



July 18, 2018

Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

*Submitted via email to Neven Stipanovic, Esq., NStipanovic@fec.gov*

**Re: Comments on Notice 2018-06: Internet Communication  
Disclaimers and Definition of “Public Communication”**

Dear Commissioners:

The Campaign Legal Center (CLC) appreciated the opportunity to testify at the Commission’s June 28, 2018 hearing on the proposed Internet Communication Disclaimer rules.

CLC writes to address a few outstanding matters from the hearing.

First, there appears to be some confusion about the scope and potential implications of written comments from Twitter.

During the June 28 hearing, CLC stated: “There are a number of different ways that information can be presented on the face of the ad or in the frame surrounding the ad. I am confident that for the vast majority of ads online, the disclaimer information can be presented on the face of the ad without having to limit the communicative content or the overall goal of the ad.”

Chair Hunter replied: “We have comments from Twitter and others that say that that’s not accurate—that requiring a full disclaimer, even a shorter one, would diminish the ability for people to run certain ads.”

Twitter’s comments and practices, however, demonstrate that a disclaimer can indeed be presented on the face of the communication without diminishing the communicative content.

See, for example, this political advertisement on Twitter:



**Beto O'Rourke** @BetoORourke · 22h

In my campaign for Senate, I'm not accepting a dime from PACs or special interests because I believe elected officials should work for the people they represent.

Chip in to elect a Senator who's fully accountable to Texans:



**Donate to our campaign for Texas**

[secure.actblue.com](https://secure.actblue.com)



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Promoted (political) - [Ad details](#)

The ad's communicative content is in the character-limited text immediately above and below the image, and in the image itself. Twitter's version of a "disclaimer" is at the bottom of the ad, which includes an icon and the text "Promoted (political) – Ad details."

Clicking the "ad details" hyperlink expands the ad to show the following information:



**Beto O'Rourke** ✓  
@BetoORourke

In my campaign for Senate, I'm not accepting a dime from PACs or special interests because I believe elected officials should work for the people they represent.

Chip in to elect a Senator who's fully accountable to Texans:



Donate to our campaign for Texas  
[secure.actblue.com](https://secure.actblue.com)

5:58 PM · Jul 9, 2018

🚩 Promoted (political)

### Tweet performance summary

This is how much the advertiser spent promoting this Tweet and how many times it was seen in ad campaigns.

Spend	Impressions
<\$100	4.2K

### Targeting

This Tweet ran in 1 campaign. Campaigns may include multiple Tweets. Select a date range to view the targeting information for each campaign.

Jul 9, 2018 – Jul 10, 2018  
4 Tweets, \$195 spend, 37.2K impressions



Clearly, the statutorily required disclaimer could be included in the image itself, which already includes the name of the sponsoring political committee and so would require only a border and the additional words “Paid for by.” Furthermore, the 35 characters in Twitter’s own disclaimer (“Promoted (political) – Ad details”) could easily be modified to accommodate a full statutory disclaimer—in this instance, the 30 characters needed to inform viewers the ad was “Paid for by Beto for Texas.” When necessary, Twitter could make this line longer to accommodate more disclaimer text.

This example shows how the dynamic nature of digital advertising allows platforms to innovatively accommodate disclaimer requirements.<sup>1</sup> If the Commission sets baseline rules, advertising platforms will find a multitude of ways to accommodate disclaimer information on the face of the communication. In this instance, Twitter could readily replace its own “Promoted (political) – Ad details” language with FECA’s disclaimer information.

The Twitter example also speaks to the urgency of Commission action in this area. Twitter has made a commendable effort to offer its users more information about who is paying for political ads. Yet in the absence of guidance from the Commission, the information currently presented on the face of the ad does not comply with FECA’s statutory requirements. If the Commission were to state clearly that this information is required for digital ads that meet the statutory criteria, advertisers on Twitter could readily provide that information.

It additionally appears that Twitter has been inconsistent in labeling advertisements as “political.” See, for example, this advertisement from the political committee Restoration PAC, which expressly advocates for the election of Wisconsin U.S. Senate candidate Kevin Nicholson:

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<sup>1</sup> Relatedly, this Twitter ad example demonstrates the limitations of the Commission’s “Disclaimer Proposals Applied to Sample Internet Ads for REG: 2011-02” document. The sample internet ads in that document seem to assume that internet ads are only analogous to the image included in the Twitter ad above; but as this example shows, there are other ways that disclaimer information can be presented outside of the four corners of an image or banner ad, and still satisfy the “face of the communication” requirement.



As was the case with the Beto for Senate advertisement, this advertisement could additionally accommodate a full or adapted disclaimer in the frame of the ad (in the area that currently states “promoted”), or within the image itself. The Commission need only state what the requirements are, and advertisers and advertising platforms will comply.

Perhaps some of the Commission’s confusion about Twitter’s position arises from the company’s written comments with respect to video advertising and Alternative A’s proposed application of “stand by your ad” requirements to digital video ads.<sup>2</sup>

Twitter’s written comment noted that “we are seeing that 6-second ‘pre-roll’ video ads are increasingly popular with political advertisers,” and that

<sup>2</sup> During the June 28 hearing, for example, Commissioner Peterson noted “Twitter is basically saying, if you adopt a lot of the rules in both Alternative A and Alternative B, but particularly Alternative A, it will mean that advertisers cannot use a lot of the ads that they are allowing and the ones that I think we all agree are more popular now which are the smaller ads and the shorter video ads.”

Alternative A’s stand by your ad requirement ”would disrupt the ability of political advertisers to utilize these ads because all or nearly all of [the] communication would be devoted to meeting the Commission’s disclaimer requirements.”<sup>3</sup>

However, according to Twitter’s own description of its advertising, this is a significant overstatement.

Twitter offers advertisers an option to purchase “in-stream video” advertisements, which it describes as a short “pre-roll ad” that plays before a longer video.<sup>4</sup> There do not appear to be any limits on the length of the ad, but advertisers are charged based on a viewer watching for either 2 seconds (at 50% view) or 3 seconds (at 100% view), or engaging with the video by clicking to expand or unmute the video.<sup>5</sup> According to Twitter, if a “video is longer than six seconds, a tap to Skip button will appear for the user at :06,”<sup>6</sup> but the advertiser will not be required to pay more, or otherwise limit their communicative content, to accommodate any disclaimer the Commission might require.<sup>7</sup>

Even if the Commission does not require a full stand by your ad disclaimer for digital video ads, or for short digital video ads, it should clarify that any disclaimer information that is required be delivered in the same format as the communicative content. That is, text-only ads should have text disclaimers; video ads should have video disclaimers; ads with video and audio components should include video and audio disclaimers, etc.

CLC also agrees with Twitter’s explicit recommendation that there should be no blanket exemptions from disclaimer requirements, such as Alternative B’s proposed paragraph 110.11(f)(1)(iv).<sup>8</sup>

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<sup>3</sup> Twitter comments at 2.

<sup>4</sup> Twitter, *Create an In-Stream Video Views Campaign*, <https://business.twitter.com/en/help/campaign-setup/create-an-in-stream-video-views-campaign.html> (accessed July 10, 2018).

<sup>5</sup> *Id.* Other Twitter video advertising options are priced in a similar fashion. See Twitter, *Create a Video Views Campaign*, <https://business.twitter.com/en/help/campaign-setup/create-a-video-views-campaign.html> (accessed July 10, 2018) (noting that bid cost is based on a video “watched in 50% view for 2 seconds or more,” or “watched in 100% view for 3 seconds or more,” or when a user clicks to expand/unmute your video.”)

<sup>6</sup> Twitter, *Create an In-Stream Video Views Campaign*, *supra* note 4.

<sup>7</sup> It should also be noted that the Supreme Court in *Citizens United* expressly rejected an argument that a four-second spoken disclaimer on a ten-second ad “decreases both the quantity and effectiveness of the group’s speech.” *Citizens United v. FEC*, 558 U.S. 310, 368 (2010).

<sup>8</sup> “Disclaimer requirements should be flexible, but they should nonetheless be requirements. Accordingly, whatever adapted disclaimer requirements the FEC may ultimately promulgate, Twitter intends to require that disclaimer information be included on

Second, at the June 28 hearing, the Institute for Free Speech called into question the value of disclaimers in the online context, given the ease with which a viewer could, for example, search for the name of an advertiser on Open Secrets or in a search engine.

In response, CLC referenced the Facebook page “Hoosier Country,” which demonstrates the importance of on-ad disclaimers for digital ads, given the opportunities for voter confusion or deception online. The Supreme Court has endorsed disclaimers as a means of “avoid[ing] confusion by making clear” whether ads are funded by a candidate, a political party, a political committee, or some other person,<sup>9</sup> and the Hoosier Country example shows the ease with which a political committee can fund digital ads through innocuously-named Facebook pages or front groups.

Hoosier Country’s “about” page describes it as “a community for anyone who wants to show their Hoosier pride. Join us in celebrating what we love about our state and help us work towards a better future for all Hoosiers.”<sup>10</sup>

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or closely associated with *all* Tweets. We do not foresee any circumstances under which a political advertisement could be eligible for a complete exemption from providing disclaimer language, and do not think such a policy is consistent with stakeholders’ shared goal of dramatically increasing transparency for political ads.” Twitter, Comments on Notice 2018-06 (May 25, 2018) at 3 (emphasis in original), <http://sers.fec.gov/fosers/showpdf.htm?docid=380577>.

<sup>9</sup> *Citizens United*, 558 U.S. at 368.



<sup>10</sup> Hoosier Country Facebook page, “About,” <https://www.facebook.com/pg/HoosiersFirst/about/> (accessed July 10, 2018). Commission regulations require disclaimers on “all Internet websites of political committees available to the general public,” 11 C.F.R. § 110.11(a)(1), but the Commission has divided on whether a page or account controlled by a committee on a third-party website like Facebook or Twitter is a website of a political committee. See, e.g. Advisory Opinion 2017-05 (Great America PAC) at 7, <https://www.fec.gov/files/legal/aos/2017-05/AO-2017-05.pdf>.




Unpaid posts on the Hoosier Country’s own page include links to local news stories, such as state universities receiving grants and a Caterpillar plant adding jobs in Indiana.<sup>11</sup> However, all of Hoosier Country’s paid advertisements attack a U.S. Senate candidate, and because Facebook has begun requiring advertising disclaimers, the ads state that they are paid for Priorities USA and Senate Majority PAC (SMP).<sup>12</sup>


<sup>11</sup> Hoosier Country Facebook page, <https://www.facebook.com/HoosiersFirst/> (accessed July 10, 2018).

<sup>12</sup> See Facebook, Archive of Ads With Political Content, “Hoosier Country,” [https://www.facebook.com/politicalcontentads/?active\\_status=all&ad\\_type=ads-with-political-content&page\\_ids\[0\]=366178390518635&q=hoosier%20country](https://www.facebook.com/politicalcontentads/?active_status=all&ad_type=ads-with-political-content&page_ids[0]=366178390518635&q=hoosier%20country) (accessed July 11, 2018).

 **Hoosier Country** Sponsored · Paid for by Priorities USA Action and SMP. Not authorized by any candidate or candidate's committee. · 

Mike Braun reportedly cuts corners to earn a quick buck. His workers get screwed.



 **Resume Video**



 **Learn More**  
[www.badbusinessbraun.com](http://www.badbusinessbraun.com)

**MIKE BRAUN TREATS HIS WORKERS LIKE MACHINES**

18-hour days.  
No breaks.  
No pay for overtime.

PAID FOR BY PRIORITIES USA ACTION AND SMP. WWW.PRIORITIES.ORG. WWW.SENATEMAJORITY.COM.  
NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE

[WWW.BADBUSINESSBRAUN.COM](http://WWW.BADBUSINESSBRAUN.COM) [Learn More](#)

 **Like**  **Comment**  **Share**

Contrary to the assertions of the Institute for Free Speech, entering “Hoosier Country” into Open Secrets or the FEC website yields no relevant results; searching for the group name on a search engine also provides no information about the group. The Hoosier Country Facebook page does not suggest any connection to national Democratic super PACs. Absent this on-ad disclaimer, a viewer would not know that Hoosier Country’s ads are paid for by Priorities USA and Senate Majority PAC.

Full disclaimer information is also available through an indicator on the ad—the small “i” in the top right hand corner. However as described by organizations such as Tech Freedom and Center for Democracy &

Technology, in written comments and during the second panel at the June 28 hearing, most research suggests that many, if not most, internet users do not recognize icons such as the DAA indicator, and do not know to click on the icon for more information.<sup>13</sup> Presumably, even fewer users would click an icon on an ad that already appears to include the name of the group's sponsor—in this instance, Hoosier Country—and would never learn that the ad is in fact paid for by, for example, two national Democratic super PACs.

Another example is “Virginians Against Tim Kaine,” whose Facebook page ran at least 19 ads expressly advocating for the election of U.S. Senate candidate Corey Stewart in the weeks before Virginia’s June 12, 2018 primary election.<sup>14</sup>

The advertisements include Facebook’s required disclaimer, and state “Paid for by Virginians Against Tim Kaine.” However, “Virginians Against Tim Kaine” is not a registered political committee, nor has it filed any independent expenditure reports with the Commission.

Some of the “Virginians Against Tim Kaine” ads additionally include the disclaimer “Paid for by Stewart for Senate, Inc.” within the image:

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<sup>13</sup> See, e.g. TechFreedom, Comments on Notice 2018-06 (May 25, 2018), <http://sers.fec.gov/fosers/showpdf.htm?docid=380620> at 2-4, and Center for Democracy & Technology, Comments on Notice 2018-06 (May 25, 2018) <http://sers.fec.gov/fosers/showpdf.htm?docid=383252> at 2-3.

<sup>14</sup> See Facebook, Archive of Ads With Political Content, “Virginians Against Tim Kaine,” [https://www.facebook.com/politicalcontentads/?active\\_status=all&ad\\_type=all&view\\_all\\_page\\_id=176744602987619](https://www.facebook.com/politicalcontentads/?active_status=all&ad_type=all&view_all_page_id=176744602987619) (accessed July 11, 2018); see also Alex Thompson, Pro-Trump Republican Corey Stewart Benefitted From Illegal Campaign Ads on Facebook, Vice News (Jun. 19, 2018), [https://news.vice.com/en\\_us/article/qvn5dp/pro-trump-republican-corey-stewart-benefitted-from-illegal-campaign-ads-on-facebook](https://news.vice.com/en_us/article/qvn5dp/pro-trump-republican-corey-stewart-benefitted-from-illegal-campaign-ads-on-facebook).



**Virginians against Tim  
Kaine**

**Sponsored • Paid for by Virginians  
Against Tim Kaine**

**FIRE TIM KAINE!  
VOTE FOR COREY STEWART ON  
JUNE 12TH!**



**FIRE TIM KAINE!**  
**VOTE FOR**  
**COREY STEWART**

**Tuesday, June 12<sup>th</sup>**  
**Republican Primary**

**VOTE AT YOUR REGULAR POLLING LOCATION**

Paid for by Stewart for Senate, Inc.

Other ads include the text “Not paid for by any candidate or committee” at the bottom of the ad:



## Virginians against Tim Kaine

Sponsored • Paid for by Virginians Against Tim Kaine

WE MUST FIGHT TO DEFEND OUR  
HISTORY AND HERITAGE!  
VOTE COREY STEWART ON JUNE  
12TH!



Other ads include neither:



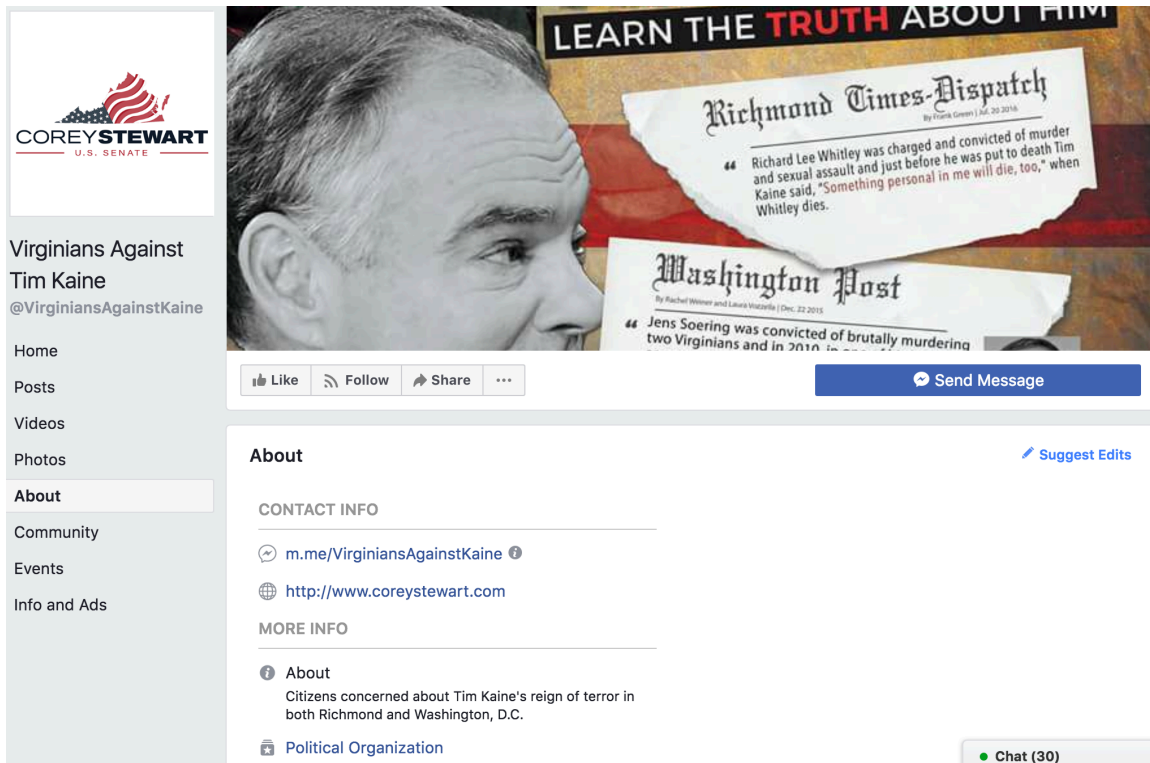
## **Virginians against Tim Kaine**

**Sponsored • Paid for by Virginians  
Against Tim Kaine**

**STAND WITH PRESIDENT DONALD J.  
TRUMP AND VOTE COREY STEWART ON  
JUNE 12TH!!**



The “About” section on the group’s Facebook page describes itself as “Citizens concerned about Tim Kaine's reign of terror in both Richmond and Washington, D.C.,” and links to the official Stewart campaign website.



There is no information about “Virginians Against Tim Kaine” outside of this Facebook page. It is not clear whether Virginians Against Tim Kaine is a project of the Stewart campaign or a project of a different political committee. But it is clear that the inclusion of the statutorily-required disclaimer language stating whether an ad is authorized by a candidate or political committee can be particularly important in the digital advertising context.

Of course, Facebook’s own self-regulatory plans are an insufficient substitute for Commission action. Facebook can change its policies at any time and lacks enforcement mechanisms. However, these examples do show the particular importance of on-ad disclaimers in the digital context.

Finally, in light of the above examples and discussion, the proposed A/B regulation from Freedom Partners is problematic.<sup>15</sup> Under this proposal, a disclaimer may be included on the face of the ad, or “in the alternative,” a disclaimer may be presented using “any technological mechanism” along with an indicator; an indicator is not required if the website or device “does not provide for or allow for indicators.” In other words, it is left up to an advertiser whether they would prefer to use an on-ad disclaimer or instead merely use a technological mechanism or indicator.

<sup>15</sup> Freedom Partners, Comments on Notice 2018-06 (May 21, 2018), <http://sers.fec.gov/fosers/showpdf.htm?docid=380570> at 10-11.

If the Freedom Partners proposal were applied to the Hoosier Country Facebook ad, for example, the advertiser could choose to omit the on-ad disclaimer stating “paid for by Priorities USA Action and SMP” and might instead only include the “i” indicator. A user would not know by looking at the Hoosier Country ad that it was actually paid for by two super PACs, and as noted above, research indicates that few users recognize that they can click icons for more information.

Moreover, the Freedom Partners proposal does not offer any more of a bright-line standard than does Alternative A. Alternative A would allow for an adapted disclaimer if the advertisement, “due to external character or space constraints,” “cannot” fit a required disclaimer. The Freedom Partners proposal would make the use of an on-ad disclaimer optional, and additionally allow for the omission of an indicator if the website or device “does not provide for or allow for indicators.” There is not a discernable difference between Alternative A’s “due to external character or space constraints . . . cannot” standard and Freedom Partners’ “does not provide for or allow for” standard.

To comply with 52 U.S.C. § 30120 and to provide clarity regarding the application of that statutory requirement to digital advertising, CLC recommends that the Commission adopt regulatory text such as the following:

Add new 11 C.F.R. § 110.11(c)(5): *Specific requirements for digital communications.* Any communication that is subject to this section and is distributed in digital format shall comply with the requirements of paragraph (c)(2) of this section if the communication includes a text or graphic component and shall comply with the requirements of paragraph (c)(3) or (c)(4) of this section, as applicable, if the communication includes an audio or video component.

Add to the beginning of 11 C.F.R. § 110.11(f): Except as provided in paragraph (f)(3) of this section, . . .

Add new 11 C.F.R. § 110.11(f)(3): Subparagraphs (f)(1)(i) and (f)(1)(ii) of this section shall not apply to digital communications. In the case of a digital communication that is subject to the requirements of this section and that is disseminated through a medium in which the provision of all of the information specified in this section is not possible, the communication shall, in a clear and conspicuous manner—

- (i) state the name of the person who paid for the communication; and

(ii) provide a means for the recipient of the communication to obtain the remainder of the information required under this section with minimal effort and without receiving or viewing any additional material other than such required information.

Thank you again for your consideration of these comments and for the opportunity to testify.

Sincerely,

/s/

Brendan Fischer  
Director, Federal Reform  
Campaign Legal Center