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THE LAW OF INTERNET COMMUNICATION DISCLAIMERS

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The Federal Election Commission last wrote internet communication disclaimer regulations several eons ago, in 2006, when political internet advertising was in its infancy.¹ The Commission has since been unable to revamp its regulations to better tailor the disclaimer rules to today's far more significant and varied political internet advertising market.²

So going into 2020, the existing law of internet communication disclaimers will still apply. Fortunately, the law remains simple and clear: **Virtually all paid political advertising on the internet must contain a full, clear, and conspicuous disclaimer on its face.**³

Though it would be far preferable to have issued disclaimer regulations specific to the internet, the existing law, reaffirmed in 2017,⁴ protects the public's right to transparent political advertising. It is technology-neutral and platform-agnostic. It is well-known to those who need to follow it. For the moment, the existing law on internet communication disclaimers gets the job done.

¹ See 71 Fed. Reg. 18,589 (Apr. 12, 2006) (amending its rules to include paid advertisements on the internet in the definition of "public communication"), found at <https://go.usa.gov/xpdep>.

² See REG 2011-02 (Internet Communication Disclaimers), found at <http://www.fec.gov/fosers>, reference REG 2011-02.

³ See "Advertising and disclaimers," FEC, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/advertising/>. In a nutshell, communications distributed over the internet must display full, clear, and conspicuous disclaimers on any paid advertisement containing express advocacy that is placed on another person's website, and on all solicitations of federal contributions. 52 U.S.C. § 30120(a); 11 C.F.R. §§100.26, 110.11(a), (a)(2)-(4), (c)(1). Additionally, communications distributed over the internet *by a political committee* must display full, clear, and conspicuous disclaimers on *any* of its paid advertisements placed on another person's website, on its own mass emails, and on its own public websites. 52 U.S.C. § 30120(a); 11 C.F.R. §§100.26, 110.11(a)(1). In 2010, the Commission opined that in a text-only, severely character-limited context, an ad displaying a URL that identified the ad's sponsor and linked to that sponsor's website where a full, clear, and conspicuous disclaimer was included was not in violation of the Act or Commission regulations. AO 2010-19 (Google), found at <https://www.fec.gov/files/legal/aos/2010-19/AO-2010-19.pdf>. The Commission has never applied the "small items" or "impracticability" exceptions to an internet ad. See 11 C.F.R. §110.11(f)(1)(i) & (ii).

⁴ See Advisory Opinion 2017-12 (Take Back Action Fund) ("The Commission concludes that, under the circumstances described in the request, TBAF must include all of the disclaimer information specified by 52 U.S.C. § 30120(a) on its proposed paid Facebook Image and Video advertising."). See Concurring Statement of Vice Chair Caroline C. Hunter and Commissioners Lee E. Goodman and Matthew S. Petersen in AO 2017-12 (Take Back Action Fund) (Dec. 14, 2017) (writing that the advisory opinion was not "new or remarkable" and explaining: "The Commission determined that disclaimer information must be included in paid Internet advertisements more than ten years ago in the 2006 Internet Communications rulemaking"), found at https://www.fec.gov/files/legal/aos/2017-12/201712S_1.pdf; Concurring Statement of Commissioner Ellen L. Weintraub in AO 2017-12 (Take Back Action Fund) (Dec. 21, 2017) ("This Advisory Opinion is important in the firm answer it gives the requestor: *Political advertisements on Facebook must carry full disclaimers*"), found at https://www.fec.gov/files/legal/aos/2017-12/201712S_2.pdf.