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FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 24-29-B
AGENDA ITEM
For the meeting of September 19, 2024

TO: The Commission
The Office of the Commission Secretary

FROM: Shana Broussard *SB*
Commissioner

Allen Dickerson *AD*
Commissioner

Dara Lindenbaum *DL*
Commissioner

James E. "Trey" Trainor, III *TT*
Commissioner

DATE: September 10, 2024

RE: REG 2023-02 (Artificial Intelligence in Campaign Ads) -
Draft Notice of Disposition

In connection with REG 2023-02, we ask that the attached Draft Notice of Disposition be added to the Commission's agenda for the Open Meeting of September 19, 2024.

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 112**

3 **[NOTICE 2024-XX]**

4 **Artificial Intelligence in Campaign Ads**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notification of Disposition of Petition for Rulemaking.

7 **SUMMARY:** The Commission announces its disposition of a Petition for Rulemaking
8 filed on July 13, 2023. The Petition asks the Commission to revise existing rules on the
9 fraudulent misrepresentation of campaign authority to make clear that the related
10 statutory prohibition applies to deliberately deceptive campaign ads using artificial
11 intelligence (“AI”). For the reasons described below, the Commission is not initiating a
12 rulemaking at this time.

13 **DATES:** [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

17 **SUPPLEMENTARY INFORMATION:** The Federal Election Campaign Act of 1971,
18 as amended (the “Act”) prohibits fraudulent misrepresentation in two specific ways.¹
19 First, the Act prohibits a candidate, his or her employee or agent, or an organization
20 under the candidate’s control, from purporting to speak, write, or act for another
21 candidate or political party on a matter that is damaging to the other candidate or party.²

¹ 52 U.S.C. 30124.

² 52 U.S.C. 30124(a). *See also* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76968 (Dec. 13, 2002). The Commission has explained that “on a matter

1 Second, the Act prohibits any person from falsely representing that they are speaking,
2 writing, or acting on behalf of a federal candidate or a political party for the purpose of
3 soliciting contributions.³ The Commission’s regulation implementing 52 U.S.C. 30124
4 essentially mirrors the statutory text.⁴

5 On July 13, 2023, Public Citizen submitted a Petition for Rulemaking (“Petition”)
6 to the Commission, asking it to undertake a rulemaking “to clarify that the law against
7 ‘fraudulent misrepresentation’ (52 U.S.C. 30124) applies to deliberately deceptive AI-
8 produced content in campaign communications.”⁵ The Petition requested that the
9 Commission initiate a rulemaking for the purpose of amending 11 CFR 110.16(a),
10 requesting that the FEC promulgate a rule providing that “if candidates or their agents
11 fraudulently misrepresent other candidates or political parties through deliberately false
12 AI-generated content in campaign ads or other communications – absent clear and
13 conspicuous disclosure in the communication itself that the content is generated by
14 artificial intelligence and does not represent real events – then the restrictions and penalties
15 of the law and the Code of Regulations are applicable.”⁶

16 On August 16, 2023, the Commission published a Notice of Availability seeking
17 public comment on the Petition.⁷ It received more than 2,000 comments in response,
18 including from Members of Congress, political party committees, advocacy groups across

that is damaging” means “actions or spoken or written communications that are intended to suppress votes for the candidate or party who has been fraudulently misrepresented.” *Id.* at 76968–69.

³ 52 U.S.C. 30124(b).

⁴ *See* 11 CFR 110.16.

⁵ Petition at 1.

⁶ Petition at 5.

⁷ *See* Notice of Availability, 88 FR 55606 (Aug. 16, 2023).

1 the ideological spectrum, and individual citizens. Commenters held a range of views about
2 the desirability of opening the rulemaking requested by Petitioner.

3 Whether or not to open a rulemaking in response to a petition is vested within the
4 Commission’s discretion.⁸ Petitioner asks the Commission to apply an interpretation of
5 52 U.S.C. 30124 specifically for “AI-produced content in campaign communications.”⁹
6 The statute, however, is technology neutral and applies on its face to all means of
7 accomplishing the specified fraud, including AI-assisted media.

8 Accordingly, the Commission has decided not to initiate a rulemaking at this time
9 and will instead proceed with any application of 52 U.S.C. 30124 to specific technologies
10 on a case-by-case basis.

11 Copies of the comments and the Petition for Rulemaking are available on the
12 Commission’s website, <http://www.fec.gov/fosers/> (REG 2023-02 Artificial Intelligence
13 in Campaign Ads (2023)) and at the Commission’s Public Records Office, 1050 First
14 Street NE., Washington, D.C. 20463, Monday through Friday between the hours of 9
15 a.m. and 5 p.m.

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18 DATED: _____

19 On behalf of the Commission,
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⁸ 11 CFR 200.5 (“The Commission’s decision on the petition for rulemaking may include, but will not be limited to, the following considerations – (a) The Commission’s statutory authority; (b) Policy considerations; (c) The desirability of proceeding on a case-by-case basis; (d) The necessity or desirability of a statutory revision; (e) Available agency resources”).

⁹ Petition at 1.

- 1 **Sean J. Cooksey,**
- 2 *Chairman,*
- 3 *Federal Election Commission.*