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SOCIAL MEDIA POLITICAL ADVERTISEMENTS AND ATTRIBUTIONS

This memorandum will provide background information on the role of social media during the 2016 election, current social media platform requirements, recent federal legislation and actions, Kansas laws and proposed legislation, and other state legislation. All social media platform requirements included in the memorandum are current as of December 2018. It is important to note the social media platform requirements for political ads and attributions are only for that particular social media platform and do not take precedence over federal and state laws. Those wishing to post political ads or content should follow the applicable federal and state laws, as well as the requirements of the particular social media platform. It is also important to note social media platforms are owned by private entities and the policies detailed below are subject to change with little to no notification to users.

Since most federal and state election laws were established prior to the development of social media, the laws typically do not address political activity on social media platforms. This led to new concerns about political advertisements (ads) and attributions on social media platforms during the 2016 election. Regulation of how social media platforms allow political ads and attributions to be published on their platforms has become an important topic at both the federal and state level, as well as among the social media platforms themselves.

Background

In 2011, Google, Facebook, and other social media companies requested guidance from the Federal Election Commission (FEC) on political ads posted to their platforms. Google requested the FEC permit Google to allow users to click through political ads to get more details on who paid for the ad. Facebook requested a blanket exemption, stating that ads on the platform were too small to comfortably include paid for details and ads on Facebook were already labeled as sponsored. While the FEC approved Google's request, they were unable to reach a decision on Facebook's request, so Facebook continued its policy of labeling ads as sponsored with no other required disclosure statements.

Independent researchers with the Foreign Policy Research Institute and PropOrNot found that the Internet Research Agency (IRA), a Russian company, began using Facebook, Twitter, Instagram, and YouTube to attempt to influence American voters, mainly through the creation of thousands of fake accounts and misleading advertising, as early as 2014. However, this was not discovered until November 2016, when the findings from these two teams of independent researchers concluded Russians exploited social media and other online platforms as part of a broad strategy of sowing distrust in U.S. politicians and elections.¹

¹Timberg, C. (2016, November 24). *Russian propaganda effort helped spread 'fake news' during election, experts say.*

In January 2017, the Office of the Director of National Intelligence published a report, noting the Russian government ordered an influence campaign in 2016 aimed at the United States' Presidential election. The report stated the influence campaign followed a Russian messaging strategy that blended covert intelligence operations with overt efforts by Russian government agencies, state-funded media, third-party intermediaries, and paid social media users, also known as trolls.

In September 2017, Facebook announced that between June 2015 and May 2017, Russian entities had purchased \$100,000 in political advertisements, publishing approximately 3,000 ads linked to 470 fake accounts and pages associated with the IRA. According to Facebook, the ads focused on amplifying divisive social and political messages. An additional 2,200 ads, costing \$50,000, were also identified as ads potentially purchased by the IRA.

In October 2017, Facebook, Twitter, and Google presented testimony to the U.S. Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism concerning Russian disinformation on the respective platforms.²

Similarly, in November 2017, Facebook, Twitter, and Google presented testimony to the U.S. Senate Select Committee on Intelligence on social media influence in the 2016 elections.³ Also, in November 2017, Facebook, Twitter, and Google provided testimony to the U.S. House of Representatives Permanent Select Committee on Intelligence on the same topic.⁴

In January 2018, Twitter announced it had identified 3,814 IRA-linked accounts, which had posted 175,993 tweets and interacted with approximately 1.4 million people. The announcement stated Twitter had identified 13,512 additional accounts, for a total of 50,258 bot⁵ accounts identified as Russian-linked and tweeted election-related content during the 2016 election period.

In February 2018, the Department of Justice issued an indictment⁶ against 13 Russian nationals and three Russian companies for committing federal crimes while seeking to interfere in the 2016 election. The defendants allegedly conducted information warfare, with the goal of spreading distrust towards the candidates and the political system in general. The defendants established hundreds of accounts on social media platforms such as Facebook, Instagram, and Twitter, making it appear the accounts were controlled by Americans. They also purchased political advertisements on social media.

In May 2018, members of the U.S. House of Representatives Permanent Select Committee on Intelligence released over 3,500 Facebook and Instagram ads⁷ purchased by the

Retrieved from https://www.washingtonpost.com/business/economy/russian-propaganda-effort-helped-spread-fake-news-during-election-experts-say/2016/11/24/793903b6-8a40-4ca9-b712-716af66098fe_story.html?noredirect=on&utm_term=.08df28daee79

² Testimony from the U.S. Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism hearing can be found here: <https://www.judiciary.senate.gov/meetings/extremist-content-and-russian-disinformation-online-working-with-tech-to-find-solutions>

³ Testimony from the Senate Select Committee on Intelligence Hearing on Social Media Influence in the 2016 U.S. Elections can be found here: <https://www.intelligence.senate.gov/hearings/open-hearing-social-media-influence-2016-us-elections>

⁴ Testimony from the U.S. House of Representatives Permanent Select Committee on Intelligence Russia Investigative Task Force Hearing can be found here: <https://intelligence.house.gov/calendar/eventsingle.aspx?EventID=583>

⁵ A software application that runs automated tasks over the Internet. Typically, bots perform tasks both simple and structurally repetitive, at a much higher rate than would be possible for a human alone.

⁶ Full text of the indictment (18 U.S.C. §§ 2, 371, 1349, 1028A) can be found here: <https://www.justice.gov/file/1035477/download>

⁷ The list of the ads purchased by the IRA can be found here: <https://democrats-intelligence.house.gov/social-media-content/social-media-advertisements.htm>

IRA. Many of the ads did not endorse a specific candidate but spread inflammatory messages on sensitive subjects such as immigration and race, and targeted users from specific backgrounds and tight races in key states. Facebook estimates 10.0 million Americans saw the ads, and 146.0 million Americans, or nearly half of the U.S. population, may have been reached by content disseminated by the IRA.

In August 2018, Facebook and Twitter identified multiple new influence campaigns being carried out by Russia and Iran, which were focused on multiple countries, including the United States. Facebook removed 652 Facebook pages and groups, and 76 Instagram accounts that originated in Iran. Twitter removed 284 accounts associated with the Iranian influence campaign.

Current social media platform requirements

According to the Pew Research Center, as of January 2018, about 70.0 percent of Americans use some form of social media. Studies indicate 65.0 percent of Americans identified an internet-based source as their leading source of information for the 2016 election and over \$1.4 billion was spent on digital political advertising in 2016.

While there are many different social media platforms, this memorandum will focus on the major platforms used in the United States: Facebook, Instagram, Twitter, Google, and Snapchat.

Facebook and Instagram

Facebook was first launched in February 2004. As of January 2018, there were an estimated 214.0 million American Facebook users. Instagram was launched in October 2010, and purchased by Facebook in April 2012. Instagram had over 100.0 million American users as of 2018. In 2007, Facebook created its elections and civic engagement team to work with governments and campaigns on how they could use the social network most effectively. After the 2016 election, the team was restructured to focus more on the security of elections.

Since Facebook is the parent company of Instagram, the following policies and rules apply to both Facebook and Instagram. Facebook, as used below, should be considered to include Instagram.

Political Ads and Content.⁸ Facebook permits advertisers to target their ads to chosen audiences. The audience for an ad can be chosen using broad factors, such as middle-aged American men, or very specific ones, such as mothers who live in Minneapolis and like Target and the Minnesota Twins. Ads can be purchased on the platform starting at \$5.00. There does not appear to be a standard spending cap established by Facebook, but users can place a spending cap on their ad accounts. Ads can take many forms, such as video, slideshow, photo, carousel, collection, and canvas. All ads must undergo a review process before being approved and then posted. Facebook will examine the ad's text, images, targeting, and positioning, as well as the content on the landing page⁹. If the landing page is not fully functional, does not match what is promoted in the ad, or does not fully comply with Facebook's advertising policies, the ad may not be approved. Item 13 under Section 4 Prohibited Content, prohibits misleading

⁸ Facebook ad policies can be found here: <https://www.facebook.com/policies/ads/#>

⁹ A single web page that appears or opens in another browser tab in response to clicking on an ad.

or false content in ads and Item 14 prohibits content that exploits controversial political or social issues for commercial purposes.

On May 24, 2018, Facebook's disclosure requirements for political ads took effect in the United States. Facebook defines a political ad as any ad:

- Made by, on behalf of, or about a current or former candidate for public office, a political party, a political action committee, or advocates for a specific outcome of an election to public office;
- Related to any election, referendum, or ballot initiative, including "get out the vote" or election information campaigns;
- Related to any national legislative issue of public importance in any place where the ad is being run; or
- Regulated as political advertising.

Under this policy, advertisers running political ads, regardless of location or audience targeting, must comply with all applicable laws, including but not limited to disclaimer, disclosure, and ad labeling; blackout periods¹⁰; foreign interference; and spending limits and reporting requirements. Advertisers wanting to run ads with political content in the United States will now need to verify their identity and location. The platform will also attempt to block ads from running automatically if the advertiser has not verified their identity. All election-related and issue ads on Facebook in the United States must be clearly labeled, including a "paid for by" disclosure from the advertiser at the top of the ad. Users will be able to report ads that do not but should contain the disclosure information. Facebook also built machine learning technology that can review the text and images in political ads, and will examine the landing pages for outside websites if an ad attempts to send users there. Facebook created an initial list of 20 political issues¹¹ that will require disclosures if the ad has the goal of influencing public opinion on an election for public office, ballot initiative, candidate, or referendum, but the list may expand and evolve over time.

Violations of the advertising policies could result in the cancellation of ads and termination of the user's account.

One of the main concerns with Facebook's new political ad policy is how Facebook will handle news articles with political content publishers pay to promote. Facebook has suggested those ads could fall under the new disclosure rules. Publishers stated the labels would misrepresent journalism as paid advertising. The platform is working with publishers to develop a satisfactory approach. News and non-news content will be differentiated in Facebook's political advertising archive, according to Facebook.

¹⁰ Also known as a silence period or a reflection period, is a set time period shortly before an election day where the media must stop covering campaigning, and often campaigning must stop as well. The intention is to give voters the opportunity to reflect on their choice, free from the media 'noise.' Often, this is a voluntary arrangement, but some countries require blackout periods by law.

¹¹ These issues include: abortion; budget; civil rights; crime; economy; education; energy; environment; foreign policy; government reform; guns; health; immigration; infrastructure; military; poverty; social security; taxes; terrorism; and values.

Political Ad Archive. Facebook has also created a political ad archive¹², available for free to the public. When users click on the disclosure label, they will be taken to the archive, which contains information including, but not limited to: the campaign budget associated with an individual ad, how many people saw the ad, and their demographic information. Visitors to the archive can see and search ads with political or issue content an advertiser has run in the United States for up to seven years.

Twitter

Twitter was launched in July 2006. In 2018, Twitter had approximately 67.0 million monthly activate U.S. users.

Political Ads and Content.¹³ Twitter began enforcing the new political ads policy on September 30, 2018. Political content regulated on Twitter includes ads that refer to an election or a clearly identified candidate or ads that advocate for legislative issues of national importance. A clearly identifiable candidate means any candidate running for a federal, state, or local office. Examples of legislative issues of national importance include, but are not limited to: abortion, civil rights, climate change, guns, healthcare, immigration, national security, social security, taxes, and trade. Twitter stated legislative issues will be updated periodically as deemed necessary. All issue ads must come from a dedicated ads account and use a “paid for by” disclaimer.

Issue advertisers must go through Twitter’s certification process and meet the following requirements:

- The profile photo, header photo, and website must be consistent with the handle’s¹⁴ online presence;
- The bio¹⁵ must include a website that provides valid contact info; and
- If the handle name is not related to the certified entity, the bio must include the following disclaimer: “owned by [certified entity name].”

State-owned media or state authorities are prohibited from buying political ads outside of the country in which they are located. State-owned media means entities financed or controlled by state or government authorities, or both. State authorities are government bodies and institutions.

Federal Political Ads. Federal political campaigning ads have additional restrictions. Political campaigning ads refer to ads purchased by a political committee or candidate registered with the FEC or ads that advocate for or against a clearly identified candidate for federal office. Foreign nationals are prohibited from targeting political advertisements to the United States. All federal political campaigning ads must adhere to the above policies and use “paid for by” and “authorized” or “not authorized” disclaimers.

¹² The archive can be found here: [facebook.com/politicalcontentads](https://www.facebook.com/politicalcontentads)

¹³ Twitter ad policies can be found here: <https://business.twitter.com/en/help/ads-policies/introduction-to-twitter-ads/twitter-ads-policies.html>

¹⁴ A username selected by anyone using Twitter.

¹⁵ Provides information on the account holder.

Twitter requires that advertisers promoting political campaigning content around U.S. federal elections go through a certification process. Political campaigning advertisers will be required to self-identify and certify they are located in the United States. Twitter requires one of the following forms of identification to begin the registration process: FEC identification, U.S. passport, notarized form, or government issued photo-identification with a U.S. mailing address. All advertisers applying for certification will need to provide one or more handles from which they intend to run political campaigning ads. In addition to complying with all general Twitter ads policies, handles associated with the certified ads account must adhere to the following requirements:

- The profile photo, header photo, and website must be consistent with the handle's online presence;
- The bio must include a website that provides valid contact info; and
- If the handle name is not related to the certified entity, the bio must include the following disclaimer: "owned by [certified entity name]."

Upon completion and review of the application, Twitter will send a letter to the registered address to verify the advertiser's location. Advertisers will then need to follow the instructions on the letter to verify the account. Once completed, advertisers will be allowed to promote federal political campaigning content from eligible handles.

If an advertiser would like to create both federal and non-federal political ads they may do so through separate ad accounts and must complete the certification process for each account.

Exemptions. Advertisements promoted by news publishers will not be identified as "issue ads" under Twitter's policy. News publishers remain subject to Twitter ads policies, including the Political Content policy. However, advertisements promoted by single-issue news publishers will be identified as "issue ads." News publishers must self-identify and meet the following criteria for this exemption to apply:

- The publication's website must have a minimum of 200,000 monthly unique visitors in the United States;
- Contact and 'about' information is available online;
- Dedicated reporter or editorial staff information is available online;
- The publication has a searchable archive available online;
- The publication is not primarily a user-generated or aggregated content platform; and
- The publication is not dedicated to advocating on a single issue.

News publishers may submit handles for affiliated reporters and journalists if they meet the following requirements:

- The profile includes the journalist's name;
- The bio discloses their affiliation to the news publisher and links to the publication's website;

- The bio states they are a reporter or journalist; and
- The reporter or journalist must be listed on their parent organization's website.

Ads Transparency Center.¹⁶ The Ads Transparency Center (ATC) was launched in the summer of 2018. The ATC is free and open to the public, and does not require a Twitter account to access the information. Currently only promoted tweets¹⁷ appear in the ATC, but other ad formats may be included in the future. All promoted tweets that have run within the last seven days are included in the ATC. The ATC is updated every 24 hours to remain current. Users will be able to see retweets but not the reply count on ads. If an advertiser deletes a promoted tweet or their Twitter username, their tweets will no longer appear in the ATC. If an ad is reported and taken down from Twitter, it will be tombstoned¹⁸ in the ATC within approximately 24 hours. If an account was suspended, tweets from that account will not be shown in the ATC.

The ATC shows billing information and spend and impression¹⁹ data for each promoted tweet by political campaigning advertisers. Additionally, the ATC shows demographic targeting data by impression, both intended by the advertiser and actually delivered by Twitter. Political campaigning ads will be included once an entity completes the certification process and agrees to the updated terms of service prior to running their first campaign. In addition, only ads from certified accounts, per the Twitter U.S. Political Campaigning Ads Policy, are displayed in the ATC. Spending amounts below \$100 and impressions under 1,000 are not disaggregated. The ATC shows a summary, per campaign with more than one tweet, along with targeted and actual audience details. If an advertiser does not target based on demographics no information will show. The billing information tab shows all billing addresses (city and state only) associated with the ad account. If a credit card is used, the individual's name on the credit card will be disclosed. If billed through an Insertion Order, the name of the advertiser or agency will be disclosed.

Google

Google was founded in 1998 and in 2000 began to sell ads associated with keywords. As of July 2018, there were an average of 11.7 billion Google searches requested by Americans each day. All the information contained in this section will pertain to all Google owned platforms, including YouTube, Gmail, Google Search, etc., unless otherwise noted.

Google allows advertisers to target audiences based on remarketing²⁰, affinity audiences²¹, in-market audiences²², similar audiences, demographics, location, and keyword contextual targeting. However, the use of a remarketing list that targets an overly narrow audience is prohibited. Other prohibited means of ad targeting include, but are not limited to, race, ethnicity, religious beliefs, marginalized groups, financial status, and sexual identification. To the extent permitted by applicable law, political affiliation may be used to target ads to users

¹⁶ Twitter's Ad Transparency Center can be found here: <https://ads.twitter.com/transparency>

¹⁷ Ordinary tweets purchased by advertisers who want to reach a wider group of users or to spark engagement from their existing followers. All promoted tweets are clearly labeled as promoted when an advertiser is paying for their placement on Twitter. In every other respect, promoted tweets act just like regular tweets.

¹⁸ A symbol of a tombstone is used to let users know the tweet was removed for violating Twitter policy.

¹⁹ A total tally of all the times a tweet has been seen. This includes not only the times it appears in a followers' timeline but also the times it has appeared in a search or as a result of someone liking the tweet. It does not include times someone may have seen the tweet through an embed on a website, third-party platform, or text preview.

²⁰ A targeting customers who have already viewed something on your site or demonstrated interest in your products.

²¹ Groups placed into predefined buckets of general interests. These audiences are created by Google based on browsing and search history.

²² A targeting tool for reaching users currently researching a particular product.

or to promote advertisers' products or services in the United States if the advertiser is verified by Google. However, political material, including political figures, political campaigns, and political issue advocacy ads can not be published on Gmail.

Political Ads.²³ Google's political ad policies became effective on July 10, 2018. Google has established a distinction between political content ads and election advertising. Google defines political content ads as ads for political organizations, political parties, political issue advocacy or fund raising, and individual candidates and politicians. Political content ads are permitted but must adhere to Google's general advertising policies. Election ads are defined as those that feature a federal candidate or current elected federal officeholder in the U.S. Elected federal offices under Google's policy are the President, Vice President, members of the U.S. House of Representatives, and members of the U.S. Senate.

Currently, Google only requires election ads undergo the verification process. Applications for verification opened on May 31, 2018. Each individual account planning to run election ads or use political affiliation in personalized ads will need to apply for verification. This policy does not apply to ads for products or services, including promotional political merchandise like t-shirts, or to ads run by news organizations to promote their coverage of federal election campaigns, candidates, or current elected federal officeholders. U.S. election ads are only permitted to run in the U.S. Google requires all election ads show a disclosure identifying who has paid for the ad. The application process can require two steps and can take up to three to five business days. Advertisers can be verified to run election ads or use political affiliation in personalized ads as an organization or an individual. Both types of advertisers are required to renew their verification periodically.

An advertiser is considered an organization if they are a political committee, non-profit organization, business, or other entity. To become verified, an authorized representative of the organization must complete the two-step verification process. The first step is to complete the application form which will request the following information:

- Google Ads Customer ID;
- Representative's name;
- Valid FEC ID for the organization (if applicable). If the organization does not have an FEC ID, a valid federal Employer Identification Number for the organization may be provided instead, along with a copy of the organization's W-9 or Internal Revenue Service verification letter (CP 575);
- Email address. This must be the email address used for the organization's FEC electronic filing (if available), or the email address of the organization;
- Organization name;
- Organization's address;
- Attestation that the representative is a U.S. citizen or a lawfully admitted permanent resident;
- Attestation that the organization applying for verification is based in the United States and is legally permitted to run election ads in the United States; and
- Agreement to Google's election advertising terms.

²³ Google ad policies can be found here: https://support.google.com/adspolicy/answer/6008942?visit_id=636803271655438470-1388135009&rd=1

The second step in the verification process for an organization is to complete the Google Ads identity verification process, which requests much of the same information as step one, with the addition of a copy of the representative's government-issued photo identification.

An advertiser is considered an individual if they do not meet the criteria for being verified as an organization. An individual must complete an application form that will request the following information:

- Google Ads Customer ID;
- Name;
- Valid FEC ID, if applicable;
- Address. If a FEC ID is entered, this must match the address associated with the FEC registration;
- Attestation that the applicant is a United States citizen or a lawfully admitted permanent resident, and is legally permitted to run election ads in the United States; and
- Agreement to Google's election advertising terms.

The second step in the verification process for an individual is to complete the Google Ads identity verification process, which requests much of the same information as step one, with the addition of the individual's date of birth, social security number, and a copy of the individual's government-issued photo identification. However, if the photo identification is not a U.S. passport or a permanent resident card, the individual must also provide one of the following: a U.S. birth certificate, a consular report of birth abroad or certification of birth, a certificate of naturalization, or a certificate of citizenship.

For most ad formats, Google will automatically generate a "paid for by" disclosure, using the information provided during the verification process. For the following ad formats and features, the advertiser is responsible for including a "paid for by" disclosure directly in the ad, followed by the name of the organization or individual paying for the ad:

- Third-party ad serving on Google Display Network and YouTube;
- Audio creatives on Display & Video 360; and
- Video creatives on Display & Video 360 (except for creatives served on YouTube).

Due to new legislation, ads related to ballot measures and candidates for state and local elections are not permitted in Maryland, Nevada, New Jersey, and Washington. [*Note:* Please see the Other Recent State Legislation section below for more information on these states.]

If an advertiser violates these requirements the ad may not be approved or their account and related accounts may be suspended.

Google Ad Library. The Google Ad Library (Library) is a free and open tool that allows users to search for and filter ads by candidate name, advertiser, amount spent, date, impressions, or type. Google also created a report²⁴ on the ad data, with a break down of money spent by state, advertiser, and by top keywords. New ads are added to the Library on a weekly

²⁴ The Google Transparency Report can be found at <https://transparencyreport.google.com/political-ads/overview>

basis. Currently, the Library does not include issue ads, state ads, or local ads. The Library also only contains U.S. ads. Google is collaborating with experts on potential tools to capture a wider range of political ads but has not given a timeline for that work.

Snapchat

Snapchat was created in 2011 and had almost 85.0 million American users in 2018. Snapchat's political advertising policies went into effect on August 13, 2018.²⁵ Snapchat defines election-related ads as ads about candidates or parties for public office, and ads that urge people to vote. Issue ads are defined as ads for, against, or about political issues or other issues that are the subject of national debate. All political advertising must include a "paid for by" message in the ad followed by the name of the paying person or entity. Unlike Facebook, Google, and Twitter, Snapchat is not implementing a verification system for political ads. Instead, the policy places the responsibility with advertisers to comply with all applicable laws, including federal election laws, FEC regulations, copyright laws, defamation laws, and other state or local laws. Non-resident foreign nationals or entities are not permitted to pay directly or indirectly for political ads on Snapchat. The policy also states political advertising must not be misleading or deceptive. All advertising must comply with Snapchat's Terms of Service, Community Guidelines, and Advertising Policies. Snapchat's policy does prohibit political ads that attack a candidate's personal life. Content that impersonates any person or entity or otherwise misrepresents a user's affiliation with a person or entity is also prohibited. On a case-by-case basis, Snapchat will review, and potentially remove, ads deemed inappropriate.

Federal Legislation and Actions

Current Law

The 1976 Supreme Court case, *Buckley v. Valeo*, 424 US 1 (1974), established the definition of express advocacy as any communication that expressly advocates the election or defeat of a clearly identified candidate. The Supreme Court noted express advocacy would encompass words such as vote for, elect, support, vote against, defeat, and reject. The case also established the definition of issue advocacy, which is defined as political advertising focused on broad political issues rather than specific candidates. Issue advocacy does not attempt to persuade the public of particular electoral outcomes, but rather seeks to highlight broader political or social issues.

The FEC defines express advocacy (11 CFR 100.22) as any communication that uses phrases such as "vote for the President," "re-elect your Congressman," "cast your ballot for the Republican or Democratic challenger," "Smith for Congress," "John Smith in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidates, "reject the incumbent," or communications of a campaign slogan or individual word, which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. Or when taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy for the election or defeat of one or more clearly identified candidates because the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning and reasonable minds could not differ as to

²⁵ Snapchat political ad policies can be found here: <https://www.snap.com/en-US/ad-policies/political/>

whether it encourages actions to elect or defeat one or more clearly identified candidates or encourages some other kind of action.

52 USC §30104 defines electioneering communications as any broadcast, cable, or satellite communication which refers to a clearly identified candidate for Federal office; is made within 60 days before a general, special, or runoff election for the office sought by the candidate; or within 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate. Electioneering communications do not include a communication appearing in the news, unless the broadcasting facilities are owned or controlled by any political party, political committee, or candidate; a communication which constitutes an expenditure or an independent expenditure²⁶; a communication which constitutes a candidate debate or forum, or promotes a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or any other communication exempted under FEC regulations. However, no communication is exempt if it refers to a clearly identified candidate for Federal office, regardless of whether a candidate for state or local office is also mentioned or identified, and promotes or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate.

52 USC §30104 also requires any group or person who makes an expenditure of more than \$10,000 in a calendar year for the direct costs of producing and airing an electioneering communication to file with the FEC. All filings must contain the identification of the person making the expenditure, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement; the principal place of business of the person making the expenditure, if not an individual; the amount of each expenditure over \$200 during that period and the identification of the person to whom the expenditure was made; the elections to which the electioneering communication pertained and the names of the candidates identified. If the expenditure was paid out of a segregated bank account which consists of funds contributed solely by U.S. citizens or other lawful residents directly to an account for electioneering communications, the names and addresses of all contributors who contributed \$1,000 or more to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date would also need to be provided to the FEC. If the expenditure was paid out of funds not previously described, the names and addresses of all contributors who contributed \$1,000 or more to the person making the expenditure during the period beginning on the first day of the preceding calendar year and ending on the disclosure date, would be required.

52 USC §30120 requires any person or group who makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, or any other type of general public political advertising or makes a disbursement for an electioneering communication, such communication must clearly state who has paid for the communication if said communication was paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, or paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents. If the communication was not authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication must clearly state the name and permanent street

²⁶ An expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, their agents, or a political committee or its agents.

address, telephone number, or web address of the person who paid for the communication and state the communication is not authorized by any candidate or candidate's committee.

Under 52 USC §30121, contributions and donations, either directly or indirectly, made by foreign nationals to a political party or in connection with a federal, state, or local election are prohibited. This includes an expenditure, independent expenditure, or disbursement for an electioneering communication.

Proposed Federal Legislation and Actions

FEC Actions. In March 2018, the FEC voted to move forward on new online disclosure requirements (83 CFR 12864). This is the first time since 2006, the FEC has presented new regulations on online advertising disclosures for public comment. Under the new requirements, disclaimers must identify the sponsors of an online, mobile, or other form of an online ad. The requirements apply to ads purchased with the intent to promote the election or defeat of a federal candidate as well as online solicitations to raise money for a political committee or candidate. Other online spending by political committees would also have to include disclaimers identifying who paid for the ad, similar to those used for television and radio ads. The FEC offered two potential proposals for the disclaimers in different digital formats. Proposal A offers users access to the disclaimer by clicking on a link, hovering over a text box, or other technology. Proposal B requires more complete disclaimers in the body of the ads. It is important to note these proposals would only cover ads with express advocacy statements. The FEC is also considering updating the definition of "public communication" to include communications placed for a fee on another person's internet-enabled device or application. Currently, digital issue ads are exempt from regulation.

H.R. 4077 and S. 1989. The Honest Ads Act (Act), which was introduced in the U.S. House of Representatives on October 19, 2017, would amend the Federal Election Campaign Act. The Act has 23 co-sponsors as of December 2018. The Act is currently in the House Committee on Administration. An identical bill, S. 1989, was introduced in the U.S. Senate on the same date. S. 1989 has 32 co-sponsors as of December 2018. This bill is currently in the Senate Committee on the Judiciary Subcommittee on Crime and Terrorism.

The stated purpose of the Act would be to enhance transparency and accountability for online political ads by requiring those who purchase and publish such ads to disclose information about the ads to the public. The Act would focus on paid online political ads. Paid for by attributions would be required to be displayed or stated in a clear and conspicuous manner. Online platforms would be required to maintain and make available for public inspection, a complete record of any request to purchase a political ad, whose aggregate purchase requests exceed \$500 in a calendar year. An online platform would be defined as any public-facing website, web application, or digital application which sells political ads and has 50.0 million or more unique monthly U.S. visitors or users over the last 12 months. The Act would define a qualified political ad as any ad made by or on behalf of a candidate or communicates a message relating to any political matter of national importance, including a candidate, any federal election, or a national legislative issue of public importance.

Kansas

Current law

KSA 2018 Supp. 25-4156(E) regulates disclaimers for express advocacy online, including political ads, in Kansas. All website, email, or other type of internet communications that expressly advocate for the nomination, election, or defeat of a clearly identifiable candidate for state or local office must contain a statement that states “paid for” or “sponsored by” the name of the chairperson or treasurer of the political, other organization, or person sponsoring the ad. These provisions only apply to any website, email, or other type of internet communication made by the candidate, the candidate’s candidate committee, a political committee or a party committee and the website, email, or other internet communication is viewed by or disseminated to at least 25 individuals. Any social media platform that has a character limit of 280 characters or less (e.g. Twitter) is exempt from these provisions.

Recent Legislation

During the 2018 Legislative Session, HB 2642 was enacted. One of the bill’s provisions maintained an exemption for attributions on social media platforms (e.g. Twitter) by increasing the character limit of communications made on a social media platform from 200 to 280 characters or fewer. Two other provisions that would have affected social platforms were removed from the bill by the House Committee of the Whole. The first provision would have required disclosures in video to be both written and spoken either at the beginning or end, except if the disclosure statement is written for at least five seconds of a broadcast that is 30 seconds or less, or 10 seconds of a 60-second broadcast. The second provision would have also required that disclosures in audio format must be at least three seconds and placed either at the beginning or end of an ad.

Other Recent State Legislation

Currently 35 states²⁷ have statutes that address disclosures for online political ads in some form. Four states (California, Maryland, New York, and Washington) have recently passed legislation directly addressing disclosures in online political ads. As mentioned previously, Google does not allow the purchase of political ads concerning ballot measures or state and local candidates in the states of Maryland, Nevada, New Jersey, New York, and Washington. While Nevada and New Jersey have not passed recent legislation, information on on these states is provided in this section due to Google’s prohibitions on the purchase of the aforementioned types of political ads in these states. Google did not provide a specific reason as to why the company has prohibited the purchase of these political ads in these states, but stated the overarching reasons are typically related to protecting Google users, conflicts with Google’s terms of service, or simply the practical details that may be involved in complying with state or local requirements.

27 Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

California

AB 2188 was enacted during the 2018 Legislative Session. The bill requires online platforms that sell political ads to make specified information about those political ads available to the public. An “online platform,” is defined as a public-facing website, web application, or digital application, including a social network, ad network, or search engine, that sells ads directly to advertisers. A website is not considered an online platform if it only displays ads sold directly to advertisers through another online platform. Online platforms that disseminate specified political ads paid for by committees, must display the text “who funded this ad?,” “paid for by,” or “ad paid for by,” as specified, in each political ad disseminated, with the text linking to the profile or landing page of the committee that paid for the ad, another page containing additional information about the committee, or a website containing any disclosures required to appear on an electronic media ad pursuant to existing law. The bill also requires online platforms to maintain, and make available for online public inspection a complete record of any ad disseminated on the online platform by a committee that purchased \$500 or more in ads during the preceding 12 months. These records must contain:

- A digital copy of the ad;
- The approximate number of impressions generated from the ad, and the date and time the ad was first and last displayed;
- Information regarding the amount charged for and spent on the ad;
- Identifying information about the candidate or the ballot measure to which the ad refers; and
- The name and identification number of the committee that paid for the ad.

Records of requests to purchase ads on the online platform must be made available as soon as possible and retain those records for no less than four years. A prominent link with the text “view ads” must be displayed on a page that contains information about the committee that paid for an ad, as specified. The linked page must show all of the ads purchased by the committee on the platform.

Maryland

The Maryland General Assembly enacted SB 875 during the 2018 Legislative Session. The bill establishes requirements for qualifying paid digital communications. A person who directly or indirectly requests placement of a qualifying paid digital communication on an online platform must expressly notify the online platform at the time the request is made that the communication is a qualifying paid digital communication. The bill defines an online platform as any public-facing website, web application, or digital application including a social network, ad network, or search engine, that has 100,000 or more unique monthly U.S. visitors or users for a majority of months during the immediately preceding 12 months and receives payment for qualifying paid digital communications. An online platform must maintain specified records for each qualifying paid digital communication a purchaser requests to disseminate. Certain records, including the name of those responsible for the qualifying paid digital communication and the amount paid for its placement must be made available to the public online in a clearly identifiable location on the online platform’s website and searchable by purchaser, within 48 hours of the purchase of a qualifying paid digital communication. The records maintained by an online platform pursuant to the bill must remain available for at least one year after the general election following the dissemination of a qualifying paid digital communication. An online

platform must make reasonable efforts to allow the Maryland State Board of Elections to take specified actions, generally relating to implementation and enforcement of the requirements applicable to qualifying paid digital communications, and to comply with any subpoena issued in connection with an investigation concerning the compliance of a purchaser of a qualifying paid digital communication with the bill's requirements or campaign material authority line requirements. The bill also prohibits the purchase of campaign material or an electioneering communication with currency other than American dollars.

Nevada

Express advocacy is defined, in NRS 294A.0025, as a communication, taken as a whole, that is susceptible to no other reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate or group of candidates or a question or group of questions on the ballot at a primary election, general election, or special election. A communication does not have to include the words "vote for," "vote against," or other similar language to be considered a communication that expressly advocates the passage or defeat of a candidate or a question. Under NRS 294A.347, statements which expressly advocate the election or defeat of clearly identified candidate are required to disclose certain information under certain circumstances. This includes any statement that expressly advocates the election or defeat of a clearly identified candidate for a state or local office; any statement published within 60 days before a general or special election or 30 days before a primary election; and any statement published by a person who receives compensation from the candidate, an opponent of the candidate or a person, political party, or committee for political action must contain a disclosure of the fact that the person receives compensation and the name of the person, political party or committee for political action providing that compensation. Nevada law considers publishing to include printing, posting, broadcasting, mailing, or otherwise disseminating a statement, or causing such statement to be published by one of the aforementioned means.

NRS 294A.348 requires a person, committee for political action, political party or committee sponsored by a political party expending more than \$100 for the purpose of financing a communication through any television or radio broadcast, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising must disclose on the communication the name of the person, committee for political action, political party, or committee sponsored by a political party that paid for the communication if the communication either advocates expressly the election or defeat of a clearly identified candidate or group of candidates; or solicits a contribution through any television or radio broadcast, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising. If a communication is approved by a candidate, in addition to the previous requirements, the communication must state the candidate approved the communication and disclose the street address, telephone number, and Internet address, if any, of the person, committee for political action, political party, or committee sponsored by a political party that paid for the communication.

Under NRS 294A.370, any newspaper, radio broadcasting station, outdoor advertising company, television broadcasting station, direct mail advertising company, printer, or other person or group of persons which accepts, broadcasts, disseminates, prints, or publishes must make information concerning the cost of political ads accepted and broadcast, disseminated or published available for inspection during the period beginning at least 10 days before each primary election or general election and ending at least 30 days after the election. The entity or

person must make the information available no later than three days after it has received a request for such information.

New Jersey

N.J. Rev. Stat. Ann. §19:44A-22.3 requires whenever a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, or any other group or person makes, incurs, or authorizes an expenditure for the purpose of financing a communication aiding or promoting the nomination, election, or defeat of any candidate, any public question, or providing political information on any candidate or public question which is an expenditure, the committee, group, or person is required to report to the New Jersey Election Law Enforcement Commission. The communication shall clearly state the name and business or residence address of the committee, group, or person, and the communication has been financed by that committee, group, or person. A communication financed by any person not acting in concert with a candidate or any person or committee acting on behalf of a candidate, must contain a clear and conspicuous statement that the expenditure was not made with the cooperation, prior consent of, in consultation with, at the request or suggestion of any such candidate, person, or committee.

Any person who accepts compensation from a committee, group, or individual previously described, for the purpose of printing, broadcasting, or otherwise disseminating to the electorate a communication must maintain a record of the transaction which shall include an exact copy of the communication and a statement of the number of copies made or the dates and times that the communication was broadcast or otherwise transmitted, and the name and address of the committee, group, or individual paying for the communication. The record must be maintained on file at the principal office of the person accepting the communication for at least two years and be available for public inspection during normal business hours.

A “communication” means a press release, pamphlet, flyer, form letter, sign, billboard, paid advertisement printed in any newspaper or other publication or broadcast on radio or television, or telephone call featuring a recorded message or any other form of advertising directed to the electorate.

New York

In April 2018, New York was the first state to enact comprehensive legislation concerning transparency of political advertising. The New York State Democracy Protection Act (A9930) (Act) expands the State’s definition of political communication to include paid internet and digital advertising. By doing so, any political ad posted online or to social media outlets will be subjected to the same standards as those posted to traditional media outlets. The Act requires all forms of political committees to conform with the disclosure requirements applicable to independent expenditures. Any independent expenditure committee who makes an independent expenditure over \$5,000 within 30 days before any primary, general, or special election must report such expenditure within 24 hours. The definition of an independent expenditure was amended to include paid internet or digital ads where such expenditure is targeted at 50 or more members of a general public audience. Platforms which publish independent expenditures are required to verify that such expenditures comply with disclosure and attribution requirements. Platforms must require that independent expenditure committees purchasing independent expenditures for publication file a copy of the registration form filed by the committee with the New York State Board of Elections with the platform. Online platforms must also maintain and

make available online a complete record of any purchase of an independent expenditure made by any independent expenditure committee on the platform. The Act also prohibits foreign nationals, governments, instrumentalities, or agents from registering as an independent expenditure committee.

Washington

Engrossed Substitute House Bill 2938 was signed by the Governor in March 2018, and had an effective date of June 7, 2018. The bill addresses several areas of Washington's Campaign Finance Laws, including reporting requirements, enforcement procedures, and funding. The reporting threshold for an independent expenditure was changed to one-half the contribution limit for expenditures of political ads in candidate campaigns. In addition, any expenditures made over the contribution limit for a statewide ballot measure, or one-half the contribution limit for a local ballot measure, must be reported as a contribution to a political committee supporting or opposing the measure, or as an independent expenditure if no such committee exists. The bill further requires political committees and candidates to make books of account available for inspection by appointment at any agreed upon location between 9:00 a.m. and 5:00 p.m., or by digital access in lieu of an appointment. Books of account are defined as a ledger for contributions, expenditures, and debt that a campaign or political committee must report, or details of political advertising or electioneering communications provided by a commercial advertiser.

The Washington Public Disclosure Commission (PDC) decided to adopt emergency rules in March 2018 to implement the contents of the bill. The short timeline from its passage to its effective date made emergency rules necessary. The emergency rules require online platforms to show information about ads related to ballot measures and state and local elections, including who sponsored the ad and how much was spent, on their websites, among other changes. In passing the emergency rules, the PDC also entered into the first stage of permanent rulemaking that will incorporate the new rules into Washington Administrative Code 390 on a long-term basis. Due to the new emergency rules Google has decided it will not accept election ads in Washington.