

*Re: Comments on Advisory Opinion 2017-12, Draft B*

Requestor Take Back Action Fund (TBAF), through counsel Campaign Legal Center, respectfully submits these comments in regards to AOR 2017-12 Draft B.

TBAF appreciates the effort of the Commission in crafting Draft A and Draft B ..

In reviewing both draft opinions TBAF wishes to emphasize that the sole question presented by TBAF's request, and reiterated in both drafts, is whether TBAF's proposed Facebook ads must "include all, some, or none of the disclaimer information specified by 52 U.S.C. § 30120(a)." (AOR at 4; Draft A at 3; Draft B at 4.)

Draft A seems to require no amendment to meet this end because it concludes that "TBAF must include all of the disclaimer information specified by 52 U.S.C. § 30120(a) on its proposed paid Facebook Image and Video advertising that expressly advocates for or against a candidate." (Draft A at 3.) TBAF appreciates the clear guidance that this draft would provide and has no concerns about its adoption.

Draft B states that TBAF's ads "will require disclaimers." (Draft B at 4-5, 7.) However, the concern regarding Draft B is that it never fully answers the question presented as to whether those disclaimers must "include all, some, or none of the disclaimer information specified by 52 U.S.C. § 30120(a)." (Draft B at 4.) Obtaining an answer to this question — so that TBAF can comply with applicable law — is the sole basis for TBAF's advisory opinion request. Because Draft B does not address whether the required disclaimers must include "all" or "some" of the § 30120(a) disclaimer information, it does not give the clear guidance that TBAF desires. Without that clarification, Draft B would not give TBAF the full answer it needs to create ads that maximize communicative content while complying with 52 U.S.C. § 30120(a).

Similarly, TBAF is not certain how to read Draft B's conclusion that "other methods of providing disclaimer information may also be permissible." (Draft B at 7.) As written, TBAF's President is concerned that some within our organization may see a conflict between Draft B's statement that "disclaimers are required," while others may conclude disclaimers are not in fact required on TBAF's ads as long as the (unspecified) disclaimer information is provided by "other methods." TBAF's request does not propose any other methods, so if the Commission intends to suggest such an approach *sua sponte*, we would ask that the Commission explain the other methods that TBAF may lawfully use to satisfy its disclaimer obligations.

Additionally, TBAF is confused by Draft B's "presum[ption]" that TBAF could include disclaimer language in its ads "without compromising or diminishing the political message that it wishes to convey." (Draft B at 6.) In decades of running Republican campaigns prior to forming TBAF, the President of TBAF was under the assumption that it was self-evident that the more ad space or ad time that must be devoted to a disclaimer, the less space or time that can be spent communicating the ad's core message. Yet, TBAF recognizes that 52 U.S.C. § 30120(a) requires disclaimers, unless an exception applies, and will adjust its ads as necessary to account for the Commission's decision and to comply with its legal responsibilities.

One final concern TBAF would like to raise regards Draft B's statement that "TBAF has not asserted, or provided any information to suggest" that, among other things, including a disclaimer "will be inconvenient or impracticable within the dimensions of the proposed ads." (Draft B at 6-7.) Here again, TBAF's President assumed it was self-evident that including a disclaimer involves a certain degree of "inconvenience," since its inclusion results in less space for a political message. The question posed is whether TBAF's Facebook Image ads or Facebook Video ads fall under any regulatory exceptions from disclaimer requirements.

For the foregoing reasons, we respectfully request that the Commission either adopt Draft A or remove and edit the language in Draft B to provide the requestor with the answer to which it is entitled under 52 U.S.C. § 30108. Thank you for your consideration of these comments.

Sincerely,

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