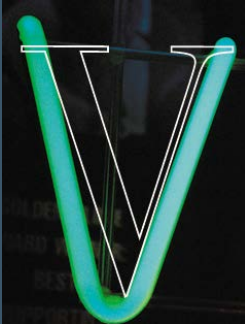


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Political Law Toolkit

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# Electioneering Communications

VENABLE LLP ON POLITICAL LAW

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## AUTHORS

Ronald M. Jacobs

*Co-Chair, Political Law Practice*

[rmjacobs@Venable.com](mailto:rmjacobs@Venable.com)

202.344.8215

Lawrence H. Norton

*Co-Chair, Political Law Practice*

[lnorton@Venable.com](mailto:lnorton@Venable.com)

202.344.4541

## Electioneering Communications

### VENABLE LLP ON POLITICAL LAW

2 U.S.C. § 434(f)(3)(A) defines an electioneering communication (“EC”) as any broadcast, cable or satellite communication that fulfills each of the following conditions:

- The communication refers to a clearly identified candidate for federal office (this condition is met if a communication contains the candidate’s nickname, name, image or makes any unambiguous reference to the person or their status as a candidate).
- The communication is publicly distributed shortly before an election for the office that candidate is seeking (the EC rules apply only 60 days before a general election or 30 days before a primary). For example, electioneering communications rules apply now regarding either candidate for president because we are 60 days before the general election.
- The communication is targeted to the relevant electorate (U.S. House and Senate candidates only). This means the communication can be received by 50,000 or more people in the district (House candidates) or state (Senate candidates).

### When Disclosure is Required

Disclosure of ECs is required when a person or organization makes electioneering communications that aggregate more than \$10,000 in a calendar year. All EC reports are 24-hour reports, meaning it must file FEC Form 9 by 11:59 p.m. on the day following the disclosure date. The disclosure date is the date that the communication is first publicly distributed. Note that for each separate time costs aggregate to more than \$10,000, an additional report is due within 24 hours of the disclosure date.

For example, say an organization makes an electioneering communication (TV ad) that costs \$50,000 of air time and \$10,000 in production costs, and it will be aired for one week. You would disclose this one time within 24 hours of the TV ad first airing, with \$60,000 as the cost.

The organization then wants to run the same ad two weeks later. The organization pays \$50,000 for the air time (no new production costs). You would file another disclosure report for this within 24

hours of the ad being publicly distributed again.

### **Contents of Disclosure Report**

The 24-hour reports must include:

- The name and principal place of business of the person or organization making the disbursement
- The name, address, employer and occupation of any persons sharing or exercising control over the organization (e.g., officers/directors)
- The name, address and occupation of the custodian of records for the entity making the expenditure
- The title of the communication (title of the TV ad, etc.)
- The name and office of a clearly-identified federal candidate in the communication, and the election/year to which the communication pertains
- The date of public distribution
- The name and address of all vendors to whom disbursements over \$200 were made; also the amount and date
- A purpose description of the disbursement—this must include the title of the communication (e.g., “Production Costs – Insert Title of Communication Here”)
- The name and address of each donor who has given more than \$1,000 since the previous calendar year (January 1, 2011).

### **Disclosure of Donors**

The disclosure of donors to electioneering communications has undergone a recent shift. The FEC regulation on this used to require disclosure of only those donors who intended for their donations to be used for electioneering communications. A recent court decision struck down that regulation, and the FEC is now complying with the court’s order that *all* donors be disclosed if they meet the \$1,000 threshold (going back to January 1, 2011), regardless of intent. This does not, however, include membership fees or dues because they are not considered donations. It may be wise for organizations to consider opening a separate “government affairs” type of account into which donations other than membership fees or organization dues would go so that it’s easy to know which donors will be disclosed on these reports.

**BALTIMORE, MD**

750 E. PRATT STREET  
SUITE 900  
BALTIMORE, MD 21201  
t 410.244.7400  
f 410.244.7742

**LOS ANGELES, CA**

2049 CENTURY PARK EAST  
SUITE 2100  
LOS ANGELES, CA 90067  
t 310.229.9900  
f 310.229.9901

**NEW YORK, NY**

ROCKEFELLER CENTER  
1270 AVENUE OF THE  
AMERICAS  
25TH FLOOR  
NEW YORK, NY 10020  
t 212.307.5500  
f 212.307.5598

**ROCKVILLE, MD**

ONE CHURCH STREET  
FIFTH FLOOR  
ROCKVILLE, MD 20850  
t 301.217.5600  
f 301.217.5617

**TOWSON, MD**

210 W. PENNSYLVANIA AVE.  
SUITE 500  
TOWSON, MD 21204  
t 410.494.6200  
f 410.821.0147

**TYSONS CORNER, VA**

8010 TOWERS CRESCENT DRIVE  
SUITE 300  
VIENNA, VA 22182  
t 703.760.1600  
f 703.821.8949

**WASHINGTON, DC**

575 7TH STREET NW  
WASHINGTON, DC 20004  
t 202.344.4000  
f 202.344.8300