

**TESTIMONY OF AMBASSADOR NORMAN L. EISEN (RET.)**

**HEARING ON THE WEAPONIZATION OF THE FEDERAL  
GOVERNMENT**

**UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON  
THE JUDICIARY**

**SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE  
FEDERAL GOVERNMENT**

**FEBRUARY 6, 2024**

Chairman Jordan, Ranking Member Plaskett, and Members of this Subcommittee:

Thank you for inviting me. I'm pleased to testify today in my personal capacity about how to avoid the weaponization of the federal government, with particular reference to issues of artificial intelligence (AI) and the First Amendment.

The first topic, weaponization of government, is an intensely personal one for me because my family was a victim of the worst weaponization of modern times: the Shoah, the Holocaust. My mother survived Auschwitz, a slave labor camp at Neuengamme, and a death train in the last days of the war. My father was trapped in Warsaw, Poland in 1939, miraculously made his way out and to the United States on the last boat from Greece during World War II in 1940, and then joined the U.S. army to fight that weaponization of government by the Nazis and Axis allies.

Most of the rest of their families did not survive. My maternal grandparents were murdered by weaponization—quite literally—in the gas chambers at Auschwitz. There and across Europe dozens of members of my family were murdered by *real* weaponization.

For that reason, among others, I have dedicated my professional life to fighting the genuine weaponization of government. When I represented the wrongly accused as a criminal defense lawyer for decades, that is what I was doing. And when I served as the

White House ethics czar, as U.S. ambassador, and as counsel to this committee for the first impeachment and trial of President Trump arising out of his pressuring President Volodymyr Zelenskyy, I endeavored to do the same.

So I agree there can be no more important topic than the weaponization of government. I urge the Committee to focus on the most imminent threat of that weaponization now facing us as a nation: Donald Trump's record of weaponizing the government and his promises to double down should he return to power.

Given my family history, I would be remiss if I did not sound the alarm before you today about the ominous historical echoes of statements like this by former President Trump: "We pledge to you that we will root out the communists, Marxists, fascists, and the radical left thugs that live like vermin within the confines of our country that lie and steal and cheat on elections."<sup>1</sup>

That is not all. The former president has raised the prospect that his former Chairman of the Joint Chiefs of Staff Mark Milley should be executed for his efforts to mitigate U.S.-China tensions.<sup>2</sup> He has also proudly promised that, if he wins the presidency, media outlets that featured any negative coverage of him "will be thoroughly scrutinized"

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<sup>1</sup> Marianne LeVine, *Trump calls political enemies 'vermin,' echoing dictators Hitler, Mussolini*, The Washington Post (Nov. 13, 2023), <https://www.washingtonpost.com/politics/2023/11/12/trump-rally-vermin-political-opponents/>.

<sup>2</sup> See Donald J. Trump (@realDonaldTrump), Truth Social (Sept. 22, 2023, 7:59 p.m.), <https://truthsocial.com/@realDonaldTrump/posts/111111513207332826> (saying it was a "treasonous act" that "in times gone by" would have been punishable by "DEATH!").

because they “should pay a big price for what they have done to our once great country!”<sup>3</sup>

And he has issued a blanket threat to his opponents: “IF YOU GO AFTER ME, I’M COMING AFTER YOU!”<sup>4</sup>

The former president has even admitted he will be a dictator if he returns to the presidency.<sup>5</sup> He says it will only be on “day one.” But history teaches us that dictatorial powers once assumed are rarely relinquished.

Indeed, the former president has been clear about his view of autocrats who truly weaponize the government. He has expressed his admiration for President Xi Jinping of China and President Vladimir Putin of Russia. And he has offered his highest praise to Prime Minister Viktor Orbán of Hungary, stating that he was “[o]ne of the strongest leaders” and “one of the most respected leaders in the world.”<sup>6</sup>

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<sup>3</sup> Rachel Scully, *Trump pledges to investigate MSNBC parent company for ‘threatening treason’*, The Hill (Sept. 25, 2023), <https://thehill.com/homenews/4221310-trump-pledges-to-investigate-msnbc-parent-for-threatening-treason/>.

<sup>4</sup> Tina Daunt, *Trump Threatens ‘If You Go After Me, I’m Coming After You’ Day After Court Warns Him Not to Issue Threats*, The Wrap (Aug. 4, 2023), <https://www.yahoo.com/entertainment/trump-threatens-m-coming-day-233448930.html>.

<sup>5</sup> Jill Colvin & Bill Barrow, *Trump’s vow to only be a dictator on ‘day one’ follows growing worry over his authoritarian rhetoric*, AP News (Dec. 7, 2023), <https://apnews.com/article/trump-hannity-dictator-authoritarian-presidential-election-f27e7e9d7c13fabbe3ae7dd7f1235c72>.

<sup>6</sup> *Donald Trump at “Commit to Caucus” Event in Iowa Transcript*, Rev (Nov. 20, 2023), <https://www.rev.com/blog/transcripts/donald-trump-at-commit-to-caucus-event-in-iowa-transcript>; “Former U.S. President Donald Trump has called Hungarian Prime Minister Viktor Orbán, who has repeatedly made anti-Ukrainian and anti-European statements, a ‘great leader’ and a ‘strong man’ during a rally in Manchester, New Hampshire on Jan. 20.” *Trump hails Hungarian PM Orbán as ‘great leader’ and ‘strong man’*, The New Voice of Ukraine (Jan. 21, 2024), [https://news.yahoo.com/trump-hails-hungarian-pm-orban-162500247.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce\\_referrer\\_sig=AQAAAAOEx3lCONylqVlf3Hyktm74Cz-Vk8amPqJxXUoyxoLKMfKfno5Y8L\\_Y6pM6UPJ8w08ckeO3wvqYGKMCxbtDUlc3JJhpadhOkP-4o\\_tTbyENiTyfjxVoOItSdY8Q5SscRrReqd5On0fzpnGyh9jA6hOrUcluPnyfnBMZ\\_ryodL5B](https://news.yahoo.com/trump-hails-hungarian-pm-orban-162500247.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAAOEx3lCONylqVlf3Hyktm74Cz-Vk8amPqJxXUoyxoLKMfKfno5Y8L_Y6pM6UPJ8w08ckeO3wvqYGKMCxbtDUlc3JJhpadhOkP-4o_tTbyENiTyfjxVoOItSdY8Q5SscRrReqd5On0fzpnGyh9jA6hOrUcluPnyfnBMZ_ryodL5B).

To see what America might look like under Trump’s weaponization of the federal government, we might do well to look at the regime of Orbán, whom Trump so admires. Orbán has packed the judiciary in order to place that branch more squarely under his control; rewritten election laws to retain his legislative majority; censored the press that opposes him; used the law enforcement powers of government to persecute his enemies; and altered the constitution to clear the way of his autocratic aims.<sup>7</sup>

What Prime Minister Orban has done in Hungary (or what other regimes have done in Turkey or until recently in Poland) is probably the right comparison to what Trump might do with a second term—not the most chilling historical examples from earlier in the Twentieth Century. That is because America was founded on the principle of preventing the weaponization of government against the American people. That is central to our Constitution, to the checks and balances and separation of powers it establishes—and to the protections it affords all of us. And although those safeguards have been tested and in places eroded, including by presidents of both parties at times, they remain largely intact.<sup>8</sup>

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<sup>7</sup> Balint Magyar & Balint Madlovics, *Manipulated election entrenches Hungary’s autocracy*, Australian Strategic Policy Institute (Apr. 5, 2022), <https://www.aspistrategist.org.au/manipulated-election-entrenches-hungarys-autocracy/>; *Analysis: One year after election, media freedom in Hungary remains suffocated*, International Press Institute (Apr. 5, 2023), <https://ipi.media/analysis-one-year-after-election-media-freedom-in-hungary-remains-suffocated/>; Benjamin Novak & Patrick Kingsley, *Hungary Creates New Court System, Cementing Leader’s Control of Judiciary*, The New York Times (Dec. 12, 2018), <https://www.nytimes.com/2018/12/12/world/europe/hungary-courts.html>; *Q&A: Hungary’s controversial constitutional changes*, BBC News (Mar. 11, 2013), <https://www.bbc.com/news/world-europe-21748878>; Press Release, Senate Foreign Relations Committee, Chair Cardin Statement on Concerns over Hungarian Government and Future of U.S.-Hungarian Relations (Feb. 1, 2024), <https://www.foreign.senate.gov/press/dem/release/chair-cardin-statement-on-concerns-over-hungarian-government-and-future-of-us-hungarian-relations>.

<sup>8</sup> Lyle Denniston, *Constitution Check: Is the U.S. air war in Syria illegal?*, National Constitution Center (Sept. 25, 2014), <https://constitutioncenter.org/blog/constitution-check-is-the-u-s-air-war-in-syria-illegal#:~:text=%E2%80%9CAfter%20spending%20nearly%20six%20years,those%20legal%20and%20policy%20enclosures>.

That is proven by the fact that Trump was unable to weaponize the government to maintain his grip on power after losing the 2020 election.

One of those protections is of course the First Amendment. It provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.<sup>9</sup>

I know that we all agree on the central importance of the First Amendment to who we are as a nation and to our future. But we do no favors to the First Amendment when we cry wolf when none is at the door.

It is no violation of the First Amendment for government officials to inform social media companies of posts that put the American people or our democracy in harm's way. That

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<sup>9</sup> U.S. Const. amend. 1, <https://constitution.congress.gov/constitution/amendment-1/>.

includes debunked posts suggesting that the Covid-19 vaccine killed particular people<sup>10</sup> or ones falsely claiming that election workers were destroying Trump ballots.<sup>11</sup>

For that reason, I believe that Judge Doughty’s preliminary injunction and accompanying opinion in *Missouri v. Biden* was incorrect; that the Fifth Circuit was right to strike down parts of his injunction but wrong to leave pieces in place; and that the Supreme Court was right to stay the whole thing while it considers the question.<sup>12</sup>

With respect to the government engaging with AI companies, it is consistent with the First Amendment for the government to make its views about safety concerns known to AI providers, or to utilize AI as it does a vast array of other tools, technology ones and otherwise. There is nothing inherently demonic about AI. It can be used wisely or

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<sup>10</sup> Marlon Ettinger, *RFK Jr. sues YouTube and Google, says he should be allowed to spew vaccine nonsense because he’s running for president*, Daily Dot (Aug. 3, 2023), <https://www.dailydot.com/debug/rfk-jr-youtube-google-lawsuit-covid-censorship/>; Biba Adams, *MLB legend Hank Aaron’s cause of death revealed*, The Grio (Jan. 26, 2021), <https://news.yahoo.com/mlb-legend-hank-aaron-cause-172128743.html>; Rick Rojas & Denise Grady, *Never mind the skeptics, officials say: Hank Aaron’s death had nothing to do with the Covid-19 vaccine*, The New York Times (Jan. 31, 2021), <https://nytimes.com/2021/01/31/us/hank-aaron-death-covid-vaccine.html>; See Memorandum Ruling on Request for Preliminary Injunction, *Missouri v. Biden*, 3:22-cv-01213, Doc. 293 at 9 (W.D. La. 2023), <https://ago.mo.gov/wp-content/uploads/missouri-v-biden-ruling.pdf>; Brief of Rep. Jim Jordan et al. as Amici Curiae Supporting Plaintiffs-Appellees and Affirmance at 5–6, *Missouri v. Biden*, 23-30445 (5th Cir. 2023), [https://media.aflegal.org/wp-content/uploads/2023/08/08135948/Filed-Brief.pdf?\\_ga=2.81320082.445613374.1691506378-560217603.1691506378](https://media.aflegal.org/wp-content/uploads/2023/08/08135948/Filed-Brief.pdf?_ga=2.81320082.445613374.1691506378-560217603.1691506378).

<sup>11</sup> Staff of Select Subcomm. on the Weaponization of the Federal Government of the H. Comm. on the Judiciary, 118th Cong., *The Weaponization of “Disinformation” Pseudo-Experts and Bureaucrats: How the Federal Government Partnered With Universities to Censor Americans’ Political Speech* at 14 (Comm. Print Nov. 6, 2023), [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/EIP\\_Jira-Ticket-Staff-Report-11-7-23-Clean.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/EIP_Jira-Ticket-Staff-Report-11-7-23-Clean.pdf).

<sup>12</sup> Gia Kokotakis, *District Court Judge Grants Preliminary Injunction in Missouri v. Biden*, Lawfare (July 5, 2023), <https://www.lawfaremedia.org/article/district-court-judge-preliminary-injunction-in-missouri-v-biden>; Opinion on Petition for Rehearing, *Missouri v. Biden*, 23-30445 (5th Cir. 2023), <https://law.justia.com/cases/federal/appellate-courts/ca5/23-30445/23-30445-2023-10-03.html#:~:text=The%20Fifth%20Circuit%20granted%20the.as%20to%20all%20other%20officials>; Order on Application for Stay, *Murthy v. Missouri*, 601 U. S. \_\_\_\_ (2023), [https://www.supremecourt.gov/opinions/23pdf/23a243\\_7148.pdf](https://www.supremecourt.gov/opinions/23pdf/23a243_7148.pdf).

wrongly like any other technology. The same transportation technology that was used to deliver my mother and her family to Auschwitz also enabled my father to escape from Warsaw and to report for duty in the United States Army in World War II. Trains are not inherently suspicious and neither is AI.

Of course, we must utilize AI consistent with the law and best practices, and that is the subject of my scholarship on AI and democracy, some of which I attach to this testimony and which I look forward to discussing today.<sup>13</sup> Thank you.

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<sup>13</sup> Norman Eisen, Nicol Turner Lee, Colby Galliher, & Jonathan Katz, *AI can strengthen U.S. democracy—and weaken it*, The Brookings Institution (Nov. 21, 2023), <https://www.brookings.edu/articles/ai-can-strengthen-u-s-democracy-and-weaken-it/>.



# BROOKINGS

## COMMENTARY

# AI can strengthen U.S. democracy—and weaken it

Norman Eisen, Nicol Turner Lee, Colby Galliher, and Jonathan Katz

November 21, 2023

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- Rapid advancements in artificial intelligence (AI) technologies have the potential to transform democratic governance and its execution.
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- AI-powered tools could assist in the administering of elections, but their capability to synthesize vast amounts of data and disseminate mis- and disinformation could also pose risks to election integrity.
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- AI has many opportunities to democratize the campaign playing field, but it could also turbocharge preexisting election interference tactics.
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- Policymakers, advocates, and citizens must keep up with continuing technological advancements to minimize AI's disruptive effects and maximize its positive democratic potential.
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Following Senate Majority Leader Chuck Schumer's (D-NY) latest [AI Insight Forum](#), which focused on elections and good governance, all eyes are on the developing intersection of artificial intelligence (AI) and democracy. Complementing the bipartisan Senate forum series are the Biden administration's recent [executive order](#) on AI and Vice President Kamala Harris' [trip](#) to the United Kingdom to attend the AI Safety Summit. This increased focus on AI comes at a time of heightened attention to the state of democracy in both the United States and globally. In this first part of a new series on the risks and possibilities of the confluence between AI and democracy, we provide an overview of three principal areas where AI may transform democratic governance and its execution. Subsequent installments of the series will offer deeper dives into these topics and policy recommendations for lawmakers.

## Election administration

AI could assist election officials and workers in their critical efforts to oversee the polls, whether in the United States or in democracies around the world. For example, AI could revamp election administration processes to make them more efficient, reliable, and secure. When monitored carefully, AI could identify [concerning anomalies](#) <sup>↗</sup> in voter lists and voting machines to [preempt](#) <sup>↗</sup> uncover fraud or disenfranchisement. AI-powered tabulators could scan paper ballots [more quickly](#) <sup>↗</sup> than poll workers, thereby reducing the time necessary to report election results or to conduct recounts. That quicker clip could help quiet accusations of fraud during close, contentious races like those seen in the wake of the 2020 election, when an influx of mail-in ballots necessitated multi-day counts in several pivotal states.

But election administrators must be wary of possible risks. AI's capacity to locate and synthesize vast amounts of public data can generate [phishing attacks](#) <sup>↗</sup> tailored to election officials whose contact information exists in the public domain. If these officials have privileged access to sensitive voter and government data, the integrity of the elections they oversee may be jeopardized if their personal information and administrative duties are exploited by malware or ransomware. AI models could also be written to further suppress and disenfranchise voters by disseminating misinformation or disinformation, particularly to less-informed citizens who may be more vulnerable to baseless [election fraud narratives](#) <sup>↗</sup>. There also could be partisan biases in the way voter rolls are “cleaned up” using AI, with minority voters being disproportionately targeted.

## Campaigns and voter education

AI is already altering the way candidates for elected office conduct their campaigns in the United States and in other democracies around the globe. New technologies are also reshaping—for better and for worse—how voters locate and consume information about candidates and issues. These shifts present opportunities and risks at every stage leading up to Election Day.

Opportunities for AI to democratize, improve, and level the campaign playing field abound. AI tools could [lower financial barriers](#) <sup>↗</sup> to entry for first-time and

underfunded candidates. Digital fundraising mechanisms could benefit from AI-powered [streamlining](#). Candidates may also avail themselves of [targeted advertisements](#) that more effectively reach undecided voters. That has the knock-on effect of better educating the electorate about their options at the ballot box. AI can be used effectively and transparently by election administration officials [to track and report on harmful hate speech](#) that unfairly tilts the playing field for candidates and impacts voter decision making.

Conversely, AI may worsen the [flood](#) of misinformation and disinformation now typical of election season. AI equips illiberal [nonstate actors](#) and [autocracies](#) with an array of comparatively low-cost, unmanned tools by which adversaries may pry the electorate further apart, fueling caustic polarization and internal destabilization. [Political bots](#), [deepfakes](#), and other [AI-generated visuals](#) have already scrambled pre-election information ecosystems in democracies across the globe. AI's capacity to rapidly generate "[pink slime](#)," [news sites](#) comprised completely of fake news, exhibits its potential to turbocharge preexisting [election interference](#) tactics. The risk of AI-fueled informational chaos grows more acute as many democracies march towards high-stakes elections in [2024](#).

## Citizen engagement and participation

In addition to elections and voting, other dimensions of democratic governance stand to benefit and face challenges from the AI revolution, domestically and internationally. New technologies will help citizens voice their opinions, organize others with similar alignments, and act on their priorities beyond the ballot box. However, those same technologies may also allow bad actors to camouflage their machinations as genuine public sentiment.

AI could further democratize the public comment process, a cornerstone of public influence over policy- and rulemaking. Machine learning can [collect and summarize](#) an individual's interests and may eventually match those priorities with specific issues on which regulatory agencies are receiving public comment. Generative AI can assist both activists and seasoned politicians at the national and local levels to make their comments more persuasive for various audiences. Such technology may also [bolster](#)

[↗](#) citizens' [understanding ↗](#) of complex legislation that their elected officials are considering by simplifying legislative text and tracking their representatives' votes.

The flip side is that advocacy groups or individuals looking to misrepresent public opinion may find an ally in AI. AI-fueled programs, like ChatGPT, can [fabricate ↗](#) letters to elected officials, public comments, and other written endorsements of specific bills or positions that are often [difficult to distinguish ↗](#) from those written by actual constituents. These fabrications—and the speed and volume at which they can be created—may be used to generate the [appearance ↗](#) of public consensus on a given issue and pressure legislators to act on a desired agenda. Much worse, voice and image replicas harnessed from generative AI tools can also mimic candidates and elected officials. These tactics could give rise to voter confusion and degrade confidence in the electoral process if voters become aware of such scams.

## Conclusion

The stakes are high to identify emerging risks and rewards at the confluence of AI and democracy. Next year, highly consequential elections will take place in the United States and in countries around the world, together representing more than [3.5 billion people ↗](#). Anti-democratic actors and autocrats will seek every opportunity to shake confidence in democracy, targeting the systems that ensure free and fair elections and good governance.

Democratic governments, policymakers, and election advocates are responding with best practices and necessary words of warning. The Biden administration's aforementioned AI Executive Order has been [lauded ↗](#) as a promising starting point for a top-down approach to these new technologies. AI-friendly and -wary lawmakers alike have begun setting their sights on a [bipartisan ↗](#) AI regulatory [regime ↗](#). And civil society has an important role to play, demonstrated by the work of organizations like the [Leadership Conference on Civil and Human Rights ↗](#), [the Lawyers Committee for Civil Rights under Law ↗](#), the [Brennan Center for Justice ↗](#), [Public Citizen ↗](#), and Brookings (which does its [own extensive work](#) (<https://www.brookings.edu/topics/artificial-intelligence/>) on the subject). They, along with many others, are marshalling their technical expertise and commitment to democracy to provide cutting-edge guidance to local, state, and federal regulators.

Minimizing the disruptive effects of the AI revolution and maximizing its positive democratic potential is an imperative for the upcoming 2024 U.S. presidential election and other similarly pivotal contests. But the need for effective, transparent strategies and guidelines goes beyond next year. AI-powered tools are in their infancy. Their impacts will likely reach every corner and function of government, from how agencies collect data to how elections are run to how voters register to vote and cast their ballots. As technologies evolve, policymakers, advocates, and citizens will need to keep up to ensure AI is leveraged as a force for a better and more inclusive democracy.

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