ECONSTOR
Make Your Publications Visible.

A Service of

ZBW Leibniz-Informationszentrum Wirtschaft
Leibniz Information Centre for Economics

Kira, Beatriz et al.

Working Paper

Current Challenges in Digital Elections: Lessons from Electoral Regulation and Digital Campaigning in Brazil

Weizenbaum Discussion paper, No. 52

Provided in Cooperation with:
WZB Berlin Social Science Center

Suggested Citation: Kira, Beatriz et al. (2025) : Current Challenges in Digital Elections: Lessons from Electoral Regulation and Digital Campaigning in Brazil, Weizenbaum Discussion paper, No. 52, Weizenbaum Institute, Berlin, https://doi.org/10.34669/WI.DP/52

This Version is available at:
https://hdl.handle.net/10419/334438

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

https://creativecommons.org/licenses/by/4.0/

WWW.ECONSTOR.EU

Mitglied der Leibniz-Gemeinschaft

weizenbaum
DISCUSSION PAPER

November 2025
52

Beatriz Kira, Clara Iglesias Keller, Gabriel Wajman, Francisco Brito Cruz, Bruno Bioni, Laura Schertel, Gabriel Fonseca, Nina Fernandes dos Santos

Current Challenges in Digital Elections

Lessons from Electoral Regulation and Digital Campaigning in Brazil

AUTHORS

Beatriz Kira \\ University of Sussex
Clara Iglesias Keller \\ Weizenbaum Institute
Gabriel Wajman \\ University College London
Francisco Brito Cruz \\ Brazilian Institute of Education, Development, and Research (IDP)
Bruno Bioni \\ Data Privacy Brasil
Laura Schertel \\ IDP and University of Brasilia
Gabriel Fonseca \\ Supremo Tribunal Federal Brazilian Federal Supreme Court
Nina Fernandes dos Santos \\ Brazilian National Institute for Digital Democracy

Contact: clara.keller@wzb.eu

ABOUT THIS PAPER

This report presents the independent research and analysis of the authors. The opinions, findings, and conclusions expressed herein are those of the authors and do not necessarily represent the official view or position of their institutions.

Some of the authors of this report participated as members of the Committee for the Study of Digital Integrity and Transparency on Internet Platforms in the Electoral Process, established by the Brazilian Electoral Court (TSE) in December 2023. While this provides first-hand insight into the Committee's deliberations, the views expressed here are personal and do not represent the official position of the Committee or the TSE.

The committee comprised of Justice Alexandre de Moraes, Justice Cármen Lúcia, José Fernando Moraes Chuy, Laura Schertel Mendes, Francisco Carvalho de Brito Cruz, Beatriz Kira, Bruno Ricardo Bioni, Clara Iglesias Keller, Gabriel Campos Soares da Fonseca, and Nina Fernandes dos Santos. The authors thank the University of Sussex and the Weizenbaum Institute for the Networked Society for supporting the development of this report.

ABOUT THE WEIZENBAUM INSTITUTE

The Weizenbaum Institute is a joint project funded by the German Federal Ministry of Research, Technology and Space (BMFTR) and the State of Berlin. It conducts interdisciplinary and basic research on the digital transformation of society and provides evidence- and value-based options for action in order to shape digitalization in a sustainable, self-determined and responsible manner.

weizenbaum institut

CEDIS | idp

UNIVERSITY OF SUSSEX

Weizenbaum Discussion Paper

Current Challenges in Digital Elections

Lessons from Electoral Regulation and Digital Campaigning in Brazil

Beatriz Kira, Clara Iglesias Keller, Gabriel Wajman, Francisco Brito Cruz, Bruno Bioni, Laura Schertel, Gabriel Fonseca, Nina Fernandes dos Santos

Abstract

This report addresses the regulation of digital electoral environments. Using Brazil's 2024 local elections as a case study, it analyzes innovative regulatory measures introduced by the Brazilian Superior Electoral Court (TSE) to manage digital political communications. As digital campaigning expands beyond traditional media into social platforms and AI-generated content, Brazil exemplifies the difficulties democracies face in adapting electoral oversight to new realities. The central contribution is an in-depth examination of five regulatory innovations in TSE Regulation No. 23,732/2024 that strengthen platform accountability: (1) rules on microtargeting and data protection; (2) mandatory Ad Libraries enhancing transparency of political ads; (3) regulation of generative AI content; (4) duties and content moderation obligations for digital platforms; and (5) updated intermediary liability frameworks. These reforms represent an important judicial attempt to fill legislative gaps and respond to the digital disruption of electoral processes. The report situates Brazil's approach within a wider comparative debate on how liberal democracies confront digital electoral challenges. It highlights issues of legitimacy, legal competence, and enforcement, while providing policy recommendations applicable beyond Brazil. Ultimately, this study offers insights into evolving models of electoral governance, bridging national experience with global democratic challenges in the digital age.

Contents

1 Introduction **10**

2 Context: Digital Policy and Political Communication in Brazil **12**
2.1 Platformization of the electoral debate at a global level 12
2.2 Digital campaigns in Brazil 13

3 Electoral Law and Platform Regulation: The Brazilian Approach **15**
3.1 Electoral laws 16
3.2 The Internet Civil Rights Framework 17
3.3 Data protection and electoral integrity 18
3.4 Statutory regulation 19
3.5 TSE regulations 19

4 Innovations introduced with Regulation No. 23,732/2024 **21**
4.1 Microtargeting and personal data protection 22
4.2 Advertisement libraries 23
4.3 AI-generated content and deepfakes 23
4.4 Platform duties and content moderation 25
4.5 Intermediary liability 26

5 Future Steps: Securin Electoral Integrity in the Digital Age **27**
5.1 Strengthening electoral law and institutions 28
5.2 Strengthening digital governance 29

6 Recommendations **31**
6.1 For electoral authorities and courts 31
6.2 For the legislative branch 32
6.3 For civil society and academia 32
6.4 For platforms 33

Imprint **34**

Executive Summary

This report examines developments in Brazilian electoral regulations, particularly the strategic challenges in digital communications during electoral periods. The Brazilian Superior Electoral Court (TSE) is the public body responsible for regulating and enforcing legal standards in local and national elections, as well as adjudicating conflicts regarding the application of electoral legislation.

For the 2024 local elections, the TSE advanced an innovative regulatory framework to respond to online campaigning in digital platforms, data protection, and the use of artificial intelligence (AI) in electoral propaganda. In this report, we analyze key aspects of this framework against the Brazilian political context, with two main goals: fostering comparative work across jurisdictions and making recommendations for future institutional action in Brazil.

As political communications have expanded beyond traditional media to a digital ecosystem, Brazil is one of many countries where a new, digital dimension of electoral dispute has shifted political power (im)balances and challenged existing legal frameworks. The 2018 Presidential elections became a landmark for these transformations, characterised by a WhatsApp-based digital disinformation campaign.[1]

The following (local, regional, and national) electoral periods were marked by the expansion of the use of digital technologies in different stages of campaigning, from the persistence of digital disinformation as a discursive practice, microtargeting and content-promotion techniques, to the expansion of AI generated content. At the same time, successive political crises and intense lobbying from big technology companies hampered the Parliamentary approval of comprehensive regulatory frameworks. In this scenario, higher courts – like the Supreme Federal Court (STF) and the TSE in particular – ended up at the forefront of the challenge of holding digital platforms accountable.

Political advertising on television and radio had historically been a key feature of the Brazilian electoral system; parties received free broadcast slots allocated and paid for by the state, providing clear regulatory oversight. However, Brazil's media diet has substantially changed. After a brief **Introduction, Section 2** details how this paradigm was disrupted by the rise of social media and private messaging apps, particularly WhatsApp, enabling decentralized, opaque, and often misleading campaign tactics.

1 Evangelista, R., & Bruno, F. (2019). WhatsApp and political instability in Brazil: targeted messages and political radicalisation. Internet Policy Review, 8(4). https://doi.org/10.14763/2019.4.1434

Section 3 focuses on Brazil's legal landscape, tracing the development of its electoral laws and platform regulation frameworks. We explain how existing internet-focused legislation such as the Internet Civil Rights Framework (*Marco Civil da Internet*, MCI) and early efforts to update electoral legislation such as the 2017 Political Reform Law proved insufficient to manage the scale and speed of digital campaigning. This legislative gap prompted the TSE to adopt a full (and often questioned) exercise of its regulatory competences, incrementally updating its rules with each election cycle through new regulations and taking on a supervisory role that is particularly active during electoral processes.

Section 4 focuses on five sets of regulatory innovations enacted within TSE Regulation No. 23,732/2024 that represented a significant shift in platform accountability for electoral propaganda: microtargeting and personal data protection; Ad Libraries; regulation of GenAI content; Platform Duties and Content Moderation; and Intermediary Liability (Table 1). We also show that these rules have also had their legitimacy questioned, particularly with regard to the extent that they are aligned with the TSE's regulatory competences.

Building on this analysis, in **Section 5** we assess the impact of the 2024 Regulation and challenges going forward. We argue that even though these regulations were developed to govern the 2024 local elections — officially, the three months leading up to the elections — they have potential long lasting effects, transcending not only this specific electoral cycle but also impacting platform governance beyond electoral contexts. Alongside questions of legitimacy, differing interpretations by regional electoral courts and the lack of operational definitions for key concepts such as "deepfake" and "virality" have also complicated enforcement. In **Section 6**, we use these findings to produce actionable policy recommendations (Table 2).

Table 1. Key innovations introduced by Regulation 23,732/2024

Topic	Innovations Introduced by Regulation 23,732/2024
Microtargeting and promoted posts	Requires political actors and platforms to provide easy access to information about data used for profiling. Classifies large-scale micro-targeting using sensitive data or emerging technologies as a high-risk activity that may require a Data Protection Impact Assessment (DPIA).
Advertisement library	Mandates public advertisement libraries on digital platforms with real-time data on all political ads. Applies beyond election periods.
AI-generated content and deepfakes	Requires clear labeling of AI-generated media and bans deepfakes intended to deceive or alter electoral outcomes. Prohibits impersonation via chatbots or avatars.
Platform duties and content moderation	Imposes a duty of care on platforms to combat false or decontextualized electoral content. Requires updated terms of service, user reporting channels, election-year risk assessments, and corrective content dissemination. Restricts promotion of harmful electoral content via ads or search.
Intermediary liability	Introduces immediate removal obligations for harmful electoral content without requiring judicial orders. Covers hate speech, disinformation, and mislabelled AI-generated content.
Personal data protection	Introduces strict rules for the processing of personal data in electoral campaigns. Requires transparency, informed consent, and alignment with LGPD principles. Mandates detailed recordkeeping of data processing activities and, in high-risk cases, DPIA.

Table 2. Key recommendations

Topic	Innovations Introduced by Regulation 23,732/2024
For electoral authorities and courts	• **Continue to hold public hearings and refine the channels of public participation:** The TSE should maintain its practice of holding public hearings to examine draft regulations while refining the process to ensure a continuous stream of technical expertise informs regulatory development.
	• **Evaluate previous regulatory efforts:** The TSE should commission comprehensive assessment of Regulation No. 23,732/2024's implementation, documenting enforcement actions, compliance challenges, and effectiveness across different regulatory provisions. This evaluation should inform future regulatory updates and should be made available to the public.
	• **Develop operational definitions:** Future regulations should include precise definitions of key concepts such as "deepfake," "virality," and "systematic risk" to ensure consistent application across regional electoral courts and provide clear compliance guidance for platforms and campaigns.
	• **Extend temporal scope:** Electoral authorities should consider expanding the temporal application of transparency and integrity rules to capture pre-campaign activities and ongoing political communication while maintaining appropriate distinctions between electoral and non-electoral contexts.
For the Legislative branch	• **Prioritize platform regulation:** Congress should prioritize comprehensive platform governance legislation, whether through reviving Bill No. 2630/2020 or introducing similar measures. Such legislation should establish administrative duties for platforms, create appropriate oversight institutions, and require companies to systematically identify and address risks to democratic processes.
	• **Advance AI regulation:** Bill No. 2338/2023 should be adopted, including rules that pay particular attention to generative AI applications in political communication and requirements for synthetic content identification.
	• **Reform competition law:** The Ministry of Finance's proposals for designating systemically relevant digital platforms should be implemented, creating competitive market conditions that support democratic discourse and prevent excessive concentration of economic and communicative power.

For civil society and academia	• **Engage in participatory processes:** Civil society organizations and researchers should actively participate in regulatory consultations and expert committees. This engagement ensures that diverse perspectives and technical expertise inform policy development.
	• **Monitor implementation:** Civil society organizations should systematically document platform compliance with electoral regulations and advocate for transparent reporting on enforcement actions and their effectiveness.
	• **Develop technical standards:** Technical communities should work toward developing industry standards for synthetic content detection and labeling that can inform regulatory implementation and provide practical compliance guidance.
For platforms	• **Compliance and transparency:** Digital platforms should comply with the law and implement robust systems for electoral integrity that exceed minimum regulatory requirements. These systems should include transparent reporting on political advertising and content moderation, with the effectiveness of risk mitigation processes measured using both ex-ante and ex-post methodologies.

1 Introduction

With voters going to the polls in more than 60 countries around the globe, 2024 became known as "the year of elections." Among the challenges aching to a wave of democratic decay in different national contexts,[2] governments and electoral authorities have had to face the increasing expansion of digital campaigning. In various jurisdictions, the question of how to ensure digital platforms strengthen electoral integrity rather than undermine it inspired public debates, expert contributions, and policy innovations. At the center of this discussion is the increasing role of private businesses as spaces for political communication and the expansion of techniques such as generative AI tools.[3]

Brazil is a case in point. In February 2024, the Superior Electoral Court (TSE) passed Regulation No. 23,732/2024, updating the interpretation and application of electoral rules for the 2024 municipal elections. This regulation introduced new rules governing political content and political advertisements on digital platforms, including on the use of AI-generated content, transparency, political microtargeting, promoted posts, and data protection.

These rules add to a track record of the TSE acting on its regulatory competences[4] to close gaps and update electoral regulation in an attempt to keep pace with technological advancements. Despite the widespread national adoption of digital communications, Brazil still lacks a comprehensive regulatory framework establishing democratic standards for the affordances and power structures that influence information and attention flows online. While advancing important principles, user rights, and net neutrality rules, the Brazilian Internet Civil Rights Framework (Marco Civil da Internet, in Portuguese, or "MCI") lacks structural mechanisms to effectively hold platforms accountable for their business models, systems, and content-related decisions.[5]

The legislative debate to update this framework has faced repeated setbacks, with proposals such as Bill No. 2630/2020 (known as the "Fake News Bill" or "PL 2630") stalling in Congress amid political resistance, lobbying from major technology companies, and public controversies over their impact on freedom of expression. Notably, the narrative that platform regulation would promote

2 See, for example, Nobre, M. (2023). *Limits of democracy: From the June 2013 uprisings in Brazil to the Bolsonaro government*. Springer; Przeworski, A. (2019). *Crises of democracy*. Cambridge University Press. Levitsky, S., & Ziblatt, D. (2018). *How democracies die*. Viking; Runciman, D. (2018). *How democracy ends*. Profile Books.

3 On the risks of generative AI for electoral processes, see Judson E and others, 'Synthetic Politics: Preparing Democracy for Generative AI' (Demos and UCL Digital Speech Lab 2024) https://demos.co.uk/research/synthetic-politics-preparing-democracy-for-generative-ai/ accessed 4 April 2024

4 For example, Articles 1, paragraph one; 23, IX; and 23-A of the Brazilian Electoral Code (federal Law nº 4737/1965) establish a *sui generis* normative regulatory competence to the TSE. Hence, in addition to its typical jurisdictional competence regarding the adjudication of electoral disputes and rights, the Superior Electoral Court also has a normative competence to issue "Instructions" and "Regulations" (Resoluções) regulating specific themes on the Electoral Code and Elections, in general. For further discussions on this sui generis regulatory competences, See Section 3.

5 Iglesias Keller, C. (2020). Policy by judicialisation: the institutional framework for intermediary liability in Brazil. *International Review of Law, Computers & Technology*, 35(3), 185 – 203. https://doi.org/10.1080/13600869.2020.1792035

censorship and harm free speech was embraced by members of Congress, especially those on the right wing political spectrum. They have been successful in pushing against regulation over content moderation and transparency standards (among other innovations that were in the proposal).

At the same time, political-electoral content is subject to a special legal regime in Brazil. Under this framework, regional electoral courts (*Tribunais Regionais Eleitorais* - TREs) at the state level and the TSE at the national level have the responsibility to monitor and enforce rules applicable to various aspects of elections, including political advertisements.

The TSE also regulates electoral periods in all these levels. Before each election cycle, the Court enacts rules on how overarching legislation will apply to each election, including the possibility of updating campaigning rules in the face of technological advancement and/or recent Court precedents that should have a broader application. The Court first emboldened its approach towards digital campaigning in 2017, through Resolution No. 23.551/2017. This established more detailed rules on online electoral advertisements after Congress allowed candidates to buy paid ads on social media platforms in that year. This institutional arrangement has allowed for the implementation and experimentation of legal standards for online content moderation; these have taken place in parallel with slow-moving Parliamentary disputes.

While this judicial protagonism comes with limitations and political contingencies, the legal and regulatory innovations introduced in the 2024 electoral cycle have the potential to create ripple effects beyond their specific context. Besides the 2024 and future elections this framework will potentially inform, it provides standards for judicial, legislative and policy decisions around the regulation of digital platforms.

By documenting the approach taken in 2024 and sharing Brazil's experience in developing innovative electoral regulations through a participatory process, this report draws the key lessons learnt and offers recommendations for both the upcoming Brazilian presidential elections and for other jurisdictions facing similar challenges. Our ultimate goal is to contribute to the global conversation on safeguarding electoral integrity in the digital age.

The report is structured as follows. **Section 2** provides an overview of how digital platforms have transformed political communication, both globally and in Brazil, highlighting the regulatory challenges these changes have introduced for electoral authorities. **Section 3** outlines the regulatory framework, analyzing the broader legal and policy landscape on platform regulation in Brazil and tracing the evolution of electoral regulations issued by the TSE from 2017 to 2022 in response to digital campaigning. **Section 4** focuses on the 2024 Regulation itself, unpacking its key innovations: rules on microtargeting and data protection, advertisement libraries, AI-generated content and deepfakes, content moderation obligations, and intermediary liability. **Section 5** examines the implications of the 2024 Regulation. **Section 6** offers policy recommendations for policymakers, electoral authorities, and electoral courts to strengthen the accountability and transparency of digital platforms in electoral contexts and beyond.

2 Context: Digital Policy and Political Communication in Brazil

Digital technologies have changed how Brazilians engage with political content. From WhatsApp groups to influencer endorsements, electoral campaigns now also unfold across platforms that operate according to logics far removed from the broadcast media that once dominated political communication. Understanding this transformation requires an examination of global trends in digital campaigning and the particular ways they have manifested in Brazil.

2.1 Platformization of the electoral debate at a global level

Digital platforms have restructured political communication. Social media and messaging apps have brought new forms of campaigning and new ways for voters to interact with candidates and political information. Compared to traditional media, digital platforms lower entry barriers significantly. This enables a broader range of political actors to participate effectively in electoral processes, including previously marginalized or lesser-known candidates. With minimal resources, anyone can establish an online presence, potentially reach millions, and engage directly with constituents. This shift has decentralized political discourse, disrupting traditional power structures by circumventing established media gatekeepers and fostering more participatory, responsive forms of political engagement.[6]

However, despite brief optimism that social media would create a more democratic public sphere where diverse voices could flourish,[7] platforms have instead given rise to (re)new(ed) forms of power asymmetry. While they indeed circumvent traditional editorial prerogatives and other gatekeeping mechanisms, platforms are not neutral infrastructures; they have immense influence on how, when, and to whom online content is directed. New hierarchies have emerged, with algorithmic curation determining content visibility, verification systems creating digital status markers, and platform policies unevenly enforcing across different political actors.

6 Francisco Brito Cruz, *Novo jogo, velhas regras: democracia e direito na era da nova propaganda política e das fake news* (Casa do Direito 2020).; Francisco Brito Cruz, Maria H Valente and Rafael A F Zanatta, *Secrets and Lies: WhatsApp and Social Media in Brazil's 2018 Presidential Election* (CELE Research Paper No 36, 1 May 2019) http://dx.doi.org/10.2139/ssrn.5152001; Anita Breuer, *From Polarisation to Autocratisation: The Role of Information Pollution in Brazil's Democratic Erosion* (IDOS Discussion Paper 2/2025, German Institute of Development and Sustainability 2025) https://doi.org/10.23661/idp2.2025.

7 See, for example, Shirky C, *Here Comes Everybody: The Power of Organizing without Organizations* (Penguin Books 2009); Loader BD and Mercea D, *Networking Democracy? Social Media Innovations and Participatory Politics* (2011) 14 Information, Communication & Society 757

These dynamics have important implications for democratic communications, further raising the stakes for electoral processes, particularly in fair competition among candidates and political parties – a founding aspect of the electoral process.[8] More recently, generative AI tools such as large language models (LLMs), chatbots, and synthetic image generators have been able to facilitate the creation and massive distribution of inauthentic content. Deepfakes, which consist of hyper-realistic AI-generated outputs representing a person's likeness in video, image, or audio, are a particular concern. They blur the lines between reality and falsehood, with the potential to misrepresent candidates, amplify disinformation, and undermine public trust in the electoral process.[9]

2.2 Digital campaigns in Brazil

For decades, political campaigning in Brazil operated under a centralized and institutionally controlled communication model. The state allocated free airtime slots on radio and television which unctioned as the main channel through which political parties and candidates reached voters. The TSE played a central role in regulating this media environment, ensuring equitable access to broadcast time and enforcing strict rules on campaign content. Political communication was largely unidirectional, hierarchical, and mediated by party structures and professional campaign strategists.[10]

This model shaped the way elections were conceived and conducted; campaigns were built around highly-produced television advertisements, with messages crafted by marketing professionals and disseminated uniformly across the country. Political authority was largely mediated by image management on television. This broadcast paradigm offered electoral authorities a relatively stable regulatory landscape. The actors were identifiable, the messages trackable, and the reach predictable.[11]

This paradigm began to decline with the growing ubiquity of digital platforms in political life. The emergence of social media, private messaging apps, and influencer-driven communication gradually decentralized the flow of political information away from traditional media. While press and broadcasting channels still play an important role, the new, widely digitalized public sphere has challenged the foundational assumptions of this regulatory model. Political actors

8 Desinformante, 'Sociedade civil cobra ações contra conteúdos antidemocráticos' (Desinformante, 9 January 2024) https://desinformante.com.br/sociedade-civil-cobra-acoes-contra-conteudos-antidemocraticos/ accessed 31 May 2025. See also Kira B, 'Regulatory Intermediaries in Content Moderation' (2025) 14 Internet Policy Review https://policyreview.info/articles/analysis/regulatory-intermediaries-content-moderation accessed 14 April 2025.

9 Fernanda de Carvalho Lage and Ingrid Neves Reale, 'O uso da inteligência artificial nas eleições: impulsionamento de conteúdo, disparo em massa de fake news e abuso de poder' (2023) 17(1) *Estudos Eleitorais* 19; Shanze Hasan and Abdiaziz Ahmed, 'Gauging the AI Threat to Free and Fair Elections' (Brennan Center for Justice, 6 March 2025) https://www.brennancenter.org/our-work/analysis-opinion/gauging-ai-threat-free-and-fair-elections; Eduardo Koetz, 'Eleições e inteligência artificial: como algoritmos podem influenciar votos' *Migalhas de Peso* (28 November 2024) https://www.migalhas.com.br/depeso/420522/eleicoes-e-ia-como-algoritmos-podem-influenciar-votos accessed 1 June 2025.

10 Cruz (n 4), Chapters 3 and 4.

11 ibid.

no longer depend on traditional media intermediaries to reach voters. Instead, they can now communicate through digital platforms, instantly, and interactively, often through informal and personalized channels that operate outside the regulatory lens.[12] This structural transformation—from a centralized and institutionalized model of political propaganda to a networked and fragmented digital ecosystem—has amplified the range of political actors participating in political disputes, which now includes digital influencers, anonymous users, and algorithmically amplified content producers.[13]

The 2018 Brazilian elections serve as a national landmark for a significant societal shift. During this period, WhatsApp's dominance in Brazil was already profound, with over 120 million users[14] in a country of approximately 209 million people.[15] Boosted by widespread "zero-rating" plans (free access to WhatsApp without data charges), the platform effectively became the primary internet experience for millions of Brazilians. This trend has continued, with a 2023 Internetlab study confirming WhatsApp's enduring role as the country's dominant messaging platform, used by 99.2% of internet users for communication.[16]

During the 2018 elections, Whatsapp enabled different campaigns to segment voters with precision and deliver them content precisely calibrated to resonate with their concerns and values.[17] Supporters of then-candidate Jair Bolsonaro created WhatsApp groups for very specific demographics, such as diabetics discussion groups, soccer team supporters, Uber drivers, job seekers, and even workmates and neighbors.[18] This systematic approach to digital campaigning coincided with a surge in political misinformation that leveraged these same distribution mechanisms, challenging existing electoral rules. This tactic was later addressed by Brazil's Superior Electoral Court in 2021, when it ruled that the online dissemination of false information during the 2018 elections could constitute abuse of the means of communication and thus lead to the ineligibility of the candidate that employs it.[19]

---

12 ibid.

13 ibid.

14 Folha, 'Facebook Chega a 127 Milhões de Usuários Mensais No Brasil' (Folha de S.Paulo, 18 July 2018) https://www1.folha.uol.com.br/tec/2018/07/facebook-chega-a-127-milhoes-de-usuarios-mensais-no-brasil.shtml accessed 18 April 2025

15 'Ibge Divulga as Estimativas de População Dos Municípios Para 2018: Agência de Notícias' (IBGE, 29 August 2018) https://agenciadenoticias.ibge.gov.br/agencia-sala-de-imprensa/2013-agencia-de-noticias/releases/22374-ibge-divulga-as-estimativas-de-populacao-dos-municipios-para-2018 accessed 18 April 2025

16 InternetLab and Rede Conhecimento Social, *Os vetores da comunicação política em aplicativos de mensagens: hábitos e percepções*, ed 4 (São Paulo, 2024) 12. https://internetlab.org.br/wp-content/uploads/2024/09/Investigando-os-vetores-de-disseminacao-de-conteudo-eleitoral_PT_versao-07.pdf accessed 12 June 2025.

17 Evangelista R and Bruno F, 'WhatsApp and Political Instability in Brazil: Targeted Messages and Political Radicalisation' (2019) 8 Internet Policy Review https://policyreview.info/node/1434 accessed 24 June 2025.

18 Cristian Favaro, 'Aumenta ação de robôs pró-Bolsonaro no Twitter' UOL (São Paulo, 19 October 2018) https://noticias.uol.com.br/politica/eleicoes/2018/noticias/agencia-estado/2018/10/19/aumenta-acao-de-robos-pro-bolsonaro-no-twitter.htm\; Bruno Benevides, 'Hackers russos tentam interferir nas eleições no Brasil, diz empresa de cibersegurança' Folha de S.Paulo (Washington, 4 October 2018) https://www1.folha.uol.com.br/mundo/2018/10/hackers-russos-tentam-interferir-nas-eleicoes-no-brasil-diz-empresa-de-cibersegu-ranca.shtml\; Yasmin Curzi, Democracia Digital e Eleições: desinformação, discursos de ódio e a regulação das plataformas digitais(FGV Direito Rio 2022) https://repositorio.fgv.br/items/2d561700-642a-4866-ac65-d7620b0c0ec3\ accessed 31 May 2025.

19 Superior Electoral Court (Brazil), Electoral Appeal No. 0603975-98.2018.6.16.0000, rapporteur Justice Luis Felipe Salomão (28 October, 2021) https://consultaunificadapje.tse.jus.br/consulta-publica-unificada/documento?extensaoArquivo=text/html&path=tse/2021/12/7/18/59/51/9e3ec06661f66b36db06854ad9e879b89b90a3ca93eec0ae98bd08c93287f51d acessed 1 June 2025.

This and other forms of digital campaigning — often in friction with electoral law principles — continue to evolve with each electoral cycle. Beyond the sort of regulatory action that this report addresses, platforms and public authorities have also engaged in different governance arrangements to cope with the new paradigm. Major platforms such as Meta (Facebook, Instagram, WhatsApp) and Google have established dedicated policy teams for Brazil and engaged in extensive lobbying efforts around proposed regulations.[20] These platforms have also made targeted adjustments to their services for the Brazilian context. Following concerns about its role in the 2018 election, WhatsApp implemented a global forwarding limit in 2019, with stricter restrictions applied in Brazil during election periods.[21]

However, self-regulatory efforts have proved insufficient, leading to growing pressure from various sectors of society to hold social media companies more accountable and update the regulatory framework governing their operation. Throughout this period of rapid digital transformation, Brazil's electoral authorities have sought to adapt regulations meant for a pre-digital era to address novel challenges related to digital campaigns. The regulatory framework has proved increasingly inadequate for addressing the intersection of digital platforms, political communication, and electoral integrity.

3 Electoral Law and Platform Regulation: The Brazilian Approach

Brazil's electoral law comprises specific electoral legislation that operates alongside broader legal frameworks, as outlined in Table 3 below.

Table 3. Legal regime applicable to digital campaigns in Brazil

Level	Legal instrument	Scope
Constitutional	1988 Brazilian Constitution	Fundamental electoral principles
Electoral legislation	Electoral Code	Primary electoral legislation, including electoral rules
Electoral legislation	Elections Law	Specific electoral procedures and rules
Electoral legislation	Political Parties Law	Party regulations and requirements

20 See, for example, Laura Scofield and Natalia Viana, 'How Big Tech Killed Brazil's "Fake News Bill"', A Pública (9 September 2025), https://apublica.org/2025/09/how-big-tech-killed-brazils-fake-news-bill/

21 https://blog.whatsapp.com/more-changes-to-forwarding

General legislation	Internet Civil Rights Framework (MCI)	Digital rights and responsibilities
General legislation	Brazilian General Data Protection Law (LGPD)	Data protection in digital contexts
Regulations	TSE Regulations	Practical implementation guidelines

The Electoral Code grants the TSE authority to issue regulations necessary for the proper functioning of elections.[22] Consequently, despite being a judicial institution, the TSE exercises a *quasi*-regulatory role, providing practical guidance and facilitating the organization of electoral processes. While hierarchically subordinate to formal legislation, TSE regulations are essential for clarifying and implementing electoral laws. This section examines how this legal framework has evolved in response to digital political communication, including TSE regulations adopted from 2017 to 2022.

3.1 Electoral laws

Equal opportunities for candidates (also known as the principle of "parity of arms") is a cornerstone of the Brazilian electoral system which aims to ensure fairness in electoral competition by limiting disproportionate advantages among candidates, political parties and campaigns.

This principle underlies long standing rules on media access, campaign financing limits, and the prohibition of certain types of propaganda. Its purpose is to protect the legitimacy of electoral outcomes by securing an environment of balanced competition.[23] The rapid growth of digital platforms introduced new dynamics that strained these protections, creating asymmetries that earlier electoral laws had not anticipated.[24]

The 2017 Political Reform Law (Law No. 13,488/2017) marked Brazil's first significant attempt to update electoral rules for the digital age. The law's most important innovation was to permit candidates and parties to pay to promote their content on social media platforms. Before this reform, all forms of paid electoral advertising online were prohibited. Under the new rules, two specific types of paid digital advertising became legal: i) promoted posts (in Portuguese, posts *impulsionados*) and ii) sponsored links in search engines. These types of paid content had to observe important requirements: they had to be clearly identified as paid political advertising; only candidates, parties, and coalitions could pay for them; all contracts had to be made directly with platforms that had a legal presence in Brazil; and all expenses had to be declared in campaign financial reports.

---

22 Brazilian Electoral Code (Law No 4,737 of 15 July 1965) Art. 23, IX and Elections Law (Law No. 9,504 of 30 September 1997), Art. 57-J.

23 Cruz (n 5).

24 ibid.

The reform also introduced specific prohibitions to address digital campaign challenges. Creating fake social media profiles to spread electoral content became explicitly prohibited. Publishing new content or promoting existing content on election day was banned and classified as a criminal offence. Anonymous political content was forbidden, reinforcing the principle that voters should know who is behind political messages.

This reform represented an early recognition that digital campaigning requires specific regulations distinct from those governing traditional media. While more modest in scope than later regulatory efforts, it established the first legal framework for paid political content on digital platforms in Brazil. The Superior Electoral Court was given the responsibility for implementing these new rules and developing best-practice guidelines for internet campaigns.

3.2 The Internet Civil Rights Framework

The Internet Civil Rights Framework (MCI) was approved in 2014. It shapes the broader regulatory environment for digital communications. Among its key features are a comprehensive list of principles to guide the use of the internet in Brazil, including freedom of expression and the protection of privacy. Crucially, Article 19 established a judicial review-based intermediary liability system. Under this system, digital platforms are generally only held liable for damages from user-generated content after a court has issued a takedown order.[25]

This regulatory design transformed the judiciary into the primary arena for political conflicts during elections. Courts became overwhelmed by competing removal requests from all sides of the political spectrum, with campaigns filing thousands of petitions demanding either the removal of allegedly defamatory content about their candidates or the reinstatement of content they had published that was taken down. The scale of this judicial overload became evident when the TSE received over 15 thousand complaints related to electoral disinformation in the four months leading up to the 2022 elections.[26]

The mismatch between the individual-case model of content removal and the massive scale of online content production led to significant operational challenges, inadvertently making the courts the central battlegrounds for political disputes. The application of pre-digital media regulations to platform communications further exacerbated this problem, creating what critics

25 The two exceptions were for non-consensual intimate imagery and copyrighted content. This conditional liability model differs significantly from approaches taken in other jurisdictions. While the EU's E-Commerce Directive (and now the Digital Services Act) and the United States' Section 230 both provide forms of immunity for platforms from liability for user-generated content, they do so through different mechanisms. The EU approach establishes a "notice-and-takedown" regime of potential liability based on knowledge of illegality, while the US model provides broader immunity with a few exceptions. Brazil's system, in contrast, places greater emphasis on judicial oversight. See Nicolo Zingales (2015). The Brazilian approach to internet intermediary liability: blueprint for a global regime? Internet Policy Review, 4(4). https://doi.org/10.14763/2015.4.395

26 Gabriela Coelho, 'TSE recebeu 15,5 mil denúncias de fake news em quatro meses' (CNN Brasil, 20 setembro 2022) https://www.cnnbrasil.com.br/politica/tse-recebeu-155-mil-denuncias-de-fake-news-em-quatro-meses/ accessed 1 June 2025.

termed a "vicious cycle of content control" where electoral courts faced impossible volumes of urgent content decisions, campaigns strategically weaponized judicial complaints, and basic questions of free expression became subject to case-by-case judicial interpretation.[27]

However, this Brazilian model of intermediary liability was recently reformed following a landmark decision by the Supreme Court in June 2025. It now operates on a multi-tiered system.[28]

The previous rule of requiring a court order for platform liability is now an exception, applying only to certain crimes (defamation and related offences), private messaging services, email providers, and closed video or voice applications. The new default standard for all other illicit content and inauthentic accounts is a notice-and-takedown model, which holds platforms liable for damages after a simple, out-of-court notification.

Additionally, a new regime was established for paid advertisements and content from artificial networks; platforms face a presumption of liability without any prior notification unless they can prove they acted with due diligence. The ruling also introduced a duty of care model, holding platforms accountable for not taking preventative measures against "serious crimes" (such as terrorism, crimes against democracy, inciting discrimination, and suicide or self-harm). It also introduced rules applying to political and electoral content.[29]

3.3 Data protection and electoral integrity

Beyond the MCI, Brazil's regulatory framework includes another significant piece of legislation that applies to digital campaigns. The Brazilian General Data Protection Law established comprehensive rules for data processing. While not specifically targeting electoral processes, this law nevertheless addresses a critical dimension of platform-based campaigning not covered by the MCI — the entire data lifecycle of voters' personal information for political purposes.

Although not originally designed for electoral contexts, the LGPD provides a crucial normative framework for evaluating the legitimacy of data-driven political campaigning. Its expansive definitions of personal and sensitive data, including political opinions and affiliations, place legal constraints on common electoral strategies that rely on grouping, profiling, and data-driven targeting. Campaigns employing voter segmentation, targeted advertising, or direct messaging must assess whether the data they use qualifies as sensitive and whether its processing complies with the law. The LGPD generally requires proper legal grounds for data processing and

27 Francisco Brito Cruz, Heloisa Massaro, Thiago Oliva and Ester Borges, 'Internet e eleições no Brasil: Diagnósticos e Recomendações', (InternetLab, São Paulo, 2019), 5.

28 The constitutionality of Article 19 of the Marco Civil da Internet was reviewed by the Brazilian Supreme Federal Court (STF) in the context of two leading cases: RE 1057258 (Rapporteur Justice Luiz Fux), known as the *Aliandra* case and RE 1037396 (Rapporteur Justice Dias Toffoli), known as the *Lourdes case*.

29 For a detailed analysis, see Ramon Costa, Francisco Brito Cruz, Ivar A. Hartmann e Beatriz Kira. "Dever de cuidado e plataformas de internet no Brasil: fontes, discussões e propostas", Policy Brief No. 2, Universidade de Sussex e Insper, August 2025.

prohibits reliance on legitimate interest when sensitive data is involved. The LGPD also lays out ten key principles to guide the lawful handling of personal data, including purpose limitation, necessity, adequacy, transparency, and accountability.[30]

3.4 Statutory regulation

As disputes around disinformation and opaque political advertising intensified after the 2018 elections, Brazilian authorities proposed new legislation aimed at directly regulating platform behavior. The most prominent effort was Bill No. 2630/2020 (colloquially known as the "Fake News Bill", or "PL 2630"), which sought to establish a "duty of care" framework requiring platforms to detect and mitigate "systemic risks", including threats to electoral integrity.[31] Key provisions included enhanced transparency requirements for paid political advertising, restrictions on message forwarding in instant messaging services, and the establishment of a regulatory council to oversee implementation. The bill would have modified platform liability, creating exceptions for cases involving platform advertising and failure to address imminent systemic risks.

Despite initial Senate approval in 2020, the bill faced mounting opposition from tech companies, misinformation campaigns, and political polarization. After nearly reaching a vote in May 2023, it was ultimately shelved, demonstrating the failure to build political consensus on platform regulation. This legislative failure left a significant regulatory gap. Despite the resulting lack of comprehensive regulatory framework, other so.

3.5 TSE regulations

In the absence of comprehensive electoral legislation addressing those challenges, the TSE assumed a more prominent regulatory role. Since 2017, the Court has issued a series of increasingly detailed regulations that seek to establish guardrails around online campaigning and platform-based political communication.

30 Heloisa Massaro, Bruno Bioni and Mariana Rielli, A proteção de dados pessoais em processos eleitorais (InternetLab 2020) https://bruno-bioni.com.br/wp-content/uploads/2020/08/MASSARO_-BIONI_-RIELLI.-A-prote%C3%A7%C3%A3o-de-dados-pessoais-em-processos-eleitorais.-1.pdf accessed 31 May 2025.

31 The bill underwent numerous revisions from its proposal in 2020 until its virtual shelving in 2024. This analysis focuses primarily on the final version that was nearly brought to a vote by its rapporteur, Deputy Orlando Silva, in April 2023: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2265334&filename=Tramitacao-PL%202630/2020

3.5.1 Regulation No. 23,551/2017

This regulation marked the first significant step toward integrating digital concerns into electoral norms following the Political Reform Law. It addressed the use of social networks and online advertising, introducing the concept of identifying sponsors of online political content. It also set parameters for campaign spending on digital platforms and required the disclosure of the sponsor's tax identification number on all paid online content.

While it did not explicitly prohibit automated mass messaging ("*disparos em massa*" in Portuguese), Article 28 introduced relevant limitations on the use of electronic messages in campaigns. It required political actors to include a clear opt-out mechanism for recipients and imposed fines for non-compliance. The provision also clarified that only individuals sending messages in a private and consensual context were exempt from such obligations. This represented an early regulatory attempt to curb unsolicited or excessive digital communication in the electoral context.

3.5.2 Regulation No. 23,610/2019

This regulation expanded the digital regulatory framework introduced in 2017. It further detailed rules for political advertising online and introduced more robust transparency requirements for sponsored content. The regulation mandated that only registered political parties, coalitions, or candidates could pay for digital advertising, and required clear identification of sponsors. It also addressed misinformation risks more directly.

The regulation established that all political messages sent via electronic means must include sender identification and provide recipients with a mechanism to opt out and request data deletion. Failure to comply could result in fines. It also reaffirmed that only consensual, private communication between individuals was exempt, indirectly targeting the use of tools for coordinated mass distribution of content.

3.5.3 Regulation No. 23,671/2021

This regulation strengthened protections against electoral disinformation. It formally prohibited the spread of "demonstrably false" and "gravely decontextualised" information that could undermine the integrity of the election. This was the first regulation to explicitly adopt disinformation as a legal category subject to electoral enforcement, a key shift in the TSE's approach.

It also integrated LGPD standards into the electoral process. Political actors were required to inform data subjects about the use of personal data for campaign purposes and provide means for them to oppose such use. The regulation also aligned electoral regulations with Brazil's data protection framework, requiring political actors to disclose how personal data is processed and inform the public of the person designated to oversee data processing activities, as required under data protection law.

3.5.4 Regulation No. 23,688/2022

Although narrower in scope, this regulation was notable for bringing sustainability considerations into the electoral debate. It required regional electoral supervisory bodies to implement measures to reduce the environmental impact of campaign activities, particularly regarding the production and disposal of physical materials such as banners and pamphlets. While this regulation did not directly address digital communication or online disinformation, it reflected a broader approach to electoral integrity, one that includes environmental responsibility.

3.5.5 Regulation No. 23,714/2022

This regulation represented a significant escalation in the TSE's efforts to combat disinformation during the electoral process. While the prohibition of "demonstrably false" and "gravely decontextualised" content had already been introduced by Regulation No. 23,671/2021, this 2022 regulation reinforced those norms by establishing concrete enforcement mechanisms. It empowered the TSE to issue immediate takedown orders to platforms, with strict deadlines and financial penalties.[32]

The regulation also allowed the TSE to extend content-removal decisions to identical posts across platforms, suspend accounts involved in systematic disinformation, and, when necessary, temporarily suspend access to entire platforms that repeatedly failed to comply.

A notable electoral decision applying these regulations involved the removal of a website and related social media profiles designed to resemble an independent fact-checking platform that, in reality, functioned as an official campaign tool for a candidate.[33] The Electoral Court found that the site misled users into providing personal data under the pretence of joining an anti-disinformation initiative, while actually enlisting them in the candidate's campaign communications. Citing Regulation No. 23,610/2019 and the LGPD, the Court concluded that there was a deliberate attempt to disguise electoral propaganda, collect personal data without clear consent, and potentially misrepresent identity; all in violation of electoral transparency and data protection norms. This decision established a clear precedent for the TSE's application of electoral and data protection rules in the digital context.

4 Innovations introduced with Regulation No. 23,732/2024

The latest update to the regulation of political advertisements is Regulation No. 23,732/2024, issued by the TSE for the 2024 municipal elections. This regulation reflects a blend of technical expertise and democratic engagement. The Court's final rules were shaped by input from civil society and the contributions of an expert committee on electoral integrity, in which some of the authors of this report participated.

---

32 Penalties ranged from R$100,000 to R$150,000 per hour of noncompliance (equivalent to €16.500 and €23.500).

33 Superior Electoral Court (TSE), Representation No. 0600966-36.2022.6.00.0000, decided on 13 October 2022.

4.1 Microtargeting and personal data protection

The new regulation introduces strict rules for electoral campaigns that engage in micro-targeting, defined as a strategy of segmenting electoral propaganda or communication by selecting individuals, groups, or sectors based on profiling, with the goal to amplify influence over the target audience's behavior.[34] Specifically addressing this practice, the Regulation No. 23,732/2024 mandates that application providers, political parties, and candidates must guarantee access to information on the personal data used for profiling for micro-targeted electoral communication.[35] Beyond the specific rules for micro-targeting, the new regulation imposes a broader set of data protection obligations. Campaigns that use personal data for any purpose must ensure transparency and accountability throughout the data lifecycle. This includes clearly informing voters about what data is collected, how it is used, and with whom it may be shared.[36] The Regulation No. 23,732/2024 also requires campaigns to maintain detailed records of all data processing operations, including the categories of data, types of data processed, processing purposes, retention periods, and how the data may be shared with third parties, including the context and purpose of such sharing.[37] These recordkeeping obligations are to enable electoral authorities and the public to monitor compliance and prevent abusive use of personal data during elections, especially in unauthorized profiling practices. In scenarios deemed to present elevated risks, such as large-scale profiling operations using sensitive data or the deployment of emerging technologies,[38] political campaigns may be required to carry out a Data Protection Impact Assessment (DPIA).

The resolution specifically defines a high-risk data treatment scenario as one that is cumulatively performed on a large scale (encompassing at least 10% of the eligible electorate in a given jurisdiction) and involves the use of sensitive personal data or emerging technologies to profile voters for the micro-targeting of electoral advertisements and campaign communication. This risk assessment must describe the types of data processed, identify potential harms to voters, and outline the mitigation measures adopted.[39]

This mechanism aligns Brazil's electoral practices with global standards for privacy and data protection, proactively mitigating potential risks to voters' personal data and safeguarding electoral integrity.[40] Furthermore, it signals a growing convergence between data protection and electoral regulation, emphasising that protecting voter data is not only a matter of individual rights, but of democratic legitimacy itself.

---

34 Art 37, XXXIII, Regulation No. 23.610/2019.

35 Art 33-B, I, Regulation No. 23.610/2019.

36 TSE Regulation No. 23,610 of 18 December 2019, Art 33-B (as amended by Regulation No 23,732 of 27 February 2024).

37 Art 33-C, Regulation No. 23.610/2019. Art 33-C, Regulation No. 23.610/2019.

38 Art 33-C § 1º, I and II, Regulation No. 23.610/2019. For the purposes of item I, profiling shall be considered large-scale if it involves more than 10% of the eligible voters in the jurisdiction.

39 Art. 33, Regulation No. 23.610/2019.

40 While the Brazilian electoral regulation does not fully replicate the DPIA model from the EU's General Data Protection Regulation (GDPR), it draws from the same logic of risk-based accountability and proactive transparency that underpins global privacy governance frameworks. See Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) [2016] OJ L119/1, Art 35.

4.2 Advertisement libraries

The Regulation No. 23,732/2024 also mandates the creation of publicly accessible political advertisement libraries by digital platforms.[41] These libraries are required to contain comprehensive and real-time information about all political advertisements published on platforms, including who sponsored each advert, amounts spent, duration, targeted audience demographics, and reach metrics. To further enhance transparency, platforms must also provide advanced search tools and Application Programming Interfaces (APIs). These enable researchers, journalists, and regulators to systematically monitor electoral advertising patterns, facilitating the identification of coordinated disinformation campaigns or unauthorized sponsorship of content.

These obligations apply continuously, not only during election periods,[42] underscoring the TSE's recognition of political advertising as an ongoing, influential activity that requires persistent oversight beyond specific election cycles. While this is consistent with the perspective of a "permanent campaign" when it comes to platforms,[43] it also further blurs the line between exceptional standards on freedom of expression and platform accountability inside and outside of electoral periods.

4.3 AI-generated content and deepfakes

Addressing rising concerns around the use of artificial intelligence, the Regulation No. 23,732/2024 introduces Brazil's first set of rules governing AI-generated content in electoral campaigns. It mandates that all synthetic multimedia content, such as manipulated images, audio, or video, must carry explicit and clear disclosures about their artificial origin. This labeling must appear prominently, ensuring voters can easily distinguish between authentic and synthetically generated materials.[44]

The regulation also bans the production and dissemination of deepfakes designed to mislead voters or manipulate electoral outcomes. It prohibits synthetic media that alters or creates the likeness of real or fictitious individuals in campaign advertisements, categorising such acts as abuses of political power and serious electoral offenses. Violations of this rule can result in severe electoral sanctions, including nullification of the candidacy or loss of mandate.[45] The use of chatbots or synthetic avatars to impersonate real individuals is also forbidden, as well as the

41 Art 27-A, Regulation No. 23.610/2019.

42 Art. 27-A § 3º, Regulation No. 23.610/2019.

43 On the concept of "permanent campaigns", see Norris P, A *Virtuous Circle: Political Communications in Postindustrial Societies* (1st edn, Cambridge University Press 2000). For the use of this concept in Brazil, see Pedro Mesquita Duarte da Rocha. A Estratégia de Construção de Imagem Pública nas Redes Sociais Digitais: A Campanha Permanente de Cinco Presidentes no Twitter e no Instagram. Tese de Doutorado. Universidade Federal da Bahia. 2025. 188 p.

44 Art. 9-B, Regulation No. 23.610/2019.

45 Art. 9-C Regulation No. 23.610/2019.

simulation of authentic interactions between voters and candidates or their representatives.[46] This rule aims to maintain authentic political discourse, preventing voter deception by automated or artificially generated interactions that could distort perceptions of political realities or candidate identities.

Despite the regulatory innovations introduced by Regulation No. 23,732/2024, AI-based manipulation was present throughout the 2024 municipal elections. According to a report by *Aláfia Lab* and *Data Privacy Brasil*, the widespread use of generative AI that had been feared did not fully materialize, but various cases were still documented.[47] These included AI-generated jingles, unauthorized synthetic images, and videos of candidates,[48] including gendered-political violence targeting female candidates with non-consensual intimate deepfakes.[49]

However, the interpretation and application of these AI provisions by regional electoral courts varied significantly. A key factor contributing to this inconsistency was the absence of a detailed operational definition of what constitutes a deepfake. Without a shared understanding, some courts adopted a broad interpretation, treating any digitally altered or fictional content as subject to the rules, regardless of realism or intent to mislead. Others applied a narrower reading, focusing enforcement only on synthetic content that was convincingly realistic and likely to deceive voters. This interpretive variation created uncertainty among candidates and platforms about compliance boundaries, highlighting the challenge of regulating emerging technologies where concepts are not clearly defined or well-understood.[50]

A similar challenge emerged around the idea of virality; although not explicitly defined in the Regulation No. 23,732/2024, this appeared to guide enforcement decisions in several cases. Courts often used the apparent reach or speed of dissemination of synthetic content as a trigger for requiring its removal, but the regulation did not establish any concrete threshold for this. In the absence of clear guidance, content with limited reach sometimes escaped scrutiny, while similar material that had gone viral was sanctioned.

These normative innovations introduced inconsistencies in enforcement and placed platforms and authorities in the difficult position of assessing impact without clear standards. These experiences suggest that future regulatory updates could benefit from more precise definitions and measurable criteria to guide more consistent application.[51]

---

46 Art. 9-C, Regulation No. 23.610/2019.

47 Matheus S Cruz and others, *IA no primeiro turno: o que vimos até aqui* (Aláfia Lab and Data Privacy Brasil 2024) https://desinformante.com.br/observatorio-ia/ accessed 1 June 2025.

48 *Marçal contraria TSE e posta propaganda com inteligência artificial*, UOL (São Paulo, 26 August 2024) https://noticias.uol.com.br/eleicoes/2024/08/26/pablo-marcal-propaganda-eleitoral-deep-fake-inteligencia-artificial.htm accessed 1 June 2025

49 Letícia Dauer, *É fake foto de Tabata Amaral em pose sensual; trata-se de deepfake*, (G1, 15 September 2024) https://g1.globo.com/fato-ou-fake/sao-paulo/noticia/2024/09/15/e-fake-foto-de-tabata-amaral-em-pose-sensual-trata-se-de-deepfake.ghtml accessed 1 June 2025.

50 Caballero BI and others, 'Construindo Consensos: Deep Fakes Nas Eleições de 2024' (Laboratório de Governança e Regulação de Inteligência Artificial (LIA) do Instituto Brasileiro de Ensino, Desenvolvi mento e Pesquisa (IDP) e ETHICS 4A 2024)

51 Ibid.

4.4 Platform duties and content moderation

Regulation No. 23,732/2024 introduced detailed obligations for digital platforms, establishing a comprehensive duty of care for electoral integrity.[52] Platforms were required to adopt and publicize measures to reduce the dissemination of information "known to be false" or "gravely decontextualised" that could harm the fairness or reliability of the electoral process. These measures include updating their terms of service and implementing accessible and efficient content-reporting mechanisms for users and institutions.[53]

During electoral years, platforms must also assess the impact of their services on electoral integrity. This includes evaluating how content recommendation systems may amplify harmful content and reporting on measures adopted to address these risks. The regulation also imposes a duty to improve technological and operational capacity to prioritize tools and functionalities that mitigate the dissemination of false or severely decontextualized information that could negatively affect the electoral process.[54]

The Regulation No. 23,732/2024 restricted platforms that offer content-promotion services, such as paid ads or search result prioritization, from offering these services for the dissemination of manifestly false or severely decontextualized facts that could undermine electoral integrity.[55] This provision is a clear step beyond voluntary platform moderation, directly restricting paid promotion of harmful electoral content. It also allows electoral courts to compel platforms to use their own promotional infrastructure, without cost, to disseminate "corrective content". This applies in situations where disinformation had previously been promoted irregularly via paid ads.[56] The intention is not only to punish infringement, but also to repair the informational environment by ensuring that accurate and contextualized information reaches the same audience that was previously exposed to manipulation.

Although there were no judicial decisions explicitly invoking Article 9-D during the 2024 elections, its provisions influenced practical measures adopted by platforms.[57] Meta (Facebook, Instagram, WhatsApp) and Google entered into agreements with the TSE, implementing proactive steps. These included Meta's "megaphone" feature to disseminate official electoral information, reporting channels integrated with the TSE's Disinformation Alert System (SIADe), and training on electoral misinformation.

---

52 There are debates about whether duty of care is a legal category in Brazil. For a detailed discussion, see Ramon Costa, Francisco Brito Cruz, Ivar A. Hartmann e Beatriz Kira. "Dever de cuidado e plataformas de internet no Brasil: fontes, discussões e propostas", Policy Brief No. 2, Universidade de Sussex e Insper, agosto de 2025.

53 Art. 9-D. I, II, III and IV, Regulation No. 23.610/2019.

54 Art. 9-D, IV and V Regulation No. 23.610/2019.

55 Art. 9-D §1º Regulation No. 23.610/2019.

56 Art. 9-D §3º Regulation No. 23.610/2019.

57 We contacted the TSE by email on May 5, 2025, and received a reply stating that no specific precedents were found regarding the application of Articles 9-D and 9-E of Resolution No 23.732/2024.

While these voluntary compliance efforts aligned with Article 9-D requirements and enhanced transparency, they did not fully prevent significant dissemination of false information and deepfake content during the elections. Moreover, mandated corrective promotional actions—such as court-ordered unpaid dissemination of corrective content—have not been documented in practice.

4.5 Intermediary liability

One of the most contentious aspects of the Regulation No. 23,732/2024 is the introduction of a novel liability regime for internet intermediaries, including digital platforms. The resolution innovates—and for many specialists arguably steps beyond its legal mandate[58]—by introducing an article that establishes civil liability and administrative sanctions for platforms that fail to immediately remove certain categories of harmful content during the electoral campaign. The specified categories include hate speech, threats to electoral institutions, crimes against democracy, dissemination of disinformation, and failure to label synthetic content properly.[59]

This framework represents a significant departure from the conditional liability regime under the MCI (which was in force at the time, as discussed in Section 3.2). By imposing "immediate" takedown obligations without explicit judicial review requirements, the regulation created space for interpretative discussions regarding the practical application of the rule.[60]

Beyond these practical concerns, the legal foundation of these changes also raises questions. By departing from the MCI liability regime, many have argued that the TSE's regulation oversteps its constitutional authority and normative competence.[61] Although the Electoral Code delegates rulemaking authority to the Court, its exercise remains subject to existing legal provisions. For instance, article 23-A of the Electoral Code states that the TSE shall not regulate matters related to how parties are organized. Therefore, critics have argued that the TSE is empowered to regulate electoral law implementation, not to create norms that bypass or contradict federal statutes.

58 For a discussion regarding TSE's normative competences and the 'new' liability regime introduced by Regulation nº 23.732/2024, See: Curzi, Yasmin et al (2024). TSE, plataformas digitais e competência normativa: Resolução nº 23.732/2024. https://www.conjur.com.br/2024-mar-27/tse-plataformas-digitais-e-competencia-normativa-uma-analise-da-resolucao-no-23-732-2024/ accessed 22 September 2025.

59 Art. 9-E Regulation No. 23.610/2019.

60 This ambiguity has raised concerns amongst civil society and legal experts about potential overreach and unintended censorship, as platforms may pre-emptively withdraw borderline content to mitigate legal risks. See, for example, Coalizão Direitos na Rede, 'Nota pública: novas regras do TSE para propaganda eleitoral na internet nas eleições podem ter consequências graves sobre o debate público' (15 March 2024) https://direitosnarede.org.br/2024/03/15/nota-publica-novas-regras-do-tse-para-propaganda-eleitoral-na-internet-nas-eleicoes-podem-ter-consequencias-graves-sobre-o-debate-publico/ accessed 1 June 2025.

61 See: Curzi, Yasmin et al (2024). TSE, plataformas digitais e competência normativa: Resolução nº 23.732/2024. https://www.conjur.com.br/2024-mar-27/tse-plataformas-digitais-e-competencia-normativa-uma-analise-da-resolucao-no-23-732-2024/ accessed 22 September 2025.

Despite the anticipated repercussions of this provision, there were no substantive judicial cases explicitly applying Article 9-E during the 2024 municipal elections. The absence of recurring judicial disputes and court cases based on Article 9-E suggests a cautious approach by electoral authorities and judicial bodies regarding enforcement, possibly reflecting an awareness of the legal complexities surrounding this liability regime.

Furthermore, the reinterpretation of Article 19 of the MCI by the Supreme Federal Court is also likely to influence the concrete application of Article 9-E. The landmark decision, discussed above in Section 3.2, not only restricted the immunity of digital intermediaries by establishing broader grounds for liability, but also explicitly safeguarded the TSE's competence to develop interpretations specific to electoral matters.

This preserved institutional flexibility for electoral regulation while introducing a more complex legal environment in which platform liability will be assessed. Consequently, the eventual enforcement of Article 9-E will occur within an evolving jurisprudential landscape where the balance between general intermediary liability rules and electoral integrity-specific considerations is still being established.

5 Future Steps: Securing Electoral Integrity in the Digital Age

The digitalization of political campaigns has fundamentally altered the temporal boundaries of electoral competition, creating a "permanent campaign" replace with state where political messaging and mobilization occur continuously rather than within discrete electoral periods.[62]

This transformation demands a comprehensive rethinking of how democratic institutions safeguard electoral integrity in the digital age.[63] Brazil's experience with Regulation No. 23,732/2024 demonstrates both the potential and limitations of reactive, cycle-specific approaches to governing digital political communication.

Securing electoral integrity in Brazil requires coordinated efforts across two complementary fronts: (i) strengthening electoral laws and institutions to address the specific challenges of digital political communication, and (ii) establishing comprehensive digital governance frameworks that operate beyond electoral periods to ensure democratic accountability of platforms and the digital public sphere.

---

62 See, for example, Norris P, *A Virtuous Circle: Political Communications in Postindustrial Societies* (1st edn, Cambridge University Press 2000); Francisco Brito Cruz, Novo jogo, *velhas regras: democracia e direito na era da nova propaganda política e das fake news* (Casa do Direito 2020).

63 Francisco Brito Cruz, *Novo jogo, velhas regras: democracia e direito na era da nova propaganda política e das fake news* (Casa do Direito 2020).

5.1 Strengthening electoral law and institutions

The TSE's regulatory approach has been characterized by contingency management—addressing immediate risks as they emerge rather than implementing systematic, anticipatory frameworks. Regulation No. 23,732/2024 represents an important step toward anticipating foreseeable challenges, particularly those linked to AI-generated content. Nonetheless, important limitations remain in the legal and institutional architecture governing digital political communication. These limitations can be grouped into four interrelated areas.

First, without a comprehensive legislative revision by the Parliament, the TSE's capacity to regulate digital campaigning will remain constrained. Existing statutory provisions do not adequately address the dynamics of online political communication, forcing the TSE to rely on *ad hoc* measures within its current remit.

Second, the lack of a dedicated digital regulatory authority in Brazil gives rise to enforcement challenges. Although the TSE has expanded its role into the digital sphere, its primary jurisdiction remains over political parties and candidates. Consequently, the new obligations imposed on digital platforms lack a clear, specialised supervisory body to monitor compliance, assess risks and ensure consistent enforcement. This institutional gap leaves the regulations susceptible to inconsistent implementation and weakens both predictability and efficiency in dealing with the impact of digital platforms on electoral integrity.

Third, while Regulation No. 23,732/2024 represents an important move toward preparedness, its implementation has been hindered by limited transparency and evaluation. The rules established for the 2024 municipal elections—with the notable exception of the controversial Article 9-E on intermediary liability—should, at a minimum, remain in place for the high-stakes 2026 presidential elections. However, the lack of publicly available information on their implementation, mechanisms for evaluating their effectiveness, systematic enforcement data, or institutional reflection on challenges represents a major limitation. Without such assessment, regulatory and institutional learning becomes extremely difficult. Therefore, the same gaps may persist across electoral cycles. Indeed, there is no guarantee that the same protections will be adopted ahead of the next electoral cycle.

Forth, and more fundamentally, Brazil's electoral regulatory regime must adapt to the reality of permanent campaigning. The current temporal scope, which activates enhanced rules only during the three-month electoral period, fails to address how digital influence is cultivated and exercised. The role of influencers exemplifies this challenge; their political influence derives from audiences built outside electoral periods, yet their electoral impact operates beyond traditional regulatory oversight. This pre-campaign audience-building translates directly into a competitive advantage once the campaign begins.

Addressing these challenges therefore requires both temporal and substantive expansion of electoral oversight. Rules governing transparency, data protection, and content authenticity should extend beyond formal campaign periods to capture pre-campaign activities and ongoing political communication. This shift would align regulatory frameworks with the operational reality of digital political influence while maintaining appropriate distinctions between electoral and non-electoral contexts.

5.2 Strengthening digital governance

The second, complementary front concerns normative and institutional reforms aimed at establishing robust digital governance frameworks that address democratic integrity as a continuous concern rather than an episodic electoral emergency.

The current material scope of electoral regulation, focused primarily on campaign period content, insufficiently addresses the broader ecosystem of political communication that shapes electoral outcomes. It also overlooks the structural features, business models, and dynamics of digital platforms that mediate and amplify this communication. In this context, three areas of regulatory development are particularly urgent: (i) platform governance, (ii) AI regulation, and (iii) competition and economic power.

5.2.1 Platform regulation

Brazil must prioritize updating its platform governance framework through comprehensive legislation that establishes positive obligations of an administrative nature.[64] Rather than focusing solely on content removal and liability, regulations should establish robust and substantive *ex ante* duties regarding how platforms design and operate their services.

This need has become more pressing as other jurisdictions update their regulatory frameworks. The EU's Digital Services Act and the UK's Online Safety Act create compliance incentives that may divert platform resources toward jurisdictions with clear regulatory requirements, potentially leaving Brazil behind in terms of platform attention and investment in safety measures. This risk of a "collateral Brussels Effect" could result in a regulatory race to the bottom, where platforms allocate minimal resources outside of electoral periods to jurisdictions without comprehensive frameworks.

The recent STF decision (discussed in Section 3.2) presents a window of opportunity. By mentioning a "duty of care", the Court established that platforms should bear greater accountability for the content they host, curate, and promote. However, due to (i) the inherent constraints on the role of the Judiciary in the implementation of public policy and the elaboration of regulatory

64 Brito Cruz, Francisco and Kira, Beatriz and Hartmann, Ivar Alberto, Duty of care and regulation of digital platforms: a Brazilian perspective, SSRN (2025). http://dx.doi.org/10.2139/ssrn.5176187

frameworks[65], and (ii) the principle of the separation of powers enshrined in Article 2 of the Brazilian Constitution, the STF cannot develop the comprehensive operational framework needed to implement this duty. In fact, this regulatory task must be undertaken primarily by the Legislative branch, as well as by the Executive branch.

A recent example of this joint action between the Federal Government and Congress was Law No. 15.211/2025 (the so-called 'ECA Digital' or the Children's and Adolescents' Digital Statute), which aims to protect children's rights on digital platforms and on the Internet in general.[66] Therefore, a broader platform regulation law should become governmental and Congressional priority. This legislation should address gaps not only in electoral and political content governance but in platform accountability more broadly.

5.2.2 AI regulation

The increasing integration of AI technologies with digital political communication requires specific regulatory responses beyond platform governance. While Regulation No. 23,732/2024 introduced important rules on synthetic content labeling and deepfake prohibition, these measures operate within the limited temporal and institutional scope of electoral law.

Brazil currently has Bill No. 2338/2023 under consideration, which includes specific provisions on generative AI and labeling obligations. Given the rapid development of AI technologies and their growing accessibility, prioritizing comprehensive AI regulation is essential for maintaining the integrity of democratic discourse beyond electoral periods.

5.2.3 Competition and economic power

The concentration of economic power among major digital platforms represents a fundamental challenge to democratic governance that extends beyond content-moderation concerns. While digital communication has reduced dependence on traditional media gatekeepers, the largest platforms with significant reach and user bases have emerged as new gatekeepers of political communication. Their political and economic power are inherently intertwined, making competition policy an essential component of democratic protection in the digital age.

65 Iglesias Keller, C. (2020). Policy by judicialisation: the institutional framework for intermediary liability in Brazil. *International Review of Law, Computers & Technology, 35*(3), 185 – 203. https://doi.org/10.1080/13600869.2020.1792035

66 See: Human Rights Watch. Brazil passes landmark law to protect children online. September 17, 2025. https://www.hrw.org/news/2025/09/17/brazil-passes-landmark-law-to-protect-children-online accessed on 01 jul. 2025

The Bill No. 4675/2025, introduced to Congress by the government in September 2025, drafted based on a participative process conducted by the Ministry of Finance[67], offers a promising approach. The proposed reforms to Brazilian competition law would empower competition authorities to designate economic agents of systemic relevance in digital markets and impose specific obligations to ensure market contestability. These measures would prevent platforms from unfairly denying access to third parties — including professional and final users who form part of the ecosystem supporting electoral integrity efforts — while establishing transparency obligations that could complement democratic governance objectives.

6 Recommendations

Based on Brazil's experience with digital and electoral regulation and our experience with the development of Regulation No. 23,732/2024, we make the following recommendations for policymakers, electoral authorities, civil society, and platforms:

6.1 For electoral authorities and courts

- **Continue holding public hearings and refine channels of public participation:** The TSE should continue its practice of holding public hearings to examine draft regulations while refining the process to ensure a continuous stream of technical expertise informs regulatory development.
- **Evaluate previous regulatory efforts:** The TSE should commission comprehensive assessment of Regulation No. 23,732/2024's implementation, documenting enforcement actions, compliance challenges, and effectiveness across different regulatory provisions. This evaluation should inform future regulatory updates and should be made available to the public.

67 Brazil, "Digital Platforms: Competition Aspects and Regulatory Recommendations for Brazil", Ministry of Finance, Secretariat for Economic Reforms (2025). Available at https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/relatorios/sre/relatorio-consolidado-traducao-26122024.pdf

- **Develop operational definitions:** Future regulations should include precise definitions for key concepts such as “deepfake,” “virality,” and “systematic risk” to ensure consistent application across regional electoral courts and provide clear compliance guidance for platforms and campaigns.
- **Extend temporal scope:** Electoral authorities should consider expanding the temporal application of transparency and integrity rules to capture pre-campaign activities and ongoing political communication while maintaining appropriate distinctions between electoral and non-electoral contexts.

6.2 For the legislative branch

- **Prioritize platform regulation:** Congress should prioritize comprehensive platform governance legislation, whether through reviving Bill No. 2630/2020 or introducing similar measures. This legislation should establish administrative duties for platforms, create appropriate oversight institutions, and require companies to systematically identify and address risks to democratic processes.
- **Advance AI regulation:** Bill No. 2338/2023 should be adopted, including rules that pay particular attention to generative AI applications in political communication and requirements for synthetic content identification.
- **Reform competition law:** The Ministry of Finance’s proposals for designating systemically relevant digital platforms should be implemented, creating competitive market conditions that support democratic discourse and prevent excessive concentration of economic and communicative power.

6.3 For civil society and academia

- **Engage in participatory processes:** Civil society organizations and researchers should actively participate in regulatory consultations and expert committees, as exemplified by the successful collaborative approach in developing Regulation No. 23,732/2024. This engagement ensures that diverse perspectives and technical expertise inform policy development.
- **Monitor implementation:** Civil society organizations should systematically document platform compliance with electoral regulations and advocate for transparent reporting on enforcement actions and their effectiveness.
- **Develop technical standards:** Technical communities should work toward developing industry standards for synthetic content detection and labeling that can inform regulatory implementation and provide practical compliance guidance.

6.4 For platforms

\ **Compliance and transparency:** Digital platforms should comply with the law and implement robust systems for electoral integrity that exceed minimum regulatory requirements. These systems should include transparent reporting on political advertising and content moderation, with the effectiveness of risk mitigation processes measured using both ex-ante and ex-post methodologies.

The path forward requires a recognition that electoral integrity in the digital age cannot be secured through reactive, crisis-driven responses alone. Brazil's regulatory experimentation with Regulation No. 23,732/2024 provides valuable lessons for the global community, but realising its potential requires sustained commitment to comprehensive governance frameworks that match the scope and sophistication of the technological challenges they aim to address. The 2026 Brazilian presidential elections represent both an immediate test of these frameworks and an opportunity to demonstrate that democratic institutions can adapt to successfully govern the digital transformation of political communication.

Imprint

Beatriz Kira, Clara Iglesias Keller, Gabriel Wajman, Francisco Brito Cruz, Bruno Bioni, Laura Schertel, Gabriel Fonseca, Nina Fernandes dos Santos
Current Challenges in Digital Elections:
Lessons from Electoral Regulation and Digital Campaigning in Brazil

Weizenbaum Discussion Paper #52
November 2025

ISSN 2748-5587 \ DOI 10.34669/WI.DP/52

Weizenbaum-Institut e.V.
Hardenbergstraße 32 \ 10623 Berlin \ Tel.: +49 30 700141-001
info@weizenbaum-institut.de \ www.weizenbaum-institut.de

COORDINATION: Dr. Moritz Buchner \ **TYPESETTING:** Luisa Le van, M.A., Atelier Hurra

This publication is licensed under Creative Commons Attribution 4.0 (CC BY 4.0).

With funding from the:
Federal Ministry of Research, Technology and Space
BERLIN Senate Department for Higher Education and Research, Health and Long-Term Care