



IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP



FEC Authorizes Federal Candidates and Officeholders to Solicit Unlimited Funds for State Ballot Initiative Committees

At the FEC's May 1 open meeting, the Commission voted 4-1 to approve an **advisory opinion** requested by Nevadans for Reproductive Freedom ("NFRF") that authorizes federal candidates and officeholders to solicit unlimited funds, at any time, from individuals, corporations, labor unions, and other organizations for state ballot initiative committees. More details are available **here**. The FEC's decision was covered by the **New York Times** and **New York Post**.

This advisory opinion was the latest in a series of requests (see **AO 2022-20**, **AO 2023-09**, and **AO 2024-01**) from Democratic attorneys seeking to loosen FEC regulations.

FEC Considers Limits to Public Disclosure of Donor Information

On May 16, the FEC considered a new **directive** proposed by Republican Commissioner Allen Dickerson to establish a formal process for considering requests to redact or exempt public donor disclosures. Under longstanding Supreme Court precedents, a donor to a political organization is entitled to a public disclosure exemption if the donor, or class of donors, can demonstrate a "reasonable probability" that disclosure will subject them to threats, reprisals, or harassment. The FEC has considered these exemptions on an ad hoc basis for decades, including through advisory opinions and private requests. As Commissioner Dickerson **explained**, "we are already doing this. The Commission has excused the disclosure of all

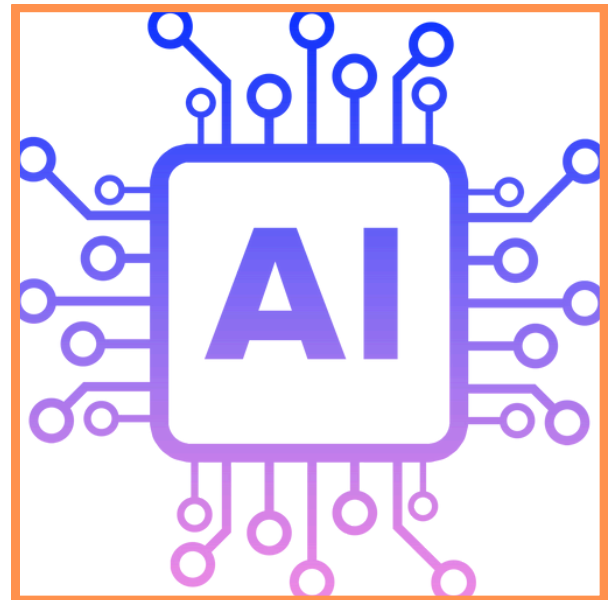


contributors to a minor political party. It has redacted the personal addresses of contributors to a corporate PAC. Even in my comparatively short time here, we have on several occasions, and sometimes unanimously, permitted contributors to redact or replace their home addresses in official FEC reports." The proposal was widely misrepresented as an effort to "**weaken**," "**undermine**," or "**eviscerate**" disclosure requirements.

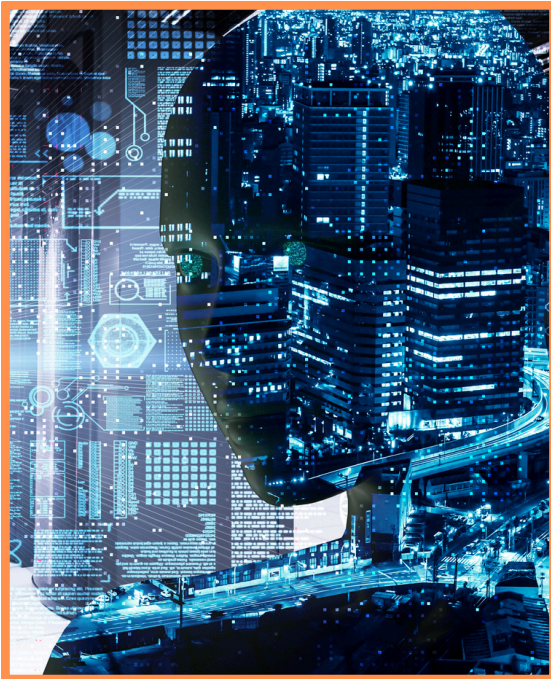
Commissioner Dickerson's proposed directive failed to garner majority support and was rejected by a 3-3 party-line vote. However, the Commissioners voted 5-0 to begin a rulemaking to formalize and make public the agency's existing exemption request process. Separately, Democratic Commissioner Dara Lindenbaum issued a **statement** calling on Congress to amend federal law to eliminate the public reporting of contributor address information.

FCC Chair Proposes New Political Advertising Disclaimers for AI Content

On May 22, FCC Chair Jessica Rosenworcel issued a **press release** announcing she had circulated a proposal to determine "whether the agency should require disclosure of AI-generated content in political ads on radio and TV." Chair Rosenworcel's proposal includes new disclaimers in political and issue advertising on television and radio, as well as additional disclosures in broadcast stations' political file submissions. Chair Rosenworcel claims the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold) "provides the [FCC] with authority regarding political advertising." FCC Commissioner Brendan Carr released a **statement** the following day opposing Chair Rosenworcel's proposal as a partisan-inspired "effort to control political speech" that exceeds the FCC's authority. In addition to pending Congressional action, the FEC is also considering new rules to address this issue. More on this issue from Holtzman Vogel attorneys is available **here**.



U.S. Senate Rules Committee Approves Three AI-Related Election Bills



The U.S. Senate Committee on Rules approved three AI-related election bills on May 15, sending the legislation to the full Senate for further consideration.

The **AI Transparency in Elections Act** was introduced by Senators Lisa Murkowski (R-AK) and Amy Klobuchar (D-MN) in March and would require disclaimers on political advertising that uses artificial intelligence (AI) to generate or alter images, audio, or video content. The legislation also includes special enforcement provisions for alleged violations, including an expedited FEC review period (45 days rather than the standard 120 days), pre-determined penalty amounts, and a provision that treats the failure to respond to notice of a complaint as an “admission of the factual allegations of the complaint.”

The **Protect Elections from Deceptive AI Act** was introduced by Senators Klobuchar, Hawley, Coons, and Collins in September 2023, and would prohibit any person or entity from distributing any “materially deceptive AI-generated audio or visual media in carrying out a Federal election activity” or of a candidate for federal office for the purpose of influencing an election or soliciting funds. The legislation provides candidates with the right to sue persons who distribute “materially deceptive” AI content for general or special damages. Language included in the original bill providing that the distribution of “materially deceptive” AI content constitutes defamation per se was removed from the version of the legislation advanced by the Rules Committee.

Finally, the **Preparing Election Administrators for AI Act**, introduced by Senators Klobuchar and Collins, would require the Election Assistance Commission to develop and issue voluntary guidelines for the administration of elections that address the use and risks of artificial intelligence technologies.

Senator Klobuchar, the Chair of the Senate Committee on Rules, issued **this statement** on the three bills.

U.S. House Passes Equal Representation Act to Exclude Noncitizens from Congressional Reapportionment; Measure Defeated in Senate Last March

On May 8, the U.S. House passed the **Equal Representation Act (H.R. 7109)**, which would include a citizenship question on the next census and exclude noncitizens from the reapportionment of U.S. House Representatives. (A state's number of Electoral College votes is also determined by its House apportionment.) The Trump Administration attempted to add a citizenship question to the 2020 census questionnaire but was blocked by the Supreme Court.

In March, **Senator Hagerty offered similar legislation** as an amendment to an appropriations bill, but the effort was blocked by Senate Democrats. As Senator Hagerty explained, "in a state like California, millions of illegal alien residents result in California receiving several more congressional seats and Electoral College votes than the state's population of citizens would justify."

Committee on House Administration Advances H.R. 8399, the Preventing Foreign Interference in Elections Act

The **Preventing Foreign Interference in Elections Act** (HR 8399) was **introduced** in the House of Representatives on May 14 by Representative Bryan Steil (WI-01), Chairman of the House Administration Committee, and Representative Stephanie Bice (OK-05). The House Committee on Administration held a **public hearing** on the legislation on May 16. Following a **full committee mark-up** of the bill on May 23, the legislation was approved and sent to the full House for further consideration



The bill would make it unlawful for a foreign national to either directly or indirectly make a donation for the purpose of funding voter registration activity, ballot collection efforts, voter identification and get-out-the-vote activities, any public communication that refers to a clearly identified Federal, State, or local political party, or federal, state, or local election administration. The legislation seeks to remove an avenue for foreign funding of election related activities that, under current law, may flow through certain Section 501(c) nonprofit organizations.

Reps. Comer and Porter Introduce Presidential Ethics Reform Act



On May 23, House Oversight Committee Chairman James Comer and Representative Katie Porter introduced the **Presidential Ethics Reform Act** to require additional financial and conflict of interest disclosures from future presidents and vice presidents.

Under the proposal, the President and Vice President, along with certain family members, would be required to disclose certain gifts, payments, and loans received during the two years before and after taking office. The President and Vice President would be required to release their tax returns for the two years before taking office, while serving, and for two years after leaving office. The President and Vice President also would be required to disclose when family members accompany them on official travel along with a description of the official purpose for the family member's travel, a listing of related events and meetings on the trip which the relative attended, and whether the relative's travel also had a commercial purpose.

Chairman Comer indicated that the legislation was intended to "ensure that moving forward American presidents, vice presidents, and their family members cannot profit from their proximity to power."

IN THE STATES

The State of AI Regulation in 2024

Holtzman Vogel attorneys authored **this article in Campaigns & Elections**. Over forty states are currently considering legislation that seeks to regulate AI, and eleven states have already enacted laws regulating the use of AI.



Georgia Governor Signs Election Integrity Bill, Vetoes "Baby FARA" Legislation

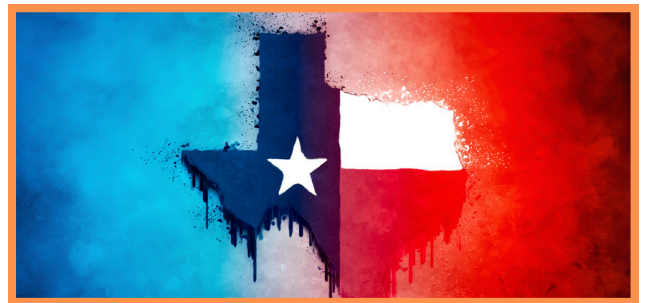


Georgia Governor Brian Kemp signed SB 189, which we **detailed last month**. The new law makes several changes to current law that are intended to enhance election security and integrity, including clarifying procedures for voter eligibility challenges and absentee ballot processing. Litigation is expected.

Separately, Governor Kemp vetoed SB 368, the so-called "baby FARA" legislation. According to Governor Kemp's **veto message**, "Senate Bill 368 would prohibit foreign nationals from making political contributions, which is already prohibited by federal law, and impose additional state-level registration requirements on agents of foreign principals, some of which were unintended by the bill's sponsor." The veto was apparently requested by the bill's sponsor. Holtzman Vogel attorneys **explained the legislation in April**.

Texas Court Orders New Judicial Election After Finding Number of Invalid Votes Exceeded Margin of Victory

Harris County was ordered to hold a new election for the 180th District Court after a court found 1,430 invalid votes had been cast in a judicial race separated by only 449 votes out of over one million votes cast. Following the November 8, 2022 election, the Democratic candidate, Dasean Jones, led the



Republican candidate, Tami Pierce, 534,460 to 534,011. Pierce filed an election contest which was ultimately upheld in the court's **May 15 decision**. The court found 983 invalid votes cast by persons living outside Harris County and another 445 invalid votes cast by persons who did not show a voter ID or provide a substitute document. In light of the closeness of the election and the number of invalid votes cast, the court concluded that "the true outcome cannot be determined" as it was "not realistic or feasible to determine which candidate received [the 1,430 illegal] votes."

A new election date has not been set.

HV Making the Rounds

- Steve Roberts and Nicole Kelly published **"Democrats Wanted an Early Debate So They'd Have Plenty of Time to Dump Biden,"** *The Federalist*.
- Andy Gould appeared on Fox News to discuss the border crisis.
- Steve Roberts and Oliver Roberts byline a weekly article for *The Federalist*: **"Last Week in Lawfare Land: What to Know About Each Legal Crusade Against Trump."**
- Jason Torchinsky and Oliver Roberts recorded a webinar **"Best (Legal) Practices for Politicians Using Social Media."**
- Mike Bayes, Jessica Furst Johnson, Matt Petersen and Andrew Pardue published **"FEC Authorizes Federal Candidates and Officeholders to Solicit Unlimited Funds for State Ballot Initiative Committees."**
- Jan Baran interviewed **Kannon Shanmugan** on his *Early Returns* podcast.
- Steve Roberts, Andrew Pardue and Nicole Kelly bylined **"The State of AI Regulation in 2024,"** *Campaigns and Elections*.
- Steve Roberts appeared in the article **"Kemp vetoes bill adding state-level requirements for foreign agents,"** *The Center Square*
- Steve Roberts, Tim Kronquist, Nicole Kelly and Merrill Weber bylined **"Raffensperger-Backed Legislation Likely to Impact Foreign Georgia Businesses Seeking to Influence Policy, if Signed into Law,"** *Daily Report*.
- Jason Torchinsky spoke on the panel: "Call Your Lawyer or Call Your Consultant? Wading Through Data Privacy and Disclosure Laws State by State in '24" at the *Campaigns & Elections Digital Campaign Summit*.
- Our Arizona office hosted the RNLA CLE on "Challenges to the Elections Procedures Manual."

This update is for informational purposes only and should not be considered legal advice. Entities should confer with competent legal counsel concerning the specifics of their situation before taking any action.

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