STATEMENT OF
COMMISSIONER BRENDAN CARR, DISSENTING

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

The Democratic National Committee (DNC) is now working to change the rules of the road in the run-up to the 2024 election.[1] It has done so by calling on the administrative state to impose new controls on political speech before voters hit the ballot boxes this fall. The FCC proposal adopted today echoes that DNC-backed initiative and would impose new regulations on the use of AI-generated political speech at the eleventh hour. This push for new regulations comes on the heels of press reports that the DNC and Democrat candidates are "nervous about not keeping up with the GOP in embracing" artificial intelligence technologies in this election cycle.[2]

The FCC's attempt to fundamentally alter the regulation of political speech just a short time before a national election is as misguided as it is unlawful.

That is why you have seen the Chairman of the Federal Election Commission (FEC) warn the FCC that its proposed regulations "would fall within the exclusive jurisdiction of the [FEC], directly conflict with existing law and regulations, and sow chaos among political campaigns for the upcoming election."[3] That is why you have seen leaders in the Senate write in opposition, stating that the FCC "has no authority to police the content of political advertising and any attempt to do so raises serious statutory and constitutional concerns."[4] And that is why you have seen legislation introduced to block the FCC from moving forward.[5]

Those concerns are well founded. We are in the home stretch of a national election. We are so close, in fact, that the comment cycle in this proceeding will still be open in September—the same month when early voting starts in states across the country. If there ever were a moment, if there ever were a

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[1] *See* Comments of Democratic National Committee, REG 2023-02 (Oct. 16, 2023) (endorsing Public Citizen's petition to regulate AI-based political speech), https://sers.fec.gov/fosers/showpdf.htm?docid=423822; *see also* Petition of Public Citizen (July 13, 2023) (petitioning the Federal Elections Commission to impose regulations on AI-based political speech), https://sers.fec.gov/fosers/showpdf.htm?docid=423502.

[2] *See* Courtney Subramanian, Nervous About Falling Behind the GOP, Democrats Are Wrestling With How To Use AI, Associated Press (May 6, 2024) ("Scarred by the memories of 2016, the Biden campaign, Democratic candidates and progressives are wrestling with the power of artificial intelligence and nervous about not keeping up with the GOP in embracing the technology, according to interviews with consultants and strategists."), https://apnews.com/article/ai-biden-campaign-democrats-2024-election-520f22de269ba1eff24d1544ca38d569; *see also* Dan Merica, *Democrats Wanted an Agreement on Using Artificial Intelligence. It went Nowhere*, Associated Press (June 2, 2025), https://apnews.com/article/artificial-intelligence-ai-dnc-campaign-2024-republicans-7c6b78b6a8ded9ad253be9ef491e0284.

[3] Letter from Chairman Sean Cooksey, Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 3, 2024), https://radioink.com/wp-content/uploads/2024/06/Sean-Cooksey-Letter-To-Jessical-Rosenworcel.pdf.

[4] *See* Letter from John Thune, Mitch McConnell, Eric S. Schmitt, & Ted Cruz, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 6, 2024), https://www.thune.senate.gov/public/_cache/files/f6d3f136-5e2e-42d6-a979-6a943dd06162/16768AD893634C882D27CE35E1D5FAE5.06.06.24-letter-to-chairwoman-rosenworcel-re.-ai-and-political-ads.pdf.

[5] Ending FCC Meddling In Our Elections Act, 118th Cong. 2d (2024), https://www.lee.senate.gov/services/files/1326B89B-5136-47CD-A020-44EE088EAAC1.

time, for a federal agency to show restraint when it comes to the regulation of political speech and to ensure that it is operating within the statutorily defined bounds of its authority, now would be that time.

Yet today, the FCC's proposal throws prudence to the wind. In this Notice of Proposed Rulemaking, the agency *begins* a rulemaking to require disclosures for so-called "AI-generated content" in political advertisements on legacy television and radio, as well as some cable and satellite offerings. The FCC has stated its intent to complete this rulemaking before Election Day.

This is a recipe for chaos. Even if this rulemaking were completed with unprecedented haste, any new regulations would likely take effect after early voting already started. And the FCC can only muddy the waters. Suddenly, Americans will see disclosures for "AI-generated content" on some screens but not others, for some political ads but not others, with no context for why they see these disclosures or which part of the political advertisement contains AI. Far from promoting transparency, the FCC's proposed rules would mire voters in confusion, create a patchwork of inconsistent rules, and encourage monied, partisan interests to weaponize the law for electoral advantage.

I dissent.

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Let's start with the law. Congress gave the Federal Election Commission—not the FCC—the exclusive statutory authority to interpret, administer, and enforce the Federal Election Campaign Act.[6] That includes the authority to establish disclosures for political communications on television and radio.[7] The courts have recognized the FEC's unique authority to regulate political disclosures, even when other agencies attempt to circumvent or supplement its rules, concluding that "the FEC is the exclusive administrative arbiter of questions concerning the name identifications and disclaimers" for political communications.[8]

Here, the FEC is actively considering the very issues implicated by the FCC's proposal, and legislators in Congress are as well. Indeed, a DNC-backed petition has asked the FEC to impose new regulations on AI-generated political speech—a proposal that mirrors the FCC's proposal here—before voters hit the ballot boxes this fall.[9] As noted above, the FEC Chairman warned weeks ago that the publicized portions of the FCC's proposal would countermand the FEC's exclusive jurisdiction, "directly conflict with existing law and regulations, and sow chaos among political campaigns for the upcoming election."[10]

That is because Congress has not given the FCC the type of freewheeling authority over these issues that would be necessary to turn this plan into law. Under the Communications Act, the FCC's authority over candidate ads is limited to ensuring that broadcasters provide candidates equal access,

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[6] 52 U.S.C. § 30106(b). *See also FEC v. NRA Policial Victory Fund*, 513 U.S. 537, 539 (1994).

[7] *See* 52 U.S.C. § 30120.

[8] *Galliano v. United States Postal Service*, 836 F.2d 1362, 1368–70 (D.C. Cir. 1988) (holding that the U.S. Postal Service may not impose its own disclaimer requirements on mailers soliciting political contributions).

[9] *See* Petition of Public Citizen (July 13, 2023) (petitioning the Federal Elections Commission to impose regulations on AI-based political speech), https://sers.fec.gov/fosers/showpdf.htm?docid=423502; Comments of Democratic National Committee, REG 2023-02 (Oct. 16, 2023) (endorsing Public Citizen's petition to regulate AI-based political speech), https://sers.fec.gov/fosers/showpdf.htm?docid=423822.

[10] Letter from Chairman Sean Cooksey, Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 3, 2024), https://radioink.com/wp-content/uploads/2024/06/Sean-Cooksey-Letter-To-Jessical-Rosenworcel.pdf.

document those ads in the stations' public file, and disclose the ads' sponsors.[11] And even where the FCC has authority (as in the case of sponsorship identification), it cannot force broadcasters to undertake a roving investigation into the truth or falsity of the disclosure.[12] Likewise, the Bipartisan Campaign Reform Act merely requires the FCC to compile information on electioneering communications that the FEC may regulate.[13]

While the FCC cites to these laws as evidence that it can act here, the opposite is true. By enacting these narrow laws and only authorizing the FCC to act in specific circumstances, Congress limited the FCC's role over political ads to targeted matters. And these narrow laws, in turn, foreclose the FCC's attempt to expand its power by pointing to its generic statutory authority to regulate radio communications.[14] In short, none of the laws cited in the FCC's proposal vest this agency with the sweeping authority it claims over political speech, and the FCC will receive no deference for its novel interpretation of the Communications Act following the Supreme Court's decision in *Loper Bright v. Raimondo*.

And this should not go overlooked: in grasping for authority, the FCC breathes new life into sweeping, decades-old agency precedents that are far from limited to disclosure requirements. In particular, the agency's decision reaches back to a policy statement from the 1960s that announced the FCC's expectation for broadcasters to "take all reasonable measures to eliminate any false, misleading, or deceptive matter" on penalty of license revocation.[15] In other words, the authority the FCC claims today is one that, by its own terms, would empower the FCC to operate as the nation's speech police.

At the same time, the FCC does not explain how its proposal to impose liability on broadcasters for airing covered political ads without a disclosure can be squared with broadcasters' federal obligation to run them. Under the Communications Act, broadcasters must provide candidates "equal opportunities" for airtime and may not exercise the "power of censorship" over this political content.[16] That provision has not only been read by courts as immunizing broadcasters from liability for candidates' speech (including speech that allegedly defames other candidates),[17] but it prevents the FCC from allowing broadcasters to refuse running politically disfavored speech.[18] As the FCC recognized 40 years ago: "A station may not refuse to broadcast a candidate's program on the ground[s] that it contains libelous remarks, even though no opposing candidates have made broadcasts."[19] If today's FCC intends for stations to deny candidates access for failure to reveal the scope and scale of AI-generated content, it is not clear how the Communications Act would permit it.

Nor does the FCC's decision clear basic APA hurdles. As the Supreme Court has made clear, an administrative rule is arbitrary and capricious when the agency has "entirely failed to consider an

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[11] 47 U.S.C. §§ 315, 317.

[12] *NAB v. FCC*, 39 F.4th 817 (D.C. Cir. 2022).

[13] Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, title II, § 201(b), 116 Stat. 90 (2002).

[14] 47 U.S.C. § 303(r).

[15] NPRM at para. 3 & n.6 (May 22, 2024) (citing *Programming Inquiry*, Report and Statement of Policy, 44 FCC 2303, 2313 (1960)).

[16] 47 U.S.C. § 315.

[17] *KENS-TV, Inc. v. Farias*, No. 04-07-00170-CV, 2007 WL 2253502 (Tex. App. Aug. 8, 2007).

[18] *Becker v. FCC*, 95 F.3d 75 (D.C. Cir. 1996).

[19] Federal Communications Commission, *The Law of Political Broadcasting and Cablecasting: A Political Primer*, 100 FCC.2d 1476, 1984 WL 251279, at *37 (1984 ed.).

important aspect of the problem."[20] The FCC has done precisely that here. Specifically, the Vice Chair of the FEC wrote a letter to the FCC, indicating that the FCC and FEC should move forward in a complementary way.[21] Yet there is no indication in the proposal today that the FCC has sought comment in this document on how the FCC can move forward in light of the FEC's views and in a manner that complements that agency's efforts. Failure to create APA notice to consider this aspect of AI regulation is a problem for the FCC.

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Undaunted, the FCC insists that its proposal merely seeks comment on transparency and disclosure obligations. That claim is not credible—in fact, it is incredible.

For starters, the FCC is wading into an area rife with politicization. It is not difficult to see how partisan interests might weaponize the FCC's rules during an election season. For example, the NPRM asks about legally obligating stations to take corrective action when they are informed by a "credible third party" that a political ad has AI-generated content. What is a "credible third party," you might ask? Is it the person being depicted? Is it a self-appointed "expert" on "misinformation" or "disinformation"? The NPRM does not say. I sure hope it is not the Orwellian-named NewsGuard[22] or Global Alliance for Responsible Media.[23]

But I will go out on a limb and predict that these "credible third parties," whoever they are, will not be disinterested observers without skin in the game. They will be about as objective and non-partisan as the self-appointed "fact checkers" that have been working to safeguard political narratives.

The FCC's proposal will invite highly motivated politicos to file a flood of complaints alleging "AI-generated content," not for the sake of the truth, but as a cudgel to chill opponents' speech. The FCC should not be offering itself up as a political football just as the big game is kicking off.

Finally, as discussed above, the FCC's proposal rests on the sweeping—and unprecedented—theory that the FCC is justified in regulating on-air content whenever it believes people might be misled. It is a theory with no limiting principle. Why stop at AI? Why stop at political ads? Why stop at disclosures? Indeed, one might wonder what would prevent the FCC from using the theory advanced by the agency in this NPRM from policing all manners of broadcast content. Today's decision, for its part, is curiously silent on this issue.

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There is no doubt that the increase in AI-generated political content presents complex questions, and there is bipartisan concern about the potential for misuse. That is precisely why the FEC, and others are actively looking at these issues. By contrast, the FCC can only muddy the waters and thumb the

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[20] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[21] *See* Letter from Ellen L. Weintraub, Vice Chair Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 6, 2024), https://www.fec.gov/resources/cms-content/documents/Weintraub-Letter-to-Chairwoman-Rosenworcel-June-6-2024.pdf.

[22] *See generally* Press Release, *Comer Probes NewsGuard's Impact on Protected First Amendment Speech* (June 13, 2024), https://oversight.house.gov/release/comer-probes-newsguards-impact-on-protected-first-amendment-speech-government-contracts%EF%BF%BC/.

[23] *See* Brent Scher, *GARM Exposed: House Judiciary Report Says Ad Coalition Likely Broke Law To Silence Conservatives*, House Committee on the Judiciary (July 10, 2024), https://judiciary.house.gov/media/in-the-news/garm-exposed-house-judiciary-report-says-ad-coalition-likely-broke-law-silence.

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scales by interjecting at the last moment before an election.

Is the government really worried that voters will find these political ads misleading in the absence of a regulator's guiding hand? Or is the government worried that voters might find these ads effective? Imagine going after President Lyndon Johnson for his 1964 "Daisy Girl" ad because voters might think that the child actually died in a nuclear strike.

The more likely scenario is that FCC-mandated disclosures will themselves prove misleading. Consider a recent example. This June, the New York Times criticized videos depicting President Biden's physical frailties as "cheap fakes" that "misled" the public.[24] Fast forward a few weeks, after the first presidential debate took place, and now that same outlet claims that the same video provides compelling evidence of President Biden's physical and cognitive decline.[25] To be sure, this example was not alleged to involve AI-generated content, but the principle is all the same.

Indeed, the agency's plan fails to identify an administrable path forward. It is just straight into the thicket. What does it mean to have "AI-generated content" in a political ad? Is it everything? Is it nothing? The NPRM proposes to cover any "image, audio, or video that has been generated using computational technology or other machine-based system that depicts an individual's appearance, speech, or conduct, or an event, circumstance, or situation."[26]

That standard is no standard at all—and, in fact, it highlights the FCC's utter lack of institutional expertise to deal with these issues, especially in this rushed manner. It would be difficult, in this day and age, to imagine an advertisement (political or not) that does *not* use a "computational technology" to "depict" an "event, circumstance, or situation." Partisan interests will undoubtedly complain that any ad contains "AI-generated content"—whether CGI, image cropping, or tools to amplify the quality of a person's voice. And lawyers will undoubtedly end up telling their clients to just go ahead and slap a prophylactic, government-mandated disclosure on all political ads going forward just to avoid liability. Whether deepfake, cheap fake, or none of the above, viewers will see these disclosures and have no more insight about what parts of the ad uses AI and which parts do not.

The FCC's involvement can only amplify that confusion. The FCC is legally powerless to adopt uniform rules in a technologically neutral fashion. Its legal authority claimed here extends only to legacy media—broadcast, cable, and satellite television—but not over-the-top content, like online streaming video and social media, where millions of Americans see political ads. As a result, AI-generated political ads that run on traditional TV and radio will come with a government-mandated disclaimer but the exact same ad that runs on a streaming service or social media site would not.

I don't see how this type of conflicting patchwork could end well. Consumers don't think about the content they consume through the lens of regulatory silos. They just view content on screens. Will they conclude that the absence of a government warning on an online ad means that the content must be real? And applying new regulations on the broadcasters the FCC regulates but not on their largely unregulated online competitors only exacerbates regulatory asymmetries.

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[24] Katie Glueck *et al.*, *How Misleading Videos Are Trailing Biden As He Battles Age Doubts*, New York Times (June 21, 2024).

[25] Peter Baker *et al.*, *Biden's Lapses Are Said to Be Increasingly Common and Worrisome*, New York Times (July 2, 2024).

[26] NPRM at para. 12.

And that's not the end of it. Applying new regulations to candidate ads and issue ads but not to other forms of political speech just means that the government will be favoring one set of speakers over another. All of this confirms that the FCC is not the right entity to consider these issues.

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The type of government intervention envisioned by this plan would only do more harm than good. I dissent.