



CITAP

Center for Information,
Technology, and Public Life

September 17, 2021
100 Manning Hall, CB 3360
Chapel Hill, NC 25799-3360

Attn.: Lisa J. Stevenson, Acting General Counsel
Federal Election Commission
Office of General Counsel
1050 First Street NE
Washington, DC 20463

Re: REG 2021-02 Subvendor Reporting

Dear Ms. Stevenson,

We at the Center for Information, Technology, and Public Life (CITAP) urge the Federal Election Commission (FEC) to begin a rulemaking proceeding based on the Petition for Rulemaking submitted by the Campaign Legal Center and the Center on Science and Technology Policy at Duke University (the “Petition”).

CITAP, housed at the University of North Carolina at Chapel Hill, is dedicated to understanding the growing impact of the internet, social media, and other forms of digital information sharing on democracy and social life. Our team of researchers includes not only widely recognized professors of technology and politics, but also current and former journalists, former campaign staffers, former digital advertising practitioners, and professors of law.

Based on our combined experience and research, we agree with the Petition’s arguments regarding the need to amend 11 CFR 104.3(b), 109.10(e), and 104.20(c) to require political committees to disclose the third parties that vendors subcontract with for electioneering communications.

As the Petition asserts, the current reporting requirements make it “nearly impossible for researchers and academics to monitor digital political ad practices.”¹ This has been our experience. The extremely limited disclosure on sub-vendors

¹ *REG 2021-02 (Subvendor Reporting)—Draft Notification of Availability*. (2021, July 21). Federal Election Commission. P.3. <https://www.fec.gov/resources/cms-content/documents/mtgdoc-21-32-A.pdf>.

provided in the FEC's campaign finance spending data has stymied our research. Lack of transparency around who is involved in purchasing campaign communications has prevented us from researching issues in campaigning which may be of great impact to the future of elections. Below, we first lay out projects that were hampered by the poor quality of data. Then, we outline the research questions about current and emerging campaigning practices which researchers have been unable to ask (or even *think to ask*) due to the opacity of the FEC data. We close by briefly refuting the concerns we believe are likely to be raised by agencies and campaigns that will lobby against this rulemaking.

Part I: Research that has been limited by current disclosure rules

For the past three years, CITAP has run research projects on digital politics and published the findings on an openly accessible website, citapdigitalpolitics.com.² Three of these research projects, published as reports, have focused specifically on the advertising platforms used by political campaigns.

All three of these reports³ focus on Facebook, YouTube, Snapchat, Reddit, and Twitter. Unfortunately, due to limitations in the data available, none of them include data demonstrating which advertising platforms are most popular among political campaigners. Because data on sub-vendors is not disclosed, it is impossible to know how digital campaign expenditures are being spent across platforms. While it is well known that Facebook/Instagram and Google/YouTube dominate the digital advertising market including digital political advertising, the other platforms in our reports were chosen based on limited—and likely flawed—information about what platforms are important to the public *and* to digital political advertisers. If sub-vendor reporting were required in the FEC data, our research could be much improved by making sure we are focusing on platforms that are most popular with digital political advertisers and are used to reach the most voters.

To give another example, CITAP digital political ads researcher Bridget Barrett attempted to map the industry of digital political advertising from 2006-2016 using FEC data. Understanding the structure of this industry is paramount to understanding what companies influence the content of political messages and who sees them, who is sharing in profits reaped from public donations, who is behind the paid campaign messaging the public sees, and how strategic and ethical norms

² CITAP Digital Politics. <https://citapdigitalpolitics.com/>

³ Barrett, B., Kreiss, D., & Reddi, M. (2020). Enforcers of Truth: Social Media Platforms and Misinformation. *Center for Information, Technology, and Public Life*, 26.

https://citapdigitalpolitics.com/?page_id=2508; Barrett, B., Kreiss, D., & Reddi, M. (2020). Political Advertising on Platforms in the United States: A Brief Primer. *Center for Information, Technology, and Public Life*. https://citapdigitalpolitics.com/?page_id=33; Barrett, B et al. (2020, January 21). *Platform Political Ad Database Comparisons*. CITAP Digital Politics. https://citapdigitalpolitics.com/?page_id=1665

may change over time. Unfortunately, Barrett was unable to answer many of her questions due to the opacity of the data.

For example, Barrett wanted to understand which companies and political committees were not established party vendors and had few or no connections to the rest of the network digital political advertising firms. Organizational theories suggest that such companies may be more likely to have different norms, content strategies, and profit models. This research question proved unanswerable because payments to sub-vendors are hidden in the limited reporting requirements. Barrett could not determine if some vendors were actually disconnected from the network, or if they only appeared to be because many payments to them were made through *other* companies. Such limitations on research stop other scholars, the press, and the public from benefitting from these data. What Barrett was able to find—and how the problems with the data make these findings limited—can be found in her recent article in *Political Communication*.⁴

These are our own examples of oversight and research being significantly curbed by the current disclosure rules. However, they serve as a demonstration of the problems that the greater research community face.

Part II: Under-researched emerging campaigning practices

The lack of visibility into sub-vendors prevents CITAP, the greater research community, and campaign finance transparency advocates from comprehensively investigating current and new digital political advertising practices.

For example, it is well known that political campaigns purchase email and phone number lists to target digital ads or use for direct contact strategies such as texting and phone calls.⁵ As digital advertising platforms, operating systems, and browsers institute tighter privacy controls (such as Apple implementing policies that make tracking iPhones harder for advertisers), these contact lists will only become more valuable to political groups.⁶ This will increase the importance of direct contacts for campaigns, which has major implications for the privacy of citizens. People give their personal information to one campaign and—potentially without their express permission or disclosure—have their information transferred to another campaign committee. Currently, there is no way to know how much these lists cost, how common their purchase and transfer is, or which agencies and political campaigns

⁴ Forthcoming.

⁵ Schneider, E. (2021, February 10). *Campaigns return to old trick after Facebook cuts off fundraising*. POLITICO. <https://www.politico.com/news/2021/02/10/online-politics-buying-email-address-468229>

⁶ Lance, G., & Rockwell, S. (2021, June 7). *Watch for a Coming Sea Change in Online Advertising*. Bloomberg Law. <https://news.bloomberglaw.com/privacy-and-data-security/watch-for-a-coming-sea-change-in-online-advertising>

use them and engage in these data trades. These topics, and we believe likely many others, would be brought to light with sub-vendor reporting requirements.

Similarly, political campaigns and advocacy organizations are increasingly using social media “influencers” to promote their messages.⁷ There is currently no comprehensive way to know how widespread this practice is among federal campaigns or what influencers are receiving these payments and at what cost. Without visibility into these costs, one cannot determine if influencers are being paid market rates or if their posts are in-kind contributions. This could allow people to avoid disclosure and contribution limits; without adjusted disclosure rules, discovering these violations is near impossible. As pointed out by Program Director of Propaganda Sam Wooley at The University of Texas at Austin, this practice has implications for our elections, threatening transparency, disclosure, accountability, and information quality.⁸

These are only two examples of emerging campaigning practices that can threaten citizens’ privacy and trust in elections. What we do not know—and currently cannot know—is if there are more. Requiring that sub-vendors be reported to the FEC in campaign spending is necessary to understanding new campaigning practices and their implications for elections and democracy.

Part III: Rebuttals to arguments against sub-vendor reporting requirements

We would also like to briefly rebut what we believe will be common objections to this proposed rulemaking.

We suspect that those opposed to this rule may argue that it may put a greater burden on smaller campaigns, chilling their political speech. However, the burden will be placed primarily on campaigns with enough resources to hire agencies. Campaigns with such resources are not small, and thus the greater burden will fall on the better resourced which are able to address these requirements.

We also suspect that those opposed to this rule may argue that such rules are too difficult to comply with in the digital advertising ecosystem due to the many players involved in each transaction. We strongly disagree with this line of argument. The difficulty of such reporting requirements is not a reason to reject these proposed rules. In fact, the black-box nature of this convoluted industry is exactly why such a requirement is necessary. Having these hidden players in each transaction revealed

⁷ Barrett, B. (2020, March 6). *What We Learned From Bloomberg’s Online Campaign*. Lawfare. <https://www.lawfareblog.com/what-we-learned-bloombergs-online-campaign>

⁸ Goodwin, A.M., Joseff, K., & Woolley, S. C. (2020, October). Social media influencers and the 2020 U.S. election: Paying ‘regular people’ for digital campaign communication. Center for Media Engagement. <https://mediaengagement.org/research/social-media-influencers-and-the-2020-election>

will give political campaigns greater transparency into what they are paying for. The digital advertising ecosystem is notorious for cases of fraud, disappearing money, redundant middlemen, and exorbitant markups charged to clients.⁹ While well-resourced, established campaigns may be able to navigate this labyrinth without being duped, giving under-resourced campaigns the ability to demand full transparency by law can help level the playing field. Requiring disclosure would help campaigns and agencies themselves understand how their resources are being spent. In addition, these campaigns are funded by donations. Such a rule would give donors transparency into what they are paying for. If a vendor is not upfront and honest about what was paid for and by whom, such a vendor is not suitable for profiting from the public's generous donations to political causes.

Finally, it is likely that agencies will argue that sub-vendor reporting rules would make it impossible for them to do their business, threatening to publicize not only their unique strategies but also the prices which they charge to clients. While we are sympathetic to these concerns made by people who have dedicated their careers to aiding causes that they believe in, we also recognize that the purpose of the Federal Election Commission is to protect the integrity of elections, not the businesses built around them. We do not believe that any rule made (or not made) by the FEC should be rationalized by business goals or needs, but rather by the needs of the public and its compelling interest in honest elections and democracy writ large.

Conclusion

The FEC's mission is "To protect the integrity of the federal campaign finance process by providing transparency..." This mission is not being accomplished due to the lack of reporting on sub-vendors in committee spending data.

We urge the FEC to begin a rulemaking proceeding to amend 11 CFR 104.3(b), 109.10(e), and 104.20(c) to require committees to disclose third parties to which vendors subcontract for electioneering communications. These are necessary to meet the FEC's mission and to allow researchers, the press, and the public to aid in the protection of the federal campaign finance process.

⁹ He, A. (2019, August 5). *eMarketer Forecast Figures and Estimates for Programmatic Fees—Insider Intelligence Trends, Forecasts & Statistics*. EMarketer. <https://www.emarketer.com/content/emarketer-s-new-ad-tech-tax-estimates-show-one-third-of-spending-goes-to-intermediaries>; Sluis, S. (2018, January 10). *Investigation: DSPs Charge Hidden Fees – And Many Can't Afford To Stop*. AdExchanger. <https://www.adexchanger.com/platforms/investigation-dsps-charge-hidden-fees-many-cant-afford-stop/>; Bruell, S. V. (2017, September 19). *Uber Sues Mobile Agency Alleging Ad Fraud*. *Wall Street Journal*. <https://www.wsj.com/articles/uber-sues-mobile-agency-alleging-ad-fraud-1505787048>; Shields, R. (2019, June 26). *How Media Buyers Are Downsizing Their Number of Ad-Tech Partners*. *AdWeek*. <https://www.adweek.com/programmatic/how-media-buyers-are-downsizing-their-number-of-ad-tech-partners/>