

## COMPONENTS OF AN EFFECTIVE INTERNET ADVERTISING LAW

The internet has transformed every aspect of society, including politics. In 2016, campaigns spent a total of \$1.4 billion online, eight times higher than the amount spent in 2012.<sup>1</sup> Federal and state rules have not kept pace with these game-changing shifts.

On the federal level, legislation is pending to extend rules that govern political advertising on television and radio to cover internet ads, too. However, there is much that states and cities can, and should, do to improve their laws. California has provided a strong start with its [Disclose Act](#), which requires disclaimers for political ads on social media feeds.<sup>2</sup> And in 2018, New York State expanded its definition of “political communication” to include paid internet or digital advertisements.<sup>3</sup>

Seattle has also won attention for its enforcement of campaign finance laws against undisclosed spending on the internet. In February 2018, the Seattle Ethics and Elections Commission found Facebook in violation of a city law that requires disclosure by ad buyers.<sup>4</sup> Seattle’s [campaign disclosure law](#) was drafted in 1977, before the advent of the internet.<sup>5</sup> The law requires companies that sell election advertising — regardless of the medium — to maintain public books showing the names and addresses of ad buyers, the corresponding payments, and the “exact nature and extent of the advertising services rendered.”<sup>6</sup> The potential penalties could be up to \$5,000 per advertising buy.<sup>7</sup> Previously, the law had not been enforced against tech companies.<sup>8</sup> After Seattle’s action, Washington State updated its campaign finance laws to include online ads in its disclosure rules, including a requirement that ad sellers maintain a file of ads available for public inspection.<sup>9</sup>

Importantly, this episode underscores that older, broader laws may leave ad buyers and sellers confused about their obligations and can even result in inconsistent application of laws across jurisdictions. It is preferable to specifically tailor laws to encompass the internet by enacting the following:

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<sup>1</sup> IAN VANDEWALKER & LAWRENCE NORDEN, GETTING FOREIGN FUNDS OUT OF AMERICA’S ELECTIONS 2 (2018) [https://www.brennancenter.org/sites/default/files/publications/Getting%20Foreign%20Funds%20Out%20of%20America%27s%20Elections.%20Final\\_April9.pdf](https://www.brennancenter.org/sites/default/files/publications/Getting%20Foreign%20Funds%20Out%20of%20America%27s%20Elections.%20Final_April9.pdf).

<sup>2</sup> CAL. GOV’T CODE ANN. §§ 84504.3(a), 84504.3(f) (2018); *see also* Ian Vandewalker & Larry Norden, *California should require disclosure of political ad buys to fend off meddling*, S.F. CHRONICLE (Feb. 18, 2018), <https://www.sfchronicle.com/opinion/openforum/article/California-should-require-disclosure-of-political-12623972.php>.

<sup>3</sup> Budget Bill, S.7509-C, 2017-2018 Leg. Sess. (N.Y. 2018), <https://www.nysenate.gov/legislation/bills/2017/s7509>.

<sup>4</sup> David Ingram, *Seattle says Facebook is violating city campaign finance law*, REUTERS (Feb. 6, 2018), <https://www.reuters.com/article/us-facebook-politics/seattle-says-facebook-is-violating-city-campaign-finance-law-idUSKBN1FP2MB>.

<sup>5</sup> *Id.*; SEATTLE MUN. CODE § 2.04.280 (1977).

<sup>6</sup> *See* SEATTLE MUN. CODE § 2.04.280(A).

<sup>7</sup> *See id.* § 2.04.500(A)(1).

<sup>8</sup> Ingram, *supra* note 4.

<sup>9</sup> Washington included digital ads under existing rules around political advertising. An Act Concerning Campaign Finance Law Enforcement and Reporting, H.B. 2938, 65th Leg. Reg. Sess. (Wash. 2018), <http://apps2.leg.wa.gov/billsummary?BillNumber=2938&Year=2017&BillNumber=2938&Year=2017>.

- ❖ **Update laws to cover online spending.** Campaign finance laws should explicitly require disclosure of internet ad spending and their underlying funding. Definitions of “electioneering communications” should include online expenditures.
- ❖ **Require disclaimers for online ads.**<sup>10</sup> Disclaimer provisions — sometimes called “stand by your ad” rules — require payer information to be placed directly on an advertisement. Including a disclaimer will ensure that people viewing a political ad online will know whether it is a paid ad and, if so, who paid for it. Viewers will then be in a better position to meaningfully evaluate the online ad’s content. Disclaimer rules should also cover social media “shares” of paid political ads by requiring that disclaimer language follows the ad when it is shared by users.<sup>11</sup>
- ❖ **Require digital platforms to maintain public files of all political advertisements purchased on the platform.** The public files should provide information including the content of the ad, the audience targeted, the timing, and payment information.<sup>12</sup> The definition of “political” ads should include any mention of a candidate or legislative issues of public importance.<sup>13</sup> This will ensure that the scope of the definition is sufficiently broad to deter end-runs around the requirement. Lawmakers should also consider including a safe harbor provision, such that platforms would be allowed to keep some identifying information out of the public file where the ad buyer provides credible evidence that disclosure will subject the buyer to “threats, harassment, or reprisals.”<sup>14</sup>
- ❖ **Provide for adequate enforcement and civil penalties for violations.** New York State, for example, recently passed budget legislation imposing a civil monetary penalty for violations of internet ad regulations.<sup>15</sup>

#### FOR MORE INFORMATION ON INTERNET ADVERTISING

IAN VANDEWALKER & LAWRENCE NORDEN, GETTING FOREIGN FUNDS OUT OF AMERICA’S ELECTIONS (2018), <https://www.brennancenter.org/publication/getting-foreign-funds-out-americas-elections>

Ian Vandewalker & Larry Norden, *California should require disclosure of political ad buys to fend off meddling*, S.F. CHRONICLE (Feb. 18, 2018), <https://www.sfchronicle.com/opinion/openforum/article/California-should-require-disclosure-of-political-12623972.php>

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<sup>10</sup> VANDEWALKER & NORDEN, *supra* note 1, at 10, 23.

<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Id.* at 10, 23.

<sup>13</sup> *Id.* at 23.

<sup>14</sup> *Buckley v. Valeo*, 424 U.S. 1, 74 (1976).

<sup>15</sup> Budget Bill, S.7509-C, 2017-2018 Leg. Sess. (N.Y. 2018), <https://www.nysenate.gov/legislation/bills/2017/s7509>.