

Fair Political Practices Commission
Digital Transparency Task Force -

Report and Recommendations

2021

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COMMISSION MEMBERSHIP

Richard C. Miadich, Chair, Fair Political Practices Commission

Brian Brokaw, Principal, Brian Brokaw Consulting LLC

Rena Davis, Government Affairs and Public Policy, Google

Thad Kousser, Department Chair, Professor of Political Science, UC San Diego

Amber Maltbie, Partner, Nossaman LLP

Jennifer Waggoner, Volunteer, League of Women Voters, voting member

Abby Wood, Professor of Law, Political Science and Public Policy, University of Southern California, Commissioner, Fair Political Practices Commission

Katie Zoglin, Volunteer, League of Women Voters, non-voting member

ACKNOWLEDGEMENTS

Allison Hayward, FPPC Commissioner, Task Force Member until August 2020

James Schwab, Chief Deputy Secretary of State, Task Force Member until January 2021

Gale Kaufman, President, Kaufman Legal Group, Task Force Member until April 2021

Speakers -

Russell Lehman, Commissioner, Washington Public Disclosure Commission

Fred Jarrett, Commissioner Washington Public Disclosure Commission

Sean Flynn, General Counsel, Washington Public Disclosure Commission

Kim Bradford, Communications, Washington Public Disclosure Commission

Brendan Fischer, Campaign Legal Center

Tyler Joseph, Director of Policy, City of LA Ethics Commission

Timothy Grant, IT Director, City of LA Ethics Commission City of Los Angeles

Matthew Sollars, Director of Public Relations, NYC Campaign Finance Board

Libby Hall, Vice President of Client Services, Unearth Campaigns

Mona Pasquil Rogers, California Public Policy, Facebook

Cristina Flores, U.S. Politics & Government Outreach, Facebook

Sarah Schiff, Product Manager, Facebook

Trent Lange, President, California Clean Money Campaign

Alea Mitchell, Google

Ronald M. Jacobs, Chair, Political Law Practice, Venable LLP

Michael A. Signorelli, Partner, Venable LLP

Jared DeMarinis, Director, Candidacy & Campaign Finance Division, Maryland State Board of Ethics

Whitney Quesenbery, Executive Director, Center for Civic Design

Fair Political Practices Commission Staff -

Galena West, Executive Director

Erika Boyd, Senior Commission Counsel

Sasha Linker, Commission Assistant

Jay Wierenga, Communications Director

Lindsey Nakano, Legislative Counsel

Katelyn Greene, Commission Counsel

Loressa Hon, Chief of Administration

Larry Crabtree, Chief Information Officer

Jesse Hidalgo, Information Technology Specialist

Sukhi Brar, Assistant General Counsel

Christopher Burton, Assistant Chief of Enforcement

Megan Van Arsdale, Commission Counsel

Paul Rasey, Special Investigator

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1. EXECUTIVE SUMMARY

Over 47 years ago, the people of California voted overwhelmingly to approve and adopt the Political Reform Act of 1974 (the “Political Reform Act” or the “Act”). Among its many purposes, the Act aims at providing full and truthful disclosure of campaign activity, such as contributions and expenditures. This mandate also includes oversight of political advertising, both in terms of accurate reporting of advertising spending on campaign statements and reports, but also on-ad disclosure of those behind the individual advertisements. In essence, disclosing who is responsible for the political ad, who paid for it, and ensure that information is readily available and reasonably discernable to the average person. Disclosure is a fundamental premise of the Act. The Act created the Fair Political Practices Commission (“FPPC”) to regulate, enforce, interpret the Act, and educate the public about its goals and requirements.

Since its inception, the FPPC has seen the evolution of political advertising in ways which could not be comprehended even a few years ago, much less in 1974. To stay current and attempt to get ahead of these changes is the impetus for creation of the FPPC’s Digital Transparency Task Force (“DTTF”).

Changing Landscape

A) Changing technology and advancements in outreach

It is not an understatement to say technology is changing at breakneck speed. And this ever-advancing technology is being utilized at an increasing rate by those targeting the public. Corporations, for example, use it for market research, to better know and understand the mind, habits, desires, and spending habits of their consumers. They market their products and services accordingly. Much of the same technology used to glean such information is then used to target those specific, micro-audiences, with subtle changes added to accommodate each. This dissection of the consumer used to take months or years can now take hours, minutes, or in some instances, even micro-seconds.

The corporate world is not alone. Virtually every entity, organization and sector is involved. Thus, it is no surprise these techniques and technologies are also being employed at an ever-increasing speed and rate in the world of political campaigns and political advertising.

B) Changing political advertising practices resulting from new technology

FPPC Staff provided an overview in the very first DTTF meeting of the changing technology and the ever-growing use of digital media, as well as trends in the increasing amount of money being spent.

The very meeting itself was an example of new technology being employed. As Covid-19 began its insidious spread, the pandemic forced the postponement of the first meeting planned for March, 2019. California, followed by much of the rest of the United States and the world, was forced into lockdown for this once in a generation pandemic. Instead of an in-person meeting with many task force members in attendance in the Commission’s meeting room, it joined millions of other meetings by moving to an online, digital platform. And thus, the very first meeting of the DTF in April, 2020 was via Zoom.

C) Changing amounts of spending on digital, political advertising

Numerous reviews, analyses and follow-ups of the 2020 elections provided the DTF with further information to bolster the evidence of the growing use and importance of digital political advertising. As expected, it showed the amount of money spent continues to grow exponentially, as this portion of a Forbes Magazine story on the phenomena points out:

“In a familiar story for most in the advertising world, digital political advertising spending exploded in 2020. In the 2015-2016 election cycle, digital media accounted for roughly 2-3% of political ad spending. That jumped to 18% in this one. The roughly \$700-800 million in digital ad spend in the 2017-2018 election cycle became \$1.6 billion in this one.” (Forbes, Dec. 8, 2020, Howard Homanoff, AdImpact, 2020 Political Cycle Review)

Questions

The FPPC Digital Transparency Task Force was thus equipped with the scope and size of the issue. It then turned its attention to asking the basic questions posed by the subject. These questions included but were not limited to:

1. What constitutes a ‘digital’ advertisement and what are their variations? In essence, what are they and what do they look like?
2. What are current laws and regulations, and what are the gaps caused by new technology and practices?
3. How do we enforce current activity, and how will we enforce future activity in this realm?

Besides having numerous experts on the DTF itself, during the course of its mission the DTF sought out experts and practitioners in the various fields to gain insight from the pertinent and various perspectives.

Looking at the basic questions, the DTFF heard from campaign practitioners who provided information and examples of the various digital ads. Predominant types of digital usage come in the form of video, with the end-user experience increasingly seen on cellphones and computers via the internet. At the December, 2020 DTFF meeting, Uneath campaigns, self-described as a public affairs technology company where “machine intelligence meets human intelligence,” offered a broad range of examples of current digital political advertising and what is working well for ease of disclosure requirements for firms and disclosure recognition by the public. The presentation outlined some observations on what may be gaps and not working in current regulatory practice.

To look at current law, the DTFF heard from both FPPC Staff regarding California statutes and regulations as well as presentations from a variety of other States, which included their current law within their presentations. This included the States of Maryland, Washington, and information on the Democracy Protection Act in New York. For California, both FPPC Legal and Enforcement Divisions provided information on The Disclose Act, passed by the legislature in 2017, and is the most relevant statute to political advertising disclosure.

These experts from around the country, as well as FPPC Legal Division staff, then looked at some of the gaps where technology may be or is outpacing the law and regulations. The previously mentioned Uneath presentation reported on gaps in videos, specifically vertical videos and GIF technology, and person-to-person texting.

From the first meeting on, FPPC Enforcement Division addressed the questions regarding enforcing current laws and regulations, the challenges facing them in both investigating potential violations (such as, new types of advertising not specifically addressed in current law) as well as prosecuting cases (including ‘over-disclosure’).

At the same December, 2020 meeting, staff from the FPPC Legal Division outlined a few of the gaps in current law, some of which overlapped the concerns made by others. One of the potential improvements recommended by FPPC Enforcement, and echoed by many others through the course of the meetings (April, 2020 DTFF meeting, LA City presentation/December, 2020 DTFF meeting, NYC presentation), was improved recordkeeping and the creation of a repository for digital ads.

Gathering More Information

A. Task Force heard from the Platforms

Fundamental to understanding the changes and challenges involving digital political advertising are needed is understanding what the current policies and practices are of the platforms

themselves. Besides having a representative of Google as a member, the DTF heard from two of the largest platforms in the world, with representatives from Google and Facebook presenting their current procedures. Both the Google and Facebook presentations laid out their standards and practices, looked at issues such as targeting and targeting restrictions, and the information available on their platforms regarding transparency (who used their platforms for political advertising, how much was spent, and other information available). This aspect was vital to the mission of the DTF to see what is currently available to the public from private companies currently holding that information. Currently, the private sector providers control the information the public has access to and can change or remove information at its discretion.

B. Task Force heard from other Jurisdictions (cities, states) regarding their Progress

Presentations made by the State of Washington Public Disclosure Commission (April, 2020), Maryland State Board of Elections (February, 2021), New York City (December, 2020) and the City of Los Angeles (April, 2020) to the DTF showed what other public entities have done in this space. Many of the jurisdictions heard from have created their own advertisement archive. The DTF heard information on the scope of what was to be included and why, how much cost to create and maintain a public database of digital advertisements, and how long those items should be maintained.

C. DTF heard Cost Estimates from FPPC Staff

FPPC Staff listened to the presentations, worked with the jurisdictions who have implemented their own advertisement archive and completed an analysis of estimated cost to implement a California State Ad Archive. The costs ranged from a start-up cost of approximately \$311,000 – about \$337,000, with on-going costs estimated at approximately \$155,000 - \$188,000 per year. These costs would vary depending on whether the system would interface with the new Secretary of State CARS system. These costs also assume interface with platforms such as Facebook and Google. See Appendix A for the full breakdown of estimated costs.

Conclusions

The fundamental conclusions reached by the Task Force indicate the following. Digital political advertising is not only here to stay - it is likely to be an ever-expanding phenomenon, rivaling and potentially surpassing traditional advertising (television, radio, print). Currently, there is no way for most California voters to access copies or content of that advertising, nor is there a way for them to be able to see who is 'behind' the advertising. Third, current databases operated by

the very platforms involved are subject to the private sector’s discretion as to what the database contains, displays and whether it will even exist in the future.

These fundamental conclusions form the basis for proposed action. To address these findings, the following are the recommendations of the FPCC’s Digital Transparency Task Force.

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2. RECOMMENDATIONS

RECOMMENDATION 1. CREATION OF A STATE-RUN POLITICAL ADVERTISEMENT ARCHIVE FOR DIGITAL POLITICAL ADVERTISEMENTS.

Political campaigns are increasingly using digital media (websites, social media, etc.) as a means of delivering campaign advertisements to voters. Digital campaign advertisements present unique challenges to regulators, such as the Fair Political Practices Commission (“FPPC”), who are charged with ensuring that voters receive timely and accurate information concerning who is responsible for the content of the advertisement and the payments associated with producing/distributing the advertisement.

Some jurisdictions, including the cities of Los Angeles and New York, have created government-run campaign advertisement archives where members of the public, academics, and the news media can access copies of digital campaign advertisements and quickly locate information about the persons/groups responsible for the advertisements as well as the spending associated with the advertisement. California has not established a similar archive at the State-level.

While various online platforms retain and make publicly available certain information about political advertisements run on their respective platforms, testimony presented to the DTF indicates that there are large discrepancies in both how platforms define “advertisements,” as well as what type of information is disclosed. Additionally, a federal appellate court recently struck down portions of a Maryland law that, similar to California, required online platforms to maintain information about campaign advertisements on their platform.

In the interests of transparency and providing relevant information to the electorate, it is therefore the recommendation of the DTF that the State of California create a state-run archive to collect and make publicly available copies of specified digital political advertisements.

A state-run archive will also assist in the facilitation of campaign finance enforcement. The centralization of digital ad information in a government-hosted archive would allow for more legal oversight of digital political ads by the FPPC, while also facilitating citizen review of political advertisements through enabling journalists, watchdog groups, and other members of the public to review ads and alert the FPPC to possible wrongdoing.

The DTF heard from a multitude of speakers who support the Archive or are working toward an Archive in their own jurisdiction. Most agree that platform run archives are inconsistent in

the type of information disclosed and lack enforcement capabilities. Specifically, the Campaign Legal Center presented the difference between the Facebook, Google, and Snapchat advertisement archives and how each platform disclosed different information. The State of Maryland has been one of the first to create such an archive and has seen a positive impact on voters and transparency.

RECOMMENDATION 2. CONTENTS OF THE ARCHIVE.

1. The DTF recommends that the Archive contain the following information:
 - a. Copy of the advertisement.
 - i. Copies of any digital advertisements which meet the definition of “advertisement” pursuant to Government Code Section 84501 must be submitted to the Archive.
 - b. Committee paying for the advertisement.
 - i. If a candidate-controlled committee – the name of the candidate, the name of the committee, and the Treasurer of the candidate’s controlled committee;
 - ii. Non candidate-controlled entities qualifying as committees pursuant to Government Code Section 82013(a) – the name of the sponsor(s) if any, the name of the committee, and the Treasurer of the committee;
 - iii. Individuals or entities qualifying as committees pursuant to Government Code Sections 82013(b) and (c) – the name, address and phone number of the filer (name used shall be that by which the filer is identified for other legal purposes or any name by which the filer is commonly known to the public); name and phone number of responsible officer if filer is other than an individual.
 - c. What platform(s) or entity the committee paid for the advertisement to appear, when the advertisement ran, and for how long.
 - d. The amount paid to the platform to disseminate the advertisement.
 - e. The number of people to whom the advertisement was disseminated directly, or expected to be disseminated, by the platform;
 - f. Identification of each candidate (including name and public office sought or held) or ballot measure referenced by the advertisement, and the support or oppose

position; and

- g. Intended Audience.
 - i. Inputs supplied by the committee to a platform or entity for distribution of each advertisement; including age, gender, geographic location, and any other targeting criteria selected and paid for by the committee.

In recommending that the Archive contain information pertaining to the intended audience of each advertisement, the DTF is mindful of the balanced approach necessary to increase transparency while also respecting the privacy and propriety considerations of campaign and political participants. To these ends, the DTF has recommended the submission of data akin to what would be disclosed on a receipt for services purchased, a majority of which is data already publicly disclosed by platforms themselves. Such information may include, but not be limited to, the total amount spent, dates the advertisement aired, number of impressions, geographic location, information related to age and gender of the targeted audience, and any other targeting parameters permitted by the platform.

Disclosure of an advertisement, who paid for an advertisement, where and when an advertisement ran, and the amount paid for an advertisement are categories used unanimously among the different archives currently in existence. The DTF heard from the State of Maryland, New York City, the City of Los Angeles, Facebook, and Google regarding the type of information disclosed in their respective archives. While each archive used a different approach, they all included some form of this disclosure. Where they differ was in the targeting information and how that should be disclosed. Facebook and Google take the approach of disclosing age, gender, and location of ad impressions. Maryland's database does not include targeting information, but the Maryland State Board of Elections has the ability to subpoena the information as needed.

- 2. The DTF recommends that the following types of advertisements be included in the Archive:
 - a. State-level candidate and ballot measure advertisements. The DTF recommends that the Archive currently focus on housing advertisements pertaining to state-level candidates and ballot measures. This would include Assembly, Senate, CalPERS/CalSTRS, and Constitutional Officer races in addition to statewide ballot measures.

- b. Digital advertisements. The DTF recommends that for its initial launch the Archive focus on the housing of solely digital advertisements. This includes, but is not limited to, advertisements disseminated over internet platforms such as Facebook and Google, paid influencer content, and any other type of paid speech disseminated over the internet or through digital means which meets the definition of “advertisement” as defined by Government Code Section 84501.

The DTF further recommends that the Archive be built in such a way as to allow for expansion in the future to encapsulate local-level candidate and ballot measure advertisements, issue advertisements, and non-digital advertisements. While there is inherent value from a transparency and efficiency standpoint of housing all such data in a single database; the DTF is mindful of feasibility implications and believes that an Archive focusing on state-level candidate and ballot measure advertisements will be of most use to voters at the current time.

In 2014, Senator Padilla introduced Senate Bill 1104 that would have covered all campaign communications, advertisements, mass mailings, and slate mailers supporting or opposing a candidate for elective state office or a statewide ballot measure that would be filed with the Secretary of State office. While this bill did not advance, the approach of the DTF is similar by including state level communications.

3. The DTF recommends that Committees paying for digital advertisements have the obligation of submitting copies and inputs regarding such advertisements to the State Archive. This structurally flows from obligations currently on committees to maintain records and report activity as designated by the Political Reform Act.

Committees may wish to contract with platforms to have the relevant information transmitted directly to the Archive if feasible. The ultimate legal obligation for provision of the required information, however, should rest with the Committee paying for the advertisements.

Los Angeles City Ethics Commission places the filing requirement on the Committee. Maryland House Bill 981 placed the reporting obligation on the platforms which resulted in some platforms not allowing advertisements within the state.

4. The DTF recommends that the following be taken into consideration for design of the Archive:

- a. Accessibility across levels of inquiry. The Archive should be easily navigable by voters, allowing them to search for information most relevant to them, while also supplying a heightened level of information for those interested in conducting research or further analysis. To these ends, the Archive should be designed with multiple types of users in mind.
- b. Searchability. A user should be able to search the Archive through as many parameters possible, including, but not limited to: committee payor name, date(s) advertisement(s) run, candidate/ballot measure at issue, platform(s) used, keyword searches, and content searches. To the extent possible, the Archive should provide an open API, as well as the ability to download raw data through multiple formats.
- c. Community review. The DTF strongly recommends that throughout the design process a diverse set of stakeholder groups are consulted in order to offer suggestions and garner feedback as to accessibility, ease of use, and desired searchability functions.

The Center for Civic Design quickly found the “bite, snack, meal” model to contain the most accessible information for readers as it gives the right amount of information for each individual seeking it. This model directly relates to the amount of information an individual receives. A “bite” contains the shortest possible information and is the first information received. The individual then can choose to move on to a “snack” which is a summary of the information or a “meal” which contains the full detail or instruction. The Center believes that receiving a small amount of information leads to curiosity and further research. The idea of progressive disclosure removes information overload which usually causes a reader to feel underprepared or disengaged. Venable LLP’s use of political ad icons uses the same small information first model and they have come to the same conclusion that a user’s ability to control information leads to greater understanding and transparency.

5. The DTF recommends that the following be taken into account in creation and maintenance of the Archive:
 - a. Training and customer service. The Archive should contain online training tools, both for entities submitting digital advertisements, as well as for individuals or organizations seeking to research the available data. To the extent possible, customer service assistance should be made available via online support.

- b. Timeline for maintenance of records. The DTF recommends that the records housed by the Archive be maintained as long as technologically and financially feasible, but in no case less than 4 years from the date of submission.
- c. Timeline for submission to the Archive. The DTF recommends that the required information regarding digital advertisements be submitted to the Archive no later than when the campaign report is due disclosing the attendant expenditure.

However, in the 90 days prior to an election, commonly referred to as the “late reporting period” in which various activity is currently required by the Political Reform Act to be disclosed within 24 hours, the DTF recommends that required information regarding digital advertisements be submitted to the Archive within 24 hours of going live.

- d. Public Records Act requests. The DTF recommends that records be retained and made available in such a way as to allow a member of the public to download any records which may be subject to a Public Records Act request. The goal of this recommendation is two-fold: to provide fast and expedient access to records for members of the public, while most efficiently using staff and department time and resources.

As learned from the Center for Civic Design presentation, training and customer service are important pieces to any project. The City of Los Angeles Ethics Commission and New York City Campaign Finance Board use a similar approach of shortened reporting timelines during the late reporting period.

RECOMMENDATION 3. REQUEST DIGITAL DISCLOSURE RESEARCH

Under existing State law, disclaimers on digital political advertisements are generally modeled after disclaimers that have historically appeared on advertisements appearing in print or on television. Given the continually evolving nature of digital communications, the DTF has discussed whether there may be better or more efficient ways to provide all voters with information about who is paying for digital campaign advertisements. Some examples discussed include: greater use of links taking a user to a webpage with further information, use of uniform insignias, or having simplified requirements applicable across multiple platforms.

The DTF, therefore, recommends that the Legislature commission a community review with public engagement to examine whether there are different styles of disclaimers that could be

required for digital campaign advertisements that would more effectively provide voters with information about who is paying for the digital campaign advertisements. In addition, this review would help committees comply with the laws under the ever-changing environment surrounding technology today. This would be similar to the study completed by the Center for Civic Design in advance of Senate Bill 505 (2015) that ultimately authorized the Secretary of State to revise the Voter Bill of Rights wording as necessary to ensure understanding by the public. The DTF believes this is the best way to ensure disclaimers on digital advertisements are designed and implemented in the most efficient way possible, while also taking the feasibility of digital disclaimers into account given the constantly evolving nature of digital communications.

The DTF heard testimonial from public affairs technology company, Uneath Campaigns, that a major gap in online disclosure exists in digital videos, including vertical videos and .GIF videos. Venable LLP discussed their work with political ad icons that provided enhanced transparency and allowed consumers real time abilities to control the amount of information they received. The “Voter Bill of Rights” study by the Center for Civic Design is the framework for the study of disclaimers since their work led to greater understanding, participation, and transparency.

3. WORK OF THE DTTF

PRESENTATIONS MADE TO THE DTTF

FAIR POLITICAL PRACTICES COMMISSION STAFF

Fair Political Practices Commission Staff gave multiple presentations regarding digital ads. Jay Wierenga, Communications Director, discussed [campaign advertising in the digital realm](#), giving an overview of the growing significance and presence of digital political advertisements, the differences from traditional political advertising, and the challenges presented. Sukhi Brar, Supervising Attorney and Katelyn Greene, Commission Counsel discussed the [current legal landscape for regulating digital political ads](#). Their presentation covered California law, regulatory laws on the federal level, and included discussion with the Washington State Public Disclosure Commission on how Washington State is approaching digital campaign ads. Christopher Burton, Assistant Chief of Enforcement and Paul Rasey, Special Investigator discussed [enforcement challenges presented by digital political advertising](#) and the differences in digital political ads compared with those in traditional media.

WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION

Russell Lehman, Vice Chair, Washington Public Disclosure Commission, gave an overview of the Commission and discussed the current landscape of digital political advertising in the state of Washington. Sean Flynn, Counsel, Washington Public Disclosure Commission, discussed the current laws in Washington that require disclosure on commercial advertisers. In 2018, the Commission adopted regulations that specifically addressed commercial advertisers in a digital format. The main goal was for the public to be able to see the ‘receipt’ of the advertisements purchased. Washington has been finding platforms are not willing to fully comply with the new laws. According to Mr. Flynn, Facebook and Google have adopted policies to not provide political advertising in Washington in reaction to the regulations adopted. Commissioner Jarrett discussed working with Facebook in an effort to bring them into compliance with the goal of Facebook having political ads by the 2021 election cycle.

CAMPAIGN LEGAL CENTER

Brendan Fischer, Campaign Legal Center, presented a [discussion of digital archives for political advertisements](#), including (1) examples of current archives; (2) information and data collected

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in archives; (3) source of information and data to be collected; (4) public v. private housing of archives; and, (5) policy and legal considerations.

In a general manner, on the federal level, political committees report all their spending including their spending on digital ads. What they are most concerned about is the spending by non-political committees, dark money groups, and the only federal regulation of their digital activity pertains to ads that expressly advocate for or against candidates. On the federal and state levels, the biggest problem has been that the ads cannot be found since digital ads have often only been viewable by the voters to whom they are targeted, which is in contrast with broadcast ads which are widely distributed. This causes enforcement issues, as enforcement cannot monitor compliance with reporting and disclosure requirements for ads they cannot locate. Without the ads, a voter also cannot track voter misinformation or misleading information.

Mr. Fischer went over the platforms that are covered. If the state maintains the ad archive, the “online platform” definition is less significant and applies primarily to platform recordkeeping requirements. Qualification thresholds are relevant if platforms maintain the ad archives. Existing legislation uses different threshold for “online platform.” Comprehensive availability of election-related ads in an archive provides more info to the public, aids in enforcement, and helps to prevent digital “dark” ads. Existing legislation is varied in coverage of digital election ads.

CITY OF LOS ANGELES

Tyler Joseph, Director of Policy, City of Los Angeles Ethics Commission, and Timothy Grant, IT Director, City of Los Angeles Ethics Commission, spoke to the Digital Transparency Task Force about the [Public Data Portal](#) currently in use in the City of Los Angeles. The Public Data Portal search for campaign communications can be used to find electronic copies of campaign communications that are distributed to 200 or more persons by a LAUSD candidate or City candidate, officeholder, or committee. The filing deadline for LAUSD candidates is at the time of distributions and the filing deadline for City candidate, officeholder, or committee is within 24 hours of distributions between filing week and the general election or within five business days otherwise.

JAMES SCHWAB PRESENTATION ON SB 1104

James Schwab, Chief Deputy Secretary of State and Digital Transparency Task Force Member, discussed SB 1104 (2014) including the intentions the CA Secretary of State was seeking with the bill. The idea for SB 1104 originated from the system in the City of Los Angeles for collecting and disclosing political advertisements. The bill would have had all campaign communication advertisements, including, mass mailing slate mailers, supporting or opposing a candidate for elective state office, or a statewide ballot measure advertisements filed with the Secretary of State's office. At the time (2014), there had not been an identified source for replacing Cal Access, so the main opposition was the cost of the new system and the bill died in the second fiscal committee. The bill would have required a candidate for state office or slate mailer organization or committee that authorizes an expenditure for a campaign contribution to file an electronic copy of the campaign communication with the date of its distribution to the Secretary of State's office. It also would have required the Secretary of State to maintain all electronic records of campaign communication, so it would be available digitally on the Secretary of State's website and that all the communications and records be maintained for public inspection on the Secretary of State's website for 5 years.

NEW YORK CITY AD ARCHIVE

Matthew Sollars, New York City Campaign Finance Board, presented the [NYC Campaign Finance Board Independent Expenditures Portal](#) to the Digital Transparency Task Force. The presentation covered the independent expenditure disclosure and communication archive and showed the search options to find campaign contributions and independent spending for each year.

The Campaign Finance Board runs the matching funds program in NYC since 1988. Their regulation requirement is communications based as opposed to expenditure based or spending based. Communications are required to be disclosed once they have spent a thousand dollars or more on any advertisement supporting or opposing any candidate or ballot proposal. They are also required to disclose and have a paid for by notice on any expenditure of a hundred dollars or more. The voters can search based on target or spender, and Mr. Sollars gave a tour of their website.

UNEARTH CAMPAIGNS

Libby Hall, Vice President of Client Services, Uearth Campaigns, gave an overview of [Uearth Campaigns](#) describing the business as a public affairs technology company where machine intelligence meets human intelligence. Ms. Hall discussed the lack of regulation for digital videos (like vertical and .GIF methods), the inconsistent platform enforcement, peer to peer texting, and influencer stories.

Ms. Hall recommended moving at campaign speed and allowing for the transparency center to have limitations for after an ad is already in market. Their suggestions include a 24-hour contribution reporting timeline, be publisher agnostic, enable peer reporting, ensure credibility through verification, and expand beyond digital.

GOOGLE

Representatives from Google, including Alea Mitchell, presented an overview of their political advertising products and transparency report.

Google Ads is a self-service ad platform used by advertisers of all sizes for an almost limitless range of products and services. Advertisers choose what ads will display, determine a budget, and place bids depending on where and when they want their ads to appear. Advertisers can create multiple ad formats including search, display, and video ads.

Ms. Mitchell went through setting a budget, creating a responsive display ad, previewing the ads, and creating sub-assets.

Google Ads Terms and Policies describe what ads are and are not allowed on their platform. They remove ads that violate their policies and act against bad advertisers. In 2019, they blocked and removed 2.7 billion ads for violating their policies and suspended nearly 1 million advertiser accounts using a combination of automated and human review.

Ms. Mitchell went over the targeting restrictions for election ads, verification process based on various regional requirements, and transparency report.

FACEBOOK

Sarah Schiff, Product Manager, Facebook, presented on Facebook's transparency efforts regarding ads, including Facebook's Ad Library.

Their advertising principles include: building for people first, they do not sell people's data, people can control the ads that they see, advertising should be safe and civil, should not divide or discriminate, and should empower all businesses.

Their process includes ad creation phase, ad review, ad delivery, and then ad reporting.

There are additional steps for advertisers who want to run ads about social issue elections or politics. The user must confirm their identity and location, specify who is responsible behind the ad, provide additional information that Facebook can validate to ensure accountability, and then the ad enters the ad library where they will be available for 7 years.

In the spirit of the Honest Ads act, which Facebook supports, they take a broader approach in defining what could influence public opinion around elections.

Facebook's transparency suite includes the ad library, the ad library report, and the ad library API.

CALIFORNIA CLEAN MONEY CAMPAIGN

Trent Lange, President, California Clean Money Campaign, presented [Identified Formatting Issues with DISCLOSE Act and Discussion on how to Rectify Those Issues](#).

Mr. Lange went over the California DISCLOSE Act History. The intent of AB 249 was to require that all ballot measures and independent expenditures show in the bottom one third of the screen for five seconds the name of the committee at the top underlines to try to separate it from the top three funders each on separate lines, so people could easily see them.

In the 2018 DISCLOSE Act Clean Up Bill, some loopholes were closed, and the current problem identified includes long committee names that make it hard to read the top three funders in five seconds. The proposed DISCLOSE Clarity Solution is to require top contributors to be yellow and separated by half line from committee name and bar use of terms such as "incorporated," "committee", "political action committee", or "corporation", or abbreviations of these terms, unless the term is part of the contributor's name in common usage or parlance (instead of having them optional as in AB 249).

Proposed DISCLOSE Clarity Act Solutions for online videos add the same requirement for top contributors to be separated by half line and yellow font, allow committee name to be shortened or replaced with FPPC Committee ID number.

Proposed DISCLOSE Clarity Act solution for small graphic ads require “who funded this ad” to be underlined and either in a white box with blue letters or a black box with white letters.

VENABLE LLP

Ronald M. Jacobs, Chair, Political Law Practice, Venable LLP & Michael A. Signorelli, Partner, Venable LLP, presented the [Digital Advertising Alliance’s \(DAA\) Political Ads Program](#) designed to increase transparency and accountability around digital express advocacy political ads, including use of a Political Ad icon.

The DAA establishes and enforces responsible privacy practices across the industry for relevant digital advertising, provides consumers with enhanced transparency and control through multifaceted principles that apply to multi-site data and cross-app gathered in either desktop, mobile web, or mobile app environments. The DAA is an independent non-profit organization led by leading advertising and marketing trade associations.

Mr. Jacobs and Mr. Signorelli went over the regulatory issues such as who should maintain the information, where does the information sought reside, how different networks place different ads so aggregate information may not be known, publisher/owner of the site may have no idea about the ads shown, and information is not always passed through.

They described the pop-up contents in detail and showed some examples of them in practice.

They gave an overview of how consumers are provided with enhanced transparency through relevant digital advertising, the consumers real time abilities to control their information, how the ad disclosure works, and the flexibility of the icons.

MARYLAND STATE BOARD OF ELECTIONS

Jared DeMarinis, Director, Candidacy & Campaign Finance Division, Maryland State Board of Elections discussed Maryland’s use of icons for specified disclaimer information and the state’s political ad database. Mr. DeMarinis stated that Maryland has always tried to understand how to change the system while still maintaining disclosure.

Mr. DeMarinis played a [YouTube video](#) from the Maryland State Board of Elections titled Transparency, Accountability, and Political Ads. He further described the video he played and

discussed the positive impact of labeling political ads, and creation of databases for the ads for voters to make the best decisions with the transparency.

CENTER FOR CIVIC DESIGN

Whitney Quesenbery, Executive Director, Center for Civic Design, gave a [presentation](#) on how the Center for Civic Design works to give voters more accessible information. Ms. Quesenbery stated that the Center for Civic Design mostly looks at election materials but also at how people interact with those materials and the government. The Center for Civic Design had found that voting is not a local interaction, as voters in Baltimore were influenced by decisions made in California. A major issue the Center encountered was the civic literacy gaps in the public and how people draw inferences or multifaceted information from print. The Center for Civic Design learned that policy making is dominated by those who gather information from text and that progressive disclosure should be utilized to prevent information overload or make them feel underprepared and disengaged.

APPENDICES

A. FISCAL ANALYSIS

The purpose of this analysis is to provide the Task Force with assumption staff used to develop the cost estimate for the State of California to create a state-run archive to collect and make publicly available copies of specified digital political advertisements.

The following assumption are included in the cost estimate of the Archive:

1. State-level candidate and ballot measure advertisements, which includes Assembly, Senate, CalPERS/CalSTRS, and Constitutional Officer races in addition to statewide ballot measures.
2. Digital advertisements disseminated over internet platforms such as Facebook and Google, paid influencer content, and any other type of paid speech disseminated over the internet.
3. The Archive designed to provide an open Application Programming Interface (API) which allows to interface with platforms such as Facebook and Google to receive advertisement data.

Software and Hardware Cost

Service type	Description	Monthly cost	Upfront cost
Azure SQL Database	Single Database, vCore, RA-GRS Backup Storage, Business Critical, Provisioned, Gen 5, 1 8 vCore instance(s), 1 year reserved, 1,000 GB Storage, 2000 GB Backup Storage		
Virtual Machines	1 D4d v4 (4 vCPUs, 16 GB RAM); Windows – (OS Only); 1 year reserved; 0 managed disks – S4, 100 transaction units; Inter Region transfer type, 5 GB outbound data transfer from West US to East Asia		
Virtual Machines	1 D3 (4 vCPUs, 14 GB RAM); Windows – (OS Only); 1 year reserved; 0 managed disks – S4, 100 transaction units; Inter Region transfer type, 5 GB outbound data transfer from West US to East Asia		
API Management	Developer tier, 1 units(s), 730 Hours		
Support			
	Licensing Program		
	Total (Based on a yearly annual contract rate)	\$ 4,658	\$ 3,212

Option A = Assume no API with CARS

Option B = Assume API with CARS on State-level candidate and ballot measure

State Staff Implementation Cost and Timeline					
<u>Option A = 12 months of Implementation</u>			<u>Option B = 12 Months of Implementation</u>		
	12 Months Startup Cost	Ongoing Annual Cost		12 Months Startup Cost	Ongoing Annual Cost
1 YR Limited Term Project Lead for Development	\$145,500		1YR Limited Term Project Lead for Development	\$145,500	
1PY Develop & Maintenance on Application (DBA)	\$106,000	\$ 99,000	1.25 PY Develop & Maintenance on Application (DBA)	\$132,500	\$132,500
PY Cost	\$251,500	\$ 99,000	PY Cost	\$278,000	\$132,500
Software and Hardware Cost	<u>\$ 59,108</u>	<u>\$ 55,896</u>	Software and Hardware Cost	<u>\$ 59,108</u>	<u>\$ 55,896</u>
Grand Total	\$310,608	\$154,896	Grand Total	\$337,108	\$188,396

B. MINUTES OF THE MEETINGS OF THE DIGITAL TRANSPARENCY TASK FORCE

(Approved May 29, 2020)

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

Minutes of Digital Transparency Task Force Meeting

April 23, 2020

1:30 p.m.

Present: Chair Miadich, Commissioner Hayward, Brian Brokaw, Rena Davis, Gale Kaufman, Thad Kousser, James Schwab, Jennifer Waggoner, Abby Wood, and Katie Zoglin

Staff Present: David Bainbridge, General Counsel
Jay Wierenga, Communications Director
Sukhi Brar, Supervising Attorney
Katelyn Greene, Commission Counsel
Christopher Burton, Commission Counsel
Paul Rasey, Special Investigator
Larry Crabtree, Chief Information Officer
Sasha Linker, Commission Assistant

Presenters:
Commission Russell Lehman, Commissioner, Washington Public Disclosure Commission
Fred Jarrett, Commissioner Washington Public Disclosure Commission
Sean Flynn, General Counsel, Washington Public Disclosure Commission
Kim Bradford, Communications, Washington Public Disclosure Commission
Commission
Brendan Fischer, Campaign Legal Center

A. Call to Order.

Chair Miadich called the meeting to order at 1:35 p.m.

B. Public Comment for Items not on Agenda.

C. Introductions.

Chair Miadich discussed the need for the Digital Transparency Task Force, the layout of the current agenda, and introduced the Task Force members and key FPPC staff.

David Banbridge, General Counsel, gave an overview of the Bagley-Keene Act as the Task Force is a Bagley-Keene body.

D. Introduction to Campaign Advertising in the Digital Realm.

E. Current Legal Landscape for Regulating Digital Political Ads.

Katie Zoglin, League of Women Voters, asked what code section talks about the disclosure to influencers. Ms. Brar replied that she will email Ms. Zoglin with the code sections after the meeting.

Abby Wood, USC, addressed concern on whether FPPC or the legislature would be enforcing target criteria to be revealed or making the audience of the ad re-targetable in order to be able to counter speak. Thad Kousser, UC San Diego, asked whether there is required disclosure on content paid for by a committee that is not specifically an ad. Gale Kaufman, Kaufman Campaigns, stated she does not agree with sharing target criteria to aid in counter speak as it takes away from campaign strategy.

James Schwab, Chief Deputy Secretary of State, stated the challenges of the expression of opinion and misinformation regarding new digital political advertisements. The Secretary of

State actively searches for misinformation on social media and works to get those posts removed.

Russell Lehman, Commissioner, Washington PDC, gave background on the creation of the PDC and their desire to have a digital ad archive in the future. Sean Flynn, General Counsel, Washington PDC, discussed ways the PDC has worked toward an ad archive and the thought process that the PDC has toward the archive they wish to create. Chair Miadich asked Mr. Flynn which information would be required to be disclosed for commercial advertisers. Mr. Flynn responded that demographics would be required to be disclosed, which include, age, gender, race, and location. This information is disclosed within 24 hours by the commercial advertiser. Fred Jarett, Commissioner, Washington PDC, addressed the opportunity of using Facebook for political advertisements in the 2021 election cycle but stated that Facebook would need to follow Washington laws.

F. Enforcement Challenges Presented by Digital Political Advertising.

Jennifer Waggoner, League of Women Voters, asked how much variety has to be seen before it is considered a new type of ad that requires different disclosure. Mr. Burton responded that any variation is a new type of ad.

G. Digital Ad Archives

Brendan Fischer, Director at the Federal Reform Program, Campaign Legal Center, presented information on digital ad archives. Different platforms were discussed including social media

platforms and other state and local jurisdiction platforms. Mr. Fischer discussed the difficulties of having States or social media platforms maintaining the archives.

H. Public Access to Archive Data

Tyler Joseph, Director of Policy, City of LA Ethics Commission, and Timothy Grant, IT Director, City of LA Ethics Commission, gave a brief walkthrough of the ad archive the LA Ethics Commission has created, showing how it works and the type of information stored. Thad Kousser, UC San Diego, asked Mr. Grant for the usage statistics for a typical election cycle process.

I. Discussion of Presentations and Next Steps.

Chair Miadich proposed to adjourn the meeting due to time and to continue with discussion of next steps at the next meeting.

MOTION: Adjourn the meeting. Moved by Commissioner Hayward, seconded by Chair Miadich. Motion approved 9-0.

The meeting adjourned at 4:11 p.m.

Respectfully Submitted,

Sasha Linker

Commission Assistant

Approved May 12, 2020

Richard C. Miadich, Chair

Fair Political Practices Commission

(Approved December 8, 2020)

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

Minutes of Digital Transparency Task Force Meeting

May 29, 2020

2:00 p.m.

Present: Chair Miadich, Commissioner Hayward, Brian Brokaw, Rena Davis, Thad Kousser, Amber Maltbie, James Schwab, Jennifer Waggoner, Abby Wood, and Katie Zoglin,

Staff Present: Sukhi Brar, Supervising Attorney
Sasha Linker, Commission Assistant

1. Call to Order

Chair Miadich called the meeting to order at 2:03 p.m.

2. Approval of April 2020 meeting minutes.

MOTION: Motion to approve April 2020 minutes. Moved by Chair Miadich, seconded by Commissioner Hayward. Motion approved 9-0.

3. Discussion of Digital Political Advertisement Archive

- A.** Should CA create and maintain a publicly accessible online archive that contains copies of, and information about, paid political advertisements run in CA State elections?

Chair Miadich stated that transparency and the intent of the Political Reform Act, database structure, and assisting with counter speak will be important for creating the database.

Jennifer Waggoner, League of Women Voters, suggested potential speakers for the task force to speak on their experience with political advertisements and to also reach out to small independent campaigns.

The Digital Transparency Task Force Committee agreed that the online archive should contain copies and information about paid political advertisements run in CA State elections.

- B.** What types of “political advertisements” should be maintained in the archive? (E.g., direct buy campaign ads, independent expenditure ads, issue ads)

Katie Zoglin, League of Women Voters, suggested having a link between current internet platforms and the future state archive.

Thad Kousser, UC San Diego, interested in issue advertisements and would like more specifics.

Sukhi Brar, Supervising Attorney, defined issue ads as an advertisement that clearly represents a candidate or measure but does not contain expressed advocacy. Chair Miadich asked if there is room to add an additional requirement to have a copy of the issue ad to be sent to the local jurisdiction. Ms. Brar stated that she would do research if this requirement would be permissible under case law.

Chair Miadich stated that there was a consensus on campaign ads, independent expenditure ads, and potentially including issue ads if it would be legally permitted.

James Schwab, Secretary of State, stated that organic, non-paid advertisements are also affecting election activity. Abby Wood, USC, addressed there still is an exchange of money in many of the unpaid advertisements creating polished videos that could trigger jurisdiction.

Chair Miadich stated that disclaimers or symbols could be used to determine who is paying for the advertisement.

- C. What type of information about the advertisements should be maintained in the archive?

Rena Davis, Google, described that different iterations and variations of advertisements that could be created from AI. Mr. Kousser would like to hear about what typical variations and how many iterations are normally in an ad buy from people who create these advertisements.

Amber Maltbie, Nossaman LLP, would also like to look at the burden on small campaigns with low budgets.

Chair Miadich asked if there is a base template that could be disclosed. Ms. Davis stated that the platform would provide a basic template to put into the system for the AI to target the audience and give information back to the campaign. Copies of the different buckets of information are given from the campaign and are available in the transparency report.

Ms. Waggoner stated that it would be complicated to track each different variation of advertisements. Mr. Kousser mentioned that changes in font or color would be insignificant variations, but modifications for words should be addressed.

Chair Miadich asked what types of targeting information taskforce members think is important in terms of disclosure. Ms. Maltbie stated that targeting is more of a resource allocation issue.

Ms. Wood believes having audience information in order to reach the same audience is important.

- D.** Who should be responsible for providing the information maintained in a publicly accessible archive of paid political advertisements?

Chair Miadich stated a campaign should be responsible for providing the information. Ms. Zoglin addressed that online platforms should provide a link between the government and information already present.

Ms. Davis suggested the taskforce discuss at a future meeting how the existing tools provided by companies can be leveraged for government use.

- E.** What types of search capabilities should the archive have?

Chair Miadich stated that the Washington Public Disclosure Commission discussed different private database experiences that allowed the ability to aggregate information and cross search different elections.

Mr. Kousser suggested a combination of open API and having some resources to create a useful website. Ms. Woods suggested there be communication within groups that would pull straight from the API.

- F.** Other issues?

Chair Miadich asked if there are other issues that the taskforce members would be interested to talk about next meeting.

Ms. Waggoner suggested the discussion on the future of apps, larger ad marketplace, and the

center for civic design.

Mr. Schwab mentioned the understanding and discussion of deep fake advertisements and will ask his staff on information or a presenter to speak on this issue.

Mr. Kousser suggested a discussion on who would be against an ad archive.

MOTION: Adjourn the meeting. Moved by Commissioner Hayward, seconded by Chair Miadich. Motion approved 9-0.

The meeting adjourned at 3:52 p.m.

Respectfully Submitted,

Sasha Linker

Commission Assistant

Approved May 12, 2020

Richard C. Miadich, Chair

Fair Political Practices Commission

(Approved January 22, 2021)

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

Minutes of Digital Transparency Task Force Meeting

December 8, 2020

12:00 p.m.

Present: Chair Miadich, Brian Brokaw, Rena Davis, Gale Kaufman, Thad Kousser, James Schwab, Jennifer Waggoner, Abby Wood, Amber Maltbie, and Katie Zoglin

Staff Present: Erika Boyd, Senior Commission Counsel
Sasha Linker, Commission Assistant

4. Call to Order

Chair Miadich called the meeting to order at 12:03 p.m.

5. Public Comment for items not on the agenda.

6. Approval of May 2020 meeting minutes.

MOTION: Motion to approve May 2020 minutes. Moved by James Schwab, seconded by Thad Kousser. Motion approved 9-0.

7. Updated Timeline.

Chair Miadich discussed the proposed schedule for the Digital Transparency Task Force through June. The next meeting would be set on January 22, 2021 to complete the information gathering on ad archives and will have digital media presentations. The proposal was to adopt this timeline going forward in 2021, with no objections.

8. Presentation of Previous Legislation.

James Schwab, Chief Deputy Secretary of State, discussed SB 1104 (2014) to the task force. The bill would have covered all campaign communications, advertisements, mass mailings, and slate mailers supporting or opposing a candidate for elective state office or a statewide ballot measure that would be filed with the Secretary of State office.

Thad Kousser, UCSD, asked if the archive would address non-searchable pdfs that users will not be able to find. Mr. Schwab responded that they were working on digitizing state archives. Mr. Kousser stated that he would want to work towards what the elements of the ads that the committee would like to be preserved and what would be useful for the public to know about them such as tags on images.

Abby Wood, USC, suggested the FPPC have a backup audit to ensure accurate data collection. Chair Miadich agreed for the need to strengthen audit records requirements if they were to create a database to house both traditional, digital campaign ad images, and information about where they were sent to ensure to the public that the information submitted is accurate.

Jennifer Waggoner, League of Women Voters, asked if the database would be able to handle an automated posting by a big platform such as Facebook. Mr. Schwab responded that it is similar to the functionality in the new Cal Access with API technology that automatically uploads from vendors.

Mr. Kousser mentioned including misinformation ads in the archive. Chair Miadich stated that it would be good to have this to check for patterns. Ms. Wood added that one of the fact

checkers can include a misinformation tag that users can search.

9. New York City Ad Archive.

Matthew Sollars, NYC Campaign Finance Board, presented the NYC Campaign Finance Board ad archive. The presentation covered the independent expenditure disclosure and communication archive and showed the search options to find campaign contributions and independent spending for each year.

Ms. Waggoner asked if campaigns are required to provide a link to the ad itself in the archive.

Mr. Sollars responded that the link is required for all disclosure and that this link is to view the advertisement. The paid for by notice also improved in 2016-2017 that would require a link to an nyc.gov follow the money link on all paid for by notices.

Ms. Waggoner asked if Mr. Sollars received different feedback from small political groups and how is it different from larger entities or major parties. Mr. Sollars stated that they was an extensive rule making on how to balance the disclosure particularly for small advocacy groups or community-based organizations and there was a concern about the intrusiveness or burden it would put on them. A lot of time was put into building the platform and portal to make it easier for all groups to have disclosure to get it done in an efficient way.

Chair Miadich asked what type of auditable record requirement existed that would double check ad information filed were accurate for the benefit of the voters. Mr. Sollars responded that they have a team to double check if they are getting disclosure for every communication but would get back to the Chair on their specific audit requirements.

10. Presentation from Unearth Campaigns.

Fair Political Practices Commission Digital Transparency Task Force – Report and Recommendations

Libby Hall, Unearth Campaigns, presented on the future of digital advertising, gaps, and opportunities. Ms. Hall stated what has worked well such as display ads and video ads and pointed out gaps in the current disclosure such as digital ads that needed more clarity in social media in vertical format, inconsistent platform enforcement, p2p texting, and influencer stories.

Mr. Kousser wanted to know more about paid bloggers and if a paid blogger reblogging campaign material would need to be disclosed. Ms. Hall stated that the reading of the current guideline around paid bloggers requires that a disclaimer appears on the material or would use the route of the sub vendor report if not totaling five thousand dollars in ad expenditures.

Chair Miadich asked what other types of disclosures would be both informative to the voters, but also balance that against what is practical or realistic. Ms. Hall stated that when an Instagram influencer paid by a campaign posts on their story, their followers do not know if they have been paid to post information.

Ms. Wood asked if the opposing campaign is one of the main mechanisms for enforcement and if the use of information is used to either retarget or if something misinformative would result in more engagement in the campaign. Ms. Hall stated that Unearth Campaigns look at what messages opposing campaigns introduce and look at direct messaging only if that individual has been identified as critical for winning the campaign.

11. Follow Up Legal Questions.

Erika Boyd, Senior Commission Counsel, provided answers to previous legal questions on disclosures including paid posts made by social influencers/bloggers, disclosures included on

streaming apps, and the ability to require a copy of issues submitted in the database.

12. Adjourn.

MOTION: To adjourn the meeting. Moved by Amber Maltbie, seconded by Chair Miadich. Motion approved 9-0.

The meeting adjourned at 1:54 p.m.

Respectfully Submitted,

Sasha Linker

Commission Assistant

Approved January 12, 2021

Richard C. Miadich, Chair

Fair Political Practices Commission

(Approved February 19, 2021)

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

Minutes of Digital Transparency Task Force Meeting

JANUARY 22, 2021

10:00 a.m.

Present: Chair Miadich, Brian Brokaw, Rena Davis, Amber Maltbie, Jennifer Waggoner, Abby Wood, and Katie Zoglin

Staff Present: Amanda Apostol, Regulations Coordinator

1. Call to Order

Chair Miadich called the meeting to order at 10:00 a.m.

2. Public Comment for items not on the agenda.

3. Approval of December 2020 meeting minutes.

MOTION: Motion to approve December 2020 minutes. Moved by Abby Wood, seconded by Chair Miadich. Motion approved 6-0.

4. Representatives from Google will present an overview of their political advertising products and transparency report.

Alea Mitchell, Google, gave a demonstration on how Google's self-service platform used by all sized advertisers works and the types of ads that are available for advertisers. Ms. Mitchell also gave an overview of how a digital ad gets placed on different websites based on the criteria of the ad and the Google Ad Policy Enforcement. Some of the different topic areas discussed were political content and election ad policies, targeting restrictions, verification process, and the

transparency report.

Abby Wood, Task Force Member, asked how 'keywords against sites' works and if they could be misused. Ms. Mitchell responded with an example of using keywords in an ad and stated misuse of keywords would be a violation of written terms and policies.

Katie Zoglin, Task Force Member, asked how political content is defined by region. Ms. Mitchell stated that Google has definitions varied by country and then by state if there are different requirements that need to be applied.

Jennifer Waggoner, Task Force Member, asked if Google has a complaints process for political advertisers. Ms. Mitchell stated that the public can report ads they feel are inappropriate or violate a policy and Google has a team that looks at complaints and responds to them quickly.

Ms. Wood asked why Google does not put merchandise related ads, especially when they're closely identified with a campaign, in the ad archive. Ms. Mitchell responded that Google has made the decision that an election ad will not include ads for products and services or promote political merchandise. This decision was made because it would be nearly impossible to capture every ad that would feature the merchandise.

Chair Miadich asked if local races are included when defining political ads on Google. Ms. Mitchell responded that political ads are only on the federal or state candidate level and ballot measures because there are many forms of local races and being able to support all of them is not possible at this time. Chair Miadich asked if the FPPC ID was an allowable identification for a political ad and if Google verifies the IDs given. Ms. Mitchell responded she believes state

regulatory IDs are allowed and Google does verify each ID but that the ID given to Google can be any allowable identification. Chair Miadich also asked if they allow academic institutions or press access to underlying raw data in the ad archive. Ms. Mitchell added that this would not be allowed because it would violate privacy concerns by releasing the data from the advertiser without their consent.

5. Presentation on Facebook Ads.

Sarah Schiff, Facebook, gave an overview of how the Facebook Ad system works and discussed policy for ads regarding social issues, election policies, and authenticity, and transparency requirements for ads. Ms. Schiff discussed how the Facebook Ad Library is set up and how to search for specific terms.

Ms. Zoglin asked which parameters or targeting criteria is allowed when a user purchases an ad.

Ms. Schiff stated that ads about social issues, elections, or politics have the same access to targeting features as other ads on Facebook, however there is a restriction on geography.

Someone is only eligible to run ads in the country they've been authorized through the Facebook authorization process.

Ms. Wood raised concern on the tradeoff between regulation and transparency regarding query problems that are preventing users from using the API to the full extent. Ms. Schiff said that Facebook does provide transparency around the actual impact of an ad and who was reached with that ad and added that Facebook is exploring ways to be more transparent with different types of data, but, will not do it at the expense at compromising user's privacy. Ms. Wood suggested it would helpful to establish a minimum bin size for how this would affect

voters and users.

Ms. Waggoner asked if Facebook discloses any social political election related content that would not be captured as an ad in the ad archive. Ms. Schiff said that the ad library does not include any non-ad formats at this time but can follow up if this could be included in the future.

Chair Miadich asked if a committee who advertises on Facebook is required to provide an FPPC ID number. Ms. Schiff stated a tax ID, an FEC ID number, a street address, phone number, email, and website are all accepted forms of identification for Facebook ads. Chair Miadich asked if all the different permutations and derivations of an ad are included in the ad archive or is it just the initial ad. Ms. Schiff stated that every ad that delivers an impression is snapshotted, copied, and maintained in the Ad Library. There is also a dynamic creative where someone could submit three versions of an ad and indicate Facebook should use the where best suited and that would indicate on the ad itself that it might have different variations.

6. Identified Formatting Issues with DISCLOSE Act and Discussion on how to Rectify Those Issues.

Trent Lange, President, California Clean Money Campaign, discussed clarifying who is paying for political ads under the California Disclose Act. The history of the California Disclose Act was explained. Mr. Lange suggested a solution to a perceived long committee name disclosure problem by requiring top contributors to be yellow and separated by a half line from the committee name for television ads. Proposals for AB 249 also suggested offering better solutions for online videos. Mr. Lange stated that the bill is currently under development with plans to pass through the legislature in 2021 as a follow up to the other disclose act bills.

7. Trends and Emerging Issues Regarding Digital Political Speech and Advertising From the 2020 Election Cycle.

Chair Miadich moved the discussion on Trends and Emerging Issues Regarding Digital Political Speech and Advertising From the 2020 Election Cycle to the February agenda due to the two-hour time constraint.

MOTION: Adjourn the meeting. Moved by Rena Davis, seconded by Chair Miadich. Motion approved 6-0.

The meeting adjourned at 12:00 p.m.

Respectfully Submitted,

Sasha Linker

Commission Assistant

Approved February 9, 2021

Richard C. Miadich, Chair

Fair Political Practices Commission

(Approved March 19, 2021)

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

Minutes of Digital Transparency Task Force Meeting

February 19, 2021

10:00 a.m.

Present: Chair Miadich, Brian Brokaw, Rena Davis, Joshua Heller (for Gale Kaufman), Thad Kousser, Amber Maltbie, Jennifer Waggoner, Katie Zoglin, and Abby Wood

Staff Present: Erika Boyd, Senior Commission Counsel
Jay Wierenga, Communications Director
Sasha Linker, Commission Assistant

Call to Order

Chair Miadich called the meeting to order at 10:02 a.m.

1. Public Comment for items not on the agenda.

Chair Miadich mentioned the receipt of a comment letter submitted by Brendan Fisher and Austin Graham of the Campaign Legal Center.

2. Approval of January 2021 meeting minutes.

MOTION: Motion to approve January 2021 minutes. Moved by Chair Miadich, seconded by Amber Maltbie. Motion approved 7-0, Ms. Davis was not yet in attendance.

3. Digital Advertisement Alliance Political Ads Program.

Michael Signorelli, Partner of Privacy Practice at Venable LLP, and Ronald Jacobs, Chair of Political Law Practice, Venable LLP, gave a presentation on Political Ad Icons. They gave an

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overview of how consumers are provided with enhanced transparency through relevant digital advertising, the consumers real time abilities to control their information, how the ad disclosure works, and the flexibility of the icons.

Jennifer Waggoner, Task Force Member, asked about the research the presenters conducted to reach their conclusions presented. Mr. Signorelli stated that the testing was done more on commercial time and the delivery was based on the volume of icons they have worked on.

Ms. Waggoner asked if they were able to apply those requirements on audio or print forms of advertisements as well. Mr. Signorelli stated that they currently have a group working on allowing the same amount of transparency for those other forms of advertisement.

Thad Kousser, Task Force Member, asked about streaming platform solutions where there are no options to click on the ads and what is the click-through rate for political versus regular ads.

Mr. Signorelli stated that their goal is to find a way that properly translates the policies for those streaming services, and that there are specialists who are working on the solution. He also stated that they do not have a definitive number for the click-through rate but there are 60 million click throughs to their choice pages that they've listed on the ads.

Abby Wood, Task Force Member, asked if the ads can be blocked by browsers, what is the process or criteria for submitting the ads, and what actions will be taken for ads that were not submitted to the DAA. Mr. Signorelli stated that they do actively enforce ads through a technology that sweeps the internet for campaigns. They then request compliance from the company, and if they fail to comply they get reported to the appropriate regulatory body. The

Better Business Bureau is one of the predominate enforcements that actively monitors campaigns in the marketplace that sweeps the internet for campaigns for noncompliance. The DAA is the regulatory body who issues the rules. If a browser had an ad blocking program, neither the ad or the icon would appear.

Ms. Wood asked how often the Better Business Bureau reports on campaign's lack of transparency. Mr. Signorelli stated that their reports show how the marketplace has been adjusting to the transparency requirements but have not addressed certain campaigns and how to work through it. They provide transparency reports on the campaigns that detail whether they are being transparent to regulators and thinktanks who are monitoring elections.

Chair Miadich stated that it was interesting that they chose not to track the click-through rates for the ads considering that they do have the capabilities. Mr. Signorelli stated that US Congressmen and Federal Trade Commission did not want them to track the rates back in 2007 through 2015. They have issued a framework for the issue to open a conversation with regulators to drive some independent thinking to help stimulate further conversation. The programs are used as a supplement to help reinforce the ethics of the icon, and the approach will allow for better education regarding the icon.

Chair Miadich asked if anyone who was doing a political ad can use the icon. Mr. Signorelli stated that people come to the DAA to use the icon, to which businesses use it in their space.

Chair Miadich asked who is responsible to obtain the icon and applying it. Mr. Signorelli stated that anyone can obtain the icon, but it is the political advertiser's obligation to identify their ad as political. Chair Miadich asked if the icon has been trademarked. Mr. Signorelli stated that

the icons are intellectual property of the DAA and they can work out the arrangements for California to utilize them. Mr. Jacobs states that while California may choose to use a bear, or any other symbol, for their icon, it may not be easily recognizable to signify a political ad. Chai Miadich asked what the verification process is for the icon application process. Mr. Signorelli stated that there is no verification process, and the icon is simply for transparency and allows access to other links for more information. The BBB does their sweep to ensure that the proper ads are using the icon or is someone is misusing the icon.

Chair Miadich asked if they consider issue ads as political ads. Mr. Jacobs stated that they do not, and that have started small with any federal or state-wide candidate or any independent expenditure that expresses advocacy for a candidate are expected to comply.

Chair Miadich asked whether local and state legislative races, which are not state wide, are subject to this requirement. Mr. Jacobs stated that they are not, and they were focusing primary on those who could adopt the new regulations first before applying it to every race.

Mr. Signorelli stated that those races can use the icon, but they are not required to.

Chair Miadich asked how many jurisdictions are using or requiring this as an option. Mr. Jacobs stated that Maryland has, and they are in discussions with Washington, but they are hopeful that more states will be interested after the election period ends. Mr. Signorelli stated that they have made it available, so it is not limited to certain states. It is a first attempt at a standardized format for information, and they believe it can become an important part in considering a political campaign.

Katie Zoglin, Task Force Member, asked for further clarification on the icon image. Mr. Jacobs

showed the icon which shows the words “Political Ad” and the icon.

4. Maryland State Board of Elections Presentation.

Jared DeMarinis, Director of Candidacy and Campaign Finance Division of Maryland Board of Elections, stated that Maryland always tried to understand how to change the system while still maintaining disclosure. Mr. DeMarinis played a YouTube video from the Maryland State Board of Elections titled Transparency, Accountability, and Political Ads. He further described the video he played and discussed the positive impact of labeling political ads, and creation of databases for the ads for voters to make the best decisions with the transparency.

Amber Maltbie, Task Force Member, asked if the platform keeps digital copies of the ads. Mr. DeMarinis stated that the platform does have to keep a copy of the ad and a lot of the demographics for it as well.

Ms. Wood asked if the opponent would only be able to see the amount spent for each ad. Mr. DeMarinis stated that the opponent would only see the amount spent, but the platform would keep a record of the demographics the ad targeted should they get subpoenaed if there is a violation.

Chair Miadich asked what happens to the demographic information Mr. DeMarinis could request from the platform. Mr. DeMarinis stated that the information must be subpoenaed from the platform and it would become a part of his investigation, which may or may not become public records after the investigation has concluded. But he would not turn it over to the entity or competitors.

Chair Miadich asked if there were any issues with the inconsistencies with the various databases. Mr. DeMarinis stated that the States are responsible for creating a blanket type of formality. These companies are currently self-regulated, but it is the responsibility of the lawmakers to ensure there is a base level of standards being met to ensure that voters are well informed of their options and decisions.

Chair Miadich asked what Mr. DeMarinis' experiences have been with the icon and the information made available with the links. Mr. DeMarinis stated that he never took any information about the click-through rates, but just wanted to ensure campaigns were able to use smaller ads to ensure the banner displays properly.

Ms. Waggoner asked if Mr. DeMarinis had any thoughts or have seen any smaller groups that are unable to comply or struggling with compliance. Mr. DeMarinis stated that the rules begin to apply as soon as you begin to be a conduit for the message and maintain records.

5. Trends and Emerging Issues Regarding Digital Political Speech and Advertising from the 2020 Election Cycle.

Jay Wierenga, Communication Director, and Erika Boyd, Senior Commission Counsel from the Legal Division, provided a brief report on the issues raised and seen in the 2020 election cycle. For Facebook pages, there was a lack of understanding at large, candidates continued to miss the requirement of disclosure on their banner and profile pictures. In-app advertising garnered the most attention and was covered by various news sites. Disclosure itself was not the issue, but how they were presented as the main ethical and legal issues. In response to the attention, the ad companies adjusted their ads to allow the public to opt-out. The other issues were with

influencers on social media, creating a lack of links between Committee pages and required disclosure and social media posts.

Chair Miadich asked about the paid influencers and where the gap is for the required disclaimers. Ms. Boyd stated that the Committee must have a disclaimer on their landing page or on their post but it is unclear if the individual would need disclosure on their landing page. The issue being the committees can make their post on social media but the gap is disclosure of the committees paying the influencer to write something on their own page.

Ms. Zoglin asked about the magnitude of the issue for California. Mr. Wierenga stated that there were potentially thousands who were targeted based on how they were marketed.

Chair Miadich asked if they needed to disclose the influencers they paid for on their campaign reports and whether there should be data to search through. Ms. Boyd stated that they are required to report that information but there is no quantitative data because some parties disclosed the information with other various titles, i.e. influencer, web ad.

Ms. Maltbie asked if influencers could not state the disclaimer at the end of their video or post.

Ms. Boyd stated that the statutes are written in such a way that doesn't cover all the platforms.

MOTION: To adjourn the meeting. Moved by Chair Miadich, seconded Thad Kousser.
Motion approved 8-0.

The meeting adjourned at 11:59 a.m.

Respectfully Submitted,

Sasha Linker

Commission Assistant

Approved March 9, 2021

Richard C. Miadich, Chair

Fair Political Practices Commission

DRAFT

(Approved April 16, 2021)

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

Minutes of Digital Transparency Task Force Meeting

March 19, 2021

10:00 a.m.

Present: Chair Miadich, Brian Brokaw, Rena Davis, Joshua Heller (for Gale Kaufman), Thad Kousser, Amber Maltbie, Jennifer Waggoner, Abby Wood, Katie Zoglin

Staff Present: Sasha Linker, Commission Assistant

Call to Order

Chair Miadich called the meeting to order at 10:02 a.m.

- 1. Public Comment for items not on the agenda.**
- 2. Approval of February 2021 meeting minutes.**

MOTION: Motion to approve February 2021 minutes. Moved by Commissioner Wood, seconded by Chair Miadich. Motion approved 7-0, with Rena Davis not yet in attendance.

- 3. Center for Civic Design.**

Whitney Quesenbery, Executive Director, Center for Civic Design, gave a presentation on how the Center for Civic Design works to give voters more accessible information. Ms. Quesenbery stated that the Center for Civic Design mostly looks at election materials but also at how people interact with those materials and the government. The Center for Civic Design had found that

voting is not a local interaction, as voters in Baltimore were influenced by decisions made in California. A major issue the Center encountered was the civic literacy gaps in the public and how people draw inferences or multifaceted information from print. The Center for Civic Design learned that policy making is dominated by those who gather information from text and that progressive disclosure should be utilized to prevent information overload or make them feel underprepared and disengaged.

Chair Miadich asked if there were any studies that Ms. Quesenbery has conducted specific to campaign ad disclaimers. Ms. Quesenbery stated that they have not because ads are not something they have done, but they have done work on what kinds of information California sends out, and the equivalent in other states, describing the mechanics of how to vote, the ballot measures, and the candidates.

Chair Miadich asked how a campaign ad disclaimer study would look like mechanically. Ms. Quesenbery stated that they would approach the public in various places for their participation and offer monetary compensation. The Center for Civic Design would show examples and ask for feedback after their interaction.

Chair Miadich asked about progressive disclosure and how the public can progress to further information. Ms. Quesenbery described a study that allowed the public to click through to further pages with more information should they desire. The Center for Civic Design observed what each person looked at, how much time was spend on each section, and how much effort each person was willing to engage.

Jennifer Waggoner, Task Force Member, asked Ms. Quesenbery to discuss how legislation is

written to accommodate this work and her experiences with that. Ms. Quesenbery stated that the community review must include usability testing with the community. Their work is not quantitative, but they work to understand trends so they can improve the presentation of information in an effort to decrease public confusion.

Chair Miadich asked if The Center has looked into using symbology to convey information.

Ms. Quesenbery stated that they do use symbology and said there is danger with too many symbols but using them to highlight categories or differences is helpful.

Ms. Waggoner requested Ms. Quesenbery discuss the stop sign example. Ms. Quesenbery described a situation where The Center for Civic Design was working on the renewal by mail forms with the Department of Motor Vehicles. Some rights advocates suggested a large stop sign to signal that this section should not be read or filled out. They tested versions with a stop sign, a triangle with an exclamation point, and a finger point. To their surprise the stop sign worked and it is still on the DMV renewal paperwork.

Commissioner Wood asked about the intersection between voter knowledge and their willingness to seek additional information. Ms. Quesenbery stated that even a small bit of information can spur curiosity to seek more information about what they are otherwise unaware of.

Chair Miadich asked if there were any observations or advice for their digital ad archive design.

Ms. Quesenbery stated that it should be designed for browsing so the public can browse and find information with greater ease.

MOTION: Adjourn the meeting. Moved by Chair Miadich, seconded by Joshua Heller.
Motion approved 8-0.

The meeting adjourned at 10:44 a.m.

Respectfully Submitted,

Sasha Linker

Commission Assistant

Approved April 6, 2021

Richard C. Miadich, Chair

Fair Political Practices Commission

DRAFT

(Approved May 21, 2021)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
Minutes of Digital Transparency Task Force Meeting

APRIL 16, 2021

10:00 a.m.

Present: Chair Miadich, Brian Brokaw, Rena Davis, Dagny Starn (for Gale Kaufman), Thad Kousser, Amber Maltbie, Jennifer Waggoner, Abby Wood, Katie Zoglin

Staff Present: Sasha Linker, Commission Assistant

Call to Order

Chair Miadich called the meeting to order at 10:03 a.m.

2. Public Comment for items not on the agenda.

3. Approval of March 2021 meeting minutes.

MOTION: Motion to approve March 2021 minutes. Moved by Commissioner Wood, seconded by Amber Maltbie. Motion approved 7-0, with Rena Davis not yet in attendance.

4. Discussion of Proposed Task Force Recommendations.

Out of an abundance of caution, Commissioner Wood disclosed that her husband owns Facebook stock.

Katie Zoglin asked about a previous speaker being rescheduled. Chair Miadich stated that they were unable to move forward due to scheduling conflicts.

Chair Miadich discussed the first recommendation of creating a State-run digital archive and asked the Task Force to discuss any disagreement with that recommendation. With no discussion, the Task Force will recommend a State-run archive.

Chair Miadich then discussed the type of information that should be contained in the archive, specifically, whether variations should be captured. Ms. Waggoner stated that she felt it was essential for the variations of an advertisement to be contained in the archive and the input given to a system is also very important. Ms. Waggoner discussed the potential of API linking the content between the archive and platforms or whether individuals would be uploading the ads. Thad Kousser stated that this is a key goal to capture the different ways people advertise stating that variations lead to very specific messaging and that should be transparent.

Amber Maltbie questioned if there was a practical compromise to create a distribution threshold, specifically mentioning the 200-distribution threshold used by the City of Los Angeles.

Chair Miadich asked how the variations for ads are created, by the committee or by the platform. Brian Brokaw said, in his experience, it is through the committee.

Commissioner Wood asked about the minimum number of ads practitioners send out for testing. Chair Miadich asked if the concern was setting the threshold too high to inadvertently miss pertinent information. Mr. Kousser discussed factorial or conjoint experiments and described the variations that get tested.

Ms. Waggoner added that when AI is being utilized for ads the campaign's ability to know what was shown and to whom is low due to technological abilities. Commissioner Wood stated that there might need to be disclosure of what was submitted to Google or the ad agency to capture as much information about the variation as possible. Chair Miadich stated that it tiptoes into proprietary strategic information and strategic proprietary considerations and questioned

whether the archive really needs the basic information from the Committee and then the images and iterations placed by the platforms.

Ms. Maltbie asked if the recommendations are constrained by the Political Reform Act and asked what the extent the Task Force are authorized under the act.

Chair Miadich asked how they can effectively capture the various iterations of an ad in an effective way for disclosure. Chair Miadich asked Ms. Davis when the different iterations are created, are they only in the control of the platform or if the committee also receives copies.

Ms. Maltbie asked if the archive would reach over into other types voter contact that are meant to test and refine messaging. Commissioner Wood stated that making the distinction between strategy and distribution is important to ensure we have analytically clear information about what the public is being exposed to.

Chair Miadich stated advertisements are defined in the Act as communications that are paid for or authorized by a committee and discussed how that definition could help narrow the variation questions.

Chair Miadich asked Ms. Davis how they could get all the variations of an ad that are being generated by the platform into the archive. Rena Davis stated that is not possible and would be extremely difficult based on the way things are structured within Google. Ms. Davis did discuss the information disclosed in the transparency report which includes the information given by the campaign. Ms. Zoglin asked about how the content is produced if Google does not have

records of what content was produced. Ms. Davis stated that the presentation given by Google in February 2021 is very informative on how the platform produces ads.

Chair Miadich stated, based on the discussion, the Task Force is interested in the archive including a copy of the advertisement as seen by the end user.

Chair Miadich further stated that who paid for each ad and on what platforms an ad appears are not controversial topic points for the Task Force. Ms. Waggoner stated that the expectation that a committee knows what platform the ad is placed is not necessarily a complete answer and that the answer should be about what platform the committee paid to place an ad.

Mr. Brokaw answered an earlier question that a committee will test up to seven to ten variations of an individual ad before settling on a final, so archiving all the variations would be cumbersome.

Chair Miadich stated that the information concerning the audience that the committee intended to reach should include the length the ad ran and geographic region the ad intended to reach and asked what other information the Task Force believes to be important.

Mr. Kousser asked what the current disclosure requirements were for radio and television.

Chair Miadich stated that it is the region, time, and station. Commissioner Wood stated that the link is through the political file at the FCC, and is where the station is, the program it was running during, and the viewer demographics of the show.

Ms. Zoglin asked if the Task Force would look at additional criteria given the unique qualities of digital advertising, such as the qualities or parameters that advertisers look for beyond

geography. Ms. Zoglin stated that micro targeting can lead to hate-speech, and maybe they should start off broad to parallel other systems to begin with before finetuning through the years.

Ms. Maltbie stated that she was unsure the Political Reform Act allows for requiring disclosure to the detail the Task Force was discussing and would want to look further into it. Chair Miadich responded that the Task Force would be recommending legislation to set up, pay for, and define parameters for the archive.

Chair Miadich asked Mr. Brokaw how he effectively engages in counter speech. Mr. Brokaw stated it's difficult and they have to do their best with guesswork since there is a lack of solid evidence.

Ms. Davis stated that targeting criteria on Google is limited to age, gender, and geographical location and it can't be a radius around a certain location.

Mr. Kousser gave an example of saying, I advertised on Facebook, as being too broad and discussed needing to know the inputs that create the targeting in order to get the same demographic information that you would get from a radio or television ad placement.

Commissioner Wood talked about Washington State's approach of asking for 'receipts' of ad placements. Ms. Davis stated Google ads are not currently offered in Washington because of some difficulties with the regulations and the Google product model. Chair Miadich asked whether the targeting data that Washington is currently requiring an obligation that is placed on the committee or on the platform. Chair Miadich stated, at a minimum, the Task Force

wants the audience information that is analogous to what is disclosed for television and radio and discussed the unique part of disclosing the input information to the platform.

Chair Miadich discussed the need to include impressions in the archive and asked how Google measures impressions that were generated from ads. Ms. Davis stated she isn't sure how that is currently captured but would follow up with her colleagues to get the answer. Mr. Kousser believes it is more important to get the impression information rather than click through information to better align with radio and television structure. Ms. Davis asked if there were any measurement tools that are used in radio and television to gauge audience interaction or if it is something unique to social media. Commissioner Wood stated that there are no measurement tools.

Chair Miadich started the discussion on what types of advertisements should be included in the archive. He further stated state level candidates and ballot measures should be included but that local races would not be realistic immediately. Issue advertisements are not something that the Task Force would recommend including into the archive now, but the archive should be built in a way that they could house those in the future. Digital advertisements are the main concern, but the archive should be constructed to be able to allow for non-digital advertisements in the future. Ms. Maltbie declared support of including non-digital advertisements to help with efficiency and transparency in the future. Commissioner Wood was surprised with not including local elections and feels local candidates and ballot initiatives might be the most important to capture.

In respect to discussion point three, Chair Miadich stated that he believes the committee should be responsible for providing the information to the State for inclusion in the archive. Ms. Waggoner asked how influencers would be handled and if special language should be added. Chair Miadich stated that it would be the committee's obligation to obtain the ad from the influencer for submission. Ms. Davis gave a note that Google includes options embedded for influencers to disclose their paid services. Commissioner Wood discussed the use of amplification and how the issue of bots should be included in the discussion.

Chair Miadich offered to have Commission Staff give an update on digital advertising rules and the direction the Commission is currently moving.

Chair Miadich stated that the searchability functions of the archive should be easily accessible and wants to include the "bite, snack, meal" idea discussed at the March 2021 meeting. Ms. Zoglin asked about parallel disclosures such as the top three donors to committees and what the Chair thought. Chair Miadich stated that they should have the committee name, FPPC ID number, and a link to the committees landing page where they have that information to avoid duplicating information.

Mr. Kousser stated that they should include all possible separate fields as searchable categories to allow public transparency and have open API to allow any secondary user to download the data to use it in any format they want or to create a relational database. Ms. Waggoner stated that she would ask staff about the performance and affordability trade-offs.

When asked about additional elements of the archive, Ms. Waggoner recommended three elements: offering training and customer service; complaints, enforcements, and audits; and

the possible insignia for the State-run archive. She further described how the public will file complaints, what the staffing will look like, what the standards will be, and what burden is the State taking on to ensure the archive is complete and accurate.

Ms. Zoglin asked how long they want to maintain the database and whether cost would impact the Commission's decision.

Commissioner Wood asked if the data would interact with public records act requests and impact staff workload.

Chair Miadich suggested using an organization to examine disclaimers and recommending improvements to make them more useable and effective for end users. Ms. Davis stated that it might be useful to add some recommendations around the technical feasibility and how the archive might function.

The meeting adjourned at 11:49 a.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved May 11, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission

(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
Minutes of Digital Transparency Task Force Meeting

May 21, 2021

10:00 a.m.

Present: Chair Miadich, Brian Brokaw, Rena Davis, Thad Kousser, Amber Maltbie, Jennifer Waggoner, Abby Wood, Katie Zoglin

Staff Present: Sasha Linker, Commission Assistant

Call to Order

Chair Miadich called the meeting to order at 10:01 a.m.

1. Public Comment for items not on the agenda.

2. Approval of April 2021 meeting minutes.

MOTION: Motion to approve April 2021 minutes. Moved by Chair Miadich, seconded by Ms. Maltbie. Motion approved 6-0, with Rena Davis not yet in attendance.

3 Review and Discussion of Draft Task Force Report Containing Recommendations for Legislative and/or Regulatory Policies

In regard to recommendation one, Ms. Waggoner commented that there was no discussion of budget or financial feasibility, and some concerns are with bandwidth, hosting, and staffing costs. Chair Miadich stated that staff is currently looking into it. Chair Miadich stated that he would like to see the addition of how the archive would be used and helpful in order to assist enforcement as a purpose.

In discussing recommendation two, Mr. Kousser discussed the targeting information and asked if it is the intent to limit this information or have that intended audience information be other targeting criteria selected and paid for by the committees. Chair Miadich stated the different

platforms would make it difficult to create a fixed, exhaustive list. Commissioner Wood stated they may look into how the platforms could respond in order to aid the advertisers.

Ms. Waggoner stated that terms like interaction or engagement could make a difference for the front end as well. Ms. Zoglin suggested other term amendments for various paragraphs.

Mr. Kousser discussed the cost efficiency of the digital retention of the ad database.

Ms. Davis discussed possibly transitioning the documents to PDF format after a certain time has passed to ensure retention. Ms. Zoglin agreed with Ms. Davis' comments due to the expansion and maintenance of software that may no longer be in use after some time.

Mr. Brokaw discussed how technology continues to grow and evolve, as the database may become obsolete in a few years.

Chair Miadich suggested shifting the database to an educational institution should funding issues arise, in order to ensure the data will not be lost and could be used later on.

Commissioner Wood discussed content searching and term amendments to ensure wider search capabilities for the public.

Trent Lange, California Clean Money Campaign, stated that they sponsored AB 2188 that put in the requirements for the minimal four-year requirements for the companies because they know the challenges of what they were asking from the companies. Mr. Lange suggested they ask for and store the position held on the ballot measure or candidate. Mr. Lange stated that he did not see any link requirements about disclosure information and the top three funders and also suggested social media automatically transmit their ad databases.

Ms. Zoglin suggested amendments to the title to ensure usability. Mr. Kousser agreed with

renaming the study to a recommended disclaimer.

Ms. Maltbie suggested adding an element about providing voters with information and making recommendations in a manner that takes into account the compliance required by those regulated committees. Chair Miadich agrees that there needs some more clarification in the recommendation.

Trent Lange, California Clean Money Campaign, suggested that they clarify the public comment input periods that should be in place for this kind of study in particular to encourage transparency. Mr. Lange stated that there should be a public hearing where the study's methodology materials and questions they will be asking to different subject are publicly disclosed so outsiders may provide further input.

Chair Miadich asked if the Center for Civic Design did any public hearings and public comments on the methodologies and materials they were using in commissioning the study for California.

Ms. Waggoner stated that they focused on best practices within community input and intentionally sought people out.

The meeting adjourned at 11:35 a.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved June 8, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission

C. WRITTEN COMMENTS SUBMITTED BY PUBLIC

Sasha Linker

From: Alexandra Starr [REDACTED]
Sent: Thursday, April 16, 2020 4:14 PM
To: CommAsst
Subject: Digital political ads

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL EMAIL

I understand that you are looking at digital political ads. Here are some of my opinions on that issue.

1. Do you know how to spot one?
No idea how to spot one.
2. Can you figure out who paid for it?
No way of knowing currently.
3. Do you know what the rules are for these ads?
No.
4. What happens when the rules are broken?
Sine I didn't know there were rules I did not know what the consequences are if they are broken.

Concerns I have:

- is there any way to tell where the ads came from? Country of origin?
- Is there any way to tell who is financially backing the company that is submitting the ads?
- Is there any limit to how many ads a group or organization can submit?
- Who, if anyone, reviews the ad content before it goes online? Just one person or more than one?
For accuracy of statements
- Is there any way to permanently block ads from groups that continue to break the rules (whatever the rules are)
- Are there fines for those who break the rules?
- Is there a time limit before an election whereby a group may not submit an ad -i.e., not closer than 24 or 48 hours before an election?

BTW - I'm active in the League of Women Voters here in Northern California. Voting rights and accuracy in all political advertising is very important to me. Another large concern is the source of ads on the internet. We happened to be in St. Petersburg, Russia right across the street from their infamous agency that dispersed the sweeping misinformation in the 2016 election. So disinformation resonates with me.

Alexandra Starr
[REDACTED]

Item #1 – Public Comment

During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Task Force and before any action is taken.

3. **Anonymous** says:

April 23, 2020 at 3:01 pm Edit

Thank you very much for the response! -EW

2. **Anonymous** says:

April 23, 2020 at 2:41 pm Edit

Hello,

We are students at Georgetown University working on research proposals for bans on political advertisements on Facebook and other social media platforms. Could Secretary Schwab elaborate and give more specifics examples on lies about election day and the electoral process? Were any of these, in the past or not, from campaigns, or entirely from foreign sources? -Eric Woods

1. **Anonymous** says:

April 23, 2020 at 2:22 pm Edit

This is Trent Lange, Executive Director of the California Clean Money Campaign which sponsored the AB 2188 (Mullin), the Social Media DISCLOSE Act that p***ed the online platform disclosed advertisement requirements. To answer Abbey Wood's question about whether including additional targeting information was part of the discussions, the answer is yes. However, both the social media platforms and some legislators strenuously objected to including any more information than the bill required, so we had to compromise to include only the information shown in the bill.

Item #4 – Presentation

4. Current Legal Landscape for Regulating Digital Political Ads. Staff: Sukhi Brar, Supervising Attorney and Katelyn Greene, Commission Counsel. FPPC Legal Division attorneys discuss California law, as well as the status of regulatory laws at the federal level and in other states. Representatives from the California Secretary of State's Office discuss efforts by the Secretary of State's Office to address challenges associated with digital political ads. Representatives from Washington State Public Disclosure Commission discuss how Washington State is approaching regulation of digital campaign ads.

1. **Anonymous** says:

April 23, 2020 at 2:25 pm Edit

This is Trent Lange, Executive Director of the California Clean Money Campaign which sponsored the AB 2188 (Mullin), the Social Media DISCLOSE Act that instituted the online platform disclosed advertisement requirements. To answer Abbey Wood's question about whether including additional targeting information was part of the discussions, the answer is yes. However, both the social media platforms and some legislators strenuously objected to including any more information than the bill required, so we had to compromise to include only the information shown in the bill.

Item #6 – Presentation

6. Digital Ad Archives. Presentation by: Brendan Fischer, Campaign Legal Center. Discussion of digital archives for political advertisements, including (1) examples of current archives; (2) information and data collected in archives; (3) source of information and data to be collected; (4) public v. private housing of archives; and, (5) policy and legal considerations

1. **walkerboyd** says:

April 23, 2020 at 3:30 pm Edit

In the absence of federal legislation, isn't requiring advertisers to submit ad info to regulators burdensome? How can smaller states meaningfully enforce a digital ad filing requirement when the advertising platform is likely located in New York or California?

May 27, 2020

Via Email

To:

Digital Transparency Task Force
Fair Political Practices Commission
1102 Q Street, Suite 3800
Sacramento, CA 95811

From:

Daniel G. Newman
President and Co-Founder
MapLight
2223 Shattuck Avenue
Berkeley, CA 94704

Ann M. Ravel
Digital Deception Project Director
MapLight
2223 Shattuck Avenue
Berkeley, CA 94704

Re: Discussion of Digital Political Advertisement Archive

The lack of transparency for online advertising allows for manipulative and divisive messaging to voters without adequate mechanisms for counterspeech and accountability. MapLight has worked on these issues since the 2016 election via our Digital Deception project, which is led by Ann Ravel (who previously served as chair of the Federal Election Commission and the FPPC).

We are writing today to offer comments on the creation of a statewide online archive of political advertising in California elections. While some social media platforms have created their own ad repositories, these are inconsistent and have glaring gaps in terms of the information needed to safeguard the public interest. MapLight supports the creation of a uniform archive to provide the public with adequate information to make informed decisions. Such an archive would provide the transparency that is so crucial for government watchdogs and civil society to hold political actors accountable for the messages they disseminate. This is an opportunity for California to lead the nation in protecting healthy democratic debate in the digital environment.

Regarding the types of political advertisements that should be included, we recommend incorporating all direct-buy and programmatic campaign ads (including those placed by consultants), independent expenditure ads, and issue ads placed for a fee on major social media platforms and intermediaries such as ad exchanges. We also recommend including “sponsored content” that campaigns may pay social media influencers to place, as the Bloomberg presidential campaign did in 2020. The language used in H.R. 7012 introduced this week in the House of Representatives by Rep. David Cicilline (D-R.I.) may offer a useful set of definitions that can be adapted for state purposes.

The archive should be designed to provide consistent information across the wide variety of advertising formats available to political advertisers online, including search ads, display ads, video, native advertising, and more. Each record should consist of:

- Unique ID number for advertiser (such as IDs assigned to filers by the FPPC)
- Unique ID number for the ad content and for each ad instance
- A copy of the ad
- Subject of the ad (including specific candidate name, office/ballot measure/issue, and jurisdiction as applicable)
- Amount paid to create and run the ad
- Who paid for the ad (to the level required by the DISCLOSE Act and Social Media DISCLOSE Act)
- Date range and times that the advertisement was run
- Description of audience targeting criteria as provided by advertisers and data sources for that targeting
- Description of any algorithmically predicted audience
- Broad demographics of audience reached, to the extent that such data is available
- Number of views

At minimum, the archive should be easily searchable and filterable by election year, advertiser name or ID, ad subject, and advertising platform or intermediary. It should also be accessible via an API and bulk data download for analysis. Data should be maintained for at least 10 years.

We suggest that there be dual responsibility for political advertisers and advertising platforms/intermediaries to provide the information described above. This could be achieved in one of two ways:

1. Social media platforms, search engines, and advertising intermediaries that exceed a certain usage threshold may be in the best position to efficiently provide information to the FPPC. Advertisers who spend beyond a certain threshold (ex. \$1,000 in a calendar year in aggregate) on political ads could be required to provide the requisite information that platforms need to meet the requirements.
2. A dual reporting system could be deployed, requiring both the advertiser (anyone who spends beyond a set threshold) and ad buying platform (any that meet specified usage requirements) to report to the FPPC using the same unique ad ID number, as is done with donors and recipients for campaign contributions.

Without dual responsibility, it will be too easy for advertisements to be excluded from the public database, either by error or by deliberate omission.

We commend this task force for tackling this complex and important issue. MapLight is available to discuss and answer questions as needed.



May 28, 2020

Submitted electronically to CommAsst@fppc.ca.gov

Richard C. Miadich, Chair
California Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Dear Chair Miadich and Members of the Task Force,

Campaign Legal Center (“CLC”) respectfully submits these written comments to the FPPC’s Digital Transparency Task Force regarding the questions for “Discussion of the Digital Political Advertisement Archive” listed on the Task Force’s May 29 meeting agenda.¹

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court and in numerous other federal and state court proceedings. Our work promotes every American’s right to a responsive and transparent democratic system.

CLC applauds the FPPC’s creation of the Digital Transparency Task Force to give careful consideration to the important legal and policy questions around the regulation of digital advertisements in elections. Ensuring transparency of digital political ads presents unique challenges for election officials due to the distinctive features of online advertising, including the ability to target communications to highly specific audiences and the ephemeral nature of much digital content. By studying the national landscape and regulatory trends in this evolving field, the Task Force will enable the FPPC to develop effective digital ad disclosure policies that deliver critical information to the public as campaigns, committees, and other groups increasingly rely on the internet to target and communicate with California voters.

Our written comments address questions (a) through (d) under “Discussion of Digital Political Advertisement Archive” on the Task Force’s May 29 meeting agenda. Part I concerns the question of whether California should create and maintain a government-hosted archive of digital political ads; Part II discusses the

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/Task-Force/may-2020/DTF%20MAY%20Agenda.pdf>.

scope of political ads that should be subject to an archiving requirement; Part III describes what information should be included in the archive for each political ad; and Part IV addresses who should be responsible for providing the information about digital ads maintained in the archive.

I. California Should Establish a Government-Hosted Public Online Archive of Digital Advertisements in State Elections

CLC strongly recommends that California establish a government-hosted online political ad archive to provide the public with access to information about digital advertisements related to state elections. As the volume of online advertising in contemporary U.S. elections continues to grow,² a number of state and local jurisdictions have adopted archiving requirements for digital political advertisements to augment the transparency of these ads.³ Among their benefits, publicly accessible and searchable archives of digital political ads present the most effective solution to the problem of “dark” digital ads in elections: online political advertisements that are microtargeted to specific segments of the population but otherwise invisible and inaccessible to the rest of the public, including law enforcement officials, journalists and watchdog groups, and voters outside of the target audience who want to learn more about election-related messaging.⁴

By ensuring online political ads microtargeted to a small audience are preserved and available for review by the public at large, digital ad archives are key to strengthening the transparency of online political advertising and enforcing campaign finance laws in the Information Age. Moreover, because longstanding federal law already requires publicly accessible records to be kept regarding the sources, cost, and distribution of political advertising on TV and radio, the creation

² By one estimate, total digital ad spending in federal, state, and local elections will reach \$1.3 billion in the 2019-2020 cycle. Kate Gibson, *Spending on U.S. digital political ads to top \$1 billion for first time*, CBS NEWS (Feb. 12, 2020), <https://www.cbsnews.com/news/spending-on-us-digital-political-ads-to-cross-1-billion-for-first-time/>.

³ See, e.g., N.Y. Elec. Law § 14-107(5-a); L.A. Mun. Code § 49.7.31(C)(2). Maryland also adopted political ad archiving requirements for online platforms in 2018—its law requires a wide range of platforms to host public archives on their websites. Md. Code, Elec. Law § 13-405(b). In a consent judgment issued earlier this month, the state agreed to a permanent injunction barring enforcement of Maryland’s digital archiving law against a group of regional newspapers whose websites qualified as “online platforms” under the state law. See Pamela Wood, *Maryland settles challenge over law regulating online campaign ads*, BALTIMORE SUN (May 6, 2020), <https://www.baltimoresun.com/politics/bs-md-pol-settlement-newspapers-20200506-7q67acrdu5dypgn7vc3juvnsku-story.html>.

⁴ See Kelly Born, *How states are experimenting with digital political advertising regulation: Interview with Campaign Legal Center’s Erin Chlopak*, HEWLETT FOUNDATION (May 28, 2019), <https://hewlett.org/how-states-are-experimenting-with-digital-political-advertising-regulation-interview-with-campaign-legal-centers-erin-chlopak/>.

of digital ad archives ads helps to institute greater symmetry in the regulation of online political advertisements and ads distributed via more traditional media.⁵

One of the primary policy questions surrounding digital ad archives is whether the state government or private online platforms should be responsible for creating and maintaining the archives. For a number of reasons, CLC believes that government-hosted archives are preferable. First, a government-hosted archive provides a centralized repository of comprehensive and standardized information about digital advertising in elections; under this approach, the public can rely on the government-hosted archive as a “one-stop shop” for *all* digital ad information regardless of where the ads were originally displayed. The centralization of digital advertisement information in a government-hosted archive also lessens the importance of delineating which websites and applications qualify as “online platforms” for archiving purposes, and facilitates more effective legal oversight by state authorities who can identify errors and omissions when uploading ad data to the archive.

Second, a government-hosted archive avoids a piecemeal approach to transparency and ensures that all digital ads subject to regulation are publicly disclosed. When only certain platforms are required to host archives, sponsors of digital ads can evade transparency requirements by routing their ad spending to smaller platforms that are not subject to archiving requirements.⁶ This sort of evasion would be impermissible with a government-hosted archive, however.

Third, a government-hosted ad archive ensures the long-term preservation of digital ad information. Platform-hosted ad archives, particularly archives hosted by smaller, less established platforms, pose an inherent risk that the public could lose access to political ad information if the platforms fold at some point in the future. A government-hosted archive thus provides more certainty of the continued availability of public information about digital political advertisements in the event that some online platforms on which ads were distributed cease to exist.

Finally, a government-hosted public archive enables the accessibility of digital political ads distributed on online platforms without imposing compliance costs on smaller platforms. A concern about burdening smaller platforms was among the reasons cited by the Fourth Circuit Court of Appeals when it affirmed an injunction against Maryland’s digital political ad archiving requirement for online platforms with 100,000 or more unique monthly U.S. users.⁷ To be sure, the Fourth Circuit’s

⁵ See 47 U.S.C. § 315(e); 47 C.F.R. §§ 73.1943, 76.1701.

⁶ See Brendan Fischer & Maggie Christ, *Digital Transparency Loopholes in the 2020 Elections*, CAMPAIGN LEGAL CENTER (April 2020), [https://campaignlegal.org/sites/default/files/2020-04/04-07-20 Digital Loopholes 515pm .pdf](https://campaignlegal.org/sites/default/files/2020-04/04-07-20%20Digital%20Loopholes%20515pm.pdf) (documenting how only 4% of a group’s FEC-reported digital political spending appeared in public archives maintained by Facebook, Google, and Snapchat).

⁷ *Wash. Post v. McManus*, 944 F.3d 506, 522 (4th Cir. 2019) (concluding that Maryland’s digital ad archive law is “too broad because it fails to distinguish between platforms large and small”).

ruling is narrow, focusing on unique characteristics of Maryland's digital ad law as well as the law's stated objective of combatting foreign interference. Nevertheless, the decision highlights important considerations for the FPPC's Digital Transparency Task Force to keep in mind regarding the imposition of archive responsibilities on online platforms.

Importantly, online platforms can still play a part in ensuring effective online advertising disclosure even if they do not host digital ad archives. In New York State, online platforms are required verify that each purchaser of a digital independent expenditure ad is properly registered with the State Board of Elections at the time of the ad's purchase;⁸ a platform that fails to collect a copy of an ad sponsor's registration statement will be assessed a civil penalty.⁹ New York's verification process thereby utilizes online platforms as a backstop to secure compliance with digital ad disclosure rules while avoiding the burdens on "neutral third-party platforms" that concerned the Fourth Circuit in its decision enjoining Maryland's law.¹⁰

For the foregoing reasons, CLC strongly supports California's creation of a government-hosted archive of digital political advertisements.

II. California's Online Ad Archive Should Include a Broad Range of Political Advertising

CLC recommends that California's online ad archive encompass a comprehensive range of political advertisements disseminated online, including advertising paid for by candidates and committees, independent expenditure ads, and certain public communications identifying state candidates or ballot measures within 45 days of an election but not expressly advocating for or against those candidates or measures.¹¹ By covering the broadest possible scope of digital political advertisements, the state's online ad archive will most effectively improve public access to information about election-related advertising, preclude dissemination of "dark" political ads, and aid in the enforcement of the Political Reform Act's disclosure requirements.

Existing laws and legislation concerning digital ad archives vary considerably in their coverage of political ads. For example, the federal Honest Ads Act would apply archive requirements to digital political advertisements that relate to a federal candidate or election, or to "a national legislative issue of public importance."¹² On the other hand, New York's Democracy Protection Act added new archiving requirements only for digital independent expenditure ads.¹³ While the California Legislature may need to adopt new legislation to extend archiving requirements to the full array of advertising covered under the Honest Ads Act, the Digital

⁸ N.Y. Elec. Law § 14-107-b(1).

⁹ *Id.* § 14-126(7).

¹⁰ *Wash. Post.*, 944 F.3d at 516-17, 523.

¹¹ *See* Cal. Gov't Code § 85310.

¹² S. 1356, 116th Cong., § 8 (2019).

¹³ N.Y. Elec. Law § 14-107(5-a).

Transparency Task Force should consider at least including all digital political advertisements subject to disclosure under the Political Reform Act as part of the state's online ad archive.

III. The Online Ad Archive Should Include Comprehensive Information About Each Political Advertisement

CLC also suggests making comprehensive information available for each political advertisement included in California's online ad archive. Providing information about the source, cost, dates, and distribution of each political ad in the archive will maximize the informational value of the archive to the public, and also assist the FPPC with oversight and enforcement. In general, CLC recommends including:

- i. A copy of the advertisement;
- ii. Identification of the advertisement's sponsor, including:
 - a. If the sponsor is a candidate, the name of the candidate, the candidate's authorized committee, and the treasurer of the candidate's authorized committee;
 - b. If the sponsor is a political committee, the name of the committee and the treasurer of the committee; or
 - c. If the sponsor is a person other than a candidate or political committee, the name of the person, the name, address, and phone number of an individual point of contact for the person, and a list of the chief executive officers or members of the executive committee or board of directors for the person.
- iii. Identification of the online platform that disseminated the advertisement;
- iv. The amount paid to the online platform to disseminate the advertisement;
- v. The dates on which the advertisement was displayed, or contracted to be displayed, through the services provided by the online platform;
- vi. A description of the demographic or geographic audience, if any, targeted by the advertisement;
- vii. The number of people to whom the advertisement was disseminated directly, or expected to be disseminated, by the online platform; and
- viii. Identification of each candidate (including name and public office sought by the candidate) or ballot measure referenced by the advertisement.

IV. The Sponsors of Political Advertisements Should Provide Required Information for the Online Ad Archive

The sponsors of political ads (i.e., the entities paying for them) should be responsible for collecting and providing ad copies and other required information for the state's

public archive. As the original sources of political advertising, ad sponsors are best positioned to promptly submit comprehensive information about their advertisements to state officials. And California would be on solid constitutional footing in requiring the collection and disclosure of this information by the sponsors of political ads, who are unquestionably “direct participants in the political process.”¹⁴

In California, candidates, political committees, and other organizations that raise or spend significant amounts of money in state elections are required to file regular reports with the FPPC;¹⁵ the existing reporting system applicable to these entities provides a well-established framework for introducing filing requirements specific to digital ads. Likewise, focusing digital ad filing requirements on the direct sponsors of political ads relieves the FPPC of having to determine who is responsible for submitting information about digital political advertisements that are disseminated through complex ad networks, in which multiple entities are involved in the placement of the ads on third-party websites or applications. Accordingly, we suggest that California require the sponsors of digital political ads to assume responsibility for filing information about their ads with state officials.

Conclusion

CLC supports the Digital Transparency Task Force’s decision to study the important questions around regulation of digital advertising in California elections. We appreciate having the opportunity to provide input on these questions and would be happy to provide additional information to assist the Task Force in assessing options for digital ad disclosure.

Respectfully submitted,

/s/
Brendan Fischer
Director, Federal Reform

/s/
Austin Graham
Legal Counsel

¹⁴ *Wash. Post*, 944 F.3d at 516 (recognizing that “governments have long required, and the Supreme Court has long upheld, the publication and retention [by ‘direct participants in the political process’] of certain information in connection with elections”); *see also Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (explaining that expenditures by candidates and political committees may be subject to disclosure requirements because “[t]hey are, by definition, campaign related.”).

¹⁵ *See* Cal. Gov’t Code §§ 84100–84511.

**Comment of Ian Vandewalker
to the California Fair Political Practices Commission
Digital Transparency Task Force¹
May 29, 2020**

On behalf of the Brennan Center for Justice, I thank the Task Force for the opportunity to comment on the issue of transparency for online political ads in California. The Brennan Center is a nonpartisan think tank and advocacy organization that focuses on democracy and justice. We work to ensure that our elections are conducted in a way that allows all Americans to participate in a self-governing democracy. The Brennan Center has studied campaign finance issues for 20 years, working to develop effective and constitutionally sound policies and advocating for them in the courts, legislatures, and administrative bodies across the nation.

Transparency about online political advertising is crucial for California elections for two main reasons: the increasing importance of highly targeted ads online, and California's history of being targeted by spending originating with unknown sources or foreign sources.

I. Political Advertising Online

Political advertising over the Internet has grown exponentially in recent years, yet campaign finance rules have not kept up. Although California has been a leader in campaign finance transparency, the state's democracy would benefit from greater transparency about online ads.

The internet has rapidly become a key focus of political advertising in American elections. One industry estimate predicts that political ad spending online in 2020 will hit \$1.34 billion, three times higher than the 2016 cycle.² That spending growth almost certainly understates the importance of the Internet in political campaigns, given how cheap Internet advertising is relative to other types of media.³ This is especially true in

¹ Mr. Vandewalker serves as Senior Counsel in the Democracy Program at the Brennan Center for Justice at New York University School of Law. This testimony does not reflect the views, if any, of New York University School of Law.

² Kate Gibson, "Spending on U.S. digital political ads to top \$1 billion for first time," *CBS News*, February 12, 2020, <https://www.cbsnews.com/news/spending-on-us-digital-political-ads-to-cross-1-billion-for-first-time/>.

³ "Traditional Media vs. Social Media Advertising," *Lyfe Marketing*, accessed February 15, 2018, <https://www.lyfemarketing.com/traditional-media-versus-social-media/>

light of sophisticated ad targeting tools that make it easier for political operatives across the spectrum to direct divisive messages to susceptible audiences.⁴

Indeed, the targeting capabilities of online advertising are particularly dangerous in political contexts. Traditional print or broadcast advertising is available to almost anyone and can be widely seen, so that the public—as well as fact checkers and political opposition researchers—know which candidates and operatives are pushing which messages. But online advertising allows ads to be targeted to small demographic slices. This obstructs fact checking and political accountability. It allows politicians to say one thing to one audience and the opposite to another. And it creates the potential for individuals to be targeted for certain messages without knowing why.

The Internet Research Agency (IRA), a Russian company with ties to President Vladimir Putin, has been trying to influence American politics with deceptive online ads and organic posts for years.⁵ Operatives with fake social media accounts disguising them as Americans attacked presidential candidates in the 2016 and 2020 elections, in addition to pushing divisive messages on many controversial issues from both left and right viewpoints. The group targeted African Americans with voter suppression and calls to boycott the election.⁶ In 2017, its operatives helped the California secessionist hashtag #Calexit reach Twitter's top trends.⁷ Similar tactics are also used by other countries, such as Iran and China.⁸

The ad archive voluntarily maintained by Facebook reveals tens of thousands of ads concerning politics or social issues that target California. Some are listed as paid for by groups that do not show up in FPPC campaign finance data and whose donors are not obvious. One page, Legit Politic, buys ads criticizing Democratic Party politicians in the

⁴ Harry Davis and Danny Yadron, "How Facebook tracks and profits from voters in a \$10bn US election," *The Guardian*, January 28, 2016, <https://www.theguardian.com/us-news/2016/jan/28/facebook-voters-us-election-ted-cruz-targeted-ads-trump>; Issie Lapowsky, "The Real Trouble with Trump's 'Dark Post' Facebook Ads," *Wired*, September 20, 2017, <https://www.wired.com/story/trump-dark-post-facebook-ads/>; "Connect with constituents and voters on Facebook," *Facebook*, politics.fb.com, accessed February 16, 2018.

⁵ See U.S. Department of Justice, Office of Special Counsel Robert S. Mueller III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, Vol. I, 14-36 (2019); U.S. Senate Select Comm. on Intelligence, *Russian Active Measures Campaigns and Interference in the 2016 U.S. Election*, Vol 2; *Russia's Use of Social Media*, S. Rep. 116-XX (2019); *Assessing Russian Activities and Intentions in Recent U.S. Elections*, ICA 2017-01D, Office of the Director of National Intelligence, 2017.

⁶ Jon Swaine, "Russian propagandists targeted African Americans to influence 2016 US election," *Guardian*, December 17, 2018, <https://www.theguardian.com/us-news/2018/dec/17/russian-propagandists-targeted-african-americans-2016-election>.

⁷ "Russian trolls' promoted California independence," *BBC*, November 4, 2017, <https://www.bbc.com/news/blogs-trending-41853131>.

⁸ "Facebook dismantles disinformation network tied to Iranian media," *Al Jazeera*, May 5, 2020, <https://www.aljazeera.com/news/2020/05/facebook-dismantles-disinformation-network-tied-iranian-media-200505182330583.html>.

state. Another, BRITE CA, bought an ad in 2018 that reached more than one million people and described its “effort to support Governor Jerry Brown” in the reform of environmental legislation.⁹

II. Spending from Secret and Foreign Sources in California

California elections have been targeted by spending from secret sources, or “dark money,” as well as foreign sources.

In 2013, the FPPC levied a record \$1 million fine against a two out-of-state dark money groups for violating disclosure rules as they spent \$15 million to influence ballot measure elections in California.¹⁰ The Texas oil company Phillips 66 was caught sending mailers to oppose a local ballot measure under the name of the shell group Californians for Good Schools and Good Jobs in 2012.¹¹ California has strengthened disclosure rules since these incidents. Nevertheless, “gray money”—when one political committee receives donations from another political committee, making the original source more difficult to find—remains an issue. Gray money has been significant in California elections, with well over \$40 million in each of the 2010 and 2014 cycles.¹²

Some political spenders in the state have been unmasked as foreign nationals. In 2012, for example, a Mexican property developer managed to funnel more than \$600,000 into San Diego’s mayoral race in an effort, as described by prosecutors, to “buy a mayor.”¹³ In another example, a committee opposing a 2012 Los Angeles ballot measure regulating the adult film industry was revealed to have been partially funded by foreign nationals affiliated with a Luxembourg-based company that runs pornographic websites.¹⁴ The funds included contributions from a corporation based in Cyprus and corporate donations directed by a German citizen.¹⁵ A group trying to get California to secede from the U.S.

⁹ BRITE was reportedly financed by utility companies trying to change the state’s wildfire liability rules after massive fires were blamed on utility equipment. Emily Turner, “Wildfire Victims Rally For Utility Company Liability In Large Fires,” *KPIX5*, August 8, 2018, <https://sanfrancisco.cbslocal.com/2018/08/08/wildfire-victims-rally-for-utility-company-liability-in-large-fires/>.

¹⁰ Kim Barker, “Dark Money Groups Pay \$1 Million in Fines in California Case,” *ProPublica*, October 24, 2013, <https://www.propublica.org/article/dark-money-groups-pay-1-million-dollars-in-fines-in-california-case>.

¹¹ Chisun Lee *et al.*, *Secret Spending in the States*, Brennan Center for Justice, 2016, 17, https://www.brennancenter.org/sites/default/files/2019-08/Report_Secret_Spending_in_the_States.pdf.

¹² Chisun Lee *et al.*, *Secret Spending in the States*, Brennan Center for Justice, 2016, 8, https://www.brennancenter.org/sites/default/files/2019-08/Report_Secret_Spending_in_the_States.pdf.

¹³ Greg Moran, “Feds say Azano wanted to ‘buy a mayor,’” *The San Diego Union-Tribune*, July 27, 2016, <http://www.sandiegouniontribune.com/sdut-feds-say-azano-wanted-to-buy-a-mayor-2016jul27-story.html>.

¹⁴ Ciara Torres-Spelliscy, “Dark Money as a Political Sovereignty Problem,” *Kings Law Journal* 28 (2017).

¹⁵ Federal Election Commission, First General Counsel’s Report, MUR 6678 (MindGeek USA, Inc., et al.), Aug. 15, 2014, 9-10 <http://eqs.fec.gov/eqsdocsMUR/15044372921.pdf>

called Yes California has been suspected of financial ties to the Russian government, although group leaders deny it.¹⁶

III. Transparency for Online Political Ads in California

The Brennan Center strongly supports the Task Force’s mission statement that: “Paid political ads should be archived in a publicly accessible database.”¹⁷ An ad archive will directly address the issues noted above. Even ads that target small audiences will still be visible to the public and subject to political accountability. And an ad archive will make it harder for dark money and covert foreign operatives to hide their identities.

Although some large platforms have created their own ad archives, voluntary efforts are not enough. Company policies can be insufficient, varied, or applied inconsistently across users. They can also be abandoned once a scandal blows over. State action is indispensable.

Below, we comment on issues raised in the Task Force’s agenda for its meeting on May 29, 2020.¹⁸

A. The state should consider creating a public database of online political ads.

Where feasible, a single state database will make the ad data most useful to the public, journalists, researchers, and law enforcement, because it will collect the information in a single place and in a standard format. Proposals to have each platform publish their own database run into issues with different data formats, different levels of completeness, and other complications.

B. The archive should include, at a minimum, all campaign ads, independent expenditures, and issue advocacy.

Transparency for political ads is clearly needed for all ads from candidates, political committees, and party committees. In addition, anything that meets the definition of “independent expenditure” or what is often called “issue advocacy”—communications

¹⁶ John Sepulvado, “From His Home in Russia, #Calexit Leader Plots California Secession,” *KQED*, December 13, 2016, <https://www.kqed.org/news/11217187/from-his-home-in-russia-calexit-leader-plots-california-secession>.

¹⁷ California Fair Political Practices Commission Digital Transparency Task Force Mission Statement, <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/DTTF/Task%20Force%20Goals%20Outline.pdf>.

¹⁸ California Fair Political Practices Commission Digital Transparency Task Force May 2020 Agenda, <http://www.fppc.ca.gov/about-fppc/hearings-meetings-workshops/digital-transparency-task-force/may-2020-agenda.html>.

that identify a candidate without express advocacy—should be included.¹⁹ These are all, by definition, communications that influence elections.

In addition, ads concerning legislative issues of importance to the state should be included. Broadcasters have been complying with a version of this requirement for years. The Federal Communications Commission requires television and radio broadcasters to maintain a file of political ads that discuss “national legislative issues of public importance.”²⁰ This category should include ads that pertain to pending or recently passed legislation or that are intended to encourage future legislative action.²¹

C. The archive should include information about the ad, its financing, as well as its targeting and audience.

To keep voters informed about who is trying to influence California politics and how, it is important that the archive include key pieces of information. It should include a copy of the ad, so that messages are available to everyone, not only those who are targeted. Since some ads are purely images, the names of candidates, ballot measures, or legislative issues discussed should be reported explicitly. The archive should include information about who paid for the ad and how much it cost, as well as which platform it ran on and the dates it was active.

Information about who the advertiser sought to target, the number of impressions (how many users were served the ad), and demographic information about the audience reached should all be included as well. Targeting, especially, is crucial because the meaning of an ad can change depending on who is targeted. For example, the message, “boycott the election because there is no difference between the candidates,” takes on a different significance if we learn that the advertiser targeted African Americans for “boycott” messages and targeted other Americans with messages in favor of one of the candidates, as the Kremlin’s operatives at the IRA did in 2016.

D. Reporting requirements should reflect who has the information.

Much of the information needed for an ad archive can be most easily provided by the ad buyer. But there are compelling reasons to require platforms and ad vendors to report as well, even if the archive is maintained by the state rather than the platforms. Ad sellers

¹⁹ Cal. Gov’t Code § 82031 (defining independent expenditure); § 85310 (requiring reporting for communications that clearly identify a candidate within 45 days of an election).

²⁰ 47 U.S.C. § 315(E)(1)(B)(iii).

²¹ *Cf.* Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al., Memorandum Opinion and Order, DA 17-14, para. 34-35 (MB rel. Jan. 6, 2017) (clarifying the scope of “national legislative issues of public importance”), *rescinded by* Complaints Involving the Political Files of WCNC-TV, Inc., licensee of Station WCNC-TV, Charlotte, NC, et al., Memorandum Opinion and Order, DA 17-126.

like platforms and third-party vendors are likely in possession of information that ad buyers don't have, like how many impressions the ad achieved and the demographics of the audience reached. Collecting data from platforms is also important as a check on the accuracy of the data, since some ad buyers may not report accurately.

E. The archive should be fully searchable.

The public should be able to search the archive by any of the types of information stored in it, including the text of the ad, as discussed above. The public should be able to download data into spreadsheets for analysis. Some ad copies will not be amenable to search and download because of images, but the data should include an identifier that will allow members of the public who search other information about an ad, like the candidate depicted, to find the images.

F. The archive should be structured with awareness of constitutional concerns.

In *Post v. McManus*, the federal Fourth Circuit Court of Appeals blocked the state of Maryland from enforcing portions of its political ad transparency law against a group of newspapers and press organizations. Although the Brennan Center disagrees with the decision, it illuminates certain constitutional concerns that may be raised.²²

The *McManus* court reasoned that certain aspects of the Maryland law were not sufficiently tailored to the legislature's stated purpose of blocking foreign interference in its elections.²³ This was, in part, because the legislative history indicated that the primary purpose of the bill was blocking interference like Russia's use of deceptive online activity in 2016. Since most of Russia's interference involved unpaid ads and messages that did not expressly advocate about the election, the court found that Maryland's regulation of paid, express-advocacy ads was underinclusive.²⁴ Increased transparency requirements for paid political ads online should therefore be expressly justified by the ample compelling reasons for regulation, such as informing voters and combating corruption, in addition to concerns about foreign interference.²⁵

Also, disclosure requirements on platforms and ad vendors—as opposed to ad buyers—should be targeted to the platforms and vendors that pose the greatest risk for spreading

²² 944 F.3d 506 (4th Cir. 2019).

²³ *Id.* at 513-23.

²⁴ *Id.* at 521.

²⁵ *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (disclosure “enables the electorate to make informed decisions and give proper weight to different speakers and messages”); *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (reasoning that disclosure “expos[es] large contributions and expenditures to the light of publicity [which] may discourage those who would use money for improper purposes either before or after the election.”).

non-transparent political ads. *Post v. McManus* expressed concern that the Maryland law was overbroad in its application to platforms with small audiences.²⁶ Therefore, regulation of platforms and ad vendors—whether requiring them to host their own ad archives or requiring them to report to a state database—should be imposed on those with large audience shares. One example of this approach is the Honest Ads Act contained in omnibus legislation that passed the U.S. House last year, which imposes certain disclosure obligations only on platforms that have 50 million or more monthly users.²⁷

Finally, *Post v. McManus* expressed special concern with the imposition of any kind of publication requirement on the press.²⁸ For this reason, the FPPC should consider exempting bona fide press outlets from regulations that would require platforms to publish anything.

²⁶ 944 F.3d at 521.

²⁷ For the People Act, H.R. 1, 116th Cong., § 4208(a).

²⁸ 944 F.3d at 521.

Item #1 – Public Comment

During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Task Force and before any action is taken.

Comment Letter – Daniel Newman and Ann Ravel, MapLight

Comment Letter – Brendan Fischer and Austin Graham, Campaign Legal Center

2. **Max Slavkin** says:

May 29, 2020 at 2:21 pm

Hello,

I run a small e-commerce business that sells politically themed merch. Two concerns as a small business. 1) The notion of an archive/database, while it makes sense for media like print ads or videos, does not make as much sense for digital ads. One “ad” we run on Facebook might actually be 10 different images, 10 different copy variations, all tested in different combinations, and changed regularly, over many weeks. If every variant needs to be submitted to a database, our small business alone would be submitting hundreds of ads every week which could be incredibly burdensome. 2) what is a “political” ad and who decides? For example we sell socks with famous women on them, and Facebook has deemed our socks featuring figures like Nancy Pelosi or Ruth Bader Ginsburg as “political” ads. Same with socks for historic figures like Maya Angelou or Harriet Tubman. Is that really what we mean when we legislate political ads?- Max Slavkin, CEO, Creative Action Network

1. **Ian Vandewalker, Brennan Center** says:

May 29, 2020 at 2:02 pm

The Brennan Center for Justice requests to comment orally during the meeting and as set out in a written comment emailed to Comm***t@fppc.ca.gov. We support a digital ad archive and offer recommendations on to structure one.

Sasha Linker

From: Cynara Velazquez <Cynara@communityengagementresources.com>
Sent: Sunday, January 10, 2021 11:49 AM
To: CommAsst
Subject: Comment to FPPC Commission/Digital Task Force Commission

Follow Up Flag: Follow up
Flag Status: Flagged

EXTERNAL EMAIL

I would like to request that my below comments be forwarded to commissioner Richard C. Miadich and the members of the Digital Transparency Task Force, as well as to include these comments as non-agenda public comments in the upcoming January 21st meeting of the FPPC.

Thank You,
Cynara Velazquez

cynara@community-engagement.org

619-208-0567

4755 Long Branch Ave,
San Diego, CA 92017

My Comments:

Dear Commissioner Miadich and the members of Digital Transparency Task Force,

Last month, as part of your task force meeting agenda, you saw a presentation from the New York City Campaign Finance Board on their online political advertising archive. Additionally, on the FPPC website, there is a link to the City of Los Angeles Advertising Archive.

I have created a similar advertising archive for San Diego county, <http://politicalpropaganda.org/>, as a volunteer effort, through the non-profit, Alliance for Community Engagement, because I saw a gap in campaign transparency and a gap in voter knowledge of the messages being sent from candidates to other voters. The goal of the site is to capture all campaign messaging received from all political campaigns by voters in San Diego County, including communications from state and national races.

I believe that such an political advertisement archiving effort would be of great value to voters, journalists and ethics professionals across the state of California, and that FPPC would be the best organization to take on such an effort.

PoliticalPropaganda.org allows voters to:

- See the quantity of campaign messaging being sent to individual voters for a race.
(Example: <http://politicalpropaganda.org/?elections=proposition-22-2020-general>)
- Allow voters to see how many pieces are sent for/against a particular candidate/initiative.
(Example: <http://politicalpropaganda.org/?candidates=catherine-s-blakespear>)
- See all of the advertisements produced by a certain campaign committee, in all races for which they advertised
(Example: <http://politicalpropaganda.org/?campaigns=ethics-transparency-in-government>)
- See the details of a specific advertisement that was sent.
(Example: http://politicalpropaganda.org/?propaganda_pieces=will-moore-is-lobbyist)

The disadvantage to doing this archiving effort as a non-profit volunteer endeavor is that it is not possible to capture every advertisement sent by every campaign, since this would require a volunteer who can submit in every race/jurisdiction/demographic target. Moreover, we do not have the resources to archive online advertisements, radio advertisements, television commercials nor texts, although the site is configured to do so. Also, this site's scope is San Diego County only, and is not a resource to voters in other counties of California.

For these reasons, I would like to request that the FPPC undertake the archiving of campaign advertising as a **statewide, state funded, effort**. Sites such as ours, as well as that of Los Angeles county and New York City, are vital to give transparency as to which organizations are actively advertising in what races and what messages they are sending, in what quantities, to voters. This is something that would be of value for all voters across the state, as well as a vital tool for tracking campaign financing and investigating ethics complaints. Moreover, the state has the power to mandate that all campaigns submit copies of all advertisements they transmit to voters, which would eliminate the missed advertisements for which there are no volunteer submittals.

I urge you to pursue a statewide political advertising archive effort. I believe that the site I created, politicalpropaganda.org, can serve as a good model for these efforts - it allows for simple and intuitive navigation to categories of advertisements by candidate, race and campaign. I am available for any questions and would be more than happy to share the knowledge I have aquired on how best to archive political advertisements with the commission.

Thank You,

Cynara Velazquez

619-208-0567

cynara@community-engagement.org



February 18, 2021

Submitted electronically to CommAsst@fppc.ca.gov

Richard C. Miadich, Chair
California Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Dear Chair Miadich and Members of the Task Force,

Campaign Legal Center (“CLC”) respectfully submits these comments to the FPPC’s Digital Transparency Task Force regarding agenda items for the Task Force’s February 2021 meeting.

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other federal and state court proceedings. Our work promotes every American’s right to a responsive and transparent democratic system.

Last May, CLC submitted written comments to the Task Force concerning the creation of a government-hosted public archive of digital political advertising in California, and CLC’s Director of Federal Programs, Brendan Fischer, also gave a presentation during the Task Force’s meeting that month. CLC continues to support the Task Force and its mission, and our comments and recommendations are intended to assist the Task Force, and the FPPC, in reviewing regulatory options to make digital advertising in California elections more transparent.

The following comments address two important topics under consideration by the Task Force: (1) emerging trends in digital advertising from the 2020 election cycle, and (2) making disclaimers on digital ads more effective and user friendly. Part I concerns emerging trends from 2020, including the movement of political ads onto streaming platforms; campaigns’ use of applications for voter data collection and microtargeting; and the

growing number of online platforms adopting internal policies on political advertising. In Part II, we review specific policy measures that would help to make digital ad disclaimers more user friendly.

I. Emerging Trends from the 2020 Election Cycle

a. Political ads move to streaming platforms.

As Americans increasingly turn to internet-based streaming services to watch their favorite movies and television shows, campaigns and political groups have recognized another opportunity to expand the reach of their messaging.¹ Although some streaming services, like Hulu and Netflix, have been around for over a decade, a multitude of other streaming platforms have emerged in recent years, and the volume of political advertising on streaming services increased significantly in 2020.²

Streaming platforms, like other digital media, are particularly appealing to political advertisers because, in addition to being largely unregulated, they allow political messages to be targeted to highly specific groups of voters. On streaming platforms, groups can influence voters by using precision microtargeting tools to reach U.S. viewers according to their political party affiliation, voter registration information, and voting history, and they may combine viewers' political information with other geographic, socioeconomic, and behavioral data to drill down even further on their target audience.³

¹ Tony Romm, *Political ads are flooding Hulu, Roku and other streaming services, revealing loopholes in federal election laws*, WASH. POST (Feb. 20, 2020), <https://www.washingtonpost.com/technology/2020/02/20/hulu-roku-political-ads-streaming/>.

² Fredreka Schouten, *Political advertising grows on streaming services, along with questions about disclosure*, CNN (June 3, 2020), <https://www.cnn.com/2020/06/03/politics/streaming-services-political-ads/index.html>. Notably, Facebook and Google banned political ads in the first weeks of the recent Georgia runoff elections, but during that same period super PACs nonetheless spent millions on digital ads in the state, including on streaming services like Hulu. See Issie Lapowsky, *Republicans Are Flooding the Georgia Runoffs With Millions of Dollars in Digital Dark Ads*, PROTOCOL (Nov. 24, 2020), <https://www.protocol.com/republicans-georgia-runoffs-digital-dark-ads>.

³ Rebecca Lerner, *OTT Advertising Will Be A Clear Winner In The 2020 Elections*, TV [R]EV (Sept. 24, 2019), <https://tvrev.com/ott-advertising-will-be-a-clear-winner-in-the-2020-elections/>; *New Research: Streaming Platforms are a Wild West of Political Ads*, MOZILLA (Sept. 22, 2020),

With streaming now accounting for around 25% of all television viewing in the United States, tens of millions of dollars likely were spent during the 2020 cycle for political ads on streaming services.⁴ However, it is virtually impossible to calculate how much candidates, PACs, and other groups collectively spent on political ads on streaming platforms in 2020. This is due, in part, to the common practice of purchasing digital political ads through third-party vendors, to inadequate campaign finance laws at the federal, state, and local levels, and to the lack of voluntary disclosure measures taken by streaming platforms.⁵

The Mozilla Foundation recently described streaming platforms as the “Wild West of Political Ads,” an appropriate designation considering the lack of regulation around election-related communications distributed on those platforms.⁶ At the federal level, for example, political committees often do not disclose which websites or digital applications their ads actually appeared on; a federal PAC’s report may describe an expenditure as being for “online/ digital advertising” and list a payment to a digital consulting firm, but the PAC will not separately report where the firm placed the ads.⁷ Because the Federal Election Commission (“FEC”) has not always required political committees to disclose the ultimate payee of a disbursement, the public is without the tools needed to identify which digital platforms have run advertising sponsored by federal candidates, parties, and PACs.

Moreover, federal campaign finance law does not apply to digital communications paid for by non-committee sources if they do not include

<https://foundation.mozilla.org/en/blog/new-research-streaming-platforms-are-wild-west-political-ads/>.

⁴ Nielsen, *The Nielsen Total Audience Report: August 2020* (Aug. 13, 2020), <https://www.nielsen.com/us/en/insights/report/2020/the-nielsen-total-audience-report-august-2020/>.

⁵ See Romm, *supra* note 1.

⁶ See Mozilla, *supra* note 3.

⁷ See Brendan Fischer & Maggie Christ, *Digital Transparency Loopholes in the 2020 Elections*, CAMPAIGN LEGAL CTR. (Apr. 2020), <https://campaignlegal.org/sites/default/files/2020-04/04-07-20%20Digital%20Loopholes%20515pm%20.pdf>; see also FEC Form 3X Instructions for Schedule E (Itemized Independent Expenditures), <https://www.fec.gov/resources/cms-content/documents/fecfrm3xei.pdf> (“For each person who receives a payment or disbursement during the calendar year aggregating in excess of \$200 in connection with an independent expenditure, provide on Schedule E . . . the purpose of the independent expenditure (e.g., radio, television, newspaper).”).

“express advocacy” for or against specific candidates for federal office. This means that vast quantities of digital political ads, including those on streaming platforms, fall outside of the law and the FEC’s transparency rules.⁸ Streaming services similarly operate beyond the Federal Communications Commission’s regulatory regime, which generally requires broadcast and cable TV stations—but not digital platforms—to make information regarding political ads and their sources accessible to the public online.⁹

Finally, although platforms like Facebook and Google have voluntarily created public archives that include copies of political ads and disclose how much an advertiser spent, streaming services have largely failed to institute similar transparency measures.¹⁰ This not only makes it extremely difficult to calculate how much advertisers have spent on a platform but also leaves the public in the dark about the content of many targeted political ads.¹¹ According to the Mozilla Foundation, “opacity, not transparency, is the status quo,” with existing platforms implementing widely different terms of service, targeting capabilities, and definitions of what constitutes a “political ad.”¹² Thus, little public information is available about how these platforms sell political ads or who is buying them.¹³

In California, the FPPC can account for the rise of political ads on streaming platforms, and other novel forms of digital media, by ensuring that advertisements run on these platforms are subject to the same reporting and disclaimer requirements applicable to other video and audio political advertising, including traditional TV and radio ads. While the size and duration of digital ads can vary considerably, and there are many ways in which video and audio components can be integrated into digital

⁸ The federal definition of “electioneering communication” only encompasses “broadcast, cable, or satellite” ads referring to clearly identified federal candidates within 60 days of a general election or thirty days of a primary. See 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

⁹ Statutes and Rules on Candidate Appearances & Advertising Fed. Communications Comm’n, <https://www.fcc.gov/media/policy/statutes-and-rules-candidate-appearances-advertising> (last visited Feb. 18, 2021).

¹⁰ See Mozilla, *supra* note 3.

¹¹ See, e.g., Brendan Fischer, Maggie Christ, & Sophia Gonsalves-Brown, *How the 2020 Elections Remain Vulnerable to Secret Online Influence*, Campaign Legal Ctr. (Aug. 2020), <https://campaignlegal.org/sites/default/files/2020-08/08-18-20%20Post-Primary%20Digital%20Ad%20Report%20%28330pm%29.pdf>.

¹² See Mozilla, *supra* note 3, <https://foundation.mozilla.org/en/blog/new-research-streaming-platforms-are-wild-west-political-ads/>

¹³ *Id.*

communications that would not be possible with traditional TV or radio advertising, the most effective regulatory approach to addressing concerns about small, short-length, or complex digital advertising is to develop flexible and technology-neutral disclosure rules applicable to video and audio communications, and to address challenges presented by unorthodox advertising formats on a case-by-case basis.

Similarly, the FPPC can facilitate greater transparency around political ads on streaming services by requiring political advertisers—*i.e.*, the candidate campaign or political committee that paid for the ad—to disclose, on reports to the FPPC, which digital platforms ultimately distributed their ads to the public. While political advertisers in some instances would need to obtain this information from vendors and other intermediaries who purchased ads on their behalf, the added information would be of substantial value to the FPPC and the public in identifying where a candidate’s or committee’s digital advertisements actually appeared online. The Task Force should consider how such an augmented reporting obligation for digital ad expenditures would fit within the Political Reform Act’s framework.

Finally, the trend towards political spending on streaming services further underscores the importance of the Task Force examining the possibility of creating a government-hosted archive of digital ads in California’s elections. When only larger platforms maintain archives, political advertisers can sidestep transparency by routing ad spending to smaller platforms—like streaming services—that do not make ad information publicly available.¹⁴ Hosting the public ad archive within a state agency, and requiring that advertisers disclose all relevant information to the state, would promote fulsome disclosure of all digital political ads, rather than only that subset of ads run on big platforms.

b. Presidential campaigns use app-based data collection and microtargeting.

In 2020, both the Biden and Trump campaigns launched mobile applications that supporters could download to receive news and updates, learn about volunteer opportunities and campaign events, and engage directly with campaign staff and likeminded voters.¹⁵ But these apps also allowed the presidential campaigns to collect large amounts of personal information from

¹⁴ See Fischer, Christ, & Gonsalves-Brown, *supra* note 11.

¹⁵ See Sue Halpern, *How The Trump Campaign’s Mobile App Is Collecting Huge Amounts Of Voter Data*, NEW YORKER (Sept. 13, 2020), <https://www.newyorker.com/news/campaign-chronicles/the-trump-campaigns-mobile-app-is-collecting-massive-amounts-of-voter-data>.

users, including their contact lists, location and G.P.S. data, and Wi-Fi and Bluetooth connections, among other content on their mobile devices.¹⁶ The Biden and Trump campaigns were able to pull this information from app users thanks to “a rapidly maturing commercial geo-spatial intelligence complex,” which has significantly expanded opportunities for digital data collection and microtargeting in connection with elections.¹⁷

According to the Center for Digital Democracy, location analytics technologies now “enable companies to make instantaneous associations between the signals sent and received from Wi-Fi routers, cell towers, a person’s devices and specific locations,” providing advertisers “greater ability both to ‘shadow’ and to reach individuals nearly anytime and anywhere.”¹⁸ Trump’s campaign app, for example, used users’ data to send them messages tied to their physical locations, and to identify potential supporters within the app users’ personal networks.¹⁹ The Trump campaign also may have sold or transferred app users’ information to third-party data brokers, who are part of “a billion-dollar shadow industry dedicated to buying and selling data from disparate sources.”²⁰

Among the possibilities, third-party brokers could have combined data pulled from the Trump campaign app with other information available through digital sources to create personalized profiles for both the app’s users and “lookalike audiences,” and then sold that data to other political advertisers seeking to target ads to those users.²¹ The 2020 presidential apps also implicated cybersecurity concerns; in the summer of 2020, researchers identified a flaw in the Trump app that made users’ data highly vulnerable to hacking efforts.²² Although the researchers concluded no data was actually

¹⁶ Jacob Gursky & Samuel Woolley, *The Trump 2020 app is a voter surveillance tool of extraordinary power*, MIT TECH. REV. (June 21, 2020), <https://www.technologyreview.com/2020/06/21/1004228/trumps-data-hungry-invasive-app-is-a-voter-surveillance-tool-of-extraordinary-scope/>.

¹⁷ Kathryn Montgomery & Jeff Chester, *The digital commercialization of US politics – 2020 and beyond*, Ctr. for Digital Democracy (Jan. 16, 2020), <https://www.democraticmedia.org/article/digital-commercialisation-us-politics-2020-and-beyond>.

¹⁸ *Id.*

¹⁹ Garance Burke, *Financially troubled startup helped power Trump campaign*, AP NEWS (Nov. 17, 2020), <https://apnews.com/article/phunware-app-helped-power-trump-campaign-89ed273f60e37ff9ee020dd2f5d3df04>.

²⁰ Gursky & Woolley, *supra* note 16.

²¹ *Id.*

²² Tim Starks, *Security researchers uncover Trump campaign app vulnerability*, POLITICO (June 15, 2020),

hacked from the Trump app, and the campaign reportedly resolved the security issue quickly, the incident nonetheless highlights safety questions surrounding data collection from personal devices by campaigns and other political groups.

In upcoming elections, California candidates and committees may try to replicate the 2020 presidential candidates' app-based data collection and microtargeting strategies. As part of its review, this Task Force should consider how the Political Reform Act would regulate the collection of voters' personal data from digital applications, as well as the sale or transfer of that data to third parties.

c. More digital platforms self-regulate with little consistency across the industry.

In light of federal lawmakers' continued inaction on digital ad regulation, more digital platforms rolled out their own internal policies on political advertising in advance of the 2020 election. Following the lead of Facebook, Twitter, and Google, which revamped their political advertising policies and introduced public archives of political ads in 2018, other major platforms have adopted new rules and protocols for political advertising they disseminate. These voluntary, platform-specific policies vary widely in their scope and efficacy and are not subject to government enforcement. Not only can these voluntary policies be revised or rescinded at any time, but the absence of a uniform, consistent, and legally enforceable approach makes both compliance and public access to information more complex, an outcome that is undesirable for advertisers and the public alike.²³

For example, Reddit, Snapchat, and Roku have each maintained their own political ad archives since early 2019.²⁴ These platforms' ad archives, like those developed by Facebook, Google, and Twitter, provide public access to copies of political ads and to basic information about the ads' sponsors, costs,

<https://www.politico.com/news/2020/06/15/security-trump-campaign-app-vulnerability-319814>.

²³ Election Integrity Partnership, *Evaluating Transparency in Platform Political Advertising Policies* (Sept. 24, 2020), <https://www.eipartnership.net/policy-analysis/evaluating-transparency-in-platform-political-advertising-policies>.

²⁴ Reddit Political Ads Transparency Community, REDDIT, <https://www.reddit.com/r/RedditPoliticalAds/> (last visited Feb. 18, 2021); Snap Political Ads Library, SNAPCHAT, <https://snap.com/en-US/political-ads> (last visited Feb. 18, 2021); Roku's Political Ad Archive, ROKU, <https://advertising.roku.com/Roku-s-Political-Ad-Archive> (last visited Feb. 18, 2020).

and distribution. But the substantive information available in each platform’s archive differs, and the archives are all missing key data, particularly regarding advertisers’ targeting capabilities and practices; they offer at most a partial snapshot of the overall political ad landscape on the internet.²⁵ In addition to hosting their own archives, some platforms have revised their terms of service and ad-vetting procedures to weed out false or misleading political advertising; however, these policies are often changed without public notice or explanation, and platforms have not coalesced around a common definition of what is a “political” ad in their respective policies.²⁶

Amid the current patchwork of platform-specific ad policies, the need for clear, uniform transparency rules on digital political advertising remains pressing. Notably, Twitter opted to stop selling political ads altogether in 2019 after facing public backlash for fueling the spread of online misinformation.²⁷ Industry-affiliated groups, meanwhile, have formulated their own “best practices” to try to bring more consistency to advertisers’ political disclosure policies, but these self-regulatory efforts have not produced the across-the-board transparency that voters deserve—in large part because their implementation is entirely optional.²⁸

Ultimately, only lawmakers and election officials can institute a sufficiently comprehensive and uniform regime that will ensure there is real transparency across the landscape of digital political advertising. As noted above, the Task Force should examine the possibility of creating a government-hosted archive of digital ads in California’s elections. This significant reform would help fill in the public information gaps that abound in the current, decentralized environment of platform-based political ad policies.

²⁵ Election Integrity Partnership, *supra* note 23.

²⁶ *Id.*

²⁷ See Kate Conger, *Twitter Will Ban All Political Ads, C.E.O. Jack Dorsey Says*, N.Y. TIMES (Oct. 30, 2019), <https://www.nytimes.com/2019/10/30/technology/twitter-political-ads-ban.html>. Facebook and Google also instituted temporary political ad “blackouts” in the leadup to Election Day 2020. Elena Schneider, *The rug has been pulled out: Campaigns flop amid Facebook, Google ad bans*, POLITICO (Jan. 27, 2021), <https://www.politico.com/news/2021/01/27/facebook-google-political-ad-ban-462948>.

²⁸ See, e.g., Digital Advertising Alliance, *Application of the Self-Regulatory Principles of Transparency & Accountability to Political Advertising* (May 2018), https://aboutpoliticalads.org/sites/politic/files/DAA_files/DAA_Self-Regulatory_Principles_for_Political_Advertising_May2018.pdf.

II. Making Digital Ad Disclaimers More Effective & User-Friendly

Political ad disclaimers are a key means of informing voters about election-related messaging. The U.S. Supreme Court has repeatedly recognized that transparency rules for political ads, including disclaimer requirements, promote the First Amendment interests of citizens seeking “to make informed choices in the political marketplace.”²⁹ And a growing body of empirical research confirms the informational value of transparency in elections, demonstrating that on-ad disclaimers can provide voters with a heuristic shortcut in assessing political messaging and its sources.³⁰

As political advertising increasingly shifts to digital media, disclaimers play an important role in “enabl[ing] the electorate to make informed decisions and give proper weight to different speakers and messages.”³¹ Consequently, it is critical that lawmakers and election officials ensure that disclaimer requirements can effectively apply across the diverse and evolving landscape of digital communications.

a. Digital ad disclaimers should provide voters with the same information available for other types of political advertising.

Voters’ right to information about political advertising should not depend on the medium by which the ads are distributed. Whether the public reads, watches, or listens to ads online or in print, on television, or on the radio, its right to meaningful information about election-related speech is constant. This means that the disclaimer requirements for a text, graphic, video, or audio

²⁹ See *Citizens United v. FEC*, 558 U.S. 310, 367 (2010) (quoting *McConnell v. FEC*, 540 U.S. 93, 197 (2003)).

³⁰ See, e.g., Abby K. Wood, *Campaign Finance Disclosure*, 14 ANN. REV. L. & SOC. SCI. 11, 20 (2018) (describing research finding that “[d]isclaimers have consistently been shown to affect voter perceptions.”); Michael Kang, *Campaign Disclosure in Direct Democracy*, 97 MINN. L. REV. 1700, 1717-18 (2013) (“Research from psychology and political science finds that people are skilled at crediting and discrediting the truth of a communication when they have knowledge about the source, but particularly when they have knowledge about the source at the time of the communication as opposed to subsequent acquisition.”).

³¹ *Citizens United*, 558 U.S. at 371. See also Abby K. Wood & Ann M. Ravel, *Fool Me Once: Regulating “Fake News” and Other Online Advertising*, 91 S. CAL. L. REV. 1223, 1253 (2018) (“Online advertising has become exponentially more important for political campaigns . . . and it will become the most important way for politicians to communicate with voters in the very near future.”).

digital ad should generally provide the same information included in the ad's closest equivalent among traditional media formats.

At the same time, disclaimer requirements for digital ads should be flexible and technology-neutral so that they cover not only current digital ad forms but also novel advertising formats that might arise in the future. There may be forthcoming digital ad forms that are incompatible with even the most flexible disclaimer requirements, and these novel ad formats may warrant including an adapted disclaimer, as described below. But any exceptions to the general disclaimer rules should be based on the objective technological constraints presented by the specific advertising medium at issue, and not on a political advertiser's subjective view regarding the feasibility of including a full disclaimer statement on a particular ad.

b. Multimedia digital ads should include disclaimers for each component of the ad.

Unlike political advertising through traditional media, digital ads often blend a combination of independent text, video, and audio components.³² It is relatively common, for example, for text or graphic digital ads also to include an embedded video, which might be hosted on a different website, such as YouTube. If the multimedia ad only included a disclaimer statement for its video portion, though, ad recipients who opted not to watch the video would never receive the disclaimer information.

To prevent this kind of digital transparency gap, disclosure rules should require a disclaimer for *each component* of a political ad that independently satisfies the relevant statutory criteria for disclaimer statements.

c. Allowing adapted disclaimers on digital ads that cannot include full disclaimers due to technological constraints.

Some digital ads may be technologically incapable of including a complete disclaimer in the ad itself. To account for instances when inclusion of a full disclaimer is genuinely not possible, digital ad rules may incorporate a

³² See, e.g., Google, *What is Rich Media?*, <https://support.google.com/richmedia/answer/2417545?hl=en#:~:text=Rich%20media%20is%20a%20digital,an%20audience%20with%20an%20ad> (last visited Feb. 18, 2021). Multicomponent ads also may be in the form of “native advertising,” like this sponsored content on BuzzFeed, which was paid for by the federal super PAC Next Gen Climate Action in 2016: <https://www.buzzfeed.com/nextgenclimate/surprising-things-about-democracy-you-wont-remember-from>.

limited exception that permits an “adapted disclaimer.” Generally, an adapted disclaimer should (i) identify the sponsor of the ad, and (ii) provide one-step access, by means of a direct link or on-ad indicator, for the ad’s recipients to immediately view any remaining disclaimer information with minimal effort and without having to navigate through any extraneous content.

The “one-step” rule is especially important for effective adapted disclaimers, as voters should not be forced to sift through even more political messaging to access information about a political ad to which they are legally entitled.³³ Digital communication technology is now sufficiently advanced that disclaimer information can be readily integrated into a political ad through a variety of means other than just a hyperlink, including non-blockable popups and roll-over displays.

The federal election reform legislation H.R. 1 incorporates a one-step rule for adapted disclaimers on online communications where a full disclaimer “is not possible”; the relevant language from that legislation is included at the end of these comments. Similarly, Washington State’s Public Disclosure Commission (“PDC”), by regulation, permits “small online advertising” with limited characters to include, in lieu of a full disclaimer, an automatic on-ad display that directs the ad’s recipients to the necessary disclaimer information.³⁴ The PDC regulation specifies that automatic displays on small ads “must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible.”³⁵ The regulation also lists permissible formats for these automatic displays, and small online advertising is compliant with Washington’s disclaimer

³³ The importance of the one-step requirement is exemplified by a Facebook ad campaign from the 2016 presidential election. In the months before the 2016 election, voters were targeted with Facebook ads sponsored by a page called “Trump Traders,” which urged third-party voters in swing states, and Hillary Clinton voters in other states, to “trade” their votes to help defeat Donald Trump. Neither the ads nor the Trump Traders Facebook page informed viewers that the messaging was actually sponsored by a federal super PAC called R4C16; instead, the ads and Facebook page directed viewers to TrumpTraders.org for more information. Those who proceeded to TrumpTraders.org first had to view a form, where they could select their preferred candidate and sign up for the vote-trading system. Scrolling down the page, a viewer could click a link for “more info on trading.” A viewer then would have to scroll to the very bottom of that page before seeing a disclaimer stating the page was “Paid for by R4C16.org.” See *Trump Traders*, <https://web.archive.org/web/20161102161910/https://trumptraders.org/trade/>.

³⁴ Wash. Admin. Code § 390-18-030(3).

³⁵ *Id.* § 390-18-030(3)(a).

requirements if it includes the disclaimer statement in a non-blockable pop-up, roll-over display, or comparable mechanism appearing on the face of the ad, or if it includes a separate text box in the ad that is conspicuously linked to a webpage with the necessary disclaimer statement.³⁶

Conclusion

CLC thanks the Task Force for considering our comments and recommendations on these important issues. We would be happy to provide additional information or answer follow-up questions to assist the Task Force as it continues to review digital advertising and regulatory options.

Respectfully submitted,

/s/ Austin Graham

Austin Graham
Legal Counsel

/s/ Brendan Fischer

Brendan Fischer
Director, Federal Reform Program

³⁶ *Id.* § 390-18-030(3)(b).

H.R. 1 (2021)

**Sec. 4207. APPLICATION OF DISCLAIMER STATEMENTS TO
ONLINE COMMUNICATIONS.**

...

(b) SPECIAL RULES FOR QUALIFIED INTERNET OR DIGITAL
COMMUNICATIONS. —

(1) IN GENERAL. — Section 318 of such Act ([52 U.S.C. 30120](#)) is amended by
adding at the end the following new subsection:

“(e) SPECIAL RULES FOR QUALIFIED INTERNET OR DIGITAL
COMMUNICATIONS. —

“(1) SPECIAL RULES WITH RESPECT TO STATEMENTS. — In the case of any
qualified internet or digital communication (as defined in section 304(f)(3)(D)) which is
disseminated through a medium in which the provision of all of the information specified
in this section is not possible, the communication shall, in a clear and conspicuous
manner—

“(A) state the name of the person who paid for the communication; and

“(B) provide a means for the recipient of the communication to obtain the remainder
of the information required under this section with minimal effort and without receiving
or viewing any additional material other than such required information.”



May 20, 2021

Submitted electronically to CommAsst@fppc.ca.gov

Richard C. Miadich, Chair
California Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Dear Chair Miadich and Members of the Task Force,

Campaign Legal Center (“CLC”) respectfully submits these written comments to the FPPC’s Digital Transparency Task Force regarding the draft recommendations for legislative and regulatory policies to be reviewed at the Task Force’s meeting on May 21, 2021.¹

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other federal and state court proceedings. Our work promotes every American’s right to a responsive and transparent democratic system.

CLC has closely followed the Task Force’s review of digital advertising practices and policies over the last year and previously submitted public comments to the Task Force for its May 2020 and February 2021 meetings. Brendan Fischer, the Director of CLC’s Federal Reform Program, also gave a presentation to the Task Force in May 2020 about differences in the political ad archives hosted by online platforms like Facebook, Google, and Snapchat. CLC continues to support the Task Force in its critical mission. The Task Force’s comprehensive review of the digital advertising landscape in U.S. elections positions the FPPC and state lawmakers to develop effective policies in this field and ultimately will ensure that California voters have better access to information about who is behind digital political ads in California elections.

¹ See Draft Recommendations of the Digital Transparency Task Force (May 17, 2021), <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/Task-Force/dttf-2021/may/draft-recommendations.pdf>.

The Task Force's draft recommendations would improve political ad transparency in California. In particular, CLC applauds the Task Force's recommendation to create a government-hosted archive of digital ads in California elections. By consolidating information about digital political advertising in one publicly accessible location, a government-hosted ad archive would be an effective solution to the problem of "dark" digital ads while also guaranteeing long-term preservation of ad info and avoiding the patchwork disclosure inherent in a decentralized system of platform-hosted archives.²

These comments propose adding two clarifications to strengthen the Task Force's final recommendations for greater digital ad transparency. Part I highlights how a government-hosted ad archive would facilitate greater enforcement of campaign finance laws and recommends that the Task Force's final report specifically cite law enforcement as another justification for creating a government-hosted archive. Part II outlines specific measures for improving digital ad disclaimers that the Task Force should include in its final report.

I. Stronger campaign finance enforcement also supports establishing a government-hosted digital ad archive.

As outlined in the draft recommendations, a government-hosted ad archive in California would improve the public's access to timely and accurate information about political ads disseminated online. Another major benefit of a government-hosted archive, which is not explicitly discussed by the draft recommendations, is facilitation of better campaign finance enforcement. The centralization of digital ad information in a government-hosted archive would allow for more legal oversight of digital political ads by the FPPC and other state officials, who could identify potential legal violations when reviewing committees' advertisements and accompanying data in the archive.

Additionally, a government-hosted archive would enable more citizen enforcement of the law by empowering journalists, watchdog groups, and other members of the public to review ads and information and alert the FPPC to possible wrongdoing. For example, in December 2020, CLC filed a complaint with the Federal Election Commission against Our American Century, a super PAC, regarding a likely violation of federal coordination rules identified through Google's ad archive, the Google Transparency Report.³ In other words,

² See, e.g., Election Integrity Partnership, *Evaluating Transparency in Platform Political Advertising Policies* (Sept. 24, 2020), <https://www.eipartnership.net/policy-analysis/evaluating-transparency-in-platform-political-advertising-policies>.

³ See Brendan Fischer, *CLC Complaint Alleges Super PAC Illegally Republished Trump Ad in Swing States*, CAMPAIGN LEGAL CENTER (Dec. 21, 2020),

CLC identified this probable infraction based on political advertisements available through Google’s ad database. But Google ads were just a fraction of Our American Century’s spending in 2020: Of the \$5.5 million the super PAC spent on digital independent expenditures, only about \$259,800 appeared in Google’s archive. It is impossible to know whether Our American Century also broke the law when advertising on other online platforms that do not voluntarily maintain public archives of political ads—underscoring the need for a centralized, government-hosted repository of digital election ads.

Along with informing voters about digital political ads and their sources, a government-hosted archive can aid the enforcement of campaign finance laws by state officials and the public at large. Accordingly, we recommend that the Task Force’s final report cite improving law enforcement as an additional justification for its recommendation to create a government-hosted archive of digital ads.

II. The Task Force’s final report should include specific recommendations for making digital ad disclaimers more effective and user-friendly.

In prior comments filed with the Task Force, CLC made several suggestions concerning how to make digital ad disclaimers more effective across the universe of digital ad formats now available to campaigns and political groups. While the Task Force’s draft recommendations would ask the state legislature to organize a study to examine the effectiveness of different styles of disclaimers,⁴ the Task Force’s final report should include more specificity regarding how to fortify California’s requirements for digital ad disclaimers. The inclusion of specific suggestions in the Task Force’s final report would provide the legislature valuable guidance in developing a study of disclaimers and in examining options to bolster California law’s disclaimer provisions.

To this end, CLC notes that its comments from February 2021 describe three key measures for making digital ad disclaimers more effective and user-friendly:⁵

<https://campaignlegal.org/update/clc-complaint-alleges-super-pac-illegally-republished-trump-ad-swing-states>.

⁴ Draft Recommendations of the Digital Transparency Task Force, at 6 (May 17, 2021), <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/Task-Force/dttf-2021/may/draft-recommendations.pdf>.

⁵ See CLC Comments to FPPC Digital Transparency Task Force, at 9-12 (Feb. 18, 2021), <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/Task-Force/dttf-2021/february-2021/CLC%20Comments%20to%20Digital%20Transparency%20Task%20Force%20of%20Feb%202021%20meeting.pdf>.

1. Digital ad disclaimers generally should provide voters with the same information available for other types of political advertising.

In general, a text, graphic, video, or audio digital ad should provide the same disclaimer statement required for the ad's nearest equivalent among traditional media formats. Any exceptions to disclaimer requirements for digital ads should be limited and based on the objective technological constraints presented by the specific ad at issue, not on the subjective preferences of political advertisers.

2. Multimedia digital ads should include disclaimers for each component of the ad.

Because digital advertising often combines text, video, and audio features in a single communication, disclosure rules should require a disclaimer to be included for *each individual component* of an ad that independently satisfies the relevant criteria for disclaimer statements. This requirement would close potential transparency gaps with respect to common types of multimedia digital ads.

3. Allowing adapted disclaimers on digital ads that cannot include complete disclaimers due to technological constraints.

In recognition that it may be technologically impossible for certain digital ads to include complete on-ad disclaimers, disclosure rules should include an "adapted disclaimer" exception in cases of technological impossibility. An adapted disclaimer on a digital ad should (i) identify the sponsor of the ad, and (ii) provide one-step access, by means of a direct link or on-ad indicator, for the ad's recipients to immediately view the remaining disclaimer information with minimal effort and without having to navigate through any extraneous content.⁶

In its final report, the Task Force should incorporate these three measures as specific recommendations for improving the effectiveness of digital ad disclaimers.

⁶ The federal legislation H.R. 1 similarly incorporates a limited exception to allow for adapted disclaimers on digital ads when a full disclaimer statement "is not possible." See For the People Act of 2021, H.R. 1, 117th Cong. § 4207 (2021).

Conclusion

CLC appreciates the Task Force's consideration of these comments and its receptiveness to all of our input over the last year. We would be happy to provide additional information to the Task Force as it prepares its final report.

Respectfully submitted,

/s/ Austin Graham

Austin Graham
Legal Counsel

/s/ Brendan Fischer

Brendan Fischer
Director, Federal Reform Program