

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2188 (Mullin) – As Amended April 5, 2018

SUBJECT: Political Reform Act of 1974: campaign disclosures: advertisements.

SUMMARY: Requires online platforms that sell political advertisements and have 50 million unique monthly United States (US) visitors or more to maintain a downloadable record with specified information about those political advertisements. Makes various changes to the required format for disclosures on electronic media advertisements that are required by existing law, and requires new disclosures to be included on specified electronic media advertisements that are paid for by political parties or candidates. Specifically, **this bill:**

- 1) Defines an “online platform,” for the purposes of this bill, as a public-facing Internet website, web application, or digital application, including a social network, ad network, or search engine, which sells advertisements, as defined, and has 50 million or more unique monthly US visitors or users for a majority of months during the preceding 12 months.
- 2) Requires an online platform, as defined, to do all of the following:
 - a) Display a hyperlink with the text “Who funded this ad?” on an advertisement paid for by an entity that qualifies as a committee under the Political Reform Act (PRA). Requires the hyperlink to comply with all of the following:
 - i) Be in the same font and size, which shall be no less than 8-point font, as the online platform’s text stating that the advertisement is an advertisement or is promoted or sponsored.
 - ii) Be located adjacent to the text stating that the advertisement is an advertisement or is promoted or sponsored.
 - iii) Be clearly clickable; and,
 - iv) Be linked to the profile or landing page of the committee that paid for the advertisement, or to an Internet Web site containing any disclosures that are required to appear on an electronic media advertisement pursuant to existing law.
 - b) Maintain, and make available for online public inspection in machine readable format, a complete record of any request to purchase an advertisement 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. Requires each record to contain all of the following:
 - i) A digital copy of the advertisement;
 - ii) A description of the audience targeted by the advertisement, the 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 average rate charged for 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, and whether the advertisement is in support of or opposition to the candidate or the ballot measure to which the advertisement refers; and,
 - v) The name and identification number of the committee that paid for the advertisement.
- c) Make the records of requests to purchase advertisements on the online platform available as soon as possible and retain those records for no less than four years.
 - d) Display a prominent button, tab, or hyperlink with the text “View Ads” near the top of a profile, landing page, or similar location of a committee that paid for an advertisement in a position that the average viewer will readily see it when viewing that page. Requires the button, tab, or hyperlink to link to a page clearly showing all of the records of requests to purchase advertisements on the online platform.
- 3) Requires a committee that requests to purchase an advertisement on an online platform to provide the online platform with the information necessary for the online platform to comply with its obligations under this bill.
 - 4) Requires an electronic media advertisement, other than a mass electronic mailing, as defined, that is paid for by a political party or a candidate-controlled committee established for an elective office of the controlling candidate, and that does not support or oppose a ballot measure and that is not paid for by an independent expenditure (IE), to include a specified disclosure regarding who paid for the advertisement.
 - 5) Increases the minimum size, from 8-point font to 10-point font, for disclosures that are required to appear on an advertisement made via a form of electronic media that allows users to engage in discourse and post content, or any other type of social media. Requires such disclosures to be easily readable by the average viewer, and to be fully visible on the cover or header photo when the profile, landing page, or similar location is viewed from any electronic media device that is commonly used to view the form of electronic media.
 - 6) Provides that a person who intentionally violates any of the provisions of this bill regarding the obligations of online platforms, as defined, for the purpose of avoiding disclosure is liable in a civil or administrative action brought by the Fair Political Practices Commission (FPPC) or by any person for a fine up to three times the cost of the advertisement, including placement costs.
 - 7) Makes technical and corresponding changes.

EXISTING LAW:

- 1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.

- 2) Defines “advertisement,” for the purposes 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 candidates for elective office or a ballot measure or ballot measures, except as specified.
- 3) Requires advertisements that support or oppose candidates or ballot measures to include disclosure statements in specified circumstances. These required statements may include a disclosure of the committee that is paying for the advertisement, a disclosure of the three top contributors to the committee paying for the advertisement, as specified, and a statement (in the case of an IE supporting or opposing a candidate) that the advertisement was not authorized by a candidate or a committee controlled by a candidate for that office.
- 4) Requires an electronic media advertisement that is an Internet Web site to include any required disclosure statements in a contrasting color and in no less than 8-point font.
- 5) Provides that a person who violates specified requirements for advertisements to include disclosure statements, in addition to specified remedies generally available under the PRA, is liable in a civil or administrative action for a fine of up to three times the cost of the advertisement, including placement costs, as specified. Provides that a person who intentionally violates specified other requirements for advertisements to include disclosure statements for the purpose of avoiding disclosure, in addition to specified remedies generally available under the PRA, is liable in a civil or administrative action for a fine of up to three times the cost of the advertisement, including placement costs, as specified

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

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

AB 2188, the Social Media DISCLOSE Act seeks to require online social media platforms to disclose information regarding the funders of political advertisements and to keep a database of the political ads they run. In 2017, the Governor signed AB 249, the California DISCLOSE Act, which made strides in addressing the shortcomings of existing campaign finance disclosure laws. The measure improved the clarity of formatting of disclosures and established new earmarking rules to identify original donors to committees and ballot measures. AB 2188 builds upon AB 249 by ensuring that these improved campaign finance regulations also apply to ads appearing on social media platforms. Currently, there is no way to determine who is paying for political ads that appear on voter’s Facebook, Instagram, and Twitter feeds. We live in an age where many voters consume political information and news via social media platforms. Because so many are exposed to this type of advertisement through social media use, it is imperative that California’s newly strengthened campaign finance disclosure laws also apply to ads appearing on these platforms.

- 2) **Federal Honest Ads Act:** The provisions of this bill that require specified online platforms that sell political advertisements to maintain a downloadable record with information about those political advertisements is modeled closely after the federal “Honest Ads Act,” which

is pending in the US Senate. The Honest Ads Act—which is contained in S. 1989—is a bipartisan bill that was introduced by Senators Amy Klobuchar (D-MN), Mark Warner (D-VA), and John McCain (R-AZ) last October. In addition to requiring online platforms to maintain public records about the purchasers of political advertisements on their platforms, S. 1989 expands federal campaign laws to include paid Internet and paid digital communications within the types of communications that are covered by those laws. S. 1989 also requires all advertising platforms to make reasonable efforts to ensure that paid advertising on their platforms does not violate federal laws that prohibit foreign nationals from attempting to influence elections through donations, expenditures, or other things of value.

While the provisions of S. 1989 and this bill are similar with respect to the information that is required to be maintained by online platforms, there are a couple of key differences. Notably, the federal Honest Ads Act applies not only to campaign advertisements, but also to advertisements that refer to national legislative issues. This bill, on the other hand, applies only to campaign advertisements (though this bill includes advertisements related to ballot measures). On the other hand, this bill requires online platforms to display a prominent link to all ads paid for by a committee on the landing page or similar location of that committee's presence on the platform. While S. 1989 generally requires online platforms to maintain information about all the ads paid for by a committee to appear on that platform, the federal bill does not include specific requirements for the location of that information to appear for a specific advertiser.

S. 1989 is pending in the US Senate's Committee on Rules and Administration.

- 3) **What is an Online Platform?** As detailed above, this bill defines the term “online platform” in a manner that limits the term to entities that sell advertisements—as defined in the PRA—and that have 50 million or more unique monthly US visitors or users for a majority of months during the preceding 12 months. Generally, for the purposes of Web analytics, the number of *unique visitors* to a website is the number of individuals who visited that website during the period of time in question, regardless of the number of times that any individual visited the website. In other words, if a person visited a specific website once a day, every day, for a month that person would be counted as one unique monthly visitor. Similarly, a person who visited a specific website one time in a month would also be counted as one unique monthly visitor. A website that has 50 million or more unique monthly US visitors or users, then, is a site that is visited by 50 million *different* people in the US over the course of a month. The Census Bureau estimates the current US population at about 327.5 million people, so a website that has 50 million or more unique monthly US visitors is visited by more than 15 percent of the US population in the typical month.

In light of this definition of the term “online platform,” it seems likely that only a very small number of websites will qualify as online platforms, and thus will be subject to the recordkeeping requirements of this bill. It is unclear, however, exactly which entities would meet the unique visitor requirements of this bill. While various private entities track web traffic levels to public websites, there is no single, uniform method for producing those figures or for determining the number of unique monthly visitors that websites receive. Furthermore, the web traffic figures produced by these private entities are not exact – they are estimates of the total traffic that websites receive. This bill does not specify how the number of unique monthly US visitors to a platform would be determined, and as such, it is

unclear how a platform or the FPPC would know whether a platform was subject to the requirements of this bill. That lack of clarity could create challenges for enforcement and compliance with this bill.

- 4) **Disclose Act and Suggested Amendments:** Last year, the Legislature approved and the Governor signed AB 249 (Mullin), Chapter 546, Statutes of 2017, which significantly changed the content and format of disclosure statements required on specified campaign advertisements in a manner that generally required such disclosures to be more prominent. AB 249 also established new requirements for determining when contributions are considered to be earmarked, and imposed new disclosure requirements for earmarked contributions to ensure that committees are able to determine which contributors must be listed on campaign advertisements. AB 249 is commonly known as the “Disclose Act.” The passage of AB 249 marked the culmination of seven years of debate and negotiation over similar legislation.

In addition to imposing new requirements for online platforms, as defined, to maintain downloadable records about specified political advertisements, this bill also makes a number of substantive changes to the Disclose Act. Some of the changes that this bill proposes to make to the Disclose Act are inconsistent with negotiated compromises regarding the scope and reach of AB 249. Notably, AB 249 was carefully written to maintain the existing disclosure requirements that applied to advertisements that are paid for by political parties and by candidates' own campaign committees. By contrast, this bill would create new disclosure requirements for electronic media advertisements that are paid for by political parties or candidate-controlled committees established for an elective office of the controlling candidate. Additionally, this bill proposes increasing the required font size for disclosures on certain other electronic media advertisements.

In light of the long legislative process that was required to pass the Disclose Act, including the extensive negotiations between stakeholders over many of the details in that bill, the author and the committee may wish to consider whether it is prudent to begin revisiting significant policy decisions in the Disclose Act before a single statewide election is conducted with its provisions in effect. **To avoid making substantive changes to the Disclose Act, the author and the committee may wish to consider amendments to strike "10" and insert "8" on line 15 of page 4 of the bill, and to delete Section 2 from the bill.**

- 5) **Television and Radio Public File:** The requirements found in this bill and in S. 1989 to require an online platform to maintain a downloadable record with specified information about paid political advertisements that appear on that platform seem to be modeled loosely after existing provisions of federal law that require radio and television broadcast stations, cable television stations, direct broadcast satellite providers, and satellite radio providers to maintain a “public inspection file” or “public file” that includes specified information about the station’s operations and service to its community. One part of the required “public file” is the “political file,” a file that contains all requests for advertising time by candidates and certain issue advertisers, as well as the deals agreed to by the broadcaster or cable or satellite provider and the advertiser. The political file must also include a description of when political advertising actually aired, the rates charged, and the classes of time purchased. Historically, the public file was maintained in paper form at the station, but recently, the Federal Communications Commission (FCC) began requiring almost all entities to post that information online on the FCC’s website.

- 6) **Arguments in Support:** A coalition letter in support of this bill sent by a number of organizations, including the California Clean Money Campaign, states:

AB 2188 is a simple yet powerful extension of last year's AB 249. AB 249 already requires electronic media ads to include a "Who funded this ad?" link to a website with the required top three contributor disclosure. Technically, however, ads on social media and some online platforms like Google ads do not make this possible.

AB 2188 is a direct analog of the bipartisan Honest Ads Act for California elections, and also provides significantly more information to voters because it links to existing AB 249 requirements that social media profile pages clearly list their top 3 funders, with ballot measure ads required to use AB 249's nation-leading earmarking rules to show the true funders even if they try to hide behind front groups...

AB 2188 closes the current disclosure loophole for online platforms to provide Californians the information they want and need about who's funding social media political ads which skyrocket in importance every election.

- 7) **Related Legislation:** AB 2155 (Mullin), which is also being heard in this committee today, makes various changes to state law governing the content and format of disclosure statements that are required to appear on communications sent by candidates and committees.

AB 2882 (Harper), which is also being heard in this committee today, lowers, from \$500 to \$100 per calendar year, the cap on the amount of dues, assessments, fees, and similar payments that may be made to a membership organization or its sponsored committee from a single source for the purpose of making contributions or expenditures without being considered earmarked for the purposes of a specified provision of law.

- 8) **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

California Church Impact
California Clean Money Campaign
California Common Cause
California League of Conservation Voters
Californians for Disability Rights
CALPIRG
End Citizens United - Fight For Reform
Endangered Habitats League
League of Women Voters of California
LegitAction
Lutheran Office of Public Policy
Maplight
Money Out Voters In
People for the American Way
Public Citizen
Represent.Us
Women's Institute for Freedom of the Press

Opposition

None on file.

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