



April 29, 2024

To: All Candidates, Treasurers, and Chairpersons

From: The Board of Supervisors of Elections

Subject: Disclaimers on Text Messages and Robocalls

During Rockville's 2023 election campaign, the Board of Supervisors of Elections (BSE) received complaints and questions about the absence of disclaimers in the text messages and robocalls that candidates and various other entities sent to Rockville voters. Based on advice from the City Attorney, the BSE decided how the requirement for including disclaimers would be applied to text messages and robocalls in future elections. I am writing to advise you of that decision.

Section 8-101(7) of the Rockville City Code provides that "campaign materials" must display disclaimers stating who paid for those materials, whether they were authorized by a candidate or political committee, and, if not authorized by a candidate or political committee, the name, mailing address, telephone number, and internet address of the person who paid for the communication. Section 8-1 of the City Code defines campaign materials to include "all electronic communications" and specifically "text messages." But, the disclaimer requirement of Section 8-101(7) contains an exception stating that "[a] disclaimer is not required when it cannot be conveniently printed . . . or its display is not practicable."

So, how do these provisions apply to text messages and robocalls? The BSE concluded that – with one exception – text messages and robocalls urging voters to vote for or against a candidate or ballot question must include the disclaimer language required by Section 8-101(7). The exception is for SMS text messages, messages sent by short message services, which are typically limited to 160 characters. In all other cases, text messages, including those in which two or more SMS text messages are strung together, and robocalls sent in connection with an election campaign must include the disclaimer language required by Section 8-101(7).

What about the text messages sent in the 2023 election that did not include disclaimers? The BSE decided that, because the obligation to display disclaimers in text messages was not entirely clear, it would be unfair to find a violation of the City Code based on the failure to meet

that obligation. Instead, the BSE voted to provide this guidance and notify interested parties that it intended strictly to enforce Section 8-101(7) in future elections.

To make the obligation to include disclaimers in text messages and robocalls even clearer, the BSE will include in its recommendations to the Mayor and Council adoption of a broader definition of campaign materials, one that would specifically include robocalls and other pre-recorded messages.

If you have questions about this guidance, please feel free to send them to the City Clerk for presentation to the BSE.