



As technology advances, laws governing online political advertising remain the same

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Social media platforms—Instagram, Facebook, Twitter, Snapchat and blogs—are ripe for political advertisement. As the electorate continues to trend away from conventional television as a means for consuming news and entertainment, political action committees (PACs) and other politically active entities will likely need to find new ways to reach the masses, particularly millennials. For that reason, it is important for candidates, corporations and PACs to understand the rules governing online political ads from both the state and federal perspectives.

Federal regulations

In 2006, the Federal Elections Commission (FEC) [approved regulations](#) governing certain types of internet communications. More than a decade later, those laws and regulations are generally outdated.

According to the regulations regarding internet activity conducted by individuals:

- “An uncompensated individual or group of individuals may engage in Internet activities for the purpose of influencing a federal election without restriction. The activity would not result in a ‘contribution’ or an ‘expenditure’ under the [Federal Election Campaign Act (FECA)]. 11 CFR 100.94 and 100.155.”
- “Individuals may send unlimited e-mails on any political topic without identifying who they are or whether their messages have been authorized by any party or campaign committee. 11 CFR 110.11(a).”
- Individuals or groups of individuals may post comments on a blog in connection with a federal election as long as such blogging is uncompensated. 11 CFR 100.94 and 100.155.
- However, “[i]nternet communications placed on another person’s web site for a fee are considered ‘general public political advertising,’ and are thus ‘public communications’ under the law. 11 CFR 100.26. As such, State, district and local party committees, and State and local candidates, must use federally-permissible funds to pay for them if the communications promote, support, attack, or oppose a candidate for Federal office. Paying to place a communication on another person’s website may result in contributions or

expenditures under the [FECA].”

Coordinated communications and disclaimer requirements regulations also apply. FEC-registered PACs are required to place disclaimers on their public websites. Furthermore, “if a political committee sends more than 500 substantially similar e-mails, each message must include a disclaimer. 11 CFR 110.11(a).” 11 CFR 110.11 specifically addresses the disclaimer requirements for printed, radio and television communications, but does not specifically address online communications.

However, “public communications,” as defined in 11 CFR 100.26, include online communications when the communication is placed for a fee on another person’s website. If a public communication requires a disclaimer, it “must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for and, where required, authorized the communication. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.” 11 CFR 110.11(c).

Therefore, if a PAC wishes to use federally-permissible funds to pay for a Facebook advertisement that (1) expressly advocates a candidate’s election or defeat or solicits funds, and (2) “is not authorized by a candidate, authorized committee of a candidate, or an agent of either of the foregoing, the disclaimer must clearly state the full name and permanent street address, telephone number, or [web] address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate’s committee.” 11 CFR 110.11(b)(3).

Ohio regulations

Like federal laws and regulations, Ohio’s laws have not been comprehensively updated to specifically address online political advertisements and communications. Under Ohio law, there is a catch-all definition of “public communications,” similar to the federal definition. Ohio law defines “public political advertising” as “newspapers, magazines, outdoor advertising facilities, direct mailings, or other similar types of general public political advertising, or flyers, handbills, or other nonperiodical printed matter.” R.C. 3517.20(A)(3). Thus, online advertisements fall under “other similar types of general public political advertising.”

Likewise, “political publication for or against a candidate” is defined as “a notice, placard, advertisement, sample ballot, brochure, flyer, direct mailer, or other form of general publication that is designed to promote the nomination, election, or defeat of a candidate.” R.C. 3517.20(A)(1). Thus, online advertisements also fall under “other form of general publication” in terms of promoting the nomination, election or defeat of a candidate.

The application of specific disclaimer requirements, under Ohio law, generally depends on the type of entity that is paying for the political advertisement and what

the advertisement is promoting (i.e., in support of or opposition to a ballot issue or question, or in support of or opposition to a candidate).

Generally, an entity that issues a form of political publication, including online communications, in support of or opposition to a candidate or a ballot issue or question must include the name of the entity in a conspicuous place on or contained within the publication or communication. R.C. 3517.20(B); OEC Adv. 96 ELC-10. When the public communication is paid for by a candidate, legislative campaign fund or campaign committee, the disclaimer must include the words "paid for by" followed by the name of the entity. However, individuals acting alone to disseminate material and certain PACs and political contributing entities limited in size and the amount of expenditure are not required to have a disclaimer on public political communications.

Pursuant to Ohio law, an entity may apply for a specific exemption from the disclaimer requirement in writing to the Ohio Secretary of State's office prior to the distribution of the item. Often, due to the small size of a mobile advertisement, entities will apply for a specific exemption from the disclaimer requirement specifically for mobile ads. In this instance, when a viewer clicks on the ad, they are redirected to a website containing the disclaimer.