

United States Senate

WASHINGTON, DC 20510

February 6, 2024

The Honorable Merrick Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Jen Easterly
Director
Cybersecurity and Infrastructure Security
Agency
245 Murray Lane SW 950
Washington, D.C. 20528-0075

Dear Attorney General Garland and Director Easterly:

I write to request you work together, using all available authorities, to address the concerning threat that AI-generated deepfake technologies pose to the democratic process. As I am sure you are aware, two days before the January 23, 2024 New Hampshire primary, deepfake robocalls were made to an unknown number of New Hampshire voters advising them to stay home from the polls. The calls comprised of a fraudulent recording that impersonated President Biden's voice and verbal patterns.¹ This deepfake call advised people:

“Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday.”²

The robocalls were reportedly registered as originating from the personal cellphone number of Kathy Sullivan, a former state Democratic Party chair.³

I am convinced the proliferation of disinformation and misinformation about our elections and political system pose one of the gravest threats facing the United States today. I am concerned that future uses of deepfake technology will be harder to detect and fend off as AI technology progresses. The federal government should use all the authority at its disposal to find and punish those using AI and related technology to break the law.

Ensuring the integrity of our elections is a responsibility shared by federal and state governments. I am pleased that the New Hampshire Attorney General Formella is investigating this unlawful attempt at suppressing New Hampshire voters.⁴ Nonetheless, I urge the U.S. Department of Justice (DOJ) investigate these deepfake calls as a possible violation of federal laws, such as but not limited to the Voting Rights Act, designed to protect voters from voter suppression. Additionally, I encourage the DOJ to work with any other relevant federal agencies,

¹ Ali Swenson and Will Weissert, “New Hampshire investigating fake Biden robocall meant to discourage voters ahead of primary,” AP News, January 22, 2024, <https://apnews.com/article/new-hampshire-primary-biden-ai-deepfake-robocall-f3469ceb6dd613079092287994663db5>.

² Id.

³ Id.

⁴ New Hampshire Department of Justice, “Voter Suppression Robocall Complaint to Election Law Unit,” January 22, 2024, <https://www.doj.nh.gov/news/2024/20240122-voter-robocall.html>.

including the Federal Communications Commission and the Federal Trade Commission, to determine whether these deepfake robocalls violated any laws they enforce. Moreover, I ask that the DOJ report back to me if there are statutory gaps that prevent federal agencies from acting to punish those who would disrupt our elections through the use of deepfake technology.

Additionally, I am concerned by foreign adversaries' use of disinformation campaigns surrounding U.S. elections. I urge the DOJ to ensure the scope of the investigation includes potential foreign threats and request the help of the National Security Agency (NSA) and U.S. Cyber Command (CYBERCOM) if necessary. The NSA and CYBERCOM have deep expertise in disrupting disinformation and maintaining election integrity that the DOJ can draw upon.

Finally, I encourage that the DOJ work collaboratively with the Cybersecurity and Infrastructure Security Agency (CISA) to develop best practices and novel techniques to track, investigate and disrupt the use of AI technologies to spread misinformation and undermine free and fair elections. I fear the AI-generated robocalls received by New Hampshire voters are only the beginning of the deeply concerning activities that should be expected going forward, particularly in the lead up to the general election in November. Given CISA's ongoing efforts to characterize AI technologies and mitigate associated risks, the agency is well suited to provide expertise and technical assistance to the DOJ in order to craft effective measures to combat future attempts at voter suppression using AI technology.

As the federal government works to address the risks posed by rapidly developing AI technologies, preserving the integrity of the election process and protecting the fundamental right to vote is paramount. I trust that the DOJ and CISA share this concern, and I look forward to hearing how the two agencies plan to address this critical threat to our democracy. I would appreciate your collectively providing my staff and me with periodic updates on these joint efforts.

Sincerely,



Jeanne Shaheen
United States Senator