

## Charging Forward in the 2016 Race . . . Prepare for a Crowded Field of Political Advertisers

Dear Friends:

Our next presidential election may be a year and a half away, but the campaigns, and their advertising, are already heating up. Media can look forward to record spending, largely due to recent Supreme Court decisions, with tremendous growth in Internet advertising, including social media. In this issue's feature article, we discuss these trends as well as pending issues before the FEC and FCC that may change regulations imposed on media with regard to political advertising.

The MFM/BCCA convention last month in Phoenix was informative and fun, including our Szabo-sponsored party on opening night. Georgia is the destination for our summer calendar events, which include the Georgia Association of Broadcasters 80th Anniversary Celebration, July 31-August 1 on Jekyll Island; our annual Szabo Quality Awards Dinner, August 31 in Atlanta; and the 2015 Radio Show, September 30-October 2 in Atlanta.

Best wishes for a wonderful summer,



Robin Szabo, President  
Szabo Associates, Inc.

Those in the know predict an enormous surge of political advertising prior to the 2016 presidential election, with the tide beginning to rise as early as the fourth quarter of this year. According to a 2014 report by Borrell Associates and reported by MediaPost VidBlog, approximately \$12 billion will be spent by candidates vying for local, state and federal offices in 2016. The report projects that politicians will spend \$51 for each eligible voter, 21% more than the last presidential election year.

Recent decisions by the Supreme Court, which has been deeply divided on the issue of campaign finance restrictions, contribute mightily to the staggering dollar predictions. The January 2010 decision in *Citizens United v. FEC* eliminated spending caps for political advertising by corporations and unions and helped spawn a rash of political action committees. In April 2014, the decision on *McCutcheon v. FEC* struck down the 1970s-era rules regarding the amount of money individuals can donate to candidates and political committees in a two-year campaign cycle. The court did not change the limit on how much an individual may contribute to a specific candidate, currently \$2,600 per election. It did, however, remove the limit on the combined amount individuals may contribute to candidates, parties, and committees.

### Who Gets What.

The advertising pie will be a huge one at \$12 billion, but how will it be sliced? Some media will get a

greater percentage than in elections past, while others will get less. But, to consider the predictions another way, probably no one will complain about not catching enough flies when the flies are the size of Mothra.

Broadcasters will continue to get the biggest share at 52%, according to Borrell, with cable earning 10%, and newspapers 7.1%. The most explosive growth will take place in—you guessed it—online advertising. Borrell forecasts that digital spending for the 2016 presidential election will comprise 7.7% of all political advertising. At a tad below \$1 billion, this is about six times the figure for the last presidential election in 2012. Much of the activity is being driven by campaign marketing managers, who manage social media and email communications with the electorate.

Prior to last year's mid-term election, MediaPost's P.J. Bednarski predicted the burgeoning of social media as vehicles for reaching voters. Politicians (perhaps informed by their children and grandkids) finally seem to be acknowledging the power of YouTube videos, Facebook postings, and Twitter tweets. The social sites themselves are hiring personnel who know how to organize exchanges for political candidates. Additionally, these social media sites that once were primarily young people's destinations are maturing in their audience demographics, with a vastly greater ability to reach likely voters than in elections past.

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### **Socials for Politics.**

While a campaign's website is the center of its online presence, social media can drive traffic to the site and engage voters on a personal level. The power of social media, which became apparent in the last presidential and midterm elections, has been widely recognized and embraced by candidates on every level. While digital spending is still, percentage-wise, in the single digits, the subject of social media bears discussion because of its relatively recent explosive growth, rapid evolution, and applicability for political messaging. The following social media networks are presently the most relevant with regard to political communications:

**Facebook.** The leader of the social media pack is Facebook. According to the Pew Research Center in its January 2015 *Social Media Update 2014*, 71% of Internet users, or 58% of the entire adult population, are on Facebook. While the overall percentage is unchanged from 2013, the number of users age 65 and older has increased to more than 56%. The percentage among older adults is significant to political advertisers, since older adults tend to vote in larger numbers than other age groups. The level of engagement on Facebook has also increased, with 70% of users visiting daily and 45% engaging several times daily. Additionally, Facebook acts as “home base” for adults who use two or more social media sites.

Facebook released new statistics in January that demonstrate the rapid growth of video sharing on the network, validating the widely held belief over the past year that it has become YouTube's biggest potential competitor. Until recently, page owners simply shared their YouTube videos on Facebook. In November 2014, the number of videos uploaded directly to Facebook surpassed the number of shared YouTube videos on the network. With the introduction

of auto-play, whereby videos automatically play as a user scrolls through a news feed, users are pulled toward the content, while YouTube requires the user to press “play.” This feature arguably has both fans and critics. In any case, YouTube remains the top dog in online video, with Facebook nipping at its heels.

**Twitter.** Created in 2006, Twitter enables users to send and read short 140-character messages called “tweets.” Registered users can read and post tweets, while unregistered users can only read them. According to Pew, Twitter is particularly popular among those under 50 and the college-educated. The service has seen significant increases from 2013 among a number of demographic groups—men, whites, older adults, adults with household incomes of \$50,000 or more, college graduates, and urbanites. Twenty-three percent of adult Internet users, or 19% of the entire adult population, use Twitter.

**Vine.** In 2013, Twitter bought Vine, a rapidly growing mobile application described as the “Instagram for video,” for about \$970 million. Vine allows its approximately 40 million users to capture and share video clips of up to six seconds. These “micro-videos” can also be posted on other platforms to increase exposure. According to twitter.com, politicians and government officials can turn Vine into a “six-second spin room,” where they speak directly to constituents or the general public and offer quick responses to big speeches or policy initiatives. For example, members of both political parties from the House and Senate used Vine to deliver rapid responses to President Obama's State of the Union address and to start a real-time conversation with their audiences. More than 15 billion (you read that correctly) Vine loops are played daily, according to expandedramblings.com, with 100 million people watching every month.

**Instagram.** Purchased in 2012 by Facebook for \$1 billion in cash and stocks, Instagram gives users the ability to snap photos, post them directly on Instagram and immediately share them on Twitter, Facebook, and other

social media platforms. Additionally, “Video on Instagram” allows users to share videos at or under 15 seconds long. Instagram users rose from 17% in 2013 to 26% of adult Internet users, or 21% of the entire adult population, according to the Pew report. Notably, the service is gaining in popularity among young adults age 18-29, women, Hispanics, African-Americans, and those who live in urban or suburban environments—all key groups in the 2016 electorate. There is significant overlap between Twitter and Instagram users, with 58% of Twitter users also using Instagram, and 52% of Instagram users also using Twitter.

**YouTube.** This powerhouse social network is a strictly video medium; however, it has enormous reach, with about a billion active monthly users. Created in 2005 and purchased by Google for \$1.65 billion in 2006, the site allows users to upload, view, and share videos. The network's use of various technologies enables it to show a wide variety of user-generated video. Media corporations as well as individuals present some of their material on YouTube as part of the YouTube's revenue-sharing “Partner Program.”

### **The Rules of Engagement.**

The Federal Election Commission (FEC) and the Federal Communications Commission (FCC) are charged with ensuring that media and candidates comply with their obligations under the law regarding election-related advertising. The 2002 Bipartisan Campaign Reform Act (BCRA), or “McCain Feingold,” continues to be the basis of “soft money” and campaign spending disclosure regulations by those agencies. The FEC requires that public communications carry a “clear and conspicuous” disclaimer identifying who paid for it—either the authorized campaign committee or other persons or groups authorized by the candidate as well as the candidate who endorsed it. Internet advertising is excluded in the definition of public communications,

except when placed for a fee on a website other than the candidate's. The FCC imposes additional rules for broadcast media, addressing access to advertising time, rates they can be charged, and disclosure and record keeping requirements. (See *Collective Wisdom*, June 2004 and *Collective Wisdom*, September 2012 for more specifics on requirements imposed by legislation and regulation.)

*At issue now.* The FEC and FCC currently have a number of issues on their agency plates. The Supreme Court ruling in the Citizens United case has resulted in significantly greater spending on broadcast commercials by third-party organizations. In his January 7th *Broadcast Law Blog*, David Oxenford predicted that calls for more regulation on such ads will likely not bring forth action from the FCC; rather, there may be minor tweaks to the rules as cases come before the Commission. Among the outstanding issues pending before the agency from previous elections are appeals of an FCC decision issued just prior to the 2012 presidential election which holds that TV stations must give all candidates, including single-issue candidates, equal access.

The complaint is that single-issue candidates, even if qualified only in the distant reaches of the station's coverage area, use the access to promote their position on other issues. Reportedly, according to Oxenford, there are additional issues that the Commission will be asked to address: station policies on levels of sold-out preemptible advertising time; treatment of candidates in sold-out situations; sufficiency of online political files; and the proper sponsorship identification of individual-funded PAC ads.

Last October, Democrat FEC Vice-Chair Ann M. Ravel announced plans to begin the process for imposing regulations on Internet-based campaigns and videos. In 2006, the FEC decided to regulate only paid political ads placed on websites belonging to someone other than the candidate, revising its initial 2002 interpretation of the law as exempting all Internet activity. As it stands now, political activity by bloggers, Internet news services, and citizens acting on their own are entitled to the same exemption from the BCRA that newspapers and other traditional forms of media receive. In a broad FEC hearing in February, proponents of more regulation urged the agency to draw up new funding disclosure rules and to

require even third-party Internet-based groups to reveal donors. Such regulations would reverse the agency's 2006 decision. Subsequently, in May, as reported by Paul Bedard of *The Washington Examiner*, public outcry forced the Democrat FEC members to junk their bid to regulate political activity on the Internet.

In late 2014, the FCC moved to expand disclosure rules on political advertising. Its proposal would require cable, satellite, and radio companies to post information online about political ad buys, as a 2012 FCC rule forced television broadcasters to do.

And finally, we have the IRS, which is working on proposed rules for so-called "dark money" groups, social welfare nonprofits that may engage in politics but do not have to disclose their donors. As reported in *ProPublica*, the IRS originally issued a draft version of new rules over a year ago, but withdrew them for revisions following intense criticism from both ends of the political spectrum. The agency's self-appointed deadline for revamped rules is early 2016, but many believe the various hurdles involved make it unlikely that new rules will be in place during the 2016 election cycle.

### And So . . .

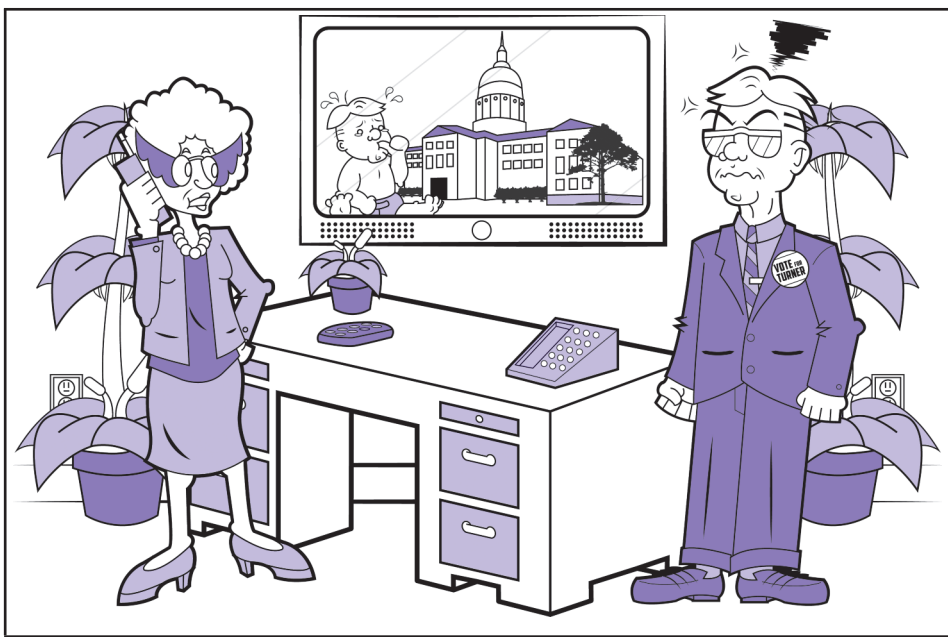
The time is now to get prepared for an early, big surge of political advertising. Here are a few tips:

#### 1. *Bone up on the law.*

Regardless of the media used (except the Internet), BCRA mandates that public communications carry a "clear and conspicuous" disclaimer identifying who paid for it. If you are a broadcast media property, brush up on FCC rules. You need to have a clear understanding of rules regarding access, rates, disclosure, and record keeping requirements. Know the definitions of "use," "reasonable access," "lowest unit charge" (LUC), "equal opportunities," and "sponsorship identification."

#### 2. *Make advance decisions about state and local races.*

Commercial broadcast media are not obligated to sell time to



"Candidate Turner is taking issue with the 'issue ad' about incompetent state legislators, Boss. Says the kid in the diaper sucking his thumb looks just like him when he was two."

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candidates in state and local elections. If you decide to do so, however, the FCC rules regarding reasonable access, LUC, equal opportunities, and censorship apply to all candidates vying for the same office.

**3. Determine responsibility for content.** The FCC’s “no censorship” rule forbids broadcasters and cable operators to censor a candidate’s message once the candidate has bought a “use” on the station, unless the ad’s content violates a felony statute or is deemed legally obscene. Third-party ads, which are not subject to the rule, may expose a station to liability for content.

**4. Get paid.** The FCC requires broadcasters to extend credit to a political advertiser “only if the station would extend credit to a similarly situated

commercial advertiser under the station’s customary payment/credit policies.” Credit extension to an advertising agency on a candidate’s behalf is required only if the agency accepts legal responsibility for payment and has qualified for credit under the station’s policies. Media can require advance payment from a political advertiser if (1) its credit policies require advance payment from a commercial entity that has been established only for a temporary time or purpose; (2) has an uncertain credit history with the media property; or (3) has an unstable financial condition.

Candidates or their agencies may insist on payment by credit card, asserting its equivalence to cash in advance. It is not; however, companies are now widely accepting credit cards as a method of remitting cash in advance, essentially equating the two. If your organization has been doing so, you may have a problem if you refuse to accept credit card payment from a political advertiser. Also, if

media accepts a credit card payment from one candidate, it must do so with all other candidates in the race if requested. Note that payment from federal candidates cannot be demanded more than seven days prior to airdate.

**5. Stay abreast of court decisions and federal agency rulings.** The numerous issues described above may result in changes that significantly impact media’s handling of political advertising.

**6. Consult legal and industry resources when questions arise.** Valuable primers, such as the *Political Advertising Handbook for the Television Executive* and the *Political Advertising Handbook for the Radio Account Executive* are available free on the MFM website. Also recommended is the 18th edition of the *NAB Political Broadcast Catechism*.

**7. Enjoy your piece of the political advertising pie! ♦**