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Federal Election Commission
1050 First Street, NE
Washington, D.C. 20463

Chair Dickerson, Vice Chair Lindenbaum, Commissioner Broussard, Commissioner Cooksey, Commissioner Trainor and Commissioner Weintraub:

The Federal Elections Commission (FEC) is moving forward on a proposed [rule](#) that would change the regulations around digital campaign advertising, but is electing to forgo a public comment period. This course of action would be a mistake, and potentially violate the [Administrative Procedures Act \(APA\) of 1946](#).

The R Street Institute's mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including election reform. This is why this rulemaking is of special interest to us.

We are particularly [dedicated](#) to increasing oversight and transparency across all levels of government, while ensuring that appropriate power is not usurped by regulatory agencies. Public comment periods are a critical means of ensuring that new regulations are right-sized and adhere to a democratic lawmaking process.

This important provision of the APA ensures that Americans have the opportunity to weigh in on important aspects of government activity that impact them directly. Disallowing comments at this time undermines the American people, who always deserve transparency from administrative agencies—particularly from the FEC—because such input helps refine and improve proposed rule changes. This is especially important as outlined in a recent [analysis](#) highlighting the ways in which the proposed rule is insufficiently clear and lacks the necessary small item exception.

The last public comment period for this rule [ended in 2018](#)—over four years ago. Since then, the digital advertising space has evolved drastically. In that time, new platforms emerged, existing platforms

altered their practices, parent companies changed leadership and consumers modified the ways in which they use platforms. To institute a rule change now without comments would not only be a violation of the APA, but a betrayal of the FEC's [mission](#) to provide transparency in campaign finance.

Both rules and precedents permit the FEC to [reopen](#) the public comment period, and there is no compelling reason to forgo public comment. Even more, public comment would not be disruptive to existing campaigns. The 2022 federal election cycle just ended and a window of time exists before the next cycle begins.

We believe that the FEC should allow for more public comments on the proposed change before moving forward. Doing so will increase transparency, refine and improve the proposed rule, and prevent any adverse consequences related to a potential violation of the APA.

Sincerely,

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