

116TH CONGRESS
2D SESSION

H. R. 7012

To amend the Federal Election Campaign Act of 1971 to prohibit online platforms and certain intermediaries from targeting the dissemination of political advertisements to a specific group of individuals on the basis of online behavioral data or on the basis of demographic characteristics shared by members of the group, to require online platforms and certain intermediaries to maintain public records of certain political advertisements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2020

Mr. CICILLINE (for himself, Mr. CASTEN of Illinois, Mr. HASTINGS, Mrs. HAYES, Mr. JOHNSON of Georgia, and Mr. LYNCH) introduced the following bill; which was referred to the Committee on House Administration

A BILL

To amend the Federal Election Campaign Act of 1971 to prohibit online platforms and certain intermediaries from targeting the dissemination of political advertisements to a specific group of individuals on the basis of online behavioral data or on the basis of demographic characteristics shared by members of the group, to require online platforms and certain intermediaries to maintain public records of certain political advertisements, 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 “Protecting Democracy
5 From Disinformation Act”.

6 **SEC. 2. REQUIREMENTS FOR POLITICAL ADVERTISEMENTS**
7 **DISSEMINATED BY ONLINE PLATFORMS OR**
8 **ARRANGED FOR DISSEMINATION BY CERTAIN**
9 **INTERMEDIARIES.**

10 (a) REQUIREMENTS.—Title III of the Federal Elec-
11 tion Campaign Act of 1971 (52 U.S.C. 30101 et seq.) is
12 amended by adding at the end the following new section:

13 **“SEC. 325. REQUIREMENTS FOR POLITICAL ADVERTISE-**
14 **MENTS DISSEMINATED BY ONLINE PLAT-**
15 **FORMS OR ARRANGED FOR DISSEMINATION**
16 **BY CERTAIN INTERMEDIARIES.**

17 “(a) RESTRICTIONS ON MICROTARGETING.—

18 “(1) RESTRICTIONS ON ADVERTISEMENTS TAR-
19 GETED AT GROUP OF INDIVIDUALS ON BASIS OF ON-
20 LINE BEHAVIORAL DATA.—

21 “(A) IN GENERAL.—Except as provided in
22 paragraph (3), a covered online platform may
23 not target the dissemination of a qualified polit-
24 ical advertisement, and a covered intermediary
25 may not arrange for the dissemination of a

1 qualified political advertisement, to a specific
2 group of individuals on the basis of any online
3 behavioral data of such individuals.

4 “(B) SPECIAL RULE FOR DISSEMINATION
5 TO INDIVIDUALS ON LIST PROVIDED BY SPON-
6 SOR OF ADVERTISEMENT.—

7 “(i) IN GENERAL.—A covered online
8 platform which targets the dissemination
9 of a qualified political advertisement to a
10 specific group of individuals on a list pro-
11 vided by the sponsor of the advertisement,
12 and a covered intermediary which arranges
13 for the dissemination of a qualified polit-
14 ical advertisement to a specific group of in-
15 dividuals on a list provided by the sponsor
16 of the advertisement, shall not be consid-
17 ered to be in violation of this paragraph if
18 the platform or intermediary made a good
19 faith effort to ensure that individuals are
20 not included on the list on the basis of
21 their online behavioral data.

22 “(ii) SAFE HARBOR FOR PLATFORMS
23 AND INTERMEDIARIES REQUIRING CERTIFI-
24 CATION BY ADVERTISER.—For purposes of
25 clause (i), a covered online platform and a

covered intermediary shall be considered to have made a good faith effort to ensure that the individuals on a list provided by the sponsor of a qualified political advertisement are not included on the list on the basis of their online behavioral data if the platform or intermediary requires the advertiser to certify that each individual on the list subscribed to the list or consented to being included on the list.

“(C) ONLINE BEHAVIORAL DATA DEFINED.—In this paragraph, the term ‘online behavioral data’ means, with respect to an individual, information that is tracked, collected, or maintained about an individual’s actions or activities online, including information relating to an individual’s activity across businesses, distinctly branded websites, applications, or services, but does not include information relating to an individual’s activity with a business, distinctly branded website, application, or service with which the individual intentionally interacts.

“(2) RESTRICTIONS ON ADVERTISEMENTS TARGETED AT GROUP OF INDIVIDUALS ON BASIS OF SHARED DEMOGRAPHIC CHARACTERISTIC.—

1 “(A) IN GENERAL.—Except as provided in
2 paragraph (3), a covered online platform may
3 not target the dissemination of a qualified polit-
4 ical advertisement, and a covered intermediary
5 may not arrange for the dissemination of a
6 qualified political advertisement, to a specific
7 group of individuals on the basis of any demo-
8 graphic characteristic shared by members of
9 such group unless—

10 “(i) the demographic characteristic is
11 described in subparagraph (B); and

12 “(ii) in the case of a covered online
13 platform, the platform disseminates with
14 the advertisement the accompanying state-
15 ment described in paragraph (4).

16 “(B) DEMOGRAPHIC CHARACTERISTICS
17 DESCRIBED.—The demographic characteristics
18 described in this subparagraph with respect to
19 a group of individuals are the following:

20 “(i) The age of the members of the
21 group.

22 “(ii) The gender of the members of
23 the group.

24 “(iii) The geographic area in which
25 the members of the group reside, except

1 that such area may not be smaller than the
2 ZIP Code in which the members of the
3 group reside.

4 “(C) RULE OF CONSTRUCTION.—Nothing
5 in paragraph (1) shall be construed to prohibit
6 a covered online platform or a covered inter-
7 mediary from using online behavioral data (as
8 described in such paragraph) with respect to an
9 individual to determine the demographic char-
10 acteristics described in subparagraph (B) which
11 apply to such individual.

12 “(3) EXCEPTION FOR TARGETING ON A CON-
13 TEXTUAL BASIS.—

14 “(A) EXCEPTION.—Paragraphs (1) and
15 (2) do not apply if—

16 “(i) a covered online platform targets
17 the dissemination of a qualified political
18 advertisement, or a covered intermediary
19 arranges for the dissemination of a quali-
20 fied political advertisement, to a specific
21 group of individuals on a contextual basis
22 as described in subparagraph (B); and

23 “(ii) in the case of a covered online
24 platform, the platform disseminates with

1 the advertisement the accompanying state-
2 ment described in paragraph (4).

3 “(B) DISSEMINATION OF ADVERTISE-
4 MENTS ON CONTEXTUAL BASIS.—For purposes
5 of subparagraph (A), a covered online platform
6 disseminates a qualified political advertisement
7 on a contextual basis, and a covered inter-
8 mediary arranges for the dissemination of a
9 qualified political advertisement on a contextual
10 basis, if the advertisement involved is dissemi-
11 nated solely on the basis of the content that the
12 individual is viewing on the covered online plat-
13 form at the same time the advertisement ap-
14 pears on the covered online platform and is not
15 otherwise disseminated on the basis of online
16 behavioral data with respect to such individual.

17 “(4) ACCOMPANYING STATEMENT DE-
18 SCRIBED.—

19 “(A) IN GENERAL.—The accompanying
20 statement described in this paragraph is, with
21 respect to a qualified political advertisement, a
22 statement made in a clear and conspicuous
23 manner which states that the dissemination of
24 the advertisement is targeted to a specific
25 group of individuals and which includes—

1 “(i) in the case of the statement re-
2 quired under paragraph (2)(A), a descrip-
3 tion of the demographic characteristic on
4 which the group was targeted; and

5 “(ii) in the case of the statement re-
6 quired under paragraph (3)(A), a descrip-
7 tion of the content on which the dissemina-
8 tion of the advertisement is based.

9 “(B) SAFE HARBOR FOR DETERMINING
10 CLEAR AND CONSPICUOUS MANNER.—For pur-
11 poses of subparagraph (A), a statement shall be
12 considered to be made in a clear and con-
13 spicuous manner if the statement is displayed
14 onscreen above the qualified political advertise-
15 ment in the format in which the advertisement
16 appears.

17 “(5) AVAILABILITY OF PRIVATE RIGHT OF AC-
18 TION.—

19 “(A) RIGHT TO FILE ACTION.—An ag-
20 grievied person alleging a violation of this sub-
21 section may bring a civil action against any cov-
22 ered online platform or covered intermediary in
23 an appropriate district court for damages, de-
24 claratory, injunctive relief, or any other relief

1 the court deems appropriate with respect to the
2 violation.

3 “(B) DAMAGES.—(i) If the court finds
4 that the defendant violated this subsection or
5 the regulations prescribed under this sub-
6 section, the court may, in its discretion, award
7 up to \$100,000 in damages to plaintiff per vio-
8 lation.

9 “(ii) If the court finds that the defendant
10 knowingly and willfully violated this subsection
11 or the regulations prescribed under this sub-
12 section, the court may, in its discretion, in-
13 crease the amount of the award to an amount
14 equal to not more than 3 times the amount per
15 violation available under clause (i).

16 “(C) ATTORNEY’S FEES.—In a civil action
17 under this paragraph, the court may allow the
18 prevailing party (other than the United States)
19 reasonable attorney fees, including litigation ex-
20 penses, and costs.

21 “(D) RELATION TO OTHER REMEDIES.—
22 The remedy established by this paragraph is in
23 addition to all other rights and remedies pro-
24 vided under this Act.

1 “(E) INJURY IN FACT.—If a court finds
2 that the defendant violated this section, the
3 court shall find that such violation constitutes
4 a concrete and particularized injury in fact to
5 the plaintiff.

6 “(F) TREATMENT OF MANDATORY
7 PREDISPUTE ARBITRATION AGREEMENTS AND
8 PREDISPUTE JOINT ACTION WAIVERS.—Any
9 agreement to arbitrate an alleged dispute of
10 this subsection that has not yet arisen at the
11 time of making the agreement or any agree-
12 ment that would otherwise prohibit, or waive
13 the right of, one of the parties to the agreement
14 to participate in a joint, class, or collection ac-
15 tion in federal court, concerning a dispute due
16 to an alleged violation of this subsection that
17 has not yet arisen at the time of making the
18 agreement shall be deemed invalid and unen-
19 forceable for purposes of civil action arising out
20 of an alleged violation of this subsection, not-
21 withstanding any other provision of law.

22 “(b) MAINTENANCE OF RECORDS OF QUALIFIED PO-
23 LITICAL ADVERTISEMENTS.—

24 “(1) IN GENERAL.—

1 “(A) REQUIREMENTS FOR ONLINE PLAT-
2 FORMS AND COVERED INTERMEDIARIES.—

3 “(i) RECORDS OF REQUESTS TO PUR-
4 CHASE ADVERTISEMENTS.—A covered on-
5 line platform and a covered intermediary
6 shall maintain, and make available for on-
7 line public inspection in a machine read-
8 able format which is searchable on the
9 basis of any of the information described
10 in paragraph (2), a complete record of any
11 request to purchase on such platform (or,
12 in the case of a covered intermediary, of
13 any request to purchase an arrangement
14 for the dissemination by the intermediary
15 of) a qualified political advertisement
16 which is made by a person the value of
17 whose aggregate requests to purchase
18 qualified political advertisements on such
19 online platform or to purchase arrange-
20 ments for the dissemination of qualified
21 political advertisements by the inter-
22 mediary (as the case may be) during the
23 calendar year exceeds \$500.

24 “(ii) ASSIGNMENT OF UNIQUE IDENTI-
25 FICATION NUMBER.—The covered online

1 platform and the covered intermediary
2 shall assign a unique identification number
3 to each person described in clause (i), and
4 shall use that same number with respect to
5 all information relating to such person
6 which is included in the record the plat-
7 form or intermediary maintains and makes
8 available under this subsection. If the per-
9 son is a candidate, the platform or inter-
10 mediary shall assign to the person the
11 same identification number assigned to the
12 person by the Commission for purposes of
13 filing reports under this Act.

14 “(B) REQUIREMENTS FOR ADVER-
15 TISERS.—

16 “(i) PROVISION OF INFORMATION.—
17 Any person who requests to purchase a
18 qualified political advertisement on a cov-
19 ered online platform, or who requests to
20 purchase an arrangement for the dissemi-
21 nation of a qualified political advertisement
22 by a covered intermediary, shall provide
23 the online platform or intermediary with
24 such information as is necessary for the
25 online platform or intermediary to comply

1 with the requirements of subparagraph
2 (A).

3 “(ii) ASSISTANCE FROM PLAT-
4 FORMS.—Each covered online platform and
5 covered intermediary shall provide such as-
6 sistance as may be required to enable a
7 person to provide the platform or inter-
8 mediary with the information required
9 under clause (i).

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

12 “(A) the unique identification number as-
13 signed under such paragraph to the person
14 making the request (and, if the person is a can-
15 didate, a statement that such number is the
16 same identification number assigned to the per-
17 son by the Commission for purposes of filing re-
18 ports under this Act);

19 “(B) a digital copy of the qualified political
20 advertisement;

21 “(C) a description of the advertisement’s
22 targeted audience, including information on the
23 audience’s age, gender, and geographic location;

24 “(D) a description of the advertisement’s
25 audience as predicted by an algorithm, includ-

1 ing information on the audience’s age, gender,
2 geographic location, race, ethnicity, and polit-
3 ical affiliation, except that a covered online
4 platform or a covered intermediary may exclude
5 this information from the record maintained
6 under paragraph (1)(A) with respect to an ad-
7 vertisement if the platform or intermediary does
8 not, in the ordinary course of business, collect
9 such information with respect to such an adver-
10 tisement;

11 “(E) a description of the advertisement’s
12 actual audience as determined on the basis of
13 data provided in an online platform user’s pro-
14 file, including information on the audience’s
15 age, gender, geographic location, race, ethnicity,
16 and political affiliation, except that a covered
17 online platform or a covered intermediary may
18 exclude this information from the record main-
19 tained under paragraph (1)(A) with respect to
20 an advertisement if the platform or inter-
21 mediary does not, in the ordinary course of
22 business, collect such information with respect
23 to such an advertisement;

24 “(F) the number of views generated from
25 the advertisement;

1 “(G) the date and time that the advertise-
2 ment is first displayed and last displayed; and

3 “(H) information regarding—

4 “(i) the average rate charged for the
5 advertisement;

6 “(ii) the name of the candidate to
7 which the advertisement refers and the of-
8 fice to which the candidate is seeking elec-
9 tion, the election to which the advertise-
10 ment refers, or the national legislative
11 issue to which the advertisement refers (as
12 applicable); and

13 “(iii) the amount such person budg-
14 eted for the purchase of the advertisement
15 on the platform, as well as the amount
16 such person paid for the purchase of the
17 advertisement on the platform.

18 “(3) TIME TO MAINTAIN FILE.—The informa-
19 tion required under this subsection shall be made
20 available as soon as possible and shall be retained by
21 the covered online platform or covered intermediary
22 for a period of not less than 4 years.

23 “(4) SAFE HARBOR FOR PLATFORMS AND
24 INTERMEDIARIES MAKING BEST EFFORTS TO IDEN-

1 TIFY REQUESTS WHICH ARE SUBJECT TO RECORD
2 MAINTENANCE REQUIREMENTS.—

3 “(A) AVAILABILITY OF SAFE HARBOR.—In
4 accordance with rules established by the Com-
5 mission, if a covered online platform or covered
6 intermediary shows that the platform or inter-
7 mediary used best efforts to determine whether
8 or not a request to purchase a qualified political
9 advertisement or a request to purchase an ar-
10 rangement for the dissemination of a qualified
11 political advertisement (as the case may be) was
12 subject to the requirements of this subsection,
13 the platform or intermediary shall not be con-
14 sidered to be in violation of such requirements.

15 “(B) SPECIAL RULES FOR DISBURSEMENT
16 PAID WITH CREDIT CARD.—For purposes of
17 subparagraph (A), a covered online platform or
18 a covered intermediary shall be considered to
19 have used best efforts in the case of a purchase
20 of a qualified political advertisement, or a pur-
21 chase of an arrangement for the dissemination
22 of a qualified political advertisement (as the
23 case may be), which is made with a credit card
24 if—

1 “(i) the individual or entity making
2 such purchase is required, at the time of
3 making such purchase, to disclose the cred-
4 it verification value of such credit card;
5 and

6 “(ii) the billing address associated
7 with such credit card is located in the
8 United States or, in the case of a purchase
9 made by an individual who is a United
10 States citizen living outside of the United
11 States, the individual provides the platform
12 or intermediary with the United States
13 mailing address the individual uses for
14 voter registration purposes.

15 “(c) COVERED ONLINE PLATFORM DEFINED.—In
16 this section, the term ‘covered online platform’ means any
17 public facing website, web application, or digital applica-
18 tion (including a social network or search engine) which
19 sells qualified political advertisements and has 50,000,000
20 or more unique monthly United States visitors or users
21 for a majority of months during the preceding 12 months,
22 except that such term does not include a website or appli-
23 cation that displays qualified political advertisements sole-
24 ly pursuant to an arrangement entered into with a covered

1 intermediary between the website or application and the
 2 sponsor of the qualified political advertisement.

3 “(d) COVERED INTERMEDIARY DEFINED.—In this
 4 section, the term ‘covered intermediary’ means a digital
 5 advertising platform or advertising system (including an
 6 ad server, ad network, ad exchange, and any other adver-
 7 tising technology intermediary) which participates in the
 8 delivery of 100,000,000 advertisements that can be viewed
 9 in the United States for a majority of months during the
 10 preceding 12 months.

11 “(e) QUALIFIED POLITICAL ADVERTISEMENT DE-
 12 FINED.—In this section, the term ‘qualified political ad-
 13 vertisement’ means any advertisement (including search
 14 engine marketing, display advertisements, video advertise-
 15 ments, native advertisements, and sponsorships) that—

16 “(1) is made by or on behalf of a candidate; or

17 “(2) communicates a message relating to any
 18 political matter of national importance, including—

19 “(A) a candidate;

20 “(B) any election to Federal office; or

21 “(C) a national legislative issue of public
 22 importance.”.

23 (b) ENHANCED CRIMINAL PENALTY FOR VIOLA-
 24 TIONS.—Section 309(d)(1) of such Act (52 U.S.C.

1 30109(d)(1)) is amended by adding at the end the fol-
 2 lowing new subparagraph:

3 “(E) Any covered online platform or covered inter-
 4 mediary, or an officer or director of a covered online plat-
 5 form or covered intermediary, who knowingly and willfully
 6 commits a violation of section 325 shall be imprisoned not
 7 more than 5 years, fined under title 18, United States
 8 Code, or both.”.

9 (c) RULEMAKING.—

10 (1) RESPONSIBILITIES OF FEDERAL ELECTION
 11 COMMISSION.—Not later than 90 days after the date
 12 of the enactment of this Act, the Federal Election
 13 Commission shall establish rules—

14 (A) regarding the definition of any term
 15 whose definition is set forth in section 325 of
 16 the Federal Election Campaign Act of 1971 (as
 17 added by subsection (a));

18 (B) regarding the restrictions established
 19 under section 325(a) of such Act (as added by
 20 subsection (a)) on targeting the dissemination
 21 of qualified political advertisements to a specific
 22 group of individuals on the basis of any demo-
 23 graphic characteristic shared by members of
 24 such group, including establishing the criteria

1 for the safe harbors described in paragraphs
2 (1)(B)(ii) and (4)(B) of such section;

3 (C) requiring common data formats for the
4 record required to be maintained under section
5 325(b) of such Act (as added by subsection (a))
6 so that all online platforms and intermediaries
7 submit and maintain data online in a common,
8 machine-readable and publicly accessible for-
9 mat;

10 (D) establishing search interface require-
11 ments relating to such record, including
12 searches by candidate name, issue, purchaser,
13 and date; and

14 (E) establishing the criteria for the safe
15 harbor exception provided under paragraph (4)
16 of section 325(b) of such Act (as added by sub-
17 section (a)).

18 (2) REVISION.—After the Commission first es-
19 tablishes rules pursuant to this subsection, the Com-
20 mission shall revise the rules every 5 years there-
21 after.

22 (d) REPORTING.—Not later than 2 years after the
23 date of the enactment of this Act, and biannually there-
24 after, the Chairman of the Federal Election Commission
25 shall submit a report to Congress on—

1 (1) matters relating to compliance with and the
2 enforcement of the requirements of section 325(b) of
3 the Federal Election Campaign Act of 1971, as
4 added by subsection (a);

5 (2) recommendations for any modifications to
6 such section to assist in carrying out its purposes;
7 and

8 (3) identifying ways to bring transparency and
9 accountability to political advertisements distributed
10 online for free.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall apply with respect to qualified political
13 advertisements disseminated after the expiration of the
14 120-day period which begins on the date of the enactment
15 of this Act.

○