



Mac Warner
Secretary of State
State of West Virginia

Meta Headquarters
ATTN: Mark Zuckerberg
1 Hacker Way
Menlo Park, CA, 94025

Subject: Campaign Finance Reporting Requirements

Dear Mark Zuckerberg:

When it comes to elections, online platforms have a responsibility to ensure equal treatment and fairness to all free-user classes. In short, platforms must be neutral, or otherwise disclose their activities that may sway users' perceptions about elections and candidates. This letter addresses concerns of social media and other online-based companies' inappropriate activities that influence users' consumption of political information.

Through recent election cycles information and messaging expressly advocating for or against candidates, political parties, and issues have been promoted through online platforms. Of those, some communications have been stifled, prompting litigation.¹ Accounts have been de-platformed prompting legislation² and legal analyses.³ Without being provided evidence to the contrary, the question is ultimately whether social media and other online-based companies' activities that influence voters and affect elections trigger campaign finance reporting requirements in West Virginia. Because all of these actions have value, both political and monetary, consider this letter notice that such actions may require public disclosure in West Virginia.

Promoting and inhibiting political candidates or their messages benefits one candidate or political party over another. Whether intentional or via algorithm, ephemeral or overt and transparent, when the impact or application is not neutral, the delta may be a reportable expense.

¹ See, e.g., North Carolina State University's Department of Computer Science academic study, "A Peek into the Political Biases in Email Spam Filtering Algorithms During US Election 2020," <https://arxiv.org/pdf/2203.16743.pdf> (last visited October 4, 2023), which formed the basis of a federal lawsuit challenging Google's use of spam filters. While this case was dismissed by the court on August 24, 2023, with leave to amend to establish that Section 230 protections do not apply to the company's actions, the Plaintiff's spam troubles dissipated thereby rendering moot the need to refile the lawsuit.

² See, e.g., Fla. Stat. § 106.072 and Texas House Bill 20 (2021).

³ See, e.g., Clay Calvert, *New: First Amendment Battles over Anti-Deplatforming Statutes: Examining Miami Herald Publishing Co. v. Tornillo's Relevance for Today's Online Social Media Platform Cases*, 97 N.Y.U. L. Rev. Online 1 (2022).

Specifically, in West Virginia the financial limit on individual campaign contributions, as well as expenditures that are coordinated with candidates, is \$2800 person per election. If political messages advocating for or against a candidate or party are created or promoted independently by companies or are phrased in a manner that leaves no other reasonable interpretation than express advocacy for or against a candidate, those independent activities ought to be disclosed. The value need not be actual, as in a line-item expense, but a company using its own platform to take these political actions would report it at the fair market value—*i.e.* the cost for a private individual to pay for the same.

Organizations such as yours have an ethical, and likely legal, obligation to report activities that use their extensive reach to sway voters. West Virginia has requested transparency on this issue since 2020, yet our Elections Division has been substantially ignored for three years. You must enact appropriate reforms to ensure that the public and candidates are fairly and equally treated when it comes to political communications, or you must file campaign finance reports showing the value of everything that is not neutral as a contribution-in-kind to the benefitting candidate or party.

Another issue of concern is unilateral and covert online activities that impact search results, visibility of certain news reports, and the burying of certain information, regardless of the First Amendment implications.⁴ This is an egregious indicator of a lack of uniformity between political content, which has a financial value that online companies are not reporting to state or federal campaign finance authorities.

Therefore, be advised that this Office will enforce all campaign finance laws triggered by online companies' activities that do not uniformly apply to or equally impact candidates or political parties in West Virginia. This includes deplatforming, non-uniform or subjective message dissemination, and unilateral suppression or amplification of political messages or profiles.

Furthermore, be advised that this Office will seek information and feedback from candidates, political parties, researchers, and the general public to report non-uniform or unequal treatment of candidates or political parties. Under this Office's authority to investigate the election regulations in West Virginia, we will consider online platforms activities, both individually and collectively, that suggest full transparency is required and will enforce those regulations using legal mechanisms available.

Sincerely,



Mac Warner
West Virginia Secretary of State

⁴ See, e.g. Jared Gans, *Zuckerberg tells Rogan Facebook suppressed Hunter Biden laptop story after FBI warning*, The Hill, (August 26, 2022, 8:04 AM), <https://thehill.com/policy/technology/3616579-zuckerberg-tells-rogan-that-facebook-suppressed-hunter-biden-laptop-story-after-fbi-warning-defends-agency-as-legitimate-institution/>.