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OVERSIGHT OF FEDERAL POLITICAL ADVERTISEMENT LAWS AND REGULATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON
INFORMATION TECHNOLOGY

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
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OVERSIGHT OF FEDERAL POLITICAL ADVERTISEMENT LAWS AND REGULATIONS

Tuesday, October 24, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INFORMATION TECHNOLOGY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:08 p.m., in Room 2154, Rayburn House Office Building, Hon. Will Hurd [chairman of the subcommittee] presiding.

Present: Representatives Hurd, Mitchell, Amash, Farenthold, Kelly, Raskin, Lynch, Connolly, and Krishnamoorthi.

Also Present: Representatives Kilmer, Cartwright, and Sarbanes.

Mr. HURD. The Subcommittee on Information Technology will come to order. And without objection, the chair is authorized to declare a recess at any time.

Good afternoon. Today's hearing is part of a series of hearings the IT Subcommittee has held to analyze existing laws and regulations that may have become obsolete or need updating to reflect technological advances. We've held hearings on health IT technologies, drones, autonomous vehicles, the Internet of Things, and many other issues.

Today we turn our attention to laws and regulations governing political advertisements.

The Federal Election Commission oversees civil campaign finance laws and enforces disclaimer requirements for public communications from candidates, campaigns, parties, or political action committees related to Federal offices.

In addition, the FCC enforces additional disclosure and disclaimer requirements on broadcast, cable, satellite, and radio ads.

Some have proposed increased disclaimer and/or disclosure laws for ads placed on internet platforms and have proposed a role for the FTC.

The interplay between these three regulatory agencies and how they each apply the law is something the Oversight Committee is uniquely situated to examine, and I hope we dig into that today.

In many ways, this hearing is another example of the IT Subcommittee's continued efforts to examine emerging technology. There is a level of urgency and importance to this hearing that cannot be understated. Since the sun rose on our democratic experiment, our adversaries have sought to destroy what our forefathers fought for. Our adversaries have always sought to use our Nation's unique qualities to undermine our robust and resilient democracy.

But now their tools have changed. As we've seen in recent months and weeks, Russia has attempted to influence our democratic process, utilizing, among other tools, political advertisements on major American social media platforms.

With every technological advancement, our Nation's regulatory posture has evolved to meet the changing needs of the day. Today I hope to explore questions related to the need for reform of our Nation's political advertisement laws and regulations.

As always, I'm honored to be exploring these issues in a bipartisan fashion with my friend and the ranking member, the Honorable Robin Kelly from the great State of Illinois.

It's always good to be with you, Robin.

I thank my colleagues and witnesses and my fellow citizens who have joined us today in person or who are watching online for participating today.

Now it is my honor to recognize the ranking member of the Subcommittee on Information Technology, Ms. Kelly, for her opening statement.

Ms. KELLY. Thank you, Mr. Chairman, and thank you for holding this important hearing.

Today we will examine Federal laws and regulations governing political advertising just 1 month after Facebook revealed that Russians spent $100,000 to buy 3,000 ads to influence the 2016 election. Those ads reached 10 million Americans.

These are just the numbers we know of. There are likely many more ads that were purchased directly or indirectly by the Russian Government.

U.S. campaign finance law prohibits foreign money in elections, but it allows foreign money to purchase issue ads. All political ads must carry a disclaimer which discloses who the buyer of the ad is, but this requirement does not extend to digital ads, like those that run on Facebook.

The Russian Government exploited these loopholes. In the 2016 elections, the Russians were able to take advantage of our antiquated campaign finance rule and mounted effective misinformation campaigns on Facebook, Twitter, and Google. They micro-targeted their ads, sometimes posing as community activists, with the intention of turning Americans against Americans. They sought to sway voters in critical congressional districts and swing States with fake news.

The last time that the Federal Election Commission updated these regulations was April 2006, more than 10 years ago. That was before the iPhone had been introduced, Twitter was still in development, and the Facebook was only for college students. In fact, 35 of the 42 members of the Oversight Committee were not yet in Congress, myself or the chairman included.

Much has changed in that time. A Presidential candidate effectively used Twitter to wage a successful Presidential campaign. It's time we recognize that in today's world television and radio are not the only media carrying political ads.

I am confident that we can prevent meddling by Russia and other foreign states in our elections while protecting the First Amendment rights of Americans. I was encouraged to see the FEC

recently reopened its 2011 comment period on social media political advertising after these Russian meddling revelations.

However, I am still concerned about the systemic problems within the FEC that have led to years of gridlock and inaction. We cannot continue waiting for action from the FEC. Our adversaries have shown they can act quickly and exploit our inability to enforce the law.

According to a recent Marist Poll, 64 percent of Americans want regulation on social media advertising and an astonishing 78 percent of Americans want payment disclosure for political advertisements. I couldn't agree more.

It's clear that Americans want transparency and more accountability in social media political advertising. Congress and the intelligence community need to fully investigate what happened in 2016. I commend the chairman for his leadership and willingness to hold today's hearing. Congress must work to ensure the integrity of our elections.

Recently, Senators Warner, Klobuchar, and McCain, and Representatives Kilmer and Coffman introduced the bipartisan Honest Ads Act. This bill would increase transparency in online political advertising by requiring online advertising platforms to disclose copies of ads and their targeted audiences. This bill is a great start.

Thank you to our witnesses for being here today. I look forward to hearing your thoughts and ideas on how we can protect our democracy.

Thank you, Mr. Chairman. I also ask for unanimous consent that Representatives Sarbanes, Kilmer, and Cartwright be allowed to join our subcommittee today and participate in the hearing.

Mr. HURD. Without any objection, so ordered.

Thank you, Ranking Member Kelly.

And now I'm pleased to introduce our witnesses. First we have Mr. Allen Dickerson, the legal director at the Center for Competitive Politics; Mr. David Chavern, the president and chief executive officer at News Media Alliance; Mr. Jack Goodman, owner of the Law Offices of Jack Goodman; Mr. Randall Rothenberg, president and chief executive officer at the Interactive Advertising Bureau; and Mr. Ian Vandewalker, senior counsel for the Brennan Center for Justice Democracy Program at the New York University School of Law.

Welcome to you all. And pursuant to committee rules, all witnesses will be sworn in before you testify. So please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Thank you.

Let the record reflect that all witnesses answered in the affirmative.

In order to allow time for discussion, please limit your opening testimony to 5 minutes, and your entire written statement will be made part of the record. And I appreciate those written statements. It really was helpful in better understanding these issues.

And for those that are looking for a great outline of these questions we're going to be debating here today, I would suggest you go to the Oversight website to review those statements.

As a reminder, the clock in front of you shows your time remaining. The light will turn yellow when you have 30 seconds left and red when your time is up.

So, Mr. Dickerson, you're up first, and you are now recognized for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF ALLEN DICKERSON

Mr. DICKERSON. Thank you, sir. Chairman Hurd, Ranking Member Kelly, distinguished members of the subcommittee, thank you for the invitation to appear today on behalf of the Center for Competitive Politics.

The internet has fundamentally transformed the ways in which we communicate with one another, and it has become ubiquitous. It is on our desk, next to our alarm clocks, and in our pockets. Today a large portion of Americans walk around every day carrying devices that can instantly connect them with anyone in the world from almost anywhere. In fact, in 2014 the Supreme Court reported survey data indicating that 12 percent of Americans use their cell phones in the shower.

The internet revolution has allowed Americans to absorb, produce, and distribute content without third-party intermediaries. They no longer need to see if an editor has accepted their letter to the editor or have to bear the expense and burden of buying broadcast political ads. As Judge John Kane, a Carter appointee, observed when he struck down a Colorado campaign finance law, it must be remembered that the internet is the new soapbox, it is the new town square.

In a way that makes the 1980s revolution in desktop publishing appear almost quaint, the internet has made us all publishers, distributors, and speakers. Every American has the opportunity to be Tom Paine, to be Publius or William Lloyd Garrison, and one suspects that those authors would approve.

Accordingly, as the Federal Election Commission itself has recognized, the blossoming of online speech and association is delicate, and great caution must be taken when burdening the speech and associational rights of American speakers.

That does not mean, as I explain at some length in my written testimony, that online speech is a Wild West without rules. But it does mean that the current regulatory environment strikes a balance in favor of a flourishing civil society.

Further efforts to license or regulate the placement of small-bore issue advertisements, particularly those that do not advocate for any electoral outcome, will drive out the poorest and least sophisticated online speakers. They will inevitably affect not wealthy corporations, which can afford the experts to ensure compliance, but rather grassroots activists passionate about the issues of the day.

Moreover, efforts to shift liability from licensed speech onto online platforms will simply require those companies to pass on those costs onto those same small budget consumers and it will create in-

centives to limit small-dollar ad buys and grassroots speakers in favor of sophisticated entities that can vet their speech in advance. The result will be an internet that is less free, less open, and less available to ordinary Americans.

Of course, the internet also presents challenges. To take one example, foreign threats are a valid and a vital concern. But they cannot justify regulations whose burdens will fall overwhelming on Americans.

The deterrence of foreign actors is a familiar problem. It is accomplished through means of diplomacy, counterintelligence, and military readiness. Campaign finance law, and in particular the possibility of a fine levied through the FEC's civil enforcement authority, adds relatively little to that mix. Instead, additional campaign finance rules will further restrict access to the internet, the new public square, by average Americans and small groups.

The First Amendment stands against those efforts. It is a bulwark against the passions of the moment and a reminder that our dedication to liberty and unfettered public debate is a strength and not a weakness.

Nor does technological advancement change the Constitution's fundamental guarantees. The First Amendment rights to free speech, press, and association are not circumscribed merely because they become easier for the average American to exercise.

As always then, when dealing with political speech, speech that the Supreme Court has recognized to be at the center of the First Amendment's protections, our guiding principle must be restraint.

Thank you. I look forward to the subcommittee's questions.

[Prepared statement of Mr. Dickerson follows:]

Testimony of Allen Dickerson
Legal Director, Center for Competitive Politics
October 24, 2017

Thank you for the opportunity to provide written testimony, on behalf of the Center for Competitive Politics ("CCP" or "Center"), to the Subcommittee on Information Technology of the Committee on Oversight and Government Reform.

This subcommittee's consideration of online political advertisements is timely and important. Americans are increasingly turning to the Internet, rather than curated media such as newspapers, periodicals, and cable television, to receive information. As the Pew Research Center observed last month, "43% of Americans report often getting news online, just 7 percentage points lower than the 50% who often get news on television. This gap between the two news platforms was 19 points in early 2016, more than twice as large."[1]

And access to the Internet is becoming increasingly convenient. Twenty years ago, smartphones and handheld tablet computers were the stuff of science fiction. According to data cited by Chief Justice John Roberts in *Riley v. California*, today "it is the person who is not carrying a cell phone, with all that it contains, who is the exception...with 12% [of such users] admitting that they even use their phones in the shower."[2] As cell phones transition to smart phones, it is unsurprising that "two-thirds...of Americans report that they get at least some of their news on social media," including Facebook and Twitter, "with two-in-ten doing so often."[3]

This new medium has served as a democratizing force, allowing Americans to instantly connect with one another at all hours and from virtually anywhere. The Internet has also drastically reduced the cost of

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[1] Jeffrey Gottfried and Elisa Shearer, "Americans' online news use is closing in on TV news use," FacTank, Pew Research Center, Sept. 7, 2017; *available at*: http://www.pewresearch.org/fact-tank/2017/09/07/americans-online-news-use-vs-tv-news-use/
[2] 134 S. Ct. 2473, 2490 (2014).
[3] Elisa Shearer and Jeffrey Gottfried, "News Use Across Social Media Platforms 2017," Pew Research Center, Sept. 7, 2017; *available at*: http://www.journalism.org/2017/09/07/news-use-across-social-media-platforms-2017/

bringing together like-minded people with common goals and interests. The rapid growth of the Internet for grassroots communications is, in that sense, merely a logical extension of the development of desktop publishing in the 1980's, which empowered individuals and groups to self-publish political material without turning to expensive and capital-intensive professional shops.

Political activity has not been immune from these forces. The Internet has allowed an explosion of political participation by ordinary Americans and the grassroots efforts they support. But that has been possible because a light regulatory touch and low overhead have made Internet communications vastly more affordable than traditional media. As the Federal Election Commission noted when it promulgated current regulations regarding online communications, the Internet is "a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach."[4] As a federal judge recently put it: "the [I]nternet is the new soapbox; it is the new town square."[5]

Nevertheless, because the Internet's rise to ubiquity has felt so sudden and dramatic, some have characterized online political advertising as a lawless "wild west," with an alleged lack of transparency singled out as a particular issue for Congress's attention.[6]

The view that the Internet is a lawless arena, however, is mistaken. Federal law already regulates "communications placed for a fee on another person's Web site."[7] Any communication that expressly advocates the election or defeat of a federal candidate[8] must "in a clear and conspicuous manner"[9] state who paid for the ad. A "disclaimer is not [considered] clear and

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[4] 71 Fed. Reg. 18589, 18589 (Apr. 12, 2006); *also* Advisory Opinion 2017-05 (Great America PAC) at 6 (citing same).

[5] *Coal. for Secular Gov't v. Gessler*, 71 F. Supp. 3d 1176, 1182 (D. Colo. 2014); *aff'd sub nom. Coal. for Secular Gov't v. Williams*, 815 F.3d 1267 (10th Cir. 2016); *cert. denied sub nom. Williams v. Coal. for Secular Gov't*, 137 S. Ct. 173 (2016).

[6] Bill Allison, Daniel Flatley and Todd Shields, "Russian Ads on Facebook End the Web's 'Wild West,'" Bloomberg, Sept. 21, 2017; *available at*: https://www.bloomberg.com/news/articles/2017-09-21/russian-ad-buys-on-facebook-prompt-calls-to-end-wild-west-on-web; Hamza Shaban and Karoun Demirjian, "Facebook and Google may be one step closer to new regulations on ad transparency," The Washington Post, Oct. 19, 2017 ("'Social media advertising had to be regulated, it's the wild wild west,' said Sen. Lindsey O. Graham (R-S.C.)"); *available at*: https://www.washingtonpost.com/news/the-switch/wp/2017/10/19/facebook-and-google-might-be-one-step-closer-to-new-regulations-on-ad-transparency/?utm_term=.ee81c3479a36.

[7] 11 C.F.R. § 100.26.

[8] If placed for a fee. 11 C.F.R. § 110.11(a)(1-3).

[9] 11 C.F.R. § 110.11(c)(1).

conspicuous if it is difficult to read or hear, or if the placement is easily overlooked."[10]

Additionally, for Internet communications "not authorized by a candidate...the disclaimer must clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee."[11]

Furthermore, all political committees—candidate committees, traditional PACs, and so-called Super PACs—must also place disclaimers on "all Internet websites" they maintain.[12] And significant email communications sent by such groups must also list the paid-for-by information.[13] The only exceptions have been for "small items" or situation where it is "impractical" to apply these disclaimers to relatively minute advertisements,[14] measured either in terms of the number of characters[15] or number of pixels.[16]

It should be noted that the "small items" and "impracticality" exceptions, the subject of a current FEC Advanced Notice of Proposed Rulemaking, are not unique to the Internet—both exceptions have existed since the Federal Election Campaign Act first began requiring advertising disclaimers, and they have been consistently applied to things such as bumper stickers, buttons, and pens. While such items may seem quaint today, they were a significant target of campaign spending when the exemptions were created.

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[10] 11 C.F.R. § 110.11(c)(1).
[11] 11 C.F.R. § 110.11(b)(3).
[12] 11 C.F.R. § 110.11(a)(1).
[13] *Id.* ("...electronic mail of more than 500 substantially similar communications when sent by a political committee").
[14] The Commission has struggled to apply those regulations on a case by case basis, and has instead reopened public comments to consider a general approach that would allow political speakers to accurately predict what speech does or does not qualify. Previously, the Center encouraged the FEC to pursue this course and to adopt a rule stating that online advertisements are excused from "disclaimers in any Internet advertising product where the number of characters needed for a disclaimer would exceed 4% of the characters available in the advertised product, exclusive of those reserved in the ad's title." Comments of the Center for Competitive Politics on Notice 2011-14 at 5, *available at:* http://sers.fec.gov/fosers/showpdf.htm?docid=98752 Such a rule provides an explicit standard. It also accords with a recent federal appellate ruling that invalidated *commercial* disclaimers occupying 20% of targeted advertisements. *Am. Beverage Ass'n v. City and Cnty. of San Francisco*, Case No. 16-16072, 2017 U.S. App. LEXIS 18150, 2017 WL 4126944 (9th Cir. Sept. 19, 2017)
[15] *See* Advisory Opinion 2010-19 (Google).
[16] *See* Advisory Opinion 2013-18 (Revolution Messaging).

In short, subject to a common-sense exception where disclaimers are simply not practical, the FEC already regulates the core of online electoral speech: express advocacy and communications by candidates, parties, and PACs.[17] Going further would, by definition, regulate speech that is further afield. It would necessarily be directed at a subset of political speech, which may or may not be partisan, and would disproportionately target speech by "groups whose only connection with the elective process arises from completely nonpartisan public discussion of issues of public importance."[18]

Such an expansion has been urged in the name of purging foreign meddling in our elections. In particular, revelations of relatively modest Internet ad buys from Russian sources over the course of 2015-16 have led to calls for regulation. This is an understandable impulse: Americans, like people across the globe, bristle at foreign intervention in our elections.

Yet perspective is necessary. There is little evidence that these purchases affected the election, and none at all that Russian efforts affected vote tallies. Indeed, former Clinton strategist Mark Penn earlier this month calculated Russian Internet ad buys at a mere $6500 in actual electioneering ads.[19] In a world where the Russian state operates RT, a cable network, foreign citizens who are U.S. permanent residents may contribute directly to candidates, and information may be posted to the Internet for free, it is not clear that small-dollar ad buys constitute a substantial route for nefarious foreign influence?

We are still learning the full scope of Russian attempts to influence the 2016 election. Nevertheless, regardless of the problem's scope, the deterrence of foreign powers is a mission for which campaign finance law and the FEC are poorly suited. Counterintelligence and diplomatic efforts, and the criminal authority of the Department of Justice ("DOJ"), are a better fit. This is especially so as nearly any efforts by foreign governments would already be regulated under the Foreign Agent Registration Act ("FARA"), which requires ongoing periodic registration, disclaimers, and copies of advertising to be filed with DOJ. Campaign finance efforts are at best duplicative and at worst counterproductive. The Congress's attention would be better directed to FARA, rather than the Federal Election Campaign Act ("FECA").

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[17] *See, e.g. Buckley v. Valeo*, 424 U.S. 1, 79-81 (1976) (*per curiam*).
[18] *Buckley v. Valeo*, 519 F.2d 821, 870 (D.C. Cir. 1975) (*en banc*); *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 790 (2011) ("[W]hatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary when a new and different medium for communication appears") (internal quotation marks and citation omitted).
[19] Mark Penn, *You Can't Buy the Presidency for $100,000*, Wall Street Journal, Oct. 15, 2017 (https://www.wsj.com/articles/you-cant-buy-the-presidency-for-100-000-1508104629).

Any expansion of the campaign finance laws, whether intended to regulate foreign nationals or not, will mostly impact American citizens and American companies. For that reason, expanding the "electioneering communications" regulatory regime enacted in the Bipartisan Campaign Reform Act of 2002, and rushing to place new regulatory burdens on small political ad buyers, would be a mistake.

It would be a mistake precisely because it would infringe upon the core activities—political speech and association—protected by the First Amendment. Given the relatively small amounts of money known to have been spent by foreign interests, any "effective" regulation would necessarily target small purchases—that is, precisely the small, grassroots activity most sensitive to, and most likely to be chilled by, heavy-handed governmental intervention. And because the majority of spending appears to have been spent on general discussions of political issues, it will be all too tempting to reach beyond advocacy for or against candidates and to instead impose restrictions on vague and subjective categories of speech "about politics."[20]

These difficulties would be exacerbated if, as has been suggested, the government chooses to shift the burden of enforcement onto social media companies. This approach would be problematic in two ways. First, these corporations would be required to determine which ads fell within and without the relevant statutory definitions. This is a difficult task even for elementary concepts like "express advocacy" that lie at the core of existing campaign finance law. If federal courts and the FEC's commissioners disagree, often and in good faith, on whether a particular communication "expressly advocates," what hope does a private actor have? The predictable result will be a risk-averse approach, vetted by competent but cautious counsel, that will sweep a large proportion of genuine issue speech into the regulated bucket.

Similarly, if Congress determines that small-dollar advertisements must be regulated, and that those ads must, in practice, be vetted by social media corporations or other significant Internet players, there is likely to be a price point at which the ads are not worth the bother. This would be especially true if liability of any kind is imposed for mistakes, but it would be true as a simple matter of costly overhead in any event. The result would be the exclusion of precisely that speech that is most central to First Amendment concerns.

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[20] Congress has made this mistake before, and the Supreme Court was forced to correct its error. *Buckley v. Valeo*, 424 U.S. at 77 ("'Contributions' and 'expenditures' are defined in parallel provisions in terms of the use of money or other valuable assets 'for the purpose of... influencing' the nomination or election of candidates for federal office. It is the ambiguity of this phrase that poses constitutional problems").

It is not obvious that anything will be gained in exchange for these burdens on fundamental liberties. Whatever modest advances may be made in preventing foreign influence will be on the backs of regulated Americans, who will bear the overwhelming burden under any proposed campaign finance regulation.

Nor is it obvious that existing concepts, such as the federal electioneering communications regime, can be seamlessly extended online. In fact, there are reasons to think that such efforts would raise serious constitutional issues given the unique nature of online communications.

Currently, federal law defines an "electioneering communication" as any "broadcast, cable, or satellite" ad which "refers to a clearly identified candidate for Federal office" made "60 days before a general, special, or runoff election for the office sought by the candidate" or "30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate."[21] Such a communication must be "targeted to the relevant electorate," which means that the "communication can be received by 50,000 persons" in the district or state in which a candidate is running.[22]

All electioneering communications must include a statement that "[XYZ] is responsible for the content of this advertising."[23] In addition, the disclaimer, whether by text or audio (by audio, if the ad is a radio ad), must provide the sponsor's street address, telephone number, or website URL and state that the ad is not authorized by any candidate or candidate's committee.[24] Additionally, upon making "electioneering communications in an aggregate amount in excess of $10,000 during any calendar year,"[25] the speaker must disclose "the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to that account during the period "for the purpose of furthering electioneering communications."[26]

The exceptions to the electioneering communications regime are few, but include an exemption for the institutional media[27] and candidate debates or fora.[28] In addition, the Federal Election Commission sought to exempt

[21] 52 U.S.C. § 30104(f)(3)(A)(i).
[22] 52 U.S.C. § 30104(f)(3)(C).
[23] 52 U.S.C. § 30120(d).
[24] 11 C.F.R. § 110.11(a)(4), (b)(3), (c)(4).
[25] 52 U.S.C. § 30104(f)(1)
[26] 11 C.F.R. 104.20(c)(9).
[27] 52 U.S.C. § 30104(f)(3)(B)(i).
[28] 52 U.S.C. § 30104(f)(3)(B)(iii).

communications made by § 501(c)(3) nonprofits,[29] which by definition cannot "electioneer."[30] However, this attempt to carve-out civil society speech was successfully challenged on administrative law grounds.[31]

The Supreme Court has upheld the current federal electioneering communication regime, both facially[32] and as-applied to "pejorative" ads about then-Senator Hillary Clinton's 2008 bid for the Democratic presidential nomination.[33] But it did so because "the vast majority of [electioneering communication] ads clearly" sought to elect candidates or defeat candidates.[34] The government supplied evidence, through a record the *Citizens United* Court recounted as being "over 100,000 pages long,"[35] that Congress had precisely targeted the type of communication and forms of media required to regulate "candidate advertisements masquerading as issue ads."[36] Indeed, the *McConnell* Court itself noted that it "assume[d] that the interest that justify the regulation of campaign speech might not apply to the regulation of genuine issue ads."[37]

But there is reason to doubt that "almost all" Internet ads that would be swept up in an expanded electioneering communication definition would also be "specifically intended to affect election results."[38]

The purchasing of broadcast advertisements is a cumbersome process. Typically, one cannot simply produce and buy a broadcast, cable, or television advertisement in a matter of hours—or even minutes—as one can when

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[29] 67 Fed. Reg. 65190, 65200 (Oct. 23, 2002) (finding concerns "compelling" that failing to provide a bright-light exemption for § 501(c)(3) charities would "discourage[e]...highly desirable and beneficial activity").

[30] 26 U.S.C. § 501(c)(3) ("...which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office").

[31] *Shays v. Fed. Election Comm'n*, 337 F. Supp. 2d 28, 127 (D.D.C. 2004). There is nothing preventing Congress from enacting a similar exemption.

[32] *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 201-202 (2003).

[33] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366-367 (2010); *also Del. Strong Families v. Denn*, 136 S. Ct. 2376, 2378 (2016) (Thomas, J., dissenting from denial of *cert.*) ("And finally in *Citizens United v. Federal Election Comm'n*, the Court concluded that federally required disclosure 'avoid[ed] confusion by making clear' to voters that advertisements naming then-Senator Hillary Clinton and 'contain[ing] pejorative references to her candidacy' were 'not funded by a candidate or political party") (quoting *Citizens United*, 558 U.S. at 368.

[34] *McConnell*, 540 U.S. at 206; *id.* at 193 ("And although the resulting advertisements do not urge the viewer to vote for or against a candidate *in so many words*, they are no less *clearly intended* to influence the election") (emphasis supplied).

[35] *Citizens United*, 558 U.S. at 332 (citation and quotation marks omitted).

[36] *McConnell*, 540 U.S. at 132 (quotation marks omitted); *id.* at 127-128 (noting that "so-called issue ads" which "eschewed the use of magic words" were "almost all aired in the 60 days immediately preceding a federal election").

[37] *McConnell*, 540 U.S. at 206 n.88.

[38] *McConnell*, 540 U.S. at 127.

purchasing online advertising. Merely producing an advertisement, let alone vetting it and securing airtime, is a significant undertaking—one that most groups would only undertake with the assistance of counsel and advertising professionals.

As a result, broadcast mass advertising is not a game for small grassroots speakers. It may often the case that people planning, producing, and scheduling a broadcast media purchase capable of reaching 50,000 people in a Congressional district a month before an election are seeking to affect the outcome of the vote. This is in part because spectrum and cable are finite media—one buys a broadcast ad to run on a given station at a given time.

By contrast, Facebook or Google AdWords advertisements calling for named members of Congress to, say, repeal the Jones Act in the immediate aftermath of a devastating late September hurricane, are more likely to be engaging in those "issue discussions unwedded to the cause of a particular candidate" that are "vital and indispensable to a free society."[39] The Supreme Court is less likely to bless the regulation of that speech.[40]

Additionally, spending $10,000, in aggregate, on broadcast television ads is likely to involve the distribution of a handful of messages. But spending $10,000 in the aggregate on small online ads such as Facebook or Google AdWords could involve many small transactions purchased by groups with a diverse set of legitimate legislative interests.

This matters. Groups that can afford counsel to help with the production of a broadcast ad are more likely to understand the disclaimer requirements and to know how to preserve documentation and comply with disclosure rules. And to the extent that Congress is tempted to provide a lower monetary trigger, it would simply compound these problems. Indeed, it has been publicly reported that legislation will soon be introduced imposing these requirements at a threshold of just $500.[41] Worse, such a low trigger might even lead Internet companies to decline to permit small-dollar grassroots advertising, rather than risk their own liability over relatively minor revenue streams.

Unless Congress can assure itself that it is regulating electioneering, and not mere political discussion about issues of public interest, it ought to act with care. After all, as the Supreme Court noted in the landmark case of *Mills v. Alabama*, "[w]hatever differences may exist about the interpretations

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[39] *Buckley*, 519 F.2d at 873.
[40] *E.g. Talley v. Calif.*, 362 U.S. 60 (1960).
[41] *See* Elizabeth Strassner, *Warner, Kobluchar, McCain propose Honest Ads Act*, U.S. News, Oct. 19, 2017 (https://www.usnews.com/news/politics/articles/2017-10-19/warner-klobuchar-mccain-propose-honest-ads-act).

of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes"[42]

In addition, there are practical concerns with merely cloning the electioneering communication standard applied to broadcast ads. What constitutes a communication reachable by 50,000 persons in the "relevant electorate?" Do the technical means exist to determine that answer without imposing insurmountable compliance costs? After all, basic economics dictates that such costs will be passed on to the consumer. And increasing compliance costs will crowd out precisely the small, grassroots speakers that are most vulnerable and rely most upon the Internet to disseminate their message. Conversely, removing the targeting requirement entirely will simply expand the scope of regulated communications, sweeping in discussions of key legislators, such as committee chairs, even where those conversations are not directed at constituents and are almost certainly not intended to affect electoral results.

These concerns suggest caution. The Internet's role as a conduit for grassroots speech and association is delicate, and too-easily crushed by overzealous or ill-considered restrictions. In particular, Congress should be wary of burdening an enormous swath of Americans' grassroots political advocacy in the name of preventing, or attempting to prevent, relatively small foreign purchases. That concern is especially acute where such foreign meddling is already regulated under an unrelated statutory regime that does not burden Americans' First Amendment liberties.

Thank you again for the opportunity to provide testimony on this important question.

[42] 384 U.S. 214, 218-219 (1966).

Mr. HURD. Thank you, Mr. Dickerson.

Mr. Chavern, you're now recognized for your opening remarks.

STATEMENT OF DAVID CHAVERN

Mr. CHAVERN. Thank you very much, Chairman Hurd, Ranking Member Kelly, and members of the Subcommittee on Information Technology. Thank you very much for asking me to participate in today's hearing.

I represent the News Media Alliance, a nonprofit trade association representing nearly 2,000 news publishers across the United States. Our members include some of the largest global news organizations, as well as local newspapers focusing on the issues that impact the daily lives of citizens in every State and congressional district.

Alliance members share a common mission: to inform society in an accurate, thoughtful, and responsible manner. Our member news organizations have long made substantial investments in high quality journalism to achieve that mission.

Our journalists and publishers are also held to high standards, as detailed in the American Society of News Editors' Statement of Principles and the Society of Professional Journalists' Code of Ethics. Not only are we potentially liable for knowingly publishing something that's false, our very brands are built on trust with our readers.

Because of this, our commitment to truthful and accurate reporting has also informed our approach to advertising. Publishers have long played an important role in ensuring the integrity of the advertisements that appear next to their content.

When it comes to political advertisements, the legal responsibility for complying with Federal Election Commission rules clearly falls on the advertiser. Nonetheless, news publishers have taken an active role in ensuring that proper disclosures are made and that all ads placed in our publications reflect the honesty and integrity that's the foundation of our brands.

As technology has evolved, publishers have carried forward our responsibility to provide accurate content and the internal controls that go with that to our digital products. These efforts are now much more difficult because of the growth of online platforms like Google and Facebook that act as intermediaries in the distribution of news content, and advertising.

Publishers previously worked to ensure the integrity of both their content and the advertising that appeared next to it, but now we have less control over advertising because of programmatic delivery of ads through ad tech platforms. These challenges are largely caused by the massive growth and inability to control an ecosystem that was built with the specific intention of not exercising responsibility over the integrity of content or the advertising that sustains its foundation.

This is exacerbated by the fact that Google and Facebook now control the distribution and monetization of online news and information. They are the top two sources of traffic for online news publishers. They also collect most of the revenue, with Google and Facebook receiving approximately 71 percent of all digital adver-

tising dollars in the United States last year, which includes political advertising.

News publishers have worked tirelessly to respond to rapidly changing business models. My members now represent some of the most innovative and engaging digital publishers in existence, and we have created these new businesses without compromising the integrity of our journalism.

It is time that Google and Facebook and other online platforms do their part as well. And while they have profited greatly from their immense market power, they have yet to accept really the full responsibility that comes with that position.

When it comes to political advertising, Congress also needs to make the same adjustments that the rest of the economy is making and move away from a platform-specific perspective. My members deliver their news content wherever their readers want it: on desktops, in print, mobile devices, and even wearables. Within the bounds of the First Amendment, if Congress sees fit to impose requirements on certain kinds of political speech, then those rules shouldn't be defined by the delivery platform.

And as a corollary, Congress should revisit the need for current platform-specific requirements to see if they appropriately apply to our converged digital world. If Congress continues to legislate by platform, then technology will simply continue to outpace the rules.

The Alliance believes that the FEC rules should be updated to require disclosures within an internet advertisement to identify the sponsor of an ad. Google and Facebook should also update their ad-driven business models and the opaque algorithms that accelerate the distribution of so-called fake news and viral messaging so that high quality, reputable content is elevated in search and news feeds. I believe that these changes would lead to a healthier journalism industry, a better informed citizenry, and a more united country.

Thank you very much for your time.

[Prepared statement of Mr. Chavern follows:]

Committee on Oversight and Government Reform
United States House of Representatives

"Oversight of Federal Political Advertisement Laws and Regulations"

Testimony of David Chavern
President and CEO
News Media Alliance

October 24, 2017

Chairman Hurd, Ranking Member Kelly, and members of the Subcommittee on Information Technology: Thank you for inviting me to participate in today's hearing.

News Media Alliance

My name is David Chavern, and I am President and CEO of the News Media Alliance, a nonprofit trade association representing nearly 2,000 newspapers across the United States. Our members include some of the largest news organizations covering events around the globe, as well as local newspapers focusing on the issues that impact the communities and daily lives of citizens in every state and congressional district. Our members publish both online and in print.

News Organizations Play an Important Role in Society

Despite their varying footprints and formats, Alliance members share a common mission: to inform society in an accurate, thoughtful, and responsible manner. Our member news organizations have long made substantial investments in high-quality journalism and professional reporting to achieve this mission.

Our members innovate to report and publish news in the modern online world. This is in no small part because journalists and publishers are held to a high standard. Reporters and editors strive to report the truth and if errors are made publish timely corrections. The principles are detailed in the American Society of News Editors' Statement of Principles and the Society of Professional Journalists' Code of Ethics.

Not only are we potentially liable for knowingly publishing something that is false, our very brands are built on trust with our readers. Because of this, our commitment to truthful and accurate reporting has also informed our approach to advertising. Publishers have long played an important role ensuring the integrity of the advertisements that appear next to our content.

When it comes to political advertisements, the *legal* responsibility for complying with Federal Election Commission (FEC) rules falls on the advertiser. Nonetheless, publishers have long taken an active role in ensuring that proper disclosures are made and that all ads placed in our publications reflect the honesty and integrity that is the foundation of our business.

Our industry has spent many years addressing the quality of content circulated in print, but with the advent of real-time information-sharing in the digital age and its ability to influence public opinion – including with milestone events such as elections around the world – readers are struggling with a current trend in which fake news and misleading advertisements are delivered in ways that are indistinguishable from fact-supported information with verifiable sources.

Intermediation by Internet Platforms Has Harmed the Integrity of Content and Advertising

As technology has evolved, publishers have carried forward our responsibility to provide accurate content—and the internal controls that come with it—to our digital products. These efforts are more difficult because of the growth of online platforms like Google and Facebook that act as an intermediary in the distribution of news content and advertising.

Publishers previously worked to ensure the integrity of both their content *and* the advertising that appeared next to it. But now, we have less control over advertising because of programmatic delivery of ads through ad tech platforms. Google and Facebook have faced similar challenges themselves, and as a result, we have seen top household brands periodically pull their advertisements from these platforms.

These challenges are largely caused by the massive growth and inability to control an ecosystem that was built with the intention of not exercising responsibility over the integrity of content or the advertising that sustains its foundation. This is exacerbated by the fact that Google and Facebook now control both the distribution and monetization of online news and information. As *de facto* gatekeepers for internet users seeking news and other information, they are the top two sources of traffic for online news publishers. They also collect most of the revenue with Google and Facebook receiving 71 percent of all digital advertising in the United States last year, which includes political advertising revenue.

Yet despite this dominant—and highly profitable—market position, neither Google nor Facebook have assumed the responsibilities that publishers once upheld to ensure that the integrity of online advertising matches the integrity of our content.

The market dominance of Google and Facebook has coincided with the proliferation of so-called "clickbait" and "fake news." This approach to monetization provides financial fuel to questionable content. A lot of 'fake news" is produced simply because it makes money.

The perpetuation of fake news and false information undermines society's knowledge base and public discourse for a healthy democracy. This is equally true with advertising that influences public opinion, and is virally distributed by opaque algorithms used by search and social platforms.

The Online Platforms That Created This Problem Should Be the Ones to Fix It

This business model is not one that publishers chose, but we have nonetheless worked tirelessly to change our operations to respond to its demands. And we have done so without compromising the integrity of our journalism. It is time that Google, Facebook, and other online platforms do their part as well.

While they have profited greatly from their immense market power, Google and Facebook have yet to accept the responsibility that comes with their position. Voters and consumers should no longer have to suffer from unreliable information because it is profitable, while producers of content continue to hold ourselves to a higher standard.

It is now time that Google and Facebook be asked to make the same commitments as publishers and modernize their platforms to help stem the flow of misinformation—a problem that is largely of their own making.

The Alliance believes FEC rules should be updated to require disclosures within an internet advertisement to identify the sponsor of the ad. These rules apply to every other medium, and there is no longer a justification for exempting the internet here. More importantly, Google and Facebook should update their ad-driven business models and the opaque algorithms that accelerate the distribution of "fake news" and viral messaging so that higher-quality, reputable content is elevated in search and news feeds.

I believe these changes would lead to a healthier journalism industry, a better-informed citizenry, and a more united country.

Thank you for your time.

Mr. HURD. Thank you, sir.

Mr. Goodman, you're now recognized for 5 minutes.

STATEMENT OF JACK N. GOODMAN

Mr. GOODMAN. Thank you.

Good afternoon, Mr. Chairman, Ranking Member Kelly, and members of the subcommittee. My name is Jack Goodman. I am pleased to present testimony on political advertising. Although I have decades of experience working with broadcast stations on political advertising, I do not appear today on behalf of any present or former client, and the views I express are entirely my own.

Broadcasters have long been considered America's most trusted source of news, far more than any other medium. However, broadcast advertising involving politics is subject to detailed regulations. These regulations affect what ads stations must accept, the information about sponsors they must obtain and disclose to the public, and the prices they charge for political ads.

In my experience, stations take their compliance efforts very seriously. The FCC's political broadcasting staff is exceptionally helpful, but even experienced broadcasters and their counsel frequently encounter questions as to which no clear answer exist.

Disclaimer, as I will refer to it, is the information that must be included in ads about their sponsor. These are often referred to as sponsor ID requirements. Disclosure refers instead to requirements for sponsors of political advertising to reveal who they are and who determines their policies.

Both the FCC and the FEC have rules governing aspects of both disclosure and disclaimer. Both agencies have sought to avoid conflicting regulations. And very importantly, both believe that broadcasters and their employees should not be required to serve as unpaid government enforcement agents or as unofficial private investigators.

The FCC disclaimer rule for all political advertising is that the ad must include a statement saying either "paid for" or "sponsored by" whoever is actually writing the check paying for it. These disclaimer rules limit the type of ads that stations can sell. Short messages cannot be used because a disclaimer will not fit. Thus inflexible disclaimer rules can prevent the use of some formats for political speech.

Turning to disclosure, broadcasters and cable systems must maintain public inspection files, including the political file. Television station public files are now online, and all stations will have their files online by next March. For candidate buys, the station is required to disclose the candidate, the requested schedule, and the cost of the ads.

Disclosure requirements for noncandidate ads, which include both independent expenditures relating to elections and ads about issues or referenda, are more complex. The rules require detailed disclosure for any ad that communicates a political matter of national importance. The act explains that these include references to a legally qualified candidate, any election to Federal office, or a national legislative issue of public importance, and this definition is, to say the least, unclear. For example, is reference to a legally

qualified candidate intended to encompass issue ads about State and local races?

Determining what is a national legislative issue can also be challenging. If Congress is considering a gun control bill and a separate gun measure were introduced in a State legislature, would an ad opposing the State bill be subject to expanded disclosure?

The requirements that issue advertisers disclose a sponsor's officers and the issues in the ad are also difficult to enforce. Some ad agencies simply refuse to provide the requested information. Stations infrequently receive orders for issue ads that do not identify any individual or, even if the station insists, are given only one name.

Stations face similar problems in getting accurate information about issues in an ad. The rule is itself ambiguous. For example, if there are issue ads next year opposing Senator Kaine's reelection in Virginia, is "reelection of Senator Kaine" an adequate description of the issue? And what if an ad discusses more than one issue? Does each one need to be disclosed?

Another problem can arise if time is reserved in advance and the advertiser does not decide what specific issue to address until just before the ad runs.

Because of these problems, even the most conscientious stations have great difficulties in obtaining the information that is supposed to be in the political file.

In conclusion, experience with the FCC's political broadcasting rules is instructive. Any new rules applicable to broadcasters or other media need to be flexible to be adapted to new and varying speech formats.

And if new disclosure requirements are created, the responsibility for collection should not be placed on the media but instead on a government agency with authority to interpret the rules, investigative resources, and the power to impose sanctions for noncompliance.

Thank you very much.

[Prepared statement of Mr. Goodman follows:]

Testimony of
Jack N. Goodman
before the House Subcommittee on Information Technology
of the Committee on Oversight and Government Reform

October 24, 2017

Good Afternoon Mr. Chairman, Ranking Member Kelly, and Members of the Subcommittee. My name is Jack Goodman. I am pleased to present testimony on disclosures and disclaimers involving political advertising.

I have advised radio and television stations about political broadcasting issues for several decades, both in private legal practice and in the Legal Department of the National Association of Broadcasters (NAB). I have spoken about political broadcasting issues to numerous groups of both broadcasters and communications attorneys.

My purpose today is to provide the Subcommittee with information on the rules that apply to political advertising on radio and television stations and on cable systems as background to your consideration of advertising on various internet-based platforms including social media. I will focus on the rules and policies established by the Federal Communications Commission (FCC). Although I am happy to answer questions about other FCC rules concerning political advertising, my testimony will explain FCC requirements for disclosure and disclaimers in political advertising.

First, I think some context is appropriate. Broadcasters have long been considered the most trusted source of news by Americans. Far more than any other medium, broadcast advertising involving politics is subject to detailed government regulations. These regulations affect what ads stations must accept, the information they must obtain from advertisers and must disclose to the public, and the prices that they charge for political ads. The rules are complicated; the Federal Communications Bar Association typically sponsors two updates on the political rules every election year for its members; many state broadcast associations sponsor political advertising rule update sessions for their members, and many station groups require their managers to attend sessions to learn about the rules every election year. Cable systems must comply with some of these rules; no other competing medium faces any of them.

In my experience, most stations take their compliance responsibilities very seriously, but find application of the rules to widely varying situations difficult. For me and my colleagues in the broadcast bar, election seasons are among our busiest periods, and the FCC's political broadcasting staff – which does a truly excellent job of providing real-time help when candidates and stations do not agree – is available almost any time in the months before elections. But as I will describe, the experience broadcasters have with these rules shows that Congress should be careful in imposing difficult new regulations on media platforms.

Turning to the rules, disclosure, as I refer to it, involves requirements for sponsors of political advertising to reveal who they are and who determines their policies. Disclaimer refers instead to the information that must be included in particular ads about their sponsor. Those rules are often referred to as "sponsor ID" requirements.

Both the FCC and the Federal Election Commission (FEC) have rules governing aspects of both disclosures and disclaimers. For many years, the two agencies have generally sought to avoid undue interference in each other's jurisdiction. Thus, in general, rules specifically relating to ads on broadcast stations or on cable are FCC rules, while rules relating to a wider range of political advocacy are established by the FEC. There is, of course, some overlap, but importantly, both agencies have concluded that broadcasters and their employees should not be required to serve as unpaid enforcement agents or as unofficial private detectives to determine the actual source of funds used to pay for political ads.

Disclaimers

The FCC's basic disclaimer rule for all advertising for a candidate or which involves a controversial issue of public importance is that the advertisement must include a statement at the beginning or end (unless the ad is longer than five minutes, in which case the disclaimer must be aired at both ends) saying either "paid for" or "sponsored by" whoever is actually paying for the ad. Thus, informal disclaimers such as "brought to you by friends of Joe Smith" are not acceptable unless "Friends of Joe Smith" is the name of Mr. Smith's official campaign committee.

In television ads, the disclaimer must be visual, must be displayed for at least four seconds, and must be in letters that are at least four percent of the screen height. Radio ads, of course, include only an audio disclaimer.

For any candidate to obtain the discounted candidate rate, or "lowest unit charge," the candidate's identifiable voice or picture must be in the ad, but that appearance does not have to be in the disclaimer. For candidates for Federal office, however, the Bipartisan Campaign Reform Act of 2002 (BCRA) created a condition on their right to the "lowest unit charge." To qualify for the reduced rate, federal candidates must certify that the ads they run will either not refer to an opposing candidate or will include a statement by the candidate stating that he or she approved the broadcast. In television ads, that statement must also be accompanied by a picture of the candidate. Although the "I'm Joe Smith and I approved this message" disclaimer is only required by *the FCC* if a candidate's message discusses an opposing candidate and the candidate sponsoring the ad wants the candidate discount, *the FEC* effectively requires the same message for advertising by any Federal candidate. Thus, this type of disclaimer has become ubiquitous in candidate advertising and is often included even in ads for state and local candidates which are not subject to either FEC rules or the BCRA condition on the candidate discount.

The disclaimer requirements effectively limit the type of ads that radio and television stations can sell to political advertisers. Short messages such as sponsorships or mentions, which are sometimes bought by commercial advertisers, cannot be used by political advertisers – whether candidates or issue advertisers – because the disclaimer cannot be accommodated in the short message. For the same reason, although stations generally must offer to candidates all types of advertising they provide to commercial advertisers, stations do not have to offer candidates formats which could not include a disclaimer.

It should be noted that the disclaimers I have discussed are required by the FCC, and the responsibility for including an accurate disclaimer in each ad is imposed upon broadcasters. There are additional disclaimer requirements that may apply to specific types of ads that are imposed under FEC rules. Those requirements apply to candidates or other advertisers. Stations are not required to examine proposed ads to make sure they include those FEC-mandated disclaimers, although I understand that many stations inform prospective advertisers if they notice that an ad fails to comply with FEC rules. NAB has put together a chart showing the various sponsorship identification rules, the ads to which they apply,

and whether they are imposed by the FCC or the FEC. A copy of that chart is attached to this testimony.

Disclosure Rules

Turning to disclosure rules, broadcasters and local cable systems must maintain public inspection files where the public can view documents relating to their operation. A key part of the public inspection file is the political file. All television stations now must have online public inspection files which are maintained on the FCC's website and are accessible by anyone over the internet. The FCC has also mandated that radio stations and cable systems transition to online public inspection files. Currently, only large cable systems and radio stations with more than five employees and which are in the 50 largest radio markets must keep their public files online. By March 1, 2018, every radio station and cable system will have to maintain an online public inspection file, at least for information created after that date.

What information stations must collect and place in their public inspection files depends on whether the advertisement is placed on behalf of a candidate or a candidate's authorized committee, or on behalf of an independent committee or issue advertiser. For non-candidate ads, the disclosure requirements also vary depending on whether the message relates to what BCRA described as "a political matter of national importance."

Although the FCC does not prescribe a particular form of agreements for political advertising, many, if not most, stations use the set of Political Broadcast Agreements published by the National Association of Broadcasters. Its current edition is commonly referred to as "PB-18." A copy of those forms is attached. They were designed to capture the information the FCC requires be placed into the political file.

When it adopted the online file rule, the FCC clarified that no disclosure of a request to purchase time would be required until a campaign makes a request for a specific schedule of ads; general requests for availabilities or discussions about "a general array of time" do not require disclosure in the political file.

For candidate advertising buys, the purchaser is required to disclose the candidate for which the time is sought, the office the candidate seeks in a particular election, the schedule that is requested, and the amount to be paid for the ads. The

buyer is also asked to state the source of payment for the time and to represent that the purchaser is either a legally qualified candidate or an authorized committee for such a candidate, and to provide the name of the treasurer of the candidate's authorized committee. Federal candidates, as explained above, also are asked to provide the certification about references to opposing candidates required by BCRA to qualify for the candidate discount rate.

In general, few problems seem to arise in connection with candidate disclosures. The most common issue in my experience is in determining whether the entity placing the ad is in fact an authorized buyer for the campaign. One national candidate in the 1990's instructed their time buyer not to provide any information demonstrating that they were an authorized purchaser to stations, which resulted in delays in their schedules being placed and disputes over whether the ads were entitled to the candidate discount rate.

The FCC also recognizes that information about when specific spots actually were broadcast is generally not assembled until a station issues invoices or confirmations, generally once a month. Once those are available, they must be placed into the station's political file. Before that, stations must make personnel available on request to confirm when spots actually aired.

Disclosure requirements for non-candidate ads, which include both independent expenditures relating to elections, and ads about issues or referenda, are more complex. BCRA established detailed disclosure rules for issue advertising that "communicates a political matter of national importance." The Act explained that this includes at least (1) references to a legally qualified candidate, (2) any election to Federal office, or (3) a national legislative issue of public importance. This definition is less than perfectly clear and results in periodic uncertainties. For example, is the inclusion of references to a "legally qualified candidate" intended to encompass issue ads about state and local races? Candidates in those races are "legally qualified," but since BCRA's exclusive focus in every other part of the law was on Federal candidates and races, most stations and their lawyers construe it to apply only to candidates for Federal office (which then makes the second element of the definition superfluous). The third element – a national legislative issue of public importance – also leads to questions. If, for example, Congress is considering a gun control measure, and a separate gun control measure were introduced in a state legislature, would an ad opposing the state gun control bill be subject to the BCRA expanded disclosure

obligations? The FCC has not clearly addressed these questions, and stations often have to ask legal counsel to decide how to characterize an ad.

If an issue ad does not communicate "a political matter of national importance," FCC rules require that the station include in the public file a list of the officers, directors, committee members or other individuals who direct the activities of the sponsoring organization.

For issue ads that do fall within the BCRA definition, much more information must be provided. Stations must report that ads were run by a particular organization, and like candidate ads, must disclose the number of ads broadcast and the times they were aired, as well as the amounts paid by the advertiser. They are also directed to include in the file a list of the executive officers, or executive committee members or board members of the sponsor, although the FCC has ruled that, unless they are presented with extrinsic evidence that the identity of the stated sponsor is misleading, they are not required to look behind the sponsor's identification of itself. Stations are further required to include for each such issue ad, the names of any legally qualified candidates referred to or the office being sought, and/or the issue to which the ad refers.

The latter two requirements – disclosure of the members of the sponsoring organization and the issues being addressed – have been problem areas. Some agencies that place issue ads refuse to complete the current NAB political agreement forms, and instead insist on filling out earlier editions of the NAB forms which asked for less information, or instead use their own form or leave out information entirely. Thus, stations not infrequently receive orders for issue ads that do not identify any individual at the sponsor, and even if the station insists, are often given only one name, which is typically the treasurer. If a station asks for more information, they often are told that the treasurer is the only official or at least the only one that the agency knows about.

And while there are repeated efforts to require stations to determine not only who the stated advertiser is, but also who may be contributing to an advocacy group, the difficulties stations have in obtaining even contact and other basic information about the stated advertiser should discourage efforts to require them to obtain the names of donors. Not only will advertisers and their agencies be reluctant or unwilling to provide that information, but even if some information is obtained, stations have no way to determine if that information is accurate or complete.

Stations face similar difficulties in getting accurate information about the issue to be addressed in ads. To be sure, unlike the list of executive officers, the issue disclosure requirement is far from clear. For example, if the National Republican Senatorial Committee places ads next year opposing Senator Kaine's reelection, do they also need to provide a description of issues other than "reelection of Senator Kaine"? And what if an ad discusses more than one issue; does each one need to be disclosed? Another problem can arise if advocacy groups reserve time well in advance and do not decide what specific issue to address until just before an ad runs. The FCC last year cited some stations for failing to obtain sufficiently specific information about the issues addressed in ads they aired, but the FCC later withdrew that decision, and these issues remain open.

Because of these problems, even the most conscientious stations have great difficulties in making sure that issue advertisers have fully disclosed the information BCRA requires to be placed in the political file. Thus, both the FCC and the FEC are correct in their conclusion that stations and their staffs should not be expected to act as government agents or to conduct investigations of their prospective advertisers. And while it is easy to say that stations could simply reject ads from uncooperative advertisers or agencies, doing so would restrict advocacy groups ability to reach voters, and broadcasters – who are fully committed to the First Amendment – should not be placed in the position of restricting speech.

Station Control over Ad Content

One short word about the content of political advertisements. The Communications Act bars stations from censoring uses by candidates. Thus, even if a candidate ad is untrue or contains libelous or slanderous material, stations cannot require the ad to be edited or refuse to air it. And because stations have no editorial authority, the Supreme Court has held that they cannot be held liable for the content of candidate ads. Issue ads, on the other hand, do not have the same protections. Stations can refuse to take them because of their content or may require them to be edited, and stations can be sued because of the content in issue ads. On the other hand, stations are not expected to be guarantors of the accuracy of every statement in an issue ad.

Stations frequently receive demands from candidates that they cease airing an ad which the candidate believes is inaccurate. If the ad is not sponsored by the

opposing candidate, stations often ask the advertiser to provide support for the claims in the ad, and then either evaluate the ad themselves or often ask counsel for their opinion. Often, the answers are not clear since a glass may be described as half-full or half-empty and both statements are at least technically accurate. But many stations, after evaluating ad claims, have declined to run the ads or required that they be edited to remove false or misleading claims. That process, as you might imagine, is difficult for station personnel and expensive.

Conclusion

Experience with the broadcast and cable political broadcasting rules I think is instructive going forward. With respect to disclaimers, given the increasing variety of formats for political speech, and with the prospect that the formats we know now may be replaced by others, a key element in any new regulations must be flexibility. Thus, rather than specifying what information must be disclosed in online or other political programming and the format that must be used, legislation should establish general goals and objectives and recognize that the means of achieving them will vary depending on the format and platform involved. That I believe requires delegation of the task of creating specific rules to an agency which can adapt the requirements to differing forms of political speech as they arise.

With regard to disclosures, if Congress concludes that the experience of the last election cycle justifies obtaining more information about political speakers' membership and financing, the Supreme Court has continued to hold that disclosure requirements are not barred by the First Amendment. But enforcement of disclosure obligations should not be placed on private parties which lack resources to investigate answers or the power to compel responses. Instead, if such obligations are established, the responsibility for ensuring the completeness and accuracy of disclosures should be placed on a government entity and that entity should then be empowered to impose sanctions on parties that fail to comply with those obligations.

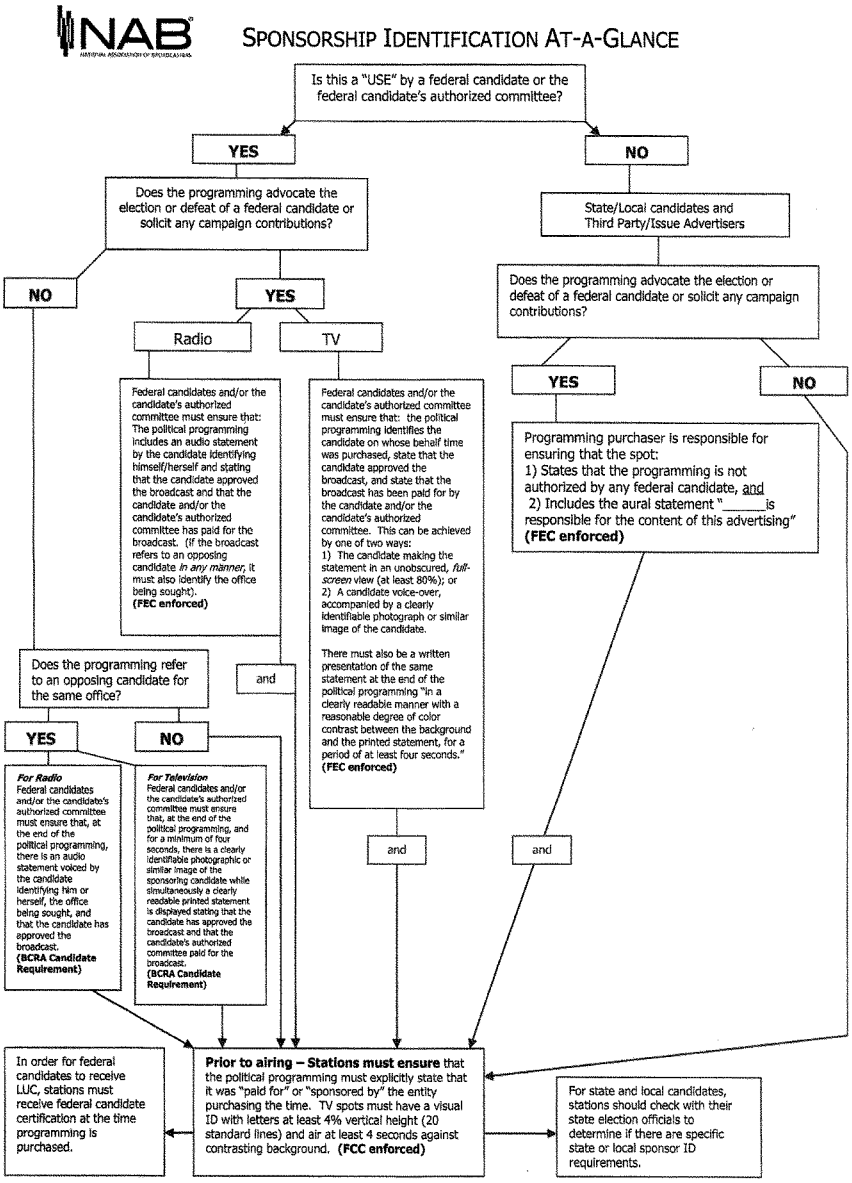
Thus, for example, Section 9 of the bill proposed this week by Senators McCain, Klobuchar and Warner, which would require media providers – including broadcast stations and cable systems – to "make reasonable efforts to ensure that" political advertisements "are not purchased by a foreign national, directly or indirectly," would be difficult to apply in practice. How far would the ban extend; would for example the fact that a donor to a group is married to a Canadian citizen prevent that group from running ads? How would the provision apply to public

companies that may have some foreign shareholders, or a few non-citizens on their boards?

Putting aside these questions about scope, presumably, if this were enacted, broadcast stations and other media platforms would ask each issue advertiser to certify that their membership or financing does not include foreign nationals. If the answer is "no," as might be the case if a foreign country were attempting to influence an election, what would be the station's obligation? Would it be allowed to take that statement on faith and run the ads? Would it be obligated to investigate, and if so, what resources could it employ, particularly if the membership of the organization were not required to be disclosed by other agencies? And if the response to the question later proved to be false, would the media company bear responsibility for accepting the ads, or would there be some means of punishing the company that provided a false certification?

These questions I believe indicate that, if Congress considers new disclosure rules, the interpretation and enforcement of those rules should not be assigned to private parties, but instead to a government agency that has authority to interpret the rules, investigative resources, and the power to impose sanctions for false reporting.

Thank you. I will be happy to answer any questions.



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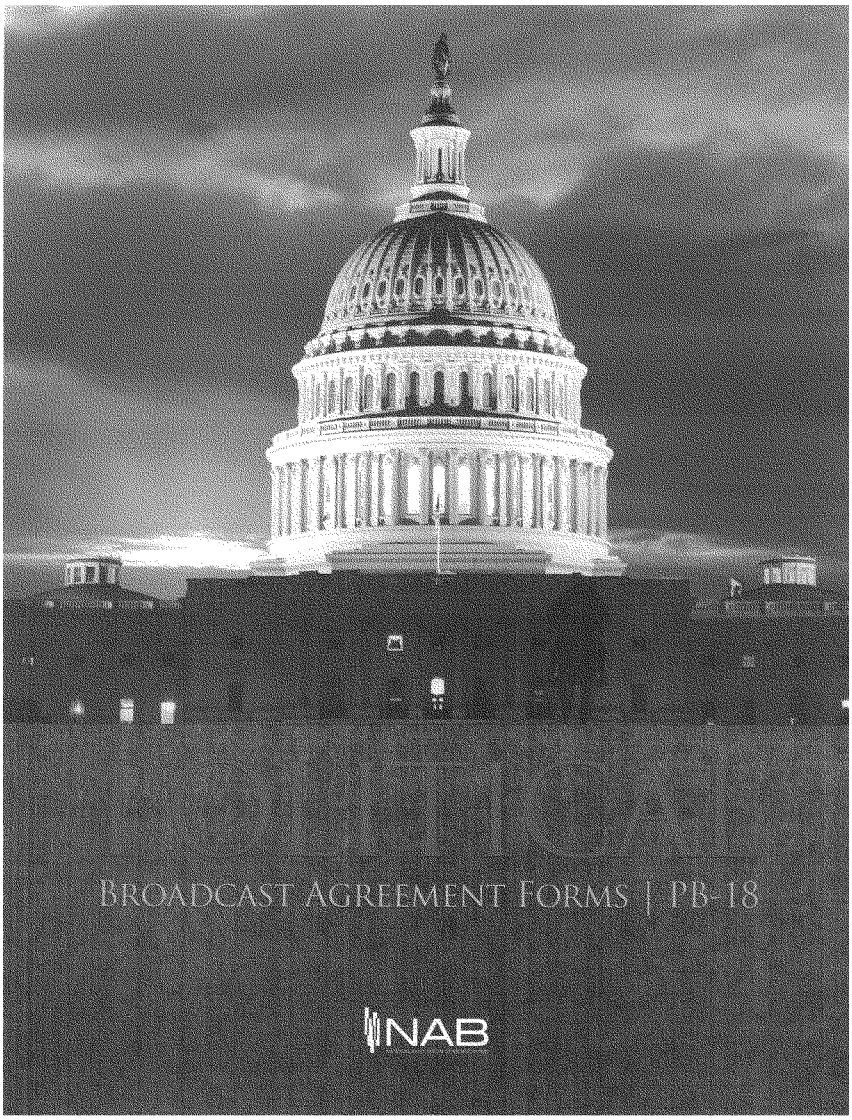
Broadcast Agreement Forms | PB-18
NAB

NAB POLITICAL ADVERTISING AGREEMENT FORMS (PB-18)

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PB-18 NAB AGREEMENT FORM FOR POLITICAL CANDIDATE ADVERTISEMENTS

PB-18 NAB AGREEMENT FORM FOR NON-CANDIDATE/ISSUE ADVERTISEMENTS

These political advertisement agreement forms have been designed to serve as actual contracts for the sale of political broadcast time and to satisfy FCC record retention requirements.

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Additional copies of the Political Agreement Forms in paper or electronic format are available through NAB Services, 1771 N Street, NW, Washington, DC 20036-2800. For price information, please visit www.nabstore.com.

POLITICAL BROADCAST ADVERTISEMENT FORMS PB-18

USING THE FORMS

IMPORTANT NOTE:

For the PB-18 Issues Form Only – If an Issue Advertiser certifies that the programming does not communicate "a message relating to any political matter of national importance," stations should review the programming to verify that no such messages are communicated in the programming. Stations have an independent obligation to disclose rates and times aired in the public file for programming relating to such matters, and they cannot rely solely on an advertiser's assessment of its own message.

Acrobat Reader XI

You must have version XI or higher of Adobe's Acrobat Reader to use these forms. If you do not have Adobe Reader XI or higher, you can download a free copy at: http://get.adobe.com/reader/

Acrobat Toolbar Functions

When you install the Acrobat Reader and view a fill-in form, you will see a toolbar at the top of the document like this:

You need to use only a few of these buttons to complete a fill-in form. The buttons you need to use are explained below:

Pointer Tool

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The **Pointer Tool** will most likely be pre-selected the first time you use Acrobat Reader. This tool allows you to fill in the forms on your desktop. This tool is selected when the cursor appears in the shape of an arrow like the one pictured on the button above.

With a fill-in form on the screen, move the pointer tool over a portion of the form to be filled in. You will notice that the pointer icon changes to a text icon, which looks like a capital I. This means that this is an area of the form that you are able to fill in using your keyboard. After you fill in that box, move your mouse to another field to fill it in. Note: you may also use the TAB button on your keyboard to advance to the next field. To mark a check box, move your pointer tool over a box and click your left mouse button. To unmark the box, move the cursor over the box and click again.

Zoom Tools

The **Zoom Tools** allow you to change the current view of the form displayed. Depending on your monitor size, you may need to use the + or - Zoom Tool to get a better view of the form. You can also type a percentage into the white box to select an exact percentage zoom.

Page Tools

The **Page Tools** help you navigate through the document. The number furthest to the right is the highest page number in the document. The number in the white box tells you what page you are currently on and you can edit that number to jump to a specific page. The arrow pointing upwards will move you one page forward on the current form, while the arrow pointing downwards will move you back one page on the current form.

Printing the Forms

To print a completed form, click on the print button:

Saving the Forms

Acrobat Reader does not allow forms to be saved. Complete the entire form, review and print prior to closing the file. Closing the file will erase all information filled in.

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NAB Form PB-18 Candidates

AGREEMENT FORM FOR POLITICAL CANDIDATE ADVERTISEMENTS

(check applicable box)

☐ **FEDERAL CANDIDATE** ☐ **STATE/LOCAL CANDIDATE**

To Avail Themselves Of The Lowest Unit Charge During A Political Window, Federal Candidates Must Sign The Certification On Page 3

Station and Location:	Date:

I, _____,

being/on behalf of: _____,

a legally qualified candidate of the _____

political party for the office of: _____

in the _____

election to be held on: _____

do hereby request station time as follows:

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

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I represent that the payment for the above described broadcast time has been furnished by:

and you are authorized to announce the time as paid for by such person or entity. I represent that this person or entity is either a legally qualified candidate or an authorized committee/organization of the legally qualified candidate.

The name of the treasurer of the candidate's authorized committee is:

This station has disclosed to me its political advertising policies, including: applicable classes and rates; and discount, promotional and other sales practices (not applicable to federal candidates).

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

To Be Signed By Candidate or Authorized Committee

Date	Signature

To Be Signed By Station Representative

☐ **Accepted** ☐ **Accepted in Part** ☐ **Rejected**

Signature	Printed Name	Title

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FEDERAL CANDIDATE CERTIFICATION

In Order For Federal Candidates To Receive The Lowest Unit Charge During A Political Window, The Following Certification Is Required:

I, _____
(name of federal candidate or authorized committee) hereby certify that the programming to be broadcast (in whole or in part) pursuant to this agreement:

☐ **does** ☐ **does not**

refer to an opposing candidate (check applicable box). I further certify that for the programming that does refer to an opposing candidate:

(check applicable box)

☐ the radio programming contains a personal audio statement by the candidate that identifies the candidate, the office being sought, and that the candidate has approved the broadcast.

☐ the television programming contains a clearly identifiable photograph or similar image of the candidate for a duration of at least four seconds, and a simultaneously displayed printed statement identifying the candidate, that the candidate approved the broadcast, and that the candidate and/or the candidate's authorized committee paid for the broadcast.

_____
signature of candidate or authorized committee

_____ _____
printed name **date**

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AGREED UPON SCHEDULE

(TO BE FILLED IN ONLY IF STATION DOES NOT ACCEPT ALL OF CANDIDATE'S REQUEST)

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

AFTER AIRING OF BROADCASTS:

Attach invoices or Schedule Run Summary to this Form showing:

1) actual air time and charges for each spot;
2) the date(s), exact time(s) and reason(s) for Make-Good(s), if any; and
3) the amount of rebates given (identify exact date, time, class of broadcast and dollar amount for each rebate), if any.

Note: Because the FCC requires that the political file contain the actual times the spots air and the rates charged, that information should be included in the file as soon as possible. If that information is only generated monthly, the file should include the name of a contact person who can provide the times that specific spots aired and the rates charged. The FCC's online political files include a folder for "Terms and Disclosures." NAB suggests that, for stations subject to the online public file rule, the names of contact person(s) be placed in that folder.

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NAB Form PB-18 Issues

AGREEMENT FORM FOR NON-CANDIDATE/ISSUE ADVERTISEMENTS

Station and Location:	Date:

I, _____
do hereby request station time concerning the following issue:

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

This broadcast time will be used by: _____

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THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT "COMMUNICATES A POLITICAL MATTER OF NATIONAL IMPORTANCE." FOR ALL OTHER ISSUE ADS, PLEASE GO TO PAGE 3.

Programming that "communicates a political matter of national importance" includes (1) references to legally qualified candidates (presidential, vice presidential or congressional); (2) any election to Federal office (*e.g.*, any references to "our next senator", "our person in Washington" or "the President"); and (3) a national legislative issue of public importance (*e.g.*, Affordable Care Act, revising the IRS tax code, federal gun control or any federal legislation).

Does the programming (in whole or in part) communicate "a message relating to any political matter of national importance?"
☐ Yes ☐ No

For programming that "communicates a message relating to any political matter of national importance," list the name of the legally qualified candidate(s) the programming refers to, the offices being sought, the date(s) of the election(s) and/or the issue to which the communication refers (if applicable):

I represent that the payment for the above described broadcast time has been furnished by (name and address):

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

For programming that "communicates a message relating to any political matter of national importance," attach Agreed Upon Schedule (Page 5)

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THIS PAGE MUST BE COMPLETED FOR PROGRAMMING THAT DOES NOT "COMMUNICATE A POLITICAL MATTER OF NATIONAL IMPORTANCE"

I represent that the payment for the above described broadcast time has been furnished by (name and address):

and you are authorized to announce the time as paid for by such person or entity (hereinafter referred to as the "sponsor").

List the chief executive officers or members of the executive committee or the board of directors below (or attach separately):

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NAB Form PB-18 Issues

TO BE COMPLETED FOR ALL ISSUE ADVERTISEMENTS

THIS STATION DOES NOT DISCRIMINATE OR PERMIT DISCRIMINATION ON THE BASIS OF RACE OR ETHNICITY IN THE PLACEMENT OF ADVERTISING.

The Sponsor agrees to indemnify and hold harmless the station for any damages or liability, including reasonable attorney's fees, that may ensue from the broadcast of the above-requested advertisement(s). **For the above-stated broadcast(s), the sponsor also agrees to prepare a script, transcript, or tape, which will be delivered to the station at least _____ before the time of the scheduled broadcasts.**

TO BE SIGNED BY ISSUE ADVERTISER (SPONSOR)

Date	Signature	Contact Phone Number

TO BE SIGNED BY STATION REPRESENTATIVE

☐ **Accepted** ☐ **Accepted in Part** ☐ **Rejected**

Signature	Printed Name	Title

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AGREED UPON SCHEDULE

For All Issue Advertisements That Communicate a Message Relating to Any Political Matter of National Importance

Broadcast Length	Time of Day, Rotation or Package	Days	Class	Times per Week	Number of Weeks

Attach proposed schedule with charges (if available):

AFTER AIRING OF BROADCASTS:

Attach invoices or Schedule Run Summary to this Form showing:

(1) actual air time and charges for each spot;

(2) the date(s), exact time(s) and reason(s) for Make-Good(s), if any; and

(3) the amount of rebates given (identify exact date, time, class of broadcast and dollar amount for each rebate), if any.

Note: Because the FCC requires that the political file contain the actual time the rate for spots "communicating a political matter of national importance" air, that information should be included in the file as soon as possible. If that information is only generated monthly, the file should include the name of a contact person who can provide the times that and rates for specific spots aired. The FCC's online political files include a folder for "Terms and Disclosures." NAB suggests that, for stations subject to the online public file rule, the names of contact person(s) be placed in that folder.

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Mr. HURD. Thank you, Mr. Goodman.

Mr. Rothenberg, you're now recognized for 5 minutes.

STATEMENT OF RANDALL ROTHENBERG

Mr. ROTHENBERG. Chairman Hurd, Ranking Member Kelly, members of the subcommittee, thank you for the honor of testifying today.

I would like to get straight to the point. Throughout my 11-year tenure, the Interactive Advertising Bureau has always stood for greater transparency and disclosure in the digital advertising supply chain regardless of whether the ads are political or commercial, because we believe transparency and disclosure are necessary for consumer safety and brand safety. So we strongly support efforts by this Congress and the Federal Election Commission to clarify, reconcile, and strengthen the disclosures required of political parties, candidates, and campaigns.

But, as a representative of the economy's fastest-growing and most dynamic sector, IAB also believes that our industry itself can go even further to implement supply chain protections that would fortify the trustworthiness of digital advertising in media, in political advertising and commercial advertising alike.

IAB has a proven track record of taking and implementing responsibility across our 650-plus member companies. Together with multiple partner associations, we have created some of the media industry's strongest self-regulatory mechanisms, programs that have been lauded by the White House, the Commerce Department, and the Federal Trade Commission.

Through the Digital Advertising Alliance's privacy program, we have provided consumers more control over their personal data in digital advertising environments.

Through the Trustworthy Accountability Group's anti-fraud registry and auditing program, we have worked closely with U.S. and overseas law enforcement bodies to root criminal activity from the ad-supported internet. We were warning about and guarding against Russian bot traffic years before it became a Washington concern.

Our long experience with the diverse, innovative, and untidy world of advertising and media persuades us that in this industry, as in many others, there is a role for government regulation. But durable reform can only happen when the digital advertising community adopts tougher, tighter, comprehensive controls for who is putting what on its sites.

Since its passage in 1971, the Federal Election Campaign Act has mandated disclaimers on all political advertising that expressly advocates the election or defeat of a candidate. But much of the fake news and fake ads at the center of the current storm did not engage in such overt candidate support. There were not a bunch of secretive Russian moles purchasing "Vote for Trump" or "Hillary for President" internet banner ads.

Rather, there were sophisticated posts about social and political issues, some of which were made more widely available because the operators paid to amplify them in peoples' social media feeds. Some of the scandalous messaging was not even placed for payment.

Both social influence advertising and unpaid advocacy fall outside the scope of Federal campaign disclosure rules. Americans have First Amendment rights to shout on street corners, put signs on their lawns, and post on social media without registering as political committees or reporting how much they spend on megaphones or smartphones.

There is one more complex challenge in extending current disclosure rules to the internet. The traditional regulations from the FEC and the FCC require disclosure by campaigns and by the media running the ads, for these are the media receiving the insertion orders and payments for those ads. In that world, the media are in full control. No programming of any sort runs on a television station or in a magazine that hasn't been vetted by those companies.

In the digital world, by contrast, every page is cobbled together from multiple sources and assembled on the fly inside a user's internet browser. Articles, videos, advertising, sponsored links, and social commentary come together from scores of server computers. Underneath the visible page, scores of other suppliers may be contributing measurement, ad verification, and auction pricing services.

Only a portion of the advertising is sold directly by publishers. The greater portion is sold and distributed by third-party technology companies which do their work via automated systems—"programmatically," in the industry parlance. Legislative proposals that would require websites to field expensive disclosure mechanisms create burdens on struggling media organizations yet would barely capture the illicit political communication which is placed programmatically.

This is why we would like the Congress' support for strengthening the self-regulatory mechanisms we already have built by which digital media companies police their supply chains for bad actors and provide greater transparency into who is putting what on their sites. We can monitor the financing chain whether the paid support takes the form of conventional advertising or whether it shows up in less familiar formats.

Thank you for the opportunity to appear before you today.

[Prepared statement of Mr. Rothenberg follows:]

BEFORE THE

SUBCOMMITTEE ON INFORMATION TECHNOLOGY

OF THE

HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

HEARING ON

OVERSIGHT OF FEDERAL POLITICAL ADVERTISEMENT LAWS AND REGULATIONS

OCTOBER 24, 2017

TESTIMONY OF

RANDALL ROTHENBERG

PRESIDENT AND CEO

INTERACTIVE ADVERTISING BUREAU

Chairman Hurd, Ranking Member Kelly, and Members of the subcommittee, thank you for the opportunity to testify today. I would like to get straight to the point: Throughout my 11-year tenure, the Interactive Advertising Bureau has always stood for greater transparency and disclosure in the digital advertising supply chain, regardless of whether the ads are political or commercial, because we believe transparency and disclosure are necessary for consumer safety and brand safety. Today's hearing focuses on a specific area where such transparency and disclosure is essential: our elections. The problems of undisclosed foreign influence in our last election demonstrate the need for greater transparency and disclosure in digital advertising, and we strongly support efforts by this Congress and the Federal Election Commission to clarify, reconcile, and strengthen the disclosures required of political parties, candidates, and campaigns.

But as a representative of the economy's fastest-growing, most innovative, and most dynamic sector, IAB also believes that our industry itself can take more responsibility and go even further to implement supply-chain protections that would fortify the trustworthiness of digital advertising and media, in political advertising and non-political advertising alike.

IAB has a proven track record of taking responsibility and implementing it across our 650-plus member companies. Together with our partner associations the Association of National Advertisers, the American Association of Advertising Agencies, the Data & Marketing Association, and the Council of Better Business Bureaus, we have created some of the media industry's strongest self-regulatory mechanisms – programs that have been lauded by the White House, the Commerce Department, and the Federal Trade Commission. Through the Digital Advertising Alliance's YourAdChoices privacy program and the Trustworthy Accountability Group's anti-fraud registry and auditing program, we have provided consumers more insight into and control over their personal data flows in digital advertising environments, and we have worked closely with U.S. and overseas law enforcement bodies to root fraud and other criminal activity from ad-supported digital media. Another coalition in which we are a partner, the Advertising Self-Regulatory Council, provides strong oversight of advertising content, particularly in children's advertising, retail advertising, and e-commerce.

Our long experience with the vast, diverse, innovative, and untidy world of advertising and media persuades us that in this industry, as in many others, there is a role for Government regulation to assure the safety and security of consumers and the economy alike. But Government alone will not create greater transparency and safety in digital advertising environments. Real reform, durable reform, can only happen when the digital advertising community adopts tougher, tighter controls for who is putting what on – and underneath – its sites.

Ten months ago, I stood in front of 1,200 of my industry's most senior executives. With talk of "fake news" swirling around the room, I opened my comments with this admonition:

> "There's a linear connection between fake news and those trolls of digital marketing and media: click fraud, fraudulent non-human traffic, and the sources of ad-blocking. Each represents the failure of our supply chain – the same kind of supply chain failure we at IAB and our members have dealt with repeatedly and successfully over the years."
>
> "If you do not seek to address fake news and the systems, processes, technologies, transactions, and relationships that allow it to flourish, then you are consciously abdicating responsibility for its outcome – the depletion of the truth and trust that undergird democratic capitalism."

I urged our member companies and other stakeholders in the marketing-media ecosystem to use common sense, technology systems, human oversight, and cross-industry self-regulation to police their own precincts – and their suppliers' trustworthiness.

"You wouldn't want your daughter to ride in a car made with faulty tires." I said. "You wouldn't want your son to breakfast on a cereal sourced from bacteria-riddled grains. Then you shouldn't abet the creation, distribution, or monetization of untruthful, dangerous falsehoods to other people's' sons and daughters."

Ten months later, we welcome the Congress's recognition of this same problem. But I want to urge you to think about it as broadly as we do. For the question is not merely how we get rid of illicit foreign influence in paid campaign advertising. It is how we create conditions for greater transparency, safety, and trust for all citizens for whom the advertising-supported internet is a necessary instrument in their daily lives.

Today's hearing looks specifically at the FEC and how it has dealt with online advertising. It is occurring in the context of understanding foreign influence in the last election. From what we know today – and I want to be clear that IAB only knows what we have been reading in the newspapers – much of what apparently occurred was not what anyone would consider traditional political advertising. There were not a bunch of secretive Russian moles purchasing "Vote for Trump" banner ads on carefully chosen web sites, nor pseudonymous Kazakh cells buying "Hillary for President" pre-rolls on digital video platforms. Rather, there were sophisticated posts about social and political issues, some of which were made more widely available because the operators paid for their posts to be more prominently featured in peoples' social media feeds.

This is important because it illustrates the opportunities for FEC reform, as well as the limitations. The FEC's rules apply only to certain kinds of communications. Since its passage in

1971, the Federal Election Campaign Act has mandated disclaimers on all political advertising that expressly advocates the election or defeat of a candidate.

If you pay for an ad online that expressly advocates for candidates in this way, that ad is supposed to have a disclaimer on it saying who paid for it. There have been questions about how certain small ads are treated in the past, and this is part of what the FEC is considering in its rulemaking. We fully support modernizing, clarifying, and reconciling any contradictions in these rules – as many states have already done with respect to their electoral advertising rules – to require click-through, hover over, and similar types of disclosure. Enhancing the existing framework by clarifying the responsibility of publishers, platforms, and advertisers in making available these disclosures to the public would create greater legal certainty across the industry and provide valuable information for FEC investigations.

But the "fake news" and "fake ads" at the center of the current storm did not engage in such overt candidate support. So they were not, and based on current Supreme Court jurisprudence will not, be regulated under the Federal Election Campaign Act. Some of the compromised, controversial communication was indeed paid for, but inasmuch as it contained commentary, and even outright falsehoods, about social conditions and political debates, such "social influence advertising" falls well outside the scope of Federal campaign disclosure rules.

And some of the scandalous messaging was not even placed for payment. The FEC has taken a measured approach to this sort of unpaid online activity, because it recognizes the First Amendment rights of Americans to shout on street corners, put signs on their lawns, send letters to the editor, write blogs, post on social media, and email their friends and family without registering as a political committee or reporting how much they spend on postage, plasterboard, megaphones, computers or smart phones. Political speech is the most protected form of speech, because the founders considered robust dialogue among different parties and factions central to our representative democracy. The courts, up to and including the Supreme Court, have accorded ever-stronger protections to political speech over the years. The Supreme Court has limited the scope of the Federal Election Campaign Act to express advocacy. As much as we might dislike it, propaganda is protected speech – because from Tom Paine to Martin Luther King, we have understood that one American's propaganda is another American's principled faith.

There is one more complex challenge in extending current disclosure rules to the internet. The traditional regulations from the FEC and the FCC require disclosure by campaigns, and by the media running the ads – for these are the media receiving the insertion orders and payments for those ads. In that world, the media are in full control. They sell the ads, vet the ads, and run the ads; indeed, no programming of any sort runs in a magazine or on a television network that hasn't been reviewed and approved by those companies.

In the digital world, every page is cobbled together from multiple sources, and assembled on the fly inside a user's internet browser. Articles, videos, audio, advertising, sponsored links, native ads, social commentary, and branded content can come together from scores of server computers; underneath the visible page, scores of other suppliers may be contributing measurement, ad verification, optimization, and auction pricing services. Only a small portion of the advertising is directly sold by publishers. The greater portion is sold and distributed by third-party technology companies, which do their work via automated systems – "programmatically," in industry parlance. Legislative proposals that would require web sites to field expensive disclosure mechanisms create expensive burdens on struggling news organizations, yet would barely capture the bulk of the illicit political advertising, which is placed programmatically.

In short, while we support greater transparency in paid political and issue advertising online, we believe that legislation alone will be unable to address the underlying need for greater transparency in the digital advertising industry without falling afoul of two centuries of First Amendment history and court decisions. Robust political speech – no matter who is paying for it, no matter how controversial it is, no matter who may be offering it – is the essence of American democracy, and must not be stifled.

Yet at the same time, we must offer consumers and our economy protection from bad actors. The digital advertising industry doesn't just want to prevent bad ads from ending up on good sites; we also want to prevent good advertisers from ending up adjacent to (and inadvertently providing financial sustenance for) Isis recruiting videos. This is why we would like the Congress's support for strengthening the self-regulatory mechanisms we already have built – and continue to build – by which digital media companies will police their supply chains for bad actors, and provide greater transparency into who is putting what into their sites. We can monitor the financing chain, whether the paid support takes the form of conventional advertising, or whether it shows up in more contemporary or unfamiliar forms and formats, such as native advertising and branded content.

Certainly, all industry participants must work with the U.S. government in its mission to enforce existing laws relating to political advertising, such as those that prohibit foreign interference in U.S. elections. But our industry standards can be tough, encompassing speech that may be legally permitted, but nonetheless offensive to common-sense norms. Our disclosure mechanisms can follow the money closely and carefully and attack the problem at its roots.

Our self-regulatory approach already works to assign responsibility across the supply chain, as no one party in the ecosystem is capable of addressing this problem alone. Advertisers must have the responsibility of providing accurate disclosures. Publishers and platforms must disclose

information provided by advertisers. And all must work together to patrol the infrastructure of internet advertising, and make sure that bad ads don't end up on good sites, and good ads don't end up on bad sites.

As Congress considers its involvement in this area, it should examine closely the digital advertising industry's successful implementation of consumer transparency and choice mechanisms that have helped inform consumers of the origin of the ads they see, while protecting our constitutional right to free speech and enabling continued innovation in the internet ecosystem.

Thank you for the opportunity to appear before you today. I am committed to working with this Committee and all members of the online ecosystem to solve the pressing challenges we are discussing, and assure that our democratic institutions can flourish unimpeded.

Mr. HURD. Thank you, Mr. Rothenberg.

Mr. Vandewalker, you're now recognized for your opening statement of 5 minutes.

STATEMENT OF IAN VANDEWALKER

Mr. VANDEWALKER. Thank you. Good afternoon. On behalf of the Brennan Center for Justice, I thank the Subcommittee on Information Technology for holding this hearing. We appreciate the opportunity to share with you our recommendations concerning Federal political advertisement laws and regulations, particularly as they relate to the ability of foreign powers to interfere in American elections.

The Brennan Center is a nonpartisan think tank and advocacy organization that focuses on democracy and justice and has studied campaign finance for 20 years, working to develop and defend effective and constitutionally sound policies.

There are gaping holes in our regulation of paid political ads. In contrast to radio and television, much of the election spending on the internet is untouched by key regulations. These include the requirements to report spending on mass media ads that mention candidates in the period before an election, the ban on foreign nationals buying such ads, and the requirement that broadcasters retain public files of political ads.

It's time for this to change. The internet is only going to grow in its importance to politics. The $1.4 billion spent online in 2016 was almost eight times higher than 2012.

Failure to subject ads on the internet to the same disclosure regime as other media will leave the public without key information about who is trying to influence them, and it will allow more mischief from foreign adversaries like Russia's meddling in 2016.

The Honest Ads Act introduced in the Senate by Senators Klobuchar, McCain, and Warner, and in the House by Representative Kilmer, offers a promising framework to ensure such disclosure. Congress could also close other loopholes that allow secrecy and potentially foreign money, like spending by dark money organizations and foreign-owned corporations.

These steps are surely needed. Investigations into the 2016 election have revealed a widespread, multipronged effort by the Russian Government to alter the course of public debate by injecting propaganda and divisive messages into the American political discussion.

As has been mentioned, firms linked to the Kremlin bought thousands of online ads on several major platforms that were seen by millions of people. The ads have still not been released to the public, but they reportedly discuss political issues, including messages advocating the election of candidates, all while the Russians disguised their identity with fake profiles designed to look like they were controlled by Americans.

The intelligence community is confident that Russia will be back. And, of course, we must watch for copycats like China, North Korea, and even ISIS.

Most immediately, this challenge to the American people's political sovereignty and the First Amendment values of transparency

and politics requires updating campaign finance laws for the internet age.

Congress should include paid ads on the internet in the definition of "electioneering communications" from the McCain-Feingold bill, which requires disclosure of expenditures above $10,000 on ads that mention candidates in certain mass media within a specified period. This would have two benefits. It would expand the ban on foreign spending, and it would increase transparency around online ads, making information about who is paying for them publicly available.

In addition, online platforms should be required to maintain public files of political ads. That would essentially extend to the internet the Federal Communications Commission's requirement that broadcasters maintain a public file of political ads.

And online platforms, along with other businesses that sell ads, should be required to make reasonable efforts to prevent political ads from being sold to foreign nationals.

All of these elements are present in the Honest Ads Act.

Moving beyond the internet, holes in campaign finance disclosure rules allow dark money organizations to spend on politics without revealing their donors, potentially hiding foreign sources of funds. In order to close the holes, Congress should enact the DISCLOSE Act.

Another blind spot in campaign finance results from corporations' ability to spend in elections. Congress should expand the ban on foreign election spending to domestic corporations substantially owned or controlled by foreign nationals, as Representative Raskin's Get Foreign Money Out of U.S. Elections Act would do.

Finally, these proposals, as well as existing laws, need vigorous enforcement. Yet deadlocks at the FEC have increased, and it has passed up chances to strengthen regulations. Congress can reform the agency, including by making the number of commissioners odd and requiring at least one member to be nonpartisan.

Thank you, and I'm happy to answer any questions you may have.

[Prepared statement of Mr. Vandewalker follows:]

Committee on House Oversight and Government Reform,
Subcommittee on Information Technology
United States House of Representatives

Statement of Ian Vandewalker
Senior Counsel, Democracy Program,
Brennan Center for Justice at NYU School of Law

October 24, 2017

"Oversight of Federal Political Advertisement Laws and Regulations"

On behalf of the Brennan Center for Justice, I thank the Subcommittee on Information Technology for holding this hearing. We appreciate the opportunity to share with you our studies and recommendations concerning federal political advertisement laws and regulations, particularly as they relate to foreign spending and the ability of foreign powers to interfere in American elections. The Brennan Center for Justice is a nonpartisan think tank and advocacy organization that focuses on democracy and justice. We work to ensure that our elections are conducted in a way that ensures all Americans can participate in a self-governing democracy. The Brennan Center has studied campaign finance issues for 20 years, working to develop effective and constitutionally sound policies and advocating for them in the courts, legislatures, and administrative bodies across the nation.

Political advertising is experiencing a shift toward spending on the internet,[1] which makes it easy and inexpensive to disseminate messages widely or with pinpoint audience targeting. Yet our laws have not been updated for this new era, leaving much political spending on the internet unregulated. Investigations into the 2016 election have revealed a widespread, multipronged effort by the Russian government to alter the course of public debate by injecting propaganda and divisive messages into the American political discussion. Russian operatives bought thousands of ads discussing political issues here, reportedly including messages advocating the election of candidates. And they did so while disguising their identity with fake profiles designed to look like they were controlled by Americans.

The potential for online ads to enable agents of a foreign government to pose as Americans while spreading propaganda creates risks for our democracy. American audiences can be misled about how popular an idea is with their compatriots and make decisions about which candidate to support, whether to vote, or even which facts to believe, all under false premises.

[1] Sean J. Miller, "Digital Ad Spending Tops Estimates," *Campaigns & Elections*, January 4, 2017, https://www.campaignsandelections.com/campaign-insider/digital-ad-spending-tops-estimates (noting $1.4 billion in digital ad spending in the 2016 election, which signifies a shift toward online spending).

The intelligence community is confident that Russia will attempt to meddle in our elections again.[2] And of course, the threat is not limited to Russia. Moscow's efforts in 2016 may serve as a blueprint, enabling an unknown number of copycats interested in meddling in American affairs, whether it's China, Iran, North Korea, or ISIS. As former Homeland Security Secretary Jeh Johnson put it, "the Russians will be back, and possibly other state actors, and possibly other bad actors."[3]

There are actions that Congress can immediately take to limit the opportunities for foreign governments to spend on election ads, and to ensure that Americans have the information they need to make informed decisions about what to believe and how to vote.[4] We recommend legislation to accomplish the following:

1. Require the same disclosure and disclaimers for online ads that the law currently requires for other mass media, and require that information about political ads online is preserved in a database available to the public.
2. Eliminate "dark money" spending by organizations that do not disclose their donors, which can be used to hide foreign expenditures on elections.
3. Expand the ban on election spending by foreign nationals to include domestic corporations with substantial foreign ownership or control.
4. Reform the Federal Election Commission to reduce the likelihood of deadlock by providing for an odd number of commissioners, at least one of whom is nonpartisan.

I. THE POWER OF THE INTERNET AND RUSSIA'S INTERFERENCE

The internet has rapidly become a key focus of political advertising as it has become a bigger part of modern life. The $1.4 billion spent online in the 2016 election was almost eight times higher than in 2012.[5] Yet the internet poses unique challenges for open political discourse. Online, messages are cheap to produce and disseminate instantly to vast potential audiences across great distances without regard for political boundaries.[6] Anonymity is easy online, allowing deception about who is paying for ads.

Moreover, many Americans have sorted themselves into political echo chambers, receiving their news online only from sources who share the same partisan allegiance. This, along with sophisticated ad targeting tools, makes it easier for political operatives to direct messages

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[2] Office of the Director of National Intelligence (ODNI), "Assessing Russian Activities and Intentions in Recent US Elections," Intelligence Community Assessment ICA 2017-01D (2017), https://www.dni.gov/files/documents/ICA_2017_01.pdf.

[3] Andrew Rafferty, "Former DHS Chief Warns Russians Will Continue to Target U.S. Elections," *NBC News*, June 21, 2017, https://www.nbcnews.com/politics/politics-news/former-dhs-chief-warns-russians-will-continue-target-u-s-n775116.

[4] Knowing who is supporting a candidate gives voters information about what the candidate stands for. Buckley v. Valeo, 424 U.S. 1, 66-68 (1976). And disclosure informs the public's decisions about how much trust to place in a message. Citizens United v. FEC, 558 U.S. 310, 371 (2010).

[5] Sean J. Miller, "Digital Ad Spending Tops Estimates," *Campaigns & Elections*, January 4, 2017, https://www.campaignsandelections.com/campaign-insider/digital-ad-spending-tops-estimates.

[6] *See* Nathaniel Persily, "Can Democracy Survive the Internet?" *Journal of Democracy* 28 (2017): 72.

intended to foment discord to susceptible audiences, for example by attacking a candidate from the left in ads targeted to progressive users and from the right in messages aimed at conservatives.[7]

Micro-targeted advertising online has given rise to the "dark ad," which is seen only by a narrowly targeted audience, threatening to remove much of the political debate around elections from public view. Contrast dark ads with television commercials, which reach wide audiences and are subject to transparency rules, allowing journalists to fact-check claims and the wider public to hold speakers accountable for false or inflammatory rhetoric.[8]

A. What Happened in 2016

Russia's attempts to influence the 2016 election took advantage of all these features of online media. They bought ads and promoted content through fake accounts pretending to be Americans. They crafted different messages for different audiences and used platforms' sophisticated audience targeting tools to increase the chances that propaganda would reach receptive audiences more likely to be swayed and to share posts.[9] So far, internal investigations by Facebook, Twitter, and Google have found Russian activity on the most popular platforms—and no doubt the full story has yet to be told.[10]

The Kremlin's messages included attacks on and praise for specific candidates in the presidential election, although many seemed designed mostly to harm the political establishment, which Russian agents attacked from both left and right.[11] Most of the ads Facebook discovered to have originated from Russian operatives "appeared to focus on amplifying divisive social and political messages across the ideological spectrum—touching on topics from LGBT matters to race issues to immigration to gun rights."[12]

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[7] Rand Waltzman, *The Weaponization of Information: The Need for Cognitive Security*, RAND Corporation, 2017, 3, https://www.rand.org/pubs/testimonies/CT473.html.

[8] *See* Christopher S. Elmendorf, Ann Ravel and Abby Wood, "Open up the black box of political advertising," *San Francisco Chronicle*, September 22, 2017, http://www.sfchronicle.com/opinion/openforum/article/Open-up-the-black-box-of-political-advertising-12221372.php.

[9] *See* Massimo Calabresi, "Inside Russia's Social Media War on America," *Time*, May 18, 2017, http://time.com/4783932/inside-russia-social-media-war-america/.

[10] Elizabeth Dwoskin, Adam Entous, and Craig Timberg, "Google uncovers Russian-bought ads on YouTube, Gmail and other platforms," *Washington Post*, October 9, 2017, https://www.washingtonpost.com/news/the-switch/wp/2017/10/09/google-uncovers-russian-bought-ads-on-youtube-gmail-and-other-platforms/; Carol D. Leonnig, Tom Hamburger, and Rosalind S. Helderman, "Russian firm tied to pro-Kremlin propaganda advertised on Facebook during election," *Washington Post*, September 6, 2017.

[11] Dylan Byers, "Exclusive: Russian-bought Black Lives Matter ad on Facebook targeted Baltimore and Ferguson," *CNN*, September 28, 2017, http://money.cnn.com/2017/09/27/media/facebook-black-lives-matter-targeting/index.html; Josh Dawsey, "Russian-funded Facebook ads backed Stein, Sanders and Trump," *Politico*, September 26, 2017, http://www.politico.com/story/2017/09/26/facebook-russia-trump-sanders-stein-243172; Adam Entous, Craig Timberg, and Elizabeth Dwoskin, "Russian operatives used Facebook ads to exploit America's racial and religious divisions," *Washington Post*, September 25, 2017, https://www.washingtonpost.com/business/technology/russian-operatives-used-facebook-ads-to-exploit-divisions-over-black-political-activism-and-muslims/2017/09/25/4a011242-a21b-11e7-ade1-76d061d56efa_story.html.

[12] Alex Stamos, Chief Security Officer, Facebook, "An Update On Information Operations On Facebook," September 6, 2017, https://newsroom.fb.com/news/2017/09/information-operations-update/.

It appears that Russia-linked accounts bought political advertising on every major platform. Facebook found ad buys totaling $150,000 linked to fake accounts suspected to be controlled by Russian operatives, encompassing some 3,300 spots, although most of the times the ads were displayed occurred after Election Day.[13] Twitter determined that accounts controlled by the Kremlin-linked network RT spent $274,100 on ads in 2016.[14] Google has yet to announce a price tag for the ads it found on YouTube, Gmail, and other services.

This may seem like a drop in the bucket of sky-high presidential election spending, but Facebook's powerful ad targeting tools and the possibility for messages to be shared organically by users—or even go viral—can vastly expand ads' reach.[15] Facebook estimated that its Russia-linked ads were seen by 10 million people, and the ads were buttressed by related content organically shared by the same pages that may have reached tens or hundreds of millions more.[16] Moreover, it's possible that the Russian ad buys reported so far are merely the tip of the iceberg—investigations are ongoing.[17]

Some of these ad buys were likely illegal, since they recommended voting for presidential candidates, and foreign nationals are banned from engaging in "express advocacy" that tells the public how to vote.[18] But, based on what Facebook has reported, many of the ads stopped short of express advocacy and so may not have run afoul of current law.[19]

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[13] Carol D. Leonnig, Tom Hamburger, and Rosalind S. Helderman, "Russian firm tied to pro-Kremlin propaganda advertised on Facebook during election," *Washington Post*, September 6, 2017 (reporting $100,000 worth of ads linked to Russian operatives and another $50,000 suspected); Elliot Schrage, "Hard Questions: Russian Ads Delivered to Congress," Facebook, October 2, 2017, https://newsroom.fb.com/news/2017/10/hard-questions-russian-ads-delivered-to-congress/.

[14] Elizabeth Dwoskin and Adam Entous, "Twitter finds hundreds of accounts tied to Russian operatives," *Washington Post*, September 28, 2017, https://www.washingtonpost.com/business/economy/twitter-finds-hundreds-of-accounts-tied-to-russian-operatives/2017/09/28/6cf26f7e-a484-11e7-ade1-76d061d56efa_story.html.

[15] Ben Collins, Kevin Poulsen, and Spencer Ackerman, "Russia's Facebook Fake News Could Have Reached 70 Million Americans," *The Daily Beast*, September 8, 2017, http://www.thedailybeast.com/russias-facebook-fake-news-could-have-reached-70-million-americans; Kevin Bingle, "I Ran Digital For A 2016 Presidential Campaign. Here's What Russia Might Have Got For $100,000," *BuzzFeed*, September 8, 2017, https://www.buzzfeed.com/kevinbingle/how-far-did-russias-100000-go.

[16] Craig Timberg, "Russian propaganda may have been shared hundreds of millions of times, new research says," *Washington Post*, October 5, 2017, https://www.washingtonpost.com/amphtml/news/the-switch/wp/2017/10/05/russian-propaganda-may-have-been-shared-hundreds-of-millions-of-times-new-research-says/. Although the upper bound of the number of interactions with the Russian pages estimated by that study is in the billions, it likely overcounts due to the fact that the Russians also created many fake accounts to follow their pages, inflating their apparent influence. David Karpf, "People are hyperventilating over a study of Russian propaganda on Facebook. Just breathe deeply." *Washington Post*, October 12, 2017.

[17] A political marketing expert told CNN that $100,000 spent on about 3,000 ads looks like a testing budget for a larger ad campaign. Donie O'Sullivan, "What Russian trolls could have bought for $100,000 on Facebook," *CNN*, September 7, 2017, http://money.cnn.com/2017/09/07/media/what-russian-troll-army-could-buy-facebook-ads/index.html.

[18] 52 U.S.C. § 30121 (banning foreign nationals from election spending); 11 C.F.R. § 100.22 (defining express advocacy).

[19] Alex Stamos, Chief Security Officer, Facebook, "An Update On Information Operations On Facebook," September 6, 2017, https://newsroom.fb.com/news/2017/09/information-operations-update/ ("The vast majority of ads run by these accounts didn't specifically reference the US presidential election, voting or a particular candidate.").

B. The Post-2016 Response of Social Media Companies

In recent months, in response to pressure from Congress and the public, social media platforms like Facebook and Twitter have conducted internal investigations and promised changes to blunt the ability of foreign powers to spend in American elections. For instance, Facebook is building an "ad transparency" tool that will require additional human review and approval of ads that are targeted with reference to "politics, religion, ethnicity or social issues."[20] In addition, when users see an ad run by a page, they will also be able to see other ads run by that page. Ads have to meet certain authenticity requirements (deprioritizing "clickbait" and ads that mask the true origins of the link) and industry best practices.[21]

Meanwhile, Twitter released a statement in September on their efforts to strengthen the site against "bots and networks of manipulation."[22] First, they collaborated with Facebook to identify corresponding Twitter accounts from the list of 470 accounts Facebook shared as spam and suspending them. They also tracked spending by the Russian state-controlled news network RT on ads targeting U.S. audiences. They removed tweets that were deemed attempts to suppress the vote.[23]

Nevertheless, almost a year after the election, there is much we do not know about the Russian ads, including what all of them said, who bought them, how much they cost, and how they were targeted. And platforms' voluntary efforts are not enough. Platforms are likely to adopt varying policies, with some worse than others. Platforms may not put enough effort into implementation or enforcement, or may apply rules inconsistently across users. And voluntary efforts can be abandoned as soon as a scandal blows over. Instead, Congress should act to craft effective policies that will be enforced across the board.

II. IMMEDIATE STEPS CONGRESS SHOULD TAKE

Congress can strengthen America's defenses against foreign governments' covert use of massive social media campaigns to try to influence our politics. The threat is multifaceted and constantly evolving, so our solutions must be the same. Some key pieces of the puzzle are already on the table in existing legislation. To be sure, this problem demands a whole-of-society approach where government and private actors continually monitor the threat and craft effective solutions, but crucial safeguards are available now. Below we describe four actions Congress can take right away.

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[20] Sara Fisher and David McCabe, "Facebook tells advertisers more scrutiny is coming," *Axios*, October 7, 2017, https://www.axios.com/scoop-facebook-tells-advertisers-more-scrutiny-is-coming-2493827891.html; *see also* Joel Kaplan, Vice President of Global Policy, Facebook, "Improving Enforcement and Transparency of Ads on Facebook," October 2, 2017, https://newsroom.fb.com/news/2017/10/improving-enforcement-and-transparency/.
[21] Alex Stamos, Chief Security Officer, Facebook, "An Update On Information Operations On Facebook," September 6, 2017, https://newsroom.fb.com/news/2017/09/information-operations-update/.
[22] "Update: Russian Interference in 2016 US Election, Bots, & Misinformation," Twitter, September 28, 2017, https://blog.twitter.com/official/en_us/topics/company/2017/Update-Russian-Interference-in-2016--Election-Bots-and-Misinformation.html.
[23] Ibid.

A. Update Campaign Finance Law to Cover Paid Internet Ads

It's clear that the trend toward more political activity being conducted on social media—whether by foreign powers or the campaigns themselves—will continue.[24] But our campaign finance regime got its last significant update in 2002, an eternity ago in the online world. Much of the activity intended to influence elections on the internet today is untouched by key regulations. These include the requirement to report spending on mass media ads that mention candidates in the period before an election, the ban on foreign nationals buying such ads, and the requirement that broadcasters retain public files of political ads.

As described below, Russian operatives seeking to influence last year's election spent money in the largely unregulated world of online political ads. To address this problem, the Brennan Center recommends increasing transparency and strengthening the ban on foreign spending. The most significant mechanisms to accomplish this are discussed below, in turn: (1) extending the definition of "electioneering communications" to paid internet ads, (2) requiring a public file of political ads online, and (3) requiring online platforms to make reasonable efforts to prevent foreign nationals from buying political ads. Together, these efforts would make more of what Russia did in 2016 illegal. They would also increase public disclosure, giving the public and law enforcement more information to catch illegal foreign spending.

1. Include Paid Internet Ads in the Regulation of Electioneering Communications

Congress should extend the rule to online ads by including paid ads on the internet in the definition of "electioneering communications." During the 1990s, "sham issue ads" that attack or praise a candidate on some salient issue without explicitly mentioning the election became an increasingly popular way of attempting to influence elections while avoiding the regulatory requirements imposed on express advocacy. The 2002 McCain-Feingold law responded by creating the category of "electioneering communications," requiring disclosure of expenditures above $10,000 on ads that mention candidates in certain mass media like TV and radio within a specified window, such as 60 days before an election.[25] The problem today is that the internet was not one of the media included.

Extending the rule to the internet would require expenditures on online ads mentioning candidates before an election to be reported, along with the name of the spender. Electioneering communications rules require reporting both the cost of ad placement and the cost of production when they together exceed $10,000. That could ensure transparency about the sources of spending on social media content where a significant amount was spent on production or targeting, even if the resulting message was placed for a very small fee. It would not stop any messages from being shared, only require financial disclosure. And because of the spending threshold, it would not affect the typical social media user at all.

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[24] Sean J. Miller, "Digital Ad Spending Tops Estimates," *Campaigns & Elections*, January 4, 2017, https://www.campaignsandelections.com/campaign-insider/digital-ad-spending-tops-estimates (noting $1.4 billion in digital ad spending in the 2016 election, which signifies a shift toward online spending).

[25] 52 U.S.C. § 30104(f). The definition excludes news stories. 52 U.S.C. § 30104(f)(3)(B)(i).

Expanding the electioneering communications rule to paid internet ads would clarify that foreign nationals are banned from buying such ads. Currently, the law prohibits foreign nationals from spending money "for the purpose of influencing any election for Federal office."[26] That ban has been interpreted to prohibit only express advocacy or its functional equivalent, leaving issue advocacy out.[27] A bright-line rule like the electioneering communications definition would clarify and broaden the foreign national ban.

Of course, agents of foreign governments willing to create fake social media profiles cannot be counted to refrain from spending merely because the law is clearer, or the ban on foreign spending expanded. Fortunately, an expansion of the electioneering communications definition would also make it easier to spot and prevent such spending. Electioneering communications reports require identifying information about the spender, like name and address, and they are made available to the public. Even if agents of foreign governments provide false information on an FEC filing, the public record would be valuable, and would provide the American government, media and public with an opportunity to investigate suspicious spending. In combination with other measures noted below, this could be an important countermeasure against illegal foreign spending.

A bill that would accomplish much of what is recommended above has been introduced by a bipartisan group of Senators: the Honest Ads Act, sponsored by Sen. Amy Klobuchar (D-Minn.), Sen. John McCain (R-Ariz.), and Sen. Mark Warner (D-Va.).[28] The House companion, H.R. 4077, was introduced by Rep. Derek Kilmer (D-Wash.). The bill would extend the definition of electioneering communications to cover paid internet and digital ads.[29]

2. *Require a Public File of Political Ads Online*

Congress should also require more transparency about political ad buys online, beyond disclosing who paid for electioneering communications. To that end, as new media expert Daniel Kreiss of the U.N.C. School of Media and Journalism has proposed, online platforms should be required to maintain repositories of political ads that include the content of the ad as well as information about how it was targeted and who paid for it.[30]

This would address the problem of "dark ads" in political advertising. It would give the public the ability to hold politicians and the interests active in elections accountable if they say different

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[26] 52 U.S.C. § 30101(9)(A)(i) (defining "expenditure"); § 30121 (prohibiting foreign nationals from, inter alia, making expenditures).

[27] See Bluman v. Federal Election Commission, 800 F. Supp. 2d 281, 292 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012) (interpreting the foreign national ban to prohibit express advocacy or its functional equivalent, leaving out issue advocacy).

[28] Byron Tau, "Proposed 'Honest Ads Act' Seeks More Disclosure About Online Political Ads," *Wall Street Journal*, October 19, 2017, https://www.wsj.com/articles/proposed-honest-ads-act-seeks-more-disclosure-about-online-political-ads-1508440260. The House companion, H.R. 4077, was introduced by Rep. Kilmer.

[29] The bill also strengthens requirements for disclaimers on the face of online messages to reveal to viewers who paid for the ad.

[30] This requirement would be analogous to existing rules government television ads regulated by the Federal Communications Commission. *See* 47 C.F.R. § 73.1943 (requiring broadcasters to keep a publicly available file of requests for air time for political ads).

things to different groups of voters, or spread inflammatory rhetoric or falsehoods.[31] And, in combination with electioneering communications disclosures, could provide information to regulators or law enforcement seeking out covert foreign spending.

The Honest Ads Act, mentioned above, would require digital platforms to maintain public files of ad buys that discuss elections or legislative issues. The provision adopts the definition of political ads currently used for television broadcasters' obligation to maintain public files. The database created by the bill would publish the content of the ad, the audience targeted, the timing, and payment information.

Ad placements online can be very inexpensive. Facebook reported that half of the Russian ads it found cost less than $3. To account for this, the criteria for including an ad buy in the public file must have a very low spending threshold, perhaps even requiring the inclusion of any purchase, no matter how low the price.

3. Require Platforms to Work to Stop Foreign Political Ad Buys

Companies that sell online political ads have a responsibility to try to keep foreign powers from using their services to interfere in American elections. Congress should require companies to make reasonable efforts to avoid selling political ads to foreign nationals. The Honest Ads Act includes a provision that would do this as well.

In their retrospective investigations of the 2016 election, Facebook, Twitter, and Google have shown they have the ability to find foreign government activity. One key piece of the puzzle, no doubt, is tracing financial transactions. For example, companies can use credit card verification protocols to examine whether money originates in the U.S.[32]

Despite the availability of clues, the platforms were apparently sufficiently caught off guard by Russia's unprecedented boldness that they didn't conduct systematic searches for covert foreign activity before the election. A prospective requirement, especially in combination with the added transparency required by the provisions recommended above, would help prevent activity like Russia's 2016 election meddling.

B. Eliminate Dark Money

Unfortunately, the lack of regulation on the internet isn't the only place our campaign finance regime is vulnerable to foreign interference. Holes in disclosure rules allow "dark money" organizations to spend on politics without revealing their donors, potentially hiding foreign sources of funds. In order to close the holes, Congress should require any organization that spends on politics disclose its donors, as explained below.

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[31] Daniel Kreiss and Shannon McGregor, "Forget Russian Trolls. Facebook's Own Staff Helped Win The Election." *BuzzFeed*, October 3, 2017, https://www.buzzfeed.com/danielkreiss/forget-russian-trolls-facebooks-own-staff-did-more; *see also* Siva Vaidhyanathan, "Facebook Wins, Democracy Loses," *New York Times*, September 8, 2017, https://www.nytimes.com/2017/09/08/opinion/facebook-wins-democracy-loses.html.

[32] There is legislation that would require candidate campaigns to use credit card verification systems. *E.g.*, Stop Foreign Donations Affecting Our Elections Act, H.R. 1341, S. 1660, 115th Cong. (2017). Congress should consider an analogous requirement for platforms' political ad sales.

In recent years, Congress and the FEC have failed to update disclosure laws in response to Supreme Court decisions that expanded the opportunities for groups to spend on elections. This has given the green light to shadowy nonprofit organizations to spend as much as they want on politics without complying with transparency and source limitations imposed on political committees.[33] Secret spending has exploded, with more than $900 million in dark money spent on the last five federal elections, highly concentrated in competitive elections with the chance of affecting party control of a chamber of Congress or the presidency.[34] Secret spending has also increased in recent state elections, where a single big spender may be able to achieve especially great influence due to lower overall election costs.[35] It is unknown how much dark money derives from foreign sources.

Dark money is possible because, under current law, disclosure requirements are pegged to the form an organization takes: if a group calls itself a political committee, it has to report the identity of all donors of more than $200. Groups that are organized as nonprofits under the tax code, however, are not required to report their donors, even when they engage in substantial political spending. These organizations can be formed with little more than a post office box and a meaningless name like "Americans for Reform." Donors can give these dark money groups unlimited amounts out of public view. Then the group can give to political committees, or it can pay directly for ads, polling, voter mobilization activities, or other political expenditures.

Fortunately, solutions are on the table. The DISCLOSE Act, versions of which have been introduced in Congress since 2010, would eliminate dark money as we know it.[36] At its core, the legislation would require any group that spent above a threshold amount on elections to disclose its major donors of $10,000 or more. This would fix the problem that the law currently allows groups to choose to register as nonprofits rather than political committees in order to hide their donors. Under the DISCLOSE Act, the way a group organizes itself under the tax code is irrelevant; rather, it is the act of engaging in political spending that triggers disclosure requirements.

In addition, the bill would crack down on the use of intermediary organizations to hide funding sources. Current law allows donors to hide their identity by funneling money through a secretive organization before it ends up in the account of the group that actually spends on politics. The DISCLOSE Act addresses this problem by providing that certain transfers of funds to political spending groups trigger donor disclosure. If one group gives funds to another with

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[33] Daniel I. Weiner, *Citizens United Five Years Later*, Brennan Center for Justice, 2015, 7, https://www.brennancenter.org/publication/citizens-united-five-years-later.

[34] "Political Nonprofits (Dark Money)," Center for Responsive Politics, accessed April 5, 2017, https://www.opensecrets.org/outsidespending/nonprof_summ.php; Ian Vandewalker, *Election Spending 2014: Outside Spending in Senate Races Since Citizens United*, Brennan Center for Justice, 2015, 13-14, https://www.brennancenter.org/publication/election-spending-2014-outside-spending-senate-races-citizens-united (finding significant percentages of money spent in competitive Senate races coming from secret spending groups: 28 percent in 2014 and 21 percent in 2016).

[35] Chisun Lee, Katherine Valde, Benjamin T. Brickner, and Douglas Keith, *Secret Spending in the States*, Brennan Center for Justice, 2016, http://www.brennancenter.org/publication/secret-spending-states.

[36] *See, e.g.*, Democracy Is Strengthened by Casting Light On Spending in Elections (DISCLOSE) Act of 2017, H.R. 1134, S. 1585, 115th Cong. (2017).

reason to know they will be spent on elections, the donor group is required to reveal the major sources of its funding.

C. Ensure Corporate Spending Is Funded Domestically

Another blind spot in campaign finance results from corporations' ability to spend in elections, since corporate assets can include vast amounts of money originating in foreign countries or controlled by foreign nationals.[37] To address this problem, Congress should expand the ban on foreign election spending to domestic corporations substantially owned or controlled by foreign nationals.

Although corporations currently can't give directly to candidates or parties, thanks to *Citizens United* and other court decisions, they can give to super PACs and make their own independent expenditures.[38] Under the federal foreign money ban, *foreign* corporations that are organized or based in other countries are banned from spending money in American elections, including by giving to super PACs. Yet current law allows foreign-owned companies incorporated in the United States, even wholly-owned subsidiaries, to make political expenditures as long as the money derives from business in the U.S. and the spending decision is not made by a foreign national.[39]

And corporations may be acting on behalf of foreign governments. Russia is known to use non-state proxies, as with the Kremlin's use of the Internet Research Agency to conduct much of its campaign to influence the election through social media.[40]

In order to address the possibility that corporate contributions may be used as an avenue for foreign influence, Congress should develop policies to restrict the ways that corporations with foreign ownership or control can spend on American elections.

Federal Election Commissioner Ellen Weintraub has proposed requiring corporations that spend on politics to certify that their share of foreign ownership is below some threshold percentage.[41]

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[37] Jon Schwarz and Lee Fang, "Cracks in the Dam: Three Paths Citizens United Created for Foreign Money to Pour into U.S. Elections," *The Intercept*, August 3, 2016, https://theintercept.com/2016/08/03/citizens-united-foreign-money-us-elections/; John C. Coates IV *et al.*, "Quantifying Foreign Institutional Block Ownership at Publicly Traded U.S. Corporations," Discussion Paper No. 888, John M. Olin Center for Law, Economics, and Business, Harvard University, 2016, 11, http://www.law.harvard.edu/programs/olin_center/papers/pdf/Coates_888.pdf (finding that corporations with majority ownership by foreigners controlled more than $12 trillion in assets in 2012, and the share of corporate equity owned by foreigners has increased fourfold in the last three decades).

[38] Super PACs, made legal by a lower court decision interpreting *Citizens United* in 2010, are allowed to take contributions of any amount, including from corporations and unions, in contrast to the contribution limits imposed on other political committees, including candidate committees. SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir. 2010). They are supposed to operate independently of candidates and parties.

[39] "Foreign Nationals," FEC, June 23, 2017, https://www.fec.gov/updates/foreign-nationals/; Federal Election Commission, Advisory Opinion 2006-15, May 19, 2006.

[40] Office of the Director of National Intelligence (ODNI), "Assessing Russian Activities and Intentions in Recent US Elections," Intelligence Community Assessment ICA 2017-01D (2017), https://www.dni.gov/files/documents/ICA_2017_01.pdf.

[41] Memorandum from Ellen L. Weintraub, Commissioner, Federal Elections Commission, September 9, 2016, 4, http://www.fec.gov/members/weintraub/statements/Weintraub-Foreign_Political_Spending_Rulemaking.pdf; *see also* Memorandum from Ellen L. Weintraub, Commissioner, Federal Elections Commission, September 28, 2016,

The FEC deadlocked on the proposal, so it was not developed further.[42] Several existing state laws prohibit either direct contributions or independent expenditures by foreign-controlled corporations. Factors that can trigger a designation that a firm is foreign-controlled include having a greater than 50 percent ownership interest held by foreign nationals.[43]

Bills introduced in Congress this year are also designed to address this issue. Rep. Jamie Raskin (D-Md.) introduced H.R. 1615, the Get Foreign Money Out of U.S. Elections Act this year, which would extend the ban on spending on elections by foreign nationals to domestic corporations that are owned, controlled, or influenced by foreigners.[44] Similar provisions can be found in the Senate version of the DISCLOSE Act of 2017, S. 1585, and the We the People Democracy Reform Act of 2017, H.R.3848.

D. Reform the Federal Election Commission

The FEC has contributed to the secret spending problem by failing to vigorously enforce transparency rules and the foreign spending ban. Congress should make the agency more effective by reforming its structure, as discussed below, including providing for an odd number of commissioners and a nonpartisan appointment process for at least one commissioner.

FEC disclosure requirements apply to groups that are organized as political committees, but as noted above, some nonprofits refuse to register as political committees despite apparently existing solely to engage in political activities. In recent elections, the FEC has not done enough to police the border, failing to pursue investigations into several groups where there are strong indications that the group has a political purpose.[45]

In response to revelations about Russian operatives buying ads on social media, one member of the FEC, Ellen Weintraub, has called for revisiting the agency's regime governing election activity on the internet.[46] It has been more than 10 years since the FEC fully grappled with the regulation of internet spending. The commission has reopened a rulemaking concerning the scope of rules for disclaimers about who's paying for online election ads. But the recent history

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https://beta.fec.gov/resources/about-fec/commissioners/weintraub/statements/Foreign_National_2_Memo_28_Sept_2016.pdf (elaborating further on issues concerning potential FEC regulation of foreign-owned corporations).

[42] Kenneth P. Doyle, FEC Deadlocks on Curbing Foreign Campaign Money, *Bloomberg BNA*, September 23, 2016, https://www.bna.com/fec-deadlocks-curbing-n57982077471. Commissioner Weintraub pushed the issue again in June. Memorandum from Ellen L. Weintraub, Commissioner, Federal Elections Commission, June 20, 2017, https://www.insidepoliticallaw.com/wp-content/uploads/sites/8/2017/06/2017-06-Memo-to-FEC-on-Foreign-Money-Discussion-FINAL.pdf.

[43] E.g., COLO. REV. STAT. §§ 1-45-103(10.5), 1-45-107.5(1).

[44] Democracy Is Strengthened by Casting Light On Spending in Elections (DISCLOSE) Act of 2017, H.R. 1585 115th Cong. (2017); Get Foreign Money Out of U.S. Elections Act, H.R. 1615, 115th Cong. (2017).

[45] *See, e.g.*, Robert Maguire, "FEC deadlocks, won't investigate dark money group that spent all its funds on an election," OpenSecrets, November 18, 2016, https://www.opensecrets.org/news/2016/11/fec-deadlocks-wont-investigate-dark-money-group-that-spent-all-its-funds-on-an-election; Daniel I. Weiner, "The FEC Deadlocks (Again) on Dark Money," Brennan Center for Justice, August 1, 2014, http://www.brennancenter.org/blog/fec-deadlocks-again-dark-money.

[46] Ellen L. Weintraub, "Our elections are facing more threats online. Our laws must catch up." *Washington Post*, September 14, 2017, https://www.washingtonpost.com/opinions/our-elections-are-facing-more-threats-online-our-laws-must-catch-up/2017/09/14/dd646346-99a0-11e7-b569-3360011663b4_story.html.

of deadlocks and lax enforcement at the FEC leaves little cause for optimism that the agency is up to the task of addressing foreign influence.[47]

And as noted, the FEC declined to strengthen the foreign national ban as needed to cover foreign-owned firms after *Citizens United* freed corporations to spend on politics.[48]

The FEC's problems are structural. The agency has an even number of commissioners, no more than three of whom may be from the same party.[49] Any significant action requires a majority. This leads to partisan deadlocks. Declining FEC enforcement in recent years has coincided with lockstep voting by a bloc of Republican commissioners ideologically opposed to aggressive enforcement or stronger rules. Although the commissioners are appointed by the president, presidents traditionally defer to party leaders in Congress, allowing partisan battle lines to infect the agency's decision making.

Reforming the agency to break partisan deadlock could greatly benefit transparency regarding money in politics.[50] Even under the current regime, the president can make appointments in a nonpartisan fashion, basing decisions on expertise or leadership rather than party loyalty. But structural reforms are warranted.[51] Most important, Congress could make the number of commissioners odd and require at least one member to be nonpartisan. There could also be ways to strengthen enforcement, such as empowering the Commission's Office of General Counsel or another designated nonpartisan enforcement official within the agency to conduct investigations, subject to override by the commission.

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To be sure, the possibilities for foreign governments meddling in our elections in the future go beyond the financing of political advertisements. Reports of Russia's activities last year include unpaid posts on social media and the use of automated accounts, or "bots," to amplify messages. There are likely benefits of increasing transparency on social media to make it harder for foreign governments to engage in coordinated, covert attempts to sway American elections, and there may be steps for the social media companies, the public, and even Congress to take to improve transparency.

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[47] *See* Ann Ravel, "How the FEC Turned a Blind Eye to Foreign Meddling," *Politico*, September 18, 2017, http://www.politico.com/magazine/story/2017/09/18/fec-foreign-meddling-russia-facebook-215619.

[48] The agency also declined to pursue a case of foreign nationals spending to influence a local ballot initiative, with the Republican commissioners arguing that the foreign spending ban applies only to candidate elections. Michelle Conlin and Lucas Iberico Lozada, "FEC decision may allow more foreign money in U.S. votes, critics say," *Reuters*, April 24, 2015, http://www.reuters.com/article/us-usa-election-fec/fec-decision-may-allow-more-foreign-money-in-u-s-votes-critics-say-idUSKBN0NF1V420150424.

[49] R. Sam Garrett, *The Federal Election Commission: Overview and Selected Issues for Congress*, Congressional Research Service, 2015, https://fas.org/sgp/crs/misc/R44318.pdf.

[50] Meredith McGehee, "How Congress can reform campaign finance for the American people," *The Hill*, April 14, 2017, http://thehill.com/blogs/pundits-blog/campaign/328759-congress-has-a-chance-to-reform-campaign-finance-for-the-american.

[51] "Reform the FEC to Ensure Fair and Vigorous Law Enforcement," Brennan Center for Justice, February 4, 2016, https://www.brennancenter.org/analysis/reform-fec-ensure-fair-and-vigorous-law-enforcement.

Regardless, it is clear that there are essential measures, recommended here, that Congress can and should enact now in order to keep foreign powers from secretly spending as much as they want on political ads in the next election.

Mr. HURD. I'd like to thank all the gentleman for your opening remarks.

And we're going to start the first line of questioning with the gentleman from Michigan.

Mr. Mitchell, you're recognized for 5 minutes.

Mr. MITCHELL. Thank you, Mr. Chair.

It appears to me that a number of the individuals testifying today are conflating general or social ads, opinion posts, admittedly political ads, and explicit political campaign ads, and conflating them all as being the same thing. As Mr. Rothenberg notes, there were a lot of sophisticated posts, I'm quoting, about social and political issues, some of which were made widely available, by operators, including those outside the United States.

Now, let me ask you, Mr. Chavern, how are we going to determine what's fake news and real news? Who determines that for us?

Mr. CHAVERN. Well, I wouldn't ask the platforms to determine it. I mean, fake news——

Mr. MITCHELL. No, that doesn't answer my question, sir. Who determines that? If we're going to say we're going to stop fake news in some manner in America—and trust me, I'm not a—you should see my Facebook posts. It's not exactly a wonderful thing to read some days, trust me. So who's going to determine what is fake news and stop it?

Mr. CHAVERN. No one's going to determine what's fake news. There's a pre-existing—I agree with you that conflating political ads with bad content is incorrect, and there is a preexisting regulatory regime about political ads. Okay.

And then on, quote/unquote, fake news front, there's a twofold problem. People get garbage over their news feeds online in the same way that good information is delivered to them.

Mr. MITCHELL. I only have 5 minutes. I only have 5 minutes, sir. So let me ask the next question for you, which is a number of the newspapers that you represent printed a variety of articles about the upcoming tax reform and tax cut bill that's pending. They quoted a variety of sources as being that the rich are going to benefit, that the majority of the tax cuts are going to be for the rich, and quoted some sources.

Did you detail the funding sources of those groups that made that quote?

Mr. CHAVERN. With regard to those pieces or other pieces, you know who to complain to. You can complain to the publisher or the reporters. Most of what we're talking about are things that——

Mr. MITCHELL. With all due respect, no newspaper in my community reported any of those sources. And, in fact, as it comes to the tax bill that's pending, the tax brackets have not been published. The bill has not been published. Yet somehow, if you read the newspapers in my community, they have already determined how the tax bill is going to work based upon some groups that are funded by, I'll admit, progressive left groups that say immediately any tax cut is going to be bad.

So my question for you is, if you're going to start being fair in terms of the information you put out, would you not be responsible for posting that this comes from a group that's largely funded by—pick whatever term you want to do—would you not post what their

bias is? Why would you not do that, then, if you want to talk about it?

Mr. CHAVERN. Congressman, what I would say is that you know who to complain to, which is the publisher and the reporters whose names are attached to that content——

Mr. MITCHELL. Well, I assure you that hasn't had much difference.

Mr. CHAVERN. —as opposed to most of what we're talking about today.

Mr. MITCHELL. I assure you that it hasn't had much difference.

The distinction I want to create, I would suggest to your group, is that there's a difference between—you're responsible for the people you employ, their opinions they put forward. You know very clearly in opinion ads or opinion columns who the writer is. I've done a number of them. You're responsible for that contact or the individual that makes their opinion piece is responsible for the content. That's clear.

The difference is on the internet, an internet post, that the provider, the intermediary, is not responsible for it. They didn't write it. They didn't hire them. They didn't determine who they are. Yet you want them held to a standard that's like your newspaper when it's an entirely different format.

Mr. CHAVERN. I wouldn't assert that, Congressman.

Mr. MITCHELL. You did in your testimony, with all due respect.

Let me move on real quick. I've got just a minute left here.

Mr. Vandewalker, I mean, can you help me understand, then, given your perspective on it, we're going to allow the Federal Government to determine what is appropriate content in social media? We're going to have them determine, well, that's a political ad, that's not? We're going to leave it up to a group of people to decide that?

Mr. VANDEWALKER. Well, no. The idea is to incorporate an existing framework that already is out there. The electioneering communication is a bright line test. Candidate mentions within a certain time period above a certain spending threshold.

Mr. MITCHELL. Well, let me stop you, though. Clearly

the bright line hasn't worked. As Mr. Rothenberg notes and Mr. Dickerson noted, the realty is an awful lot of these posts are now questioned as influencing the election fell well outside the bright line. So who's going to determine that?

Mr. VANDEWALKER. Well, again, the bright line keeps you from having someone have to determine it. Certainly there are things outside of the bright line. But, you know, having a bright line and having people understand that they can post if it's below a spending threshold protects speech and protects the ability for people to talk about legislative issues without having a decisionmaker have to make judgment calls every time.

Mr. MITCHELL. Well, let me suggest to the group, and I've suggested internally here to other members, our first responsibility here is to protect the Constitution. The First Amendment is the first amendment for a reason. We need to defend that even if some people think it's fake news, because one person's opinion on fake news is another person's opinion. And the idea that we're going to allow a group of regulators, a group of bureaucrats to regulate

what we will be able to see in terms of social media or other formats offends me, and I will certainly oppose that any way I can.

Thank you very much. I yield back.

Mr. HURD. The Honorable Robin Kelly from Illinois is now recognized.

Ms. KELLY. Thank you, Mr. Chair.

In January of this year, the intelligence community released its assessment that Russian President Vladimir Putin ordered an influenced campaign aimed at the U.S. Presidential election. According to that assessment, and I quote, "Moscow's influence campaign followed a Russian messaging strategy that blends covert intelligence operations, such as cyber activity, with overt efforts by Russian agencies, state-funded media, third-party intermediaries, and paid social media users or trolls."

Only 1 month ago, as I said before, Facebook revealed that a company linked to the Russian Government bought 3,000 ads aimed at amplifying divisive issues. These ads are believed to have reached 10 million people in the United States.

To be clear, this is just the ads we know about and people they have reached. There are likely to be more advertisements bought and concealed due to the nature of digital advertising.

Mr. Vandewalker, are our current laws and regulations sufficient to prevent future influence campaigns by foreign actors? If not, why not?

Mr. VANDEWALKER. Well, unfortunately, too much of the internet is left out right now. We have, as I mentioned, a regime that applies to political spending in mass media. And at the time that that regime was enacted, the important mass media were covered. But now the internet is far more important than it was then, and it's only gaining in importance.

And it should be brought into the regime that exists so that spending above a certain—spending thresholds on electioneering communication should be covered. Similar requirements of disclosures for political ads under the FCC rule for broadcasters should be applied to internet ads as well when they're paid for.

Ms. KELLY. Okay.

Mr. Rothenberg, your testimony characterized this as a supply chain issue. What do the members of your industry that are a part of that supply chain need to do to prevent this issue.

Mr. ROTHENBERG. I think they need to participate in both our existing programs of industrywide self-regulation that have been very successful. We've built them to give consumers disclosure and control over their privacy, over their data flows in digital advertising environments, and we've built another that requires disclosure to prevent fraudulent activity from taking place.

So I think we need much more aggressive participation in those, and we would welcome Congress' support for that. And I think we can build out from those programs to create better conditions for not just disclosure, but I call it supplier qualification.

I mean, basically, if you take a couple steps back, if you think about your local supermarket, or even something as large as your local Walmart, nothing goes on those shelves without it having gone through a series of sluice gates that give everyone a bit of assurance that those products are safe.

We have created mechanisms that can do the same thing, and I think we ought to build out those mechanisms and get more comprehensive participation in them.

Ms. KELLY. Thank you.

Besides lax self-regulation of advertising appearing on social media, there's also the proliferation of fake accounts. On election day, thousands of fake accounts coordinated messages aimed at disparaging Secretary Clinton and Democrats.

Mr. Chavern, print media still contains a large amount of advertising. What are its responsibilities in terms of political advertising?

Mr. CHAVERN. Well, its responsibilities are those that it's traditionally had and upheld, which is to develop a safe and trusting environment for its readers.

Most of our content is now delivered digitally, and the biggest things we can do there are let people know where the information has come from, what is the source of the information. The biggest issue from my perspective with, quote/unquote, fake news is that it comes out of nowhere, people don't where it comes from, and it's fed to them in the same way that other legitimate news is fed to them.

So the best thing that any platform or news source can do is be clear about why the news is coming from, what the source of it is.

Ms. KELLY. Just out of curiosity, do you, with print media, do you feel like—you said you want to provide a safe and trusting. Do you feel like most of your readers feel that way or trust what they read?

Mr. CHAVERN. I think they do find it is. We have an extremely loyal and actually growing audience for our news product. The audience for our news product is bigger than it's ever been in history across all the platforms. And the fact of the matter is people want credible information about the world and their community, and they primarily come to us to get it.

Ms. KELLY. Should digital political ads be held to a different standard than political ads in other media?

Mr. CHAVERN. No. I come back to the—we're in a platform-agnostic world where you get information 16 different ways, which is all good. But the rules can't be divvied up by platform. We're going to need to come up with a set of rules that goes with the content, not with the platform.

Ms. KELLY. What do you think that you can do to do a better job helping leaders distinguish between the real news and content that comes from questionable sources or the fake news?

Mr. CHAVERN. I mean, there's always been crazy conspiracy theories. I think we've all got uncles over the Thanksgiving dinner who's told us crazy stuff. But that's always been different from the newspaper in your driveway or what's on TV.

What's happened now is that it all gets put in a blender and fed to you so that the real news sources and the crazy conspiracy theories come the same way.

You don't want the platforms and anybody else censoring content, but you need to give readers more information. You need to indicate much more clearly where it's coming from. And these algo-

rithms, to which we are all subject to in our lives, need to give credit do people who actually pay reporters for real reporting.

Ms. KELLY. Thank you. I yield back.

Mr. HURD. Now I'd recognize my friend and colleague from the great State of Texas. Mr. Farenthold, you are now recognized for 5 minutes of questions.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman.

So, Mr. Chavern, Ms. Kelly asked you a question I don't think you adequately answered. Are there any Federal Government regulations on a political ad placed in the newspaper? Is there anything a newspaper has to do by law?

Mr. CHAVERN. As the primary responsible party, no, it's on the advertiser, is the primary——

Mr. FARENTHOLD. All right. And you say Federal regulations should be platform neutral. So it would also, by extension, be the Federal Government should not place any regulations on internet platforms as well and treat them the same as a print newspaper. Is that correct?

Mr. CHAVERN. Right. As long as the regulation around the advertisement itself is the same. If there are disclosure regulations on whoever they're from, they have to be—whether it's online or on your watch, it's—you know, people are consuming content in every way. So the requirements, whoever they may fall on, should fall without regard to the platform.

Mr. FARENTHOLD. All right.

So, Mr. Rothenberg, would you—actually, is there anybody on the panel who disagrees with that?

Mr. ROTHENBERG. Well, I would just add one kind of coda to it. The law has long—and I would defer to Mr. Goodman on this too—the law has long recognized that broadcasting is different because of the scarcity——

Mr. FARENTHOLD. Yeah, the scarcity of the airwaves held in public trust. I'm an old radio guy.

Mr. ROTHENBERG. Right. So with that as a known exception, you know, platform agnosticism makes sense, yes.

Mr. FARENTHOLD. All right. So let's talk a little bit about—there's a difference in the way that ads are placed. There's been a lot about, you know, who's buying these ads and the disclosures. Typically in the newspaper, you actually probably talk to a salesman or you talk to somebody on the phone. If you're going to buy something on an online platform, it's typically done online.

Let's say I'm Boris or Natasha from Moscow and have a pile of rubles I've converted into American dollars. I go buy a cash card, Visa, rent a post office box, and ain't nobody going to know I'm a foreign national. Do you see that as a problem?

Yes.

Mr. ROTHENBERG. Well, as I said in my testimony, and it's not necessarily a popular point of view across my entire industry, every company should know to some degree of comfort and certainty who it's doing business with. That's a fundamental principle whether you're making a car or whether you're running a grocery store. So I think that it is not just possible but necessary to have some kind of supplier qualification and customer qualification safeguards in place.

Mr. FARENTHOLD. All right. Now, let's go to the other problem that people are complaining about in social media. I think there's—you may actually have more effect in elections on, say, Twitter or maybe Facebook with bots, just posting something at no cost. A bad actor may go spend $100,000 hiring a programmer to create bots and start posting stuff.

How do we deal—is there a technological way to detect that? I understand that's a problem in the industry worldwide dealing with bots. What do you do about that? And how do you not get legitimate people who are trying to exercise their First Amendment rights wrapped up in that.

Mr. ROTHENBERG. Sir, you have just identified the absolute total nut of the problem, the dilemma. But it's not unsolvable. I don't think you can come up with anything that will ever be 100 percent foolproof, because the technology is very low barrier to entry and will always evolve. It's like a game of whack-a-mole. They're always going to find new ways to do things.

But I keep coming back—I'm sorry I sound like a broken record. Nobody actually knows what a record is these days. But I'm sorry I keep repeating myself. But I think elements of supplier qualification, knowing with whom you're doing business up and down the supply chain and building that into a comprehensive self-regulatory program, will go, and we have proof that it goes a long way to reducing the bot traffic.

Mr. FARENTHOLD. Under some sort of self-regulatory program, you're going to have to have the ability of a social media platform or website operator, whomever, to reject something. Where do you draw the line that they're being treated fairly? Let's say I start Blakeoogle, or whatever the new search engine is, and I'm going to turn down all ads from liberals because I'm a conservative. How do we address that?

Mr. ROTHENBERG. Well, first of all, it's your right. You can do anything you want and prevent anybody you want from coming on. If you want to grow and you want to create a larger business, you want to be as open as possible, so you have to find a balance. I know that may come off as a little mealy-mouthed. But there is a balance between using technology systems and human oversight to determine the quality of your supply chain participants.

Mr. FARENTHOLD. But how does somebody know then, for instance, say my algorithm, to determine what's in a user's news feed? I could subtly weight that to conservative messages and it might be years before somebody figure that out.

Mr. ROTHENBERG. It's true. The same has long existed in every other medium as well. There's been political bias. Sometimes it's subtle and sometimes it's not so subtle.

Mr. FARENTHOLD. You find that on cable news, I'm sure. You choose your channel, I think.

Mr. ROTHENBERG. And you choose your technology.

Mr. FARENTHOLD. Right.

Thank you very much. I see my time has expired.

Mr. HURD. I now recognize the distinguished gentleman from Maryland, Mr. Raskin, for 5 minutes.

Mr. RASKIN. Mr. Chairman, thank you very much. And thank you for calling this really important hearing.

Mr. Rothenberg, you've spoken eloquently about building integrity into the supply chain, which then leaves the obvious question, what went wrong in 2016 and why are we in this situation we're in? Why didn't that happen?

Mr. ROTHENBERG. Well, to quote a former Secretary of Defense, you can't plan for the unknown unknowns.

We did very explicitly, going back over the 11, 12 years I've been in this job, working with our partner associations, the Association of National Advertisers, the four A's, which represents the agencies, the Data and Marketing Association, built very effective self-regulatory programs for known knowns, consumer privacy controls for bot fraud, but nobody had anticipated illicit Russian actors.

Mr. RASKIN. Gotcha. So you think you're ready next time, or you're getting ready for next time?

Mr. ROTHENBERG. Well, you know, I was——

Mr. RASKIN. And intelligence agencies say they're coming back.

Mr. ROTHENBERG. Oh, they will be.

Mr. RASKIN. As early as 2018.

Mr. ROTHENBERG. They will be. But I'll give kind of a warning borne of my older profession.

Back, way back, in my dark past history, I covered politics and political media for The New York Times, and I developed a principle back in the late '80s that we're always covering the last election. The media and the way communications happen are always outrunning our thoughts about what's going to happen. I don't think anybody anticipated the degree to which Twitter was going to be a massive social influence, let alone bots.

So, yes, I think we can very much be prepared for the bot traffic problem, but we don't know what mole is going to pop up in that game next time around.

Mr. RASKIN. Gotcha. Thank you.

Mr. Vandewalker, let me switch to you. You've made what seems like the intuitively obvious point that the internet is properly analogized to TV and radio in terms of its—in terms of the medium, in terms of its intact, in terms of how it works. And, therefore, the rules that apply to electioneering communications in the TV context, in the broadcast context, should also apply in the internet. And all of us are familiar with that. We have to say that, you know, we paid for this ad and we stand by this ad and all that kind of stuff.

But what about the problem which has kind of been floating around from the beginning of the hearing that it seems as if of the hundreds and hundreds of Facebook pages and Twitter messages and bots that were put out by the Russians, many of them were just meant to sow chaos and to inject poison into the American body politic. They would not fall within the electioneering communications definition that we've got under the McCain-Feingold legislation.

Can anything be done about that? Or is it, as Mr. Rothenberg is suggesting, that, well, we've learned our lesson from 2016, and now the public is going to be much more wary, or should be, and the media themselves and the internet companies themselves should be—try to be on top of this problem?

Mr. VANDEWALKER. Right. I mean, I think, as you noted, we should close the doors that we know we can close.

I don't think that's all that can be done. For example, the political ad database encompassed in the Honest Ads Act actually goes beyond electioneering communications because it involves issues of national legislative importance and so would create a publicly available record that researchers could use to try to piece together what's coming from where, who's being targeted, and what are the messages. That could be, I think, extremely valuable in understanding what the sort of next attacks are and how to respond.

And then I think there are more things to be done sort of outside the realm of campaign finance. And that's going to require industry and Congress working together in the ways that Mr. Rothenberg has proposed and really figuring out how to get on top of this thing.

Mr. RASKIN. Let me ask you another question. The Supreme Court in the Bluman decision upheld our traditional ban on foreign nationals spending money in U.S. elections. That's not covered by Citizens United if they are not a U.S. individual or a corporation. However, foreign money could take over domestic corporations, as you were suggesting before, and then money could be channeled through the Citizens United loophole directly into the political system. Is that something that you think we can tighten up as well?

Mr. VANDEWALKER. Yes, definitely. You know, regulation has in many ways not caught up with Citizens United even though it was several years ago now. A corporation's ability to spend unlimited amounts on politics either directly or through super-PACs requires dealing with the problem that even a domestic corporation can be wholly owned or controlled by foreign powers, and that should be tightened up.

One of the ways would be to, as has been proposed, set some kind of percentage, ownership percentage by foreign nationals or foreign governments, and say, above this even a domestically sited or incorporated corporation can't spend on politics.

Mr. RASKIN. Mr. Chairman, thank you very much.

I yield back.

Mr. HURD. I recognize myself for 5 minutes.

This question is to everybody on the panel. You can say, yes, no. You can elaborate. Just don't take too long if you're going to elaborate.

And, Mr. Vandewalker, I'm going to start with you, and we'll go your left, to your-all's right.

Laws like the Federal Election Campaign Act, McCain-Feingold, and Supreme Court cases like Citizens United, do those refer to and should those cover all political advertisements, whether express advocacy or issue advocacy, despite the platform?

Mr. Vandewalker.

Mr. VANDEWALKER. Yes. I think our campaign finance regime at its heart is about transfers of money designed to influence politics, whether that means buying a political ad, writing a check directly to a candidate. There are different ways that that can play out in detail. But, yes, I think——

Mr. HURD. Mr. Rothenberg.

Mr. ROTHENBERG. No. Opinion is protected. Issues are protected. That is not just a slippery slope. You're already three-quarters of

the way down that slope. When it's about candidates and about actual advocacy for or against the candidate, then clearly that falls within the scope of existing——

Mr. HURD. Yeah, that's what I asked. I asked specifically for express advocacy. You should, you know, vote for this guy or don't vote for that guy.

Mr. ROTHENBERG. Sure.

Mr. HURD. Or the issue saying: Call your Congressman if this. In any of those types of political speech, should that fall under these laws and Supreme Court cases despite the medium, whether it's you're writing——

Mr. ROTHENBERG. Yeah.

Mr. HURD. —whether you're sending a piece of mail in the mailbox or it's a digital ad?

Mr. ROTHENBERG. Yes, they absolutely can. You've got to make certain adjustments for the differences among the media. You can't have video rules applying to audio and vice versa. But yeah, sure.

Mr. HURD. Mr. Goodman.

Mr. GOODMAN. I agree that under the Court's precedents it doesn't matter the medium. To the extent speech can be regulated under those cases, it doesn't matter whether you're—how you say it.

Mr. CHAVERN. Yes, as to express advocacy. You get beyond that, you get into tremendous free speech issues.

Mr. HURD. My First Amendment expert, Mr. Dickerson.

Mr. DICKERSON. Yes, as regards to the—as to those platforms with a caveat, which is that, you know, the amount of money that is being regulated is important. The fact that it is cheaper to run an ad in some media versus another doesn't change the burdens on the speaker and their resources in complying with a regulatory regime. So in that sense, if we're talking apples to apples, certainly.

Mr. HURD. So if somebody—you know, coming from the great State of Texas, where I'm in the only competitive district in the State, I'm very familiar with all of the political advertisements that may or may not be run against me. If somebody's running ads against me, there's a public file.

Mr. Chavern, is that correct?

Or, I guess, Mr. Goodman. I think you're—let's say—if they were doing it on television.

Mr. GOODMAN. If they were doing it on radio, television, there's a public file. And depending on whether they are your opposing candidate or an independent group, different information would be in that file.

Mr. HURD. And what law governs that?

Mr. GOODMAN. It's largely the Communications Act. And there were amendments to that act by the McCain-Feingold Act in 2002.

Mr. HURD. Mr. Chavern, is that the same for print?

Mr. CHAVERN. In terms of the—there's no public——

Mr. HURD. A public file. Like, do I know how——

Mr. CHAVERN. No, there's not a public file requirement. And as a matter of fact, I would take this opportunity, I think this is a time where Congress can look and see what requirements are needed across platforms. You know, we have different requirements now. I think looking forward, you have to say what's rational and

required. And, for example, do you need a public repository when you have the internet? But, you know, currently, the rules are different.

Mr. HURD. Or should it be available on the internet?

Mr. CHAVERN. Right.

Mr. HURD. Mr. Rothenberg, you obviously know you're next.

Mr. ROTHENBERG. Well, on that one, I think——

Mr. HURD. When it comes to specifically digital platforms.

Mr. ROTHENBERG. You're talking about the public file?

Mr. HURD. Public file, yeah.

Mr. ROTHENBERG. Yeah. I think that it's hard under the law and under First Amendment history to require the public file to reside with different media. It's hard to take something that was based on the stewardship of the airwaves, import it over to something as open and diverse as the internet.

But what I don't understand is why you can't place those requirements on the campaigns themselves. They know what they're spending, they know where they're spending it, they can create the public file, and that would be available across all media, rather than burdening the end nodes, the edge providers.

Mr. HURD. So my first question to all of you all were the rules that govern express advocacy should apply to all mediums. But we're saying when it comes to the public file and making sure that what advertisements are and timing and amounts, that should only apply to broadcasters? Is that what I just heard?

Mr. ROTHENBERG. Interesting. What I would say is you can apply it, but you should place the burden on the campaigns, not on the media that are not responsible for selling the ads.

Mr. HURD. Mr. Dickerson, can you help me understand any First Amendment issues with this notion of a public file?

Mr. DICKERSON. Well, I mean, the most basic is that it's not costless.

Mr. HURD. It's not?

Mr. DICKERSON. It's not costless. I mean, it's necessarily burdening speech in the sense that certain types of advertisers have to do things that others don't. We've largely lived with that because, you know, as I explained in my written testimony, the sort of speech that's being done on broadcast tends to be larger amounts of money and more sophisticated actors. There are human beings in the mix who are making these determinations as to express advocacy.

Mr. HURD. So are you saying that I should have to do it on television, but somebody else shouldn't to have do it in another medium? If somebody is running against me and they shouldn't have the same?

Mr. DICKERSON. I personally would question the utility of a lot of the exercise in the sense that I'm not sure this information is actually used in ways that are useful from a First Amendment standpoint. But if we are going to have them, we need to be careful to ensure that only the sort of sophisticated actors like political campaigns, and that only the sort of speech that is clearly about elections is covered.

Mr. HURD. Yeah. And I want to make sure I'm clear. When I ask questions, it's narrow, express advocacy and issue advocacy. Mr. Dickerson, I appreciate that.

Now I would like to recognize the gentleman from Massachusetts.

Mr. Lynch, you're recognized for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. And I want to take a special moment just to thank you and to thank Ranking Member Kelly for holding this hearing. This is incredibly important. I want to thank the panel members as well.

And although Ranking Member Kelly mentioned that it's only been a month since Facebook came out and said, yes, the Russians did purchase $100,000 on Facebook to influence the election, it has been a very long time since Members of Congress have been asking to have an investigation on the interference of a foreign government, in this case, Russia, with our democratic elections. It goes back a long way. And this is the first time, Mr. Chairman, you are the first, you are the first to hold a public hearing on the hacking of our election. And I want to thank you for that.

I mean, we go all the way back to September of 2015 when the FBI actually contacted the DNC to say the Russians are hacking your website. And the Democratic National Committee did not act promptly on that warning, and so the hacking continued.

And then in June 2016, it became public of the Russian hacking, widely reported. In December 2016, every single one of the U.S. intelligence agency heads went public and said that with high confidence—this is December of 2016—with high confidence they could say that the Russians were hacking our election.

In September of 2016, Senator Feinstein and Representative Adam Schiff came forward and they said, based on their positions as ranking members of the Intelligence Committees, they had information from their hearings that the Russians were hacking our elections.

And, yes, again last month, Facebook came out and said, yeah, the Russians purchased, with rubles, $100,000 in ads and interfered with our elections.

So all that happened, and today's the first day of the hearing. Today is the first public hearing that we're having on the infringements made by a foreign government on the United States elections. That's shameful that it took so long.

And so I'm going to—we're talking about campaigns in general, and limitations on campaign advertising, but again, I'm going to repeat my request. And my when I say repeat, back in December 2016, December 14, I submitted this letter to the chairman of our committee, at that time Mr. Chaffetz, asking him for a hearing on the Russian interference with our election. No response.

On April 3, 2017, I repeated the effort again. I wrote a letter to this committee saying, look, this is the Oversight Committee, this is our national election, can we please have a hearing on the Russian interference with our election? No response.

Again, I joined—this time I thought maybe it was just me—so I asked all my colleagues to join with me to a letter to Jason Chaffetz, and also the Honorable Bob Goodlatte, chairman of the House Judiciary Committee, on May 16, 2017. Could we please,

could we please have a hearing on the Russian interference in our election. It's very, very important to our democracy. They hacked the RNC and the DNC, both parties. We should be bipartisan about the integrity of our elections. And, again, up to today, no action.

And we're having a hearing today on political advertising, but we still haven't had a single hearing, a single public hearing on the Russian interference in our election.

Ironically, today I did learn in Politico that Mr. Goodlatte has announced the 11th hearing on the Clinton investigation, on the Hillary Clinton investigation, the Department of Justice investigation of Secretary Clinton.

So we've got to get together on this stuff. And I know it might be painful for everyone. I actually asked Ms. Wasserman Schultz, would she come and testify. Yes, she said, she would. It would be difficult, but she would. She would come and help us to delve into what actually happened.

So let me ask you, with my remaining 30 seconds, Mr. Vandewalker, you're familiar with the Honest Ads Act that my friend Mr. Kilmer and Senator McCain have put out there. It seems straightforward. Give me your opinion on that, please.

Mr. VANDEWALKER. We think it's—the Brennan Center takes the position that it is an excellent framework to apply to address the problem of political spending, to close doors on foreign spending that can come in and affect elections, by bringing the internet into an established framework that exists for political spending and other mass media.

Mr. LYNCH. Thank you.

And, Mr. Chairman, I thank you for your indulgence, and I yield back the balance of my time.

Mr. HURD. Mr. Lynch, thank you. And I appreciate the kind words, but I also want to highlight that there have been a number of hearings, open and closed, on the House Permanent Select Committee on Intelligence.

Mr. LYNCH. I haven't seen them.

Mr. HURD. On the issue of this. But this, again, making sure that we're—why we have this—doing this in a bipartisan way.

With that, it's now a pleasure to recognize the gentleman from the Commonwealth of Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman, and thank you for having this hearing.

I find it a remarkable moment in our democracy when so many up here apparently can see and hear no evil when it comes to Russian interference with the American election process, irrespective of who benefited, but can beat a dead horse when it comes to what kind of server was used for somebody's emails. I think that's an indictment of the enabling and complicit behavior we have seen all too much of since Mr. Trump was signed in as President of the United States.

What could be more sacred than protecting everyone's franchise and the integrity of that process in a democracy? And when it is interfered with deliberately, strategically, targeted by a foreign adversary, not an ally, an adversary, why wouldn't we be doing everything in our power on a bipartisan basis to make sure that can never happen again? And that is really the context of this hearing.

Mr. Goodman, from a legal point of view, in my State, the great Commonwealth of Virginia, when I do a campaign ad, if I do one, I'm required by law at the end of it to have a trailer saying, I paid for this, this is my campaign ad. It's a "stand by your ad" kind of requirement in the law. In a sense, it's circumscribing my free speech, is it not?

Mr. GOODMAN. To some extent it—the courts have so far never questioned the ability of the government to require disclosure. And with respect to one part of that, which is the "I'm Gerald Connolly and I paid for this ad," that, at least with to respect to the FCC, is something you can choose to do or not do, but if you don't do it you're not entitled to the candidate discount rate. So it's your choice.

Mr. CONNOLLY. But the point here is there's precedent for circumscribing certain forms of political advertisement.

Mr. GOODMAN. No one has ever questioned those particular requirements, to my knowledge, in court. But the Supreme Court has in all of its cases said that disclosure is largely the remedy, and I would think this would be within the scope of disclosure.

Mr. CONNOLLY. Uh-huh.

So, Mr. Vandewalker, given the fact that there is precedent—that is one example, there are lots of other examples of circumscribing what otherwise would be free speech, tobacco advertising, for example, the government makes a producer of a certain product actually add words to its packaging it does not want to add, but that are required by law.

So there is precedence. No one wants to infringe the First Amendment. But one of our friends on the other side of the aisle earlier made it seem as if the choice were gut the First Amendment or deal with this problem. And it seems to me those are not the only two options in front of us.

Your comment?

Mr. VANDEWALKER. That's right. There are sort of limits on the amount of speech in various ways. And it's important to recognize that there are First Amendment interests on both sides, that is, the listener has an interest in knowing who is speaking to them so that they can evaluate that message.

There's sort of democratic interest in voters knowing who's piping up for a candidate, that tells you something about what that candidate stands for, holding candidates accountable for the financial support that they get, as well as being able to evaluate is this message about some political issue coming to me from an environmentalist group or an oil industry, and do I trust which one of those and taking those sorts of things into account.

Mr. CONNOLLY. I'm going to run out of time. So let me just—do Boris and Natasha operating from the dacha in the outskirts of Moscow, trying to corrupt American democracy through multiple social media and digital ads, do they have the unfettered First Amendment rights that anybody else does in the United States?

Mr. VANDEWALKER. No.

Mr. CONNOLLY. They don't. Why not?

Mr. VANDEWALKER. Well, for a number of reasons. You know, constitutional rights, in general, are diminished at most—at the very least for foreign nationals not within the United States.

But also it's important to note that in the democracy sphere, as noted in the Bluman opinion that was referenced earlier, we have this self-governing community. We are governing ourselves. And that is why we have a democracy and a First Amendment that allows political debate and others do not necessarily get——

Mr. CONNOLLY. And therefore we have a right to protect ourselves from Boris and Natasha?

Mr. VANDEWALKER. Right.

Mr. CONNOLLY. Thank you.

Mr. HURD. Mr. Krishnamoorthi, you're now recognized for your 5 minutes of questions.

Mr. KRISHNAMOORTHI. Thank you, Chairman Hurd and Ranking Member Kelly, for holding this important hearing on our political advertisement disclosure laws.

You know, regardless of our political affiliations, we all agree that our elections are the cornerstone of our democracy, and transparency and the security of elections must be protected at all costs.

Foreign efforts to undermine both our elections and the elections of other Western democracies must be taken seriously. This Congress has a responsibility to ensure that all future elections are protected against foreign meddling.

Mr. Vandewalker, we've heard today the suggestion, and we've seen in at least written testimony, that Russian internet ad buys were just simply too small to be considered a nefarious foreign influence, given the actual amount of money spent on electioneering ads versus other means of Russian propaganda.

Would you agree with the idea that any effort by a foreign adversary to sway our elections regardless—regardless—of whether or not those efforts had a significant impact on the outcome of an election are troubling?

Mr. VANDEWALKER. Yes. I mean, first of all, we don't know the extent. So we haven't seen the maximum figure. But, yes, any amount of, again, trying to influence American elections contrary to our self-sovereignty is problematic.

Mr. KRISHNAMOORTHI. You know, Mr. Vandewalker, earlier this month Facebook stated that about 10 million people—10 million people—have seen these ads. How concerning would you say those estimates are? And how does that impact the public's trust of our news media and our democratic institutions?

Mr. VANDEWALKER. I mean, I think it's very troubling. And, again, that should not be considered an upper bound. Facebook said that that was the audience that the paid ads reached. Those same profiles produced unpaid content that reached probably—potentially tens of millions more. We don't yet know.

And that's one of the problems with not having very much disclosure in this area, that we actually still don't know the extent of the reach, and we need more information about who's trying to sway our political opinion.

Mr. KRISHNAMOORTHI. So it may have reached tens of millions of people, not just 10 million. Through the purchase of thousands of ads and the use of Russian-linked accounts or bots on various social media platforms, Russia's Government was able to manipulate the Internet's open access to information to spread lies, inflam-

matory rhetoric, and other propaganda in the hopes of swaying voters both in the United States and France, among other places.

Multiple news reports found that on Facebook alone there were hundreds of profiles linked to Russian agents that spread false information regarding one of the Presidential candidates, as well as issues like immigration, guns, and other divisive topics.

During the French elections, there were similar efforts to spread false information regarding one of their Presidential candidates.

Mr. Vandewalker, one final question. In your opinion, are we taking as a body in Congress the issue of foreign infiltration of our internet sites seriously enough?

Mr. VANDEWALKER. I think there's been a lot of discussion from—you know, our perspective at the Brennan Center, we value transparently, which is crucial in elections always, and is especially crucial now to address this foreign influence. We certainly think more action could be taken. There are bills that have been introduced that would help address this problem.

Mr. KRISHNAMOORTHI. Do you anticipate that the Russians and others are going to continue these efforts in the ramp-up to 2018?

Mr. VANDEWALKER. Everything I've seen from the intelligence community indicates that, yes, they are.

Mr. KRISHNAMOORTHI. Thank you.

Mr. HURD. The gentleman from the great State of Washington, and a friend, welcome to the Oversight Committee. You're always welcome. Love to see you at future hearings. You're now recognized. Mr. Kilmer is now recognized for 5 minutes.

Mr. KILMER. Thanks, Chairman Hurd and Ranking Member Kelly, both for overseeing this important hearing, but also for letting me sit in with your subcommittee.

Our democratic Republic, that system in which we the people are the boss, has become vulnerable to foreign actors that want to disrupt our system of government to influence electoral outcomes. And from the reports that we've read so far, foreign actors targeted American voters to have the maximum impact on our elections. And that's unacceptable, and that's something, thankfully, both Democrats and Republicans have agreed needs to be stopped.

That's why we introduced the Honest Ads Act, myself and Congressman Coffman, with input from my good colleague, Representative Sarbanes, and Senators Klobuchar, McCain, and Warner. And our bill would have the Federal Election Commission enact rules for online advertisements similar to what's already in place for TV and radio and satellite ads. Those rules require disclosure of who's buying what ads where. And that's vital if we're going to ensure transparency to affirm the public's right to know. And it's important that if we're going to—that's increasingly important if we're going to keep foreign money out of our politics.

Just based on some of the comments that have been made, I think it's important to acknowledge, requiring disclosure when someone purchases a radio or TV ad does not prohibit or inhibit free speech, nor does holding those purchases in a public file. The Supreme Court has long recognized that commercial speech, such as political advertisements, is not subject to the same protections as a citizen's comment to speak up in the public square.

I appreciate Mr. Chavern's comment that applying those disclosure requirements to internet-based advertisements should be no different than what happens with radio and TV media. And I also appreciate Congressman Raskin's comment that certainly this bill doesn't solve all of the problems that we saw in this last election cycle, but this would at least solve the discrete issue of the public's right to know whether a foreign actor is trying to purchase an ad on the internet.

So I have a bunch of questions, but I'm going to try to limit them.

First, for Mr. Rothenberg, because you spoke to the challenges associated with perhaps the burden of keeping the file. If the public file requirement were on the purchaser of the ad or on the campaign, I guess my question is, how could the government ensure compliance by foreign actors if we went in the direction that you suggested previously?

Mr. ROTHENBERG. Well, I'm not sure that you could assure that no matter whom you put the burden on. It will always be difficult if front groups, and then front groups beyond front groups, can actually take out the ad. It doesn't matter where the burden is placed in that regard.

But I would say that one of the problems that I have with the Honest Ads Act is it's placing the burden in no small part on smaller publishers that don't have the financial wherewithal to shoulder that burden and when they're not the ones that are actually responsible for placing most of those ads.

Mr. KILMER. So let me dive into the detail of that with Mr. Chavern. The Honest Ads Act would apply an FCC-style political file requirement to the largest platforms that sell paid online political ads. It currently defines a large online platform as those with 50 million unique U.S. visitors per month. So I guess I might suggest that that might differentiate from the concern that you just raised.

I guess, Mr. Chavern, my question is, what's your view on that figure? Do you have a sense of what types of platforms would be captured at that level?

Mr. CHAVERN. Off the top of my head, it's hard for me to deal with specific metrics other than clearly at this point in time there are two large social media platforms that get the bulk of peoples' attention and ad revenue. That may change over time, by the way, so we will need some metric of size.

I would come back to one thing Mr. Rothenberg stated that I certainly agree with. With regard to the Honest Ads Act, with regard to the stated purpose of equal treatment, I think we've talked a lot about that today and how there may be value in that, we're still studying the implications of all the components of it, in particular the repository and database and what kind of database—for any platform, by the way—is required in this new kind of converged digital age.

But fundamentally, to answer your question, there's two clear candidates right now in terms of online platforms, but we'll have to consider the fact that there may be others and different ones in the future as there always are.

Mr. ROTHENBERG. I can answer that, Mr. Kilmer. It would include companies like Hearst, Conde Nast, Meredith, Vox, Vice Media, basically a lot of newspapers and magazines that are not in a position to take on extra burdens, financial burdens, in reporting. Fifty million unique users in the internet world is actually not a lot.

Mr. KILMER. Thank you, Mr. Chairman.

Mr. HURD. The gentleman from Maryland, Mr. Sarbanes, you're now recognized for 5 minutes.

Mr. SARBANES. Thanks very much, Mr. Chairman, for permission to participate today in the hearing. Thank you for taking this issue as seriously as you have.

I also want to thank Ranking Member Kelly for her focus on this. And I want to thank my colleague, Derek Kilmer from Washington, for his leadership on the Honest Ads Act, which I think is a critical step as we prepare for the elections next week—next year—although it could be next week. It seems like it's coming fast and furious, and that's why we need to get ready for it.

Is there anyone on the panel who thinks that right now we have an adequate level of disclosure with respect to spending on political advertisements on online platforms to be ready for the next election? Does anyone think that disclosure is adequate?

Mr. DICKERSON. I predicted you would be the one.

Mr. DICKERSON. I do.

Mr. SARBANES. You do. But I don't see anybody else, let the record show.

I don't think it's adequate. I think that if we're going to be ready, as you were saying, Mr. Rothenberg, we have got to anticipate what comes next. It's hard sometimes to do that. But I would think putting a baseline regime of disclosure in place with respect to what is happening online would be one thing that we could do to be more ready than we are now.

And so we're obviously going to encourage our colleagues to continue to push very hard for this kind of disclosure, which, as the hearing has indicated, is not out of line with the expectations that have been created with respect to the broadcast industry over time. And the public, I think, has indicated through polling data that it wants to see this kind of information as well.

I'm curious what you would say about whether advertisers should be allowed to make money from foreign election interference. I mean, how would you answer that question, Mr. Vandewalker? Do you think that advertisers should be able to make money on foreign interference in our elections?

Mr. VANDEWALKER. Well, I mean, I think within reason we should be preventing foreign interference in our elections, and it logically follows from that that companies shouldn't be able to make a profit from it.

Mr. SARBANES. Any others?

Mr. GOODMAN. Yes. I think the question really needs to be refocused, because the issue is not whether, for example, somebody makes money off an ad, but whether an advertiser that's foreign is permitted to participate in U.S. elections. And I think that is one of the issues that if there are going to be further disclosure require-

ments needs to be addressed, which is that online platforms, like broadcasters, have no enforcement authority.

If Boris and Natasha, who have been mentioned before, they say, yes, we're U.S. citizens or we have a U.S. company, either an online platform or a newspaper or a TV station have no way really to determine whether that's accurate. And that's why I think this has to be a government responsibility.

Mr. SARBANES. But I do think it goes to the question of what kind of expectation we should have from the advertisers themselves, what sort of responsibility they should carry to promote this kind of disclosure, to keep track of these kinds of things.

I don't think, as you indicated, Mr. Rothenberg, that we can, for example, rely on campaigns to enforce these standards. I don't think that's realistic. I think the advertisers or the platforms that are receiving these purchased advertisements are in a better position to do that. It may not be easy out of the gates to construct these new regimes or algorithms, but they can construct algorithms for just about everything else in the world, they should be able to do this in order to enhance disclosure.

I'm going to run out of time, so I wanted to ask one other question of you, Mr. Vandewalker. And that is the FEC takes a lot of hits these dates, and in certain regards it is not functioning in the way it should. But there are some things that the FEC is able to do pretty well. It collects information that's submitted by campaigns every quarter. It digests that and it produces it in a very accessible way on its online platform so people can go there and get information about what is happening in terms of the spending on the campaigns themselves.

So do you have any reason to think that the FEC would not be able to handle the responsibility of administering what's being envisioned under the Honest Ads Act in terms of information being collected, public files being produced, that being put in a place where the public can see it easily? Isn't that a function that the FEC could undertake at this point?

Mr. VANDEWALKER. Yes. As you mentioned, that's one of the things that the FEC is actually good at. And they recently revamped the public face of those disclosures, making them more searchable online. And certainly policies could be developed in cooperation with social medias of the world who are very good at putting things online, I think, to make it all feasible and usable.

Mr. SARBANES. Thank you. I yield back.

Mr. HURD. Thank you. I recognize myself for another 5 minutes.

Mr. Dickerson, I want to follow up on something Mr. Vandewalker said. Does a Russian in Russia have First Amendment rights in the United States?

Mr. DICKERSON. A Russian in Russia certainly has fewer First Amendment rights than an American or than a Russian would have on American soil.

Mr. HURD. Gotcha.

Mr. Goodman, can the Government of Russia buy an ad saying, "Come to Moscow" on broadcast television?

Mr. GOODMAN. There is no restriction which prohibits a foreign government from buying an ad. I think there would be a restriction

on them buying an ad, which would be explicit advocacy, because that would be illegal under U.S. election laws.

Mr. HURD. So the Russian Government, if they wanted to buy an ad on broadcast that said, "Don't send weapons to Ukraine," what would govern that?

Mr. GOODMAN. There are disclosure requirements, and I'm certainly no expert in the disclosure requirements with respect to foreign participation in U.S. media. But other than that, assuming they comply with those disclosure requirements, there is no prohibition on their speaking in the U.S.

Mr. HURD. Does the Foreign Agent Registration Act have anything to do with that disclosure or that purchase of——

Mr. GOODMAN. That's exactly what I was referring to.

Mr. HURD. Gotcha.

Mr. Chavern, can the Russians run a political advertisement in the newspaper saying, "Don't send guns to the Ukraine"?

Mr. CHAVERN. I believe it would not count as express advocacy, and I——

Mr. HURD. If they said, "Call your Congressman and tell them don't support sending guns, American guns to the Ukraine"?

Mr. CHAVERN. Once you get into issue advocacy, I have the same—I would have the same question as Mr. Goodman about foreign agent——

Mr. HURD. Mr. Rothenberg, can the Russians run a digital ad that tells you to call your Congressman and tell them not to support sending American guns to the Ukraine?

Mr. ROTHENBERG. Mr. Chairman, I'm not an expert on that, so I cannot answer that question.

Mr. HURD. Mr. Vandewalker, do you have an opinion on either one of those three scenarios that I just brought up?

Mr. VANDEWALKER. You know, so one of the things that could get at that is the political file requirement, which would, again, not be prohibition, but would be——

Mr. HURD. So let me ask you, is there some piece of law, court case, that regulates whether the Russian Government could buy an ad on print, broadcast, or digital that says, "Call your Congressman and tell them to not send guns to Ukraine"?

Mr. VANDEWALKER. Not that I'm aware of.

Mr. HURD. And just for the record, I'm supportive of sending guns to the Ukraine. I just want to make that clear.

Mr. VANDEWALKER. Right. It could be an electioneering communication if it were 60 days within an election and mentioned someone running for reelection.

Mr. HURD. Mr. Dickerson, your opinion on one of those three scenarios.

Mr. DICKERSON. My opinion is—I'm pleased to finally hear the Federal—the Foreign Agent Registration Act raised because it basically is a political file. I mean, this is a law that requires essentially any— And it's a very broad definition of political public communication at very low dollar thresholds to be filed with the Department of Justice, to have physical copies of the ad filed with the Department, to have a disclaimer on the front of the ad saying it's being paid for by a foreign government.

I mean, I think a lot of the tragedy of this conversation is that in our efforts to get at Russian activity we're ignoring the tool that's directed at foreign actors and instead trying to expand laws that by definition impact American political speech.

And given the scope of the existing FARA, and the fact that it could be expanded if it was this committee's interest to not only foreign agents but also foreign principals, that strikes me as a much narrower, much more constitutionally defensible way of building the political file that's being discussed here, precisely because it's targeted at foreigners and not Americans.

Mr. HURD. So right now your understanding of FARA is that it's for agents of the government, it doesn't include principals of the government?

Mr. DICKERSON. That's my understanding.

Mr. HURD. Mr. Raskin, you're now recognized.

Mr. RASKIN. Mr. Chairman, thank you very much. I'm going to follow up on your questions.

Listening to the testimony, I recognize that what's at stake here really is the integrity of liberal democracy in our century. You know, Vladimir Putin and his agents understood they could not compete with us militarily, they could not compete with us economically, and they could not compete with us politically on a fair stage because they've got nothing to sell but tyranny and despotism and kleptocracy.

But he detected a little bit of an Achilles' heel in the United States, which is our openness, and specifically our openness, our freedom of expression on the internet, which might be the most wide open of all of the forums in media that we have. So he took advantage of that.

And I think everybody here agrees that we were caught sleeping. And there were hundreds of thousands of dollars, perhaps millions of dollars spent to invade every nook and cranny of the internet in order to inject poison into our political process and to try to gerrymander the outcome of our election.

Now, let me ask this. First of all, can we do this in reverse? For example, would we be allowed to spend whatever money we wanted, either as a government or private entities in the United States, in Saudi Arabia, in Iran, in Russia, in the Philippines? Do the authoritarian societies allow people from the liberal democracies to access their public with such ease? Does anybody have an answer to that?

Mr. Rothenberg.

Mr. ROTHENBERG. Well, yes, for generations we did that through the Voice of America and various other arms of the United States Government, and did it very effectively.

Mr. RASKIN. But what about the purchase of TV ads in Saudi Arabia or Iran or Russia, the purchase of radio ads? I understand there is the Voice of America, which is announced, which is disclosed, and it clearly comes from the United States. But what about the kind of surreptitious penetration of the public consciousness that took place in 2016 here?

Mr. ROTHENBERG. Well, history shows us that we have all played games in each other's countries with each other's media for genera-

tions. I'm not defending it or decrying it, I'm just stating a fact that I think we're all aware of.

Mr. RASKIN. Yeah. And there's no doubt that the U.S. Government has intervened to destabilize democracies, as in Chile, as in Iran, and that's something, obviously, that real small "d" democrats oppose and have tried to stop in our history.

But perhaps we need some kind of global understanding about giving the people of every society the right, first, to free and fair elections in democratic government, and then the right to pursue those elections without covert interference by foreign nations.

Well, let me ask this question. The FECA makes it unlawful for any foreign national directly or indirectly to make a contribution or donation in connection with a Federal, State, or local election. That doesn't use the language of express advocacy, it says any contribution or donation in connection with an election.

Would it be within the constitutional authority and province of Congress to ban—and I think perhaps the chairman was asking this question too—not just express advocacy spending by foreign nationals, corporations, and governments, but also any political advertising taking place during the election season?

Would we have the authority to do that to foreign nationals on the theory that they don't enjoy the First Amendment rights of the American people, or indeed of, I think, even permanent residents of the country, people who are here and our part of the country?

Does anybody have an opinion on that?

Mr. DICKERSON. I think the problem, Congressman, is less the matter of the First Amendment than a matter of vagueness. I mean, as I know you're aware, the Supreme Court in Buckley said that precisely that language was unconstitutionally vague in the sense that actors couldn't, as a matter of due process, determine what was and wasn't covered. The danger with these sort of words like——

Mr. RASKIN. Well, we've drawn the line between express advocacy and then just generalized political advocacy. Because the line exists, we've got two separate categories, and our campaign laws apply for American citizens on one side but not the other, but perhaps they could apply on both sides for people or entities, foreign governments and corporations that decide they want to get involved in our elections. What do you think about that?

Mr. DICKERSON. I think we're already there. I mean, express advocacy is banned by foreigners and foreign governments.

Mr. RASKIN. But we want to go beyond that to all political spending during our campaigns. For example, if it turns out that the Russian Government cleverly got itself involved with alt-right activities, it tried to get involved with Black Lives Matter, it was doing everything possible to exacerbate tensions in our country, which we live with to this very day.

Mr. DICKERSON. I would think the Department of State would have views on this. From the point of view of the First Amendment, that is probably permissible provided that things are defined in a way that is understandable. And, frankly, Congress has a bad track record on that.

Mr. RASKIN. And, of course, they have the right to speak voluntarily and freely through public platforms where they're an-

nounced, and they've got a right to do a Facebook page, which is not the spending of any money.

But it just seems to me that when we talk about the expenditure of money in the political system, that's where it gets to be very dangerous because you can't rerun an election. And one contaminated election can take a country down a very dark road.

I yield back to you, Mr. Chairman.

Mr. HURD. Thank you.

I recognize myself for another 5 minutes.

This set of questions is for Mr. Chavern, Mr. Goodman, Mr. Rothenberg.

We'll start with you, Mr. Rothenberg. How much does it cost a month to host a website.

Mr. ROTHENBERG. Oh, my goodness. I mean, you can do it for under $20 a month.

Mr. HURD. Mr. Goodman and Chavern, would you agree about the cost?

Mr. CHAVERN. [Nonverbal response.]

Mr. GOODMAN. [Nonverbal response.]

Mr. HURD. Are you familiar with WordPress.

Mr. ROTHENBERG. Yes, certainly. I had a blog on WordPress.

Mr. HURD. How much does that cost?

Mr. ROTHENBERG. Right now I don't know. I think you can actually go up on WordPress for—there might be a free option.

Mr. HURD. I believe there is a free option.

Mr. ROTHENBERG. Yeah.

Mr. HURD. When people do advertising on a digital platform they fill out some form, right, upload the copy, that form gets stored somewhere, and that gets pushed out, right?

Mr. ROTHENBERG. Essentially. It's a good summary.

Mr. HURD. So there's an electronic record of it?

Mr. ROTHENBERG. That I can't speak to. I don't know how evanescent those are or are not.

Mr. HURD. But could there be an electronic record?

Mr. ROTHENBERG. I imagine, yes.

Mr. HURD. Could it get exported to an Excel document or a Google Sheet?

Mr. ROTHENBERG. I imagine, yes. It doesn't sound like it would be that difficult.

Mr. HURD. And if you already own a website, publishing an Excel document or a Google Sheet, how much does that cost?

Mr. ROTHENBERG. Give me the question again, sir.

Mr. HURD. If you already own a website, right, how much does it cost to publish a Google Sheet or an Excel document to that website?

Mr. ROTHENBERG. If I already have, say, a WordPress site and I want to—I mean, you can upload that relatively simply, it's di minimis, yes.

Mr. HURD. Zero cost, right?

So I'm curious, Mr. Goodman and Mr. Chavern, would you disagree with any of those or would you agree with Mr. Rothenberg's comments in all that?

Mr. CHAVERN. Yes.

Mr. HURD. So I'm curious to know what burden we're putting on someone to publish the information of who's advertising?

Mr. ROTHENBERG. Well, first of all, the ads that are going onto my WordPress blog, if I've enabled it to take advertising, are not being bought—not being sold by me directly. I have nothing to do with it, it's all an automated——

Mr. HURD. So what is the burden that we are putting on the person that is displaying that ad on your individual website?

Mr. ROTHENBERG. Well, one of my concerns, as I expressed before, with the way the Honest Ads Act is worded, it would put the burden on me to keep those records.

Mr. HURD. So what is the burden?

Mr. ROTHENBERG. Even though I have no involvement in the actual sale or distribution of that advertising.

Mr. HURD. And I know it's hard to address everyone, right, and I get that, but are they expunging all that information, the people that are collecting the advertising dollars on what's being promoted?

Mr. ROTHENBERG. Presumably they have it, but you're asking me to keep the records, and I don't have any of those records.

Mr. HURD. So the person that has the record, what burden would it be for them to publish the details of that?

Mr. ROTHENBERG. That I don't know. It depends upon who it is and where they are in the system.

Mr. HURD. Mr. Goodman, do you have an opinion when it comes to broadcasting?

Mr. GOODMAN. I think there are two questions. One is, if you ask who is paying for the ad, that is what broadcasters already do. There is a considerable amount of complaint that that isn't really that informative. In other words, if it's Citizens for Good Government who actually that is, it's not clear.

Mr. HURD. And the broadcaster goes back and asks and says, "Who's your counsel?" or, "Who's your executive committee?" and they don't give you an answer. I get that. I'm not asking for enforcement. I'm asking, what burden is there to publish the information, the data that is already in hand?

Mr. GOODMAN. The information is currently uploaded to websites that are really run by the FCC, and it has proven not to be a very significant burden to most TV stations.

Mr. HURD. Gotcha.

Mr. Chavern.

Mr. CHAVERN. The one thing I'd note is in the website example you gave, obviously the website viewed by you would have some sets of ads. If I viewed the same website, they might likely have a totally different set of ads served programmatically by the ad-tech platforms.

So I think you also have to take into account volume. And again, these programmatic systems have no human touch related to them. And the volume of ads and deciding, for example——

Mr. HURD. It is the same amount of effort to publish a 10-line Excel document or spreadsheet as it is to publish a 10-million line? I know the answer.

Mr. CHAVERN. Okay.

Mr. HURD. Same level of effort, because you're not collecting it. If you're collecting the information automatically, right? So to display it, there's no difference in displaying 10 lines versus a million lines.

Now, you may have to pay for the size of the file. But I'm getting at I keep hearing over and over the burden to publish data that is already in hand. You already have the data. What's the burden?

Mr. ROTHENBERG. It's where you're placing the burden. If you're placing the burden on a place that——

Mr. HURD. On whoever has it. Who's collecting it.

Mr. ROTHENBERG. Okay. That depends upon how you write the requirements.

Mr. HURD. Mr. Dickerson, do you have any opinion in all of this exchange?

Mr. DICKERSON. No.

Mr. HURD. Mr. Vandewalker?

Mr. VANDEWALKER. No. I'm excited to hear the answer.

Mr. HURD. Parting wisdom. I don't have any time left, but I'll extend some of that time to you all.

Ten seconds, Mr. Vandewalker, what is it that you wish this committee would know about this topic that you haven't been able to address.

And that's the same question for all you all.

Mr. Dickerson, it better be good because you're going to be last, okay? And you don't have to saying. If the answer is we got it, we got it all.

Mr. VANDEWALKER. I think the committee got it all from our perspective.

Mr. HURD. Great. Thank you.

Mr. Rothenberg.

Mr. ROTHENBERG. I think industry self-regulation, managed industry-wide, with tough and tight enforcement, can actually go further than this Congress can go in enforcing the rules.

Mr. GOODMAN. I think that whatever you do, it needs to be clear so that the rules are understandable and the responsibility for enforcement is also well-established.

Mr. CHAVERN. Let's take this moment to figure out what rules about political advertising makes sense, no matter what the platform. And that doesn't mean being taught by what happened before. Let's take this moment to say what really makes sense and what do we need.

Mr. HURD. Mr. Dickerson, don't let me down.

Mr. DICKERSON. The courts have allowed us to establish disclosure requirements, record-keeping burdens, things of this nature, only insofar as the underlying speech is directed at an election. And, to the extent that we are toying with using foreign intervention, which we can separately regulate, as an excuse to undue that burden, I think we are wading into territory that is far less charted than some of the testimony has suggested.

Mr. HURD. Well, gentlemen, I want to thank you all for being here today and appearing before us.

The hearing record will remain open for 2 weeks for any member to submit a written opening statement or questions for the record.

If there's no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 3:55 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Questions for Mr. David Chavern
President and CEO
News Media Alliance

Questions for the Record submitted by Chairman Will Hurd
Subcommittee on Information Technology
Committee on Oversight and Government Reform

Question 1. Is it allowable under current rules, regulations and laws for a foreign agent to buy an advertisement in a newspaper today that did not expressly advocate for the election or defeat of a candidate?

If the answer is yes, what would be the disclosure or notice requirements for identity of the entity who purchased it?

Answer: We are not aware of any current laws that would prevent such a purchase. If the term "foreign agent" is used as it is defined in the Foreign Agents Registration Act ("FARA"), purchasing such an advertisement may give rise to disclosure or labeling obligations for the agent under that statute. The applicable FARA responsibility would fall to the agent purchasing the advertisement.

Question 2. Is it allowable under current rules, regulations and laws for a foreign country to buy an advertisement in a newspaper today that did not expressly advocate for the election or defeat of a candidate?

If the answer is yes, what would be the disclosure or notice requirements for identity of the entity who purchased it?

Answer: We are not aware of any current laws that would prevent such a purchase. FARA may or may not apply in such circumstances depending on the relevant facts.

Question 3. In your testimony, you advocated several times for regulations to be platform agnostic. Does that mean you would accept requirements for print media to keep a political file?

Answer: My member companies deliver their news content however their readers want to receive it, be it in print, desktops or mobile devices. As technology platforms continue to evolve we believe it is reasonable for Congress and Federal agencies to evaluate whether platform-specific regulations adopted years ago make sense in our converged digital world.

As far as the political file requirement, this is a regulation placed on broadcasters who must adhere to the "lowest unit rate" and other public interest requirements as a consequence of receiving a government license to use the public airwaves. Imposing this political file requirement on printed or digital news media likely would not survive First Amendment scrutiny. However, I suspect that many newspapers would voluntarily maintain some form of a political file for the public to view if other media, including digital platforms, did so.

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November 15, 2017

The Honorable Will Hurd
Chairman
Subcommittee on Information Technology
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Mr. Chairman:

I am pleased to respond to your letter dated November 1, 2017, submitting two post-hearing questions you propounded for the record of the hearing on October 24, 2017 relating to "Oversight of Federal Political Advertisement Laws and Regulations."

Question: Is it allowable under current rules, regulations and laws for a foreign agent to buy an advertisement on television today that did not expressly advocate for the election or defeat of a candidate?

> If the answer is yes, what would be the disclosure or notice requirements for identify of the entity who purchased it?

Answer: Insofar as this question relates to rules and regulations of the Federal Communications Commission ("FCC") and provisions of the Communications Act of 1934, as amended, a foreign agent would be allowed to purchase an issue advertisement on a U.S. television station. FCC rules do not bar anyone from purchasing issue advertising, although unlike candidate ads, television stations are not required to accept issue advertising and could choose not to accept purchases from particular entities. Stations also would have the authority to censor or require edits to such issue advertisements.

With respect to disclosure or notice, if the proposed advertisement related to "any political matter of national importance," as defined in the Bipartisan Campaign Reform Act of 2002 ("BCRA"), as part of the agreement to purchase time on a station, the advertiser would be required to disclose the identity of the person or entity purchasing the time; the name, address and telephone number of a contact person; and a "list of the chief executive officers or members of the executive committee or of the board of directors" of the advertiser. That information must

be placed by the television station in its online public file, and the station must also upload whether it accepted or rejected the proposed purchase, the rate charged for the time, the class of time purchased, and the date and time when any advertisements were broadcast.

If the advertisement does not relate to "any political matter of national importance," but does involve a political matter or a "discussion of a controversial issue of public importance," 47 C.F.R. § 312(e) requires the station to place in its online public inspection file "a list of the chief executive officers or member of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity" paying for the advertisement. Stations are also required under 47 C.F.R. § 312(d) to air an announcement during the advertisement "fully and fairly" disclosing the true identity of the individual or entity paying for the announcement. Further, when "an agent or other person or entity" contacts a station on behalf of another, the station is required to use "reasonable diligence" to "identify the person or persons or entity on whose behalf the agent is acting."

In addition to FCC requirements, where the responsibility for compliance is imposed at least in part on broadcasters, there may be additional disclosure requirements that apply to the advertiser under federal election laws administered by the Federal Election Commission, under the Foreign Agents Registration Act, or under other laws.

Question: Is it allowable under current rules, regulations and laws for a foreign country to buy an advertisement on television today that did not expressly advocate for the election or defeat of a candidate?

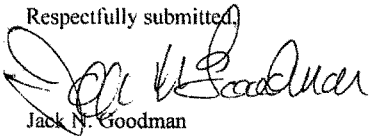
> If the answer is yes, what would be the disclosure or notice requirements for identify of the entity who purchased it?

Answer: With respect to the rules and regulations of the FCC and the provisions of the Communications Act, the answer is the same as to the question of an advertisement being purchased by a foreign agent. There are no FCC rules or provisions of the Communications Act that apply different standards or requirements for announcements paid for by a foreign country. There is, of course, a direct prohibition of foreign contributions to candidates for election to federal office, but it is not clear that an advertisement that did not expressly advocate for or against the election of a federal candidate would be viewed as a contribution to a federal campaign, and responsibility for compliance with that requirement is placed on the advertiser and not on broadcast stations. And other provisions of law may limit such expenditures or

require additional disclosures. But it is not uncommon for foreign governments to place advertisements in U.S. media to express viewpoints, and a ban on their speech might also raise questions under the First Amendment.

Please let me know if I can provide any additional information.

Respectfully submitted,



Jack N. Goodman

cc: The Honorable Robin L. Kelly, Ranking Minority Member
Kiley Bidelman (by e-mail)

November 15, 2017

Via email to Kiley.Bidelman@mail.house.gov

The Honorable Will Hurd
Subcommittee on Information and Technology
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: Questions for the Record

Dear Chairman Hurd:

Thank you again for the opportunity to testify at the "Oversight of Federal Political Advertisement Laws and Regulations" hearing on October 24, 2017. Per your request, this letter responds to the Questions for the Record you sent on November 1, 2017.

QUESTION 1: Is it allowable under current rules and laws for a foreign agent to buy an advertisement online today that did not expressly advocate for the election or defeat of a candidate? If the answer is yes, what would be the disclosure or notice requirements for identity of the entity who purchased it?

Yes, an agent of a foreign principal, as that term is defined under the Foreign Agents Registration Act ("FARA"), is allowed to purchase online advertisements, as long as they do not expressly advocate the election or defeat of a clearly identified candidate for federal office under the Federal Election Campaign Act ("FECA"). The advertisement would have to include a statement that identifies the name of the agent and the foreign principal and the agent would have to file copies of the advertisement with the FARA Unit at the Department of Justice. In addition, the agent would have to file periodic reports with DOJ about its activities.

FECA Restrictions on Foreign National Advertising

The FECA provides that "[i]t shall be unlawful for a foreign national, directly or indirectly, to make...an expenditure, independent expenditure, or disbursement for an electioneering communication."[1] The FEC's implementing regulations expand this slightly by saying that a "foreign national shall not, directly or indirectly, make any expenditure, independent

[1] 52 U.S.C. § 30121(a)(1)(C).

expenditure, or disbursement in connection with any Federal, State, or local election."[2] In addition, "[n]o person shall knowingly provide substantial assistance in the making of an expenditure, independent expenditure, or disbursement prohibited" by the regulations.[3]

A special three-judge court that hears challenges to the FECA has interpreted the statute as prohibiting foreign nationals "from making expenditures to expressly advocate the election or defeat of a political candidate; and from making donations to outside groups when those donations in turn would be used to make contributions to candidates or parties or to finance express-advocacy expenditures."[4] The court explained that the FECA "does not bar foreign nationals from issue advocacy—that is, speech that does not expressly advocate the election or defeat of a specific candidate."[5] The court then said that the "line between prohibited express-advocacy expenditures and permitted issue-advocacy expenditures for purposes of this statute is the line drawn by the Supreme Court…: An express-advocacy expenditure is one that funds 'express campaign speech' or its 'functional equivalent.'"[6] Finally, the court explained that under Supreme Court jurisprudence, an "advertisement is the 'functional equivalent' of express advocacy if it 'is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.'"[7]

Thus, an agent of a foreign government could purchase an online advertisement that talks about issues, as long as it does not expressly advocate the election or defeat of a candidate.

Disclosure and Notice Requirements Under FARA

Because the ads in question would not expressly advocate the election or defeat of a candidate, the FECA would not impose any disclaimer or disclosure rules. FARA, however, includes a requirement that agents must include notices on informational materials and file those with the DOJ. Disseminating issue-based ads would generally fit within FARA's definition of political activity, which includes activity that the agent intends will influence any agency or official of the U.S. government or any section of the public within the U.S. with reference to formulating, adopting, or changing the domestic or foreign policies of the U.S. or

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[2] 11 C.F.R. § 110.20(f).

[3] *Id.* § 110.20(h)(2).

[4] *Bluman* v. *FEC*, 800 F. Supp. 2d 281, 284 (D. D.C. 2011), *affirmed by* 132 S. Ct. 1087 (2012).

[5] *Id.*

[6] *Id.*

[7] *Id.* at 285.

with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party and therefore require registration.[8]

When they register, foreign agents must provide information about themselves, their clients, the contract with the client, and the work they plan to do.[9] In addition, they must file periodic reports every six months detailing the work done, political contributions the agent has made, payments received, funds disbursed, and informational materials disseminated.[10]

Although the statute and regulations refer to informational materials in terms of print materials, such as newspapers and periodicals, books, pamphlets, sheet music, photographs, pictures, maps, advertisements, and lithographs,[11] the DOJ registration forms and instructions adapts the term "informational materials" to include electronic communications.[12] These forms specifically request a foreign agent to identify whether it will disseminate informational materials that are "Email," "Website URL(s)," "Social media website URL(s)," and other forms of electronic communications.[13]

Informational materials must include a "conspicuous statement" on all informational material that identifies the name of the registrant, the name of the foreign principal, and advises that the recipient may obtain information about the registrant via DOJ's FARA Registration Unit.[14]

Other Disclosure Requirements

It is worth noting that if an online ad seeks to influence state legislation, state law may require additional disclaimers. For example, Washington requires sponsors of online advertising campaigns that attempt to influence the passage or defeat of legislation to register and report if they spend more than $700 in a one-month period (or more than $1,400 in a three-month period).[15] Texas requires a disclaimer that identifies the communication as

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[8] 22 U.S.C. § 611(o).

[9] *Id.* § 612(a).

[10] *Id.* § 612(b).

[11] *Id.* § 611(n).

[12] Form NSD-1, Registration Statement Pursuant to FARA, Section V., Question 15, *available at* https://www.fara.gov/forms/2017/OMB_1124_0001.pdf.

[13] *Id.*, Section V., Question 15.

[14] *Id.* § 614(b); 28 C.F.R. § 5.402(a) (recognizing that such statements at the beginning of material will be considered conspicuous).

[15] *See* REV. CODE. WASH. § 42.17A.640.

a "Legislative Advertisement" and that includes "Paid for by" language.[16] There are no analogous federal rules for online advertising that seeks to influence federal legislation.

QUESTION 2: Is it allowable under current rules, regulations and laws for a foreign country to buy an advertisement online today that did not expressly advocate for the election or defeat of a candidate? If the answer is yes, what would be the disclosure or notice requirements for identity of the entity who purchased it?

Yes, as explained above with respect to ads purchased by foreign agents, the FECA prohibits foreign entities—which would include a government—from paying for ads that expressly advocate the election or defeat of a candidate but does not prohibit issue advertising. Unlike ads purchased by agents of a foreign principal, there are no disclaimer or disclosure requirements that apply. For comparison purposes, an ad placed on broadcast television by a foreign government would require a sponsor-ID message under applicable Federal Communications Commission rules.

* * *

The IAB appreciates the opportunity to provide these responses to your Questions for the Record. The IAB and its member companies are committed to transparency in online political advertising, and we look forward to working with you on this important issue. Please contact me at 212-380-4717 with any questions.

Sincerely,

Randall Rothenberg
President and CEO
Interactive Advertising Bureau

[16] *See* TEX. GOV'T CODE § 305.027; *see also*, Texas Ethics Comm'n, Legislative Advertising Pamphlet, *available at* https://www.ethics.state.tx.us/pamphlet/B07legad.htm.