

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 3875

To amend the Federal Election Campaign Act of 1971 to provide further transparency for the use of content that is substantially generated by artificial intelligence in political advertisements by requiring such advertisements to include a statement within the contents of the advertisements if generative AI was used to generate any image, audio, or video footage in the advertisements, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Ms. KLOBUCHAR

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “AI Transparency in
- 5 Elections Act of 2024”.

1 **SEC. 2. REQUIRING DISCLAIMERS ON ADVERTISEMENTS**
2 **CONTAINING CONTENT SUBSTANTIALLY GEN-**
3 **ERATED BY ARTIFICIAL INTELLIGENCE.**

4 (a) REQUIREMENT.—Section 318 of the Federal
5 Election Campaign Act of 1971 (52 U.S.C. 30120) is
6 amended by adding at the end the following new sub-
7 section:

8 “(e) SPECIAL DISCLAIMER FOR COVERED COMMU-
9 NICATIONS CONTAINING CONTENT SUBSTANTIALLY GEN-
10 ERATED BY ARTIFICIAL INTELLIGENCE.—

11 “(1) DEFINITIONS.—For purposes of this sub-
12 section:

13 “(A) COVERED COMMUNICATION.—

14 “(i) IN GENERAL.—The term ‘covered
15 communication’ means a communication
16 through any broadcasting station, news-
17 paper, magazine, outdoor advertising facil-
18 ity, mailing, telephone bank, internet or
19 other digital medium, or any other type of
20 general public political advertising that—

21 “(I) expressly advocates for or
22 against the nomination or election of
23 a candidate;

24 “(II) refers to a candidate at any
25 time during the period beginning 120
26 days before the date of a primary

1 election or nominating caucus or con-
2 vention and ending on the date on
3 which a general election occurs; or

4 “(III) solicits a contribution for a
5 candidate or political committee or
6 any other person who makes disburse-
7 ments for communications described
8 in subclause (I) or (II).

9 “(ii) VOICE AND LIKENESS.—A com-
10 munication that invokes the likeness or
11 voice of a candidate shall be treated as a
12 communication that refers to such can-
13 didate.

14 “(B) GENERATIVE ARTIFICIAL INTEL-
15 LIGENCE.—The term ‘generative artificial intel-
16 ligence’ means artificial intelligence technology
17 that uses machine learning (including deep-
18 learning models, natural language processing,
19 or other computational processing techniques of
20 similar or greater complexity) to generate text,
21 images, audio, video, or other media.

22 “(C) SUBSTANTIALLY GENERATED BY AR-
23 TIFICIAL INTELLIGENCE.—

24 “(i) IN GENERAL.—The term ‘sub-
25 stantially generated by artificial intel-

1 ligence’ means an image, audio, or video
2 that was created or materially altered
3 using generative artificial intelligence.

4 “(ii) EXCEPTION.—Such term does
5 not include an image, audio, or video
6 that—

7 “(I) has only minor alterations
8 by generative artificial intelligence (in-
9 cluding cosmetic adjustments, color
10 editing, cropping, resizing, and other
11 immaterial uses); and

12 “(II) does not create a fun-
13 damentally different understanding
14 than a reasonable person would have
15 from an unaltered version of the
16 media.

17 “(2) REQUIREMENT.—When a person makes a
18 disbursement for the purpose of financing a covered
19 communication containing an image, audio, or video
20 that was substantially generated by artificial intel-
21 ligence, the covered communication shall include, in
22 a clear and conspicuous manner, a statement that
23 the covered communication contains such an image,
24 audio, or video.

1 “(3) SAFE HARBOR FOR DETERMINING CLEAR
2 AND CONSPICUOUS MANNER.—A statement required
3 under this subsection shall be considered to be made
4 in a clear and conspicuous manner if the statement
5 meets the following requirements:

6 “(A) IMAGE COVERED COMMUNICA-
7 TIONS.—In the case of an image that is a cov-
8 ered communication, the statement—

9 “(i) appears in letters at least as large
10 as the majority of the text in the covered
11 communication or otherwise meets the re-
12 quirements under subsection (c)(1);

13 “(ii) meets the requirements of para-
14 graphs (2) and (3) of subsection (c);

15 “(iii) states that the covered commu-
16 nication was created or materially altered
17 by artificial intelligence; and

18 “(iv) is permanently affixed to the
19 covered communication.

20 “(B) AUDIO COVERED COMMUNICA-
21 TIONS.—In the case of an audio covered com-
22 munication, the statement—

23 “(i) is spoken in a clearly audible and
24 intelligible manner at the beginning or end

1 of the covered communication and lasts not
2 fewer than 4 seconds; and

3 “(ii) includes the following audio
4 statement in a clearly spoken manner: ‘
5 _____ used artificial in-
6 telligence to generate the contents of this
7 communication.’ (with the blank filled in
8 with the name of person who made the dis-
9 bursement to pay for such covered commu-
10 nication).

11 “(C) VIDEO COVERED COMMUNICA-
12 TIONS.—In the case of a video covered commu-
13 nication that also includes audio, the statement
14 is made both in—

15 “(i) a written format that meets the
16 requirements of subparagraph (A) and ap-
17 pears throughout the length of the video
18 covered communication; and

19 “(ii) an audible format that meets the
20 requirements of subparagraph (B).”.

21 (b) ENFORCEMENT.—

22 (1) IN GENERAL.—Section 309(a)(4)(C)(i) of
23 the Federal Election Campaign Act of 1971 (52
24 U.S.C. 30109(a)(4)(C)(i)) is amended—

1 (A) in the matter before subclause (I), by
2 inserting “or a qualified disclaimer require-
3 ment” after “a qualified disclosure require-
4 ment”; and

5 (B) in subclause (II)—

6 (i) by striking “a civil money penalty
7 in an amount determined, for violations of
8 each qualified disclosure requirement” and
9 inserting “a civil money penalty—

10 “(aa) for violations of each quali-
11 fied disclosure requirement, in an
12 amount determined”;

13 (ii) by striking the period at the end
14 and inserting “; and”; and

15 (iii) by adding at the end the fol-
16 lowing new item:

17 “(bb) for violations of each quali-
18 fied disclaimer requirement, in an
19 amount which is determined under a
20 schedule of penalties which is estab-
21 lished and published by the Commis-
22 sion and which takes into account the
23 existence of previous violations by the
24 person and how broadly the commu-
25 nication is distributed and such other

1 factors as the Commission considers
2 appropriate, provided that any such
3 civil penalty shall not exceed \$50,000
4 per covered communication.”.

5 (2) FAILURE TO RESPOND.—Section
6 309(a)(4)(C)(ii) of such Act (52 U.S.C.
7 30109(a)(4)(C)(ii)) is amended by striking the pe-
8 riod at the end and inserting “, except that in the
9 case of a violation of a qualified disclaimer require-
10 ment, failure to timely respond after the Commission
11 has notified the person of an alleged violation under
12 subsection (a)(1) shall constitute the person’s admis-
13 sion of the factual allegations of the complaint.”.

14 (3) QUALIFIED DISCLAIMER REQUIREMENT DE-
15 FINED.—Section 309(a)(4)(C) of such Act (52
16 U.S.C. 30109(a)(4)(C)) is amended by redesignating
17 clause (v) as clause (vi) and by inserting after clause
18 (iv) the following new clause:

19 “(v) In this subparagraph, the term ‘quali-
20 fied disclaimer requirement’ means the require-
21 ment of section 318(e)(2).”.

22 (4) APPLICATION.—Clause (vi) of section
23 309(a)(4)(C) of such Act (52 U.S.C.
24 30109(a)(4)(C)), as redesignated by paragraph (3),
25 is amended—

1 (A) by striking “shall apply with respect to
2 violations” and inserting “shall apply—

3 “(I) with respect to violations of
4 qualified disclosure requirements”;

5 (B) by striking the period at the end and
6 inserting “; and”; and

7 (C) by adding at the end the following new
8 subclause:

9 “(II) with respect to violations of
10 qualified disclaimer requirements oc-
11 ccurring on or after the date of the en-
12 actment of the AI Transparency in
13 Elections Act of 2024.”.

14 (5) TIME OF JUDICIAL REVIEW.—Section
15 309(a)(8)(A) of the Federal Election Campaign Act
16 of 1971 (52 U.S.C. 30109(a)(8)(A)) is amended by
17 inserting “(45-day period in the case of any com-
18 plaint alleging a violation of section 318(e)(2))”
19 after “120-day period”.

20 (c) REGULATIONS.—Not later than 90 days after the
21 date of enactment of the AI Transparency in Elections
22 Act of 2024, the Federal Election Commission shall, in
23 consultation with the Director of the National Institute
24 of Standards and Technology, promulgate a regulation to

1 carry out the amendments made by subsections (a) and
2 (b), including—

3 (1) criteria for determining whether a covered
4 communication (as defined in section 318(e) of the
5 Federal Election Campaign Act of 1971, as added
6 by subsection (a)) contains an image, audio, or video
7 substantially generated by artificial intelligence (as
8 defined in such section); and

9 (2) requirements for the contents of the state-
10 ment required under section 318(e)(2) of the Fed-
11 eral Election Campaign Act of 1971, as added by
12 subsection (a).

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall—

15 (1) apply with respect to any communication
16 made after the date of enactment of this Act; and

17 (2) take effect without regard to whether the
18 Federal Election Commission has promulgated regu-
19 lations to carry out such amendments.

20 **SEC. 3. REPORTS.**

21 Not later than 2 years after the date of enactment
22 of this Act, and biannually thereafter, the Federal Elec-
23 tion Commission shall submit a report to the Committee
24 on Rules and Administration of the Senate and the Com-

1 mittee on House Administration of the House of Rep-
2 resentatives that includes—

3 (1) an assessment of the compliance with and
4 the enforcement of the requirements of subsection
5 (e) of section 318 of the Federal Election Campaign
6 Act of 1971, as added by this Act; and

7 (2) recommendations for any modifications to
8 that subsection to assist in carrying out the pur-
9 poses of that subsection.

10 **SEC. 4. SEVERABILITY.**

11 If any provision of this Act or any amendment made
12 by this Act, or the application of any such provision or
13 amendment to any person or circumstance, is held to be
14 unconstitutional, the remainder of this Act, and the appli-
15 cation of such provision or amendment to any other person
16 or circumstance, shall not be affected by the holding.