



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%20for%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