

POLITICAL FINANCE IN THE DIGITAL AGE IN CHILE

An Anachronistic Regulation

Maria Jaraquemada

EXECUTIVE SUMMARY

Online campaigning has been gaining prominence in Chile since the 2017 elections, featuring heavily especially during the five elections held after 2019. Regulations governing political finance were reformed in 2016 in response to political finance scandals in the country, but these reforms failed to address the growing use of digital technology and tactics in electoral campaigns.

The case study highlights critical challenges related to online campaign finance, some of which are not unique to Chile. The first is the definitional issue regarding what constitutes electoral campaigning in the online sphere. In the legal definition, there is an ambiguity in the treatment of organic campaigning, which while considered part of freedom of expression, has implications particularly when social media influencers are used to capitalize on their reach and influence to endorse candidates and/or political parties. Additionally, the definition of political advertisement and its treatment varies across platforms, further complicating transparency of spending on political ads in online space. Second, there is the challenge of monitoring spending and ensuring compliance with laws, not only in terms of the capacity of oversight agencies, but also in terms of their oversight authority, particularly over the actions of social media companies not legally registered in Chile. Moreover, the spending categories used to report campaign expenditures are found to be vague and unclear, making it difficult to determine if spending limits were complied with. Finally, while third-party actors are regulated under Chilean legislation, investigations have found that grassroots and social organizations have engaged in campaigning for candidates, parties, and political agendas on social media without prior authorization or registration with the oversight body.

Online campaigning has been gaining prominence in Chile since 2017, signalling the growing use of digital technology and tactics in electoral campaigns.

In order to overcome these challenges, the case study makes the following suggestions for consideration of stakeholders:

- Design and put in place specific regulations in relation to political advertisement on social networks and digital media, including transparency in reporting of online campaign spending and permitted timelines for campaigns online.
- Invest in building oversight capacity of the Electoral Service, equipping it with sufficient human and financial resources required to conduct effective oversight of online campaign finance.
- Collaborate with counterparts and experts regionally as well as globally since regulation of social networks and the flow of money in those networks requires collaboration between stakeholders beyond one's own border.
- Adapt a whole-of-society approach, with each actor playing its part—legislators facilitating campaign finance reforms to match the evolving digital landscape, social media companies adapting their corporate positions on transparency to match with country requirements, political parties committing to transparent online campaign finance, electoral service conducting effective oversight and other government agencies doing their part considering the cross-institutional nature of the issue.

1. INTRODUCTION

Chile has experienced five electoral campaigns in recent years—at least one per year from 2020 to 2023. Since half of these took place under pandemic conditions, digital campaigning featured heavily, as a result of social distancing measures. In the 2021 presidential elections, digital advertising—social networks, automated calls, mass text messages and the use of artificial intelligence—replaced traditional methods of campaigning, such as door-to-door canvassing, rallies, and billboard campaigns, to a large extent (Olave 2021).

The 2016 political finance reforms failed to keep pace with the explosive growth in new technologies and campaign tactics.

Changes were made to the regulation of electoral campaigning and advertising in Chile in 2016, in response to scandals involving political finance. These were the most significant reforms since political finance regulations were first adopted (in 1988, during the dictatorship and subsequently modified in 2003). However, the 2016 reform failed to keep pace with the explosive growth in new technologies and campaign tactics.

2. POLITICAL AND LEGAL FRAMEWORK

Chile has a presidential system, where the president—who is both head of state and head of the government—is elected for a four-year term and cannot be immediately re-elected. The parliament is bicameral, comprising a Chamber of Deputies with 155 representatives and a Senate with 50 members, both chosen by a party list proportional representation system and D'Hondt coefficient (IPU n.d.). Currently, 21 different political parties make up the Chamber of Deputies, a number that has increased in recent years, especially since changes were made to the electoral system in 2016. Between 2012 and early 2023, voting was voluntary; compulsory voting was reintroduced through a 2022 reform, applicable for the first time during the election of the constitutional councillors held in May 2023. Out of the total population of approximately 19 million, more than 15 million are registered to vote.

Chile's first regulation on political campaigning, Law No. 18700 (Chile 1988), was introduced by the military junta. It contained a few rules on electoral campaigning: funding could only be sourced from within the country; campaigning could be carried out via the press, radio stations and television channels, as well as by means of flyers, banners or notices; and campaigning was permissible from the 30th, and up to the third day prior to an election or plebiscite (Chile 1988: para. 6). In 2003, after scandals involving the misuse of public funds for financing campaigns, known as the MOP-GATE case (see, for example, TV Poder Judicial 2018), a new regulation was adopted: Law No. 19884 (Chile 2003). This new law outlined stricter regulations on the origin of funds, established a mixed system with private and public funding, and placed limits on donations and expenses. It also required more transparency in private funding and instituted administrative sanctions—mostly fines—for any infringements.

Some years later, with fresh cases related to illicit political financing, known as Penta and SQM (see, for example, Laborde 2023), and evidence of regulatory weaknesses, some modifications were adopted by means of Law No. 20900 (Chile 2016). This followed the recommendations of an Advisory Committee to President Michelle Bachelet, known as the Engel Commission (after its President, Eduardo Engel) (Engel Commission 2015).

Related to campaign finance, the main substance of the current regulations is as follows:

1. *Regulated periods for campaigning.* Most campaigning starts 60 days before elections, but propaganda in public and private spaces with posters and banners can only be displayed 30 days before (in authorized spaces and with size restrictions). Only for presidential elections can 'pre-campaigning' take place 200 days before elections. During this period, candidates can receive funding and incur expenditures for campaigning.
2. *Registry of electoral supporters.* Referred to as 'brigadists', these are personnel who either volunteer or are hired to support political campaigns.

The political finance regulations in Chile were modified in 2003 and 2016 after scandals involving misuse of public funds and illicit political financing, respectively.

Candidates are liable for any damages caused by these individuals, and people with a criminal record are barred from becoming brigadists.

3. *Mixed system of funding.* The state provides an advance to political parties according to previous electoral results, as well as a subsidy for free television spots and reimbursement of expenses according to the number of votes obtained in the current election. Companies and legal entities, such as non-governmental organizations (NGOs), can no longer contribute private campaign and party funding—it must come from individuals only.
4. *All contributions are made public.* Details of all contributions, other than minor ones,¹ are published regularly on the website of Chile's Electoral Service (Servicio Electoral de Chile, SERVEL).
5. *Definition of electoral expenditure.* This is understood as any disbursement or contribution in cash, made by the pre-candidate, the candidate, a political party or a third party in their favour, on the occasion and for the purpose of electoral acts.
6. *Limits on electoral expenses² and on individuals' contributions³.* All contributions and expenses must be made to and from a bank account for this sole purpose, controlled and monitored by the Electoral Service.
7. *Role of the electoral management body.* The Electoral Service, an autonomous entity, is responsible for oversight. There is a specific form—Form 105—to report expenses relating to digital campaigns. Reporting channels for possible legal infringements are in place.
8. *Advertising in violation of the law is punishable with fines.* Fines are up to five times the excess over election spending limits, but in some cases, serious offences can be sanctioned with loss of public office; imprisonment of up to five years; or lesser, non-custodial sentences.

Digital campaigning was initially forbidden as per the guide published by the Electoral Service in 2016 after the new legislation was adopted.

The Electoral Service publishes guides for each election, providing details on donations and expenses. The first such guide after the 2016 legislation reflected a very restrictive view by stating that digital campaigning was forbidden (see, for example, El Mostrador 2016). This came as a surprise, both to the public and to political parties; some Deputies even proposed a bill to address this issue. As a result, the Electoral Service had to retract and clarify their criteria (Zamora 2020).

¹ Under USD 1,800 for presidential candidates, USD 900 for parliamentary candidates, USD 675 for mayoral candidates, approximately.

² For the 2021 presidential election the limit on electoral expenses was near USD 7.4 million, and for the Deputies election, also in 2021, the limit ranged from around USD 70,000 to USD 550,000, depending on the size of the constituency.

³ The maximum was almost USD 21,000 per person for a candidate to the Congress in the same election, and USD 22,500 for a presidential candidate.

3. PATTERNS IN DIGITAL CAMPAIGNING

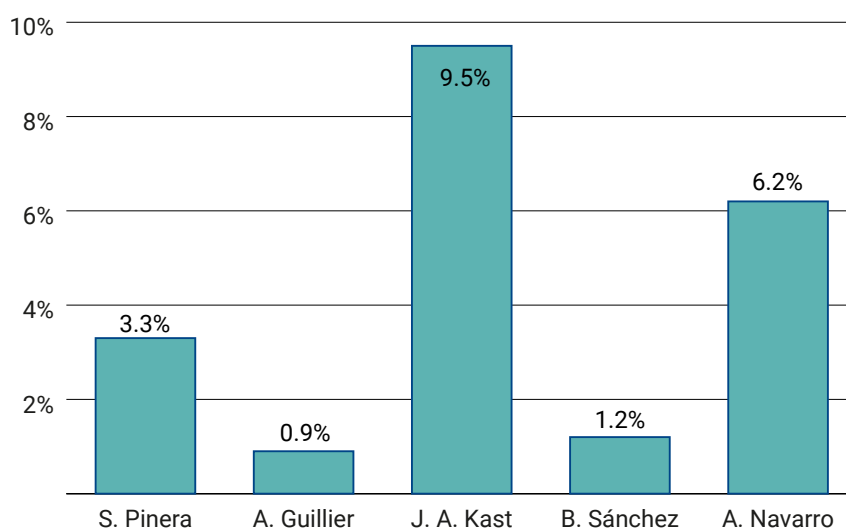
Over the last few years, there has been an increasing mobilization of online channels by political contestants to reach their constituencies. Lionel Brossi, from the Faculty of Communication and Image at the University of Chile, and a member of the Artificial Intelligence and Society Hub, commented that the importance of social networks is increasing with time: 'They enable the possibility of sending messages to different segments of the electorate ... [microtargeting] is a marketing strategy that uses data, very detailed categories of individuals or the population in terms of their interests, their preferences, to influence their decisions' (Tapia 2021).

3.1. Presidential elections in 2017 and the 2020 referendum

The civil society organization Digital Rights (Derechos Digitales) has been researching the impact and use of digital media advertising in political campaigns in Chile since 2020. In its first report (ADC and Derechos Digitales 2021), it analyses the use of digital media in the 2017 presidential elections, which suggests that the percentage of electoral expenses allocated to digital and social media was still very low (see Figure 1). Candidates spent, on average, 4.2 per cent of their total electoral expenses on digital media. It must be noted that this information comes from the reports provided by the candidates, which are approved by the Electoral Service.

In the 2017 presidential elections, candidates spent, on average, 4.2 per cent of their total electoral expenses on digital media.

Figure 1. Digital expenses as a percentage of total campaign expenses, 2017 presidential election



Source: Compiled with data from ADC and Derechos Digitales, 'Publicidad electoral en redes sociales. PubliElectoral: una herramienta en búsqueda de transparencia. Informe de resultados del plebiscito constitucional de Chile, octubre de 2020' [Electoral advertising on social networks. PubliElectoral: A tool in search of transparency. Results report of Chile's constitutional plebiscite of October 2020], April 2021, <https://www.derechosdigitales.org/wp-content/uploads/ADC_Informe_PubliElectoral_Plebiscito_Chile_FINAL.pdf>, accessed 11 September 2023.

In the initial referendum on the constitutional process in 2020, the same study shows that, on average, the platforms of political parties or the candidates published 97.7 per cent of their electoral advertising during electoral periods (ADC and Derechos Digitales 2021: 35). By the same token, social networks are mainly used for electoral campaigning (propaganda) during these periods, rather than for other purposes. This might seem obvious, but the pattern as reported has not been the same for all recent electoral events.

3.2. Presidential elections in 2021

Derechos Digitales' analysis of the 2021 presidential election shows that all candidates used Meta (the parent company of Facebook, WhatsApp and Instagram) for political advertising. During the first round, with six candidates competing, most of the content posted on the monitored accounts (62 per cent) were categorized as 'non-electoral' (not fully related to the campaign); only 36 per cent (2,238 publications) were 'electoral' publicity; and the remaining 2 per cent were categorized as 'doubtful' (Figure 2) (ADC and Derechos Digitales 2022). For the purposes of the study, the advertising analysed included both the registered candidates' official campaign outputs, and those of 'satellite accounts' belonging to entities with public influence—institutions, party factions and individual figures—who had publicly declared their support for any of the registered candidates. At least during the first round, which took place at the same time as the parliamentary election, the percentage of 'electoral' publications was inversely proportional to the size of the party (ADC and Derechos Digitales 2022: 35).

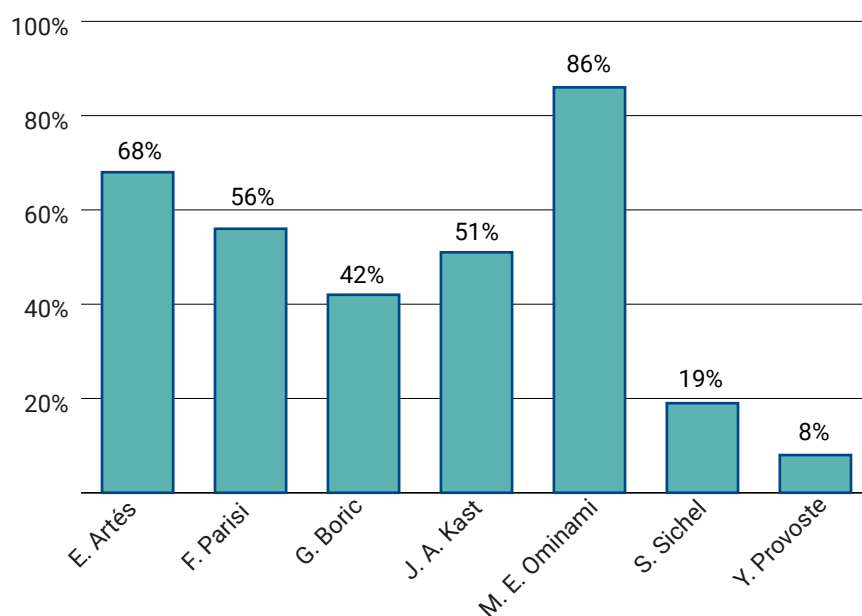
Candidates were found to be flouting the rules regarding the permitted period of electoral campaigning on social media.

In the second round, the numbers changed dramatically, as 59 per cent of advertising on Meta was categorized as electoral and 37 per cent as non-electoral (ADC and Derechos Digitales 2022: 39). The study concludes that this platform is a significant space for electoral campaigning and that, as with offline media, the rules about the permitted periods for electoral campaigning are not necessarily respected on social media (ADC and Derechos Digitales 2022: 44). Claims about campaigning outside permitted timelines are a regular feature of elections in Chile (see, for example, Radio Universidad de Chile 2020; Lingua 2022) and the Electoral Service faces oversight challenges specific to social media.

The Derechos Digitales study finds that, in 2021, not all political parties or presidential candidates reported their digital expenses using the stipulated Form 105. In some cases, the correct form was used to report digital expenses but it lacked the required detail about specific platforms and services purchased. Also, in almost all cases, the spending data given on the form did not match the data published by Meta, considering that political parties and candidates may have reported expenses made on other social media networks, but their ad libraries are not available (ADC and Derechos Digitales 2022: 54).

Unusually, one of the first-round candidates, Franco Parisi, was not physically in Chile in the pre-election period—due to unresolved legal issues related to pending alimony—so his campaign was mainly carried out by digital means, especially through a weekly YouTube programme called 'Bad Boys' (which,

Figure 2. Electoral posts as a percentage of all social media posts of monitored accounts, 2021 presidential election (first round)

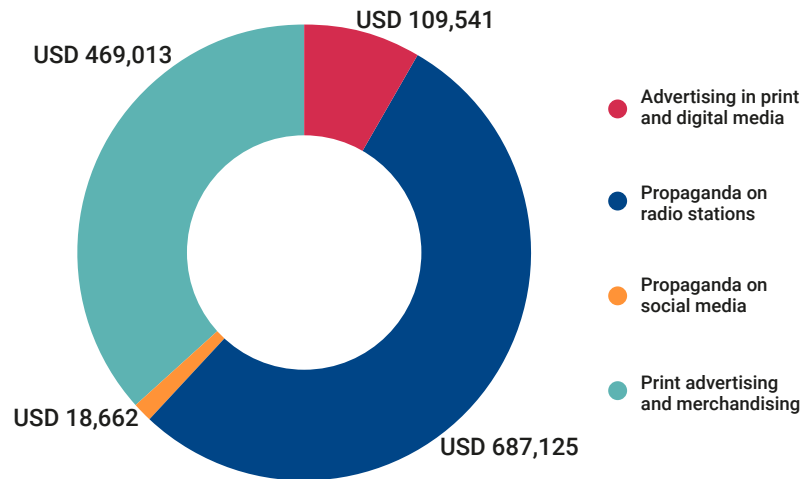


Source: Compiled with data from ADC and Derechos Digitales, 'PubliElectoral Elecciones 2021 Chile. Informe de elecciones presidenciales' [PubliElectoral Chile Elections 2021. Report of the presidential elections], April 2022, <https://www.derechosdigitales.org/wp-content/uploads/2022_InformePubliElectoral-Chile-v2-1.pdf>, accessed 11 September 2023.

according to YouTube and Google (n.d.b), is not considered advertising content). Using such platforms, Parisi obtained third place in the first round of the presidential election, with 13 per cent of the vote. This case demonstrates that there is a challenge in accounting for expenses made by candidates campaigning from outside the country. National political finance regulations and oversight rules often only apply within the country and, consequently, it is difficult to control the misuse or underreporting of campaign expenditures incurred in another country (Figuroa 2023).

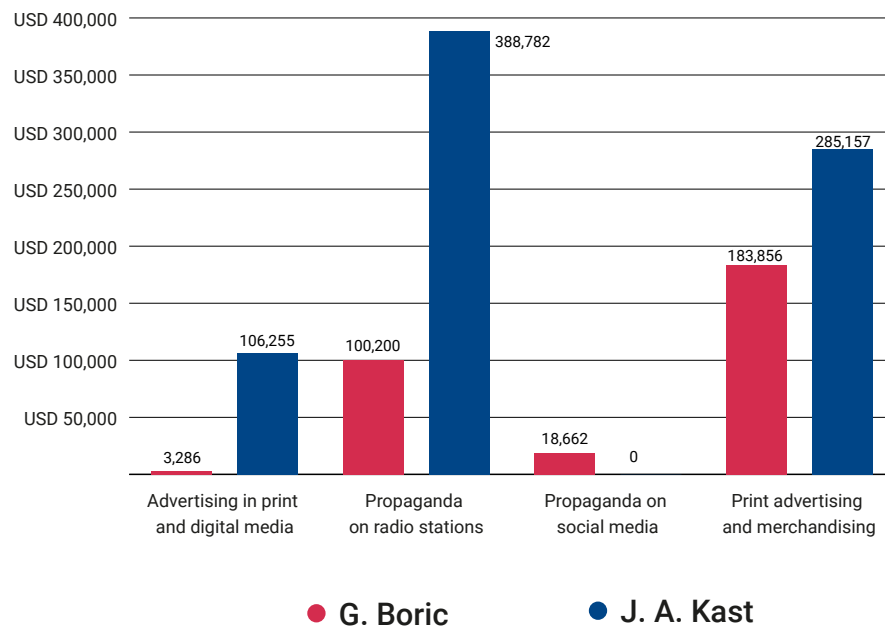
Figures 3 and 4 give a breakdown of officially reported expenses in the second round by type of electoral propaganda and by two presidential candidates, respectively.

Figure 3. Campaign expenses, 2021 presidential election (second round)



Source: Author's compilation with data from SERVEL, Gastos Elección Primaria Presidencial, 2021a, <https://www.servel.cl/servel/modulo-de-archivos/?y=2021&sv_documento_id=4&sv_variableattribute_id=22&offset=0>, accessed 11 September 2023.

Figure 4. Expenses by candidate, 2021 presidential election (second round)



Source: Author's compilation with data from SERVEL, Gastos Elección Segunda Votación Presidencial, 2021b, <https://www.servel.cl/servel/modulo-de-archivos/?y=2021&sv_documento_id=4&sv_variableattribute_id=22&offset=0>, accessed 11 September 2023.

4. CHALLENGES RELATED TO ONLINE CAMPAIGN FINANCE IN CHILE

4.1. 'Electoral propaganda'—definitional issues

To understand the situation regarding digital campaigns, it is very important to consider the current definition of 'electoral propaganda' in law (as modified in 2016):

[A]ny public event or demonstration; or radio, written, visual, audiovisual or other similar media advertising, if it promotes one or more persons or political parties, for electoral purposes. In the case of plebiscites, propaganda shall be understood to be that which induces support for any of the propositions submitted for consideration by the citizens. Such propaganda may only be carried out at the time and in the manner prescribed by law ... dissemination of ideas or information on political acts carried out by natural persons shall not be understood as electoral propaganda.

(Chile 2016: article 30; author's translation)

Considering the above, the following observations can be made in relation to campaigning through social networks or social media in Chile.

When paid services are commissioned on social media (such as Facebook or TikTok) to promote a candidate, this is advertising and falls under the definition of electoral propaganda, and hence should be governed by the corresponding rules and declared as an expense. Where a person or agency is hired to plan or execute viral communication strategies, this is defined in the same way and the same rules apply. Also, if a person offers their services for free, these must be declared and valued as contributions.

In the case of telephone and email campaigning, the same criteria as above apply, regarding advertising and contracting communications services. Activities of this type should not be considered mere private communications, as they involve expenditure on publicity for electoral campaigns—and should be regulated accordingly.

However, the law requires (Chile 2016: article 16) that stakeholders distinguish between promotional activities (what might be called political marketing or messaging) and those merely 'disseminating ideas or information on political acts or expressions', with the latter treated as an exercise in freedom of expression. This is a grey area and where to draw the line is sometimes not at all obvious. Ultimately, it is up to the Electoral Service to determine where to draw the line, as it exercises its oversight powers, and on a case-by-case basis if and when it receives complaints. For example, if a social media influencer uses their personal accounts to promote a candidate, and no advertisement is purchased, it is usually considered part of their right to exercise freedom of expression. But this is an example of where the Electoral Service would need to determine whether the activity crossed the grey line, as it could be considered

While the law requires that stakeholders distinguish between campaign advertising and posts made to 'disseminate ideas or information on political acts or expressions', drawing the line between the two is not always obvious.

an in-kind donation of services, such as a performance by an artist during the closing act of the election campaign might be.

In the many guides published for each election since 2016, the Electoral Service has clearly stated that digital advertising expenditure (i.e., on digital or social media, including social networks) must be declared as part of electoral expenditure. This must include information on the platform used, the contract period and the amounts involved. These guides state that on social media platforms only ‘promotional advertisements’, involving the commission of paid advertising services, are considered electoral propaganda, and not the communications from the personal profiles of candidates or political parties (for example, SERVEL 2017, 2021c).

The regulation described above was considered insufficient by the Congress; therefore, for the extraordinary referendum on the 2021 constitutional process, a special rule was established in the Constitution, just for that process. In addition to the application of some general rules, there were provisions for social networks. These stated that, although political expressions made through personal or group social media profiles do not constitute electoral propaganda (and would instead be protected by the freedom of expression guarantee), commissioning political advertising services through digital platforms would be considered electoral propaganda, and therefore be subject to the general campaigning restrictions.

There is no uniformity among platforms on how they define and treat political ads.

4.2. Social media platforms’ own policies

Following the Cambridge Analytica affair (Confessore 2018), Meta now publishes information related to political advertising on its platforms, which is available to all (Meta n.d.), as well as sharing these data with the Electoral Service directly.

Meta uses a broader definition of political advertising than the Chilean law on electoral propaganda. According to Meta, political advertising is anything that:

- Is made by, on behalf of or about a candidate for public office, a political figure, a political party, a political action committee or advocates for the outcome of an election to public office.
- Is about any election, referendum or ballot initiative, including ‘get out the vote’ or election information campaigns.
- Is about any social issue in any place where the ad is being run (Meta Transparency Center n.d.).

As a result, campaign activity referenced in Meta’s Ad Library is correspondingly inclusive.

TikTok, on the other hand, excludes anything it defines as political content from permitted—paid—advertising:

Political content is not allowed in any form of advertising ... this includes, and has always included, both brand ads and paid branded content. ... Sharing political beliefs and engaging in political conversation is allowed as organic content, but it cannot be used with paid ad products, such as Spark Ads and Promote. (TikTok n.d.)

Google has different requirements for political and election advertising based on region. In some regions, election ads may run only if the advertiser is verified by Google. In regions or countries where election advertising is required to be verified, the advertisement must contain information on who funded it: an advertiser ID label 'is generated from the data provided during the verification process and is automatically included in most ad formats' (Google n.d.a).

Further restrictions may apply according to local regulations, but this appears not to be the case in Chile. All the information is published in Google's Transparency Center (Google n.d.b).

In the case of Telegram, political adverts are forbidden: 'Ads must not promote political campaigns, elections, political parties, candidates, political or religious movements' (Telegram n.d.).

As seen above, different platforms treat political advertisements differently which has a practical implication on how expenses are reported and accounted for. This creates omissions and often underreporting of expenditures online, thwarting the goals of attaining transparency in campaign finance.

4.3. Challenges in monitoring and compliance

One of the difficulties in the oversight of digital campaign advertising in Chile is that it mostly relies on reporting from candidates and political parties (Castañón 2023). Most provide information about their recruitment of communications and public relations agencies, but without disclosing which social media platforms are used and what specific strategies are employed—for example, 'bots', 'troll farms', indirect campaigns, etc. (Castañón 2023). Through its Communication Unit, the Electoral Service monitors activity on social networks, using specialized professionals and technology. It is aware of the difficulties of this task and the need for more capacity, especially given the trend towards greater levels of digital campaigning (Figueroa 2023). A related challenge is that there seems to be no accountability obligation from political actors for political advertisements placed by these outside agencies. On the one hand, political parties and candidates have the incentive to outsource digital advertisement services; on the other, they refuse to take responsibility for information or statements disseminated by these agencies even if there are clear similarities in the messages conveyed (Castañón 2023; Figueroa 2023).

A second difficulty—not unique to Chile—is, as highlighted previously, that Internet and social media companies self-regulate themselves, often in distinct ways, especially in the absence of national legislation. Additionally, they may

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operate in a national territory without being legally established there so there is a lack of jurisdiction over them. This means that there is no real control or oversight by electoral bodies in the region, even less when there are attempts to decrease the budget and personnel of these oversight institutions or to diminish their autonomy (as happened in Mexico and Brazil, for example).

Third, it is very difficult—if not impossible—to track digital advertisements in detail and to trace who paid for them (‘following the money’) and therefore to determine if spending limits have been complied with. Some of the expense categories identified, in reviewing the election expenditure reports for the presidential second round (SERVEL n.d.), included ‘Services from costume designer for the second round of the presidential campaign’ and ‘Protagonist and extras from the second round of the presidential campaign’, and others as general as ‘Publicity for the 2021 presidential election campaign second round’ or ‘Social media management support second round presidential campaign’. Such vague expense categories make it extremely difficult to determine whether contribution or spending limits were complied with, or whether any illegal means of campaigning were employed.

4.4. Indirect campaigning and constitutional processes

The loopholes in Chilean regulation can also be considered in relation to indirect campaigning: advertising or propaganda coming from campaigning movements, grassroots or social organizations for, or against, causes that are related to a specific candidate or party’s manifesto. Campaigns carried out by these bodies, as per the definition of electoral propaganda by the Chilean Electoral Services, may be considered manifestations of freedom of expression, as happened with super political action committees (PACs) in the United States (Zamora 2020). CIPER Chile, an investigative journalism NGO, showed how these loopholes were used in Chile without any oversight (Segovia, Sepúlveda and Herrera 2022). In some cases, social movements or grassroots organizations effectively promoted electoral propaganda through these platforms without prior authorization or registration, resulting in no accountability or transparency. In other cases, digital platforms considered some projects promoting access to information or citizen engagement with the constitutional process to be political advertising, even though they were following national regulations and not promoting specific candidates or parties, or any alternatives to the referendum. This points out the need to adopt some criteria that considers the particularity of social media and that allows for better oversight.

During the two referendums in Chile in 2022 and 2023, some third parties were found to be running social media campaigns without registering with the Electoral Service.

The two referendums carried out in Chile in 2022 and 2023 showed how—for this kind of electoral process, even more so than in conventional electoral competition between candidates—it was difficult to track who was behind various campaign initiatives. Some of these involved promoters of the different constitutional options paying for advertising on social networks without having been registered with the Electoral Service to carry out electoral propaganda. Some research has suggested that such unregistered (i.e. unauthorized) expenditure on social networks outweighed official campaign spending (Garay 2022).

When reviewing the list of political, social or electoral advertisers on Facebook and Instagram, it is possible to see that many of the pages that have invested the largest sums of money in referendum campaigning are not registered to do so. Not all social media networks share such information with the public bodies in charge of monitoring this, as Meta does. Even where companies do publish this information (such as Meta), there are also difficulties and challenges in accessing it, as it can be segmented by different criteria (geography, age, sex, interests, etc.), which makes it difficult to trace the true expenses.

This will be a major challenge in any country experimenting with direct democracy mechanisms, whether referendums or citizens' law initiatives, because they potentially bring in a different mix of actors than those seen in traditional elections.

5. CONCLUSIONS AND LESSONS LEARNT

Chile has made an exceptional effort to adapt and modernize its regulations on political campaigning in the last few years, in response to various scandals—something that is rare in the region. Also, the Electoral Service has proven to be very effective in organizing almost flawless elections and has good levels of public confidence, which is remarkable for Chile. This provides the country with a very good opportunity to innovate, and to address challenges in an area that is dynamic but requires urgent modernization.

While digital campaigning has enabled political contestants to reach voters at lower cost, the lack of sufficient regulation can actually undo its very purpose, which is to level the playing field and promote greater fairness in electoral competition. The Electoral Service in Chile, after first attempting to forbid digital advertising, tried to treat social networks and digital media as analogous to traditional political advertisements on radio and in newspapers, without considering their special characteristics. This has resulted in legislative loopholes, as well as making it challenging for regulators to enforce electoral rules. This calls for the need for better clarity in the regulatory definition of digital propaganda—for example, defining the act of paying for promotion in Google's search engine as propaganda—and of the boundary line with freedom of expression.

These loopholes can and do lead to the following electoral integrity challenges:

- violation of permitted campaigning periods;
- use of bots for manipulation of the electorate or negative campaigning;
- misinformation campaigns;
- external influence in national elections;

The lack of sufficient regulation of digital campaigning can actually undo its purpose to level the playing field and promote greater fairness in electoral competition.

- violation of rules on expenses and donations (origins, limits);
- difficulty in tracing electoral finance ('following the money'); and
- unregistered, unauthorized campaigning, including indirect campaigning.

Domestic actors aside, it remains a major challenge to enforce local statutes on large digital companies that, although legally incorporated abroad, operate on national territory and have a significant impact on the national political scene. As Zamora (2020: 16) states: 'Considering the law and the interpretation made by the electoral body, we would dare to suggest that the Chilean regulation is confusing, anachronistic and meagre with respect to the treatment of new technologies.'

6. NEXT STEPS

One proposal made by the Engel Commission but not considered in new regulations was a public register of suppliers. This would promote more competence on standardized services, ensure better oversight of electoral expenses and fairer pricing, and prevent conflicts of interest or even possible overpricing or abuse of public resources (currently, Chile is seeing ongoing investigations into possible fraud) (Castañón 2023; Engel Commission 2015: 81; Ayala 2023). Although the Engel Commission proposal goes beyond the difficulties mentioned here, it could be a useful mechanism to address some of them, such as providing better information to the Electoral Service on which companies political parties or candidates have engaged with for digital campaigning, the services they have provided, and the amount of resources destined for digital and online campaigning.

The 2016 political finance reforms failed to keep pace with explosive growth in new technologies and campaign tactics.

As is already the case with professional and volunteer campaigners ('brigadists'), candidates should also be responsible for and have civil liability for the any wrongdoing of suppliers or companies that provide electoral advertisement services. Latin American media institutions have reported how irregularities by such suppliers are more common than expected and are transnational in nature (Fundación LaBot 2023). Also, collaboration with civil society organizations to report breaches of regulations on social networks could help in complementary monitoring.

Electoral stakeholders in Chile should consider the following:

- *Regulate electoral propaganda within social networks and digital media expressly and specifically.* Reporting requirements and permitted timelines for campaigns must take account of specific dynamics, such as the hiring of bots, interactions with influencers and supporters, grassroots campaigns, foreign funding. Transparency on this issue is key to promoting compliance with existing rules.

- *Strengthen the capacity of the Electoral Service, especially, but not only, during electoral periods.* Additional financial and human resources are needed for effective oversight and to ensure the continuous innovation that is needed to keep up with the fast pace of developments in the digital campaign realm.
- *Collaborate with counterparts and expert partners regionally and globally.* As regulating big tech is ultimately beyond the capacity of individual countries and their oversight agencies, Chile should seize opportunities to pool resources with others, including through the European Union and other partners. Latin America needs to confront digital capacity building and regulation in the light of other transnational problems including organized crime.
- *Implement current best practices as an interim measure.* As an example, Google has special regulations on political advertising in some countries, but not in Chile, so there is scope for negotiating improvements in the short term before more ambitious solutions can be identified.
- *Adopt a whole-of-society approach.* It is not only big tech that needs to be called to collaborate better, but also national political parties. The Electoral Service can play a role in bringing political forces together, so that they commit to not only comply with political finance laws but also follow basic standards of ethical political campaigning, including refraining from spreading misinformation through platforms, committing to high standards of transparency and reporting, and working with companies that carry out digital campaigns ethically. Finally, monitoring of online campaign finance goes beyond the realm of the oversight body and should involve other actors such as data protection bodies, commissions on digitalization, etc.

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ABOUT THE AUTHOR

Maria Jaraquemada is a lawyer from Pontificia Universidad Católica de Chile with a master's degree in Fundamental Rights from Universidad Carlos III, Madrid. She has more than 15 years of professional experience working on public policies related to anti-corruption, transparency, open government, and democratic strengthening. She has previously worked at the Transparency Council, at the Ministry General Secretariat of the Presidency, at Fundación Ciudadanía Inteligente as Director of Research and Advocacy, at Espacio Público as Director of Advocacy and coordinator of the Anti-Corruption Observatory and the Latin American Anti-Corruption Network, as Programme Officer for Chile and the Southern Cone at International IDEA, and as Executive Director of the Chilean Chapter of Transparency International.

Contributors

Khushbu Agrawal is Advisor for Money in Politics at International IDEA.

Yukihiko Hamada is Programme Manager for Money in Politics at International IDEA.

ABOUT THE SERIES

This case study on Chile was drafted between May and September 2023 and is part of International IDEA's Political Finance in the Digital Age project, which collects empirical information about the ways in which countries adapt to and cope with political finance challenges associated with digitalization. Through the project, members of political finance oversight agencies and civil society organizations, political party officials and legislators can learn about good practices and lessons learnt from various countries that can help them devise and implement political reforms to protect the integrity of political processes and institutions against existing and emerging digital risks.

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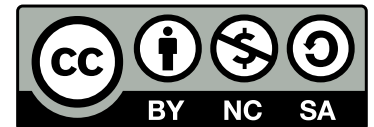
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Design and layout: International IDEA

DOI: <https://doi.org/10.31752/idea.2024.5>

ISBN: 978-91-7671-734-9 (PDF)



International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int