



Statement of Trevor Potter

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Hearing on “AI and the Future of our Elections”

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Chairwoman Klobuchar, Ranking Member Fischer, and Members of the Rules Committee, thank you for the opportunity to testify at this important hearing about the impact of artificial intelligence (AI) on our elections, as well as the urgent need for federal action to regulate this rapidly developing technology.

I am the founder and president of Campaign Legal Center (CLC), a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels. Among our mission areas, CLC advocates for reforms to strengthen and ensure the consistent and robust enforcement of campaign laws in the United States. Prior to founding CLC, I served as Chairman of the Federal Election Commission (FEC), and have also been legal counsel to several presidential campaigns, and an advisor to the drafters of the Bipartisan Campaign Reform Act of 2002.

Today, my testimony describes how AI fits into the broader context of our campaign finance system. I will discuss how AI tools can be used, and increasingly are being used, to design and spread fraudulent or deceptive political communications that infringe on voters’ fundamental right to make informed decisions at the ballot box. The issue is not automation itself, but the ways in which this technology, without the proper safeguards, can distort reality and undermine our democratic process of self-governance.

In addition to presenting these concerns, my testimony outlines several recommendations for federal regulation that could mitigate the harms of AI’s usage in our elections. These proposals include action the FEC could take under current

law to address the dangers of fraudulent misrepresentation through AI-generated political advertisements. They also include measures that Congress could adopt to prohibit the most pernicious uses of AI to manipulate or disrupt elections, as well as to provide greater transparency for voters on the receiving end of communications made using this new technology.

The solutions described below are by no means mutually exclusive or exhaustive. AI technologies will continue to develop, and the challenges facing our democracy will evolve with them. As a result, I hope this discussion about AI and elections continues long after today's hearing.

AI and Our Campaign Finance System

To understand what is at issue when we talk about AI impacting our elections, a good place to start is how money influences our elections. Every election cycle, candidates, parties, and a wide array of outside groups spend billions of dollars to influence voters and sway election results, and these spending figures continue to grow – breaking new records cycle after cycle. The nonpartisan nonprofit OpenSecrets estimated that federal election spending in 2020 exceeded \$14.4 billion, an unprecedented sum for a presidential election cycle. In 2022, spending on the federal midterms was estimated to be around \$8.9 billion, likewise breaking the previous record for spending on a midterm election.

Much of this money is spent on creating, targeting, and distributing electoral communications, including ads advocating for or against or featuring candidates, and this is an area where AI has already begun to influence what voters are seeing. If AI use in ads becomes more commonplace, it could significantly impact our elections, especially when the technological power of AI is magnified by the spending power of billions of dollars.

AI has the power to manipulate what viewers are seeing and hearing in a way that is as convincing as it can be misleading, and that presents a unique challenge. For voters to decide how to vote, they have to parse through the many messages they are being bombarded with every election cycle and decide what to believe. They have to be able to evaluate the credibility of electoral messages and the underlying motivations of the people paying for them. AI has the potential to make that task much more difficult because the technology can be used to craft a very convincing and realistic misrepresentation of who is speaking, what is being communicated, or even whether something shown in an ad really happened.

Campaign finance laws allow voters to assess an ad's credibility and reliability by requiring transparency about who is paying for the ad and who is spending money to influence our elections. Certain electoral ads must make clear on their face—with a visual or audio statement in the ad itself—who is responsible for and authorized

the content the viewer is hearing or seeing. Candidates must “stand by” their electoral messages. Through mandatory disclosure reports and disclaimer requirements, Congress has taken steps to protect voters’ rights to be informed about who is behind political communications that influence our elections. Voters, equipped with this information, still need to decide for themselves whether what they are seeing or hearing is credible and whether it will influence how they will vote. That is where AI presents a real problem that federal policymakers must address.

The ability of AI to create an extremely convincing yet imperceptibly false alternative reality poses a serious threat to the voting public’s ability to properly evaluate political messages seeking to influence their voting decisions—a First Amendment interest recognized by the Supreme Court. AI could facilitate a political landscape where electoral ads are increasingly used for manipulation: to misrepresent who is speaking and what is being said. AI could thus interfere with voters’ ability to meaningfully evaluate the candidates vying to represent them, while also impeding the ability of candidates and political parties to effectively communicate their messages to voters.

If voters are unable to trust that what they are seeing is real, then they could be easily misled about a candidate’s positions or actions. At a time when the public’s trust in our political process is already extraordinarily low—with a recent poll by the Brookings Institution showing that only 20% of Americans feel “very confident” in the integrity of the U.S. election system, while 56% have “little or no confidence” that our elections represent the will of the people—the potential uses of AI to mislead or defraud voters threatens to further erode confidence in our system of government. This could lead more voters to disengage from the political process, undermining our democracy.

Applications of AI in Political Ads

AI could affect electoral communications in a variety of ways—some relatively innocuous and others deeply concerning. There has been extensive reporting on the use of AI to make so-called “deepfakes,” which mimic, distort, or fabricate the voice or appearance of a person and create the very realistic but false impression of a person saying or doing something they did not actually do or say.

On the relatively innocuous end, people may recall an image that circulated online earlier this year that depicted Pope Francis wearing a distinctive white puffy coat that was apparently the creation of a high-end fashion designer. In reality, the Pope never wore the coat. This same technology can be used in the context of elections to fraudulently (or at least misleadingly) create the appearance of a candidate doing or saying something they never did or said—with the underlying intention of manipulating or deceiving the public and influencing voters and elections.

For instance, a super PAC recently used AI to generate audio mimicking the voice of a candidate it opposed, speaking words that the candidate had posted on social media. The voice was created by AI; it was not actually the candidate speaking, although it sounded convincingly like his voice. If the super PAC had not publicly acknowledged using AI to recreate the sound of the candidate's voice, any listener reasonably could have believed it was actually the candidate speaking in the ad.

Another recent example went further, using AI to depict an event that never occurred: A presidential campaign used AI to create an ad with images depicting another candidate hugging Dr. Anthony Fauci. The images show something that had not occurred, but a reasonable person easily could have concluded that it had, thus intentionally and artificially interfering with voters' ability to decide whether they can trust what they are seeing.

To be sure, political ads can distort reality even without AI. Not every sales pitch or commercial we see is the unvarnished truth. Tools like photoshop have become staples of the media we consume, whether we are aware of it or not. A voice actor could imitate a candidate's voice, and an impersonator could pretend to be a candidate in an ad. But AI is an unprecedented game changer because of the technology's unique ability to easily create deceptively realistic false content. If left unregulated, AI could make it so common to see the false depicted as true that the public, and, in particular, voters, will be unable to know whether what they are seeing or hearing is real. The ease with which such false content could deceive voters threatens to undermine our democratic process.

To illustrate what is at stake, consider another recent example: An AI deepfake that was anonymously released on social media in the weeks before Chicago's recent mayoral election. This AI-generated ad depicted an image of a candidate and an imitation of that candidate's voice saying something to the effect of "back in my day, cops would kill 17 or 18 people and 'nobody would bat an eye.'" The complete lack of transparency about who paid for the ad, and the fact that it was not disclosed as an AI-generated fabrication, made it virtually impossible for viewers to know that this was an overt attempt at electoral manipulation. Concerningly, the video was reportedly viewed thousands of times before it was reported as false content and taken down.

We cannot say for certain how ads like those described above might impact a particular election, but the potential for manipulation has to deeply concern anyone who cares about the integrity of the democratic process. No less concerning would be AI deepfake ads that could undermine the administration of elections, such as by misrepresenting where and when people should go to vote, presenting false information about one's eligibility to vote, or other blatant attempts at electoral misinformation.

AI could also affect elections in less obvious ways. For example, AI could be used to determine who sees communications, which political consultants might refer to as the “targeting” of ads. With enough data “scraped” from various sources, AI has the potential to know what you like to eat, wear, and do—perhaps to know our preferences better than we know them ourselves. It could “categorize” voters based on their preferences to decipher their receptiveness to certain ideas or values over others, and then show them ads uniquely tailored to those preferences.

Again, targeting is not a new concept. Marketing experts and political consultants are in the business of trying to help their clients reach their desired audience, and polling and sample testing can help them determine not only what goes into an ad but who the ad is being shown to, and on what medium. Yet, an AI-powered advertising platform that shows different versions of ads to different viewers, based on their perceived group identity or their identifiable political views, opens new possibilities for problematic microtargeting.

Microtargeting political ads based on user data, a process that is invisible to voters, means that audiences have little understanding of what other voters are being shown or told. The ability to secretly direct a range of specially tailored and potentially conflicting messages to different audiences is incompatible with a transparent democratic process. By showing audiences more content that caters to their existing views and preferences, microtargeting can feed into echo chambers that exacerbate polarization. AI-powered microtargeting could make these problems even worse, as in theory, every person might see a slightly different version of an ad, recalibrated constantly based on viewer interest and engagement.

To summarize the concerns created by AI’s usage in our elections, AI has the potential to sow doubt and mistrust among voters trying to evaluate the credibility of election ads they view, by making it easy and inexpensive to fabricate manipulative and false content that can be incredibly convincing. There may be relatively innocuous uses of AI in elections, but there are also deeply concerning applications. While AI did not invent the danger of electoral manipulation, it has the capacity to make existing problems much worse because of the power of the technology to easily make the false look real, and to micro-target segments of voters in ways not previously possible. Regulators must recognize and proactively address these risks immediately.

Recommendations for Federal Action

There are many ways that AI could impact elections, and policymakers must act now to prevent some of the most dangerous outcomes, as well as to ensure that even the more innocuous applications of AI are handled responsibly.

Before detailing my recommendations for federal regulation, it is important to note that the application of AI to political communications is clearly in its infancy, and we do not yet know what may be possible with AI in the future. Nevertheless, we have already seen enough to be concerned about the ramifications for the integrity of the democratic process.

It is an understatement to observe that technology develops more quickly than the law. It took more than a decade for the FEC to update the rules for disclaimers on digital electoral ads, during which time digital advertising evolved and expanded to new mediums, including streaming media platforms. Technology evolved rapidly and political advertisers changed their practices to better reach their audience. Trailing years behind was the agency responsible for ensuring voters would know who paid for these ads.

Congress must consider this dynamic when addressing the current threats posed by AI. The technology will continue to advance, and political advertisers—as well as those that employ them—will respond swiftly. New rules will need to be flexible enough to remain relevant over time, yet pointed enough to ensure that voters are protected.

With that in mind, I believe there are three concurrent paths for addressing these issues under the law through our campaign finance system. The first is to use and enhance the FEC’s existing authority to protect elections against fraud. The second is to pass new legislation prohibiting the most pernicious uses of AI to influence elections. The third is to expand existing statutory disclosure and disclaimer requirements to ensure voters know when AI is used in election-related communications.

On the first point, the FEC currently has authority, under the Federal Election Campaign Act, to prohibit “fraudulent misrepresentation” for federal candidates. The non-profit organization Public Citizen has petitioned the agency to clarify explicitly, through the rulemaking process, that fraudulent uses of AI are included in this existing prohibition. **I believe the FEC ought to take this action.** This relatively simple regulatory action would clarify the application of long-established rules that are animated by the same underlying concerns that apply to AI: the law must ensure that candidates and voters alike are protected from fraud.

However, while this reform is relatively straightforward and simple, it is also narrow. More still needs to be done. The existing law only prohibits federal candidates, along with their employees and agents, from misrepresenting themselves as speaking for another candidate or party “on a matter which is damaging” to that candidate or party. It also prohibits any person from fraudulently misrepresenting their authority to solicit funds on behalf of any candidate or party.

The statute, at present, is not broad enough to address the wide variety of ways AI could be used to manipulate voters and undermine elections. **As a result, Congress should expand this provision**, and in fact, the FEC has long asked for such an expansion. Since 2004, the FEC’s annual legislative recommendations have asked Congress to expand the relevant provision to “encompass all persons purporting to act on behalf of candidates and real or fictitious political committees and political organizations.” Moreover, the agency has asked Congress to “remove the requirement that the fraudulent misrepresentation must pertain to a matter that is “damaging” to another candidate or political party.” As modified in this way, the law would ban fraudulent electoral ads using AI to speak or act on a candidate’s behalf—regardless of the person behind the ad, or whether the ad was “damaging” to the candidate or party it fraudulently depicted.

These relatively simple amendments to the federal fraudulent misrepresentation law would empower the FEC with greater authority to combat election fraud—authority the agency has sought for nearly two decades. While those changes would be important, they would not be enough to protect against some of the most pernicious uses of AI, which may not be limited to depicting a candidate speaking or acting on their own behalf.

As a second action, Congress should also pass a law that specifically prohibits uses of AI for the purpose of engaging in electoral fraud or manipulation—an area where the government has a clear, compelling interest in protecting voters and the integrity of the electoral process.

In recent years, we have seen efforts to undermine our elections, some of which were engineered by foreign governments, through systematic efforts to mislead voters. A similar future effort using AI to create and distribute manipulative or fraudulent content could be even more damaging, heightening the threat to our elections and, in a real sense, to our national security. Alarming, examples of this new avenue for election interference have begun to appear, with reports indicating that suspected Chinese operatives have already used AI-generated images to spread disinformation and create controversy along America’s socioeconomic and political fault lines. The risk extends to bad actors at home and abroad. To mitigate this concern, Congress should enact a law that prohibits the use of AI to manipulate and deceive voters or disrupt the administration of elections.

It is important to note here that voters have a well-recognized First Amendment interest in being able to assess the political messages they see; there is no countervailing First Amendment right to intentionally defraud or deceive voters or interfere in elections. A narrow law prohibiting the use of AI to engage in fraud designed to undermine the electoral process would rest on firm constitutional footing.

Third and finally, Congress should expand existing disclosure and disclaimer requirements to ensure voters know when the electoral content they are receiving has been materially altered, created, or otherwise influenced by the use of AI. If the fundamental concern with AI is that voters may not even know when AI was used to make the ads they are seeing or hearing, a legal mandate that the use of AI to materially influence electoral content be disclosed would at least ensure that voters can treat such content with the appropriate level of skepticism. Voters have a right to know who is speaking through an election ad, which is why existing disclaimer laws require candidates to “stand by” their message. Similarly, an AI disclaimer requirement would require an ad’s sponsors to “stand by” their use of AI, heightening the public’s ability to decide for themselves whether the ad can be relied on to influence their decision-making.

The private sector is already taking steps in this direction: Alphabet, the parent company of Google and YouTube, recently announced a new policy that paid political advertisements must explicitly disclose when ads contain “synthetic content that inauthentically depicts real or realistic-looking people or events.” However, the rules of the road for AI cannot be left up to private companies. For starters, such an approach is neither uniform nor comprehensive; Alphabet’s policies have no bearing on other social media platforms like Facebook or X (formerly known as Twitter), and even Alphabet’s new policy apparently does not apply to unpaid content uploaded to YouTube. It also goes without saying that private companies may have their own interests; Alphabet itself has a subsidiary, DeepMind, working on generative AI. A company’s voluntary policies regarding the disclosure of AI could change at any time, regardless of whether the underlying threat to our elections remains. Federal policymakers need to act.

An AI disclaimer law could be tailored to the level of concern regarding the technology’s use. A basic disclaimer could simply state that AI had been used in the ad, whereas a more detailed disclaimer might require additional information. This could include how AI was used, what it was used to depict, alter, or imitate, and more. The scope of the required disclosure could be tailored to best address varied concerns by giving voters the necessary information to evaluate an ad’s credibility and reliability.

These approaches are not mutually exclusive. Congress should consider each and might very well decide to use a combination of tools at its disposal. For the most pernicious forms of AI-based fraud and manipulation, a prohibition would seem most appropriate. Whereas for other material forms of AI use, a disclaimer would be sufficient to put voters on notice that the content before them is AI-based.

In addition, Congress should carefully consider how each of these policies could be enforced. The FEC’s well-established procedures for the civil enforcement of campaign finance laws, though in need of fundamental reform, could be applied to

the use of AI in elections. The unique challenges of AI might also require additional enforcement mechanisms, including establishing criminal penalties enforceable by the Department of Justice or creating a private right of action for candidates targeted by AI to seek rapid relief in federal court.

These recommendations are also not meant to be exhaustive. In light of the rapid acceleration and evolution of AI, Congress should continue studying how these technologies are used in the coming years, particularly in our elections. A one-and-done solution to the problems AI presents is unlikely to remain relevant for long, and at stake is the very fabric of our democracy. This problem merits continued vigilance.

Conclusion

Today's hearing is an encouraging sign that Congress is proactively working to address the impact of AI on our electoral process. The concerns raised by this technology are real and growing, and I strongly urge this Committee to approach these challenges without regard for partisanship or political gain. If left unregulated, AI will increase the risk of misinformation, deceptive advertisements, and distrust for candidates and voters on both sides of the aisle. If appropriately safeguarded, we may yet enjoy the benefits of this technology alongside a stronger democracy.

Thank you again for the invitation to testify. I look forward to answering your questions.