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May 15, 2024

Chairwoman Amy Klobuchar
Senate Committee on Rules and Administration
425 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member Deb Fischer
Senate Committee on Rules and Administration
448 Russell Senate Office Building
Washington, DC 20510

Re: Rules Committee Markup of S.2770, S.3875, and S.3897

Dear Chair Klobuchar, Ranking Member Fischer, and Members of the Committee:

On behalf of the Software & Information Industry Association (SIIA), I write to convey views with regard to election-focused bills the Senate Committee on Rules and Administration (the Committee) will markup on May 15. We ask that this letter be included in the record of the May 15 hearing.

SIIA is the principal trade association for the software and digital information industries worldwide. Our members include nearly 400 companies and associations reflecting the broad and diverse landscape of digital content providers and users in academic publishing, education technology, and financial information, along with creators of software and platforms used by millions worldwide and companies specializing in data analytics and information services.

Free and fair elections are the cornerstone of our nation. Technology has helped voters gain access to information about candidates and to lower barriers to access so constituents and politicians can interact. We recognize there are questions about the impact of certain technological innovations on our election process as the use of AI has become more prevalent.

The time is right for Congress to consider the role that AI technologies play in the upcoming elections and beyond. The key, as always, is to strike a balance that is both effective and properly suited to issues at hand.

We support measures such as S.3897 and S.3875, which strike the appropriate balance between taking a responsible, proactive approach while also not overstepping into areas of vast unintended consequences. S.3897 would require development of a public report with voluntary guidelines for election officials on the uses and risks of AI technologies in election administration. S.3875 would amend Section 318 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30120) to require disclaimers on advertisements containing content substantially generated by AI.

On the other hand, we urge the Committee to reject the approach taken in S.2770, the Protect Elections from Deceptive AI Act. S.2770 would risk infringing on First Amendment-protected speech while also undermining innovative technology that has increased the accessibility of election-related information to voters. Instead of protecting voters from false and deceptive information, S.2770 could give politicians a tool to target accurate content they simply don't like. The bill also risks chilling and censoring speech disseminated by everyday Americans, journalists, and small businesses. This legislation, in its current form, is also problematic as it relates to liability for intermediaries such as platforms and publishers of user-generated content.

We also believe that the harm that S.2770 seeks to curtail is already addressed by existing law. Among these is the Federal Election Commission's (FEC) fraudulent misrepresentation doctrine (52 USC 30124), which provides a basis to address both "cheapfakes" and the use of AI-generated deepfakes to mislead. To the extent there is ambiguity about the application of this doctrine to deepfakes, the FEC should provide clarification through a policy statement or amendment to 11 CFR 110.16. We understand the FEC is considering doing so. In addition, fourteen states have enacted laws that address the use of deepfakes in political campaigns, and leading AI companies and platforms in the private sector have made unprecedented commitments to mitigate the risk of deepfakes in elections through detection, labeling, remediation, and other measures.

We support Congress' urgency in combating false election-related information made using AI and acknowledge the complexity of these issues. We believe Congress has an important role in protecting the election ecosystem. We urge elected officials to examine how current laws and guidelines can address some of the concerns at hand and, where that is not the case, to strike a careful balance that protects Americans free speech while also preserving free and fair elections.

Sincerely,

Paul Nicholas Lekas
Senior Vice President, Head of Global Public Policy & Government Affairs
Software & Information Industry Association