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**SENATE COMMITTEE ON  
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**  
Senator Steven Glazer, Chair  
2023 - 2024 Regular

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**Bill No:** AB 868 **Hearing Date:** 7/5/23  
**Author:** Wilson  
**Version:** 6/27/23  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Karen French

**Subject:** Political Reform Act of 1974: digital political advertisements.

**DIGEST**

This bill requires the Fair Political Practices Commission (FPPC) to develop an online archive of digital campaign advertisements. This bill also requires a candidate or committee that pays for a digital campaign advertisement related to a candidate for elective state office or a state ballot measure to submit that advertisement and specified information about it to the FPPC for inclusion in the archive.

**ANALYSIS**

Existing law:

- 1) Creates the FPPC and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act of 1974 (PRA).
- 2) Defines a “person” to mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.
- 3) Defines “committee” to mean any person or combination of persons who directly or indirectly does any of the following:
  - a) Receives contributions totaling \$2,000 or more in a calendar year (also known as a recipient committee).
  - b) Makes independent expenditures totaling \$1,000 or more in a calendar year to or at the behest of candidates or committees (also known as an “Independent Expenditure” committee).
  - c) Makes contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees (also known as a “Major Donor” committee).
- 4) Requires a qualified committee to file periodic statements and reports, as specified.
- 5) Defines "advertisement," for the purposes of specified provisions of the PRA, as any general or public communication that is authorized and paid for by a committee for

the purpose of supporting or opposing a candidate or a ballot measure, unless certain conditions are met.

- 6) Defines “online platform” to mean a public-facing internet website, web application, or digital application, including a social network, ad network, or search engine that sells advertisements directly to advertisers. Provides that a public-facing internet website, web application, or digital application is not an online platform to the extent that it displays advertisements sold directly to advertisers through another online platform, as specified.
- 7) Defines “online platform disclosed advertisement” to mean either of the following:
  - a) A paid electronic media advertisement on an online platform made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, for which a committee pays the online platform, unless all advertisements on the platform are video advertisements that can comply with a specific section of existing law. Individual posts, comments, or other similar communications are not considered online platform disclosed advertisements if posted without payment to the online platform.
  - b) A paid electronic media advertisement on an online platform that is not any of the following:
    - i) A graphic, image, animated graphic, or animated image that the online platform hosting the advertisement allows to hyperlink to an internet website containing required disclosures, as specified.
    - ii) Video, audio, or email.
- 8) Provides that electronic media advertisements that are not online platform disclosed advertisements, as defined, shall follow disclosure requirements for electronic media advertisements under existing law.
- 9) Requires a committee that disseminates an online platform disclosed advertisement to do all of the following:
  - a) Upon requesting the dissemination, expressly notify the online platform through which the advertisement would be disseminated, using the online platform’s chosen notification method, that the advertisement is an advertisement, as specified.
  - b) Provide the online platform with the disclosure name of the committee, as specified.
  - c) Provide the online platform with the name of the candidate to which the advertisement refers and the office to which the candidate is seeking election, as applicable, or number or letter of the ballot measure and the jurisdiction to which the advertisement refers.

- d) Provide the online platform with the name and identification number of the committee that paid for the advertisement.
- 10) Requires an online platform that disseminates committees' online platform disclosed advertisements meet all of the following requirements:
- a) Maintain, and make available for online public inspection in a machine readable format, a record of any advertisement disseminated on the online platform by a committee that purchased \$500 or more in advertisements on the online platform during the preceding 12 months. Requires each record contain all of the following:
    - i) A digital copy of the advertisement.
    - ii) The approximate number of views generated from the advertisement and the date and time that the advertisement was first displayed and last displayed.
    - iii) Information regarding the range charged or the total amount spent on the advertisement.
    - iv) The name of the candidate to which the advertisement refers and the office to which the candidate is seeking election, as applicable, or number or letter of the ballot measure and the jurisdiction to which the advertisement refers.
    - v) The name and identification number of the committee that paid for the advertisement, if the committee is assigned an identification number.
  - b) Requires the information required be made available as soon as practicable and be retained by the online platform for no less than four years.

This bill:

- 1) Enacts the Digital Advertisement Transparency and Accountability Act (DATA Act) operative on the first January 1 that is at least 60 days after the FPPC certifies a system for accepting and maintaining the information submitted by political committees.
- 2) Clarifies the definition of "online platform" to mean a public-facing internet website, web application, or digital application, including a social network, ad network, or search engine, that sells advertisements directly to advertisers. Provides that the term "online platform" does not include a public-facing internet website, web application, or digital application to the extent that it displays advertisements that are sold directly to advertisers through another online platform.
- 3) Adds a definition of "online platform disclosed advertisement" as either of the following:
  - a) A paid electronic media advertisement on an online platform made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media, for which the committee pays the online platform,

unless all advertisements on the platform are video advertisements that can comply with Section 84504.1. Individual communications are not considered online-platform-disclosed advertisements if they are posted without payment to the online platform.

- b) A paid electronic media advertisement on an online platform that is not any of specified types of digital postings, and are considered electronic media advertisements subject to the disclosure requirements of Section 84504.3.
- 4) Upon certification of the above system, eliminates the existing requirement for an online platform that disseminates committees' online platform disclosed advertisements and that receives \$50,000 or more from digital advertisement sales during a calendar month to maintain and make accessible for public inspection specified records of advertisements.
- 5) Requires, instead, an online platform to transmit to the commission a record of any advertisement disseminated on the online platform by a committee that purchased five hundred dollars (\$500) or more in advertisements on the online platform during the preceding 12 months specified information regarding digital advertisements and to retain the information for no less than four years for specified purposes, as specified.
- 6) Requires a political committee that pays for a digital advertisement to appear on an online platform if that advertisement supports or opposes a candidate for elective state office or a state ballot measure, to submit to the commission a copy of the digital advertisement and specified information, including, among other things, the name, disclosure name and identification number of the committee that paid for the advertisement, information relating to the subject of the advertisement, the name of the online platform or platforms on which the digital advertisement was displayed, and the amount paid or agreed to be paid to the online platform for the advertisement
- 7) Requires the information to be submitted to the FPPC in accordance with existing deadlines for the submission of semiannual statements and preelection statements, if the committee spends \$1,000 or more during the period covered by the statement.
- 8) Requires the FPPC to make information submitted pursuant to this act available in a centralized and publicly accessible online format, as specified, and to maintain information for a digital advertisement for no less than 12 years from the date that information is first submitted.
- 9) Requires the information submitted related to digital advertisements to be available to the public in a user-friendly format that includes search capabilities, including filtering by various parameters, and the ability to download raw data. Requires search and filter parameter categories to include, but not be limited to, committee payor name, dates the advertisements ran, the candidate or ballot measure at issue, the platforms used, keywords, and content.

- 10) Permits a committee to contract with an online platform to submit copies of the advertisement and other information specified above to the FPPC on behalf of the committee.
- 11) Makes a committee that submits the information related to a digital advertisement after the prescribed deadline liable in the amount of \$10 per day after the deadline until the information is submitted. Provides that this penalty applies in addition to any other penalties or remedies established by existing law, but provides that the \$10 per day penalty is the exclusive administrative penalty or remedy for a negligent violation of the provisions of this bill related to the submission of digital advertisements by a committee.
- 12) Makes various findings and declarations, as specified.
- 13) Makes technical, clarifying, and conforming changes.

### **BACKGROUND**

FPPC Digital Transparency Task Force. In 2019, the FPPC authorized and established the Digital Transparency Task Force (DTTF) in an effort to examine issues surrounding digital political advertising. The DTTF recognized that digital political advertising has risen over time with the advancement of social media and other online platforms. The DTTF sought to explore how to balance the rise of digital political advertising with the adequate need for transparency for these types of communication.

Following a number of meetings throughout 2020 and 2021, the DTTF published a report towards the end of 2021 with a summary of their efforts and a number of recommendations. One recommendation was to create a state-run political advertisement archive, which the DTTF saw as assisting in the facilitation of campaign finance enforcement and allowing for more legal oversight of digital advertisements by the FPPC. Additionally, the recommendations also specified that the archive collect and make publicly available copies of digital political advertisements.

Political Advertising Archives in Other Jurisdictions. The cities of Los Angeles, San Jose, and New York have all created online, government-run campaign advertisement archives where the public can access copies of certain political advertisements along with information about the persons or groups responsible for those advertisements. If certain requirements are met for a type of communication, such as when a monetary spending or a distribution threshold is reached, then the campaign is required to send a copy of the advertisement and other specified information to a centralized database where the public can access copies and locate information about the people and/or organizations responsible for the advertisement. For example, in Los Angeles, campaign communications that are distributed to 200 or more persons by a candidate, officeholder, or committee are required to be submitted to the City Ethics Commission, which makes those communications available through an online public data portal. The Los Angeles law applies not only to digital communications, but also to physical mail, emails, telephone calls (candidates and committees must submit a copy of the script for the call), and similar communications. In addition to the city archives, online platforms, such as Facebook and Google, have created their own archives in an effort to be more transparent and comply with existing law.

Existing Regulation of Political Advertising on Online Platforms. In the last several years, the Legislature has taken a number of significant steps to improve transparency in connection with political advertising. In particular, recently enacted legislation has sought to make information more accessible to the public about the identity of committees that are responsible for political advertisements, and of the top campaign contributors to those committees. Five years ago, in response to a growth in political advertisements on social media platforms, the Legislature approved and Governor Brown signed AB 2188 (Mullin), Chapter 754, Statutes of 2018, which requires online platforms that sell political ads to make specified information about those political ads available to the public, among other provisions. In accordance with the provisions of AB 2188, major online platforms that run political advertising (including Google, Meta (the parent company of Facebook), and Snap) maintain online political advertising libraries that include digital copies of political advertisements that ran on the platform, along with specified information about when the ad ran, the approximate number of views that the ad received, the amount charged or spent on the ad, the candidate or ballot measure that the ad supported or opposed, and the identity of the political committee that paid for the ad. Although the information available through these political advertising libraries is similar, there are differences in the way that each platform presents the information. Furthermore, there is no centralized library or archive that contains comprehensive information about political advertisements related to California elections that appeared on different online platforms.

### COMMENTS

- 1) According to the author: AB 868 (Wilson) would create a centralized, searchable, and user-friendly public record of digital campaign advertisements that appear across multiple online platforms.

Access to copies of the campaign ads that voters see on their smartphones, computers, and other devices, and information about who paid for those ads, is crucial to empowering an informed electorate. This information enables the public to understand what interests and groups are funding these ad campaigns, weigh the value and veracity of the ads' messages, and hold speakers accountable for any false or misleading statements. Additionally, targeting and microtargeting tools create opportunities for political committees to send inconsistent or conflicting messages to appeal to different groups of people. The creation of a centralized public record would enable the public to discover these inconsistencies and hold speakers accountable.

Tools for effective transparency must keep pace with advancing technology and changing practices. Currently, voters have no ability to search for or access digital campaign ads that appear across multiple online platforms. AB 868 creates a common-sense, forward-thinking public resource that addresses this need and will create crucial improvements to campaign transparency

- 2) Argument in Support. In a letter supporting AB 868, the League of Women Voters of California states, in part, the following:

*The League of Women Voters supports state campaign finance practices that increase transparency in funding sources in political campaigns so that voters*

*can be more informed when making decisions. The League also supports the effective monitoring and enforcement of campaign finance laws. The methods of financing political campaigns should protect representative democracy from being distorted by big spending in election campaigns and undue influence. Political campaigns are increasingly turning to advertising via digital media, including social media and internet websites. Current law does not address these forms of political advertising. As we have seen during recent election cycles, digital campaign ads have been used as vehicles for misinformation, disinformation, and amplifying "fake news." The nature of these ads makes it difficult for the public to correct and/or to respond to these ads or to understand who is trying to influence the public.*

- 3) Argument in Opposition. In a letter opposing AB 868, the California Chamber of Commerce stated, in part, the following:

*While we strongly support additional transparency in our elections process and agree that digital advertisements have increased in use in recent years, we don't believe that this will improve the state's current disclosure requirements.*

*California already has one of the most robust and transparent systems of campaign finance laws in the country... There is information already available through the Secretary of State's website where anyone in the world can see – in near real time depending on the proximity to an election of the expenditure – which candidate or committee has expended funds on digital ads, who contributed to the candidate or committee, what types of ads were paid for (whether they were digital, television etc.), and to the penny how much money was spent... Additionally, if there is any allegation of impropriety or malfeasance or a formal complaint is filed, the FPPC already has the authority to conduct a thorough investigation... While we appreciate the author's efforts to narrow the bill from last year, we will note that with the State facing a more than \$20 billion budget deficit, this proposal would add material cost to the FPPC budget.*

- 4) Who should submit? This bill makes political committees responsible for submitting information about digital advertisements to the FPPC. SB 921 (Newman) of 2022, was similar to this bill, although notably SB 921 would have made online platforms responsible for submitting digital political advertisements to the FPPC's archive, rather than requiring political committees to submit those advertisements as is proposed by this bill. SB 921 was held on the Senate Committee on Appropriations' suspense file.

Some of the reasoning behind requiring online platforms to submit information about digital advertisements, instead of imposing that obligation on political committees includes: 1) minimizing the number of entities that are submitting information to the FPPC, and 2) improving compliance because many political committees are ad hoc entities that exist only for a limited duration, online platforms may be in a better position to develop familiarity with submitting information about digital advertising to the FPPC, therefore improving compliance. However, this bill implements the recommendations of the DTF, including that committees paying for digital advertisements have the obligation of submitting copies and inputs regarding such advertisements to the archive, and noting that such a requirement "structurally flows

from obligations currently on committees to maintain records and report activity" under the PRA.

- 5) Double Referral. If approved by this committee, AB 868 will be referred to the Committee on Judiciary.

**RELATED/PRIOR LEGISLATION**

SB 921 (Newman) of 2021 would have made online platforms responsible for submitting digital political advertisements to the FPPC’s archive, rather than requiring political committees to submit those advertisements as is proposed by this bill. SB 921 was held on the Senate Appropriations Committee’s suspense file.

AB 2885 (Eduardo Garcia) of 2020 would have required an online platform to maintain and make available for online public inspection a description of the audience requested by the committee and the types of personal information used by the platform to target the advertisement, including use of characteristics that are protected classifications under law; and also would have required the online platform’s officers, to personally certify, under penalty of perjury, that to their knowledge the online platform has correctly disclosed all activity under this law. SB 2885 died in the Assembly Committee on Elections and Redistricting.

AB 864 (Mullin), Chapter 558, Statutes of 2019, among other things, excluded certain online communications from the Act’s campaign advertisement disclosure requirements, including communications opted into by the recipient, added certain requirements for campaign text messages, and added certain definitions to the provisions imposing requirements for advertisements on online platforms.

AB 2188 (Mullin), Chapter 754, Statutes of 2018, required, among other provisions, online platforms that sell political ads to make specified information about those political ads available to the public.

SB 1104 (Padilla) of 2014 would have required a candidate for elective state office, a slate mailer organization, or a committee that authorizes an expenditure for a campaign communication to file an electronic copy of the campaign communication with the Secretary of State. This bill would have also required the Secretary of State to maintain an archive of the filed campaign communications and to make the campaign communications available for public inspection on the Secretary of State’s website. This bill was held on the Assembly Suspense File.

**PRIOR ACTION**

Assembly Floor:	58 - 17
Assembly Appropriations Committee:	11 - 4
Assembly Elections Committee:	6 - 2

**POSITIONS**

**Sponsor:** Fair Political Practices Commission

**Support:** California Clean Money Campaign  
League of Women Voters of California  
Northern California Recycling Association

**Oppose:** California Chamber of Commerce  
California Federation of Teachers, AFT, AFL-CIO

**-- END --**