



MPA Webinar Series: Election Advertisements January 2024



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ELECTION NIGHT FEVER: MICHIGAN IN THE LIMELIGHT



It's that time again!

- Pundits suggest national advertising spending could exceed \$11 Billion this year
- Down-ballot races are expected to be 75% of the spend according to NBC News
- It's going to be "fun." There's no doubt that advertising will bring some ... interesting approaches and potential disinformation here's what's blowing up NJ:

For example, one mailer paid for by the Republican State Leadership Committee – New Jersey PAC alleges that "Trenton Democrats" are "Threatening your gas stoves, cars and household appliances."



Michigan: A Nation Turns Its Lonely Eyes to You...

 Michigan Plays a Looming Role in 2024: Michigan will again play a major role in both down-ballot races as well as the Presidency



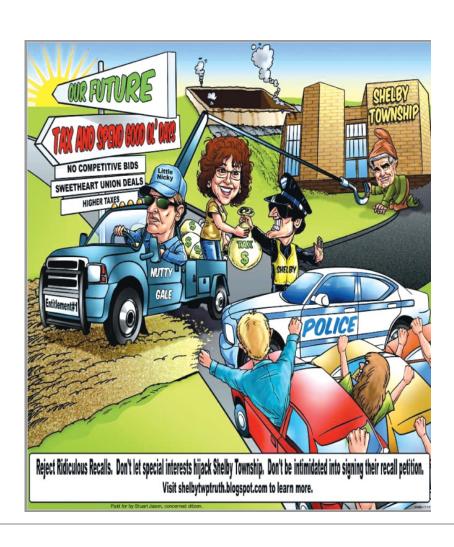


First Principles: Don't Forget the Normal Issues

- What does the ad say?
- Could the ad be defamatory?
- Are the statements factually accurate?
- Is there information to back up the claims being made?







And Look Deep...

- What if the ad contains a cartoon alleging misconduct by the individual running for office?
- Is there some subtle undertone that only a select few may understand?
- Is it a parody?
- What about doctored photos (or... an advertisement with prison bars superimposed over the candidate)?





PREPARING FOR DISINFORMATION AND THE ALLEGATIONS OF DISINFORMATION



Disinformation 101

- What is disinformation? According to author Barbara McQuade in the upcoming book Attack from Within, disinformation is "the deliberate use of lies to manipulate people, whether to extract a profit or to advance a political agenda."
- How does it work? Here are the tactics you may see and how they may impact you.
 - Aim for the Heart: Appeal to emotion over reason
 - o *Divide*: Make it us against them
 - Demonize: Create a scapegoat or call groups a "squad" or a "gang" or... some new term
 - Seduce with Nostalgia: Appeal to tradition and what the community used to be
 - Shut down Critics: Fight the other side even using advertising just wait for the call complaining or the desire to make ads into letters to the editor



Happy Elections! Disinformation is set to return!

- Nation-State Disinformation Campaigns: NYU's Brennan Center for Justice reported on the significant 2020 election disinformation campaign that is likely to reprise itself in 2024. Top issues that are being exploited this year are:
 - o Race
 - Nationalism and patriotism
 - Immigration
 - Gun control
 - LGBT rights

The accounts reviewed by the researchers were found to have heavily targeted misinformation at Michigan, Wisconsin, Arizona, Florida and Ohio, all of which are seen as swing states in the 2020 presidential election.

Amid Russian election interference, Michigan's leaders worry about misinformation

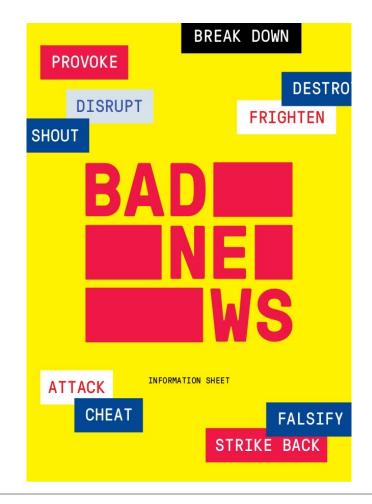
Michigan's swing state status could put it at risk for Russian election interference

Michigan was key target of Russian election meddling, Slotkin says



How to Address Disinformation

- Focus on journalism and comply with traditional norms:
 - Use headlines that reflect the content
 - Double or multiple source factual assertions
 - Understand the risk of reliance on unnamed sources
- Call out disinformation and fact check without legitimizing the falsity: provide counter-narratives or debunk without restating the claim
- Don't employ click-bait for disinformation







THE MECHANICS: ADVERTISING REQUIREMENTS OF MICHIGAN'S LAWS



Newspaper's Own Advertisements: <u>Author Disclaimer</u>

If you, as a newspaper, publish an advertisement that mentions or includes anything about a candidate for Michigan public office, the advertisement must always include the author of the advertiser.





Requirements for Payors of Printed Political Ad: <u>Identification Statements</u>

Printed political ads referencing an *election*, *candidate*, or *ballot question must identify* ...

- 1. The *Name* of the person/organization paying for the ad; and
- 2. The *Address* of the person/organization paying for the ad.

Exception: no identification statement is necessary if the payor of the ad is an individual acting independently, who is not a candidate, and is not acting as an agent for a candidate or committee.



Requirements for Payors of Printed Political Ad: Regulated Funds Disclaimer

When a printed political advertisement requires an *identification statement*, the *identification statement* must include the following ...

"this advertisement is paid for with regulated funds"

Exceptions – this statement is not necessary if ...

- 1. A candidate's committee pays for the printed ad; OR
- 2. The printed ad does not *expressly* advocate the election or defeat of a "clearly identifiable candidate"

E.g., if the ad contains the following words, it will likely need the disclaimer – "vote for," "elect," "support," "cast your ballot for," "Smith for governor," "vote against," "defeat," "reject," etc.



Requirements for Payors of Printed Political Ad: <a href="https://doi.org/10.1007/j.nc/4/2012-10.1007/j.nc

Printed political ads referencing a candidate that is an independent expenditure that is not authorized in writing by the candidate committee of that candidate must include the following disclaimer...

"Not authorized by any candidate committee."

Exception: no identification statement is necessary if the payor of the ad is an individual acting independently, who is not a candidate, and is not acting as an agent for a candidate or committee.



Bottom-Line for Michigan Law

- Every printed political ad should contain the following:
 - 1. The *name of the author* of the advertisement;
 - 2. The *name of the person or organization who is paying* for the advertisement; AND
 - 3. The address of the person or organization who is paying for the advertisement.







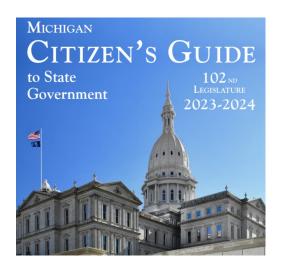
MICHIGAN'S NEW AI LAW



Michigan Passes Al Campaign Advertising Law

Sec. 59. (1) If a person, committee, or other entity creates, publishes, or originally distributes a qualified political advertisement, the qualified political advertisement must include, in a clear and conspicuous manner, a statement that meets all of the following requirements, as applicable:

- (a) State that the qualified political advertisement was generated in whole or in part by artificial intelligence.
- (b) If the qualified political advertisement is a text or graphic communication, appear in letters at least as large as the majority of the text in the communication.





HB 5141 (Rep. Penelope Tsernoglou) Campaign finance: advertising; using artificial intelligence in certain political advertisements; require disclosure.

HB 5142 (Rep. Ranjeev Puri) Criminal procedure: sentencing guidelines; sentencing guidelines for campaign finance violations; modify.

HB 5143 (Rep. Matt Bierlein) Campaign finance: other; artificial intelligence; define.

HB 5144 (Rep. Penelope Tsernoglou) Elections: offenses; penalties for distributing materially deceptive media; provide for, and provide procedure for enjoining materially deceptive media.

HB 5145 (Rep. Noah Arbit) Criminal procedure: sentencing guidelines; sentencing guidelines for certain election law offenses involving materially deceptive media; provide for.



Under the New Al Law

- You will need to ask all advertisers (*or advertisers in the area the law covers – like political advertising) if they used GenAl to create their copy
 - Note: The Legislature REALLY needs to define GenAI, because (technically) spell check applies artificial intelligence and might have to be disclosed
- You will want to consider assuring you have good indemnification provisions that call out the use of artificial intelligence
 - We have provided a sample indemnification provision behind the paywall on the MPA website.
- You will want to have an internal Al advertising policy that you provide to your advertisers



Indemnification and AI Use Policies

For indemnification – use the MPA template AI Indemnification

[ADVERTISER/ADVERTISING AGENCY] warrants and represents that the advertisement ("Work") and all components of the Work submitted to [NEWSPAPER] were not made in whole or in part with artificial intelligence (e.g., such as generative AI programs). [ADVERTISER/ADVERTISING AGENCY] shall indemnify, defend, and hold harmless [NEWSPAPER] from and against any losses arising from infringement or violation of any applicable laws and regulations relating to the use of artificial intelligence, including, but not limited to, intellectual property rights of third parties and privacy rights.

 Use Policies – Call the hotline for a tailored AI use policy to circulate to your advertisers





THE MECHANICS: ADVERTISING REQUIREMENTS OF FEDERAL LAWS



Printed Political Ad Disclaimer: When Required

Disclaimers *must* be included if the ad is...

- 1. Made by a *political committee*;
- 2. Made by any person that *expressly* advocates the election or defeat of a clearly identified candidate;
- 3. Made by any person that *solicits any contributions*; OR
- 4. Is an electioneering communication.





Printed Political Ad Disclaimer: <u>Content of Disclaimer</u>

If the printed ad is *paid for* or *authorized* by a

- (1) candidate,
- (2) an authorized candidate committee, or
- (3) an agent of the candidate or committee,

the disclaimer must state ...

"This advertisement has been [paid for/authorized] by [Smith/the committee to elect Smith]"



Printed Political Ad Disclaimer: <u>Content of Disclaimer</u>

If the printed ad is authorized by a

- (1) candidate,
- (2) an authorized candidate committee, or
- (3) an agent of the candidate or committee,

but paid for by any other person/organization, the disclaimer must state ...

"This advertisement has been [authorized] by [Smith/the committee to elect Smith] and paid for by [Lincoln]"



Printed Political Ad Disclaimer: Content of Disclaimer

Political Party Committee Special Rules

- If the printed ad is **paid for** by a political party committee, then the political party committee must be named as the entity paying for the ad.
- If the candidate has **authorized** the political party committee's ad, this must be stated.
- If the candidate has not authorized the political party committee's ad, this must be stated.





Printed Political Ad Disclaimer: <u>Content of Disclaimer</u>

If the printed ad is **not authorized** by a candidate, an authorized candidate committee, or an agent of the candidate or committee, the disclaimer must state ...

- 1. The *Name* of the person who paid for the ad;
- 2. The *Address* of the person who paid for the ad;
- 3. The person's *Telephone Number*;
- 4. The Website Address of the person; AND
- 5. Must **state** "This communication is not authorized by any candidate or candidate's committee."



Printed Political Ad Disclaimer: <u>Presentation of Disclaimer</u>

Make sure the disclaimers are clear, legible, and understandable!

A printed political ad must ...

- 1. Be presented in a clear and conspicuous manner;
- 2. Be of sufficient type size to be clearly readable;
- Be contained in a printed box set apart from the other contents of the printed advertisement; AND
- 4. Be printed with a reasonable degree of color contrast between the background and the printed statement.





Charging Advertisers: Keep Comparable Rates

Treat all advertisers equally!

 Newspapers cannot charge a greater amount for political ads than non-political ads.

 You can offer volume discounts, but the discount must be offered to all candidates.



Bottom-Line for Federal Law

- Printed political ads should always include a disclaimer which includes
 - 1. Whether the ad is authorized;
 - 2. Who authorized it; AND
 - 3. Who paid for it.
- Disclaimers should be readable, clearly understandable, and contained in a separate box from the advertisement.
- Treat all advertisers equally!





OTHER HOT TOPICS



Hot Topics in Election Advertising

- **Privacy**: Campaigns are often getting bolder in sharing private information about candidates. Current trends include doxxing and swatting posting private information to harass or using private information to "call down the SWAT" to someone's residence.
 - Watch for questionable information about candidates in any advertising
- The Impact of Social Media Restrictions: With platforms creating and using (or not enforcing) political ad policies, there may be a move to more local sources with a wider variety of divisive advertising. We've already seen the "squad" / "gang" competing advertisements seeking to denigrate the competition, for example.





FINAL NOTES ON PRINTED POLITICAL ADS



You still have editorial discretion

- You do not have to publish political ads if you don't want to!
- You do not have to allow politicians to run articles on your newspaper!

 You are allowed to editorially favor one candidate over another – just do not charge differing rates!





Confidentiality in disclaimers is generally not an issue

- No law prevents the advertiser from including the name and address of the person/entity paying for the ad.
- Nothing prevents the newspaper from requiring that private independent ads contain the name and address of those paying for the ad.

• Still *Ensure Confidentiality* – Political advertisers want their ad copy to be kept confidential prior to publication. Ensure employees involved in the ad (e.g., sales and perhaps newsroom) take appropriate steps to maintain confidentiality.



Finally, always remember...

You are responsible for the content of any political ad you publish.

Candidates may sue the newspaper when a mistake is made.

Therefore, you *must* do your best to ensure the accuracy of the assertions in the ad.

If you have questions about the accuracy of the ad – call the person placing the ad and ask for sources.





YOUR FINAL EXAM



WHICH OF THE FOLLOWING ARE NEWSPAPERS REQUIRED TO ACCEPT?

- a. Political ads
- b. Columns from politicians
- c. Letters to the Editor

ANSWER: NONE!



WHICH OF THE FOLLOWING CAN A NEWSPAPER DO?

- A. Run ad for one candidate and none for the other(s).
- B. Charge one candidate a higher rate than another candidate.

ANSWER: A, NOT B



WHICH OF THE FOLLOWING IS A BAD POLICY TO HAVE?

A. Require all political ads to contain an identification statement

B. Establish a review process involving the news department for political races

ANSWER:

Neither!

Only political advertising by candidates and ballot committees must contain an identification statement which says, "Paid for by the Mary Jones for Dogcatcher Committee with regulated funds," but it is not a bad idea for a newspaper to create advertising requirements beyond that.



TRUE OR FALSE – CAMPAIGN ADVERTISING IS NOT ALLOWED IN THE NEWSPAPER ON THE DAY OF THE ELECTION.

• ANSWER: FALSE



IF YOU HAVE ACCEPTED AN AD PREVIOUSLY, YOU MAY NOT REFUSE TO PUBLISH THAT AD AT A LATER TIME. TRUE OR FALSE?

• ANSWER: FALSE



Don't forget! If you have a question – EMAIL THE HOTLINE!



hotline@michiganpress.org

