

FEC REG 2023-02

Comments on Petition Regarding Artificial Intelligence in Campaign Ads Submitted to the Federal Election Commission

I strongly support the Petition's request to clarify that the fraudulent misrepresentation provision of 52 U.S.C. 30124(a)(1) applies to Artificial Intelligence (AI) campaign ads that are designed to deceive or mislead voters about other candidates or political parties.

Such ads pose a serious threat to democracy and the integrity of elections, and that the FEC has the authority and the responsibility to regulate them. It might to some that AI campaign ads are protected by the First Amendment as a form of political speech, and that regulating them would violate the free speech rights of candidates, committees, platforms, and media. However, this argument falls short because the First Amendment does not protect fraudulent or deceptive speech that harms or defrauds others. Moreover, the Supreme Court has upheld the constitutionality of campaign finance laws that aim to prevent corruption or the appearance of corruption in elections. Regulating AI campaign ads that fraudulently misrepresent other candidates or parties is consistent with the First Amendment and the public interest.

I urge the FEC to adopt a broad and inclusive definition of AI campaign ads, that covers not only deepfakes, but also other forms of AI-generated or manipulated content, such as synthetic audio, text, or images. I also urge the FEC to consider the potential harms and benefits of AI campaign ads, not only for candidates and voters, but also for the public interest and democratic values. Some might argue that defining and regulating AI campaign ads is too difficult and complex, given the rapid and diverse development of AI technologies and applications. But this argument is not persuasive because the difficulty and complexity of a problem should not be an excuse for inaction or delay. The FEC should adopt a flexible and adaptive approach to defining and regulating AI campaign ads, based on the best available evidence and expertise, and update its rules and guidance as needed. Moreover, the FEC should consider the potential harms and benefits of AI campaign ads from a

holistic and long-term perspective, taking into account not only their immediate effects on candidates and voters, but also their broader implications for democracy and society.

I recommend that the FEC establish clear and specific criteria and standards for determining whether an AI campaign ad is fraudulent or not, and provide guidance and examples for candidates, committees, platforms, media, and the public. I also recommend that the FEC require disclosure and labeling of AI campaign ads, as well as verification and validation of their sources and accuracy. It may appear at first glance that establishing criteria and standards for AI campaign ads is too subjective and arbitrary, given the diversity and ambiguity of political expression, opinion, or satire. However, there are objective and reasonable ways to distinguish between fraudulent and legitimate AI campaign ads, based on their intent, content, context, and impact. Moreover, requiring disclosure and labeling of AI campaign ads is a simple and effective way to inform and empower voters to make their own judgments about the credibility and reliability of AI campaign ads.

I propose that the FEC impose criminal penalties for the use of deepfakes or impersonation in an election context, given the extreme dangers of such activity, and the inability to act before harm and public deception occurs. I think that civil penalties are insufficient to deter and punish those who would use deepfakes to undermine democracy and manipulate voters. As Jacques Abbadie wrote in 1684 (and Abraham Lincoln likely never said), "One can fool some men, or fool all men in some places and times, but one cannot fool all men in all places and ages."

But with deepfakes, you may fool enough people at a critical time to change the outcome of an election. Some may claim that imposing criminal penalties for deepfakes is too harsh and disproportionate, given the uncertainty and variability of their effects on elections. However, this argument is not persuasive because deepfakes are an explicit and implicit form of intentional fraud that can cause significant harm to individuals, groups, institutions, or democracy as a whole. Moreover, imposing criminal penalties for deepfakes is consistent with existing laws that criminalize other forms of election fraud or interference.

I suggest that the FEC collaborate with other agencies, organizations, or experts on how to regulate and monitor AI campaign ads, and learn from best practices and recommendations from other countries or regions. I also suggest that the FEC educate and inform the public about the risks and challenges of AI campaign ads, and encourage critical thinking and media literacy among voters. It may seem to some that collaborating with others on AI regulation is unnecessary or counterproductive, given the uniqueness and sovereignty of the U.S. political system and culture. However, it is undeniable AI is a global phenomenon that transcends national borders and jurisdictions, and requires international cooperation and coordination to address its opportunities and challenges. Moreover, educating and informing the public about AI is essential to foster trust and confidence in AI, and to enable voters to make informed and responsible decisions in elections.

Some may argue that this regulatory activity is outside the purview of the FEC mission and statutory authority. But I believe it is self-evident that the role of protecting the integrity of elections is a core part of FEC's statutory mission and mandate. The FEC was established by the Federal Election Campaign Act of 1971 (FECA) to administer and enforce the federal campaign finance law. The FECA aims to prevent corruption or the appearance of corruption in federal elections by regulating the sources and amounts of campaign contributions and expenditures, requiring disclosure and reporting of campaign finance activities, and providing public funding for presidential campaigns. The FECA also prohibits fraudulent misrepresentation of campaign authority, which is the subject of the Petition for Rulemaking filed by Public Citizen. FEC has the authority and the responsibility to address the issue of AI campaign ads that fraudulently misrepresent other candidates or parties.

Regulating AI campaign ads is in the interest of consumers, who have the right to receive accurate and truthful information about the products and services they buy, including political candidates and parties. AI campaign ads could mislead or deceive consumers, such as creating false or exaggerated claims about a candidate's qualifications, achievements, or policies, or generating negative or defamatory content about a candidate's opponents, such as personal attacks, scandals, or crimes. Furthermore, AI campaign ads could

pose significant risks to consumer protection, privacy, and data security. AI campaign ads could exploit consumers' psychological vulnerabilities, manipulate their emotions and opinions, collect and use their personal data without their consent, or expose them to malicious actors or cyberattacks. I am personally uncomfortable with any infringement on First Amendment rights, but I think that the FEC should examine the misleading and deceptive advertising constraints imposed by the Federal Trade Commission, the Food and Drug Administration and other regulatory agencies that protect the public from deceptive advertising.

Regulating AI campaign ads is also necessary to protect the public rights and interests of citizens, who have the right to participate in free and fair elections, to express their political views and opinions, and to access diverse and reliable sources of information. AI campaign ads could violate or threaten these rights, such as creating false or misleading information about the electoral process, candidates, or issues, suppressing or discouraging voter turnout or registration, interfering with or influencing the outcome of elections, or undermining the diversity and quality of public discourse and debate. AI campaign ads could cause great harm to the public rights and interests of citizens, such as eroding their trust and confidence in democracy and its institutions, polarizing or dividing society along political lines, or gratuitously inciting violence or unrest.

Rapid diffusion of technological changes makes these concerns serious, timely, and urgent, and the FEC should not delay or postpone its response. Therefore, I urge the FEC to adopt the Petition's request to amend its regulation on fraudulent misrepresentation of campaign authority to make clear that the related statutory prohibition applies to deliberately deceptive AI campaign ads. I also urge the FEC to adopt a broad and inclusive definition of AI campaign ads, establish clear and specific criteria and standards for determining their fraudulence, require disclosure and labeling of AI campaign ads, impose criminal penalties for the use of deepfakes in an election context, collaborate with other agencies, organizations, or experts on AI regulation, and educate and inform the public about the risks and challenges of AI campaign ads. Thus, I believe that these actions are necessary and urgent to protect

democracy and the integrity of elections from the threats posed by the misuse of AI.

In summary, I strongly support the Petition's request to clarify that the fraudulent misrepresentation provision of 52 U.S.C. 30124(a)(1) applies to Artificial Intelligence (AI) campaign ads that are designed to deceive or mislead voters about other candidates or political parties.

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