



Political Advertising in the Midterm Election Cycle

AI, Influencers, Disclosures, and More

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Today's Roadmap

A practical framework for deciding when advertising is “political” and what follows

I

The Threshold Question

When does advertising become “political”?

Meredith McCoy

II

AI, Deepfakes, and Political Influencers

Synthetic-media and creator triggers

Dave Owens

III

Email, Texts, and Robocalls

The adlaw overlay on political messaging

Barry Benjamin

IV

Who Is Responsible?

Advertiser vs. agency vs. platform / publisher

All speakers

V

Bringing It Together

One framework, a hypothetical, and Q&A

All speakers

The Threshold Question

Part I: When Does Advertising Become “Political”?

Classify First, Disclaim Second

The first question is not “What disclaimer do we need?”

NOT THE FIRST QUESTION

“What disclaimer do we need?”



START HERE

**Is this communication
regulated at all?**

1 Classify

Is it regulated political advertising?



2 Identify the rules

Disclaimers, reporting, recordkeeping,
state and platform rules



3 Assign responsibility

Who must do what: advertiser,
agency, publisher, platform

Nine Variables That Drive the Answer

Work through each variable before deciding which rules apply.

1 Speaker and payor

Who is speaking, and who is paying?

2 Message

What does the message actually say?

3 Candidate or ballot measure

Does it refer to one?

4 Express vs. issue advocacy

Does it call for a vote or for action?

5 Coordination

Is it coordinated with a campaign?

6 Medium

How is it delivered?

7 Geography

Where will it run or be targeted?

8 Timing

How close is the election?

9 Governing law

Which federal, state, or local law applies?

What Is “Political Advertising”?

Definitions vary, but regulated ads typically share these elements.

TYPICALLY REGULATED

- 1 **Paid** (including boosted or promoted social media)
- 2 **References a clearly identified candidate or ballot measure**
- 3 **And either:**
 - A reasonable person would understand the ad to advocate for or against the candidate or measure
 - In some jurisdictions, the ad merely references or depicts a candidate in the weeks or months before an election
 - The ad is paid for by a political committee (candidate, party, PAC, super PAC, ballot measure committee)

TYPICALLY NOT COVERED

- **Unpaid advertising** (e.g., organic social)
- **Lobbying campaigns** (calling for official government action)
- **General issue advertising**

But see broadcast and platform-specific requirements, which can apply regardless.

Same Candidate, Three Different Answers

Mentioning a candidate does not, by itself, answer the question.

CLEAR ELECTION ADVOCACY

“Vote against Senator Smith”

Express advocacy aimed at an election outcome.

ISSUE ADVOCACY

“Tell Senator Smith to vote against Bill X”

A call for official action, but other rules may still apply.

IT DEPENDS

“Senator Smith raised your taxes” (shortly before an election)

Turns on the facts, the speaker, the medium, the timing, and the jurisdiction.

Do not stop at the content: speaker, medium, timing, and jurisdiction can change the result.

What Changes Once an Ad Is Regulated

A “yes” on classification brings additional obligations.

**Once the answer is
“yes”...**

the ad carries obligations that
ordinary advertising does not.



1

Disclaimers or authorization statements

Who paid for it, and who authorized it

2

Reporting

Campaign finance reporting for the advertiser or campaign

3

State sponsor-identification rules

Requirements vary from state to state

4

Political file and recordkeeping

For advertisers, publishers, and platforms

5

Platform rules

Ad policies that may go beyond what the law requires

State-Law Overlay: One Ad, Many Rule Sets

State approaches vary, and a national digital campaign can touch all of them.

Disclosure required

The ad may run if it carries the required disclosure or sponsor statement.

Content prohibited

Certain content is barred outright, whether or not it is labeled.

Prohibited unless disclosed

The content is barred unless it carries the required disclosure.

STATES ALSO DIFFER ON

Timing windows

Remedies

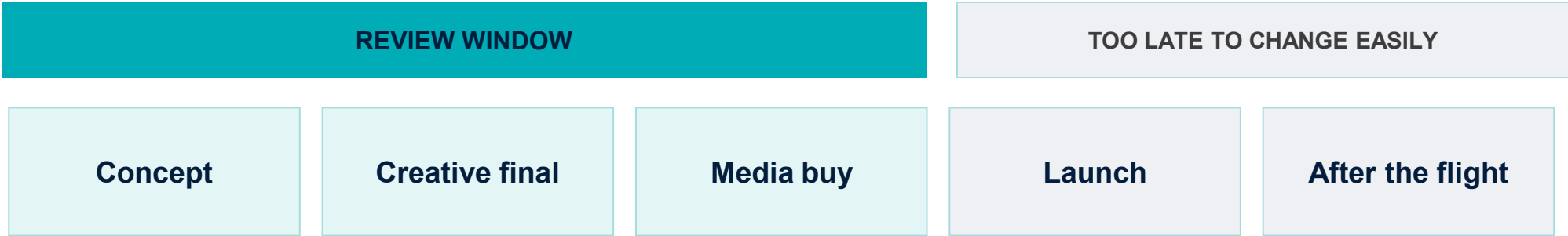
Exceptions

Satire, parody, and news

National digital campaigns raise a geography problem: one ad, many jurisdictions.

Practical Takeaway: Review Early

Classify before the creative is final and before the media buy.



CLASSIFICATION CAN AFFECT



Build the classification question into intake: before creative is locked, and before money is committed to a media buy.

AI, Deepfakes, and Political Influencers

Part II: Spotting the Synthetic-Media and Creator Triggers

The Landscape: States Have Filled the Federal Gap

- **31 states** have enacted laws regulating deepfakes in political messaging
- **FEC:** currently no quorum; no AI-specific rule; FECA bars only fraudulent impersonation of a candidate
- **FCC:** 2024 proposal for on-air AI disclosures in broadcast political ads; no final rule
- **Courts:** Hawaii permanently enjoined; Montana and Vermont preliminarily enjoined; Minnesota litigation ongoing
- **Result:** a patchwork that turns on geography, timing, and who is distributing the ad

The Question Is Not Simply “Was AI Used?”

- **What did AI create or alter?** Routine editing differs from synthetic speech or conduct
- **Is a real person shown saying or doing something they did not?** Most laws target depictions of candidates or other real individuals
- **Is it materially deceptive?** Would a reasonable person believe it is authentic, or come away with a “fundamentally different” impression than they would from the original?
- **Where will it run?** Each state’s law turns on the election, the medium, and the distributor
- **When will it run?** Many laws apply only within 30–180 days before an election
- **Who is creating, sponsoring, or distributing it, and with what intent?** Many laws require knowledge and intent to injure a candidate or influence voters; others do not

Three Regulatory Models

Model	How it works	Examples (Oct. 2026)
Prohibition	Covered deceptive deepfakes are prohibited; a label does not provide a safe harbor	MN, TX, MD
Disclosure required	Content may run if it carries the required disclosure, often only in a pre-election window	28 states
Enhanced disclosure	Visible disclosure plus information embedded in the digital file	CO, UT

Common Building Blocks, and Where States Differ

Element	Range across states
Elections covered	Most: state and local only. Some reach federal races on their face (e.g., MN, MI, AL), but application to federal races may raise FECA preemption issues.
Timing window	None, 30 to 180 days, or year-round (MD); Tennessee has no window for incumbents
Intent	No separate intent requirement under some statutes; others require knowledge and/or specified electoral intent
Who is liable	Varies: creators/sponsors in some states; distributors or disseminators in others; many laws limit platform/media liability
Common exemptions	Satire and parody; bona fide news coverage; varying protections for broadcasters, media, and online platforms

Who Is Responsible: Creators, Sponsors, or Distributors?

- **Creator and sponsor laws:** Some states impose liability primarily on those who create or pay for the ad, or expressly exempt platforms
- **Conditional protections:** Other states protect platforms if they preserve disclaimers, maintain required policies, or satisfy other conditions
- **Distributor laws:** Some laws can reach distributors, often subject to knowledge or intent requirements
- **Federal overlay:**
 - Application to federal races may raise FECA preemption issues, particularly where state law imposes additional campaign finance disclosure or expenditure requirements on federal candidates and committees
 - No-censorship rule protects broadcasters airing candidate ads; Section 230 may protect platforms from liability premised on publishing third-party content, and many state statutes separately exempt platforms
 - Third-party broadcast and cable ads may require closer state-by-state review

Three Models in Action: Texas, Tennessee, Maryland

	Texas	Tennessee	Maryland
Model	Pre-election prohibition	Mandatory label	Year-round prohibition
Trigger	Deceptive deepfake video; intent to injure a candidate or influence an election	Deepfake impersonating or depicting a candidate saying or doing something that did not occur	Materially false deepfake; knowledge/recklessness; specified election-related intent; actual or intended harm
Timing	30 days before an election	120 days before voting for non-incumbents; no window for incumbents	No election window
Does a label cure it?	No	Yes — the label is the requirement	No
Enforcement	Class A misdemeanor	Class C misdemeanor; candidate damages and equitable relief	Misdemeanor (up to \$5,000 / 5 yrs); State Board civil suits; removal injunctions
Takeaway	Short-window prohibition	Label it, with the exact words	Applies outside election windows

What Required Disclosures Look Like

State	Required or model disclaimer
Alabama	“This media has been manipulated by technical means and depicts speech or conduct that did not occur.”
California	“Ad generated or substantially altered using artificial intelligence.”
New Hampshire	“This [image/video/audio] has been manipulated or generated by artificial intelligence technology and depicts speech or conduct that did not occur.”
North Dakota	“THIS CONTENT GENERATED BY ARTIFICIAL INTELLIGENCE.”
Tennessee (video)	“This communication contains fake content depicting actions that did not occur.”

AI Review for Political Ads

- **Identify AI use that generated or materially altered the content**
- **Identify any depiction of a real person** and any material alteration
- **Map the geography and timing** against each state's election windows
- **Determine the disclosure:** wording, placement, and duration, or whether the content cannot run at all
- **Keep source files and relevant production records**
- **For distributors:** obtain advertiser attestations at intake, never remove an advertiser's AI disclaimer, and post a disclaimer policy

Political Influencers: Creator Payment vs. Paid Promotion?

- **Start by identifying who paid the creator, who shaped the message, and whether anyone paid the platform to promote the post**
- **Key questions:**
 - Is the creator being paid, and by whom?
 - Who developed or controlled the message?
 - Is the content boosted, and who pays for the boost?
 - Which disclaimer and reporting rules apply?
 - Was AI used in a way that triggers additional rules?
- **Overlays:** FEC rules for paid placement or promotion on internet platforms, state paid influencer rules (e.g., California), and platform political ad policies

When Disclaimers Aren't Required, Transparency May Still Matter

- FTC Endorsement Guides do not apply to political advertisements
- Paid boosts, platform ads, express advocacy, or electioneering communications may change the analysis
- State law may separately require disclosures for paid political influencer or compensated social-media content (e.g., California)
- Platform rules may require labels or restrict paid political content
- Agencies may have their own disclosure rules
- Voluntary disclosure may reduce reputational risk even when not legally required

Contracting Checklist for Political Influencer Agreements

Core terms	AI-specific additions
Who is responsible for sponsor, disclaimer, and AI disclosures	Representation on whether, and how, AI was used
Pre-publication review	Restrictions on unauthorized synthetic depictions of real people
Bar on removing disclosures	Geographic and timing limits tied to election windows
Recordkeeping	Retention of source files and relevant AI production records
Platform compliance	Representations and remedies for undisclosed or unauthorized synthetic content
Correction and takedown	Prompt correction/takedown and cooperation when a state law or platform rule is triggered

Key Takeaways

- The question is not just whether AI was used, but what it changed, who is depicted, and where and when the ad runs
- Expect a patchwork: 31 states have enacted laws; 28 use disclosure models, including CO and UT, which also require embedded file information; three use prohibitions (MN, TX, MD)
- Map geography and timing early; state AI and paid-influencer disclosure rules vary by jurisdiction
- For influencer content, ask who paid the creator, who shaped the message, and whether anyone paid to promote the post; those facts can determine which disclosure and reporting rules apply
- Courts are actively scrutinizing these laws; re-check before every cycle

Political Email and Text Message Marketing

Part III: Election-Law Disclosure and Transmission-Law Compliance

The Direct Marketing Trap

Political content does not make ordinary channel rules disappear.

Election-law question

Is this a regulated political communication?
Does it need a disclaimer, authorization statement, reporting, or political recordkeeping?



Transmission-law question

Are we legally allowed to send it by email, text, robocall, or platform message? What consent, opt-out, and proof issues apply?

Core message: “political marketing” is still marketing—and the medium can create independent legal risk.

Email: Political Does Not Mean Unregulated

Start by classifying the message and the sender.

Campaign email

PAC / Super PAC

Fundraising

Issue advocacy

Ballot measure

Mixed political / commercial

Key question: Who is sending, on whose behalf, and for what purpose?

FEC Email Disclaimer Issues

Some email is not a “public communication” but still requires a disclaimer.

Political committee email: more than 500 substantially similar communications

1 “Paid for by” identification

2 Candidate authorization / non-authorization

3 Solicitation and fundraising language

4 Sponsor identity and committee name

5 Vendor / agency sender role

6 Forwarding, republication, and reuse

Practical point: Do not assume “email” escapes the political-disclaimer framework.

When Political Email Becomes Commercial

CAN-SPAM applies to commercial email—messages whose primary purpose is commercial advertisement or promotion.

Political / other content

Pure advocacy, campaign updates, voter mobilization, candidate messaging.

Commercial content

Merchandise, paid event promotions, product / service offers, commercial website promotion.

Mixed content

Primary-purpose analysis; do not assume fundraising, merchandise, or co-promotion is outside email rules.

Commercial-email analysis is separate from political-disclaimer analysis.

Email Compliance Checklist

Build the compliance record before pressing send.

- Who owns the list?
- How was consent or permission obtained?
- Who is the sender and payor?
- Is the message political, commercial, or mixed?
- Is a federal or state disclaimer required?
- Are opt-outs and suppression lists honored?
- What deployment and creative records are retained?

Compliance file

- Final creative
- Disclaimer
- List source
- Send logs
- Opt-out records
- Vendor instructions

Text Messages: The TCPA Still Matters

Political texts require two analyses—just like email.

Election-law disclosure

Political disclaimer? Sponsor identification?
State-law overlay? Reporting or recordkeeping?

TCPA / transmission compliance

Consent? Autodialer? Artificial / prerecorded
voice? Revocation? STOP? Vendor records?

Political campaign robocalls to mobile phones using autodialing generally require prior express consent.

Robotexts, P2P, A2P, and Manual Texting

Labels are not legal conclusions. The actual technology matters.

Autodialed robotexts

TCPA consent risk is front and center.

Application-to-person (A2P)

Analyze dialing / texting functionality and consent proof.

Peer-to-peer (P2P)

Manual involvement matters, but facts control.

Manual texting

May avoid autodialer issues, but records and opt-outs remain important.

Short codes / long codes

Carrier, platform, and campaign registration rules may apply.

AI-assisted messaging

Analyze AI voice / content separately from delivery technology.

Ask: Is the technology regulated as autodialing, artificial voice, or prerecorded voice?

Consent, Revocation, and “STOP”

The proof problem is usually as important as the consent standard.



Revocation can occur in any reasonable manner; the FCC specifically identifies replying “STOP” to a text as an example.

AI Voice and Political Calls

AI voice is not only a deepfake issue—it may also be a TCPA issue.

AI-generated voice

- Voice cloning
- Synthetic candidate voice
- Generated call content



- Artificial / prerecorded voice restrictions
- Prior express consent for covered calls
- Caller identification requirements
- State political deepfake disclosure / prohibition overlay
- Platform / carrier scrutiny

Document both the content-creation process and the call / text delivery process.

Closing Framework: Six Questions

Before sending political email or texts, ask six questions:

1 Is the message political, commercial, or mixed?

2 Who is the sender, payor, and list owner?

3 What political disclaimer is required?

4 What consent is required for the channel?

5 How are opt-outs and revocations honored?

6 What records prove compliance?

Political marketing is still marketing. Election-law review is necessary—but not sufficient.

Who Is Responsible?

Part IV: Advertiser vs. Agency vs. Platform / Publisher

Who Is Responsible for Compliance?

Joint discussion: Who should be responsible, and for what?

1

Advertiser / Campaign

Holds the facts the media cannot confirm: classification, payor, authorization, and AI use.

2

Agency / Vendor

Executes the campaign.
Responsibility is allocated by contract, so the contract matters.

3

Publisher / Platform

Some independent legal duties; others add their own requirements to limit reputational risk.

For each requirement, ask: Who has the facts, and who has the legal duty?

Advertiser and Campaign Side

Responsible for information the publisher or platform cannot confirm on its own.

1 Whether the ad is “political” (classification)

2 Representations about the payor and authorization

3 The required disclaimer

4 Campaign finance reporting

5 Use of AI and related disclosures

6 Accuracy of the information given to vendors and platforms

7 Records

The media buyer often cannot verify any of this independently.

Publisher and Platform Side

Some media have independent legal duties; others add their own requirements.

INDEPENDENT LEGAL DUTIES

- **FCC compliance:** political file, sponsorship identification, and more
- **State digital political files**
- **AI labeling**
- **Record retention**

LIABILITY FOR ADVERTISERS' CONTENT

Defamation, IP, privacy / false light, right of publicity

Broadcast

Compare candidate ads with third-party ads

Digital

Section 230

Beyond the law, some media add their own requirements to limit reputational risk.

Practice Tips for Publishers and Platforms

Be realistic: no one can become a legal expert and review every ad.

1 Build intake procedures

Obtain representations from advertisers up front.

2 Carve out jurisdictions

Exclude certain jurisdictions from the geographies where you accept ads.

3 Escalate facial problems

Route ads that look problematic on their face for review.

Non-digital platforms, at least, should review third-party ads for obvious legal problems and respond when put on notice of a potentially actionable claim.

Who Is Responsible: Contract Allocation

Do not leave responsibility to operational assumptions.

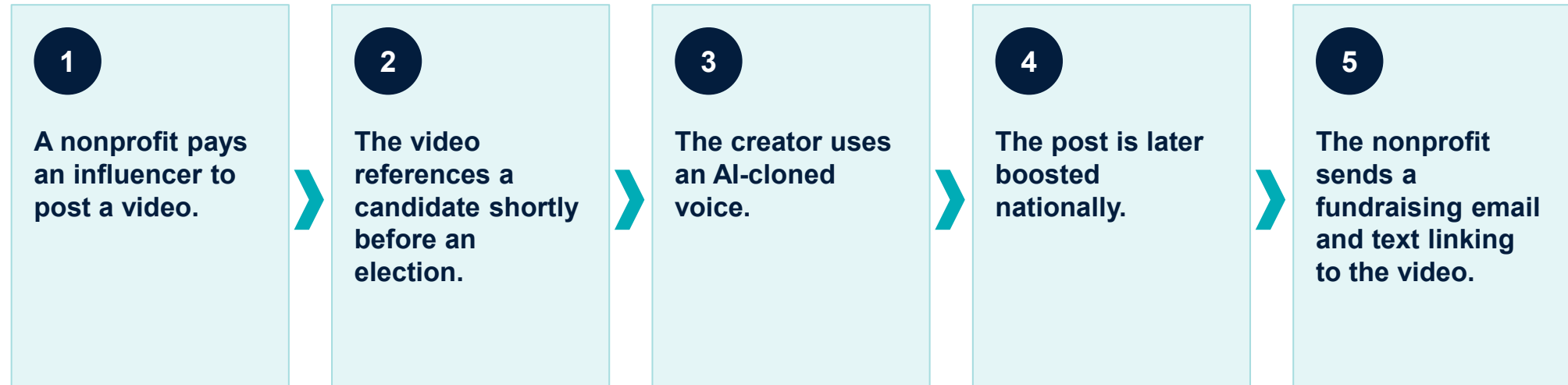
Issue	Contract allocation
List source and consent	Campaign / advertiser + vendor
Disclaimer content	Campaign / legal
Opt-out and suppression	Vendor + campaign oversight
Carrier / platform compliance	Vendor, with campaign review
Complaint handling	Allocated in contract
Regulatory cooperation / records	All parties

Bringing It Together

Part V: One Compliance Framework, a Hypothetical, and Q&A

Putting It Together: A Hypothetical

One campaign, three areas of law. What are the issues?



Ask each speaker: What are the issues in your area?

Spotting the Issues by Area

Each speaker's lens on the same facts.

Meredith McCoy

Threshold and responsibility

- Is it “political advertising”?
Paid, references a candidate, timing near the election
- Who is the payor and sponsor?
Disclaimer, reporting, and records
- A national boost touches many state rule sets

Dave Owens

AI and influencers

- Paid or coordinated creator, not organic speech: who selected, paid, and controlled the message?
- AI-cloned voice: state deepfake disclosure or prohibition by geography and timing
- The boost changes the disclaimer analysis; check the influencer agreement

Barry Benjamin

Email and text

- Fundraising email: FEC disclaimer, and CAN-SPAM if commercial or mixed
- Text: TCPA consent, STOP, and vendor records, separate from the election-law disclaimer
- Responsibility divided with vendors by contract

Closing Message: Spot the Trigger Early

“Political advertising” is a regulatory trigger, not a single category.

Spot the trigger early, then analyze each of these separately:



Classification first. Then message, medium, jurisdiction, technology, and who is responsible.

Questions?

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