North Carolina Voters for Clean Elections

**House Bill 700**

In the past few election cycles we've all seen how campaigns have changed how they communicate to voters. Digital ads are becoming the norm.

**But North Carolina's campaign finance disclosure laws have not kept up with changing technology.** That slow reaction created a blind spot that special interests exploit and run thousands of campaign advertisements on Facebook and other digital platforms.

And this is a problem. We've all seen the special interest attack ads run with no idea who paid for them. That's because we have not updated our laws to mandate disclaimer or “Paid for by Lines” on qualified digital ads. And we have not updated our campaign finance laws to require some disclosure of the money behind the qualified digital ads. With an election coming up and campaigns moving into digital mediums this major loophole will wreak havoc on the 2020 election so we must act now.

We already have disclosure/disclaimer for TV, radio, and newspaper. This bill adds qualified digital communications creating equal treatment of ads placed with for a fee. Also, Facebook has already stepped up to implement similar strict ad buying laws.

Plain and simple we have loopholes in our campaign finance laws in regards to certain campaign digital ads that need to be fixed.

**Current law:**
Most digital campaign ads currently are not required to have a “Paid for by” line.

Registered groups - campaign committees, political committees, independent expenditures committees, and referendum committee already have to disclose for digital ad expenditures but little information is provided to the public about these digital ads.

However, some entities, electioneering communications (the mentioning of a candidate 30 days prior to an election) do not have to disclose if they are doing qualified digital ads because the definition of electioneering communication is currently limited to print, TV and radio.

**This bill changes the law to:**
Narrowly defined qualified digital as those placed with a fee.

Will require most campaign entities, supporting or opposing candidates or those engaging in electioneering communication (the mentioning of a candidate 30 days prior to an election) to place disclaimers on their qualified digital ads and file qualified digital communications disclosure report, in most cases.

*Please note the new $1,000 threshold for disclosure. This ensures that the law is not overly burdensome to low dollar candidates or individuals who wish to have their voice heard.*
Digital Disclosure Does Not Chill Speech

Paid speech is not the same as free speech. Because money is spent to amplify the speech, the money (not the content of the speech) is routinely subject to disclosure requirements as they are for TV, radio, and newspaper. The U.S. Supreme Court has again and again upheld disclosure requirements, even as it has allowed more entities to spend money and influence elections outcomes.

Moreover, research has been done to prove the claim of speech chilling false. In the report entitled Shadows of Sunlight: The Effects of Transparency on State Political Campaigns it states that "courts view disclosure as a less-restrictive means to root out corruption while critics claim that disclosure chills speech and deters political participation".

The study finds that "the argument that disclosure chills speech is not strongly supported by the data".

The report continues by saying:

The purpose of these disclosure laws is to provide the electorate with information about election-related spending sources and to prevent or expose political corruption. Although the courts have grown skeptical of limiting the sources of campaign funds in recent years, judges almost always uphold disclosure requirements despite challenges that transparency chills speech and deters political participation.

An example of courts upholding disclosure can be found:

1) Buckley v. Valeo the Supreme Court held that disclosure “appears to be least restrictive means of curbing the evils of campaign ignorance and corruption”.
2) McConnell v. FEC three justices who disagreed with the Court’s opinion on certain regulations of soft money nonetheless voting to uphold disclosure and disclaimer requirements.
3) Citizens United the Court invalidated the federal ban on independent expenditures from corporations’ general treasury by a 5-4 vote, yet all 8 agreed that disclosure requirements for entities who fund independent electioneering communications are constitutionally valid under the First Amendment.

Thus, as long as disclosure has “substantial relation” to a “sufficiently important government interest” it does not abridge the freedom of speech.

Moreover, arguments claiming disclosure chills online political speech privilege the interest of political actors with financial backing – including but not limited to dark money groups – over the information needs of the public and a broader systemic interest in political accountability. This type of reasoning omits important distinctions in the type of political speech that take place on the internet grouping content that is freely posted by individuals with paid ads by coordinated, well-resourced campaigns.
Transparency Builds Trust

This lack of transparency means that voters are left in the dark about who is attempting to influence them, and there is little accountability for bad actors – including foreign nationals, who are legally barred from spending on U.S. elections. This is how trust in the democratic process erodes. In order to provide sufficient transparency and accountability to safeguard our political system we must address these challenges and fix these loopholes.

Moreover, there is no compelling argument for big-money qualified digital ads to be exempt from existing disclosure laws.

By updating campaign finance disclosure laws, we can ensure that voters have the information they need to interpret political messages and make choices in their own interests and that reporters and government watchdogs can hold political actors accountable.

States Moving on Digital Disclosure

Moreover, many states are already moving forward with laws to modernized disclosure laws. Idaho, Kentucky, Michigan, Connecticut, Hawaii and Virginia have pending legislation and Vermont, Maryland, California, New York and Washington have already passed laws.

Americans Overwhelming Support Disclosure

According to polling by Voters Right to Know, 81% of American voters believe they should have the right to know the money behind elections.

Claims that HB 700 is Unconstitutional are False

The issue in the Maryland case doesn’t apply to HB 700 because HB 700 does not impose obligations on online platforms, like Facebook or the Washington Post website. The federal district court in Maryland ruled that the Maryland law was unconstitutional based on the obligations it imposes on online platforms.

The issue identified by the Maryland district court doesn’t exist in HB 700: there are no obligations on online platforms under the bill.

Moreover, that ruling is flawed because it incorrectly applied the standard of scrutiny to the Maryland law and the decision has been appealed to the 4th Circuit. For a more detailed explanation of the errors in constitutional analysis made by the district court in Maryland, you can read the amicus brief the Campaign Legal Center filed with the 4th Circuit in support of reversing that decision at this link.