



Campaign Advertising Guidelines

Fair Campaign Practices Act ♦ Election 2018

Elections Division ♦ Office of the Secretary of State ♦ State of Alabama

John H. Merrill, Secretary of State

ELECTIONEERING COMMUNICATION

The Fair Campaign Practices Act (FCPA) defines “**electioneering communication**” as any communication disseminated through any federally regulated broadcast media, any mailing, or other distribution, electronic communication, phone bank, or publication which [§17-5-2(a)(5)]:

- (i) contains the name or image of a candidate;
- (ii) is made within 120 days of an election in which the candidate will appear on the ballot;
- (iii) the only reasonable conclusion to be drawn from the presentation and content of the communication is that it is intended to influence the outcome of an election; and
- (iv) entails an expenditure in excess of one thousand dollars (\$1,000).

IDENTIFICATION OF RESPONSIBLE PARTY

The Fair Campaign Practices Act (FCPA) specifies that a political advertisement or electioneering communication appearing in print and broadcast in any electronic media must clearly identify the entity responsible for paying for the advertisement or electioneering communication.

Any printed campaign literature, political advertisement or electioneering communication must contain a clear and unmistakable identification of the entity responsible for directly paying for the advertisement or electioneering communication.

Any political advertisement or electioneering communication appearing in broadcast media must contain a statement that the communication is a paid advertisement and must clearly identify the entity directly responsible for paying for the advertisement. These statements must appear at the beginning, during, or end of a radio or television spot.

EXCEPTIONS TO IDENTIFICATION REQUIREMENTS

The requirement to identify the entity responsible for paying for a campaign advertisement or electioneering communication does not apply to any political advertisement or electioneering communication used by a candidate and the candidate's supporters or by a political committee if the message or advertisement is:

- ▶ Designed to be worn by a person.
- ▶ Placed as a paid link on an Internet website, provided the message or advertisement is no more than 200 characters in length and the link directs the user to another Internet website that complies with the identification requirements.
- ▶ Placed as a graphic or picture link where compliance with the identification requirements are not reasonably practical due to the size of the graphic or picture link and the link directs the user to another Internet website that complies with the identification requirements.
- ▶ Placed at no cost on an Internet website for which there is no cost to post content for public users.
- ▶ Placed or distributed on an unpaid profile account which is available to the public without charge or on a social networking Internet website, as long as the source of the message or advertisement is patently clear from the content or format of the message or advertisement. A candidate or political committee may prominently display a statement indicating that the website or account is an official website or account of the candidate or political committee and is approved by the candidate or political committee. A website or account may not be marked as official without prior approval by the candidate or political committee.
- ▶ Distributed as a text message or other message via Short Message Service, provided the message is no more than 200 characters in length or requires the recipient to sign up or opt in to receive it.
- ▶ Connected with or included in any software application or accompanying function, provided that the user signs up, opts in, downloads, or otherwise accesses the application from or through a website that complies with the identification requirements.
- ▶ Sent by a third-party user from or through a campaign or committee's website, provided the website complies with the identification requirements.
- ▶ Contained in or distributed through any other technology related item, service, or device for which compliance with the identification requirements is not reasonably practical due to the size or nature of such item, service, or device as available, or the means of displaying the message or advertisement makes compliance with the identification requirements impracticable.

DOES THE FCPA SPECIFY WORDING FOR THE IDENTIFICATION STATEMENT?

No, the law does not give a specific format for wording the disclaimer. However, the FCPA does state that political advertisements must be identified or marked as a paid advertisement. Such words as *paid advertisement by*, *paid for by*, *paid political ad* meet the requirements of the act; however, an advertiser is not limited to just those phrases. Attorney General's Opinion 94-227 states that *words which indicate that the advertisement is a paid political advertisement meet the requirements of the law*.

The disclaimer must contain the identification of the person, candidate, principal campaign committee, non-profit corporation, or other entity placing the ad or distributing the electioneering communication. Under the FCPA, the term **identification means full name and complete address**. The attorney general has stated in AG's Opinion 94-227 that a complete address includes the street or post office box, city, and state.

DOES THE U.S. SUPREME COURT RULING IN MCINTYRE V. OHIO ELECTIONS COMMISSION AFFECT FCPA DISCLAIMER REQUIREMENTS?

That case, which involved an individual who distributed anonymous leaflets opposing a proposed school tax levy, has a very limited impact. Alabama's attorney general wrote in AG's Opinion 95-218 the ruling *is limited to individuals who distribute anonymous written material (particularly leaflets) in a non-candidate election*. In all other circumstances, the advertising is subject to the identification requirements.

IS THERE A PENALTY FOR FAILING TO COMPLY?

The attorney general or a district attorney may prosecute any person who violates the FCPA. Upon conviction, the penalty for failing to comply with the advertising requirements is a fine of not more than \$6,000 and/or imprisonment of not more than one year. [§§13A-5-7, 13A-5-12, 17-17-35]

DISCLOSURE REQUIREMENTS FOR ELECTIONEERING COMMUNICATIONS

Any person, principal campaign committee, political action committee, non-profit organization, or other entity paying for an electioneering communication must disclose the contributions received for funding the electioneering communication and to whom payments are made related to the electioneering communication.

This disclosure of these contributions and expenditures is to be made on the same forms and at the time times as required of political action committees.

EXEMPTIONS FROM DISCLOSURE REQUIREMENTS

The following entities are exempt from the disclosure requirements for electioneering communications:

- ▶ Churches, unless the church's expenditures are used to influence the outcome of an election. A church shall not be required to disclose the identities, donations, or contributions of members of the church. As used in FCPA, the term "church" is defined in accordance with and recognized by Internal Revenue Service guidelines and regulations.
- ▶ Any membership or trade organization, when using an electioneering communication to communicate with or inform its members, its members' families, or its members' employees.

HAVE QUESTIONS? CONTACT US

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DISCLAIMER

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