



September 15, 2021

Submitted electronically to [ashley.coles@elections.virginia.gov](mailto:ashley.coles@elections.virginia.gov)

Robert H. Brink, Chairman  
Virginia State Board of Elections  
Washington Building  
1100 Bank Street, First Floor  
Richmond, VA 23219

Dear Chairman Brink,

Campaign Legal Center (“CLC”) respectfully submits these written comments to the Virginia State Board of Elections (“Board”) regarding the Notice of Intended Regulatory Action (“Proposed Rule”) to implement the print media advertising disclosure statement requirements in Code §§ 24.2-956 and 24.2-956.1.<sup>1</sup>

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other federal and state court cases. Our work promotes every American’s right to an accountable and transparent democratic system.

CLC supports the Board’s rulemaking regarding Virginia’s disclosure statements on political print media advertisements. In addition to supporting the adoption of requirements for disclosure statements similar to the federal disclaimer requirements for traditional print media advertisements, CLC also recommends that the Board clarify the requirements for “print media advertisements appearing in an electronic format” in the final rule. Although the proposed rule “appl[ies] to print media advertisements under § 24.2-956 and § 24.2-956.1 of the Code of Virginia,” it is currently silent as to the alternative method of displaying disclosure statement information via a link on certain digital advertisements as provided under Code §§ 24.2-956(5) and 24.2-956.1(6).

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<sup>1</sup> State Bd. of Elections, Notice of Intended Regulatory Action, 37 Va. Reg. Regs. 3926 (Aug. 16, 2021), <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9299>.

With the increasing prominence of digital advertising in federal, state, and local campaigns, it is imperative that election officials extend political transparency requirements to communications distributed via digital methods.<sup>2</sup> Our comments are intended to help the Board promulgate a final rule that ensures voters receive the information required by disclosure statements when viewing digital advertisements and that provides clear guidance for the regulated community on the disclaimer requirements in Code §§ 24.2-956(5) and 24.2-956.1(6).

First, we propose requiring that the sponsor of a digital advertisement establish, at the Board's request, why a disclosure statement could not be included on the face of an advertisement due to "lack of sufficient space." Second, we recommend specifying guidelines for how a digital advertisement must provide the required disclosure statement through a direct link when the disclosure statement cannot be placed on the face of the advertisement. Each part of our comments also includes an example of proposed rule text based on our recommendations, which we hope the Board will consider adopting as part of the final rule.

**I. Require sponsors of digital advertisements to be able to establish that particular ads could not include complete disclosure statements.**

Code §§ 24.2-956(5) and 24.2-956.1(6) provide an exemption for digital advertisements that "lack sufficient space for a disclosure statement in a minimum font size of seven point," allowing the sponsor to provide the disclosure statement through a link—specifically, "by clicking on" the advertisement, itself—to a landing page or home page that displays the required information. The final rule should require that sponsors of digital advertisements establish, at the Board's request, that including a complete disclosure statement on the face of a particular ad was not possible due to legitimate size or technological constraints. This addition would help to prevent ad sponsors from abusing the exemption and ensure that full disclosure statements appear on digital advertisements when possible.

Other states have similar exemptions allowing for an alternative method of accessing the disclosure statement.<sup>3</sup> California's Political Reform Act, for example, permits the sponsor of an "electronic media advertisement" to substitute a complete disclaimer statement on the face of an ad with a hyperlink to the required information when including a complete disclaimer would be "impracticable or would severely interfere with the [sponsor's] ability to convey the intended message due to

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<sup>2</sup> By one account, at least \$1.6 billion was spent on digital advertising in federal, state, and local elections during the 2019-2020 cycle. See Howard Homonoff, *2020 Political Ad Spending Exploded: Did It Work?*, FORBES (Dec. 8, 2020), <https://www.forbes.com/sites/howardhomonoff/2020/12/08/2020-political-ad-spending-exploded-did-it-work/?sh=77afe1bd3ce0>.

<sup>3</sup> See, e.g. Wis. Admin. Code Eth. § 1.96(5)(h).

the nature of the technology used to make the communication.”<sup>4</sup> Applying this statutory provision, California’s Fair Political Practices Commission requires that a sponsor of an electronic media advertisement who claims inclusion of a full disclaimer on the ad is “impracticable” be able to show why it was not possible to include a complete disclaimer on the advertisement.<sup>5</sup>

In the final rule, we recommend the Board include a similar provision requiring sponsors of digital advertisements to demonstrate, upon request by the Board, that “the advertisement lacks sufficient space for a disclosure statement in a minimum font size of seven point.” This would safeguard against exploitation of the “sufficient space” exemption and ensure Virginia voters have access to complete information about the sources of digital political ads, even when those ads are small, as intended by state law.

***Recommended text for final rule:***

**1VAC20-90-40 (new subsection):** A candidate, candidate campaign committee, person, or political committee that claims its print media advertisement appearing in electronic format lacks sufficient space for a disclosure statement in a minimum font size of seven point, as provided by § 24.2-956(5) and § 24.2-956.1(6) of the Code of Virginia, must be able to establish, at the Board’s request, that this exception has been met.

**II. The modified disclosure statement requirement for digital advertisements should specify that viewers of the advertisement must be able to access the disclosure statement in one step.**

For a digital advertisement on which a disclosure statement genuinely cannot be included due to insufficient space, Code §§ 24.2-956(5) and 24.2-956.1(6) provide that the disclosure requirements may be met if the viewer may click on the advertisement and be “taken to a landing page or home page that displays the disclosure statement in a conspicuous manner.” To ensure that Virginia voters who view digital advertisements about state candidates can easily access all information required by law, we recommend that the Board add guidelines in the final rule to clarify the modified disclosure statement requirement in Code §§ 24.2-956(5) and 24.2-956.1(6).

In particular, the Board’s final rule should make clear that clicking on a digital advertisement must immediately direct the recipients of the advertisement to a page displaying the remaining information required by Code §§ 24.2-956 and

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<sup>4</sup> Cal. Gov’t Code §§ 84501(a)(2)(G), 84504.3(b).

<sup>5</sup> Cal. Code Regs. tit. 2, § 18450.1(b); *see also* Cal. Fair Political Practices Comm’n, Op. No. I17-017 (Mar. 1, 2017), at 4 (“Where character limit constraints render it impracticable to include the full disclosure information specified, the committee may provide abbreviated advertisement disclosure on the social media page. . . . If abbreviated disclaimers are used a committee must be able to show why it was not possible to include the full disclaimer.”).

24.2-956.1—without requiring the recipient to navigate through or view any extraneous material beyond the disclosure statement. This addition would ensure Virginia voters have one-step access to clear and complete disclosure information when they view digital advertisements supporting or opposing state candidates. Other states, including Washington,<sup>6</sup> New York,<sup>7</sup> and Wisconsin,<sup>8</sup> have promulgated similar regulations for modified disclaimers on certain digital ads, which allow the public to readily obtain key information about the sources of online advertising in elections.

*Recommended text for final rule:*

**1VAC20-90-40 (new subsection):** A print media advertisement appearing in electronic format that provides the disclosure statement on a landing page or home page shall provide a link for the recipient of the advertisement to immediately view the disclosure statement required under Code §§ 24.2-956(5) and 24.2-956.1(6) with minimal effort and without receiving or viewing any additional material other than the required information.

**Conclusion**

Thank you for your consideration of CLC’s comments and recommendations for this important rulemaking. We would be happy to answer questions or provide additional information to assist the Board in promulgating the final rule for Code §§ 24.2-956 and 24.2-956.1.

Respectfully submitted,

/s/ Aaron McKean  
Aaron McKean  
Legal Counsel

/s/ Patrick Llewellyn  
Patrick Llewellyn  
Director, State Campaign Finance

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<sup>6</sup> Wash. Admin. Code § 390-18-030(3) (specifying that “small online advertising” with limited character space may include, in lieu of full disclaimer, “automatic displays” with the required disclaimer information if such displays are “clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible.”).

<sup>7</sup> N.Y. Comp. Codes R. & Regs. tit. 9, § 6200.10(f)(2)(ii) (requiring an “adapted attribution” included on a “paid internet or digital advertisement” to “allow a recipient of the communication to locate the full attribution by navigating no more than one step away from the adapted attribution and without receiving or viewing any additional material other than the full attribution required by this [rule].”).

<sup>8</sup> Wis. Admin. Code Eth. § 1.96(5)(h) (permitting “small online ads or similar electronic communications” on which disclaimers cannot be “conveniently printed” to include a link that “direct[s] the recipient of the small online ad or similar electronic communication to the attribution in a manner that is readable, legible, and readily accessible, with minimal effort and without viewing extraneous material.”).