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**To:** Digital Transparency Task Force

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**Subject:** **Draft Recommendations of the Digital Transparency Task Force**

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**Recommendation 1. Creation of a state-run political advertisement archive for digital political advertisements.**

Political campaigns are increasingly using digital media (websites, social media, etc.) as a means of delivering campaign advertisements to voters. Digital campaign advertisements present unique challenges to regulators, such as the FPPC, who are charged with ensuring that voters receive timely and accurate information concerning who is responsible for the content of the advertisement and the payments associated with producing/distributing the advertisement.

Some jurisdictions, including the cities of Los Angeles and New York, have created government-run campaign advertisement archives where members of the public, academics, and the news media can access copies of digital campaign advertisements and quickly locate information about the persons/groups responsible for the advertisements as well as the spending associated with the advertisement. California has not established a similar archive at the State-level.

While various online platforms retain and make publicly available certain information about political advertisements run on their respective platforms, testimony presented to the Task Force indicates that there are large discrepancies in both how platforms define “advertisements,” as well as what type of information is disclosed. Additionally, a federal appellate court recently struck down portions of a Maryland law that, similar to California, required online platforms to maintain information about campaign advertisements on their platform.

In the interests of transparency and providing relevant information to the electorate, it is therefore the recommendation of the Task Force that the State of California create a state-run archive to collect and make publicly available copies of specified digital political advertisements.

The Task Force heard from a multitude of speakers who support the Archive or are working toward an Archive in their own jurisdiction. Most agree that platform run archives are inconsistent in the type of information disclosed and lack enforcement capabilities. Specifically, the Campaign Legal Center presented the difference between the Facebook, Google, and Snapchat advertisement archives and how each platform disclosed different information. The State of Maryland has been one of the first to create such an archive and has seen a positive impact on voters and transparency.

## **Recommendation 2. Contents of the Archive.**

1. The Task Force recommends that the Archive contain the following information:
  - a. Copy of the advertisement.
    - i. Copies of any digital advertisements which meet the definition of “advertisement” pursuant to Government Code Section 84501 must be submitted to the Archive.
  - b. Committee paying for the advertisement.
    - i. If a candidate-controlled committee – the name of the candidate, the name of the committee, and the Treasurer of the candidate’s controlled committee;
    - ii. Non candidate-controlled entities qualifying as committees pursuant to Government Code Section 82013(a) – the name of the sponsor(s) if any, the name of the committee, and the Treasurer of the committee;
    - iii. Individuals or entities qualifying as committees pursuant to Government Code Sections 82013(b) and (c) – the name, address and phone number of the filer (name used shall be that by which the filer is identified for other legal purposes or any name by which the filer is commonly known to the public); name and phone number of responsible officer if filer is other than an individual.
  - c. What platform(s) or entity the committee paid for the advertisement to appear, when the advertisement ran, and for how long.
  - d. The amount paid to the platform to disseminate the advertisement.
  - e. The number of people to whom the advertisement was disseminated directly, or expected to be disseminated, by the platform;
  - f. Identification of each candidate (including name and public office sought) or ballot measure referenced by the advertisement; and
  - g. Intended Audience.
    - i. Inputs supplied by the committee to a platform or entity for distribution of each advertisement; including age, gender, geographic location, and any other targeting criteria selected and paid for by the committee.

In recommending that the Archive contain information pertaining to the intended audience of each advertisement, the Task Force is mindful of the balanced approach necessary to increase transparency while also respecting the privacy and propriety considerations of campaign and political participants. To these ends, the Task Force has recommended the submission of data akin to what would be

disclosed on a receipt for services purchased, a majority of which is data already publicly disclosed by platforms themselves. Such information includes the total amount spent, dates the advertisement aired, number of impressions, geographic location, and any information related to age and gender of the targeted audience.

Disclosure of an advertisement, who paid for an advertisement, where and when an advertisement ran, and the amount paid for an advertisement are categories used unanimously among the different archives currently in existence. The Task Force heard from the State of Maryland, New York City, the City of Los Angeles, Facebook, and Google regarding the type of information disclosed in their respective archives. While each archive used a different approach, they all included some form of this disclosure. Where they differ was in the targeting information and how that should be disclosed. Facebook and Google take the approach of disclosing age, gender, and location of ad impressions. Maryland's database does not include targeting information, but the Maryland State Board of Elections has the ability to subpoena the information as needed.

2. The Task Force recommends that the following types of advertisements be included in the Archive:
  - a. State-level candidate and ballot measure advertisements. The Task Force recommends that the Archive currently focus on housing advertisements pertaining to state-level candidates and ballot measures. This would include Assembly, Senate, CalPERS/CalSTRS, and Constitutional Officer races in addition to statewide ballot measures.
  - b. Digital advertisements. The Task Force recommends that for its initial launch the Archive focus on the housing of solely digital advertisements. This includes, but is not limited to, advertisements disseminated over internet platforms such as Facebook and Google, paid influencer content, and any other type of paid speech disseminated over the internet or through digital means which meets the definition of "advertisement" as defined by Government Code Section 84501.

The Task Force further recommends that the Archive be built in such a way as to allow for expansion in the future to encapsulate local-level candidate and ballot measure advertisements, issue advertisements, and non-digital advertisements. While there is inherent value from a transparency and efficiency standpoint of housing all such data in a single database; the Task Force is mindful of feasibility implications and believes that an Archive focusing on state-level candidate and ballot measure advertisements will be of most use to voters at the current time.

In 2014, Senator Padilla introduced Senate Bill 1104 that would have covered all campaign communications, advertisements, mass mailings, and slate mailers supporting or opposing a candidate for elective state office or a statewide ballot measure that would be filed with the Secretary of State office. While this bill did not advance, the approach of the Task Force is similar by including state level communications.

3. The Task Force recommends that Committees paying for digital advertisements have the obligation of submitting copies and inputs regarding such advertisements to the State Archive. This structurally flows from obligations currently on committees to maintain records and report activity as designated by the Political Reform Act.

Committees may wish to contract with platforms to have the relevant information transmitted directly to the Archive if feasible. The ultimate legal obligation for provision of the required information, however, should rest with the Committee paying for the advertisements.

Los Angeles City Ethics Commission places the filing requirement on the Committee. Maryland House Bill 981 placed the reporting obligation on the platforms which resulted in some platforms not allowing advertisements within the state.

4. The Task Force recommends that the following be taken into consideration for design of the Archive:
  - a. Accessibility across levels of inquiry. The Archive should be easily navigable by the average voter allowing them to search for information most relevant to them, while also supplying a heightened level of information for those interested in conducting research or further analysis. To these ends, the Archive should be designed with multiple types of users in mind.
  - b. Searchability. A user should be able to search the Archive through as many data points as possible, including, but not limited to: committee payor name, date(s) advertisement(s) run, candidate/ballot measure at issue, platform(s) used, etc. To the extent possible, the Archive should provide an open API, as well as the ability to download raw data through multiple formats.
  - c. Community review. The Task Force strongly recommends that throughout the design process a diverse set of stakeholder groups are consulted in order to offer suggestions and garner feedback as to accessibility, ease of use, and desired searchability functions.

The Center for Civic Design quickly found the “bite, snack, meal” model to contain the most accessible information for readers as it gives the right amount of information for each individual seeking it. The Center believes that receiving a small amount of information leads to curiosity and further research. The idea of progressive disclosure removes information overload which usually causes a reader to feel underprepared or disengaged. Venable LLP’s use of political ad icons uses the same small information first model and they have come to the same conclusion that a user’s ability to control information leads to greater understanding and transparency.

5. The Task Force recommends that the following be taken into account in creation and maintenance of the Archive:

- a. Training and customer service. The Archive should contain online training tools, both for entities submitting digital advertisements, as well as for individuals or organizations seeking to research the available data. To the extent possible, customer service assistance should be made available via online support.
- b. Timeline for maintenance of records. The Task Force recommends that the records housed by the Archive be maintained in perpetuity. If this goal is not feasible given financial or capacity limitations, then the Task Force recommends the data be maintained for a minimum of 4 years from the date of submission.
- c. Timeline for submission to the Archive. The Task Force recommends that the required information regarding digital advertisements be submitted to the Archive no later than when the campaign report is due disclosing the attendant expenditure.

However, in the 90 days prior to an election, commonly referred to as the “late reporting period” in which various activity is currently required by the Political Reform Act to be disclosed within 24 hours, the Task Force recommends that required information regarding digital advertisements be submitted to the Archive within 24 hours of going live.

- d. Public Records Act requests. The Task Force recommends that records be retained and made available in such a way as to allow a member of the public to download any records which may be subject to a Public Records Act request. The goal of this recommendation is two-fold: to provide fast and expedient access to records for members of the public, while most efficiently using staff and department time and resources.

As learned from the Center for Civic Design presentation, training and customer service are important pieces to any project.

The City of Los Angeles Ethics Commission and New York City Campaign Finance Board use a similar approach of shortened reporting timelines during the late reporting period.

### **Recommendation 3. Commission a Study**

Under existing State law, disclaimers on digital political advertisements are generally modeled after disclaimers that have historically appeared on advertisements appearing in print or on television. Given the continually evolving nature of digital communications, the Task Force has discussed whether there may be better or more efficient ways to provide voters with information about who is paying for digital campaign advertisements. For example, greater use of links taking a user to a webpage with further information, or simplified requirements applicable across multiple platforms.

The Task Force, therefore, recommends that the Legislature commission a study to examine whether there are different styles of disclaimers that could be required for digital campaign advertisements that would more effectively provide voters with information about who is paying for the digital campaign advertisements. This would be similar to the study completed by the Center for Civic Design in advance of Senate Bill 505 (2015) that ultimately authorized the Secretary of State to revise the Voter Bill of Rights wording as necessary to ensure understanding by the public. The Task Force believes this is the best way to ensure disclaimers on digital advertisements are designed and implemented in the most efficient way possible, while also taking the feasibility of digital disclaimers into account given the constantly evolving nature of digital communications.

The Task Force heard testimonial from public affairs technology company, Unearth Campaigns, that a major gap in online disclosure exists in digital videos, including vertical videos and .GIF videos. The inclusion of an embedded insignia, while uniform, still requires greater voter knowledge and removes transparency. The “Voter Bill of Rights” study by the Center for Civic Design is the framework for the study of disclaimers since their work led to greater understanding, participation, and transparency.