April 3, 2024

Assembly Committee on Elections
Room 365, Legislative Office Building
1020 N Street
Sacramento, CA 95814

RE: AB 2355, "Political Advertisements, artificial intelligence" (Support, if amended)

Dear Chair Pellerin and Members of the Assembly Committee on Elections:

The above four co-signed organizations commend California lawmakers' commitment to ensuring that California's elections remain free and fair. The advent of generative artificial intelligence (AI) carries great potential for beneficial uses and impacts to society, however, it is also important to identify and mitigate specific risks. We collectively understand California lawmakers' and residents' rightful concerns about how content, including media created with AI, might be used by bad actors for nefarious purposes, such as to spread mis- and dis-information about elections or otherwise influence election outcomes. We look forward to reaching a position of support on AB 2355 and request several amendments to remove ambiguity surrounding liability.

Regarding liability for distribution:

AB 2355 would require "a person, committee, or other entity that creates, originally publishes, or originally distributes'' a political advertisement to include certain disclosures to indicate whether the content was generated, in whole or in part, using AI. Further clarity is needed to ensure that the appropriate party that knows *how* and *for what purpose* the content was created is held liable for disclosing whether it was generated using AI. While digital services may employ tools to identify and detect these materials with some degree of certainty, it is an evolving and imperfect science in its current form. It is therefore critical to ensure that liability for disclosures is appropriately targeted to the party who is responsible for originally publishing content for wider dissemination, as is the case under AB 2355. To that end, we request an amendment to clarify that this section does not apply to:

(B) <u>An internet service provider, cloud provider, interactive computer service, or online service, an internet website</u>, radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, when it is paid to broadcast a qualified political advertisement.

By requiring the original creators and publishers to adhere to AB 2355's disclosure provisions, this will assist responsible digital platforms in being able to more easily discern between lawful election-related speech and misleading, deceptive speech intended to nefariously influence elections.

Regarding liability for creating a covered political advertisement:

Due to the many applications in which AI can be used, it is also important to consider the different entities involved in a given AI-driven model, including the developer that builds an AI system, the deployer who applies the model to a given task and the user who ultimately utilizes the system. Each of these entities could bear responsibility for outcomes arising from the use of the AI system, depending on the circumstances, but those circumstances are important to consider.

Under AB 2355, it is unclear if the deployers of AI systems could be held liable as an "entity that creates" a political advertisement if a user chooses to use such a system to create some component that is subsequently published and distributed as a covered political advertisement. We certainly understand the importance of ensuring that content generated from AI systems is not used to further nefarious purposes. However it is impossible for the developers or deployers of such systems to predict how each and every individual may use generated audio or visual media. This places deployers of such technologies in the untenable scenario of having to predict each and every use of their product and risks chilling innovation. We therefore recommend that liability be targeted to the person or entity who used the AI tool to create the covered political advertisement, rather than tying liability to the product that allowed the content to be generated. This division of responsibility will ensure that liability lies in the most appropriate place – with the actor most capable of minimizing any misinterpretation or deception associated with the election-related content.

We suggest adding language to 20050(b)(2) to specify that the section does not apply to:

(E) a generally accessible generative AI system, if that system solely provides the generated content to the requesting user and does not itself further publish or distribute the generated content beyond.

This will help to ensure that liability falls on the entity responsible for the creation, rather than service providers whose tools might have been used.

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We appreciate the Committee and Assemblymember Carillo's commitment to protecting California's election integrity while mitigating the potential risks of generative AI with a targeted approach.

Respectfully submitted,

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        On behalf of:

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