MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson  
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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
Use of Artificial Intelligence in Campaign Ads

**AGENCY:** Federal Election Commission.

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

**SUMMARY:** The Commission announces its receipt of a Petition for Rulemaking submitted on May 16, 2023 by Public Citizen. The Petition asks the Commission to specify in regulations or guidance that its statutory provision regarding the fraudulent misrepresentation of campaign authority applies to deliberately deceptive Artificial Intelligence campaign ads.

**DATES:** Comments must be submitted on or before [insert date 60 days after publication in the *FEDERAL REGISTER*].

**ADDRESSES:** All comments must be in writing. Commenters may submit comments electronically via the Commission’s website at [https://sers.fec.gov/fosers/](https://sers.fec.gov/fosers/), reference REG 2023-01.

Each commenter must provide, at a minimum, his or her first name, last name, city and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission’s website and in the Commission’s Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of
birth, phone number, social security number, or driver’s license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

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

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

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

The Petition asserts that generative AI and deepfake technology, is “being used to create convincing images, audio and video hoaxes.” Petition at 1. The Petition asserts that while the technology is not so far advanced currently that viewers are unable to
identify when it is used disingenuously, the use of the “technology continues to improve and will become increasingly difficult, and perhaps, nearing impossible for an average person to distinguish deepfake videos and audio clips from authentic media.” Petition at 2.

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

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

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

Dated: ______________

On behalf of the Commission,

Dara Lindenbaum
Chair,

Federal Election Commission.

BILLING CODE: 6715-01-P