Artificial Intelligence (AI) and Campaign Finance Policy: Recent Developments

Updated August 27, 2024

No federal statute or regulation specifically addresses artificial intelligence (AI) in political campaigns. The Federal Election Campaign Act (FECA) and Federal Election Commission (FEC) regulations govern conduct that calls for election or defeat of federal candidates or solicits funds. They also regulate some advertisements (*electioneering communications*) that refer to clearly identified federal candidates during preelection periods that do not call for election or defeat. Disclaimer requirements that mandate attribution for communications regulated by campaign finance law appear to apply to ads created with AI. Those requirements do not mandate that such advertising alert the audience, or regulators, to the presence of AI-generated content. Campaign management decisions, such as which technology to use, are generally not subject to regulation.

This updated CRS Insight discusses recent developments that could be relevant as Congress monitors or considers legislation related to AI and campaign finance policy. It does not address legal issues. Other CRS products provide information on generative AI and other AI policy areas.

AI in Political Campaigns, and Recent Legislative Developments

Recent policy attention to AI in campaigns focuses on "deepfakes," referring to artificially manipulated audio or video content in political advertising. Such advertising appears to present new challenges for campaigns and voters about how to determine whether communications are authentic.

Recent legislation proposes disclaimers, reporting requirements, or prohibitions on deepfakes in federal campaigns or elections. Bills introduced in the 118th Congress include H.R. 3044; H.R. 3106; H.R. 3831; H.R. 4611; H.R. 5586; H.R. 8384; H.R. 8668; S. 686; S. 1596; S. 2770; and S. 3875. The Senate Committee on Rules and Administration reported an amended version of S. 3875 on May 15, 2024. The bill would amend FECA to require disclaimers on certain political advertisements that are generated using AI. Legislation (H.R. 1; H.R. 5314) addressing various elections topics, including some provisions concerning deepfakes, passed the House in the 117th Congress but was not enacted.

In May 2023, the American Association of Political Consultants (AAPC) issued a statement explaining that its board of directors unanimously "condemn[ed] use of deceptive generative AI content in political campaigns" as inconsistent with the organization's code of ethics. The AAPC position represents a

voluntary professional standard, not a regulatory requirement. The AAPC also stated its support for a February 2024 Federal Communications Commission (FCC) declaratory ruling that calls made with AI-generated voices are "artificial" under the Automated Telephone Consumer Protection Act of 1991 (47 U.S.C. §227), and that using AI-generated voice for robocalls absent prior consumer consent is "illegal." FCC activity on robocalls is otherwise beyond the scope of this Insight.

Despite the focus on AI's role in political advertising, AI also can serve campaign-management functions. For example, political professionals or volunteers could use AI to automate, or supplement human labor to complete, various internal campaign tasks. According to media reports, campaigns have used AI to perform data analysis, compile opposition research, or draft fundraising appeals.

Federal Election Commission Rulemaking Activity

On June 22, 2023, members of the FEC deadlocked on whether to issue a notice of availability (NOA) to receive comments on an AI rulemaking petition from the interest group Public Citizen. The request asked the FEC to issue rules specifying that the FEC fraudulent misrepresentation of campaign authority prohibition (52 U.S.C. §30124) applied to AI-generated ads. At the June 22 meeting, some commissioners expressed skepticism about the agency's statutory authority to regulate AI ads; others expressed support for a rulemaking. On July 13, 2023, several Members of Congress wrote to the commission expressing "disappoint[ment]" with the FEC's action and requested additional information. Also on July 13, 2023, Public Citizen submitted a new rulemaking petition.

The commission considered the new petition on August 10, 2023. In this case, it approved an NOA. Discussion at the August 10 meeting suggested that at least some commissioners continued to have reservations about the commission's authority concerning regulating AI ads in particular; about the appropriateness of the FECA fraudulent misrepresentation provision as an avenue to do so; or both. Fifty-two Members of Congress submitted joint comments encouraging the FEC to adopt rules specifying that the fraudulent-misrepresentation provisions apply to ads created using generative AI, and to require disclaimers on ads created with the technology.

In August 2024, three commissioners proposed a notice of disposition (NOD) for the second Public Citizen rulemaking request, following the NOA noted above. The draft proposes to explain that the commission declines to issue rules in this instance for, among other reasons, lack of statutory authority. The commission is scheduled to consider the draft NOD on August 29.

FEC Responses to Federal Communications Commission Activity

Some House and Senate activity has examined a proposed FCC rulemaking that does not directly implicate campaign finance policy and which is largely beyond the scope of this Insight. On July 25, 2024, the FCC approved a notice of proposed rulemaking (NPRM), published in the *Federal Register* on August 5. If approved, the rules would require certain licensees (e.g., broadcasters) to (1) announce on air that a political ad contains "AI-generated content"; and (2) include the information in their "political files" of advertising contracts. Another CRS product discusses identification requirements on political advertising in telecommunications law and regulation.

On June 3, 2024, FEC Chair Sean Cooksey wrote to FCC Chair Jessica Rosenworcel, stating that the reportedly forthcoming FCC proposed rules would infringe on FEC jurisdiction and could cause confusion before the general election. Three days later, FEC Vice Chair Ellen Weintraub wrote to Rosenworcel stating that the FCC could add telecommunications expertise to AI regulation. It is unclear how or whether the FEC might respond if the FCC adopted the proposed rules.

Potential Policy Considerations for Congress

If pursuing legislation, Congress might need to determine whether to do so narrowly, such as by addressing specific AI issues, or to also address other campaign finance or elections topics. Congress has pursued both approaches to campaign finance regulation recently. If Congress chose to task the FEC with pursuing rulemaking without also providing additional statutory guidance, it is possible that the commission would be unable to agree, with the four of six minimum required votes, about how to proceed.

Maintaining the status quo likely would reinforce the emerging debate about whether additional regulation is needed, including about what role industry should play. Congress could also require agency (or committee or task force) study of AI issues before, or in addition to, other policymaking.

Amending FECA would be a typical approach to further regulate ads that are made by political committees; or that solicit funds, engage in express advocacy, or refer to federal candidates through electioneering communications. Although Congress could also amend FECA or another statute to require disclaimers on ads that do not meet those requirements (e.g., issue advocacy), federal campaign finance law currently generally does not regulate issue advocacy. As noted above, amending telecommunications law or regulation could affect broadcasters or other entities that transmit ads, and could affect issue advocacy in ways that campaign finance law and regulation do not. Prohibiting AI-generated ads might raise First Amendment concerns, such as those discussed in another CRS campaign finance product.

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