August 9, 2023

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

Re: Rulemaking on 11 C.F.R. §110.16

Dear Ms. Stevenson:

Citizens for Responsibility & Ethics in Washington ("CREW") respectfully supports the petition requesting the Federal Election Commission ("FEC" or the "Commission") conduct a rulemaking pursuant to 11 C.F.R. §200.1 et seq. on the subject of "fraudulent misrepresentation" regarding deliberately misleading campaign communications generated through the use of artificial intelligence (AI). The petition, submitted by Public Citizen on July 13, 2023, requests the FEC conduct a rulemaking to clarify the meaning of "fraudulent misrepresentation" within 11 C.F.R. §110.16.

Artificial intelligence is progressing quite quickly and is being used more and more to create convincing audio, video and image hoaxes known as deepfakes. Political campaigns have already used deep fakes, and their use is only likely to increase as the technology becomes more sophisticated and widespread.

- Donald Trump's presidential campaign released an audio clip using deepfaked voices of rival presidential candidate Ron DeSantis, Adolf Hitler, Elon Musk and George Soros.[1]
- An account associated with Ron DeSantis's presidential campaign released an ad attacking Donald Trump using AI-generated images of Trump embracing Dr. Anthony Fauci.[2]

While experts are generally still able to distinguish between authentic media and deepfakes, they can be quite convincing and can conceivably mislead voters who have far less expertise. In fact, in January 2019, then-U.S. Director of National Intelligence, Dan Coats, warned that deepfakes or similar fake media will likely be among the tactics used by people who want to disrupt elections.[3] In the future, it is possible that deepfakes will become so sophisticated that even experts will have a difficult time distinguishing between real and artificially generated media.

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[1] https://gizmodo.com/desantis-trump-musk-twitter-hitler-deepfake-campaign-1850475254
[2] https://www.theverge.com/2023/6/8/23753626/deepfake-political-attack-ad-ron-desantis-donald-trump-anthony-fauci
[3] https://www.cnn.com/2019/04/26/tech/ai-deepfake-detection-2020/index.html

Given these developments, CREW encourages the FEC to conduct the rulemaking requested by Public Citizen. Federal law already forbids candidates for federal office or their agents from fraudulently misrepresenting themselves as speaking or acting for or on behalf of another candidate or political party on a matter damaging to the other candidate or party.[4] By its very terms, this provision would appear to apply to deepfakes as well.

A deepfake audio or video clip by a campaign that claims to show an opponent saying or doing something they did not say or do appears to violate this provision of the law. As outlined above, campaigns and political committees have already begun to use deepfakes in misleading ways, and CREW strongly urges the FEC to clarify that the law, and specifically the regulation implementing the law, 11 C.F.R. §110.16, applies to the misleading use of deepfakes without sufficient disclaimers. As artificial intelligence and deepfake technology advances, it is crucial that our elections are not compromised by misleading and deceptive communications, and that federal agencies ensure that their practices, guidance and regulatory and enforcement regimes keep up.

Sincerely,

Donald K. Sherman
Executive Vice President and Chief Counsel

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[4] 52 U.S.C. §30124