

Nonprofit Alert: Political Advertising on Social Media—New Requirements Emerge in Advance of the 2018 Elections

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Federal and state election laws have long required that certain types of political advertisements contain a disclosure identifying the person or group who paid for the ad. But because these laws largely predate the internet, online political ads have largely been exempt from disclosure requirements.

In light of apparent meddling by foreign actors in the 2016 Presidential election through fake social media accounts, lawmakers and tech-industry professionals have been pressured to adopt rules dealing with both accountability and transparency in online political advertising. In response to that pressure, Twitter and Facebook (which also owns Instagram) recently adopted new rules that apply to certain types of political advertisements posted on their platforms. This alert discusses these new requirements and compares them to federal and Minnesota disclosure laws that apply to independent expenditures.

Facebook and Instagram

On May 24, 2018, Facebook rolled out new disclosure rules that apply to political ads posted on both Facebook and Instagram. Facebook claims its new rules were designed to “prevent future abuse in elections—and to help ensure you have the information you need to assess political and issue ads[.]” Under these new rules, only authorized Facebook users who have confirmed their identity and location with Facebook are allowed to post political ads on the Facebook and Instagram platforms. Facebook has stated that it will delete ads that do not comply with the new rules and block users who repeatedly fail to comply.

Facebook’s new rules affect only *promoted* political content—e.g., traditional “paid for” ads and “boosted content” that Facebook users pay in order to target particular audiences at particular times—but the rules broadly define the type of political content that will be covered. For example, covered content includes not only ads that expressly advocate for or against specific candidates, but also voter education, registration and get-out-the-vote communications, communications on referendums and ballot initiatives, and issue ads on any national legislative issue of public importance in a place where the ad is run. Facebook pledged to maintain a list of issues that will be subject to its rules, which include abortion, guns, the economy, crime, education, health, environment, and values.

In order to post promoted political content on Facebook under the new rules, users must:

1. Register with Facebook;
2. Include a “paid for” disclaimer at the top of each political ad; and
3. Disclose information about the target audience and money spent on the ad.

Twitter

On June 28, 2018, Twitter rolled out new rules for paid political ads posted on its platform. Compared to Facebook, the Twitter rules apply to a much narrower universe of political ads—namely, those that expressly advocate for or against a clearly identified candidate for federal office. The Twitter rules do not apply to issue ads, nor do they apply to ads regarding state and local candidates.

Under the new rules, before advertisers post express advocacy ads on Twitter in connection with a federal election, they must file for certification with Twitter. The self-certification process requires applicants to confirm their identity and physical location, and that they are not foreign nationals who are prohibited from influencing federal election campaigns. Covered posts made from certified Twitter handles will automatically be labeled with a disclosure identifying them as political

advertisements and identifying the user that paid for the ad. In addition to the self-certification requirements, Twitter requires that certified accounts (i) maintain a profile photo, header, and website consistent with the Twitter handle’s online presence; (ii) contain a link in their bio to a website that provides valid contact information; and (iii) contain a disclaimer in their bio stating “Owned by [certified entity name]” if the handle name is not related to the name of the certified entity.

Comparing Social Media Disclosure Requirements with Federal and State Law

As noted above, federal and state election laws have long required that certain types of political advertisements contain a disclosure identifying the person or group who paid for the ad. These rules still apply, and are in addition to any rules that a social media site may also require.

Because most nonprofits running these types of advertisements are doing so as independent expenditures, the chart below compares the new Facebook and Twitter disclosure requirements for political advertisements with the requirements that apply to independent expenditures under federal and Minnesota law.

	Types of Ads that Require Disclosures	How to Comply	Exceptions
FEC Rules	Communications that expressly advocate the election or defeat of a clearly identified candidate for federal office and certain “electioneering communications” made via broadcast, cable, or satellite.	“Paid for by [Organization][website] and not authorized by any candidate or candidate’s committee.”	Disclaimer requirements do not apply to internet communications, unless they are placed for a fee on another person’s website or are delivered by email to 500 or more recipients.
MN State Law	Communications that expressly advocate the election or defeat of a clearly identified candidate for state or local office in Minnesota.	“This is an independent expenditure prepared and paid for by [Organization], [street or website address]. It is not coordinated with or approved by any candidate nor is any candidate responsible for it.”	If the entire website or social media page is devoted to independent expenditures, the disclaimer requirements are satisfied for an entire website or social media page—including videos—when the disclaimer appears once on the homepage of the site.
Facebook & Instagram	Ads relating to an election, candidate, or issue identified on Facebook’s National Issues of Public Importance list.	Become authorized as a political advertiser. Once this has been done, the appropriate disclaimer will be attached to the ads by Facebook or Instagram when they are posted. The disclaimer will identify the ad as a paid political advertisement and will identify who paid for the ad.	None identified.
Twitter	Ads that expressly advocate the election or defeat of a clearly identified federal candidate.	Open an advertiser account on Twitter and get certified by Twitter as a Political Campaigning Advertiser. Once certified, advertisers can post promoted content on Twitter and the appropriate disclosure will be automatically added. The disclosure will state that the ad is political in nature, and will identify who paid for it.	Disclosure requirements do not apply to issue ads, ads advocating for or against candidates in state or local elections, or ads relating to elections in other countries.

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