



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CONCURRING STATEMENT OF COMMISSIONER SEAN J. COOKSEY ON THE FINAL RULE FOR INTERNET COMMUNICATION DISCLAIMERS

I supported the Commission’s final rule for internet communication disclaimers. While I opposed the Commission’s initial draft for this rule—which would have dramatically expanded our agency’s regulation of political speech online—subsequent revisions have substantially narrowed its scope. By limiting itself only to traditional paid advertising placed on the internet and providing sufficient flexibility for different kinds of ads, the revised regulation will not unduly burden freedom of speech. I believe the revised regulation also complies with the important procedural safeguards under the Administrative Procedure Act. Because of those significant improvements, I voted in favor of the revised final rule.

First, I am satisfied that this rulemaking meets the notice-and-comment requirements of the Administrative Procedure Act.¹ Although I maintain the Commission would benefit from additional public review and comments, this revised final rule removes novel regulatory expansions and represents a logical outgrowth of the proposals put forth in the Commission’s 2018 Notice of Proposed Rulemaking. I believe interested parties have therefore had adequate notice and opportunity to offer feedback and criticism on the proposed amendments to the Commission’s regulations, and a further comment period is not legally mandatory.²


Second, I believe that this revised regulation is tailored to address the distinct and often complex features of online communications without unnecessarily burdening political speech and association on the internet. The final rule permits small and unconventional online ads for which a full disclaimer is unreasonably cumbersome to instead include an “adapted disclaimer” that maintains the integrity of the advertisement. Similarly, Commission regulations will maintain exemptions from disclaimer requirements for small-item advertisements and communications for which disclaimers are impracticable, such as with exceptionally short video clips.³ Even with the revised regulation’s limited purview, these safeguards are critical to maintaining regulatory flexibility for political campaigning online.

¹ See 5 U.S.C. § 553; 52 U.S.C. § 30107(a)(8).

² “A rule is deemed a logical outgrowth if interested parties ‘should have anticipated’ that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.” *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 952 (D.C.Cir.2004) (quoting *City of Waukesha v. EPA*, 320 F.3d 228, 245 (D.C.Cir.2003)).

³ See 11 C.F.R. § 110.11(f).

For more than two decades, the Commission has taken a light touch to regulating political activity online, in recognition of the fact that “the Internet is by definition a bastion of free political speech, where any individual has access to almost limitless political expression with minimal cost.”⁴ I believe this revised regulation for internet communication disclaimers is in keeping with that approach and will preserve the internet’s special capacity to foster the exchange of political speech, ideas, and values. I will continue to stand up for Americans’ First Amendment freedoms across all platforms for as long as I am on the Commission.



Sean J. Cooksey
Commissioner

December 1, 2022

Date

⁴ Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 Fed. Reg. 49,063, 49,072 (July 29, 2002). *See also, e.g.*, 11 C.F.R. § 100.155(a) (exempting an “individual’s uncompensated personal services related to []Internet activities” and an “individual’s use of equipment or services for uncompensated Internet activities” from the meaning of “expenditure”); Explanation and Justification for the Regulations on Internet Communications, 71 Fed. Reg. 18,589, 18,589 (Apr. 12, 2006) (describing the internet as “a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach,” due to its “accessibility, low cost, and interactive features”).