



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**STATEMENT FOR THE RECORD**

**BY**

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**IN ADVISORY OPINION REQUEST 2013-18 (REVOLUTION MESSAGING, LLC)**

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Today, the Federal Election Commission considered whether to exempt mobile phone advertisements from the disclaimer requirements of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations. We believe strongly that the Commission must protect the public right to disclosure. Given the many technological options available, speakers can share their messages freely while still complying with the Act’s disclaimer requirements.

Political advertising disclaimers serve an extremely important function in our democracy—they “insure that the voters are fully informed about the person or group who is speaking.”<sup>1</sup> The Supreme Court has affirmed, time and again, that disclosures of this type are essential—they “appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption;”<sup>2</sup> they allow voters to “evaluate the arguments to which they are being subjected;”<sup>3</sup> and they “enable[] the electorate to make informed decisions and give proper weight to different speakers and messages.”<sup>4</sup> Without information about the sources of political advertising, voters cannot accurately assess the validity of those messages.

Ensuring that voters are properly informed about the sources of mobile phone political advertising is particularly important, as citizens increasingly rely on their phones for information about candidates and campaigns. According to a study by the Pew Research Center, the proportion of cell phone owners who use their cell phones to go online has doubled since 2009.<sup>5</sup> Another study found that 35% of smartphone owners used their smartphone during the 2012

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<sup>1</sup> *Citizens United v. FEC*, 558 U.S. 310, 368 (2010) (internal citations and quotation marks omitted).

<sup>2</sup> *Buckley v. Valeo*, 424 U.S. 1, 68 (1976).

<sup>3</sup> *Citizens United v. FEC*, 558 U.S. at 368 (quoting *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, at 792, n. 32).

<sup>4</sup> *Id.* at 371.

<sup>5</sup> Aaron Smith & Maeve Duggan, *Cell Internet Use 2013*, Pew Research Center’s Internet and American Life Project, (2013), <http://pewinternet.org/Reports/2013/Cell-Internet.aspx>.

election to verify the truthfulness of something they heard about a candidate or a campaign.<sup>6</sup> As these statistics indicate, voters are increasingly relying on information they access on their mobile devices to make decisions concerning elections. Moreover, Revolution Messaging LLC's advisory opinion request demonstrates that political committees and others are increasingly relying on mobile phone ads to influence voters. As mobile technology evolves into a major medium for mass communication, the Commission has an obligation to ensure that political advertisements on mobile phones comply with disclaimer requirements, just as television, radio and newspaper advertisements do.

The Commission may not discard or abandon disclaimer requirements mandated in the Act. The Act clearly requires that certain communications contain disclaimers, and it provides for no exceptions.<sup>7</sup> The Commission has, by regulation, created two minor exceptions to the disclaimer requirements where space limitations or other considerations make it exceptionally difficult for an effective disclaimer to be included in the message.<sup>8</sup> As the Commission has previously concluded, however, an advertiser's voluntary decision to admit particular time or space constraints is not alone sufficient to justify an exemption.<sup>9</sup> These exceptions, which are not provided for in the Act, must be narrowly construed, and neither exception applies here.

The "small items" exemption applies only to communications on bumper stickers, pins, pens and other items "upon which the disclaimer cannot be conveniently printed."<sup>10</sup> The "impracticable" exception exempts disclaimers on water towers, skywriting and apparel, where disclaimer messages would be impracticable due to "the nature of the communication."<sup>11</sup> Neither exception applies here, as there are no physical or technological limitations which prevent the provision of a complete disclaimer. Moreover, the "small items" exception, upon which Draft B and Revised Draft B rely, is a narrow exception which was intended to encompass only advertising on physical items, such as pins and other campaign paraphernalia, and not "general public political advertising," like television and newspaper advertisements.<sup>12</sup> Mobile phone advertisements, which may be disseminated on a national scale to voters, are clearly general public political advertising and do not warrant special exemption from disclaimer requirements. Providing information about who is disseminating such public communications is the core purpose behind the Act's disclaimer requirements.

Disclaimers in mobile phone advertisements can be provided in creative new ways, satisfying the interests of both speakers and the public. For example, Geegle provides disclaimers by linking to a "landing page" with a disclaimer, an approach that has been approved by the Commission.<sup>13</sup> Another option is a rollover display. We would be open to the use of such methods for mobile phone advertisements. Larger format ads can also be purchased. In short,

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<sup>6</sup> Aaron Smith & Maeve Duggan, *The State of the 2012 Election – Mobile Politics*, Pew Research Center's Internet and American Life Project, (2012), <http://pewinternet.org/Reports/2012/Election-2012-Mobile.aspx>.

<sup>7</sup> See 2 U.S.C. § 441d.

<sup>8</sup> 11 C.F.R. § 110.11(f)(1)(i)-(ii).

<sup>9</sup> See, e.g., Advisory Opinion 2007-33 (Club for Growth) (declining to exempt 10 and 15-second radio advertisements).

<sup>10</sup> 11 C.F.R. § 110.11(f)(1)(i).

<sup>11</sup> 11 C.F.R. § 110.11(f)(1)(ii).

<sup>12</sup> See 2 U.S.C. § 441d; Advisory Opinion 1978-33 (Allen).

<sup>13</sup> See Advisory Opinion 2010-09 (Google).

there are a number of viable alternatives political advertisers can employ to provide proper disclaimers if they wish to advertise on mobile phones.

In sum, any allegation that requiring mobile phone ads to contain disclaimers significantly limits political speech is clearly without merit. We are confident that current technology provides ample means for citizens to make their voices heard while still standing behind their political messages, and we expect future technological innovations will provide additional options. For that reason, we supported Revised Draft A, which requires Revolution Messaging LLC to comply with the Act's disclaimer requirements when advertising on mobile phones.