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

August 15, 2023

No federal statute or regulation specifically addresses artificial intelligence (AI) in political campaigns. The Federal Election Campaign Act (FECA) and Federal Election Commission (FEC or commission) regulations govern conduct that calls for election or defeat of federal candidates or solicits funds affecting federal election campaigns. They also regulate some advertisements (*electioneering communications*) that refer to clearly identified federal candidates during preelection periods but 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. However, 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 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 topics such as generative AI and AI policy areas other than campaign finance that could be relevant for Congress.

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; S. 686; and S. 1596. 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), a trade association representing political professionals, issued a statement explaining that its board of directors had unanimously "condemn[ed] use of deceptive generative AI content in political campaigns" and noted that such

communications were inconsistent with the organization's code of ethics. The AAPC position represents a voluntary professional standard, not a regulatory requirement.

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 are already using AI to perform large-scale data analysis, compile opposition research, or draft targeted fundraising appeals.

Federal Election Commission Rulemaking Petitions

On June 22, 2023, members of the FEC deadlocked (3-3) on whether to issue a notice of availability (NOA) to receive comments on an AI rulemaking petition from the interest group Public Citizen. Citing the potential for AI-generated ads to "provide political operatives with the means to produce campaign ads with computer-generated fake images of candidates," the request asked the FEC to issue rules specifying that the fraudulent misrepresentation of campaign authority prohibition codified at 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, Public Citizen submitted a new rulemaking petition.

The commission considered the new petition on August 10, 2023. In this case, it approved a NOA. The limited discussion at the August 10 meeting suggested that at least some commissioners continue 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 regulating AI ads; or both. The NOA provides an opportunity for public, or Member of Congress, comment on these or other questions (available here on the FEC website under document REG 2023-02). Approving the NOA does not guarantee that the commission will adopt rules or preview the contents of such rules. Comments will be due 60 days after NOA publication in the *Federal Register*.

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 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. This approach could have the advantage of providing time to gather additional information about how AI evolves during the 2024 election cycle and where legislative coalitions might exist. It could have the disadvantage of delaying opportunities to clarify how or whether Congress intends existing or future legislative or regulatory options to apply to AI in campaigns and elections. Congress could also require agency (or congressional committee or task force) study of AI issues before, or in addition to, other policymaking, as some recent legislation proposes (or has required in non-campaign finance matters).

Amending FECA would be a typical approach to further regulate ads that are made by political committees, 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. Prohibiting AI-generated ads might raise First Amendment concerns, such as those discussed in another CRS campaign finance product.

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