



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

June 3, 2024

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street N.E.
Washington, D.C. 20554

Dear Chairwoman Rosenworcel,

I write in response to your recent announcement proposing new regulations on political speech by the Federal Communications Commission (“FCC”) through mandatory disclosures related to artificial intelligence (“AI”). I am concerned that parts of your proposal would fall within the exclusive jurisdiction of the Federal Election Commission (“FEC”), directly conflict with existing law and regulations, and sow chaos among political campaigns for the upcoming election.

To date, you have not made the draft Notice of Proposed Rulemaking (“NPRM”) available to the public. Nonetheless, in your announcement, you describe among the NPRM’s proposals to “require an on-air disclosure and written disclosure in broadcasters’ political files when there is AI-generated content in political ads” and to “apply the disclosure rules to both candidate and issue advertisements.”¹ I believe these would invade the FEC’s jurisdiction.

Congress vested the FEC with the sole authority to interpret, administer, and enforce the Federal Election Campaign Act of 1971, as amended.² This includes the disclaimer and reporting requirements specific to political communications set out under federal law.³ Indeed, federal courts of appeals have upheld the FEC’s unique authority to regulate political disclaimers against other agencies’ attempts to circumvent or supplement our rules, concluding that “the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers” for political communications.⁴ Consequently, I maintain that the FCC lacks the legal authority to promulgate conflicting disclaimer requirements only for political communications.

¹ Press Release, *Chairwoman Rosenworcel Unveils First Step in New AI Transparency Effort to Disclose AI-Generated Content in Political Ads on TV and Radio*, Federal Communications Commission (May 22, 2024), <https://docs.fcc.gov/public/attachments/DOC-402740A1.pdf>.

² 52 U.S.C. § 30106(b). *See also* *FEC v. NRA Political Victory Fund*, 513 U.S. 537, 539 (1994).

³ *See* 52 U.S.C. § 30120.

⁴ *Galliano v. United States Postal Service*, 836 F.2d 1362, 1368–70 (D.C. Cir. 1988) (holding that the U.S. Postal Service may not impose its own disclaimer requirements on mailers soliciting political contributions).

To be sure, your announcement claims that “[t]he Bipartisan Campaign Reform Act provides the Commission with authority regarding political advertising.”⁵ But that is an overstatement. The sole provision in BCRA that relates to your agency is § 201(b), which mandates that the FCC compile information related to electioneering communications that the FEC may require to administer the law on such communications.⁶ Nothing in BCRA empowers the FCC to impose its own affirmative disclaimer requirements on political communications—a form of compelled speech—whether they are forced on the speakers or on the broadcasters.

The FEC already maintains rigorous regulations governing required disclaimers on political communications.⁷ Moreover, the FEC is engaged in its own rulemaking process to consider whether or how the use of AI in political communications should be regulated.⁸ If the FCC moves forward with a final rule on this issue, I fear your proposed regulations may create irreconcilable conflicts between our agency’s respective statutes and rules. If those disagreements cannot be avoided, a federal court may be called upon to resolve them through litigation.

Finally, notwithstanding these legal issues, I am deeply troubled that you reportedly “hope to have the regulations in place before the election.”⁹ The general election is in five months. Assuming you do not disregard the procedural protections of notice-and-comment rulemaking, any final rule from your proposal would become effective mere weeks before the election. This would create confusion and disarray among political campaigns, and it would chill broadcasters from carrying many political ads during the most critical period before Americans head to the polls. As a result, your agency would be interfering with and undermining political campaigns and the election. Therefore, if you proceed with all or part of this rulemaking, I urge you and your FCC colleagues to delay the effective date of any new regulations until after November 5, 2024.

AI presents many complex technological and policy questions for Congress, the executive branch, and the states. But in addressing those questions, federal agencies must proceed with caution—and within their legal authority—when seeking to regulate the constitutionally sensitive area of political speech. Thank you for your attention to this important issue.

Sincerely,



Sean J. Cooksey
Chairman

⁵ Press Release, *Chairwoman Rosenworcel Unveils First Step in New AI Transparency Effort to Disclose AI-Generated Content in Political Ads on TV and Radio*, Federal Communications Commission (May 22, 2024), <https://docs.fcc.gov/public/attachments/DOC-402740A1.pdf>.

⁶ Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, title II, §201(b), 116 Stat. 90 (2002).

⁷ See, e.g., 11 C.F.R. §§ 100.26, 110.11.

⁸ Artificial Intelligence in Campaign Ads, 88 Fed. Reg. 55606 (Aug. 16, 2023).

⁹ Ali Swenson, *FCC will consider rules for AI-generated political ads on TV and radio, but can’t touch streaming*, AP (May 22, 2024), <https://apnews.com/article/artificial-intelligence-political-ads-fcc-f42380ea8f984e81a622f0f3db3224a6>.

cc: The Honorable Brendan Carr
Commissioner

The Honorable Geoffrey Starks
Commissioner

The Honorable Nathan Simington
Commissioner

The Honorable Anna M. Gomez
Commissioner