is crucial that political actors know that a "fraudulent misrepresentation" in campaign materials includes AI-generated campaign materials.

Recommendations

1) **Clarify "fraudulent misrepresentation" under 52 U.S.C. §30124 to ensure transparency obligations critical for governance of AI systems, preserving democracy, and informed votership**

The Commission must mandate transparency, fairness, and accountability in the use of AI systems. We propose that the FEC issue a policy statement in relation to 52 U.S.C. §30124[48]

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[46] UNESCO RECOMMENDATION ON THE ETHICS OF AI (2021), https://en.unesco.org/about-us/legal-affairs/recommendation-ethics-artificial-intelligence.

[47] The American Independent, *Biden leads US back to membership in UNESCO,* Jun. 30, 2023, https://americanindependent.com/joe-biden-donald-trump-china-unesco-blinken-ai/.

[48] **52 §30124**. **Fraudulent misrepresentation of campaign authority**
(a) In general
No person who is a candidate for Federal office or an employee or agent of such a candidate shall-
(1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or
(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1)

clarifying that *"information or communication produced by a generative AI or machine learning system shall not release any person from liability under the provision."*

Political actors may use generative AI systems for civic engagement as well as election campaigning. Any governmental use of generative AI to aid with educating voters or otherwise engage constituents in elections should be tightly regulated.[49]

Given the propensity of generative AI tools to create and disseminate indistinguishable falsehoods, candidates should not be allowed to escape liability simply because it was automated through an AI system. A failure to do so, can give rise to innumerable situations similar to the 8.5 million fake comments submitted to the Federal Communications Commission (FCC) as part of an astroturfing campaign carried out in 2017 in relation to FCC's public comment procedure to repeal net neutrality rules.[50]

During the investigation carried out by the New York State Attorney General's Office, the broadband companies that spent $8.2 million on the anti-net neutrality campaign could not be prosecuted for having "no direct knowledge of fraud" having used third-party vendors to conduct the campaign.

We also recommend that the intent element of fraudulent misrepresentation be revisited considering the unique risks of generative AI systems outlined above. The FEC's own jurisprudence and policies would support such a reconsideration of the element. The Policy Statement of Commissioner Lee E. Goodman on the Fraudulent Misrepresentation Doctrine,[51]

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[49] Brennan Center for Justice, *How AI Puts Elections at Risk–And the Needed Safeguards,* Jul.21, 2023, https://www.brennancenter.org/our-work/analysis-opinion/how-ai-puts-elections-risk-and-needed-safeguards.

[50] ArsTechnica, *Biggest ISPs paid for 8.5 million fake FCC comments opposing net neutrality,* May 6, 2021, https://arstechnica.com/tech-policy/2021/05/biggest-isps-paid-for-8-5-million-fake-fcc-comments-opposing-net-neutrality/.

[51] Federal Election Commission, Policy Statement of Commissioner Lee E. Goodman, Feb. 16, 2018, https://www.fec.gov/resources/cms-content/documents/Commissioner_Lee_E._Goodman_Policy_Statement_-_Fraudulent_Misrepresentation.pdf.

explains that, "a misrepresentation can be deemed fraudulent "if it was reasonably calculated to deceive persons of ordinary prudence and comprehension."[52] The FEC in making a determination, considers whether "some facts that could lead to an inference of fraudulent intent must be more reasonable that competing reasonable inferences that could be drawn."[53] Therefore, the FEC should revise its policy statement on fraudulent misrepresentation to clarify that, "*absent any clearly convincing and countermanding inference, the use of generative AI systems in any representation within the scope of §30124 will be construed as calculated to deceive*."

The Commission must recognize the unique nature of generative AI technology which OpenAI, the creator of ChatGPT, admits is prone to widespread fraud and disinformation. OpenAI itself has conceded that "GPT-4 will generate targeted content <u>intended to mislead.</u>"[54] Therefore, the use of generative AI tools in election campaigns should be construed as a prima facie "intent to deceive."

2) **Amend 11 C.F.R. §110.11(b) and 11 C.F.R. §110.16 to assign legal liability to actors who use generative AI in campaign materials without attribution to the generative AI tool**

   (a) **We recommend that 11 C.F.R. §110.11(b)[55] be amended** to include an additional clause that states *"If any communication, including any solicitation,*

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[52] *Id*. at 6-7.
[53] *Id*. at 7.
[54] *supra* note 14.
[55] **§110.11 Communications; advertising; disclaimers (52 U.S.C. 30120)**
(b) General content requirements. A disclaimer required by paragraph (a) of this section must contain the following information:
   (1) If the communication, including any solicitation, is paid for and authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state that the communication has been paid for by the authorized political committee;

*whether paid for and authorized by a candidate or any other person, is
materially and substantially generated by, or, disseminated by, an artificial
intelligence or machine learning system, a disclaimer must clearly state so."*

According to a recent Pew Research Center study, only 30% of U.S. adults were able to correctly identify all six uses of AI that researchers presented in the study.[56] Without mandated disclosures of AI, a majority of Americans may not be able to recognize the use of AI. Thus, Americans may be more easily tricked by false AI-generated campaign materials.

The burden of false advertising, created by generative AI, falls most heavily on disadvantaged and marginalized communities. The Pew poll found that concern is higher among Americans who are less formally educated, those in poverty, and older Americans. Adults with higher formal education, who have a high income, and who are young are better able to detect AI usage.[57] Poor American voters, older American voters, and those with minimal formal education are more vulnerable to AI-generated falsehoods.[58] Thus, during the next election, voters will not be similarly situated when faced with AI-generated campaign materials. This is hardly surprising when AI can now generate hyper realistic human voices and media.[59] The Commission must

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(2) If the communication, including any solicitation, is authorized by a candidate, an authorized committee of a candidate, or an agent of either of the foregoing, but is paid for by any other person, the disclaimer must clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee, or agent; or

(3) If the communication, including any solicitation, is not authorized by a candidate, authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee.

[56] *supra* note 37.
[57] *supra* note 37.
[58] *Id.*
[59] David Klepper, Ali Swenson, *AI presents political peril for 2024 with threat to mislead voters*, AP News, May. 14, 2023, https://apnews.com/article/artificial-intelligence-misinformation-deepfakes-2024-election-trump-59fb51002661ac5290089060b3ae39a0.

mandate disclosures to protect vulnerable voters. Without a disclosure, deceptive AI will threaten public trust of reputable sources.[60] "While regulation is important, so too is individual liability for those who use social media, algorithms, and AI to subvert democratic discourse."[61]

All Americans should be able to detect AI generated advertisements and communications during election season.

(b)   **We also recommend 11 C.F.R. §110.16[62] be amended** to read that *"information or communication produced by a generative AI or machine learning system shall not release any person from liability under this provision."* Additionally, a provision defining "AI Actors" should be included comprising, *candidates, their offices, agents, employees, political committees, and third-party service providers for the purpose of electioneering communications.*

Political candidates who rely on campaign donations may be financially incentivized to have an AI-generated campaign in two ways: (1) AI tools can generate content quickly, which can

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[60] Philippe Lorenz et al., *Initial policy considerations for generative artificial intelligence*, OECD, pp.14 (Sept. 18, 2023), https://www.oecd-ilibrary.org/science-and-technology/initial-policy-considerations-for-generative-artificial-intelligence_fae2d1e6-en.

[61] Roger Berkowitz, *A.I. and Democratic Sustainability,* Digital Humanism Summit on Generative AI and Democratic Sustainability, Sept.07, 2023, https://hac.bard.edu/amor-mundi/digital-humanism-summit-on-generative-ai-and-democratic-sustainability-2023-07-09

[62] **§ 110.16 Prohibitions on fraudulent misrepresentations.**
(a) *In general.* No person who is a candidate for Federal office or an employee or agent of such a candidate shall—
(1) Fraudulently misrepresent the person or any committee or organization under the person's control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof in a matter which is damaging to such other candidate or political party or employee or agent thereof; or
(2) Willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (a)(1) of this section.
(b) *Fraudulent solicitation of funds.* No person shall—
(1) Fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or
(2) Willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (b)(1) of this section.

increase production and lower cost; and (2) AI companies and technology companies that contribute to campaigns may encourage the use of AI generated campaign content.

Under the standards of "exacting scrutiny" set out in *McConnell* [63] and *Citizens United,*[64] the Court is likely to uphold the disclaimer and disclosure requirement as having a sufficiently important governmental interest as these disclaimer requirements further the informational interests of the electorate.[65] The FEC most recently undertook similar amendments to the regulations to amend the definition of "public communication" to include internet communications and to prescribe appropriate disclosures in the case of internet public communications.[66]

The problem with AI in elections is likely to get worse. Major tech companies have cut back their internal investments in election integrity work, and the newest AI companies lack the resources and relationships to effectively manage the risks their tools pose to elections.[67] Even more concerning is the ease that bad political actors can obtain generative AI. AI-generated content has a nearly non-existent barrier to entry.[68] Several generative AI programs are publicly available to anyone with a computer and Wi-Fi.[69] Even scammers are using AI-generated content that can

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[63] McConnell v. FEC, 540 U.S. 93, 231 (2003).

[64] Citizens United v. FEC, 558 U.S. 310, 368 (2010).

[65] Congressional Research Services, *Artificial Intelligence (AI) in Federal Election Campaigns: Legal Background and Constitutional Considerations for Legislation,* IN FOCUS, Aug. 17, 2023, https://crsreports.congress.gov/product/pdf/IF/IF12468.

[66] Federal Election Commission, *Internet Communication Disclaimers and Definition of Public Communication,* Final Rule, 11 CFR Parts 100 and 110, Notice 2022-22, Federal Register, Vol. 87, No. 242, Dec. 19, 2022, https://sers.fec.gov/fosers/showpdf.htm?docid=421096.

[67] Axios, *Researchers, activists try to get ahead of AI-driven election misinformation,* Oct. 10, 2023, https://www.axios.com/2023/10/10/ai-misinformation-elections-response.

[68] Lutz Finger, *Overview Of How To Create Deepfakes - It's Scarily Simple*, Forbes, Sept. 8, 2022, https://www.forbes.com/sites/lutzfinger/2022/09/08/overview-of-how-to-create-deepfakesits-scarily-simple/?sh=67344d852bf1; *see also* Dimitris Poulopoulos, *How to Produce a DeepFake Video in 5 Minutes*, Towards Data Science, Apr. 2, 2020, https://towardsdatascience.com/how-to-produce-a-deepfake-video-in-5-minutes-513984fd24b6.

[69] Bernard Marr, *Beyond ChatGPT: 14 Mind-Blowing AI Tools Everyone Should Be Trying Out Now*, Forbes, Feb. 28, 2023, https://www.forbes.com/sites/bernardmarr/2023/02/28/beyond-chatgpt-14-mind-blowing-ai-tools-everyone-should-be-trying-out-now/?sh=5071bf567a1b; *see*

be created in minutes.[70] It is not hard to imagine that political candidates with societal and financial influence will use the best available generative AI systems for campaign materials. AI-generated campaign materials can even be more cost effective than human-generated material.[71]

Therefore, "To reduce the risk of AI misuse by political campaigns, the Federal Election Commission should ensure that its political ad disclosure requirements cover the full range of online communications currently permitted under federal law. That includes ensuring its rules cover political communications from **paid influencers**, who may disseminate AI-generated content, and the paid online promotion of content, which may also make use of AI."[72]

Congress has already expressed support for new efforts to regulate AI in campaigns and protect the integrity of democratic institution. Senators Coons, Hawley, Klobuchar, and Collins have sponsored S.2770, the Protection Elections from Deceptive AI Act, to prohibit deceptive AI-generated content.[73] Senators Hawley and Blumenthal have presented the Bipartisan AI Act, a framework for AI regulation.[74] The Bipartisan AI Act notes that "A.I. system providers should be required to watermark or otherwise provide technical disclosures of A.I.-generated deepfakes."[75]

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also Norwegian Consumer Council, *Ghost in the machine – Addressing the consumer harms of generative AI*, Jun. 2023, https://storage02.forbrukerradet.no/media/2023/06/generative-ai-rapport-2023.pdf:"Several different types of generative artificial intelligence are publicly available to consumers today. Many of these are readily available to use by anyone with an internet connection, and do not require expert technical knowledge to use."

[70] Emily Flitter and Stacy Cowley, *Voice Deepfakes Are Coming for Your Bank Balance*, N.Y. Times, Aug. 30, 2023, https://www.nytimes.com/2023/08/30/business/voice-deepfakes-bank-scams.html.

[71] *supra* note 28.

[72] Brennan Center for Justice, *How AI Puts Elections at Risk—And the Needed Safeguards,* Analysis, Jul. 21, 2023, https://www.brennancenter.org/our-work/analysis-opinion/how-ai-puts-elections-risk-and-needed-safeguards.

[73] Text - S.2770 - 118th Congress (2023-2024): Protect Elections from Deceptive AI Act, S.2770, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/senate-bill/2770/text.

[74] S.1993 - 118th Congress (2023-2024): A bill to waive immunity under section 230 of the Communications Act of 1934 for claims and charges related to generative artificial intelligence, S.1993, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/senate-bill/1993.

[75] Senator Richard Blumenthal and Senator Josh Hawley, BIPARTISAN FRAMEWORK FOR U.S. AI ACT (2023),

Conclusion

As Kreps and Kriner stated in the *Journal of Democracy,* "Generative AI threatens three central pillars of democratic governance: representation, accountability, and, ultimately, the most important currency in a political system—trust."[76]

We urge the Commission to consider our recommendations above and amend 52 U.S.C. §30124 , 11 C.F.R. §110.11(b), 11 C.F.R. §110.16 to address the risks of generative AI systems to democratic processes and election integrity.

Thank you for your ... ne the opportunity to speak with you further.
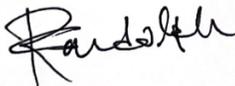
Sincerely,

CAIDP President

CAIDP Executive Director

Marc R...

Christabel Randolph

CAIDP Law Fellow

Brianna Rodriguez

CAIDP Law Fellow

https://www.blumenthal.senate.gov/imo/media/doc/09072023bipartisanaiframework.pdf.

[76] Sarah Kreps, Doug Kriner, *How AI Threatens Democracy,* Journal of Democracy, Vol. 34 (1), Oct. 2023, Pg. 122-31, https://www.journalofdemocracy.org/articles/how-ai-threatens-democracy/.

ARTIFICIAL INTELLIGENCE AND DEMOCRATIC VALUES INDEX

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