



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

**STATEMENT OF COMMISSIONERS
ELLEN L. WEINTRAUB AND SHANA M. BROUSSARD
REGARDING THE COMMISSION’S ADOPTION OF FINAL RULES IN
REG 2013-01 (TECHNOLOGICAL MODERNIZATION)**

Today, the Commission adopted final rules on technological modernization that update the Commission’s filing, service of process, banking, and recordkeeping requirements to account for modern electronic processes. Importantly, the new rules provide the Commission with the needed flexibility to accept electronic documents and electronic signatures and explicitly permit committees to maintain records in electronic form. The new rules also remove obsolete technological references and account for how committees bank and receive contributions via text message and electronic payment platforms in today’s technological age. In addition, these rules make clear that the term “general public political advertising” includes payments to promote or boost a communication’s circulation on social media or other advertising platforms.

Because of these significant and long overdue improvements, we voted in favor of these new rules. However, the Commission missed a golden opportunity to address the ever-increasing phenomenon of social media influencers who are paid to create or share political content. Unfortunately, while the updated definitions include payments to a platform to boost an ad’s prominence, the new rules do not include behind-the-scenes payments to social media influencers to accomplish the same goal.¹

Paying social media influencers to spread political messaging is an increasingly significant form of paid political advertising. In 2020 and 2021, President Trump’s campaign committee and Make American Great Again PAC disbursed nearly \$1.1 million to Legendary Campaigns LLC - a social media influencer marketing firm.² Michael Bloomberg’s 2020 campaign teamed up with a social media influencer collective, Meme2020, with an audience of more than 60 million followers to pay for memes promoting his candidacy.³ A large super PAC, Priorities USA, recently announced a plan to spend \$75 million on digital communications, infrastructure and research leading up to the 2024 Presidential election including “developing relationships with influencers

¹ See Technological Modernization, Agenda Document No. 23-29-A at 56 (adopted Dec. 14, 2023).

² See Filtered Disbursements, FEC.GOV, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00580100&recipient_name=legendary+campaigns (last visited Nov. 21, 2023) (showing disbursements from Make America Great Again PAC f/k/a Donald J. Trump for President to Legendary Communications LLC); see also Lachlan Markay, *Trump Campaign Enlisted Influencer Marketing Firm*, AXIOS (Feb. 18, 2021), <https://www.axios.com/2021/02/18/trump-campaign-social-media-influencer-firm>.

³ Taylor Lorenz, *Michael Bloomberg’s Campaign Suddenly Drops Memes Everywhere*, THE N.Y. TIMES, (Feb. 13, 2020), <https://www.nytimes.com/2020/02/13/style/michael-bloomberg-memes-jerry-media.html>.

and other ‘content creators’ to spread campaign messages on platforms like TikTok.”⁴ It is not the proliferation of these digital communications, but rather the lack of transparency that is the problem. Without disclaimers, the public may be unaware they are consuming paid political communications. No one is seeking to impede influencers from communicating with their fans or to prevent political actors from capitalizing on those channels. But the public is entitled to know when those influencers are being paid to spread a political message. As the Supreme Court has held, “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”⁵

When the Commission initiated this rulemaking in 2013, *Forbes* published a list of the top ten social media influencers of the year. At that time, each influencer on the list had an audience of 2,000 to 3,000 people.⁶ The number one influencer on *Forbes* 2023 list has 312 million followers and \$82 million in revenue.⁷ This is big business. According to the *Washington Post*, “The creator economy, as it’s known, is now a global industry valued at \$250 billion, with tens of millions of workers, hundreds of millions of customers and its own trade association and work-credentialing programs.”⁸

Some may suggest that a paid social media influencer’s post including express advocacy is not a “public communication” simply because followers have sought out such communications.⁹ We disagree. First, the common sense meaning of the words “public communication” plainly includes communications that are distributed to audiences that can number in the millions. Secondly, unlike the blogs discussed in the 2006 internet communications rulemaking,¹⁰ each platform has its own algorithms that are designed to show users new content that they do not already follow. The Commission’s 2006 rationale for exempting blogs because “a website’s information is seen only by those who actively take the steps necessary to find, visit, and view the website” is inapplicable today.¹¹

⁴ Rebecca David O’Brien, *Liberal Super PAC Is Turning Its Focus Entirely Digital*, THE N.Y. TIMES (Nov. 14, 2023), <https://www.nytimes.com/2023/11/14/us/politics/priorities-usa-super-pac-digital-ads.html>.

⁵ *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

⁶ Haydn Shaughnessy, *Who Are the Top 50 Social Media Power Influencers, 2013?*, FORBES (Apr. 17, 2013), <https://www.forbes.com/sites/haydnshaughnessy/2013/04/17/who-are-the-top-50-social-media-power-influencers-2013/?sh=1d1826771e03>.

⁷ Steven Bertoni, *Top Creators 2023*, FORBES, <https://www.forbes.com/sites/stevenbertoni/2023/09/26/top-creators-2023/?sh=1151e2f24c0c> (last visited Dec. 12, 2023).

⁸ Drew Harwell and Taylor Lorenz, *Millions Works as Content Creators. In Official Records They Barely Exist*, THE WASHINGTON POST (Oct. 26, 2023), <https://www.washingtonpost.com/technology/2023/10/26/creator-economy-influencers-youtubers-social-media>.

⁹ See Technological Modernization, Agenda Document No. 23-29-A at 56 (adopted Dec. 14, 2023).

¹⁰ See *id.* (citing Internet Communications, 71 FR at 18594-95).

¹¹ Internet Communications, 71 FR at 18594-95; see also Statement of Commissioners Shana M. Broussard and Ellen L. Weintraub Regarding Advisory Opinion 2022-20 (Maggie for NH) (Nov. 4, 2022), https://www.fec.gov/files/legal/aos/2022-20/202220S_1.pdf.

In 2006, the Commission considered whether bloggers should have to disclose payments from political committees. The Commission then opted not to impose such requirements based on concerns that bloggers were not accustomed to having disclosure obligations and that in any event, the public would be informed of the payments when political committees disclosed their spending.¹² Neither of these factors remains true today. In the years since 2006, it has become clear that committees are using intermediary media vendors to pay influencers and only disclosing the payments to those vendors.¹³ Therefore, no one can see who ultimately receives the money.

Moreover, the Commission's decision to exempt social media influencers will now be the outlier, not the norm. The Federal Trade Commission requires paid social media influencers to publish a disclaimer when they receive a monetary payment from the seller of the product they endorse.¹⁴ Thus influencers have a legal obligation to tell their audience if they are being paid to endorse a brand of toothpaste. They should have a similar obligation to inform their audience when they try to sell the American public on a candidate. On September 1, 2023, a California bill was signed into law requiring paid social media influencers to include a disclaimer.¹⁵ Influencers are now familiar with disclaimer regulations because they are obliged to disclose paid endorsements under other regulatory frameworks. And as noted above, payments to influencers have become big business. Concerns about unduly burdening unsophisticated social media influencers with disclaimer requirements are no longer relevant in light of these changes to the factual and legal landscape.

We live in a time where collectively as a society we are trying to grasp the veracity of the information we consume. Disinformation and misinformation are rampant on social media platforms and advances in artificial intelligence are compounding the problem. Malicious bad actors and innocent well-intentioned sellers of brands participate in the same social media ecosystem and the consumer is left questioning whether what they see is true or whether it has been manipulated. Requiring people to disclose the money behind their political communications is at the heart of the FEC's mission. Such disclosures have been upheld repeatedly by the Supreme Court because the public has the right to know who is funding political messages and that they are being funded.¹⁶ Disclaimers would enable consumers to fully understand and analyze the context of an influencer's paid political content.

¹² *Id.*, 71 FR at 18602.

¹³ *See supra* note 2.


¹⁴ *See* 11 C.F.R. § 255.

¹⁵ California Senate Bill 678, (Sept. 1, 2023), https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB678&version=20230SB67896CHP.

¹⁶ *McConnell v. FEC*, 540 U.S. 93, 230–31 (2003); *Citizens United v. FEC*, 558 U.S. 310, 367 (2010).


We regret that the Commission did not reach consensus today to provide the public with this transparency. We hope the Commission will reconsider this choice in the future.

December 14, 2023
Date



Ellen L. Weintraub
Commissioner

December 14, 2023
Date



Shana M. Broussard
Commissioner