

116TH CONGRESS
1ST SESSION

S. 1356

To enhance transparency and accountability for online political advertisements by requiring those who purchase and publish such ads to disclose information about the advertisements to the public, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2019

Ms. KLOBUCHAR (for herself, Mr. GRAHAM, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To enhance transparency and accountability for online political advertisements by requiring those who purchase and publish such ads to disclose information about the advertisements to the public, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Honest Ads Act”.

5 **SEC. 2. PURPOSE.**

6 The purpose of this Act is to enhance the integrity
7 of American democracy and national security by improving
8 disclosure requirements for online political advertisements

1 in order to uphold the United States Supreme Court’s
2 well-established standard that the electorate bears the
3 right to be fully informed.

4 **SEC. 3. FINDINGS.**

5 Congress makes the following findings:

6 (1) On April 18, 2019, Special Counsel Robert
7 Mueller released a report titled “Report on the In-
8 vestigation into Russian Interference in the 2016
9 Presidential Election”, which concluded that “the
10 Russian government interfered in the 2016 presi-
11 dential election in sweeping and systemic fashion.”.
12 The report details that Russia interfered in the 2016
13 presidential election principally through two oper-
14 ations: first, through a Russian government spon-
15 sored social media influence campaign, and second,
16 by Russian intelligence “computer-intrusion” oper-
17 ations against those associated with both presi-
18 dential campaigns.

19 (2) On September 6, 2017, the Nation’s largest
20 social media platform disclosed that between June
21 2015 and May 2017, Russian entities purchased
22 \$100,000 in political advertisements, publishing
23 roughly 3,000 ads linked to fake accounts associated
24 with the Internet Research Agency, a pro-Kremlin
25 organization. According to the company, the ads

1 purchased focused “on amplifying divisive social and
2 political messages . . .”.

3 (3) In 2002, the Bipartisan Campaign Reform
4 Act became law, establishing disclosure requirements
5 for political advertisements distributed from a tele-
6 vision or radio broadcast station or provider of cable
7 or satellite television. In 2003, the Supreme Court
8 upheld regulations on electioneering communications
9 established under the Act, noting that such require-
10 ments “provide the electorate with information and
11 insure that the voters are fully informed about the
12 person or group who is speaking.”.

13 (4) According to a study from Borrell Associ-
14 ates, in 2016, \$1,415,000,000 was spent on online
15 advertising, more than quadruple the amount in
16 2012.

17 (5) The reach of a few large internet plat-
18 forms—larger than any broadcast, satellite, or cable
19 provider—has greatly facilitated the scope and effec-
20 tiveness of disinformation campaigns. For instance,
21 the largest platform has over 210,000,000 American
22 users—over 160,000,000 of them on a daily basis.
23 By contrast, the largest cable television provider has
24 22,430,000 subscribers, while the largest satellite
25 television provider has 21,000,000 subscribers. And

1 the most-watched television broadcast in U.S. his-
2 tory had 118,000,000 viewers.

3 (6) The public nature of broadcast television,
4 radio, and satellite ensures a level of publicity for
5 any political advertisement. These communications
6 are accessible to the press, fact-checkers, and polit-
7 ical opponents; this creates strong disincentives for
8 a candidate to disseminate materially false, inflam-
9 matory, or contradictory messages to the public. So-
10 cial media platforms, in contrast, can target portions
11 of the electorate with direct, ephemeral advertise-
12 ments often on the basis of private information the
13 platform has on individuals, enabling political adver-
14 tisements that are contradictory, racially or socially
15 inflammatory, or materially false.

16 (7) According to comScore, 2 companies own 8
17 of the 10 most popular smartphone applications as
18 of June 2017, including the most popular social
19 media and email services—which deliver information
20 and news to users without requiring proactivity by
21 the user. Those same 2 companies accounted for 99
22 percent of revenue growth from digital advertising in
23 2016, including 77 percent of gross spending. 79
24 percent of online Americans—representing 68 per-
25 cent of all Americans—use the single largest social

1 network, while 66 percent of these users are most
2 likely to get their news from that site.

3 (8) In its 2006 rulemaking, the Federal Elec-
4 tion Commission noted that only 18 percent of all
5 Americans cited the internet as their leading source
6 of news about the 2004 Presidential election; by con-
7 trast, the Pew Research Center found that 65 per-
8 cent of Americans identified an internet-based
9 source as their leading source of information for the
10 2016 election.

11 (9) The Federal Election Commission, the inde-
12 pendent Federal agency charged with protecting the
13 integrity of the Federal campaign finance process by
14 providing transparency and administering campaign
15 finance laws, has failed to take action to address on-
16 line political advertisements.

17 (10) In testimony before the Senate Select
18 Committee on Intelligence titled, “Disinformation: A
19 Primer in Russian Active Measures and Influence
20 Campaigns,” multiple expert witnesses testified that
21 while the disinformation tactics of foreign adver-
22 saries have not necessarily changed, social media
23 services now provide “platform[s] practically pur-
24 pose-built for active measures[.]” Similarly, as Gen.
25 (RET) Keith B. Alexander, the former Director of

1 the National Security Agency, testified, during the
2 Cold War “if the Soviet Union sought to manipulate
3 information flow, it would have to do so principally
4 through its own propaganda outlets or through ac-
5 tive measures that would generate specific news:
6 planting of leaflets, inciting of violence, creation of
7 other false materials and narratives. But the news
8 itself was hard to manipulate because it would have
9 required actual control of the organs of media, which
10 took long-term efforts to penetrate. Today, however,
11 because the clear majority of the information on so-
12 cial media sites is uncensored and there is a rapid
13 proliferation of information sources and other sites
14 that can reinforce information, there is an increasing
15 likelihood that the information available to average
16 consumers may be inaccurate (whether intentionally
17 or otherwise) and may be more easily manipulable
18 than in prior eras.”.

19 (11) Current regulations on political advertise-
20 ments do not provide sufficient transparency to up-
21 hold the public’s right to be fully informed about po-
22 litical advertisements made online.

23 **SEC. 4. SENSE OF CONGRESS.**

24 It is the sense of Congress that—

1 (1) the dramatic increase in digital political ad-
 2 vertisements, and the growing centrality of online
 3 platforms in the lives of Americans, requires the
 4 Congress and the Federal Election Commission to
 5 take meaningful action to ensure that laws and reg-
 6 ulations provide the accountability and transparency
 7 that is fundamental to our democracy;

8 (2) free and fair elections require both trans-
 9 parency and accountability which give the public a
 10 right to know the true sources of funding for polit-
 11 ical advertisements in order to make informed polit-
 12 ical choices and hold elected officials accountable;
 13 and

14 (3) transparency of funding for political adver-
 15 tisements is essential to enforce other campaign fi-
 16 nance laws, including the prohibition on campaign
 17 spending by foreign nationals.

18 **SEC. 5. EXPANSION OF DEFINITION OF PUBLIC COMMU-**
 19 **NICATION.**

20 (a) IN GENERAL.—Paragraph (22) of section 301 of
 21 the Federal Election Campaign Act of 1971 (52 U.S.C.
 22 30101(22)) is amended by striking “or satellite commu-
 23 nication” and inserting “satellite, paid internet, or paid
 24 digital communication”.

1 (b) TREATMENT OF CONTRIBUTIONS AND EXPENDI-
2 TURES.—Section 301 of such Act (52 U.S.C. 30101) is
3 amended—

4 (1) in paragraph (8)(B)—

5 (A) by striking “on broadcasting stations,
6 or in newspapers, magazines, or similar types of
7 general public political advertising” in clause
8 (v) and inserting “in any public communica-
9 tion”;

10 (B) by striking “broadcasting, newspaper,
11 magazine, billboard, direct mail, or similar type
12 of general public communication or political ad-
13 vertising” in clause (ix)(1) and inserting “pub-
14 lic communication”; and

15 (C) by striking “but not including the use
16 of broadcasting, newspapers, magazines, bill-
17 boards, direct mail, or similar types of general
18 public communication or political advertising”
19 in clause (x) and inserting “but not including
20 use in any public communication”; and

21 (2) in paragraph (9)(B)—

22 (A) by striking clause (i) and inserting the
23 following:

24 “(i) any news story, commentary, or
25 editorial distributed through the facilities

of any broadcasting station or any print,
 online, or digital newspaper, magazine,
 blog, publication, or periodical, unless such
 broadcasting, print, online, or digital facili-
 ties are owned or controlled by any polit-
 ical party, political committee, or can-
 didate;” and

(B) by striking “on broadcasting stations,
 or in newspapers, magazines, or similar types of
 general public political advertising” in clause
 (iv) and inserting “in any public communica-
 tion”.

(c) DISCLOSURE AND DISCLAIMER STATEMENTS.—

Subsection (a) of section 318 of such Act (52 U.S.C.
 30120) is amended—

(1) by striking “financing any communication
 through any broadcasting station, newspaper, maga-
 zine, outdoor advertising facility, mailing, or any
 other type of general public political advertising”
 and inserting “financing any public communication”;
 and

(2) by striking “solicits any contribution
 through any broadcasting station, newspaper, maga-
 zine, outdoor advertising facility, mailing, or any
 other type of general public political advertising”

1 and inserting “solicits any contribution through any
2 public communication”.

3 **SEC. 6. EXPANSION OF DEFINITION OF ELECTIONEERING**
4 **COMMUNICATION.**

5 (a) EXPANSION TO ONLINE COMMUNICATIONS.—

6 (1) APPLICATION TO QUALIFIED INTERNET AND
7 DIGITAL COMMUNICATIONS.—

8 (A) IN GENERAL.—Subparagraph (A) of
9 section 304(f)(3) of the Federal Election Cam-
10 paign Act of 1971 (52 U.S.C. 30104(f)(3)(A))
11 is amended by striking “or satellite communica-
12 tion” each place it appears in clauses (i) and
13 (ii) and inserting “satellite, or qualified internet
14 or digital communication”.

15 (B) QUALIFIED INTERNET OR DIGITAL
16 COMMUNICATION.—Paragraph (3) of section
17 304(f) of such Act (52 U.S.C. 30104(f)) is
18 amended by adding at the end the following
19 new subparagraph:

20 “(D) QUALIFIED INTERNET OR DIGITAL
21 COMMUNICATION.—The term ‘qualified internet
22 or digital communication’ means any commu-
23 nication which is placed or promoted for a fee
24 on an online platform (as defined in subsection
25 (j)(3)).”.

1 (2) NONAPPLICATION OF RELEVANT ELEC-
 2 TORATE TO ONLINE COMMUNICATIONS.—Section
 3 304(f)(3)(A)(i)(III) of such Act (52 U.S.C.
 4 30104(f)(3)(A)(i)(III)) is amended by inserting “any
 5 broadcast, cable, or satellite” before “communica-
 6 tion”.

7 (3) NEWS EXEMPTION.—Section
 8 304(f)(3)(B)(i) of such Act (52 U.S.C.
 9 30104(f)(3)(B)(i)) is amended to read as follows:

10 “(i) a communication appearing in a
 11 news story, commentary, or editorial dis-
 12 tributed through the facilities of any
 13 broadcasting station or any online or dig-
 14 ital newspaper, magazine, blog, publica-
 15 tion, or periodical, unless such broad-
 16 casting, online, or digital facilities are
 17 owned or controlled by any political party,
 18 political committee, or candidate;”.

19 (b) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply with respect to communications
 21 made on or after January 1, 2020.

22 **SEC. 7. APPLICATION OF DISCLAIMER STATEMENTS TO ON-**
 23 **LINE COMMUNICATIONS.**

24 (a) CLEAR AND CONSPICUOUS MANNER REQUIRE-
 25 MENT.—Subsection (a) of section 318 of the Federal Elec-

tion Campaign Act of 1971 (52 U.S.C. 30120(a)) is amended—

(1) by striking “shall clearly state” each place it appears in paragraphs (1), (2), and (3) and inserting “shall state in a clear and conspicuous manner”; and

(2) by adding at the end the following flush sentence: “For purposes of this subsection, a communication does not make a statement in a clear and conspicuous manner if it is difficult to read or hear or if the placement is easily overlooked.”.

(b) SPECIAL RULES FOR QUALIFIED INTERNET OR DIGITAL COMMUNICATIONS.—

(1) IN GENERAL.—Section 318 of such Act (52 U.S.C. 30120) is amended by adding at the end the following new subsection:

“(e) SPECIAL RULES QUALIFIED INTERNET OR DIGITAL COMMUNICATIONS.—

“(1) SPECIAL RULES WITH RESPECT TO STATEMENTS.—In the case of any qualified internet or digital communication (as defined in section 304(f)(3)(D)) which is disseminated through a medium in which the provision of all of the information specified in this section is not possible, the communication shall, in a clear and conspicuous manner—

1 “(A) state the name of the person who
2 paid for the communication; and

3 “(B) provide a means for the recipient of
4 the communication to obtain the remainder of
5 the information required under this section with
6 minimal effort and without receiving or viewing
7 any additional material other than such re-
8 quired information.

9 “(2) SAFE HARBOR FOR DETERMINING CLEAR
10 AND CONSPICUOUS MANNER.—A statement in quali-
11 fied internet or digital communication (as defined in
12 section 304(f)(3)(D)) shall be considered to be made
13 in a clear and conspicuous manner as provided in
14 subsection (a) if the communication meets the fol-
15 lowing requirements:

16 “(A) TEXT OR GRAPHIC COMMUNICA-
17 TIONS.—In the case of a text or graphic com-
18 munication, the statement—

19 “(i) appears in letters at least as large
20 as the majority of the text in the commu-
21 nication; and

22 “(ii) meets the requirements of para-
23 graphs (2) and (3) of subsection (c).

24 “(B) AUDIO COMMUNICATIONS.—In the
25 case of an audio communication, the statement

1 is spoken in a clearly audible and intelligible
2 manner at the beginning or end of the commu-
3 nication and lasts at least 3 seconds.

4 “(C) VIDEO COMMUNICATIONS.—In the
5 case of a video communication which also in-
6 cludes audio, the statement—

7 “(i) is included at either the beginning
8 or the end of the communication; and

9 “(ii) is made both in—

10 “(I) a written format that meets
11 the requirements of subparagraph (A)
12 and appears for at least 4 seconds;
13 and

14 “(II) an audible format that
15 meets the requirements of subpara-
16 graph (B).

17 “(D) OTHER COMMUNICATIONS.—In the
18 case of any other type of communication, the
19 statement is at least as clear and conspicuous
20 as the statement specified in subparagraphs
21 (A), (B), or (C).”.

22 (2) NONAPPLICATION OF CERTAIN EXCEP-
23 TIONS.—The exceptions provided in section
24 110.11(f)(1)(i) and (ii) of title 11, Code of Federal
25 Regulations, or any successor to such rules, shall

1 have no application to qualified internet or digital
2 communications (as defined in section 304(f)(3)(D)
3 of the Federal Election Campaign Act of 1971).

4 (c) MODIFICATION OF ADDITIONAL REQUIREMENTS
5 FOR CERTAIN COMMUNICATIONS.—Section 318(d) of such
6 Act (52 U.S.C. 30120(d)) is amended—

7 (1) in paragraph (1)(A)—

8 (A) by striking “which is transmitted
9 through radio” and inserting “which is in an
10 audio format”; and

11 (B) by striking “BY RADIO” in the heading
12 and inserting “AUDIO FORMAT”;

13 (2) in paragraph (1)(B)—

14 (A) by striking “which is transmitted
15 through television” and inserting “which is in
16 video format”; and

17 (B) by striking “BY TELEVISION” in the
18 heading and inserting “VIDEO FORMAT”; and

19 (3) in paragraph (2)—

20 (A) by striking “transmitted through radio
21 or television” and inserting “made in audio or
22 video format”; and

23 (B) by striking “through television” in the
24 second sentence and inserting “in video for-
25 mat”.

1 **SEC. 8. POLITICAL RECORD REQUIREMENTS FOR ONLINE**
2 **PLATFORMS.**

3 (a) IN GENERAL.—Section 304 of the Federal Elec-
4 tion Campaign Act of 1971 (52 U.S.C. 30104) is amended
5 by adding at the end the following new subsection:

6 “(j) DISCLOSURE OF CERTAIN ONLINE ADVERTISE-
7 MENTS.—

8 “(1) IN GENERAL.—

9 “(A) REQUIREMENTS FOR ONLINE PLAT-
10 FORMS.—An online platform shall maintain,
11 and make available for online public inspection
12 in machine readable format, a complete record
13 of any request to purchase on such online plat-
14 form a qualified political advertisement which is
15 made by a person whose aggregate requests to
16 purchase qualified political advertisements on
17 such online platform during the calendar year
18 exceeds \$500.

19 “(B) REQUIREMENTS FOR ADVER-
20 TISERS.—Any person who requests to purchase
21 a qualified political advertisement on an online
22 platform shall provide the online platform with
23 such information as is necessary for the online
24 platform to comply with the requirements of
25 subparagraph (A).

1 “(2) CONTENTS OF RECORD.—A record main-
2 tained under paragraph (1)(A) shall contain—

3 “(A) a digital copy of the qualified political
4 advertisement;

5 “(B) a description of the audience targeted
6 by the advertisement, the number of views gen-
7 erated from the advertisement, and the date
8 and time that the advertisement is first dis-
9 played and last displayed; and

10 “(C) information regarding—

11 “(i) the average rate charged for the
12 advertisement;

13 “(ii) the name of the candidate to
14 which the advertisement refers and the of-
15 fice to which the candidate is seeking elec-
16 tion, the election to which the advertise-
17 ment refers, or the national legislative
18 issue to which the advertisement refers (as
19 applicable);

20 “(iii) in the case of a request made
21 by, or on behalf of, a candidate, the name
22 of the candidate, the authorized committee
23 of the candidate, and the treasurer of such
24 committee; and

1 “(iv) in the case of any request not
 2 described in clause (iii), the name of the
 3 person purchasing the advertisement, the
 4 name, address, and phone number of a
 5 contact person for such person, and a list
 6 of the chief executive officers or members
 7 of the executive committee or of the board
 8 of directors of such person.

9 “(3) ONLINE PLATFORM.—For purposes of this
 10 subsection, the term ‘online platform’ means any
 11 public-facing website, web application, or digital ap-
 12 plication (including a social network, ad network, or
 13 search engine) which—

14 “(A) sells qualified political advertise-
 15 ments; and

16 “(B) has 50,000,000 or more unique
 17 monthly United States visitors or users for a
 18 majority of months during the preceding 12
 19 months.

20 “(4) QUALIFIED POLITICAL ADVERTISEMENT.—

21 “(A) IN GENERAL.—For purposes of this
 22 subsection, the term ‘qualified political adver-
 23 tisement’ means any advertisement (including
 24 search engine marketing, display advertise-

1 ments, video advertisements, native advertise-
2 ments, and sponsorships) that—

3 “(i) is made by or on behalf of a can-
4 didate; or

5 “(ii) communicates a message relating
6 to any political matter of national impor-
7 tance, including—

8 “(I) a candidate;

9 “(II) any election to Federal of-
10 fice; or

11 “(III) a national legislative issue
12 of public importance.

13 “(5) TIME TO MAINTAIN FILE.—The informa-
14 tion required under this subsection shall be made
15 available as soon as possible and shall be retained by
16 the online platform for a period of not less than 4
17 years.

18 “(6) PENALTIES.—For penalties for failure by
19 online platforms, and persons requesting to purchase
20 a qualified political advertisement on online plat-
21 forms, to comply with the requirements of this sub-
22 section, see section 309.”.

23 (b) RULEMAKING.—Not later than 90 days after the
24 date of the enactment of this Act, the Federal Election
25 Commission shall establish rules—

1 (1) requiring common data formats for the
2 record required to be maintained under section
3 304(j) of the Federal Election Campaign Act of
4 1971 (as added by subsection (a)) so that all online
5 platforms submit and maintain data online in a com-
6 mon, machine-readable and publicly accessible for-
7 mat; and

8 (2) establishing search interface requirements
9 relating to such record, including searches by can-
10 didate name, issue, purchaser, and date.

11 (c) REPORTING.—Not later than 2 years after the
12 date of the enactment of this Act, and biannually there-
13 after, the Chairman of the Federal Election Commission
14 shall submit a report to Congress on—

15 (1) matters relating to compliance with and the
16 enforcement of the requirements of section 304(j) of
17 the Federal Election Campaign Act of 1971, as
18 added by subsection (a);

19 (2) recommendations for any modifications to
20 such section to assist in carrying out its purposes;
21 and

22 (3) identifying ways to bring transparency and
23 accountability to political advertisements distributed
24 online for free.

1 **SEC. 9. PREVENTING CONTRIBUTIONS, EXPENDITURES,**
2 **INDEPENDENT EXPENDITURES, AND DIS-**
3 **BURSEMENTS FOR ELECTIONEERING COM-**
4 **MUNICATIONS BY FOREIGN NATIONALS IN**
5 **THE FORM OF ONLINE ADVERTISING.**

6 Section 319 of the Federal Election Campaign Act
7 of 1971 (52 U.S.C. 30121) is amended by adding at the
8 end the following new subsection:

9 “(c) Each television or radio broadcast station, pro-
10 vider of cable or satellite television, or online platform (as
11 defined in section 304(j)(3)) shall make reasonable efforts
12 to ensure that communications described in section 318(a)
13 and made available by such station, provider, or platform
14 are not purchased by a foreign national, directly or indi-
15 rectly.”.

○