



# IN COMPLIANCE

HOLTZMAN VOGEL'S MONTHLY ROUND-UP



## EMERGING AI TECHNOLOGY CONTINUES TO SPAWN NEW REGULATIONS

### *FCC Declares Telephone Calls Using AI Voice Are Subject to Robocall Regulations*

The FCC issued a **Declaratory Ruling** on February 8 to ensure that telephone calls that use artificial intelligence (AI) to generate or mimic human voices are treated as “robocalls” for purposes of the Telephone Consumer Protection Act (TCPA). The TCPA’s robocall rules generally prohibit placing commercial (telemarketing) robocalls to landlines, and all robocalls to wireless numbers, unless the caller has prior express consent or another exception applies.

Under the TCPA, robocalls are described as calls made using an “automatic telephone dialing system or an artificial or prerecorded voice.” The FCC’s decision makes clear that an AI-generated voice is an “artificial” voice under the TCPA, and subject to robocall regulation.

The FCC issued a Notice of Inquiry soliciting comment on the use of AI technologies in telephone calls on November 16, 2023. In late January, just before the New Hampshire presidential primary election, a robocall featuring a fake, AI-generated message from “Joe Biden” telling voters to skip the upcoming primary election **made headlines**. The call was **later traced** to a consultant working for Democratic Presidential candidate Dean Phillips who “used software from the artificial intelligence voice cloning company Eleven Labs to create a deepfake voice of Biden.”



The FCC's Declaratory Ruling was adopted less than two weeks later after the fake Biden call was distributed. While the FCC's action was widely reported as implementing a "ban" on AI-voice robocalls, these calls may still be placed when prior express consent is given. In addition, noncommercial calls – including political calls – are not subject to the FCC's landline prohibition. Up to three noncommercial calls **may be placed** to a landline telephone number during a 30-day period without prior consent.

### ***Wisconsin Legislators Move to Regulate AI Content in Political Advertising***

In mid-February, Wisconsin lawmakers approved **Assembly Bill 664** in an attempt to crack down on the use of AI in political advertising. Under the bill, advertisements that contain "synthetic media" – defined as audio or video content substantially produced by AI – must contain disclaimers alerting the public that the advertisement "contains content generated by AI."

If enacted into law, the disclaimer requirement would apply to any audio or video communication: (1) paid for by a campaign committee, party committee, political action or independent expenditure committee, or recall or referendum committee, (2) that contains synthetic media, and (3) includes express or issue advocacy, or supports or opposes a referendum.



For audio communications – such as radio advertisements – the advertisement would have to include the AI disclaimer at both the beginning and the end of the ad. For video communications – such as television advertisements – the advertisement would be required to include the AI disclaimer for the duration of each portion of the video that contains AI. The disclaimers for video ads would also need to indicate whether the AI was used in the advertisement's audio content, video content, or both.

The Assembly's bill next moves to the Senate for further consideration.

## ***Technology Companies Sign “A Tech Accord to Combat Deceptive Use of AI in 2024 Elections”***

On February 16, 2024, twenty tech companies **announced an agreement** to combat the use of artificial intelligence (AI) in political advertisements shared on their platforms. The pact does not commit companies to banning or removing AI-generated political content, but only to make efforts to identify and label such content to enhance transparency. Participating companies include Adobe, Amazon, Google, IBM, Meta, Microsoft, OpenAI, TikTok, and X.



Notably, each participating company will develop unique content policies to regulate the use of AI in political advertisements. You should always consult with counsel before disseminating an advertisement that incorporates AI to make sure that the ad is compliant with a given platform’s content moderation policy and with state and federal law.

## **FEC UPDATE**

### ***FEC Seeks Comment In Party Account Rulemaking***

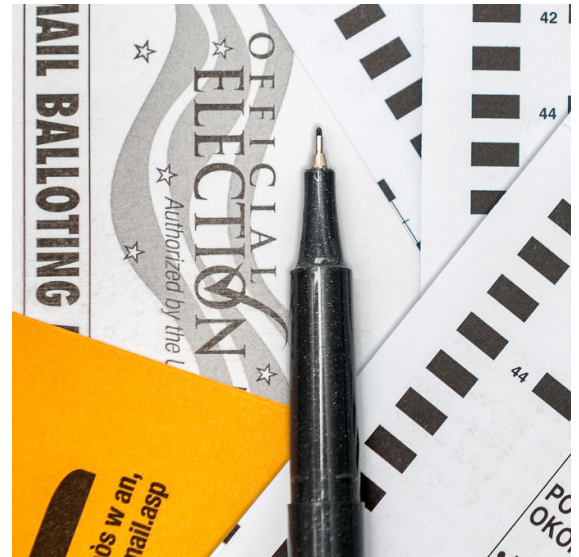
The FEC recently published a **Notice of Inquiry for Segregated Party Accounts** (the “Notice”), inviting public comment to assist in its consideration of a potential rulemaking regarding national party committees’ legal proceedings, building, and convention funds. Authorized by the Consolidated and Further Continuing Appropriations Act of 2015 (often referred to as the “Cromnibus”), each of these accounts may accept contributions of up to three times to maximum applicable limit for 1) election recounts or contests and other legal proceedings; 2) party headquarters buildings; and 3) presidential nominating conventions, respectively.

Petitioners requested both new regulations and revisions to existing regulations regarding the purposes for which the funds in each account may be used and the reporting of specific transactions within those accounts. The Commission issued **interim guidance** on reporting segregated account activities in 2015 but has not commenced formal rulemakings on either of the issues referenced in the Notice.

Public comments are due by March 15, 2024.

## ***DNC Files Coordination Complaint Against RFK Jr.***

American Values 2024, a Super PAC supporting Robert F. Kennedy's presidential candidacy, announced in early December 2023 that it would spend \$10 - \$15 million to get Kennedy on the ballot in ten states. The Super PAC said at the time that its efforts would be directed to gaining ballot access in Arizona, California, Colorado, Georgia, Illinois, Indiana, Michigan, Nevada, New York, and Texas. Their program reportedly involves "hiring multiple signature-gathering vendors to begin the massive undertaking of circulating petitions" to gather the signatures needed to qualify Kennedy for the ballot as an independent candidate in the targeted states.



Just over two months later, on February 9, 2024, the Democratic National Committee filed a complaint against Robert F. Kennedy, Jr., and American Values 2024, alleging illegal coordination between Kennedy's campaign and the Super PAC. According to the DNC's complaint, "to qualify for the ballot under state law, American Values 2024 must coordinate its activity with Mr. Kennedy and his campaign in a way that violates federal campaign finance laws."

## ***FEC Issues Advisory Opinion Clarifying Prohibition Against Federal Candidates Soliciting Soft Money***

The FEC issued an **advisory opinion** on February 15 in response to a request from Congresswoman Maxine Waters, who asked whether her campaign committee could (1) pay to produce and mail out brochures featuring Waters' endorsements of state and local candidates and her support of (or opposition to) ballot measures and then (2) receive reimbursement from the featured non-federal candidates and committees for their share of the brochures' production and distribution costs. The FEC concluded the proposal was permissible so long as Congressman Waters ensured that any reimbursements from state and local candidates, or ballot committees, were made with funds that complied with the federal contribution limits and source prohibitions. In addition, the FEC confirmed that the state and local candidates, or ballots committees making the reimbursement payments would not incur any additional reporting requirements with the FEC. More information on Advisory Opinion 2024-02 is available [here](#).

## VOTING RIGHTS UPDATE

### *House Administration Committee Advances the “End Zuckerbucks Act of 2024”*



On February 14, the House Administration Committee approved the End Zuckerbucks Act of 2024 by a 6-3 vote. The **legislation** would “prohibit Section 501(c)(3) organizations from providing direct funding to official election organizations.” The term “Zuckerbucks” refers to the \$300 million that Facebook founder Mark Zuckerberg donated to the Center for Tech and Civic Life, which was then distributed to state and local election offices. While promoted as a source of additional funding for election officials grappling with COVID-19, critics contend the funds were largely used for get-out-the-vote efforts in Democratic strongholds.

Since 2020, **27 states** have prohibited or restricted “Zuckerbucks.” The End Zuckerbucks Act would serve as a national prohibition.

### *New York Intermediate Appellate Court Invalidates New York City’s Noncitizen Voting Law under New York Constitution*

On February 21, New York’s Appellate Division court **held in *Fossella v. Adams*** that New York City Local Law No. 11, which extended voting rights to certain lawfully admitted noncitizens in New York City’s local elections beginning in 2022, violates New York’s state constitution. The complainants alleged that the law’s new class of “municipal voters would make approximately 800,000 noncitizens eligible to vote in New York City elections. The court held that language in New York’s state constitution providing that “[e]very citizen shall be entitled to vote at every election” creates “an irrefutable inference ... that noncitizens were intended to be excluded from those individuals entitled to vote in elections.” New York City Mayor Eric Adams and the City Council have not yet indicated whether they will appeal the decision to the state’s highest court.



*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.*

Please reach out to one of the following compliance partners or your personal Holtzman Vogel contact with any questions.

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