



COUNSEL TO GREAT COMPANIES

# Political File Requirements

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# Campaign Finance Law Overview

- The financing of political advertisements is regulated differently by every jurisdiction in the U.S.
- Federal campaign finance law governs ads influencing federal elections
- State campaign finance law (e.g., California, New York, Washington State) governs ads influencing state elections

# Campaign Finance Law Overview

- Some localities have their own laws separate from those of their states (e.g., Los Angeles, New York City)

# Campaign Finance Law Overview

- Jurisdictions take different positions on the kinds of money that campaigns may take in direct donations
- E.g., at the federal level, corporations **CANNOT** give direct contributions to candidates
- In certain states, corporations **MAY** contribute directly to candidates (Virginia and California are examples)

# Campaign Finance Law Overview

- Jurisdictions also vary with respect to the sorts of ads that are treated as political, or election-influencing, for campaign finance purposes
- This is relevant for a few different purposes, including:
  - Reporting
  - Whether the ad may be treated as a contribution to the candidate
  - Disclaimers

# Campaign Finance Overview

- An ad is almost certainly going to be treated as political, or election-influencing, if it directs the viewer to vote for, vote against, support, or oppose a clearly-identified candidate

# Campaign Finance Overview

- But what about an ad that doesn't do that?
  - For example:
    - The ad discusses only the candidate's position on an issue
    - The ad focuses on the candidate's very sunny and pleasant history as a great citizen
    - The ad discusses the candidate's unpleasant history with a lawsuit
    - The ad focuses on the candidate's military service

# Campaign Finance Overview

- But what about an ad that doesn't do that?
  - For example:
    - The ad doesn't discuss the candidate personally, but discusses a bill (e.g., Sarbanes-Oxley, Dodd-Frank) that is known by the candidate's name



# Campaign Finance Overview

- In some jurisdictions, those ads are not regulated
- In some jurisdictions, whether they are regulated depends on \*when\* the ad is run
- In some jurisdictions, those ads would be treated as contributions to the candidate under some circumstances

# Political File Laws

- An increasing number of jurisdictions impose requirements on publishers of election-influencing ads to retain, and in some cases make publicly-available, information about the ads and their purchasers
- Some of these requirements apply to SSPs and DSPs

# Political File Laws

- These requirements fall into three general buckets:
  - Apply only to traditional media
  - Require \*retention\* of records
  - Require \*publication\* of records
- Some of the retention and publication laws were written pre-internet but may be interpreted to apply to digital ads

# Political File Laws

- These laws generally incorporate the terms and concepts in the jurisdiction's campaign finance law
- So, for example, an ad that directs voters to support Donald Trump in the Presidential race, run to viewers in California, would not implicate California's political file laws

# Political File Laws

- When determining which political file requirements apply, it is necessary to understand the campaign finance law of the jurisdiction whose elections are at issue

# Political File Laws – Some Examples

## California

- Applies to an “online platform” that disseminates certain qualifying political ads
  - Includes social networks
  - Includes “ad networks”
- The law does not further define these key terms
  - California may issue regulations providing further guidance

# Political File Laws – Some Examples

## California

- A covered online platform must make the following publicly available:
  - A copy of the ad
  - Number of impressions generated
  - Dates the ad was displayed
  - Information regarding the rate charged or total amount spent on the ad
  - The name of candidate mentioned

# Political File Laws – Some Examples

## California

A covered online platform must make the following publicly available:

- The name of the ad's sponsor
- A “View ads” button or hyperlink visible to viewer that takes viewer to page showing all of these ad records



# Political File Laws – Some Examples

## New York

- Applies to:
  - A public-facing website with 70m US MAUs
  - An ad vendor that has 30m US MAUs “on any advertisement space that it has sold or bought”
- Specifically includes, but is not limited to, “an ad network, an ad exchange, a demand side platform, or a supply side platform”

# Political File Laws – Some Examples

## New York

- Only covers “independent expenditure” ads purchased by IE committees
- A covered website or third-party advertising vendor must make the following publicly available:
  - A copy of the registration form that the independent expenditure committee purchasing the ad has filed with the State Board of Elections

# Political File Laws – Some Examples

## Washington State

- Applies to a “commercial advertiser”
  - i.e., an entity “that sells the service of communicating messages or producing material ... through ... paid internet or digital communications” related to elections
- Applies to the commercial advertisers that directly sell ads; does not apply to ads that have “been purchased directly through another commercial advertiser”

# Political File Laws – Some Examples

## Washington State

- Requires covered commercial advertisers to make the following publicly available:
  - The candidate supported or opposed
  - The name & address of the ad's sponsor
  - The total cost of the ad; amounts paid to date; method of payment(s); identity of who made payment(s); dates of payments
  - Dates the commercial advertiser rendered the services for the ad

# Political File Laws – Some Examples

## Washington State

- Requires covered commercial advertisers to make the following publicly available:
  - Demographic information of the audience the ad is targeted to reach
    - (Only if the commercial advertiser already regularly collects this information)
  - Total number of impressions
  - A copy of the ad

# Political File Laws – Some Examples

## Washington State

- Presentation may be made:
  - In person during normal business hours or
  - By email or
  - By online publication
- Must be made available within 24 hours of public distribution of the ad

# Political File Laws – Some Examples

## Maryland

- Applies to an online platform with 100k US MAUs that runs qualifying ads
  - Includes an “ad network”
  - Includes a social network, public-facing website, web application, or digital application
- The law does not define these key terms
  - A proposed regulation has languished

# Political File Laws – Some Examples

## Maryland

- Requires covered online platforms to make the following public:
  - Name & contact info of purchaser
  - Name of individuals exercising control over that entity (e.g., treasurer of a political committee, or CEO/Board of other entity)
  - Total amount paid for the ad



# Political File Laws – Some Examples

## Maryland

- Additional recordkeeping requirements:
  - Copy of the ad
  - Name of the candidate/ballot issue to which the ad relates
  - Whether the ad supports or opposes that candidate/ballot issue
  - The dates the ad was first and last disseminated
  - Approximate geographic area where disseminated
  - Approximate audience targeted
  - Total impressions

# Political File Laws – Some Examples

## Maryland

- Alternate public notice requirements that apply when an ad is purchased by an ad network:
  - The name & contact info of the ad network
  - A link to the ad network's website where contact information is located

# QUESTIONS?

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