

Maryland Enacts Broad New Disclaimer and Recordkeeping Requirements for Online “Campaign Material”

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On May 26, 2018, Maryland enacted the Online Electioneering Transparency and Accountability Act, codifying and expanding existing broad regulatory restrictions on Internet speech and advertising in Maryland non-federal elections. Specifically, this law expands reporting and disclaimer requirements for any “campaign material” that is disseminated online, including a requirement that all such material contain a disclaimer stating the name and address of the person responsible for the campaign material, or of the treasurer of each PAC responsible for the campaign material.

Regulated “campaign material” is broadly defined to include any published, distributed, or disseminated “material that . . . relates to a candidate, a prospective candidate or the approval or rejection” of a ballot initiative question or prospective question. This wide-reaching definition further includes any “material transmitted by or appearing on the Internet or other electronic medium.” Violations of this law, even if unintentional, are criminally punishable by up to a \$1,000 penalty, a year in jail, or both.

This law also requires that sponsors of “qualifying paid digital communications” provide certain information to the online platform (such as Facebook or Google) where those campaign communications are placed or promoted. “Qualifying paid digital communication” is statutorily defined to mean an electronic communication that 1) is campaign material, 2) does not propose a commercial transaction, 3) is placed on an online platform for a fee, and 4) is disseminated to 500 or more individuals. The online platforms must then maintain records of all qualifying paid digital

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communications and make them publicly available for online inspection within 48 hours of purchase, as well as for the State Board of Elections upon request.

As reported by *The Baltimore Sun*, these new requirements are already having an impact. Google recently determined that it will no longer allow state and local election ads for Maryland to be run on its platform until it knows how the law will be interpreted. Google spokeswoman Alex Krasov explained that Google's systems "are not currently built to collect and provide the information in the time frame required by Maryland's new disclosure law."

Maryland Governor Larry Hogan allowed the law to be enacted by the General Assembly without his signature, explaining in a letter to the General Assembly's presiding officers that the legislation has several laudable goals he supports - such as "modernizing Maryland's election laws to recognize and regulate electronic communication on the web and requiring additional disclosure and transparency for those advertising on social media platforms." Governor Hogan added, however, that while he wouldn't veto the legislation, he also believes that it has serious constitutional problems, including its encroachment on freedom of the press and its "vague and overbroad language that could have the unintended consequence of stifling the free speech of citizens who are mobilizing on social media platforms." The law became effective on July 1, 2018.