



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

**STATEMENT BY VICE CHAIR ELLEN L. WEINTRAUB
ON THE DISPOSITION OF THE RULEMAKING PETITION REGARDING
FRAUDULENT MISREPRESENTATION AND ARTIFICIAL INTELLIGENCE**

On July 13, 2023, Public Citizen petitioned the Federal Election Commission to conduct a rulemaking to address the use of artificial intelligence (“AI”) in campaign communications, specifically “to clarify that the law against ‘fraudulent misrepresentation’ (52 U.S.C. 30124)¹ applies to deliberately deceptive AI-produced content in campaign communications.”² Today, the Commission declined to initiate a rulemaking.³ Instead, the Commission adopted an Interpretive Rule, a brief document that conveys Commission guidance but does not require all the administrative steps of notice-and-comment rulemaking and will not be incorporated into the Code of Federal Regulations. The Interpretive Rule states that the law and the Commission’s implementing regulation, 11 C.F.R. § 110.16, are technology-neutral but do include fraudulent misrepresentation by means of AI.⁴

The clarification is welcome, and I voted for the Interpretive Rule. I appreciate the efforts of my colleagues to broker this compromise, which allows the Commission to provide some guidance in advance of the upcoming election. My preference, however, would have been to

¹ The statute reads in full:

“(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).

(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 (1).” 52 U.S.C. § 30124.

² Second Submission: Petition for Rulemaking to Clarify that the Law Against “Fraudulent Misrepresentation” (52 U.S.C. § 30124) Applies to Deceptive AI Campaign Communications (July 13, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423502>.

³ Notice of Disposition in REG 2023-02 (Artificial Intelligence in Campaign Ads) (Sept. 10, 2024), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-24-29-B.pdf>.

⁴ Interpretive Rule Regarding 52 U.S.C. 30124 (Sept. 10, 2024), <https://www.fec.gov/resources/cms-content/documents/mtgdoc-24-39-A.pdf>.

conduct a full rulemaking.⁵ Had we responded to the petition more promptly, there would have been time to do so before the 2024 election. Even now, I believe it behooves us to begin the process so that we could have rules in place in time for the next election. Accordingly, I voted to open a rulemaking, which would have enabled the Commission to more thoroughly consider how, consistent with our statutory authority, to protect the transparency and integrity of our elections in an AI world.

In response to the petition for rulemaking, the Commission received over 2,400 comments from a diversity of stakeholders.⁶ This enthusiastic response demonstrates that AI-generated content in political advertisements is a priority for the regulated community and members of the public who will be (and already are) confronted by misleading AI-generated political content. An overwhelming majority of the comments encouraged the Commission to act. Thirty-one members of Congress “urged” the Commission “to regulate the use of generative AI in campaign advertisements and protect the democratic processes that serve our country.”⁷ The non-partisan Center for Democracy & Technology cautioned that “public faith in the electoral process itself may be at stake: recent polling shows that eighty-five percent of Americans are concerned about the spread of misleading video and audio deepfakes.”⁸ And the Partnership on AI, an independent coalition of over 90 companies and non-profits, “identified specific harms related to synthetic media, such as voter deception and damaging the reputation of a candidate ahead of an election, that can have potential negative effects on democratic and political processes.”⁹

The petition itself and several comments the Commission received included real-life examples of AI already being used to perpetrate “dirty tricks.”

- AI technology cloned the voice of a recent Chicago mayoral candidate in a way that made him appear to be condoning police brutality.¹⁰ The candidate lost by a small margin.¹¹

⁵ The Commission’s issuance of an Interpretive Rule affirms that the Commission has statutory authority to exercise here.

⁶ All comments are available on the Commission’s website at <https://sers.fec.gov/fosers/>, referencing REG 2023-02 (Artificial Intelligence in Campaign Ads).

⁷ Comment from Multiple Members of Congress (Oct. 3, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423806>.

⁸ Comment from the Center for Democracy & Technology (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423817>.

⁹ Comment from Partnership for AI (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423817>.

¹⁰ Comment from Accountable Tech at 3 (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423807>; Comment from the Center for Democracy & Technology at 2-3 (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423817>.

¹¹ Tiffany Hsu and Steven Lee Myers, *A.I.’s Use in Elections Sets Off a Scramble for Guardrails*, N.Y. TIMES (June 25, 2023), <https://www.nytimes.com/2023/06/25/technology/ai-elections-disinformation-guardrails.html>.

- Another video posted by a political party during Slovenia’s recent election used AI to imitate the voice of a rival candidate making damaging comments.¹²
- In New Hampshire, a robocall that appeared to have been artificially generated to sound like the voice of President Biden stated that voters should not vote in the 2024 primary election.¹³
- A news organization used AI to create a video in which Senate candidate Kari Lake appears to encourage viewers to subscribe to the news organization’s list.¹⁴

And recently, Elon Musk shared a manipulated video of Vice President Harris on X, the platform he owns, without any disclosure that it was the product of AI (reportedly violating his platform’s own rules).¹⁵ Tens of millions of his followers saw the video before, under criticism, he posted that it was a parody.¹⁶

The Interpretive Rule provides guidance, but its parameters remain to be fleshed out in response to complaints or advisory opinion requests. This is certainly not the first time that the Commission has chosen to proceed on a case-by-case basis, but a rulemaking would have enabled the Commission to clarify the scope of the fraudulent misrepresentation prohibition in a comprehensive and transparent fashion. Specifically, the Commission could have addressed some of the practical issues raised by several comments, such as:

- Whether an advertisement must include at least one false claim to fraudulently misrepresent another candidate, campaign, or political party;¹⁷
- Whether adopting or imitating the voice of another person, without altering the facts about what the other person said or did, is “misrepresentation” under the statute;¹⁸

¹² Comment from the Center for Democracy & Technology at 2-3 (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423817>.

¹³ N.H. Office of the Attorney General, “Steven Kramer Charged with Voter Suppression Over AI-Generated President Biden Robocalls” (May 23, 2024), <https://www.doj.nh.gov/news-and-media/steven-kramer-charged-voter-suppression-over-ai-generated-president-biden-robocalls>.

¹⁴ Reis Thebault, *Deepfake Kari Lake video shows coming chaos of AI in elections*, WASHINGTON POST (Mar. 24, 2024), <https://www.washingtonpost.com/politics/2024/03/24/kari-lake-deepfake/>.

¹⁵ See Ken Bensinger, *Elon Musk Shares Manipulated Harris Video, in Seeming Violation of X’s Policies*, N.Y. TIMES (July 27, 2024), <https://www.nytimes.com/2024/07/27/us/politics/elon-musk-kamala-harris-deepfake.html#:~:text=On%20Friday%20night%2C%20Mr.%20Musk,over%20in%20a%20deceptive%20manner>.

¹⁶ See Ali Swenson, *A parody ad shared by Elon Musk clones Kamala Harris’ voice, raising concerns about AI in politics*, AP (July 29, 2024), <https://apnews.com/article/parody-ad-ai-harris-musk-x-misleading-3a5df582f911a808d34f68b766aa3b8e>.

¹⁷ See Comment from Holtzman Vogel (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423826>.

¹⁸ See Comment from Campaign for Accountability (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423814>.

- Whether the statute and regulation require an intent element, such that the AI-generated content must have been created to be deliberately deceptive;¹⁹
- Whether there are a standard set of factors that could be used for determining fraudulent misrepresentations in political advertisements and other political content;²⁰ and
- Importantly, what role disclaimers could play in assisting the public to understand when AI is being used in political advertising.²¹

In past enforcement matters involving claims of fraudulent misrepresentation, the presence or absence of disclaimers has been a key element of the Commission’s analysis of whether the law was violated.²² Presumably, that would continue to be the case were the Commission to be presented with a complaint of fraudulent misrepresentation by means of AI. It remains to be determined, however, how (and how vigorously) the Commission will enforce the law in the AI context. Will the Commission examine whether communications disclose that they were produced using AI, or will it suffice if the communication bears a disclaimer stating who paid for it?

The petition posited that “[a] deepfake audio clip or video by a candidate or their agent that purports to show an opponent saying or doing something they did not do would violate . . . the law. . . . Specifically, by falsely putting words into another candidate’s mouth, or showing the candidate taking action they did not, the deepfake would fraudulently speak or act ‘for’ that candidate in a way deliberately intended to damage him or her.”²³ The Commission has not addressed this interpretation, which is at the crux of the petition, and it is not at all clear that a majority of commissioners agrees. Many of the commenters on the petition raised their deep concern with the need to provide transparency when AI is used in political communications. A rulemaking could have grappled with this issue head on.

¹⁹ See Comment from Stanford Cyber Policy Center (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423837>.

²⁰ See Comment from Public Citizen (Oct. 11, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423835> (discussing former Comm. Lee Goodman’s Policy Statement on the Fraudulent Misrepresentation Doctrine from Feb. 16, 2018).

²¹ See Comment from Harvard Law School Cyberlaw Clinic and Election Law Clinic (Oct. 16, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423821>.

²² See, e.g., MUR 7004 (The 2016 Committee, *et al.*), <https://www.fec.gov/files/legal/murs/7004/17044422443.pdf>, MUR 3690 (National Republican Congressional Committee), <https://www.fec.gov/files/legal/murs/3690.pdf>, MUR 2205 (Foglietta, *et al.*), <https://www.fec.gov/files/legal/murs/2205.pdf>.

²³ Second Submission: Petition for Rulemaking to Clarify that the Law Against “Fraudulent Misrepresentation” (52 U.S.C. § 30124) Applies to Deceptive AI Campaign Communications at 3 (July 13, 2023), <https://sers.fec.gov/fosers/showpdf.htm?docid=423502>.

While there may be disagreement among commissioners as to exactly how far our jurisdiction to regulate AI extends, it is clear that the Commission does not have the statutory authority to solve all the transparency and regulatory issues involved in AI-generated political content. Notably, the Act’s fraudulent misrepresentation prohibition covers only misrepresentations made by a federal candidate or the candidate’s employee or agent or misrepresentations in solicitations. In other words, the prohibition does not generally prohibit non-candidate committees, such as Super PACs, or other individuals from using AI to misrepresent a candidate’s image or statement. The Commission has unanimously, on a bipartisan basis, recommended that Congress expand the fraudulent misrepresentation prohibition.²⁴ I would welcome that expanded authority and would further encourage Congress to pass legislation explicitly directing the FEC to require transparency on AI-generated political communications.

The public is entitled to know whether what they are seeing online is real or not. AI-generated disinformation is already spreading. To those who argue that there is no urgency since there has not yet been an election-altering use of AI, my response is that I would prefer to act before that happens, not after.

The Commission’s statutory mission demands that we do everything in our power to respond to the threats AI poses to our campaign finance system. President Biden’s Executive Order on AI instructed the federal government to “lead the way” in “deploy[ing] technology responsibly — and building and promoting those safeguards.”²⁵ The Commission cannot solve this problem alone, but we should do our part by leading the way. Conducting a rulemaking would have been an important step in that process.

September 19, 2024

Date



Ellen L. Weintraub
Vice Chair

²⁴ FEC Legislative Recommendations 2023 at 13 (Dec. 14, 2023), <https://www.fec.gov/resources/cms-content/documents/legrec2023.pdf>.

²⁵ Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>.