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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

AGENDA DOCUMENT NO. 23-20-A  
AGENDA ITEM  
For meeting of August 10, 2023

August 3, 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*  
Attorney

SUBJECT: REG 2023-02 (Artificial Intelligence in Campaign Ads) – Draft  
Notification of Availability

On July 13, 2023, the Commission received a Petition for Rulemaking (“Petition”) from Public Citizen asking the Commission to amend its regulation on the fraudulent misrepresentation of campaign authority to make it clear that the related statutory prohibition 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 **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 filed  
8 by Public Citizen. The Petition asks the Commission to amend its regulation on  
9 the fraudulent misrepresentation of campaign authority to make clear that the related  
10 statutory prohibition applies to deliberately deceptive Artificial Intelligence campaign  
11 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 2023-02.

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  
23 birth, phone number, social security number, or driver’s license number, or any

1 information that is restricted from disclosure, such as trade secrets or commercial or  
2 financial information that is privileged or confidential.

3 **FOR FURTHER**  
4 **INFORMATION**

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

8 **SUPPLEMENTARY**

9 **INFORMATION:** On July 13, 2023, the Commission received a Petition for  
10 Rulemaking (“Petition”) from Public Citizen, a non-profit advocacy organization. The  
11 Petition asks the Commission to amend its regulation on “fraudulent misrepresentation”  
12 at 11 C.F.R. 110.16 to clarify that “the restrictions and penalties of the law and the Code  
13 of Regulations are applicable” should “candidates or their agents fraudulently  
14 misrepresent other candidates or political parties through deliberately false [Artificial  
15 Intelligence]-generated content in campaign ads or other communications.” Petition at 5.

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

22 The Petition asserts that generative Artificial Intelligence and deepfake  
23 technology, is being “used to create convincing images, audio and video hoaxes.”  
24 Petition at 2. The Petition asserts that while the technology is not so far advanced  
25 currently as for viewers to not be able to identify when it is used disingenuously, if the

1 use of the “technology continues to improve, it will become increasingly difficult, and  
2 perhaps, nearly impossible for an average person to distinguish deepfake videos and  
3 audio clips from authentic media.” *Id.*

4         The Petition notes that the technology will “almost certainly create the  
5 opportunity for political actors to deploy it to deceive voters[, ] in ways that extend well  
6 beyond any First Amendment protections for political expression, opinion or satire.” *Id.*  
7 According to the Petition, this technology might be used to “create a video that purports  
8 to show an opponent making an offensive statement or accepting a bribe” and, once  
9 disseminated, be used for the purpose of “persuading voters that the opponent said or did  
10 something they did not say or do.” *Id.* The Petition explains that a deepfake audio clip or  
11 video by a candidate or their agent would violate the fraudulent misrepresentation  
12 provision by “falsely putting words into another candidate’s mouth, or showing the  
13 candidate taking action they did not [take],” thereby “fraudulently speak[ing] or act[ing]  
14 ‘for’ that candidate in a way deliberately intended to [harm] him or her.” *Id.* at 3. The  
15 Petitioner states that because the deepfaker misrepresents themselves as speaking for the  
16 deepfaked candidate, “the deepfake is fraudulent because the deepfaked candidate in fact  
17 did not say or do what is depicted by the deepfake and because the deepfake aims to  
18 deceive the public.” *Id.* The Petitioner draws a distinction between deepfakes, which it  
19 contends violates the prohibition on fraudulent misrepresentation, and other uses of  
20 Artificial Intelligence in campaign communications, such as in parodies, where the  
21 purpose and effect are not to deceive voters, or as in other communications where “there  
22 is a sufficiently prominent disclosure that the image, audio or video was generated by  
23 [A]rtificial [I]ntelligence and portrays fictitious statements and actions.” *Id.* at 4.

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

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

7  
8 Dated: \_\_\_\_\_  
9

10 On behalf of the Commission,  
11  
12 Dara Lindenbaum  
13 *Chair,*  
14 *Federal Election Commission.*  
15  
16 BILLING CODE: 6715-01-P