



December 14, 2017

Lisa J. Stevenson  
Acting General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Comments on AOR 2017-12 (Take Back Action Fund)

Dear Ms. Stevenson:

We submit these comments on behalf of our members regarding the Office of General Counsel's proposed Drafts A and B issued in response to AOR 2017-12 (Take Back Action Fund). Take Back Action Fund submitted its request on October 31, 2017, and the Commission is scheduled to take up review of the advisory opinion at a meeting scheduled for December 14. On November 16, the Commission voted to open a new Notice of Proposed Rulemaking ("NPRM") addressing paid internet and digital communications.

Take Back Action Fund asks the Commission in its advisory opinion request whether its proposed digital ads, which expressly advocate for or against a candidate, must include the full disclaimers specified in the Federal Election Campaign Act ("FECA" or the "Act") at 52 U.S.C. § 30120(a). The ads Take Back Action Fund describes in the request are to be purchased in a specific medium: Facebook ads that are 400 x 150 pixels with recommended 125 characters of text, and Facebook video ads that are up to 4 GB in size and include recommended 125 characters of text. No other Facebook products are referenced; nor does the request reference products by any other advertising platform or any other digital medium.

Both Drafts conclude that the Act's disclaimer requirements apply. We agree with this conclusion; as described, the ads are "public communications" and the requestors make clear they intend the ads to qualify as "express advocacy." *See* 11 C.F.R. § 110.11.

However, we encourage the Commission to expressly include in its opinion the so-called "one-click" method it approved Advisory Op. 2010-19 (Google) as an option for compliance.<sup>1</sup> In that opinion, the Commission permitted sponsors of advertising purchased through Google AdWords to comply with 11 C.F.R. § 110.11 by displaying the URL of the sponsoring committee's website in the ad and displaying the full disclaimer on a linked landing page. *See* FEC Adv. Op. 2010-19 (Google); *see also* Concurring Statement of Commissioners Bauerly, Walther & Weintraub, FEC Adv. Op. 2010-19 (Google). This method of compliance has been in use now for three federal election cycles, and is one to which digital ad purchasers and viewers alike have become accustomed. Providing clarity, continuity, and stability to the industry is of paramount importance to our members and those who use their products.

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<sup>1</sup> While Draft A notes that the options it describes for satisfying the disclaimer requirements "are not intended as an exclusive list," it does not explicitly acknowledge the permissibility of this method for the proposed Facebook ads. *See* Draft A, at 10-11. While Draft B likewise does not expressly address the permissibility of the "one-click" method for the ads at issue, it does provide that "the essential element of the disclaimer requirement is to provide information to the public about an advertisement's source," and that "other methods of providing disclaimer information may also be permissible, consistent with the Commission's policy and practice of 'interpreting the Act and its regulations in a manner consistent with contemporary innovations,'" and cites to Advisory Op. 2010-19 (Google), among other opinions, for that proposition. *See* Draft B, at 7.



As noted above, in the intervening time since the Commission received Take Back Action Fund’s request, it has voted to open a new NPRM addressing paid internet and digital communications. Although the text of the proposed rule is not yet available, its scope will almost certainly encompass the activities at issue here. REG 2011-02, Mot. by Vice Chair Hunter, Commissioner Goodman & Commissioner Petersen, Nov. 16, 2017; *see also* Draft B, at 4 n.16 (“advisory opinion implicates issues that may also be addressed in a forthcoming Commission rulemaking”). That the Commission has opted to begin a rulemaking on this issue illustrates the significance of the topic, and we look forward to the opportunity to contribute to that process once it begins.

Take Back Action Fund’s request seeks guidance concerning two kinds of digital ads offered by single platform; yet the industry is populated by a varied and growing range of products that are evolving and developing at a rapid pace. This is a hallmark of digital advertising that the Commission will almost certainly consider when promulgating its new rule, but because of the limited scope of the request, ads made available through other technologies or ad products are not at issue here. Should the Commission consider delaying the issuance of a ruling on this advisory opinion until it has the opportunity to address the full range of issues presented by evolving technologies through the rulemaking process, we would support that decision.

We thank the Commission for considering these views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Beckerman', written over a light blue horizontal line.

Michael Beckerman  
President & CEO