October 16, 2023

Federal Election Commision
Lisa J. Stevenson, Office of General Counsel
1050 First Street, NE
Washington, D.C. 20463

Re: Regulatory 2023-02: Artificial Intelligence in Campaign Ads

To the Office of General Counsel,

We thank you for the opportunity to comment on the Federal Election Commission (FEC) rulemaking regarding the applicability of "fraudulent misrepresentation" (11 C.F.R. §110.16) towards the usage of deliberately deceptive artificial intelligence (AI) in campaign communications. The threat that AI poses to the integrity of our national security and our democratic elections has increasingly come into focus, and the FEC has both the duty and authority to act to safeguard our election system. Issue One stands in firm support of the clarification of the jurisdiction of "fraudulent misrepresentation" outlined by 11 C.F.R. §110.16 to include the use of generative AI in election campaign materials. This rulemaking will establish a critical precedent that will guide how Congress and other federal agencies respond to the use of generative AI in our elections.

Issue One has worked for more than a decade to find crosspartisan structural solutions to the growing threats to American democracy. We have successfully advocated for federal election funding, increased transparency in campaign finance, reforms to modernize the institution of Congress, and the enactment of the Electoral Count Reform Act. Through our organization's work with election officials, Issue One has grown increasingly concerned about generative AI's potential disruptive effects on public trust in elections.

The deceptive use of generative AI in political campaigns is not a future possibility, it is a present reality. Congress is considering legislation to add new guardrails and increased appropriations to give local election officials the resources they need to counter this growing threat. Meanwhile, the FEC must act where it possesses the statutory authority to do so, as it does in this case.

I.   Deceptive Deepfakes Are Already a Threat

Generative AI has already begun to adversely affect elections around the world, particularly in the form of deepfakes: synthetic media created using deep learning that create false, but realistic sounding and looking audio, video, or text that is often hard to distinguish from genuine, real,

unaltered content. While deepfakes are not entirely new, generative AI makes their creation easier and cheaper, and their end product more convincing and widespread/easier to distribute. Research has found that the average viewer already cannot reliably detect a deepfake.[1] Effectively, generative AI threatens to allow an unlimited number of rogue actors to create deepfakes, crippling the verifiability of video footage, once the "gold standard for establishing veracity [digitally]," and setting a dangerous precedent for political campaign strategy for coming election cycles.[2]

The difficulty to catch up to and debunk a deepfake once it has been unleashed into a campaign was demonstrated during the recent Slovakian national election. A fabricated audio recording of one of the candidates was released during the 48-hour campaigning moratorium prior to the opening of polls. The audio clip was determined by multiple fact-checking organizations to be fabricated, yet it circulated far faster than did any fact-checking attempts. The opposing candidate narrowly won the election.[3]

In the United States, federal campaigns and political committees have already begun creating and circulating AI-generated deepfake images and audio, as have independent actors.[4] Regulations on AI-generated imagery and audio as they are currently enforced are simply unable to keep up with the speed and power of these new systems.

II.   Jurisdiction of the Federal Elections Commission

The Commission has previously recognized its statutory authority to clarify the applicability of "fraudulent misrepresentation" found in 11 C.F.R. §110.16 towards AI-generated fabricated materials. Former Commissioner Lee Goodman clarified this authority in 2018 when he explained that the law against "fraudulent misrepresentation" falls within the Federal Election Campaign Act (FECA). According to Commissioner Goodman, such rulemaking not only falls

[1] Nils C. Köbis, Barbora Doležalová, and Ivan Soraperra, "Fooled Twice: People Cannot Detect Deepfakes But Think They Can," *National Center for Biotechnology Information,* October 29, 2021, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8602050/ (accessed October 7, 2023).

[2] Nils C. Köbis, Barbora Doležalová, and Ivan Soraperra, "Fooled Twice: People Cannot Detect Deepfakes But Think They Can," *National Center for Biotechnology Information,* October 29, 2021, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8602050/ (accessed October 7, 2023).

[3] Morgan Meaker, "Slovakia's Election Deepfakes Show AI Is a Danger to Democracy," *Wired,* October 3, 2023, https://www.wired.com/story/slovakias-election-deepfakes-show-ai-is-a-danger-to-democracy/ (accessed October 12, 2023)

[4] Aleks Phillips, "Deepfake Video Shows Elizabeth Warren Saying Republicans Shouldn't Vote," *Newsweek,* February 27, 2023, https://www.newsweek.com/elizabeth-warren-msnbc-republicans-vote-deep-fake-video-1784117 (accessed October 7, 2023); Alexandra Ulmer and Anna Tong, "With Apparently Fake Photos, DeSantis Raises AI Ante," *Reuters,* June 8, 2023, https://www.reuters.com/world/us/is-trump-kissing-fauci-with-apparently-fake-photos-desantis-raises-ai-ante-2023-06-08/ (accessed October 7, 2023).

within the jurisdiction of the Commission, but is the Commission's chartered duty to uphold and codify.[5]

III.   Legislative Oversight and Action

Congressional concerns regarding AI and its implications for upcoming elections are widespread and bipartisan. At a September 2023 Senate Rules Committee hearing on this topic, Senators from both parties and witnesses with expertise in election administration, campaign regulation, and AI technology agreed on the need for immediate legislative action. Rules Committee Chair Amy Klobuchar (D-MN) made clear: "With AI, the rampant disinformation we have seen in recent years will quickly grow in quality and quantity…We need guardrails to protect our elections." Trevor Potter, Former Chair of the FEC, told the Committee that the utilization of AI in campaign spaces leaves more room for foreign interference within our elections: "Unchecked, the deceptive use of AI …could leave voters unable to meaningfully evaluate candidates, and candidates unable to convey their desired message to voters, undermining our democracy." The hearing built on extensive research by experts who have argued that generative AI poses dangers to elections that extend beyond the specific issue raised by this rulemaking.[6]

Many of the dangers to democracy raised in the Senate hearing will require action by Congress, federal agencies, and private companies to counter. Yet, this imminent legislative and agency activity only makes clear action by the FEC in this rulemaking more important. There have been two recent legislative proposals to expand FEC authority to regulate generative AI in campaign advertisements: The *Protect Elections from Deceptive AI Act*, a bipartisan bill targets the use of AI generated deepfakes in political ads, and the REAL Political Ads Act requires a disclaimer on political ads that use images or video generated by AI. Both of these bills would be strengthened by clarity from the FEC in this rulemaking process that "fraudulent misrepresentation" includes the use of generative AI in election campaign materials. Decisive action on the use of deepfakes in political ad campaigns is a necessary first step to set a federal precedent on the management of harmful AI.

The FEC is charged with the critical role of administering and enforcing campaign finance laws. The use of generative AI in paid campaign advertisements now poses a serious threat to the integrity of American elections as a whole. This rulemaking is a focused, statutorily valid, and necessary intervention. While the adoption of this petition will not end the generative AI threat to our elections, it will narrow the avenues of attack that bad actors are able to use to spread deepfakes and false information in our campaigns. We therefore strongly encourage the

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[5] Federal Elections Commission, *Policy Statement of Commissioner Lee E. Goodman,* February 16, 2023, https://www.fec.gov/resources/cms-content/documents/Commissioner_Lee_E._Goodman_Policy_Statement_-_Fraudulent_Misrepresentation.pdf (accessed October 10, 2023).

[6] Senate Rules Committee, *AI and the Future of Our Elections*, September 27, 2023, https://www.rules.senate.gov/hearings/ai-and-the-future-of-our-elections.

Commission to accept the petition for rulemaking and clarify that the "fraudulent misrepresentation" provision covers content created by generative AI.

Sincerely,

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Legislative Director
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