



Help achieve an open and accountable government

June 17, 2021

VIA EMAIL

Chair Miadich and Digital Transparency Task Force Members
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Dear Chair Miadich and Digital Transparency Task Force Members,

As sponsors of AB 249 (2017, Mullin, the *California DISCLOSE Act*) and this year's SB 752 (Allen, the *Disclosure Clarity Act*) and as lead supporters of AB 2188 (2018, Mullin, the *Social Media DISCLOSE Act*), the California Clean Money Campaign would like to applaud the FPPC's Digital Transparency Task Force (DTTF) for its comprehensive review and recommendations of ways to increase transparency and accessibility of disclosures for digital advertisements.

We strongly support the concept of the DTTF's draft recommendations to create a state-run political advertisement archive for digital political advertisements. We would like to request that the archive record also record the top three contributors to ads, as required by the *California DISCLOSE Act*. We'd also like to request that the archive avoid potentially burdensome and duplicative requirements for campaign committees by instead requiring social media online platforms which are already required to store copies of those advertisements to automatically submit them to the archive as described below.

We also support the concept of the DTTF's draft recommendation for the Legislature to commission a community review including public engagement to examine the most effective visual and content designs for various campaign advertisement disclosures. We would like to request that the study commissioned specifically prioritize investigation of designs that optimize the disclosure of top contributors. In addition, we believe it is very important that the requested study specifically require that the methodology, materials, data, and draft conclusions be vetted in a fully open and transparent public process before any final report is released.

Below are further details about our three requested additions to the DTTF's recommendations.

1. STATE-RUN POLITICAL ADVERTISEMENT ARCHIVE MUST INCLUDE TOP THREE CONTRIBUTORS

The DTTF's draft recommendation appropriately recommends that the state-run political advertisement archive include a copy of any digital advertisements and information about the committee paying for the advertisement such as the name of the committee, its Treasurer, plus the filer's name, address, and phone number.

However, the DTTF recommendations do not yet include a requirement that committees also report to the archive the top three contributors to the committee that paid for the ad.

The *California DISCLOSE Act*, AB 249, required that online graphic ads link to a website that discloses the top three contributors of \$50,000 or more to the committee that paid for the ad. The *Social Media DISCLOSE Act* (AB 2188) followed up by requiring that committees provide social media "online platforms" like Facebook, Twitter, and Google with their top three contributors of \$50,000 or more, and that the online platform disclose

them on the ads in a specified fashion. But except for video ads, neither bill required the committee's ad graphics themselves to display those top three contributors.

Omitting from the state-run political advertisement archive the names of the top three contributors — perhaps the most important part of the disclosures — despite current law requiring committees to make that information available to voters when they place the ad would be a major hole in the database and a significant problem for FPPC enforcement.

Knowledgeable researchers might be able to painstakingly calculate who the top three contributors should have been when a particular digital advertisement was made by looking up the committee's contribution history in the Secretary of State's CalAccess website. However, that wouldn't allow them or FPPC enforcement to determine if the advertiser actually disclosed the correct top three contributors — or any top three contributors — when they placed the ads.

A practicable approach is to require committees to also send to the archive the top three contributors at the time the digital ad was placed. This will not be a burden because in current law they are already required to disclose that information in defined ways when they place the ad.

2. REQUIRING SOCIAL MEDIA PLATFORMS COVERED UNDER AB 2188 TO SEND DISCLOSURE INFORMATION TO THE STATE ARCHIVE WOULD AVOID DUPLICATIVE AND BURDENSOME REQUIREMENTS FOR COMMITTEES

A state-run political advertisement archive with copies of all of a committee's digital advertisements, its information, and the top three contributors at the time of each advertisement as defined by the *DISCLOSE Act* would be a great boon to Californian voters, researchers, and FPPC enforcement of disclosure rules.

Currently this information isn't archived anywhere for many types of electronic media advertisements. However, the *Social Media DISCLOSE Act* required in Section 84504.6 that online platforms such as Facebook, Twitter, and Google request most of that information when an advertisement is placed and to store the ad and the associated information in a publicly accessible online database for at least four years. Because online platforms are already required to gather and store that information, it would be relatively easy for them to connect to a state-run archive via an Application Programming Interface (API) to send the required information whenever a committee places an advertisement.

In addition, requiring social media platforms to automatically send the information to the state archive is superior because it will ensure that the archive has copies of every single political advertisement posted on the platform and the associated information in near real time.

Under this proposed amendment to the recommendations, committees would still be responsible for directly reporting to the archive digital ads that were not placed through social media online platforms as currently defined in Section 84504.6. But having social media online platforms that currently have databases do the reporting would avoid substantial duplicative and burdensome reporting requirements for committees that pay for ads on them, because the committees are already required under current law to provide the online platforms with their disclosure information

This is especially important because political ads on social media very often have multiple variations and targeting in different areas of the state —resulting in hundreds of ads to report, if not more —making it especially difficult for committees to accurately enter every single variation in the state archive for social media ads. Social media online platforms would be able to post that information to the state archive for all committees automatically, perhaps in exchange for lifting current law requirements that they keep their own archives.

3. ANY DISCLOSURE RESEARCH COMMISSIONED BY THE LEGISLATURE SHOULD BE CONDUCTED IN A FULLY OPEN, TRANSPARENT, AND PUBLIC PROCESS

We're excited to see the draft DTF recommendation 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.

The California Clean Money Campaign has always used an empirical and collaborative approach to design the DISCLOSE Act disclosure and visual requirements. This includes our own empirical research working with Maplight, along with nearly ten years of working with stakeholders, academic experts, the general public, the FPPC, and the Legislature. However, we haven't had time to conduct as much research as we'd like recently, so we think a new well-designed study on digital advertisement disclosure could be extremely helpful.

That said, it's crucial for any study commissioned by the Legislature about disclosure requirements be conducted in an especially transparent manner with full input from experts and the public.

First, any study should include as part of its scope empirically assessing each potential disclosure design for the percentage of voters who detect the top funder or funders of the committee paying for the ad, subject to feasibility on different types and sizes of digital advertisements.

Second, any such study should have at a minimum:

(1) A public hearing at the beginning of the process to help inform the scoping of the study and what questions it should ask.

(2) A public hearing where the study's proposed methodology, materials, and questions are disclosed and discussed before the actual study begins so that experts and stakeholders from all points of view can provide input before the study.

(3) A public hearing on the data and draft report before it is finalized. The hearing should include full public disclosure of the data analyses the reports' conclusions and recommendations are based on, along with Q&A with the researchers. Before the meeting a draft report should be available along with access to the full dataset.

Important reasons for public review and input before the study is conducted include that fact that participants' responses to particular tasks can be strongly influenced by the order in which tasks are presented, by the specific wording of questions or instructions, etc. Opportunity for the public to review the actual dataset of results before the final report is publicized would help ensure that no possible important findings are missed.

Such opportunities for public input will create the greatest confidence in the results of the study because experts and stakeholders from all perspectives will be able to understand and critique the study and findings before they are finalized.

Thank you again for all of your hard work of the Digital Transparency Task Force. If these issues are addressed, then the DTF's recommendations will be something we could strongly support to further California's leadership in the best possible transparency and disclosure in digital political ads.

Sincerely,



Trent Lange, PhD.
President and Executive Director
California Clean Money Campaign