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AGENDA DOCUMENT NO. 23-14-A

AGENDA ITEM

For the meeting of June 22, 2023



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 15, 2023

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by RMK*
Acting General Counsel

Neven Stipanovic *NFS by RMK*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Jennifer Waldman *JW by RMK*
Attorney

SUBJECT: REG 2023-01 (Use of AI in Campaign Ads) – Draft Notification of Availability

On May 16, 2023, the Commission received a Petition for Rulemaking (“Petition”) from Public Citizen asking the Commission to specify in regulation or guidance that its statutory provision regarding the fraudulent misrepresentation of campaign authority applies to deliberately deceptive artificial intelligence campaign advertisements.

The Office of General Counsel has examined the Petition and determined that it meets the requirements of 11 C.F.R. § 200.2(b). Therefore, we have drafted the attached Notification of Availability (“NOA”) seeking comment on whether the Commission should initiate a full rulemaking on the proposal in the Petition. The NOA will be published in the *Federal Register* pursuant to 11 C.F.R. § 200.3(a)(1).

In keeping with the Commission’s usual procedure, the NOA does not address the merits of the Petition. Instead, it states that consideration of the merits will be deferred until the close of the comment period.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 112**

3 **[NOTICE 2023-XX]**

4 **Use of Artificial Intelligence in Campaign Ads**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notification of Availability of Petition for Rulemaking

7 **SUMMARY:** The Commission announces its receipt of a Petition for Rulemaking

8 submitted on May 16, 2023 by Public Citizen. The Petition asks the Commission to

9 specify in regulations or guidance that its statutory provision regarding the fraudulent

10 misrepresentation of campaign authority applies to deliberately deceptive Artificial

11 Intelligence campaign ads.

12 **DATES:** Comments must be submitted on or before [insert date 60 days after

13 publication in the *FEDERAL REGISTER*].

14 **ADDRESSES:** All comments must be in writing. Commenters may submit comments

15 electronically via the Commission's website at <https://sers.fec.gov/fosers/>, reference REG

16 2023-01.

17 Each commenter must provide, at a minimum, his or her first name, last name,

18 city and state. All properly submitted comments, including attachments, will become

19 part of the public record, and the Commission will make comments available for public

20 viewing on the Commission's website and in the Commission's Public Records Office.

21 Accordingly, commenters should not provide in their comments any information that they

22 do not wish to make public, such as a home street address, personal email address, date of

1 birth, phone number, social security number, or driver’s license number, or any
2 information that is restricted from disclosure, such as trade secrets or commercial or
3 financial information that is privileged or confidential.

4 **FOR FURTHER**
5 **INFORMATION**

6 **CONTACT:** Robert M. Knop, Assistant General Counsel, or Ms. Jennifer Waldman,
7 Attorney, 1050 First Street, NE., Washington, D.C. 20463, (202) 694-1650 or (800)
8 424-9530.

9 **SUPPLEMENTARY**

10 **INFORMATION:** On May 16, 2023, the Commission received a Petition for
11 Rulemaking (“Petition”) from Public Citizen, a non-profit consumer advocacy
12 organization that advocates for the public interest. The Petition asks the Commission to
13 clarify its statute at 52 U.S.C. 30124 through regulation or guidance to explain when and
14 how the prohibition on fraudulent misrepresentation of campaign authority applies to
15 deliberately deceptive artificial intelligence (“AI”) campaign ads.

16 The Federal Election Campaign Act (the “Act”), 52 U.S.C. 30124, provides that a
17 candidate for federal office, employee, or agent of such a candidate shall not
18 “fraudulently misrepresent” themselves or any committee or organization under their
19 control “as speaking or writing or otherwise acting for or on behalf of any other candidate
20 or political party or employee or agent thereof on a matter which is damaging to such
21 other candidate or political party or employee or agent thereof.” 52 U.S.C. 30124(a)(1).

22 The Petition asserts that generative AI and deepfake technology, is “being used to
23 create convincing images, audio and video hoaxes.” Petition at 1. The Petition asserts
24 that while the technology is not so far advanced currently that viewers are unable to

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1 identify when it is used disingenuously, the use of the “technology continues to improve
2 and will become increasingly difficult, and perhaps, nearing impossible for an average
3 person to distinguish deepfake videos and audio clips from authentic media.” Petition at
4 2.

5 The Petition notes that the technology will “almost certainly create the
6 opportunity for political actors to deploy it to deceive voters, in ways that extend well
7 beyond any First Amendment protections for political expression, opinion or satire.”
8 Petition at 2. According to the Petition, this technology might be used to “create a video
9 that purports to show an opponent making an offensive statement or accepting a bribe”
10 and, once disseminated, be used for the purpose of “persuading voters that the opponent
11 said or did something they did not say or do.” Petition at 2. The Petition also notes that
12 while legislation has been introduced in Congress to require a disclaimer on
13 advertisements where AI is used, there is no such requirement as of now. Petition at 2-3.

14 The Commission seeks comment on the Petition. The public may inspect the
15 Petition on the Commission’s website at <http://www.fec.gov/fosers/>.

16 The Commission will not consider the Petition’s merits until after the comment
17 period closes. If the Commission decides that the Petition has merit, it may begin a
18 rulemaking proceeding. The Commission will announce any action that it takes in the
19 Federal Register.

20 Dated: _____

21 On behalf of the Commission,

22 Dara Lindenbaum

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- 1 *Chair,*
- 2 *Federal Election Commission.*
- 3 BILLING CODE: 6715-01-P