

FEC Holds Two-Day Hearing on Internet Disclaimers; Rulemaking Faces Uncertain Future

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As previously reported in *Election Law News*, late last month the Federal Election Commission (FEC) convened its first Internet-focused rulemaking hearing in over a decade, with Commissioners receiving comments on two competing proposals for altering the disclaimer rules for Internet communications. But after two days of public discussion, it is uncertain whether the Commission is any closer to reaching a consensus path forward or when any new rules will be implemented.

By way of background, the Commission announced in mid-March that it intended to open a rulemaking on the disclaimer requirements applicable to many video, audio, graphic, and text-based political advertisements disseminated through the Internet, cell phones, and other digital devices. The rulemaking reportedly generated close to 160,000 written comments from citizens, interest groups, and political actors, which argued both for and against the proposals pushed by Democratic Vice Chair Ellen Weintraub and the FEC's Republicans, respectively.

At a public hearing on June 27-28, a diverse array of organizations – including the Institute for Free Speech, Common Cause, the Brennan Center for Justice, and the Republican National Committee – engaged in a dialogue with Commissioners about the various proposals and their thoughts on the regulation of Internet communications generally. While Commissioners generally agreed on the importance of creating an “objective” standard that made compliance straightforward, there was no unanimity among the Commissioners on the best way to achieve that result. And

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particularly given that the Commission is currently operating with the bare minimum number of commissioners necessary to conduct business, unanimity will be necessary to bridge the gap between the competing Republican and Democratic proposals, as well as other ideas aired at the hearing.

As to timing, Commissioner Weintraub stressed the importance of the voters having “information to evaluate the ads that they are seeing” in advance of the 2018 elections, particularly given allegations of unlawful online electioneering by foreign powers in 2016. But the FEC’s current Chair, Republican Caroline Hunter, reportedly expressed some skepticism with attempts to change the rules this year, underscoring that it would be unfair to change the rules months or even just a few weeks before the November election.

At bottom, while many observers viewed the discussion at the hearing as productive, it is clear that much more work will have to be done behind the scenes before any new regulations will emerge.