



September 27, 2023

Chairwoman Amy Klobuchar
Ranking Member Deb Fischer
Rules and Administration Committee
U.S. Senate, Washington, DC

Re: Statement for the record: Committee Hearing on “AI AND THE FUTURE OF OUR ELECTIONS”

Dear Chairwoman Klobuchar, Ranking Member Fischer, and Committee Members,

We write to you regarding the upcoming hearing, “AI and the Future of Our Elections.”¹ With the 2024 Presidential election approaching, we commend the Committee’s oversight for AI-generated political content.

The Center for AI and Digital Policy (CAIDP) is an independent research organization, based in Washington, DC.² We advise national governments and international organizations regarding artificial intelligence policy. We previously testified on AI policy before the House Oversight Committee.³ Our landmark report *AI and Democratic Values*⁴ assesses AI policies and practices around the world and emphasizes the importance of transparency in national AI strategies.⁵ (See attached image for digital download of the CAIDP report).

In a complaint filed earlier this year with the Federal Trade Commission, CAIDP warned of the specific Risks to Democracy of generative AI products such as ChatGPT.⁶ We urged the FTC to act quickly, stating “The Federal Trade Commission may be the only federal agency with

¹ Senate Rules and Administration Committee, *AI and the Future of Our Elections*, Sept. 27, 2023, <https://www.rules.senate.gov/hearings/ai-and-the-future-of-our-elections>.

² CAIDP, <https://www.caidp.org>.

³ Testimony and statement for the record of CAIDP President Merve Hickok, *Advances in AI: Are We Ready For a Tech Revolution?*, House Committee on Oversight and Accountability: Subcommittee on Cybersecurity, Information Technology, and Government Innovation (Mar. 8, 2023), https://oversight.house.gov/wp-content/uploads/2023/03/Merve-Hickok_testimony_March-8th-2023.pdf.

⁴ CAIDP, *AI and Democratic Values* (2023), <https://www.caidp.org/reports/aidv-2022/>.

⁵ *Id.* at 1132-33.

⁶ CAIDP, *In the Matter of OpenAi* (2023), <https://www.caidp.org/cases/openai/>.

the opportunity and authority at this time to regulate ChatGPT so as to diminish threats to the 2024 election.”⁷

We set out below brief observations and recommendations to address the threat of false and deceptive AI-generated political content in elections:

1) Move forward with federal AI legislation based on established governance frameworks

We need federal AI legislation which would mandate transparency, fairness, and accountability of AI systems, including those that provide information to voters and may impact election outcomes. There are well-established governance frameworks aimed at ensuring safety and scientific validity set out in the Universal Guidelines for AI⁸ and the OECD AI Principles.⁹

The Universal Guidelines on AI (UGAI) were adopted in 2018 and over 330 leading experts and 60 associations (including the AAAS, the ACM, and the IEEE) have endorsed the UGAI. It sets out 12 principles that are foundational for the governance of AI systems. According to the UGAI Right to Transparency, “All individuals have the right to know the basis of an AI decision that concerns them. This includes access to the factors, the logic, and techniques that produced the outcome.”¹⁰ In these AI systems, “Both technical and institutional designs should ensure auditability and traceability of (the working of) AI systems to address any conflicts with human rights norms and standards and threats to environmental and ecosystem well-being.”

The OECD has highlighted that the combination of AI language models and disinformation can lead to large-scale and damage public trust in democratic institutions.¹¹ A study found that Google's Bard AI tool generates persuasive misinformation content on 78 out of 100 tested narratives.¹² A recent study found that ChatGPT4 is more likely than its predecessor to generate

⁷ CAIDP, *Supplement to the Original Complaint, In the Matter of Open AI* (2023), pp. 35, para. 138, <https://files.constantcontact.com/dfc91b20901/72cccde7-44a7-44e4-bfee-d6801b3891d2.pdf>.

⁸ The Public Voice, *Universal Guidelines for Artificial Intelligence*, Guideline 5, <https://thepublicvoice.org/ai-universal-guidelines/>.

⁹ Recommendation of the Council on Artificial Intelligence, OECD (May 21, 2019), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>.

¹⁰ UGAI Guideline 1.

¹¹ *supra* at note 7.

¹² Center for Countering Digital Hate (CCDH), Misinformation on Bard, Google's New AI Chat, Apr. 5, 2023, <https://counterhate.com/research/misinformation-on-bard-google-ai-chat/#:%7E:text=Google%E2%80%99s%20new%20%E2%80%98Bard%E2%80%99%20AI%2>

misinformation when prompted, including false narratives concerning vaccines, conspiracy theories, and propaganda.¹³

“OpenAI notes that even a powerful model like GPT-4 “is not fully reliable” and “great care should be taken when using language model outputs, particularly in high-stakes contexts, with the exact protocol (such as human review, grounding with additional context, or avoiding high-stakes uses altogether) matching the needs of a specific use-case.” Additionally, because the models are generally trained on large amounts of data scraped from the internet, they can incorporate, reflect, and potentially amplify biases in such data.”¹⁴

OpenAI has acknowledged the specific danger of Disinformation and influence operations. As we explained in our complaint to the FTC, OpenAI has warned that ““AI systems will have even greater potential to reinforce entire ideologies, worldviews, truths and untruths, and to cement them or lock them in, foreclosing future contestation, reflection, and improvement.’ The company already disclaims liability for the consequences that may follow.”¹⁵ (*emphasis added*)

In May 2023, the American Association of Political Consultants (AAPC), issued a statement explaining that its board of directors had unanimously “condemn[ed] use of deceptive generative AI content in political campaigns” and noted that such communications were inconsistent with the organization’s code of ethics.¹⁶ However voluntary code of ethics will not suffice to address the serious risks generative AI systems pose to election processes.

Election interference can arise from private or public or even foreign actors. Laws must be enacted to penalize malicious uses of AI, thereby discouraging acts of misinformation and

[Ogenerates%20false%20and%20harmful%20narratives%20on%2078%20out%20of%20100%20t opics.](#)

¹³ Axios, Exclusive: GPT-4 readily spouts misinformation, study finds, Mar. 21, 2023,

<https://www.axios.com/2023/03/21/gpt4-misinformation-newsguard-study>

¹⁴ Congressional Research Services (CRS), *Generative Artificial Intelligence: Overview, Issues, and Questions for Congress*, In Focus, June 9, 2023,

<https://crsreports.congress.gov/product/pdf/IF/IF12426>

¹⁵ CAIDP, *In Re OpenAI*, Complaint to the Federal Trade Commission (FTC), Apr. 30, 2023, pp. 1, <https://www.caidp.org/app/download/8450269463/CAIDP-FTC-Complaint-OpenAI-GPT-033023.pdf>

¹⁶ *Id.* at note 14.

impersonation.¹⁷ Federal AI legislation based on established governance frameworks would address risks arising from AI systems and preserve the integrity of the democratic processes. To be clear, there must be legal liability and accountability mechanisms for developers, deployers and users of AI systems. This cannot be achieved without federal AI legislation.

2) Mandate disclosures obligations for the use of AI in campaigns

The Committee must mandate transparency and accountability for AI-generated content to maintain democracy and informed votership in the United States. Generative AI systems can produce false information and spread a bias or opinions that do not represent the public sentiment.¹⁸ “By intensifying the barrage of untrustworthy information, AI will presumably make voters more mistrustful, cynical and intransigent.”¹⁹

As we also explained to the FTC, Jen Easterly, CISA Director called for stronger guardrails around new AI technologies such as ChatGPT stating that, “Countering disinformation is about to get much harder: In the near term, ChatGPT and similar chatbots powered by large language models, or LLMs, will let threat actors master a range of malicious activities, including manufacturing more believable lies at scale.”²⁰

Just last week, OpenAI launched the third version of DALL-E, a software for AI-generated art.²¹ Now, DALL-E-3 incorporates ChatGPT, another widely known and widely used OpenAI product.²² OpenAI has also announced voice and image based verbal conversational capabilities

¹⁷ CAIDP, Comments to the President’s Council of Advisors on Science and Technology (PCAST) Working Group on Generative AI, Aug. 3, 2023, pp. 8, <https://www.caidp.org/statements/>

¹⁸ European Parliamentary Research Services (EPRS), Artificial Intelligence, Democracy, and Elections, Briefing, Sept.2023, pp. 1, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751478/EPRS_BRI\(2023\)751478_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751478/EPRS_BRI(2023)751478_EN.pdf).

¹⁹ The Economist, *AI will change American elections, but not in the obvious way*, Aug. 31, 2023, <https://www.economist.com/united-states/2023/08/31/ai-will-change-american-elections-but-not-in-the-obvious-way>

²⁰ CAIDP, *In Re OpenAI*, Supplement to Original Complaint, July 10, 2023, pp. 18-19, <https://www.caidp.org/app/download/8466615863/CAIDP-FTC-Supplement-OpenAI-07102023.pdf>.

²¹ Emilia David, *OpenAI releases third version of DALL-E*, The Verge (Sept. 20, 2023) <https://www.theverge.com/2023/9/20/23882009/class-action-lawsuit-openai-privacy-dropped>.

²² Will Knight, *OpenAI’s Dall-E 3 is an Art Generator Powered by ChatGPT*, Wired (Sept. 20, 2023), <https://www.wired.com/story/dall-e-3-open-ai-chat-gpt/>.

of ChatGPT.²³ OpenAI has announced that its new technology will be “capable of crafting realistic synthetic voices from just a few seconds of real speech.”²⁴ In its own system card “OpenAI has acknowledged that GPT-4 will generate targeted conflict ‘intended to mislead.’” In a section describing disinformation, Open AI has stated that “[G]PT-4 can generate plausibly realistic and targeted content, including news articles, tweets, dialogue, and emails.”²⁵ (*emphasis added*)

As the European Parliamentary Research Service has warned, “The network analysis capabilities of AI can also be used to better target an audience and establish the profile of voters, in what is known as political micro-targeting. AI can dramatically increase the speed at which content is made, while also offering access to a wealth of resources. Consequently, this could give rise to entire fake-news websites posing as news outlets.”²⁶

False AI-generated political content also has a greater chance of harming vulnerable populations—those of low-income, low formal education, and the elderly.²⁷ Vulnerable populations are already being targeted during elections. For example, during the 2020 elections, conservative provocateurs targeted racial minorities and low-income groups with robocalls.²⁸ These robocalls contained threats to deter these groups from voting.²⁹ Political actors have already begun to use generative AI for their agendas.³⁰ The photos are surprisingly realistic. As Presidential elections become closer, false AI generation will only increase.³¹

²³ OpenAI Blog, *ChatGPT can now see, hear and speak*, Sept. 25, 2023, <https://openai.com/blog/chatgpt-can-now-see-hear-and-speak>.

²⁴ TechCrunch, *OpenAI gives ChatGPT a voice for verbal conversations*, Sept. 25, 2023, <https://techcrunch.com/2023/09/25/openai-chatgpt-voice/>.

²⁵ Open AI, *The GPT-4 System Card*, Mar. 15 2023. <https://cdn.openai.com/papers/gpt-4-system-card.pdf>.

²⁶ *Id.* at note 18, pp. 3.

²⁷ Brian Kennedy et al., *Public Awareness of Artificial Intelligence in Everyday Activities*, Pew Research Center (Feb. 15, 2023), <https://www.pewresearch.org/science/2023/02/15/public-awareness-of-artificial-intelligence-in-everyday-activities/>.

²⁸ Charlene Richards, *Robocalls to voters before 2020 election result in \$5 million fine*, NBC News (June 8, 2023), <https://www.nbcnews.com/politics/elections/robocalls-voters-2020-election-result-5-million-fine-rcna88391>.

²⁹ *Id.* at note 28.

³⁰ 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>.

³¹ *Id.*

AI-generated content can be created at high volumes for a cheap price and can be convincing to the electorate. According to Georgetown University Center for Security and Emerging Technology, in experiments with AI-generated news content and authentic news content, humans were able to guess which content was authentic “at a rate *only slightly better than random chance*.”³² Researchers also found that AI-generated news articles “were nearly as persuasive as articles from real world covert propaganda campaigns. Language models could also be used to generate summary text of other articles, inflected for *ideological alignments*”.³³ (*emphasis added*)

We urge the Committee to mandate disclosures when election campaigns publish and distribute AI-generated content. “Federal campaign finance law does not specifically regulate the use of artificial intelligence (AI) in political campaign advertising.”³⁴ The current provisions of the Federal Election Campaign Act (FECA)³⁵ do not require the disclaimers and/or disclosures where an advertisement is created by or with AI.

Federal AI legislation (or amendments to FECA) should ban targeting and amplification techniques that involve the processing of sensitive personal data such as political opinions.

Candidates, campaign staff and political committees should be required to:

- a. file ex-ante disclosures if they intend to deploy or use AI systems for creating, disseminating, or otherwise communicating with voters
- b. watermark/label or implement provenance mechanisms to identify AI generated content

We further recommend amendments to Section 230 of the Communications Decency Act³⁶ to impose liability on communications service providers for amplifying political micro-targeting using sensitive personal data, like political opinions/beliefs, carried out through their services.

³² Josh A. Goldstein et al., *Generative Language Models and Automated Influence Operations: Emerging Threats and Potential Mitigations*, GEORGETOWN UNIVERSITY’S CENTER FOR SECURITY AND EMERGING TECHNOLOGY (Jan. 10, 2023), <https://arxiv.org/pdf/2301.04246.pdf>.

³³ *Id.*

³⁴ Congressional Research Service, *Artificial Intelligence (AI) in Federal Election Campaigns: Legal Background and Constitutional Considerations for Legislation*, In Focus, Aug. 17, 2023, <https://crsreports.congress.gov/product/pdf/IF/IF12468>

³⁵ 52 U.S.C. §§ 30101–46.

³⁶ 47 U.S. C. § 230.

3) Implement and accelerate public literacy and fact-checking mechanisms³⁷

This Committee can also take guidance from the UNESCO Recommendation on the Ethics of Artificial Intelligence¹⁸ on increasing media and public literacy:

The development of AI technologies necessitates a commensurate increase in data, media, and information literacy as well as access to independent, pluralistic, trusted sources of information, including as part of efforts to mitigate risks of misinformation, disinformation and hate speech, and harm caused through the misuse of personal data.

The companies that deploy Generative AI systems must establish fact-checking mechanisms and promote the use of trusted sources. To augment the trustworthy design of generative AI, there should be a collaboration with media organizations and companies to establish rigorous fact-checking processes, ensuring the dissemination of accurate information and comprehensive AI education and media literacy programs as recognized by UNESCO. In addition to accountability practices, the public must be able to recognize and evaluate AI-generated content effectively, fostering resilience against manipulation.

4) Urge the Federal Trade Commission to Move Forward the OpenAI investigation as expeditiously as possible.

The FTC has opened the investigation of OpenAI we requested.³⁸ This is clearly a positive development, but the FTC needs to prioritize this investigation. It took two years from the time we filed similar complaints with the FTC concerning Google and Facebook before there was a settlement.³⁹ We can't wait that long this time. AI products are evolving rapidly and being

³⁷ CAIDP, *Comments to the President's Council of Advisors on Science and Technology (PCAST) Working Group on Generative AI*, Aug. 3, 2023, pp. 5, <https://www.caidp.org/statements/>.

³⁸ Cecilia Kang and Cade Metz, *F.T.C. Opens Investigation Into ChatGPT Maker Over Technology's Potential Harms*, N.Y. TIMES, July 13, 2023, <https://www.nytimes.com/2023/07/13/technology/chatgpt-investigation-ftc-openai.html>; John D. McKinnon and Ryan Tracy, *ChatGPT Comes Under Investigation by Federal Trade Commission*, Wall Street Journal, July 13, 2023, <https://www.wsj.com/articles/chatgpt-under-investigation-by-ftc-21e4b3ef>.

³⁹ Federal Trade Commission, *Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises*, Nov. 29, 2011, <https://www.ftc.gov/news-events/news/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep-privacy-promises>.



deployed downstream in consumer facing services. AI products will certainly have an impact on the 2024 elections in the United States and around the world.

The Federal Trade Commission must act on our pending OpenAI complaint.

We ask that this statement be included in the hearing record.

Thank you for your attention to our statement. We would welcome the opportunity to speak with you further or to testify in a future hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Merve Hickok".

Merve Hickok
CAIDP President

A handwritten signature in blue ink, appearing to read "Marc Rotenberg".

Marc Rotenberg
CAIDP Executive Director

A handwritten signature in black ink, appearing to read "Christabel Randolph".

Christabel Randolph
CAIDP Law Fellow

A handwritten signature in black ink, appearing to read "Brianna Rodriguez".

Brianna Rodriguez
CAIDP Law Fellow