


The Federal Election Commission
1050 First St. NE
Washington, DC 20002

October 16, 2023

Re: Comments on Public Citizen's Petition for Rulemaking on Artificial Intelligence (AI) in Campaign Ads (Docket 2023-13)

On behalf of UnidosUS (formally known as National Council of La Raza), we write to respond to the Federal Election Commission's (FEC) request for public comment regarding Public Citizen's Petition for Rulemaking on Artificial Intelligence (AI) in Campaign Ads (Docket 2023-13). UnidosUS is a nonprofit, nonpartisan organization that is the nation's largest Hispanic civil rights and advocacy organization. Since 1968, we have challenged the social, economic, and political barriers that affect Latinos through our unique combination of expert research, advocacy, programs, and an Affiliate Network¹ of nearly 300 community-based organizations across the United States and Puerto Rico. 

Our electoral processes have already been negatively impacted by the spread of misinformation and disinformation, particularly when our community is targeted with misleading information in Spanish.² As the Petition notes, advances in AI technology have increased the risk that deepfakes – fabricated images, videos, or audio clips – can be created and disseminated to deceive voters, furthering the scale and reach of false narratives.

Deepfakes also have the very real potential to exacerbate existing inequities and distrust in our democratic systems.³ Marginalized groups are often most vulnerable to disinformation campaigns and are often also the subjects of false narratives and disinformation that promotes racial animus, xenophobia, and polarization.⁴ Without proper safeguards, the proliferation of deepfakes could further undermine faith in elections among communities and deepen polarization based on untruths.⁵

While deepfakes are concerning regardless of the language, our experience shows that Spanish disinformation spreads further and persists longer than English disinformation online.⁶ False narratives targeting Latinos generally aim to mischaracterize the positions of political parties and candidates

¹ UnidosUS Affiliate Network, <https://www.unidosus.org/about/affiliates/>.

² Stephanie Valencia, Misinformation online is bad in English. But it's far worse in Spanish., The Washington Post, October 28, 2021, <https://www.washingtonpost.com/outlook/2021/10/28/misinformation-spanish-facebook-social-media/>.

³ Gabriel R. Sanchez, Keesha Middlemass, Aila Rodriquez, Misinformation is eroding the public's confidence in democracy, The Brookings Institute, July 26, 2022, <https://www.brookings.edu/blog/fixgov/2022/07/26/misinformation-is-eroding-the-publics-confidence-in-democracy/>.

⁴ Christine Fernando, Election disinformation campaigns targeted voters of color in 2020. Experts expect 2024 to be worse., A.P. News, July 29, 2023, <https://apnews.com/article/elections-voting-misinformation-race-immigration-712a5c5a9b72c1668b8c9b1eb6e0038a>.

⁵ Gabriel R. Sanchez, Keesha Middlemass, Aila Rodriquez, Misinformation is eroding the public's confidence in democracy, The Brookings Institute, July 26, 2022, <https://www.brookings.edu/blog/fixgov/2022/07/26/misinformation-is-eroding-the-publics-confidence-in-democracy/>.

⁶ Jeronimo Cortina and Brandon Rottinghaus, With the 2022 midterms ahead, expect another Latino misinformation crisis, The Washington Post, February 25, 2022, <https://www.washingtonpost.com/politics/2022/02/25/latino-misinformation-spanish-social-media/>.

running, exploit racial tensions to pit Latinos against other communities of color, and provide false information about voting processes and voting access to deter turnout by Latino voters.⁷ If unchecked, the weaponization of AI deepfakes advances these serious threats to Hispanic voters, who can be targeted with false and inflammatory content meant to suppress turnout and erode faith in our democratic systems.⁸

The relevant law granting the FEC authority to regulate the use of deepfakes in campaign ads is the law against “fraudulent misrepresentation” (52 U.S.C. §30124), part of the Federal Election Campaign Act (FECA). This law prohibits a candidate or their agent from “fraudulently misrepresent[ing] 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.”

The FEC has recognized its authority to provide regulations implementing this law at 11 C.F.R. §110.16. The petition for rulemaking requests that the FEC clarify in its regulations that “deepfakes” depicting a candidate saying or doing something they did not actually say or do are subject to the constraints in 52 U.S.C. §30124.

The FEC has the authority under current law to regulate deepfakes under the prohibition against fraudulent misrepresentation. In a so-called “deepfake,” the ad creator manipulates a third person’s voice and image to falsely represent or communicate messages, positions, likenesses, and more. In short, the “target” candidate represented in an ad is merely a fabrication of the ad creator. We acknowledge counterarguments pertaining to free speech and First Amendment concerns that may be raised as part of this rulemaking, but the narrow focus on identity fraud makes this a constitutional approach, as the constitution does not protect fraudulent or blatantly false speech. Deepfakes aim to deceive, and not to engage in political dialogue.

Regulating deepfakes under this law is an important first step, but not a cure-all. The law applies only to candidates and party committees, excluding outside groups. Further legislation is still needed, like the proposed REAL Political Advertisements Act (S.1596) introduced earlier this year by Senator Klobuchar (D-MN) and co-sponsored by Senators Bennet (D-CO) and Booker (D-NJ) and, to fully address potential abuses of AI technology by all political actors. Still, an FEC regulation on fraudulent misrepresentation would help by establishing needed guardrails on the use of AI deepfakes by federal candidates.

Additionally, social media platforms must strengthen their content moderation policies and enforce them equitably across languages. Importantly, more than 70% of Spanish language political misinformation stays online, compared with 29% of English-language misinformation.⁹ Our experience with election mis- and disinformation online clearly demonstrates the need for preventative measures and affirmative information or “inoculation” campaigns, in addition to reactive content takedowns after damage has already been done. We call on the FEC to work with social media platforms in the lead-up to the election to push them to monitor sites for misinformation across multiple languages.

⁷ Jeronimo Cortina and Brandon Rottinghaus, With the 2022 midterms ahead, expect another Latino misinformation crisis, The Washington Post, February 25, 2022, <https://www.washingtonpost.com/politics/2022/02/25/latino-misinformation-spanish-social-media/>.

⁸ Shirin Ghaffary, How fake news aimed at Latinos thrives on social media, Vox Media, November 19, 2020, <https://www.vox.com/recode/21574293/social-media-latino-voters-2020-election>.

⁹ Jeronimo Cortina and Brandon Rottinghaus, With the 2022 midterms ahead, expect another Latino misinformation crisis, The Washington Post, February 25, 2022, <https://www.washingtonpost.com/politics/2022/02/25/latino-misinformation-spanish-social-media/>.

Regulating deepfakes should be one part of a broader effort to strengthen our information ecosystem and media literacy. While this reform alone is not sufficient, a multifaceted strategy is imperative. The American people need and deserve the tools and knowledge to identify and reject intentionally false, deceptive, or misleading information. In fact, a survey by Pew Research Center from 2019 found that 77% of U.S. adults said that steps should be taken to restrict altered videos and images that are intended to mislead.¹⁰

The need for action is urgent. We have already seen concerning uses of AI to spread disinformation in the current election cycle.¹¹ The FEC must act now to clarify that existing regulations apply to AI deepfakes, before their use becomes even more widespread and harmful.¹² Regulating deepfakes is not only about protecting candidates, but about preserving foundational democratic principles. When voters cannot discern truth from fiction, it threatens the informed civic participation at the heart of our system.

To protect all voters, including Hispanics, against harms posed by advances in AI technology, we urge the FEC to act on the petition and clarify that the prohibition on fraudulent misrepresentation applies to deliberate use of AI deepfakes in campaign communications. This measured approach aligns with Constitutional principles and protects the integrity of both candidates and voters.

The technology is evolving and scaling rapidly in sophistication, as well as in terms of public deployment and access, making FEC action even more pressing. Each election cycle brings new advancements, and 2024 (and beyond) is likely to see significant improvements in deepfake quality and reach. Delay in regulation and rulemaking risks irreparable harm that our democracy cannot afford.

We appreciate the opportunity to weigh in on the Commission's consideration of a new rule related to AI and election ads. Should you have any questions regarding these comments, please contact Claudia Ruiz, Senior Civil Rights Analyst, at cruiz@unidosus.org or Laura MacCleery, Senior Director of Policy, at lmaccleery@unidosus.org.

¹⁰10 Jeffrey Gottfried, About three-quarters of Americans favor steps to restrict altered videos and images, Pew Research Center, June 14, 2019, <https://www.pewresearch.org/short-reads/2019/06/14/about-three-quarters-of-americans-favor-steps-to-restrict-altered-videos-and-images/>.

¹¹ James Vincent, DeSantis attack ad uses fake AI images of Trump embracing Fauci, The Verge, June 8, 2023, <https://www.theverge.com/2023/6/8/23753626/deepfake-political-attack-ad-ron-desantis-donald-trump-anthony-fauci>.

¹² Matt O'Brien, U.S. lawmakers question Meta and X over AI-generated political deepfakes ahead of 2024 election, PBS News Hour, October 5, 2023, <https://www.pbs.org/newshour/politics/u-s-lawmakers-question-meta-and-x-over-ai-generated-political-deepfakes-ahead-of-2024-election>.