

# **Honest Ads Act**

**Sponsored by Senators Klobuchar, Warner and McCain**

Endorsements: Campaign Legal Center, the Sunlight Foundation, Issue One, Brennan Center for Justice, Common Cause, Public Citizen

## **Summary**

This bill would improve our democracy and national security by increasing transparency and accountability for online political ads so that voters, law enforcement, journalists, and watchdog groups can better detect and investigate foreign involvement in our elections. The proposed legislation accomplishes this by requiring digital ads to meet the same disclaimer requirements as analogous print or broadcast ads, as well as by subjecting the largest online platforms to similar transparency and reporting obligations as required of broadcast, cable, and satellite providers that sell political ads.

## **Background**

A combination of statutes, FEC rules, and FCC rules currently create a robust disclaimer and public access framework for political advertisements disseminated by broadcast, cable, and satellite providers. However, digital providers like Facebook, the nation's largest digital platform – whose 210 million American users are nearly ten times as large as the subscriber base of the largest cable or satellite provider – face significantly fewer obligations.

This lack of transparency has dangerous implications for our democracy. As we saw in the 2016 presidential election, foreign actors can seek to influence the electorate without voters' knowledge. For instance, on September 6th, Facebook disclosed that between June 2015 and May 2017, Russian entities published roughly 3,000 ads linked to fake accounts associated with the pro-Kremlin Internet Research Agency.

The dramatic increase in digital political advertisements (\$1.4 billion was spent on online political ads during the last election), and the growing centrality of digital platforms in the lives of Americans, requires Congress and the FEC to take meaningful action to ensure that laws and regulations provide fundamental accountability and transparency.

## **Proposal**

### *Expansion of Disclaimer Requirements –*

This legislation would extend existing disclaimer obligations that print, broadcast, and cable ads must meet to analogous political ads disseminated on online platforms.

- Under the proposed legislation, the Federal Election Campaign Act's definition of "electioneering communication" is expanded to include paid political advertisements online. This definition is one way the FEC determines whether an advertisement requires a disclaimer and disclosure to the FEC.

- A separate category of ads requiring disclaimers are “public communications” that expressly advocate for a candidate’s election or defeat, are paid for or authorized by a candidate, solicit a political contribution, or are by a political committee. The proposed legislation updates the definition of “public communication,” as well, to ensure that obligations on these types of ads extend to digital ads.

The Supreme Court has consistently upheld these types of obligations, noting that “[d]isclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”

As the late Justice Antonin Scalia wrote in *Doe v. Reed*, “Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.” Updating our disclosure laws to include digital political advertising is essential to maintaining a democracy where citizens can make informed decisions.

*Expansion of Public File Requirement –*

Digital platforms (with 50 million or more unique monthly visitors for a majority of months during the preceding 12 months) would be required to maintain a complete record of political advertisements by a purchaser whose aggregate requests to purchase qualified political advertisements on that platform within the preceding 12 months exceed \$500. While disclaimers are required for “electioneering communications” and “public communications,” a separate, but overlapping, statutory regime determines whether an ad triggers the political file obligation. Our proposed legislation uses this existing statutory definition of political ad to determine what triggers an analogous political file obligation for digital platforms.

The record must be available online in machine readable format. Largely mirroring existing rules for broadcast, cable, and satellite providers, this record would include:

- a digital copy of the advertisement,
- a description of the audience the ad targets,
- the average rate charged for the ad,
- the name of the candidate/office or legislative issue to which the ad refers (if applicable), and
- the contact information of the purchaser.

If the online platform fails to comply with this requirement, or an advertiser causes an online platform to make available false, inaccurate, or incomplete information about its political ads, they will be subject to penalties imposed by the FEC consistent with current law.

*Reasonable Efforts on Foreign Interference –*

Finally, this legislation would require that all advertising platforms – whether broadcast, radio, or digital – make reasonable efforts to ensure that the foreign participation ban (which broadly prohibits foreign nationals from attempting to influence elections through donations, expenditures, or other things of value) is not violated.