

Judith Kelley: Technology is changing what it means to be human, how we think, how we interact. And increasingly, it's also budding into our governance systems, elections. And now, we hear everybody talking about political advertisement. We had the announcement by Twitter not too long ago about their policy, so with me here today to talk a little bit about political advertising and social media, I've got a couple of faculty members from the Sanford School, Matt Perrault, who joined the Sanford School in October from Facebook, where was the director of the global policy team, and Phil Napoli, who is a faculty member as well and he researches social media regulation. He's just published a new book called Social Media and the Public Interest: Media Regulation in the Disinformation Age. I am Judith Kelley. Welcome to Policy 360. I'm dean of the Sanford School of Public Policy here at Duke University. Welcome to Policy 360.

Matt Perrault: Thank you.

Phil Napoli: Thank you.

Judith Kelley: First, let's talk about the current state of things. What and where can a candidate run ads? What are the existing rules? Phil, can you give us a lay of the land on that?

Phil Napoli: Sure. In terms of where there are actual explicit government regulations about the airing of candidate ads, that applies really, pretty strictly to over-the-air broadcasting, so over-the-air radio and television broadcasters as of 1971 are required to air all candidate ads, all candidate ads for a federal office as provided. There is no opportunity, no editorial authority there to reject certain ads, require alterations, et cetera. They essentially have to operate as a common carrier for political advertisements. But all of our other media sectors have the right, if they so choose, to select which ads they choose to air, print, whatever medium we're talking about.

Judith Kelley: What other the medium? [crosstalk 00:01:55] There's the radio, there's the television.

Phil Napoli: [crosstalk 00:01:57] Well, even within radio and television, we would have to parse it out. Say you wanted to run an ad tonight on the local news, that station has to run that ad as you provide it. They are required by law to do so.

Judith Kelley: Right.

Phil Napoli: Now if you ran-

Judith Kelley: Provided I pay them?

Phil Napoli: Right. And if you wanted to run that ad a half hour later during The Tonight Show on the NBC Broadcast Network, NBC has every right to refuse that ad. Even as the end user, you're watching ... and by the same token, if that ad

wanted to run on a cable network like ESPN or CNN, they have the right to refuse it. However, if you want-

Judith Kelley: Because they're cable?

Phil Napoli: Because they're cable networks.

Judith Kelley: Net ... okay.

Phil Napoli: To confuse things further, if you wanted to run that ad on a cable system, your local cable system, Time Warner, et cetera.

Judith Kelley: I see.

Phil Napoli: They're treated like broadcast stations. There again, the ad has to run as prepared and all ads must be accepted.

Judith Kelley: They don't get to be like the cable ...

Phil Napoli: Networks.

Judith Kelley: Networks.

Phil Napoli: They are treated like broadcast stations under the logic that cable systems are ancillary to local broadcast television.

Judith Kelley: What about newspapers, other things?

Phil Napoli: Print, digital, complete autonomy to accept or reject ads as they see fit.

Judith Kelley: All right, let's switch then to social media. Just to think about Facebook, would you consider Facebook a distributor of content or a platform? Matt, do you want to take that?

Matt Perrault: I think it's a platform.

Judith Kelley: Platform? Is that how you think of it as well, Phil?

Phil Napoli: I think it depends on how we ... What are the points of distinction between a platform and a distributor?

Judith Kelley: Right.

Phil Napoli: They serve a distribution function, that's why everybody wants access to it, right?

Judith Kelley: Mm-hmm (affirmative).

Phil Napoli: Certainly it has a greater degree of functionality than a traditional distributor has had.

Judith Kelley: Right.

Phil Napoli: They're certainly more complex, so I'd say ... A platform, which amongst its functionalities, it includes distribution. I'm happy with thinking of them that way.

Matt Perrault: Is the distinction between platform and distributor or between platform and publisher?

Judith Kelley: Why are you asking the question?

Matt Perrault: Well, I think in terms of whether Facebook is able to get immunity under Section 230 of the Communications Decency Act, it's important that it's considered a platform.

Judith Kelley: Just tell us, Phil, what is the section two whatever of the Communications Decency-

Phil Napoli: Section 230?

Judith Kelley: Yes.

Phil Napoli: Sure. Section 230 of the Communications Decency Act of 1996, I emphasize that just because it's interesting when we talk about a piece of legislation written before any of the technology we are talking about actually existed, but that's ... The Communications Act of 1996 replaced the Communications Act of 1934, so all things considered, this isn't so bad. But anyway, basically it says that, digital platforms, and this includes a broad range of categories that fall under this, internet service providers, social media platforms, have the right to edit, filter content posted by third parties as they see fit. But at the same time, do not have any or in most categories, legal liability for that content.

Phil Napoli: Matt, I think, knows the specifics of where the liability begins and ends better than me. But, the general idea is that they have both the right to filter, to edit, et cetera, but engaging in that right doesn't trigger the legal liability that we generally associate with, with publishers.

Matt Perrault: They have civil immunity, they don't have criminal immunity. But it also is important-

Judith Kelley: Back to your distinction about publisher versus ...

Matt Perrault: Well, I was also just going to say it. Also, newspapers benefit from section 230 immunity when they serve as a host. For instance, if The New York Times has a

comment section on its website, it is not civilly liable for comments that are posted in that comment section. It is a distinction between when you're serving as a host and when you're serving as a publisher.

Matt Perrault: I don't quite understand why people, and maybe you could tell me, why people often say that social media platforms are often, should be considered publishers because it just seems to me very evident that they're not. They don't have a team of writers who are working to produce content on the site. They're not thinking about, how do we figure out what's going to be on the front page in your news feed-

Judith Kelley: Your landing page, or whatever.

Matt Perrault: ... in the same way that The New York Times is thinking about, "We have a finite amount of space and all our journalists are going to write pieces for this space." There are content teams at social networks and there are editorial boards at news publishers, but those two teams serve very different functions. A content team at a social network is basically saying there's going to be content on this site unless we come up with a reason to remove it. It's the reverse at an editorial board. They're figuring out what gets into the newspaper. Those are very different things, so I think it's very clear that most tech platforms, when they're serving as hosts of content or hosts, it's a very different technology than a newspaper, a very different technology than a broadcast medium.

Phil Napoli: And then going back to your question about the difference between publisher and distributor, when Matt started talking about sources, to get at that, a distributor, a classic example of a distributor would be a cable system that chooses the networks that it makes available, but doesn't play a role in determining the content of that network. They host a range of networks and can make some decisions about who is not and who is available, and that's different from a publisher.

Judith Kelley: Right.

Matt Perrault: And that's existed for a long time. Bookstores are different from authors, two different functions. For a long period of time there have been things that are considered distributors, there have been things considered publishers. I think it seems pretty clear and obvious that platforms are distributors and not publishers.

Judith Kelley: How does that all play in when we start thinking about the obligation that social media should have or should not have to regulate political ads? Matt, do you want to start?

Matt Perrault: I think as a matter of Black Letter Law, there are people in the world who would correct me on this because I'm not an expert on it, I think the answer is basically that social networks have very little legal obligation to do so, but they have the

ability to make decisions about how they want their products to function. Twitter has the right to ban all political advertising and I don't think it's going to get any legal challenge on that decision. That's a different question from whether it's the right one, and I think it's really a mistaken decision.

Matt Perrault: I recognize that there are benefits to banning political advertising. You don't see any of the content that you don't want to see. There will not be ads, political ads that feature misinformation on Twitter. There also won't be political ads that correct misinformation, there won't be ads calling for climate regulation, there won't be ads promoting voting for gay rights legislation. I think even though it eliminates a lot of problematic use cases, it eliminates a lot of positive use cases and that is really going to constrain expression in a way that I think is deeply unfortunate.

Judith Kelley: Not necessarily specifically on the Twitter case, Phil, but your thoughts on the same question about the obligation that social media have to regulate political ads.

Phil Napoli: Sure. It's interesting if we use the history as a baseline for this, that they have a range of choices, there is the position that Twitter is taking, there's the position that Facebook has taken, which is interesting that they're choosing to operate closer to the way that our government currently requires broadcasters to behave.

Judith Kelley: Facebook, their policy being, anybody can run a political ad and we're not going to police the content whatsoever?

Phil Napoli: Right. The only other medium that operates that way is required to operate that way by law, which is interesting. And then you have Snapchat, which actually just was in the news for making explicit again, that they actually do fact check all the political ads on their platform. It's not just a Facebook-Twitter dime ... there's a whole host. And because again, they have all the discretion they could possibly want to decide how to position themselves in relation to these ads. Which of these positions best serves the public interest? It's so hard to know yet. It's so hard to even know whether what happened in 2016 is meaningful guidance for what we might be dealing with in 2020, given the nature of the strategies changing, the nature of the platforms changing. So it's-

Judith Kelley: The nature of the technologies themselves.

Phil Napoli: Oh yeah.

Judith Kelley: There may be things we have not even imagined right now as possible that's possible.

Phil Napoli: Yeah, there was no discussion of deep fakes in 2016, so it is a moving target, absolutely.

Matt Perrault: There are lots of reasons that I admire Phil's work, but this is one where I think it really does feel to me like he's got a super power that's going to be so useful in this area, which is deep empirical work to try to figure out exactly what are the costs and exactly what are the benefits. My general view, which is really just intuition, is that the current narrative around tech platforms and political advertising overstates the costs and understates the benefits. And the result of that is that we think of policy solutions like banning all political advertising that actually are not optimal.

Matt Perrault: Banning all political advertising is the perfect approach when you think the costs of political advertising far outweigh the benefits. It's a really big mistake if the benefits outweigh the costs, particularly if the benefits significantly outweigh the costs.

Matt Perrault: My view is that the benefits do outweigh the costs, but it's a view based on intuition. Phil, I think has this extraordinary skillset of actually been able to unpack, what are the benefits, how are people actually experiencing these platforms in practice, and to actually look at generating data to try to figure out what the answers to these questions might be?

Judith Kelley: I asked you about what the obligation that social media should have, and you started out, Matt, by saying, well, they don't have any legal obligation. And then you said that's different from what maybe they should do. But from your perspective, should they have any obligation at all to regulate themselves?

Matt Perrault: I don't know what obligation really means in that context. I start with a legal point because I think it's really important.

Judith Kelley: Mm-hmm (affirmative).

Matt Perrault: The first amendment bars Congress from taking action on political advertising and doing things like banning political advertising. There are certain things they can do and Phil can provide us with the details on disclosure and transparency and that sort of thing, but they wouldn't be able to legislate Twitter to bar political advertising. And that's important because we have hundreds of years of jurisprudence about the value of free speech, and there are reasons animating principles of our country, our democracy, about why Congress couldn't take that action. And I don't think we should just throw it overboard.

Judith Kelley: Got it.

Matt Perrault: If the question is, do Twitter and Facebook and Google and other tech companies, including small tech companies that no one really mentions, should they develop products that are good for the world to the extent they're able to? I think the answer is, yes. And should they strive every day to make those products better? Just try to minimize the negative use cases to try to ensure that the social harms from their products are as small as possible, while

maximizing the benefits? Of course, they have, and I think all the companies have.

Matt Perrault: The companies have improved in their policies. I think people like to think of Twitter and Facebook as total opposite ends of the spectrum on political advertising, but Facebook has taken strong steps in that area too. They have an ads archive now. You have to authenticate to advertise on Facebook. There are pros and cons to that decision, but it's not the case that anyone can advertise anything on Facebook.

Judith Kelley: Let's push that a little bit more because before, we were just talking about should they, should they not, and then the different extreme positions that different companies have taken. But what about things like the disclosure of the source of the advertisement, or allowing fact checking on the advertisement? What are ways that we could let the public know more about the source of ads on social media, Phil?

Phil Napoli: Well, that's one of the areas that is actually regulated. Now, we get away from regulations directed at the media outlets in particular, but regulations directed at the political advertisers themselves. So then now, we're in the realm of what the Federal Election Commission requires, and the Federal Election Commission requires for pretty much all of what we would call traditional media, our broadcast, our print, our cable that the sponsor of the ad always be clearly [crosstalk 00:14:55].

Judith Kelley: That's right, a quick talk at the end of the TV commercial [crosstalk 00:14:57].

Phil Napoli: Absolutely, right. But as of yet, those disclosure requirements have not been transferred over to digital contexts such as social media platforms.

Judith Kelley: Meaning that if you run an ad, political ad on Facebook, you don't have to disclose who paid for it?

Phil Napoli: No, you're not required by law, though I believe Facebook and some other platforms are adopting that as their own policy.

Judith Kelley: Right.

Phil Napoli: But it's not part of within the Federal Election Commission's media outlets that they put under this requirement. Years back there was the question of whether or not really social media ads, for example, could practically include that disclosure where they are more akin to a campaign button. The Federal Election Commission could never quite make up their mind on that, so the default of them operating outside of those requirements has been the norm and continues to be.

Judith Kelley: Matt, part of the complication is that when a political ad, quote, unquote, gets posted, it's not even necessarily clear that it wants to appear as if it is a political ad. Sometimes it wants to appear like it's something else. And so how should we think about a company like Facebook or Twitter and this source disclosure?

Matt Perrault: I think source disclosure is generally a good thing. What Phil was just describing, I think is accurate. The issue around social media ads, I don't think had to do with a desire to disclose. It had to do with the practical physics of disclosures.

Judith Kelley: Right.

Matt Perrault: There are only a certain number of pixels that you could have on a sidebar ad, and if you devoted those pixels to a disclosure, that would be the entire advertisement.

Judith Kelley: Mm-hmm (affirmative).

Matt Perrault: You could have no additional content. And so I think the question was just, how could you practically include a disclosure alongside that? That was difficult. But I'm very supportive of the idea of including information that enables people to understand more about the ads they're seeing, and then make their own determinations about what they should believe or what they shouldn't.

Judith Kelley: What would that information then entail?

Matt Perrault: You could have information about who the advertiser is, you could have information about when they created an account on a social platform. There's any range of different types of information that you could have that might be things that would potentially correlate to veracity, but not actually make a determination of truth or falsehood.

Judith Kelley: Could you also have things that just pop up? Because it doesn't necessarily need to be a fixed message on the sidebar as you say. It could just be you click on that icon and then you know what the source, you click on that icon and then you know who paid for it, and you click on that icon you know when it was posted.

Matt Perrault: That's the direction a lot of tech platforms are moving in, so a lot of pieces of content now will have a little eye or a little thing that you can roll over, and when you roll over it [crosstalk 00:17:49] you get sourced information. And I think those are the types of things that are ... that makes a lot of sense to me. No one loses in that because you have the ability to speak, but you have disclosure. Other people can make decisions when they get more information about an ad. And then-

Judith Kelley: Well, you could lose if you don't want to be known as a speaker.

Matt Perrault: I think that's right and I guess I-



Judith Kelley: But those are the people we want to lose?

Matt Perrault: Yeah, well, not ... Honestly, not necessarily. I think there's a value in anonymous speech now. It's since free speech is not doing so hot in the news these days. Generally, anonymous speech is really not doing particularly well, but I think there is a value in anonymous speech. Twitter for instance, has been an anonymous speech platform and I think there are a lot of benefits to that relative to a authentic identity platform like Facebook. But I do think if you want to advertise it seems like it's reasonable to say there has to be some information about who you are.

Phil Napoli: There's a piece of legislation working through Congress called the Honest Ads Act that actually would reconcile the differences and apply the same requirements that currently apply to traditional media to do the digital context.

Judith Kelley: That's interesting because I was going to ask you next. We are on the throat of an election, what do you think we'll see in terms of regulatory changes as we're leading up to 2020? Is this going to pass at the arrival?

Phil Napoli: It is interesting [crosstalk 00:19:09] how close we are to the next election, and that this is a piece of legislation that was spawned by the previous election. I'm not sitting here saying yeah, it's ...

Judith Kelley: It's going to happen.

Phil Napoli: This is the one piece of legislation that was ... Of all the different ideas that have been kicking around over the past three years or so, this is probably the one that is the least controversial. That has probably the most bipartisan support for, and yet, we can't even point to that as being in place yet.

Judith Kelley: Do you have opinions on that, Matt?

Matt Perrault: Yeah, I think this goes back to the question that you asked about obligations, and I think that's a really interesting one. Because I'm not sure right now, the primary people you would be wanting to act would be tech platforms.

Judith Kelley: Mm-hmm (affirmative).

Matt Perrault: My last role at Facebook, I was focused on competition and antitrust policy, and in that context a lot of people had concern about the alleged accumulation of power at tech companies. I think that was an overbroad concern, I don't think it was fair. I think the tech landscape is much more competitive than people think, but that was a concern.

Matt Perrault: If that's a concern, then why would you want to say in the absence of the FEC being able to take strong action and in the absence of Congress being able to pass legislation in light of the fact that the First Amendment is a bar to lots of

congressional action in this area, we want Twitter to have the responsibility of political advertising on this platform, and we want them to take the step of banning political advertising. To me, that seems like it's putting a lot of power related to expression in Twitter's hands, and I think it's preferable for government to take more of a lead role in acting.

Judith Kelley: What should that lead role then look like, Phil? What should they act?

Phil Napoli: I'm not going to begin to say I have the solution to this or any of the problems all mapped out, but in researching the book, one of the concepts I found myself intrigued by was this idea of government-mandated self-regulation, and actually in some contexts, very common in the media sector where whether indirectly or directly, different sectors develop their own self-regulatory apparatus.

Phil Napoli: Whether it's the Motion Picture Association of America or the Media Rating Council, which I think is the best analog for the oversight model that they provide for systems of audience measurement, which I argue actually have a lot of commonalities with algorithmic systems that power social media platforms, and this idea of creating oversight boards and audits and things of that sort that provide seals of approval of one sort or another that ideally compel those self-regulated-entities to behave in ways that a consortium of stakeholders think would be beneficial. That's vague and broad. That direction is the one that I'm personally most comfortable with.

Judith Kelley: Matt, as somebody who's worked from inside a social media platform, what advice would you give to the users now? They sit down, they interface with the platform. In the absence of brilliant solutions from government or self-regulation, how should the common user approach platforms?

Matt Perrault: Well, I think it's important for them to be able to make their own decisions about what they want to see in their tech platforms, and so what they want to see in terms of organic content, meaning content that's unpaid, and paid content as well. I worked on an op-ed that was published in The New York Times recently with Daniel Kreiss, who's a professor at UNC, at the journalism school there. The focus for us was on what we thought were common sense steps that social networks could take that don't stand in the way of speech. They don't eliminate political advertising, but things that platforms could actually do to help address some of the concerns that people have about political advertising without banding it entirely.

Judith Kelley: Phi, do you have any thoughts? What would you advise your-

Phil Napoli: When you were talking about what should people do? And it's interesting-

Judith Kelley: Tell your wife, here are the things you need to look for, you know what I mean?!

Phil Napoli: Stanford actually just released a study this week on what they call, if I'm remembering the terminology right, critical civic reasoning.

Judith Kelley: Mm-hmm (affirmative).

Phil Napoli: Basically, where they evaluate individual's ability to distinguish between disinformation and truth in various online contexts. And do they know procedurally, what would be the ways to verify the accuracy of this claim or this story, et cetera? It's a study primarily of young people and they're performing horribly. The reason I bring this up is because that's actually where we need to start. There were in years past, people would say, well, we need media literacy in the schools, and people would go, "Media literacy? That's like underwater basket weaving or whatever. I don't watch TV," and so it had this longstanding stigma.

Phil Napoli: But when you look at, and we're starting to do this, look at countries that have actually been somewhat successful in resisting disinformation campaigns, Finland for example, it starts in the elementary schools: training kids, how to be critical thinkers, critical consumers of media, showing them procedurally, how to go about verifying the accuracy. We need to be more literate users of these platforms and most of us aren't.

Phil Napoli: We all have a mother, a grandmother, a father, I have a mother, my list could go on and on of people where you're like, oh my God, this is a [crosstalk 00:24:49] very dangerous tool to put in this person's hand because they really don't know how to use it properly, or to navigate this space in a way that is safe for themselves.

Judith Kelley: Any uplifting words, Matt?

Matt Perrault: I think Phil's are plenty uplifting. I love the idea of digital literacy campaigns. I think that's a good idea.

Judith Kelley: At the end of the day, it's going to come back to us as consumers and users of the information to think critically, and so that means we have to educate people, and I want to thank both of you for coming and sharing some of your thoughts about this, this question with us today.

Judith Kelley: Phil Napoli is a James R. Shepley professor of Public Policy here at the Sanford School, and his book again is Social Media and the Public Interest: Media Regulation in the Disinformation Age. And we had also with us Matt Perrault, who is a new faculty member at Sanford and who has just launched Duke's new Center for Science Technology and Policy.

Judith Kelley: Also, I hope you'll check out the podcast, Ways and Means. It's also produced here at the Sanford School, and this season we'll dive into a whole series of topics related to politics and democracy. That series will be in partnership with

POLIS, Duke Center for Politics. That's Ways and Means, find it wherever you get your podcast. I'm Judith Kelley.