

Statement

of

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Majority Leader Schumer, Sen. Heinrich, Sen. Rounds, Sen. Young, and attendees:

I welcome the opportunity to provide insights around the use of AI and elections. My research focuses primarily on the intersection of law and technology, including issues related to speech, competition, and privacy and the governance of emerging technologies, such as artificial intelligence (AI). In this statement, I will focus on two key points:

- While much of the conversation is centered around risks, policymakers should also consider the impact of regulation on benign and beneficial uses of this general-purpose technology, including in areas related to elections.
- Policymakers should consider if the underlying harms they are concerned about are addressed by existing law and distinguish between a technology — or its application — and the actions of malicious users. Additionally, they must consider the impact of regulation on key values including speech and should consider alternatives to regulation that can support societal norms and empower citizens to make their own informed decisions about election content.

As the breadth of areas covered in this series of insight forums highlights, AI is a general-purpose technology with many potential applications. In fact, the most basic definition of AI is simply a computer or robot that can perform tasks associated with human intelligence and discernment. As a result, AI is used more regularly than many consumers may realize, such as using talk-to-text features on a phone or auto-complete in an email. As such, broad regulations could impact not only the future but many already commonplace technologies that individuals use on a daily basis.

While much talk has been made about the risks, I would like to start by emphasizing the beneficial impact many see from AI and why we should be cautiously optimistic. History shows a societal ability to adapt to new challenges, including those related to election information and democracy. A generative AI, for example, would be able to take complicated bill text and synthesize it in a way that a small business owner can more easily understand. The positive impact that the tool might have on his or her business is that it reduces the need for hiring an expensive outside consultant. Moreover, AI might be able to help with translations or captions that expand the accessibility of election materials to traditionally marginalized communities in ways that empower them to be more active participants in democratic processes. It could also be used to lower the costs of production and post-production of campaign ads, such as in removing a disruption in a shot, spell-checking a script, or using an algorithm in a search engine to conduct research or promote an ad. In other words, there are many legitimate and non-manipulative reasons that AI may be used in elections and campaigns, even in ways that “transform” the original content.

Still, there have been growing concerns about the potential impact of mis or disinformation, many of which have only been further heightened by the rapid rise in popularity of generative AI tools. Yet, we have been here before. Once-new technologies, like the camera, have required society to evolve its awareness of potential deception or manipulation of media and redefine what makes information “real” or “true.”¹ While many may express frustrations about the decreasing trust in media and institutions more generally, this distrust and the accompanying

¹ Jeffrey Westling, *Deception & Truth: A Deep Look At Deep Fakes*, 2019, <https://www.techdirt.com/2019/02/28/deception-trust-deep-look-deep-fakes/>

concerns existed before AI (and before the creation of social media).² Contrary to how it is often portrayed, a growing skepticism might actually turn positive, as it may result in a greater awareness of the need to scrutinize certain types of content that a user may encounter.³

Some have suggested that rather than allow these societal norms to develop organically, there should be a call to act — not to ban the technology, but to merely require a warning label on all election related content that uses generative AI. This, however, raises challenges, given the breadth of potential applications of AI, including a number of uses that do not manipulate or deceive, nor do they give rise to concerns about mis or disinformation. However, under many definitions, some or all of these actions would fall into the labeling requirements.. If definitions are dictated to apply broadly to scenarios as simple as using a filter on an image in an election ad or the repeated image format popularized in GIFs, these could trigger such a “warning label” as the underlying image qualifies as “manipulated.” The result is that such labels could result in fatigue among consumers and fail to provide any meaningful context.

If we look to the past, what we will find is that society — not government — is often better able to adapt to the changing nuances of such concerns. As Jeffrey Westling, Director of Technology and Innovation Policy at the American Action Forum, writes, “These societal norms can and will continue to drive trust in video as the viewer will understand that these institutions investigated the claims beyond just what appears on screen. And to the extent that videos become more consistently faked, society will shift back towards looking at the context behind the video.”⁴

² Megan Brenan, *Americans’ Trust In Media Remains Near Record Low*, Gallup, 2022, <https://news.gallup.com/poll/403166/americans-trust-media-remains-near-record-low.aspx#:~:text=Just%207%25%20of%20Americans%20have,in%20newspapers%2C%20TV%20and%20radio.>

³ Taylor Barkley, *How Much Should We Worry about Deep Fakes?*, Human Progress, 2019, <https://humanprogress.org/how-much-should-we-worry-about-deep-fakes/>

⁴ Jeffrey Westling, *Are Deep Fakes a Shallow Concern? A Critical Analysis of the Likely Societal Reaction to Deep Fakes*, TPRC47, 2019, <https://dx.doi.org/10.2139/ssrn.3426174>

We are seeing societal norms evolve in the market when it comes to AI and elections in real time. For example, Google has chosen to mandate AI disclosures in political ads.⁵ Private platforms can arrive at different specifics regarding their policies. Trends and best practices will emerge over time. This approach provides better flexibility to adapt to new and unpredictable challenges as well as better responses to evolving technologies or differences in platforms and user bases with specific concerns or needs. It also can allow the public in the marketplace of ideas to express preferences for different solutions to this problem.

When it comes to addressing potential harms, existing law does not get tossed out the window, but it is important to ask who and what is actually resulting in a harm. Technology, even AI, is just a tool. Actions by bad actors using that tool may be addressed by laws that already exist regarding the specific underlying bad action. Before engaging in new regulation, it should be considered: 1) where the harm occurs (which is often from the action of a bad actor and not the underlying technology itself) and 2) if that harm is already addressed by existing law.

Finally, the potential impact of AI regulations on other issues, such as speech, should be carefully considered. Political speech, including that contained in election advertising, is protected by the First Amendment. As a result, policymakers should carefully consider if their requirements for AI usage in election-related material would impact speech in such a way that accounts to government intervention into speech, either by silencing or requiring certain types of speech in this context. Consequently, policymakers should consider how they can educate as well as regulate so that the public can make sound decisions in the marketplace, especially since many of the underlying speech concerns are not about AI, but about broader societal questions.

⁵ Gerrit De Vynck, *Google to require politicians to disclose use of AI in election ads*, Washington Post, 2023, <https://t.co/b5yhKWRQh2>

I thank you again for the opportunity to participate in this forum and engage in the conversation around this important topic.