



September 19, 2024

Jessica Rosenworcel, Chairwoman
Brendan Carr, Commissioner
Geoffrey Starks, Commissioner
Nathan Simington, Commissioner
Anna M. Gomez, Commissioner
Federal Communications Commission
45 L St. NE
Washington, DC 20554

**Re: MB Docket No. 24-211, Disclosure and Transparency of
Artificial Intelligence-Generated Content in Political
Advertisements**

Dear Commissioners:

Campaign Legal Center (“CLC”) respectfully submits this comment on MB Docket No. 24-211, Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy. CLC has longstanding expertise on campaign finance topics: since the organization’s founding in 2002, it has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal court cases, and it monitors the Federal Election Commission’s (“FEC”) work, comments regularly on the FEC’s regulatory authority under the Federal Election Campaign Act (“FECA”), and operates as a watchdog by filing FEC complaints against those violating federal campaign finance laws.¹ In addition, CLC has previously engaged with the Federal Communications Commission (“FCC”) on matters involving important electoral transparency concerns.² CLC has also been tracking the rise of AI in elections and has been assisting with legislative efforts to address it, including by offering testimony at the

¹ See generally *Campaign Finance*, CLC, <https://campaignlegal.org/issues/campaign-finance> (last visited Sep. 18, 2024).

² See, e.g., CLC, Common Cause, and the Sunlight Foundation, Petition for Rulemaking (Jul. 31, 2014), https://campaignlegal.org/sites/default/files/Cable-Sat-petition-for-RM-Final_0.pdf (petitioning the FCC to “initiate a rulemaking to expand to cable and satellite systems the requirement that public and political files be posted to the FCC’s online database”).

U.S. Senate Committee on Rules and Administration’s 2023 hearing on “AI and the Future of our Elections.”³

Artificial intelligence (“AI”) poses unique threats to our democracy, and we support the FCC effort to address this important emerging issue. The Notice of Proposed Rulemaking (“NPRM”) poses a number of questions for public comment,⁴ including whether regulating AI in election ads would advance the public interest, whether the FCC has the authority to promulgate the proposed rule, what providers and operators the rule should cover, and whether the regulated providers and operators should have any duty to respond when presented with credible information indicating that an advertiser has failed to disclose the use of AI.⁵

As detailed below, we believe the FCC has the authority to promulgate the proposed rule, which is unquestionably in the public’s interest, and that doing so would not impede the FEC’s jurisdiction. Further, we would urge requiring public disclosure of AI used in campaign ads across as many mediums—and over as many providers and operators—as possible, while requiring those providers and operators to investigate credible third-party complaints that AI use has not been disclosed by advertisers. A well-crafted AI disclosure rule that meaningfully increases voters’ awareness when AI is being used in campaign ads would undoubtedly benefit voters and uphold the integrity of the electoral process.

AI is already impacting our elections, and it appears highly likely to play a bigger role in the future as AI technology continues to advance and become more widely accepted. Because AI can convincingly present as real and authentic things that are wholly or partly fabricated, this technology has the potential to make voters’ basic task—evaluating candidates and making an informed choice about whom to vote for—much more difficult. Voters have a right to know when campaign ads are made or modified using AI in order to evaluate the credibility of those ads and cast an informed vote. While Congress should someday enact comprehensive legislation regulating AI in elections, the FCC’s proposed rule would provide vital electoral transparency for voters in the interim.

The FCC’s Authority to Regulate AI in Political Advertising

Regulating AI is in the “Public Interest” under Section 303(r)

AI is a powerful tool for influencing elections because it can create a convincingly realistic, but false, reality. AI can depict events that never happened, put false

³ CLC’s Trevor Potter Testifies at Senate Hearing on AI in Elections, CLC (Sep. 27, 2023), <https://campaignlegal.org/update/clcs-trevor-potter-testifies-senate-hearing-ai-elections>; see *How Artificial Intelligence Influences Elections, and What We Can Do About It*, CLC (Feb. 28, 2024), <https://campaignlegal.org/update/how-artificial-intelligence-influences-elections-and-what-we-can-do-about-it>.

⁴ See Disclosure and Transparency of Artificial Intelligence-Generated Content in Political Advertisements, 89 Fed. Reg. 63,381 (Aug. 5, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-08-05/pdf/2024-16977.pdf> (“NPRM”).

⁵ See *id.* at 63,385–86.

words in candidates' mouths, or show candidates or election workers doing things that they never did. It can generate images and audio so convincingly real that voters have no way to distinguish fact from fiction.⁶ While voters have always had to wade through false or conflicting messages, AI threatens to make it nearly impossible for them to decipher whether what they are seeing and hearing is real.

The FCC's proposed rule prudently seeks to address this problem by offering a relatively simple solution: broadcast and radio stations and other operators airing political ads must ask those purchasing ad time if their communication uses AI,⁷ and if it does, the station or operator must make "an on-air announcement" that the ad contains AI and put a notice in the ad's online "political file" disclosing the use of AI.⁸ Campaigns, political committees, and other groups can use AI when creating political ads, provided they inform the stations airing those ads accordingly.⁹ The required disclosures notify voters that what they are seeing or hearing has been altered or created with AI, allowing them to approach those ads with the necessary scrutiny.¹⁰

The FCC's proposed "on-air announcement" and political file notice would thus provide the transparency that the Supreme Court has long noted is essential for voters to exercise their right, under the First Amendment, "to make *informed* choices among candidates for office."¹¹ This straightforward and minimally burdensome requirement—the type of disclosure/disclaimer obligation that courts have consistently upheld as the least restrictive means of regulating campaign

⁶ The comments submitted during this rulemaking provide a possible example of how difficult it can be to spot AI. On August 19–20, 2024, the FCC received over 230 substantially similar comments that used irregular capitalizations in proper names and irregular titles. Odd and inconsistent capitalization and punctuation across otherwise identical documents is common when using generative-text AI tools like ChatGPT. While we do not know for certain whether these comments were generated using AI (it is possible that they could also have been submitted by hundreds of real individuals using a template letter), the FCC may wish to closely examine the authenticity of these comments as it decides how to proceed with this rulemaking.

⁷ NPRM at 63,384.

⁸ *Id.*

⁹ *See id.* ("[T]he Commission is not proposing to ban or restrict the use of AI-generated content in producing political ads.").

¹⁰ *See id.*

¹¹ *Buckley v. Valeo*, 424 U.S. 1, 14–15 (1976) (emphasis added). As the Ninth Circuit later summarized, "Providing information to the electorate is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment." *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010). Moreover, the Supreme Court has remarked on the "First Amendment interest of individual citizens seeking to make informed choices in the political marketplace," and recognized that campaign disclosures and on-air disclaimers provide voters with the information they need to evaluate the messages they hear and strip through ad sponsors' efforts to be "misleading." *McConnell v. FEC*, 540 U.S. 93, 197 (2003) (internal quotations omitted); *see id.* at 128 & n.23; *Buckley*, 424 U.S. at 66–67.

spending because they do not stop anyone from speaking¹²—also fits squarely within the FCC’s existing statutory authority. The proposed rule is wholly consistent with the FCC’s authority to regulate the airways as “public convenience, interest, or necessity requires,”¹³ vindicating voters’ First Amendment right to meaningfully evaluate candidates and make well-informed choices on their ballot.

Against this backdrop, there can be little doubt that the FCC’s proposed rule would benefit the “public interest” under 47 U.S.C. § 303(r). In the absence of such regulation, voters will be denied vital information that could help them evaluate whether what they are seeing and hearing in campaign ads is authentic and real, which fundamentally threatens their ability to cast an informed vote and meaningfully participate in our democracy. The proposed rule would equip voters with the information they need to assess the credibility of political communications and weigh the messages they receive.

FECA Does Not Preclude the FCC’s Proposed Rule

The FCC’s authority to implement this rule is also not foreclosed or precluded by FECA or the FEC’s regulatory authority—contrary to the recent assertions of FEC Chairman Sean Cooksey.¹⁴ Put simply, Chairman Cooksey vastly overstates the extent to which an FCC disclosure requirement for broadcasters would unlawfully “invade the FEC’s jurisdiction.”¹⁵ While FECA is the federal statute that most particularly regulates federal campaign activity, other federal laws and agencies can and do also play an important role; the concerns raised by Chairman Cooksey’s letter are overblown and rest on a single federal court decision that is distinguishable from the issue at hand.¹⁶ The FCC is on solid footing to reject the premise of Chairman Cooksey’s letter and move forward with its proposed rule.

As an initial matter, the FCC’s proposed AI disclaimer requirements apply only to *broadcasters*, not to the candidates and committees that the FEC regulates. As explained above, the NPRM states that the rule would “require that all *radio and television broadcast stations that air political ads* . . . provide an on-air announcement . . . disclosing the use of AI-generated content in the ad” and “include in their online political files a notice disclosing the use of AI-generated content” in the ad.¹⁷ The proposed rule does not require FEC-registered entities to file any additional disclosures or place any additional disclaimers on their ads. Accordingly,

¹² See *Buckley*, 424 U.S. at 82 (calling disclosures a “minimally restrictive method of furthering First Amendment values”); *Citizens United v. FEC*, 558 U.S. 310, 366 (2010) (stating that disclosure and disclaimer requirements “‘impose no ceiling on campaign-related activities,’ and ‘do not prevent anyone from speaking’” (internal citations omitted)).

¹³ 47 U.S.C. § 303(r).

¹⁴ See Letter from FEC Chairman Sean J. Cooksey, to Jessica Rosenworcel, FCC Chairwoman (Jun. 3, 2024), https://www.fec.gov/resources/cms-content/documents/FEC_Chairman_Cooksey_Letter_to_FCC_Chairwoman_Rosenworcel_June_3_2024.pdf (“Cooksey Letter”).

¹⁵ *Id.* at 1.

¹⁶ See *id.* n.4 (citing *Galliano v. U.S. Postal Service*, 836 F.2d 1362 (D.C. Cir. 1988)).

¹⁷ NPRM at 63,384 (emphasis added).

the FCC is not creating any new obligations for entities regulated by the FEC. Under the proposed rule, the FCC would only be regulating communications providers, consistent with its jurisdiction and in furtherance of its core mission and purpose.

In addition, Chairman Cooksey appears to misread *Galliano v. U.S.P.S.*, since the holding in that decision does not support the sweeping conclusion that the FEC has “unique authority to regulate political disclaimers.”¹⁸ In *Galliano*, the U.S. Court of Appeals for the District of Columbia Circuit had to decide whether the U.S. Postal Service could penalize a political committee for using a misleading name under a generally-applicable mail fraud statute, since FECA contains conflicting requirements for naming political committees and identifying committees in disclaimers.¹⁹ Emphasizing that FECA was the more specific regulatory regime when it came to naming political committees, and that specific statutes govern over general ones,²⁰ the court held that a committee that complies with FECA’s committee-naming and disclaimer requirements cannot be charged with violating the postal fraud statute based on its name choice or the way its name appears in a disclaimer.²¹ Importantly, the court noted that while allowing the Postal Service to impose liability based on a name or disclaimer that passes muster under FECA would “countermand the ‘precisely drawn, detailed’ prescriptions of FECA[.]” the Postal Service could prosecute mail fraud based on *other* false representations contained in political mailers, which FECA does not regulate.²² Indeed, *Galliano* specifically states that “[n]o provisions of FECA set standards for such [other] representations and there is no reason to believe that the silence of that legislation was meant to exempt uncovered statements from all regulation.”²³

The concerns described in *Galliano* are not present here, and, moreover, the FCC’s proposed regulation would require disclaimers of an entirely different sort—and serving an entirely distinct purpose—than those required under FECA. The FCC’s proposed rule would be just as specific as FECA’s disclaimer rules, and the proposed AI disclaimer requirements imposed on broadcasters would not “countermand” any part of FECA, which does not address the use of AI or impose any disclaimer or disclosure requirements on broadcasters. Although Chairman Cooksey appears to rely on *Galliano* for the broad proposition that only the FEC can require disclaimers

¹⁸ Cooksey Letter at 1.

¹⁹ *Galliano*, 836 F.2d at 1363.

²⁰ *Id.* at 1368–69 (“FECA, appellants and the FEC emphasize, establishes a comprehensive regime of limitations on campaign contributions and expenditures and extensive disclosure requirements [and] it is thus precisely the kind of detailed statute whose specific provisions control matters that might otherwise fall under the total governance of a more broadly conceived and crafted statute.”).

²¹ *Id.* at 1370 (“We hold that the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers of organizations soliciting political contributions. As to *representations not specifically regulated by FECA*, however . . . nothing in or about the Act limits the 39 U.S.C. § 3005 enforcement authority of the Postal Service.” (emphasis added)).

²² *Id.* at 1371.

²³ *Id.*

or disclosures that are in any way connected with political or campaign ads, the decision clearly did not reach such a sweeping conclusion—and Chairman Cooksey’s letter cites no other decisions by a court or agency in support of such a conclusion.

Chairman Cooksey also expresses concern that an FCC AI-disclaimer rule could conflict with the way the FEC might regulate AI in elections.²⁴ However, the FEC’s authority to regulate AI is limited by FECA, and Chairman Cooksey has asserted in other contexts that neither FECA’s disclaimer requirements²⁵ nor its provisions barring the “fraudulent misrepresentation of campaign authority”²⁶ provides the necessary authority for the FEC to require broadcasters to provide AI disclaimers, as contemplated by the FCC’s proposed rule. FECA’s disclaimer requirements pertain to identifying the person(s) paying for and authorizing a campaign ad, and the relevant fraudulent misrepresentation provisions are limited to barring candidates and their agents from misrepresenting themselves as speaking for or on behalf of a candidate or committee “on a matter which is damaging” to that candidate or committee.²⁷

Moreover, the FEC just today closed out its own AI rulemaking after adopting an “interpretative rule,” which merely confirms the basic principle that “fraudulent misrepresentation of campaign authority” can be carried out with or without AI—*i.e.*, that federal campaign finance laws are “technology neutral.”²⁸ Thus, Chairman Cooksey’s concern regarding “irreconcilable conflicts” appears to be baseless.²⁹

Other Considerations

The NPRM also asks whether the FCC’s AI-disclaimer rule should, in addition to radio and television broadcasters, apply to cable operators, DBS providers, SDARS licensees, and section 325(c) permit holders.³⁰ CLC urges the FCC to apply the final AI-disclaimer rule as broadly as its statutory authority allows. If the FCC does not extend the disclosure and disclaimer requirements to all distribution methods within its jurisdiction, savvy political operatives may very well migrate their AI-generated, deceptive campaign ads to those outlets that do not require transparency regarding the use of AI in campaign ads, reducing the impact of the proposed regulation. Moreover, as a matter of equity, voters should ideally be informed when AI is used in a campaign ad, regardless of the medium used to distribute the ad: for example, voters watching cable television should not receive less information than those watching broadcast television. The FCC’s final rule should provide as many voters as possible with the transparency that the First Amendment requires.

²⁴ Cooksey Letter at 2.

²⁵ See 52 U.S.C. § 30120.

²⁶ See *id.* § 30124(a).

²⁷ See *id.* §§ 30120, 30124(a).

²⁸ See *Agenda, September 19, 2024 Open Meeting*, FEC, <https://www.fec.gov/updates/september-19-2024-open-meeting/> (last visited Sep. 19, 2024).

²⁹ See Cooksey Letter at 2.

³⁰ NPRM at 63,386.

Finally, the proposed rule's disclosure and disclaimer requirements will be hindered if stations are not required to take action upon receiving a credible complaint alleging that an ad containing AI was not accompanied by the required disclaimer or indication in the political file. The FCC's final rule should require stations to follow up with the advertiser and then amend the political file and add the "on-air announcement" to the communication if the advertiser admits that the communication was made or modified with AI. Stations should also be required—and empowered—to take some kind of corrective action if the advertiser does not promptly answer, or maintains that the ad at issue does not contain AI, if the station is convinced by the evidence that the ad does in fact use AI. Without such a requirement, the FCC's final rule will be less effective, as bad actors are unlikely to voluntarily disclose when they have used AI—thus depriving voters of the information this regulation aims to provide them.

Conclusion

Voters have a right to the information they need to evaluate candidates and cast an informed vote. AI poses a special threat to that right because it can present false and manipulated information in a highly convincing manner. The FCC's proposal—to arm voters with knowledge of which ads contain AI through on-air announcements and disclosures in the political file—is an excellent first step toward vindicating voters' rights. CLC fully supports the rulemaking and urges the FCC to speedily adopt the final rule.

Respectfully submitted,

/s/ Saurav Ghosh

Saurav Ghosh
Shanna (Reulbach) Ports
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005