



MORE is better than less.

Dear Friends:

As the 2024 political season is ramping up, it's good to stay abreast of the rules and regulations that surround political advertising to reap the rewards. This quarter's article looks at the evolving rules and regulations and the inclusion of AI.

It was great to see many of you at the 2024 MFM annual conference in May. And we had a great time sponsoring the opening night party.

Our calendar is filling up and we will be busy late summer, beginning in August with the Nebraska Broadcasters Association's Annual Conference, August 6-7 in Lincoln; the Szabo Annual Quality Awards Banquet, August 26 in Atlanta recognizing several of our outstanding team members; and once again we are sponsoring the Lekotek of Georgia Run on August 24, in support of the nonprofit's work with children with disabilities. In September we are a sponsor of the Georgia Association of Broadcasters' GABCON 2024 in Jekyll Island September 6-8, and the Annual Media Credit Conference September 19 in New York City.

Best wishes for a healthy and happy summer!

A handwritten signature in cursive script that reads "Robin".

Robin Szabo, President
Szabo Associates, Inc.

Political Advertising in 2024... Rules, More Rules, and AI!

We are months away from the 2024 general election and the political ads are already ramping up. The 2024 election cycle is expected to break records in political ad spending here in the United States. The news website Axios projects that political ad spend this year will reach \$16 billion, and while the majority of that will be on local broadcast television, there will be a larger move toward digital. And then there's Artificial Intelligence (AI) and its effect on all those ads that will be put before us. Predictably, calls for greater transparency and accountability have increased along with this surge in spending.

The old rules imposed by regulatory agencies with regard to traditional media still apply. The Federal Election Commission (FEC) and the Federal Communications Commission (FCC) are charged with ensuring that candidates and media comply with their obligations under the law regarding election-related advertising. The FEC is tasked with protecting the integrity of the federal campaign finance process. The agency has jurisdiction over campaign financing for the U.S. House, Senate, Vice-Presidency, and Presidency. Its purview does not extend to issue-based ads, such as those from advocacy groups or trade organizations.

The FEC requires that public communications carry a "clear and conspicuous" disclaimer identifying who paid for it. Furthermore, disclaimers must also appear on political committees' public websites and in certain email communications. Broadcast, cable or satellite, news-

papers and magazines, billboards, and mass mailings are included in the FEC's definition of public communications, but internet advertising is excluded except when the ads are placed for a fee on a website other than the candidate's.

Print.

Because print publishers are private companies and do not broadcast over public airwaves, publishers are free to turn down advertisements; however, most of the other rules apply.

Pricing and payment.

Publications cannot charge more than their customary rate for comparable advertising and cannot favor one candidate over another with rates. Volume or other discounts must be equally available to all political advertisers.

Recordkeeping. Publications are required to keep a signed agreement for each expenditure for each advertisement and those records are deemed public record by statute. A best practice would be to create a streamlined document to comply with the statutory requirements while keeping more detailed communications with the advertiser in a separate file.

Disclosures. The ad must state "Paid for by..." and then name the candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor. These disclosures must be in a readable type size and contained in a printed box set apart from other content.

Libel risks. While broadcasters

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have immunity from libel claims because they cannot reject political advertising from qualified candidates, print media does not have this protection. Newspapers and candidates have been sued and found guilty for libelous statements published in print advertisements and bear some fact-checking responsibility. If you doubt the accuracy of a claim in a political advertisement, we recommend that you ask for substantiation or reject the copy.

Broadcast.

The FCC imposes additional rules for broadcast media, addressing access to advertising time, rates they can charge, and disclosure, as well as extensive and tedious record-keeping requirements. The agency does not review or pre-approve the content of political ads before they are broadcast; ensure the accuracy of statements that are made by candidates and issue advertisers; require broadcast stations and other regulatees to provide all sides of controversial issues; or oversee the nature and extent of the coverage that individual candidates receive in news programs.

Digital.

The explosion of digital media continues, particularly social media such as Facebook, Instagram, X (formerly Twitter), and YouTube. Platforms designed to provide tools for networking among family and friends have evolved in the last decade from their original purpose, developing into extremely useful platforms for exerting political influence. There was a decline in digital advertising in 2022 over 2020, and while spending in 2024 is expected to eclipse 2022, it is not expected to reach the same level as 2020.

A Pew Research Center's survey, conducted between September 25 and October 3, 2023, found that "a large majority of U.S. adults (86%) say they often or sometimes get news from a smartphone, computer or tablet." This percentage is up from 82%

in 2020 and 84% in 2022. Over the same three-year period, we were getting our news on TV at an average of 59%, radio at an average of 50%, and print at an average of 35%. But the preference for digital devices was nearly 60%, according to the survey.

For those American adults who rely on social media for their news, Pew's study found that Facebook is now where about 30% get the news; YouTube is second at 26%. "Smaller shares regularly get news on Instagram (16%), TikTok (14%), X (12%) or Reddit (8%)." LinkedIn, Nextdoor, Snapchat, WhatsApp, and Twitch have much smaller shares.

Lon Safko, author of *The Social Media Bible*, noted a serious criticism of social media—that they, without consequences, may allow the promotion of a particular agenda, misinformation, or propaganda masquerading as "news." The accessibility of social media also makes it easy for groups of individuals with common agendas to form social networks to have online discussions and share messages. Between these groups and social media feeds, the opportunities to quickly, even spontaneously, develop cultural and political movements are rampant.

The regulatory challenges regarding social media are numerous and complex:

Transparency: Social media platforms struggle to ensure transparency in political ads. It is difficult to track who is behind an ad and whether it is sponsored by a political entity.

Microtargeting: Social media allows precise targeting of ads to specific demographics using people's data (searches, shopping, purchasing, contacts, and interests) to segment them into smaller groups for targeting, making it harder to monitor and regulate political messaging.

Disinformation: False or misleading political content can spread rapidly on social media, impacting public opinion and can have a significant impact on elections.

Foreign Influence: Regulating foreign interference in domestic politics is complex due to the global nature of social platforms.

Ad Verification: Ensuring compliance with regulations across

diverse platforms requires robust verification mechanisms.

Governmental Attempts.

Although there has been broad-based concern among agencies, organizations, and politicians across the political spectrum about the integrity of our elections, there has been little consensus about possible solutions for addressing the challenges of digital advertising. The subject has been discussed, debated, voted on, and tabled for years, with few results from federal agencies or Congress to address inadequacies.

In October 2017, the Senate put forth the Honest Ads Act, which was intended to regulate online campaign advertisements. The Act would have required online platforms to maintain a public file of all political ads that appear on their sites if the purchaser has already bought \$500 of political ads on the platform. They would have to provide a copy of each ad, a description of the audience targeted, the number of views generated, the dates it ran, and more. Advertisers and platforms would be liable for collecting and providing this information. While the Act was not enacted, it was incorporated into the For the People Act in 2019, which also did not pass. It was reintroduced in the Freedom to Vote Act in 2021 and again in January 2022, failing each time.

In October 2019, the House passed its own bill, the Stopping Harmful Interference in Elections for a Lasting Democracy (SHIELD) Act, which would require campaigns to report any illicit offers of assistance by foreign governments or agents and would take steps to ensure that paid online political advertisements are subject to the same rules as TV and radio ads. The SHIELD Act incorporated the Honest Ads Act, but added additional legislation. The Act was referred to the Senate's Committee on Rules and Administration, but has not yet been put to a vote.

In March 2024, the FEC updated its rules for political advertising, especially in the digital realm, with respect to transparency and accountability, recordkeeping and compliance, influencer marketing

and social media, and adaptation and innovation. These rules aim to enhance transparency, protect voters, and maintain integrity in political advertising.

Transparency and Accountability. Campaigns must disclose their sponsors transparently to prevent misleading or deceptive practices. Clear and conspicuous disclaimers are required for political ads placed on websites, social media, and other digital platforms.

Recordkeeping and Compliance. The definition of “record” was expanded to include electronic data. Campaigns must maintain accurate records of contributions, expenses, and communications. Compliance with electronic transaction rules ensures proper reporting and accountability.

Influencer Marketing and Social Media. The rules extend to influencer marketing. Paid endorsements on media platforms must include disclaimers. Campaigns need to navigate these requirements when collaborating with influencers.

Adaptation and Innovation. Campaigns must adapt to the evolving digital landscape while adhering to ethical and legal standards.

Platforms vs Publishers.

Because it is not nearly so regulated as television, radio, and print advertising, social media has become the Wild West of political advertising. In fact, social media platforms are not considered publishers at all but rather internet service providers and are not liable for what other people post on them, based on Section 230 of the 1996 Communications Decency Act. They cannot be sued for allowing false content on their sites or for running false political ads. Both President Biden and President Trump before him called for the repeal of Section 230.

Understandably, laws written to regulate television, radio, and print ads are not easily applied to online ads. Like newspapers and cable TV stations, social media platforms are under no obligation to run every political ad they receive or offer advertising slots to all candidates. While there are numerous platforms, Facebook (which owns Instagram), and Google (which owns YouTube), are the major players. Each platform is free to set its own policies. While X (*Twitter*) formerly had halted political advertising in 2019 due to concerns about disinformation and election tampering, X has reversed the ban and has decided to accept political ads again, expanding its

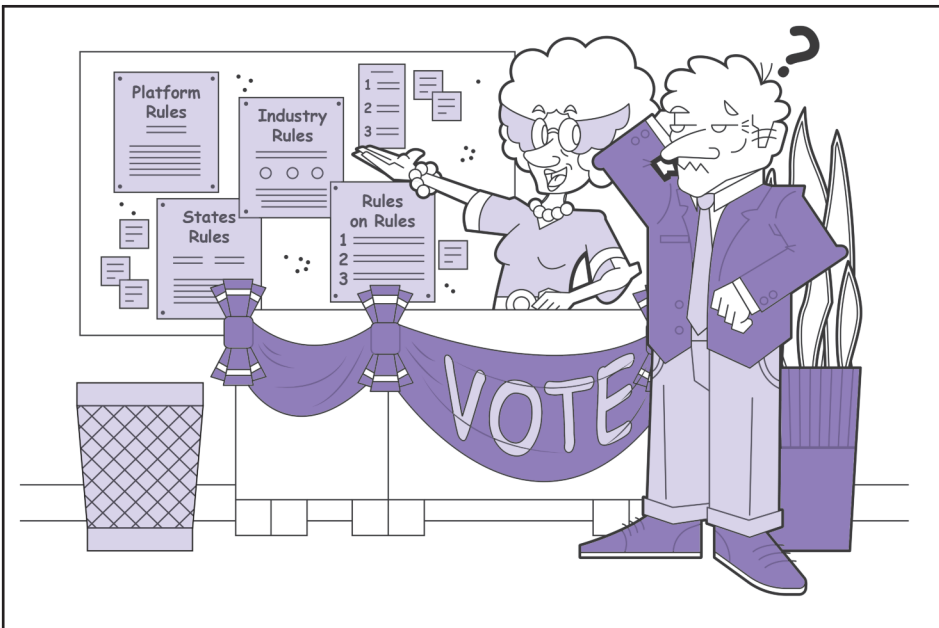
safety and elections teams to prepare for greater content moderation. They will continue to apply specific policies to paid political ads, including restrictions on false or misleading content intended to undermine public confidence in an election. LinkedIn does not have a blanket ban on political advertising, but its policies may vary based on specific contexts and regions.

The AI Game Changer.

To complicate the advertising landscape further, political campaigns are already using AI to compose campaign emails. Christina LaChapelle and Catherine Tucker, in their November 28, 2023, article “Generative AI in Political Advertising,” on the website *Brennan Center for Justice* feel that “generative AI is poised to redefine modern campaigning, although the exact nature of its influence remains uncertain.”

In the August 25, 2023, *Forbes* article “Ethics and Transparency in AI-Powered Political Advertising,” Gino Sesto states, “an AI-driven campaign could dramatically change how politicians reach their voters.” Voters could be identified based on specific concerns and have video ads about candidates’ plans to address those concerns. But as these AI-driven political advertisements have become more and more common, three issues have been raised. Sesto describes these issues: “Data privacy is the first, and safeguarding it is going to be a prominent challenge.” The second is that “bias can lead to inequalities and unfair representation in advertising, and AI algorithms are not immune to this. Advertisers will be under pressure to prevent bias from taking place.” And the third is, “countering misinformation is vital to address the rampant presence of fake news.” While campaigns can use AI to enhance their strategies, it can and does throw out a lot of false information.

In May 2024, the bipartisan Protect Elections from Deceptive AI Act was introduced in the House after being passed by the Senate Rules Committee. The bill proposes to safeguard the integrity of our federal elections. According to Rep. Derek Kilmer,



So in the interest of “transparency,” you’ve got your state rules. Then you’ve got your platform rules, and they may refuse ads from states ‘cause they don’t like their rules. Then we have your industry rules, but they’re voluntary so some have signed on but a lot haven’t yet. Does that clear things up?

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“Artificial intelligence holds immense potential to revolutionize many aspects of our lives, from health care to national security to everyday life. But when it comes to our democratic processes, the intentional use of AI to create and spread deceptive content threatens the very fabric of our electoral integrity.” The bill proposes to amend the Federal Election Campaign Act of 1971 by expressly prohibiting the distribution of deceptive AI-generated audio or visual media pertaining to candidates in federal campaigns. It would also pertain to certain issue ads trying to influence those elections and fundraising efforts. The bill still needs to advance in the

House and pass the full Senate to become law.

In Nick Robertson’s article, “FCC to consider disclosures for AI-generated political ads” on the website *The Hill*, he reports that in May 2024 the FCC introduced a measure “that would require political advertisements to disclose the use of artificial intelligence (AI) software.”

Chairwoman Jessica Rosenworcel circulated the Notice of Proposed Rulemaking (NPRM) to her colleagues. The fate of the proposal is not yet clear as of this writing.

Prepare and Stay on Top.

Compliance with federal rules and regulations is key, but it does not end there. Social platforms are free to change their own rules at will. Additionally, states and even local municipalities may have their own varying requirements. And then we have the advertisers themselves.

Continue to require advance payment from federal candidates, but understand that payment cannot be demanded more than seven days prior to the airdate. Consult industry experts and legal counsel when questions arise.

Prepare early, making sure your staff knows the rules. Stay abreast of legal challenges and decisions.

Keeping up with, understanding, and complying with current rules and regulations may at times cause our collective head to spin. That said, doing so is well worth it. Remember that these efforts are all about minimizing payment-related and rules-related risks. The last thing you want to do is sabotage your opportunities that a presidential election offer. 2024 promises to be a banner year for advertising revenue! ♦



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