

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 868 (Wilson) – As Introduced February 14, 2023

SUBJECT: Political Reform Act of 1974: digital political advertisements.

SUMMARY: Requires the Fair Political Practices Commission (FPPC) to develop an online archive of digital campaign advertisements. 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 that archive. Specifically, **this bill**:

- 1) 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 the following information to the FPPC in a format specified by the FPPC:
 - a) The name and identification number of the committee that paid for the advertisement, as specified.
 - b) One of the following, as applicable:
 - i) The name of the candidate identified in the advertisement, whether the advertisement supported or opposed the candidate, and the office sought by the candidate.
 - ii) The number or letter designation of the ballot measure, and whether the advertisement supported or opposed the measure.
 - c) The name of the online platform on which the digital advertisement was displayed.
 - d) The amount paid or agreed to be paid to the online platform for the advertisement.
 - e) The date range during which the advertisement was displayed.
 - f) A copy of the digital advertisement.
 - g) The name, title, and contact information of the person submitting the information.
- 2) Requires a committee to submit the information specified above in accordance with the deadlines for semiannual statements and preelection statements, as specified.
- 3) 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.

- 4) Provides that the provisions outlined above shall become operative 60 days after the FPPC certifies a system for accepting and maintaining the information submitted by political committees. Makes existing laws that require an online platform to make information publicly available about political advertisements that are disseminated through the platform inoperative on that date. Requires the online platform to retain the information required by those laws for no less than four years, or to transfer the information to the FPPC, as specified.
- 5) Requires the FPPC to make the information specified above related to digital advertisements available in a centralized and publicly accessible online format.
- 6) Requires the FPPC to maintain information for a digital advertisement for no less than 12 years from the date that information is first submitted to the FPPC.
- 7) 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.
- 8) 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.
- 9) Defines the following terms, for the purpose of this bill:
 - a) “Digital advertisement” to mean a paid advertisement, as specified, that appears in a digital format, including on an internet website, digital application, or web application.
 - b) “Online platform” to means 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 the following:
 - i) 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.
 - ii) The internet website, web application, or digital application of a newspaper, magazine, or other periodical of general circulation that routinely carries news and commentary of general interest.
- 10) Makes various findings and declarations, including the following:

- a) Political campaigns are increasingly using digital media as a means of delivering campaign advertisements and persuading voters to support their campaigns.
- b) Digital campaign advertisements present unique challenges to regulators who are charged with ensuring that voters receive timely and accurate information about who is responsible for the content of the advertisement and the payments associated with producing and distributing the advertisement.
- c) Because of the impermanent nature of these ads, and because these ads are increasingly appearing in new digital spaces, it can be difficult and sometimes impossible for a voter to track down an ad they saw previously or to find other digital ads associated with a campaign or election.
- d) Although current law requires online platforms to maintain and make available a record of some of the campaign advertisements disseminated on the platform, these current requirements do not capture all digital ads run on those platforms and the different ways in which platforms maintain these records has made it difficult for the public, academics, and others to meaningfully utilize this information.
- e) Digital campaign advertisements are also used as vehicles for misinformation and disinformation, and the nature of these ads makes it difficult for the public, media, researchers, government agencies, and watchdog groups to find these ads, correct false statements, and hold speakers accountable.
- f) Creating a public record of digital campaign advertisements will facilitate transparency of those advertisements for the benefit of the public, journalists, academics, watchdog groups, and other persons seeking to better understand who is trying to influence voters and the outcome of elections.

11) Makes technical, clarifying, and conforming changes.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA). (Government Code §§83100, 83111)
- 2) 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, except as specified. (Government Code §84501)
- 3) Requires an online platform, as defined, that disseminates specified political advertisements that are paid for by committees, to do all of the following:
 - a) Maintain, and make available for online public inspection in machine readable format, a record of any ad that is disseminated on the online platform by a committee that purchased \$500 or more in ads on the online platform during the preceding 12 months. Requires each record to contain all of the following:

- i) A digital copy of the ad;
 - ii) The approximate number of views generated from the ad, and the date and time that the ad was first and last displayed;
 - iii) Information regarding the amount charged for or spent on the ad;
 - iv) Identifying information about the candidate or the ballot measure to which the ad refers; and,
 - v) The name and identification number of the committee that paid for the ad.
(Government Code §§84504.6(d)(1))
- b) Make the information related to campaign ads that are disseminated on the online platform available as soon as possible and retain those records for no less than four years.
(Government Code §§84504.6(d)(2))
 - c) Display a prominent link with the text "View Ads" or similar text on a page that contains information about the committee that paid for an ad, as specified. Requires the linked page to show all of the ads purchased by the committee on the platform. (Government Code §§84504.6(d)(3))
- 4) Requires a committee that disseminates an ad on an online platform to provide the platform with the information it needs to comply with the requirements of the PRA, as specified.
(Government Code §§84504.6(b))
 - 5) Requires elected officers, candidates, and specified committees to file semiannual disclosure statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31, except as specified. (Government Code §84200)
 - 6) Requires preelection campaign disclosure statements to be filed by specified elected officers, candidates, and committees as follows:
 - a) For the period ending 45 days before the election, the statement shall be filed no later than 40 days before the election.
 - b) For the period ending 17 days before the election, the statement shall be filed no later than 12 days before the election.
 - c) For runoff elections held within 60 days of the qualifying election, an additional preelection statement for the period ending 17 days before the runoff election shall be filed no later than 12 days before the election. (Government Code §84200.8)
 - 7) Permits the FPPC to impose administrative penalties in situations where it determines that a violation of the PRA has occurred. Permits the FPPC, through this administrative enforcement procedure, to require the person who violated the PRA to do any of the following:

- a) Cease and desist violation of the PRA;
 - b) File any reports, statements, or other documents or information required by the PRA; and,
 - c) Pay a monetary penalty of up to \$5,000 per violation. (Government Code §83116)
- 8) Provides civil and criminal penalties for violations of the PRA. (Government Code §§91000, 91004, 91005, 91005.5)
- 9) Provides that any person who files an original statement or report after a deadline imposed by the PRA is liable in the amount of \$10 per day after the deadline until the statement or report is filed, as specified, in addition to any other penalties or remedies established by the PRA. (Government Code §91013)

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) **Purpose of the Bill:** 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) **FPPC Digital Transparency Task Force:** In September 2019, the FPPC voted to establish a task force to study best practices for regulating campaign activity on social media and other digital platforms. That task force, known as the Digital Transparency Task Force (DTTF), included members of the FPPC, along with representation from a digital platform, political scientists and academics who study digital political activities, political practitioners experienced using digital technology in advertising and outreach, and groups devoted to

political transparency.

The FPPC formed the DTF in recognition of the fact that an increase in digital political activities created new challenges for ensuring transparency of campaign spending and advertising. After holding 10 meetings between April 2020 and July 2021, the DTF published a report summarizing its findings and making recommendations. One recommendation was the creation of a state-run archive for digital political advertisements. Although state law already requires online platforms to make certain information publicly available about political advertising that they run, the DTF found that approach lacking, noting that there were discrepancies in how platforms defined “advertisements” and in the types of information that the platforms disclosed. The DTF noted that a state-run archive would facilitate public review of political advertising and enforcement of the state’s campaign finance laws by centralizing and standardizing the information available about digital political advertisements.

- 3) **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 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.
- 4) **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. 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.

The online campaign advertisement archives in San Jose and New York generally include campaign advertisements that were paid for by independent expenditures, but do not include advertisements made by candidates and their committees. Other jurisdictions, including Marin County and the cities of Berkeley and Palmdale, have laws that require copies of certain campaign communications to be submitted to the jurisdiction and make those communications available to the public upon request, but do not generally post those communications online.

- 5) **Responsibility for Submitting Advertisements:** As currently drafted, this bill makes political committees responsible for submitting information about digital advertisements to the FPPC. As discussed in more detail below, a similar bill in the last legislative session proposed requiring the online platforms to submit that information to the FPPC.

It is possible that this bill's objectives would be better realized by requiring online platforms to submit information about digital advertisements to the FPPC, instead of imposing that obligation on political committees. A substantial majority of digital political advertising is made through a small number of online platforms. Accordingly, making those platforms responsible for submitting information to the FPPC about digital political ads will minimize the number of entities that are submitting information to the FPPC. Furthermore, 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 with this bill.

On the other hand, because online platforms are not responsible for creating the content of advertisements that political committees run on those platforms, the political committees may be in a better position to know which advertisements must be submitted to the FPPC. Furthermore, the DTF recommended that committees paying for digital advertisements have the obligation of submitting copies and inputs regarding such advertisements to the archive, noting that such a requirement "structurally flows from obligations currently on committees to maintain records and report activity" under the PRA.

- 6) **Effective Date and Suggested Amendments:** As currently drafted, this bill requires committees to begin submitting information about digital advertisements to the FPPC beginning 60 days after the FPPC certifies that it has a system for accepting and maintaining that information. Depending on when the FPPC makes such a certification, this requirement theoretically could go into effect in the days leading up to a major election. Changing state laws governing the submission of digital political advertisements during the middle of an election could create substantial burdens for the entities that are subject to those laws, thereby complicating compliance. Furthermore, any problems or technical issues with the FPPC's system when it is first deployed will be considerably more significant if the system is launched in close proximity to an election, when the system must deal with a larger volume of submissions.

To decrease the likelihood that the online archive of digital campaign advertisements may be launched in close proximity to a major election and to provide greater certainty to the regulated community about the date on which those entities will need to submit advertisements to that archive, committee staff recommends that this bill be amended to

require submissions to the FPPC's digital advertisement system beginning the January 1 that is at least 60 days after the FPPC certifies its system for accepting and maintaining that information.

- 7) **Penalties for Violations and Suggested Amendments:** As detailed above, violations of the PRA generally are subject to administrative, civil, or criminal penalties. Civil and criminal proceedings for violations of the PRA are relatively rare, however, and the FPPC deals with a substantial majority of enforcement cases through its administrative enforcement process. In most situations, the FPPC can levy a monetary penalty of up to \$5,000 per violation through an administrative enforcement action, though certain types of violations are subject to different penalty amounts. In addition to administrative, civil, or criminal penalties, the PRA also includes a "late filing fee" of \$10 for every day after the deadline for filing a statement or report until the date on which that statement or report is filed.

This bill establishes a similar \$10 per day late filing fee for information about digital advertisements that is required to be submitted to the FPPC under this bill, and specifies that the penalty shall apply in addition to other penalties or remedies, but the \$10 per day fee "shall be the exclusive administrative penalty or remedy for a negligent violation." As currently drafted, this language appears to allow for more significant penalties to be levied for inadvertent violations than for negligent violations, which does not appear to be consistent with the author or sponsor's intent. Accordingly, committee staff recommends amendments to this bill on page 9, line 35 by deleting the word "negligent" and inserting "non-intentional."

- 8) **Previous Legislation and Technical Issues:** SB 921 (Newman) of 2022, was similar to this bill, though 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 Appropriations Committee's suspense file.

Because this bill is based off the text of SB 921, it includes various provisions that are tailored for a law that requires online platforms to submit digital political advertisements; those provisions are less appropriate for a law that makes political committees responsible for submitting the advertisements, as proposed in this bill. To the extent that this bill continues to make political committees responsible for submitting digital political advertisements to the FPPC, various technical changes will be necessary to ensure that this bill accomplishes its goals.

SB 1104 (Padilla) of 2014 would have required all campaign communications that support or oppose a candidate for state office or a statewide ballot measure to be submitted to the Secretary of State (SOS) and made available on a campaign communication archive on the SOS's website, as specified. SB 1104 was approved by the Assembly Elections & Redistricting Committee by a 5-0 vote, but subsequently was held on the Assembly Appropriations Committee's suspense file.

- 9) **Arguments in Support:** The sponsor of this bill, the Fair Political Practices Commission, writes in support:

Political committees are spending more money than ever on digital campaign ads to affect public opinion and voter choices. On many platforms, committees can customize ads to particular groups, increasing the danger that these ads can be used to manipulate or spread misinformation or disinformation. It is currently not possible to view the ads paid for by a particular committee or campaign across multiple platforms. Better public transparency is needed to allow the public to review ads, determine who is funding these ads, and hold speakers accountable. Information about the money behind digital campaign ads helps voters weigh the value and veracity of the ad's message, empowering voters to make informed decisions at the ballot box.

By creating a publicly accessible and searchable record of digital ads in a centralized location, AB 868 would effectively address these transparency and accountability issues by providing voters with a mechanism to view digital ads associated with a particular campaign or committee across multiple online platforms.

10) **Arguments in Opposition:** In opposition to this bill, the California Chamber of Commerce writes:

The California Chamber of Commerce respectfully OPPOSES AB 868 (Wilson), as it would add yet another regulatory cost to political speech by requiring the [FPPC] to build and implement a new system to accept, process and maintain a database with nearly all of the digital advertisements that are created during a political campaign in the previous 12 months.

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...

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.

11) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

Fair Political Practices Commission (Sponsor)
League of Women Voters of California

Opposition

California Chamber of Commerce

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