October 24, 2023

Dear Meta Oversight Board,

Campaign Legal Center ("CLC")[1] respectfully submits the following comment regarding Case Number 2023-029-FB-UA and Meta's policy with respect to deceptive political advertisements altered or manipulated by artificial intelligence (AI).[2]

I. Voters have a right to know who is "speaking" in electoral communications.

Every election cycle, voters are inundated with political communications seeking to influence their vote, which candidates, PACs, and nominally independent groups spend billions of dollars to produce and disseminate.[3] Social media platforms like Facebook and Instagram have become a common medium through which voters see these communications, which they must evaluate in order to make an informed decision when casting their ballots.

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[1] CLC is a nonprofit, nonpartisan organization based in Washington, DC, that advances democracy through law, fighting for every American's right to participate in and affect the democratic process. More information on CLC can be found at https://campaignlegal.org/.

[2] As used in this comment, the term "artificial intelligence" refers to *generative* artificial intelligence, which is "a type of artificial intelligence technology that broadly describes machine learning systems capable of generating text, images, code or other types of content, often in response to a prompt entered by a user." Owen Hughes, *Generative AI Defined: How it Works, Benefits and Dangers*, TechRepublic (Aug. 7, 2023), https://www.techrepublic.com/article/what-is-generative-ai/.

[3] 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 spend $8.9 billion, likewise breaking the previous record for spending on a midterm election. Karl Evers-Hillstrom, *Most expensive ever: 2020 election cost $14.4 billion*, OpenSecrets (Feb. 11, 2021), https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16/; Taylor Giono, *"Midterm spending spree": Cost of 2022 federal election tops $8.9 billion, a new midterm record*, OpenSecrets (Feb. 7, 2023), https://www.opensecrets.org/news/2023/02/midterms-spending-spree-cost-of-2022-federal-elections-tops-8-9-billion-a-new-midterm-record/.

As such, to meaningfully participate in the democratic process, voters have to be able to evaluate the credibility and reliability of electoral messages and the underlying motivations of the people paying for them. They must also be able to trust that the person "speaking" on behalf of a candidate is authentic, not a fabrication made with AI or other media tools. If voters are unable to trust that what they are seeing is authentic, then they could be easily misled about a candidate's positions or actions, and might ultimately opt to disengage from the political process, undermining our democracy.

As the manipulated video of President Joe Biden demonstrates, altering a video of real events to misrepresent what actually happened can potentially deceive viewers and impact how voters perceive candidates seeking their vote. Even without doctoring or fabricating a candidate's speech, a manipulated video altering their actions can be used to mislead and manipulate the electorate.[4] Meta's policies concerning manipulated media should be carefully written so they may be applied to—and don't categorically exempt—media like the altered Biden video, where conduct is distorted or manipulated to create a false impression on viewers.

Moreover, artificial intelligence (AI) further raises the stakes by making such manipulation more realistic. AI presents an unprecedented capacity to create deceptive or fraudulent political advertisements. AI-based manipulated content could be used to depict a candidate saying or doing something they neither said nor did, or to undermine the administration of elections, such as, *e.g.*, by misrepresenting where and when people should go to vote or presenting false information about one's eligibility to vote.

II.   Meta should adopt policies regulating AI-generated political advertisements.

Prohibiting Deceptive AI

Federal campaign finance laws have long prohibited the fraudulent misrepresentation of campaign authority, allowing voters to rely on the representation that the candidate "speaking" in a political ad is who they claim to be. A candidate cannot, therefore, pay for an ad while claiming the ad was, in fact, the speech of another candidate, on a matter damaging to that candidate.[5] Indeed, to confront the emerging threat of AI deepfakes being used to fraudulently misrepresent candidates' speech or conduct, more

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[4]   This is certainly not the first example of someone publishing a manipulated video to deceptively portray a federal candidate or officeholder. In May 2019, a video of Rep. Nancy Pelosi that had been "significantly slowed down" to make her appear drunk and slurring her words was circulated on social media, with one post on Facebook being shared 91,000 times. Reuters Staff, *Fact check: "Drunk" Nancy Pelosi video is manipulated*, Reuters (Aug. 3, 2020), https://www.reuters.com/article/uk-factcheck-nancypelosi-manipulated/fact-check-drunk-nancy-pelosi-video-is-manipulated-idUSKCN24Z2BI.

[5]   52 U.S.C. § 30124(a).

comprehensive laws and policies prohibiting such deception are urgently needed.

Meta should institute similar policies prohibiting the use of AI to manipulate or create content in electoral communications that is intended to deceive voters about who is "speaking" in such communications. This type of policy would be consistent with the longstanding federal prohibition of fraudulent misrepresentation of campaign authority. Meta's policy should go even further than existing federal law, which is limited to candidates misrepresenting campaign authority, and extend such a prohibition to anyone using AI to materially alter or create deceptive content intended to influence an election, or to undermine the administration of an election. This type of broader prohibition—which would apply not only to candidates but to political party committees, PACs, and nominally independent groups spending money to influence elections, such as super PACs—would be similar to a recent federal bill that is currently under consideration and has bipartisan support.[6]

AI Disclaimers

In addition to prohibiting deceptive AI in electoral communications, Meta should adopt an AI disclaimer policy that would provide a crucial backstop in cases where AI-based media content is found not to violate its Manipulated Media standard. An AI disclaimer requirement would put voters on notice that the content they are seeing or hearing was created or substantially altered using AI, allowing them to evaluate that content with the requisite skepticism regarding the authenticity of what is being depicted. An AI disclaimer requirement would essentially require an ad's sponsors to "stand by"[7] 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.

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[6] Protect Elections from Deceptive AI Act, S. 2770, 118th Cong. (2023). Such proposed legislation would be consistent with the First Amendment. The Supreme Court has held that fraudulent and deceptive statements have no value under the First Amendment. *See Ill., ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 612 (2003) (stating that "public deception is "unprotected speech" and "the First Amendment does not shield fraud"). In fact, the Supreme Court has recognized that the government has a "firmly established" interest in "protect[ing] people against fraud." *Donaldson v. Read Magazine*, 333 U.S. 178, 190 (1948). As election law expert Professor Richard Hasen recently noted, "There is no First Amendment right to use speech to subvert an election, any more than there is a First Amendment right to use speech to bribe, threaten, or intimidate." Richard L. Hasen, *U.S. v. Trump Will Be the Most Important Case in Our Nation's History*, Slate (Aug. 1, 2023), https://slate.com/news-and-politics/2023/08/trump-trial-2024-historic-jacksmith-indictment.html.

[7] Certain political advertisements must make clear on their face—with a visual or audio statement in the ad itself—who is responsible for and authorized the ad's content, and candidates must "stand by" their electoral messages. 52 U.S.C. § 30120.

Meta could model its disclaimer policy off of federal campaign finance laws, which play a pivotal role in protecting voters' rights to be informed about who is behind political communications that influence our elections. Regulations of political advertisements actually promote the marketplace of ideas by providing the voting public with information with which to assess competing election communications.[8]

Meta's AI disclaimer policy 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 can be tailored to best address varied concerns by giving voters the necessary information to evaluate an ad's credibility and reliability.

We urge you to take this critical opportunity to establish disclosure requirements that increase transparency and promote trust in social media platforms as important players in the election landscape.

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/s/ Saurav Ghosh

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[8] Disclosure and disclaimer requirements actually uphold the values of the First Amendment. Even as the Supreme Court's decision in *Citizens United* opened the floodgates to corporate money in elections, eight of the nine justices upheld these requirements as an important tool to ensure electoral transparency.[8] *Citizens United v. FEC*, 558 U.S. 310, 366-67 (2010) (remarking that disclaimers "impose no ceiling on campaign-related activities," "do not prevent anyone from speaking," and fulfil the government's important interest in "providing the electorate with information" to "make informed choices in the political marketplace."). *See McConnell v. FEC*, 540 U.S. 93, 197 (2003) (recognizing "the [ ] First Amendment interests of individual citizens seeking to make informed choices in the political marketplace" (internal quotation marks omitted)); *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) ("[D]isclosure provides the electorate with information . . . in order to aid the voters in evaluating those who seek federal office."); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1005, 1008 (9th Cir. 2010) ("Providing information to the electorate is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment. . . . Campaign finance disclosure requirements thus advance the important and well-recognized governmental interest of providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas.").