

NetChoice *Promoting Convenience, Choice, and Commerce on The Net*

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RE: **Comments on Proposed Rulemaking I.D. No. SBE-21-18-00047-P Amendment of section 6200.10; addition of section 6200.11 to Title 9 NYCRR**

NetChoice offers this response to the New York State Board of Elections Proposed Rulemaking I.D. No. SBE-21-18-00047-P Amendment of section 6200.10; addition of section 6200.11 to Title 9 NYCRR.

NetChoice is a trade association of leading e-commerce and online companies. We work to promote the integrity and availability of the global Internet and are significantly engaged in internet issues in the states, in Washington, and in international internet governance organizations such as ICANN and the IGF.

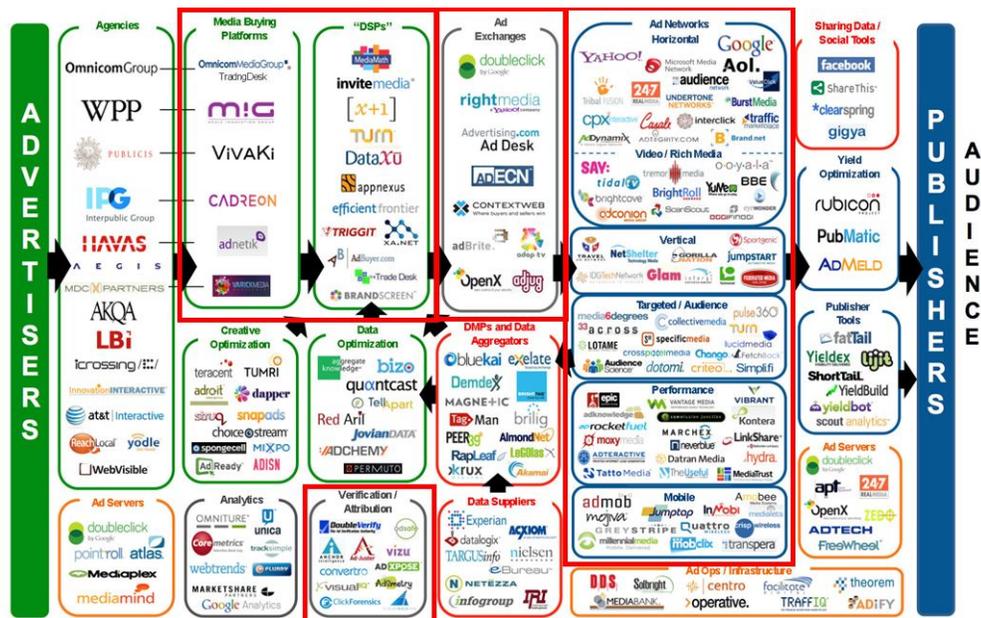
These comments represent the views of NetChoice and do not necessarily represent the view of any single member or of all members of the trade association.

[Overview of Concerns and Proposed Changes](#)

We thank you for taking this thoughtful approach to addressing transparency in election advertising. However, there are areas in the proposed amendments to Section 6200.10 Disclosure of independent expenditures and addition of new section 6200.11, that should be clarified and slightly modified to address the complex system of internet advertisements. Nonetheless, we offer the following comments in the hopes of achieving the same goals of transparency in all political advertisements in the state of New York.

When it comes to placement of any online advertisement often the buyer of the advertisement has no interaction with the site or service where the advertisement ultimately shows the advertisement. Take for example the image below which shows the complexity of the process. This means, for purposes of political ads, the Ad Network or for that matter the online platform, likely has no interaction with the Independent Expenditure Committee that makes the original purchase of the ad.

As currently drafted, the Independent Expenditure Committee would need to communicate with every part of the advertising ecosystem to avoid violation. Likewise, each Ad Network and online platform in that system would need to report. This will likely result in over-counting and a morass of data through which the NY Board of Elections must analyze. We know that this is not the intended purpose of the proposed rule.



A direct approach to reporting

Looking at the notion of the “least cost avoider,” the entities in the best position to be responsible for reporting and compliance are the Independent Expenditure Committee and the Ad Network or online platform with which the Independent Expenditure Committee directly engages.

This approach enables reliable reporting but avoids the unnecessary complexity and problems of injecting liability on down-stream actors who have no knowledge of the content of the ad nor have a relationship with the Independent Expenditure Committee.

We suggest the following recommended amendments to the proposed text: in §6200.10:

(i) Independent Expenditure Verification.

Upon the purchase of a communication in the form of an independent expenditure, each television or radio broadcast station, provider of cable or satellite television, or online platform as defined in this Part that interacts directly with the Independent Expenditure Committee purchasing the communication shall require that the independent expenditure committee making such purchase file with such station, or platform a copy of the registration form filed by such independent expenditure committee with the state board of elections pursuant to subdivision three of section 14-107 of article fourteen of the election law. Upon the purchase of a communication

covered by this paragraph, the Independent Expenditure committee shall notify the entity from which the purchase is being made that the purchaser is an Independent Expenditure Committee and shall provide a copy of the independent expenditure committee's registration documents that have been filed with the State Board of Elections.

Standardizing communications between Independent Expenditure Committees and Online Platforms

We suggest that the Board of Elections create a standardized electronic registration form that can be used by Independent Expenditure Committees and online platform to comply with the proposed requirements in §6200.10 (i) Independent Expenditure Verification.

Clarifying submission of copies of advertisements

§6200.11 includes a requirement to disclose copies of any paid internet or digital advisement to the State Board of Elections. However, the language is not clear as to who must make the disclosure. We suggest making the following change to clarify that the Independent Expenditure Committee is the entity that must disclose to the Board of Elections.

(c) Copies of any paid internet or digital advertisement, as required by paragraph b of this section, shall be submitted by the Independent Expenditure Committee to the State Board of Elections via e-mail in a format specified by the board of elections that is accessible and can be read by a screen reader. For the purposes of this section, copies of any paid internet or digital advertisement shall include: (1) scripts for any paid internet or digital advertisement with an audio and/or video component which shall include a reasonable description of any visual elements; (2) screenshots of any paid or digital advertisement without an audio and/or video component; (3) for paid internet or digital advertisements without a video component that are dynamic, such as advertisements with animation, or interactive advertisements that change when a viewer views or interacts with the advertisement, each image in the advertisement.

NetChoice appreciates the opportunity to provide these comments and stands ready to expand further assist the New York Board of Elections on this important and complex issue.

Sincerely,

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NetChoice

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