



## **An Election With No Facebook Ads? Meet The Digital Black Hole States**

Nick Fouriezos

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On Facebook feeds and Google search pages across the nation, potential voters are being bombarded with an avalanche of ads as political campaigning for the 2020 elections picks up. That outreach is seen as crucial by strategists in both parties given how the president harnessed online platforms to vault his unlikely candidacy in 2016. All together, Donald Trump and the Democratic presidential candidates have spent more than \$25 million on online ads since January.

You wouldn't know that, though, if you're a resident of Maryland or Washington state. That's because Google and Facebook are now refusing to run political ads in both states — together, home to 5 percent of the nation's population and 22 electoral votes — due to stringent campaign-transparency laws that the tech giants say they can't properly adhere to. Maryland and Washington are at the extreme end of a growing divide in the way different states will experience the 2020 election.

After rampant Russian meddling in the 2016 presidential election, lawmakers in several states began pushing for stricter regulations on online spending for political advertisements. Social media giants such as Facebook, Google and Twitter tried to head off that growing campaign by releasing online archives of their own accord, each trying to live up to the promise that Facebook COO Sheryl Sandberg gave the U.S. Senate in a September 2018 hearing: that “you can see who paid for” political ads.

But as America heads toward the 2020 elections, more and more states are reluctant to take a chance. Beginning in the summer of 2018, states including Maryland, Washington, Vermont, California and New York enacted laws to ban foreign spending on digital ads and to disclose the backers behind such ads. The stipulations over how to enforce these regulations vary in each state. In some, Facebook and Google are convinced they can still push political ads, though not with the same degree of freedom as in 2016. On the other hand, Maryland and Washington are witnessing a digital ad freeze. And then there are the many states without such laws, where political strategists can continue to target residents with the full force of their campaign dollars.

“These things tend to have a snowball effect. I could certainly see other states start to adopt it,” says Republican digital strategist Adam Meldrum.

The result is a uniquely varied online landscape for political campaigning, including rare physical places that could be relative digital black holes for the 2020 elections. In Maryland and Washington, for instance, it'll be a campaign season without incessant asks for \$1 donations from the Democrats, or requests to sign birthday cards for the Trump family that serve as thinly disguised excuses to harvest your email address.

“Yes, neither place is necessarily a swing state,” says Matt Compton, director of advocacy and engagement at the left-leaning creative and tech agency Blue State Digital, but “for organizers, these places could be fascinating case studies for the future.”

These states won't need to wait until the presidential elections to test their new laws. The legislature and governor of Washington will be decided next year, as will local elections in Maryland. With those elections will come key questions. Will campaigns in those states start getting creative, become more willing to advertise over new channels or come up with other tactical innovations?

Yet even as some applaud the decisions to take digital ad transparency seriously, others worry the new restrictions raise significant free speech concerns. “One thing that could happen is the chilling of participation from some advertisers,” says Walter Olson, a senior fellow at the Cato Institute, a libertarian think tank. “That could take some voices that are potentially valuable out of the debate.”

Google did not respond to a request for comment, and a Facebook spokesman responded initially but ignored follow-up requests. Google spokeswoman Alex Krasov told the Seattle Times in June that the company was assessing “the amended campaign disclosure law” to “ensure that our systems are built to comply with the new requirements.” That was after Washington state attorney general Bob Ferguson charged them with not complying with the new requirements. Both Google and Facebook admitted no wrongdoing, eventually together paying more than \$450,000 to settle the lawsuits. “We want the people of Washington state to have a chance to use Facebook ads for civic discourse and are looking into how to address these new requirements,” Facebook spokeswoman Elizabeth Gautier told the Times at the time while announcing a similar pause.

The Maryland law has been particularly contentious. Social media giants and newspapers reaching more than 100,000 unique monthly viewers were required to keep a database of Maryland political ads, publish proprietary details about audience and pricing and keep records that could be seen by the state at a two-day notice. The regional press association, The Washington Post and The Baltimore Sun all opposed the law in court, fearful of setting a precedent where the government could dictate political coverage. Maryland Gov. Larry Hogan, a Republican, originally vetoed the bill — although it eventually passed anyway — writing to the state legislature that it contained “vague and overbroad language that could have unintended consequences of stifling the free speech of citizens.”

The debate over these laws — and whether they're good for American democracy — is far from settled. Free speech concerns led a Maryland federal court to block the state law in January while it was unconvinced the legislation “is the least restrictive means of achieving its compelling

interest in deterring or exposing foreign attempts to meddle in its elections.” It is unclear if Maryland will challenge the ruling before an appellate court or whether Facebook and Google are willing to reopen political ad spending in the Old Line State (so far, they haven’t announced plans to end the buying freeze).

Olson, who lives in Maryland, isn’t surprised that the law has run into legal difficulties, and he cautions that other states will have to contend with similar “practical and constitutional” challenges while trying to clamp down on online interference. But for political campaigns — and states — worried about a repeat of the foreign meddling of 2016, such laws remain important. In October 2017, Sen. Amy Klobuchar of Minnesota, now a presidential candidate, introduced the Honest Ads Act, calling it “an issue of national security” that would “ensure that political ads sold online are covered by the same rules as TV or radio stations — and make them public, so Americans can see who is trying to influence them.”

That bill didn’t gain traction in the nation’s divided capital, but similar laws still stand in other states. With state legislatures and courts battling it out, it could be a country of patchwork protections that heads into a national presidential election that the U.S. intelligence community is already warning is being targeted by foreign adversaries.