



Political Advertising Basics

Promoting Public Confidence in Government

TEXAS ETHICS
COMMISSION

Political Advertising Overview


What is Political Advertising?


What Regulations Apply?


What Issues are Outside the TEC's
Jurisdiction?


How Do You Correct Non-Compliant
Political Advertisements?

What is Political Advertising?

"Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television, or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website ([Tex. Elec. Code § 251.001\(16\)](#))

- Does not include an individual communication made by e-mail but does include mass e-mails involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth

What is Political Advertising?

Purpose:

- Support or oppose:
 - A candidate for nomination or election to a public office or office of a political party,
 - A political party,
 - A public officer, or
 - A measure

Distribution:

- In return for consideration, is
 - Published in a newspaper, magazine, or other periodical or
 - Broadcast by radio or television,
- Appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication,
- On an Internet website, or
- Mass e-mails

Political Advertising Regulations

- Political advertising disclosure statement?
- Required notices?
- Representations made in political advertisements?
- Prohibited political advertisements?
- Paying for political advertisements?

Disclosure Statement

A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate

[Tex. Elec. Code § 255.001](#)

Express Advocacy

- Does the communication expressly advocate the election or defeat of an identified candidate or measure?
 - Examples: “vote for,” “elect,” “support,” “defeat,” “reject,” or “Smith for Senate,” “Cast your ballot for X”
- Does the communication include the functional equivalent of express advocacy?
 - “The ad is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007).

Express Advocacy

- Political advertising is deemed to contain express advocacy if it is authorized by:
 - A candidate,
 - An agent of a candidate, or
 - A PAC filing campaign finance reports

[Tex. Elec. Code § 255.001](#)

Political Advertising Disclosure Statement Requirements

- State one of the following:
 - the person who paid for the ad,
 - the PAC authorizing the ad, or
 - the candidate or SPAC supporting the candidate, if the ad is authorized by the candidate
- Appear on the face of the ad
- Be clearly spoken if ad is only audio

Disclosure Statement Examples

Non-Compliant



Paid for by Joe

Compliant



Paid for by Joe Smith

Disclosure Statement Exceptions

Disclosure statements are not required on:

- Tickets or invitations to political fund-raising events ([Tex. Elec. Code § 255.001\(d\)\(1\)](#));
- T-shirts, balloons, buttons, emery boards, hats, lapel stickers, small magnets, pencils, pens, pins, wooden nickels, candy wrappers, and similar materials where size makes printing impractical ([Tex. Elec. Code § 255.001\(d\)\(2\)](#), [1 Tex. Admin. Code § 26.1\(c\)\(1\)](#), [EAO 184](#), [EAO 387](#), [EAO 390](#), [EAO 424](#), [EAO 457](#));
- Circulars or flyers that cost in the aggregate less than \$500 to publish and distribute ([Tex. Elec. Code § 255.001\(d\)\(3\)](#));

Disclosure Statement Exceptions

Disclosure statements are not required on:

- Envelopes used to transmit pol. ads, if the ad includes the disclosure statement ([EAO 380](#));
- Pol. ads printed on letterhead stationery, if the letterhead contains the full name of the person, PAC, or candidate that would have been identified in the disclosure statement ([1 Tex. Admin. Code § 26.1\(b\)](#))

Disclosure Statement Exceptions

Disclosure statements are not required on:

- Political advertising posted or re-posted on an Internet website, as long as the person posting or re-posting the political advertising:
 - Is not an officeholder, candidate, or PAC;
 - Did not make an expenditure exceeding \$100 in a reporting period for political advertising beyond the basic cost of hardware messaging software and bandwidth; and
 - Did not post or re-post the political advertising in return for consideration

[1 Tex. Admin. Code § 26.1\(c\)\(2\)](#)

Disclosure Statement Exceptions

Disclosure statements are not required on:

- The Internet social media profile webpage of a candidate or officeholder, provided the webpage clearly and conspicuously displays the full name of the candidate or officeholder
 - “Internet social media profile webpage” is an Internet webpage on a website where members of the public may, for no charge, connect electronically with other members of the public and share text, images, videos, and similar forms of communications

[1 Tex. Admin. Code § 26.1\(c\)\(3\), -\(d\)](#)

Disclosure Statement Exceptions

Disclosure statements are not required on:

- Political advertising posted or re-posted by a person on an Internet website, provided the advertising is posted with a link to a publicly viewable Internet webpage that:
 - Contains the disclosure statement; or
 - Is a candidate's or officeholder's social media webpage that falls under the exemption provided in TEC Rule 26.1(c)(3)

[1 Tex. Admin. Code § 26.1\(c\)\(4\)](#)

Highway Right-of-Way Notice

All political advertising signs must include the following notice:

- **"NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY."**

- **"Political advertising sign" means a written form of political advertising designed to be seen from a road but does not include a bumper sticker**
 - Can be on the front or back of the sign

[Tex. Elec. Code § 259.001](#)

Highway Right-of-Way Notice

It is a violation for a person to:

- Knowingly enter into a contract to print or make a political advertising sign that does not contain the notice; or
- Instruct another person to place a political advertising sign that does not contain the notice

[Tex. Elec. Code § 259.001](#)

Misrepresentation of Identity

A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person's identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication ([Tex. Elec. Code § 255.005](#))

- "Campaign communication" means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure ([Tex. Elec. Code § 251.001\(17\)](#))

True Source of Communication

A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source ([Tex. Elec. Code § 255.004\(a\)](#))

A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source ([Tex. Elec. Code § 255.004\(b\)](#))

- *Ex Parte Stafford*, No. PD-0310-23 (Crim. App. Sept. 4, 2024) – unconstitutional

Misleading Use of Office Title

A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made

A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made

[Tex. Elec. Code § 255.006](#)

Misleading Use of Office Title

A person represents that a candidate holds a public office that the candidate does not hold if:

- The candidate does not hold the office that the candidate seeks; and
- The political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office

[Tex. Elec. Code § 255.006](#)

Misleading Use of Office Title

- Former judge is prohibited from representing that he or she currently holds a judicial office or is currently a judge ([Tex. Ethics Comm'n Op. No. 171 \(1993\)](#))
- The use of the title "Judge" by a retired judge who sits by assignment does not, by itself, represent that the former judge holds an office he does not hold ([Tex. Ethics Comm'n Op. No. 303 \(1996\)](#))
- Associate judge is not prohibited from wearing judicial robes or referring to themselves in political advertising as "Associate Judge" ([Tex. Ethics Comm'n Op. No. 548 \(2018\)](#))

Misleading Use of Office Title

A person other than an officeholder commits an offense if the person knowingly uses a representation of the state seal in political advertising

[Tex. Elec. Code § 255.006\(d\)](#)

Deep Fake Videos

“Deep fake video” means a video, created with the intent to deceive, that appears to depict a real person performing an action that did not occur in reality

A person commits an offense if the person, with intent to injure a candidate or influence the result of an election:

- **Creates a deep fake video; and**
- **Causes the deep fake video to be published or distributed within 30 days of an election**

[Tex. Elec. Code § 255.004\(d\), -\(e\)](#)

Use of Public Funds for Political Advertising

An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising ([Tex. Elec. Code § 255.003\(a\)](#))

- A political subdivision is a county, city, or school district or any other governmental entity that embraces a geographic area with a defined boundary, exists for the purpose of discharging functions of government, and possesses authority for subordinate self-government through officers selected by it ([1 Tex. Admin. Code § 20.1\(11\)](#))
- Does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure ([Tex. Elec. Code § 255.003\(b\)](#))
- “Spending” of public funds includes the use of a political subdivision employee’s work time or a political subdivision’s equipment or facilities. ([Tex. Ethics Comm’n Op. No. 443 \(2002\)](#))

Political Advertising Issue Outside the TEC's Jurisdiction

- Where signs may be placed
- Length of time signed may be posted
- The size of a sign
- False statements regarding an officeholder or candidate

Non-Compliant Political Advertisements



Stop distributing or posting the non-compliant communication

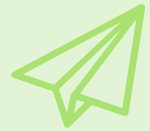


Remove non-compliant communication



Correct non-compliant communication

Questions?



Email: helpline@ethics.state.tx.us



FAQs: <https://www.ethics.state.tx.us/resources/FAQs/>