



January 30, 2019

Neven F. Stipanovic, Esq.
Acting Associate General Counsel
Federal Election Commission
1050 First St. NE
Washington, DC 20463

Re: REG 2011-02: Internet Communication Disclaimers

Dear Mr. Stipanovic,

The Campaign Legal Center (CLC) respectfully urges the Commission to take action on REG 2011-02: Internet Communication Disclaimers.

This rulemaking has been languishing for more than seven years. As of today, 477 days have passed since the Commission voted to solicit a second round of public comments on the matter. 310 days have passed since the Commission published competing sets of draft rules in the Federal Register. 217 days have passed since the Commission held two days of hearings on the competing draft rules. 156 days have passed since CLC met with Commissioners to stress the urgency of finalizing this rulemaking.

In our August 2018 meeting, we provided the Commission with evidence — including evidence specifically requested by the Commission’s then-Chair — demonstrating how foreign and domestic actors have exploited the Commission’s inaction to the detriment of American voters. We also stressed that for the rulemaking to be completed in time for the beginning of the 2019-2020 election cycle, the Commission would need to publish final rules by mid-September 2018.

That deadline is long past, the 2020 presidential campaign has begun, and the Commission has done nothing.

In fact, rather than advance this matter, one Commissioner recently sent to an academic witness a letter that posed a series of argumentative “questions” about the witness’s prior testimony to the Commission. That letter — the substance of which demonstrated a marked lack of factual understanding about political digital advertising, despite the years of study that the Commission has supposedly devoted to the issue — was sent *five months* after Commissioners had the opportunity to inquire of the witness in person. If Commissioners genuinely felt that the witness’s written comments, in-person testimony, and post-hearing submissions necessitated further inquiry, why wait months to follow up? It is difficult to see the letter as anything other than a stalling technique intended to divert attention from the Commission’s own failure to act.

The Commission is statutorily charged with ensuring that certain campaign advertising identify its sponsor on its face.¹ The Commission’s longstanding failure to fulfill its statutory duty is both unlawful and dangerous to our nation. The Commission must complete this rulemaking.

As always, we stand ready to assist the Commission in any way we can. Thank you for considering this submission.

Respectfully,

/s/ Adav Noti

Adav Noti
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¹ We will not reiterate here the many authorities making clear that voters have a right to disclaimers “to evaluate the arguments to which they are being subjected,” *Citizens United v. FEC*, 558 U.S. 310, 368 (2010), and thereby to make the fully informed political decisions that are critical to realizing the republican form of self-government envisioned by the Constitution. We do note that in the absence of Commission action, certain platforms have independently taken strides to try to limit the problem of online advertisements funded by undisclosed sources, but as laudable as these efforts are, the 2018 elections demonstrated that they are of limited effectiveness. See Kevin Roose, *In Virginia House Race, Anonymous Attack Ads Pop Up on Facebook*, N.Y. TIMES (Oct. 17, 2018), <https://www.nytimes.com/2018/10/17/us/politics/virginia-race-comstock-wexton-facebook-attackads.html>; William Turton, *We Posed As 100 Senators to Run Ads on Facebook. Facebook Approved All of Them*, VICE (Oct. 30, 2018), https://news.vice.com/en_us/article/xw9n3q/we-posed-as-100-senatorsto-run-ads-on-facebook-facebook-approved-all-of-them. Moreover, these private actors have no authority to impose or enforce a disclaimer regime in any digital spaces except their own. The Commission cannot abdicate its national responsibilities to individual platforms.