



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