

116TH CONGRESS  
1ST SESSION

# H. R. 2592

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 8, 2019

Mr. KILMER (for himself, Ms. STEFANIK, Mr. SARBANES, Mr. FITZPATRICK, Miss RICE of New York, Mr. GALLAGHER, Mr. CRIST, Mr. KATKO, Mr. SUOZZI, Ms. HERRERA BEUTLER, Mr. PANETTA, Mr. DUFFY, Mr. SCHNEIDER, Mr. DIAZ-BALART, Mr. COSTA, Mr. MCKINLEY, Mr. PHILLIPS, Mr. FORTENBERRY, Mr. PETERS, Miss GONZÁLEZ-COLÓN of Puerto Rico, Mr. SMITH of Washington, Mr. BACON, Mr. SCHRADER, Mr. STAUBER, Mr. LUJÁN, and Mr. GONZALEZ of Ohio) introduced the following bill; which was referred to the Committee on House Administration

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# A BILL

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

- 1       *Be it enacted by the Senate and House of Representa-*
- 2       *tives of the United States of America in Congress assembled,*
- 3       **SECTION 1. SHORT TITLE.**
- 4       This Act may be cited as the “Honest Ads Act”.

1 **SEC. 2. PURPOSE.**

2       The purpose of this Act is to enhance the integrity  
3 of American democracy and national security by improving  
4 disclosure requirements for online political advertisements  
5 in order to uphold the United States Supreme Court's  
6 well-established standard that the electorate bears the  
7 right to be fully informed.

8 **SEC. 3. FINDINGS.**

9       Congress makes the following findings:

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

23           (2) On September 6, 2017, the Nation's largest  
24 social media platform disclosed that between June  
25 2015 and May 2017, Russian entities purchased  
26 \$100,000 in political advertisements, publishing

1 roughly 3,000 ads linked to fake accounts associated  
2 with the Internet Research Agency, a pro-Kremlin  
3 organization. According to the company, the ads  
4 purchased focused “on amplifying divisive social and  
5 political messages . . .”.

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

16 (4) According to a study from Borrell Associ-  
17 ates, in 2016, \$1,415,000,000 was spent on online  
18 advertising, more than quadruple the amount in  
19 2012.

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

1 By contrast, the largest cable television provider has  
2 22,430,000 subscribers, while the largest satellite  
3 television provider has 21,000,000 subscribers. And  
4 the most-watched television broadcast in U.S. his-  
5 tory had 118,000,000 viewers.

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

19 (7) According to comScore, 2 companies own 8  
20 of the 10 most popular smartphone applications as  
21 of June 2017, including the most popular social  
22 media and email services—which deliver information  
23 and news to users without requiring proactivity by  
24 the user. Those same 2 companies accounted for 99  
25 percent of revenue growth from digital advertising in

1       2016, including 77 percent of gross spending. Seventy-nine percent of online Americans—representing  
2       3       68 percent of all Americans—use the single largest  
3       4       social network, while 66 percent of these users are  
4       5       most likely to get their news from that site.

6                 (8) In its 2006 rulemaking, the Federal Election  
7       Commission noted that only 18 percent of all  
8       Americans cited the internet as their leading source  
9       of news about the 2004 Presidential election; by con-  
10      trast, the Pew Research Center found that 65 per-  
11      cent of Americans identified an internet-based  
12      source as their leading source of information for the  
13      2016 election.

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

20                 (10) In testimony before the Senate Select  
21      Committee on Intelligence titled, “Disinformation: A  
22      Primer in Russian Active Measures and Influence  
23      Campaigns,” multiple expert witnesses testified that  
24      while the disinformation tactics of foreign adver-  
25      saries have not necessarily changed, social media

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

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

## **1 SEC. 4. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

20 SEC. 5. EXPANSION OF DEFINITION OF PUBLIC COMMU-  
21 NICATION.

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

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

4               (1) in paragraph (8)(B)—

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

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

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

21               (2) in paragraph (9)(B)—

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

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

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

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

13                 (c) DISCLOSURE AND DISCLAIMER STATEMENTS.—  
14 Subsection (a) of section 318 of such Act (52 U.S.C.  
15 30120) is amended—

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

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

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

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

5       (a) EXPANSION TO ONLINE COMMUNICATIONS.—

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

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

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

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

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

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

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

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

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

3                 (1) by striking “shall clearly state” each place  
4                 it appears in paragraphs (1), (2), and (3) and in-  
5                 serting “shall state in a clear and conspicuous man-  
6                 ner”; and

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

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

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

17                 “(e) SPECIAL RULES QUALIFIED INTERNET OR DIG-  
18                 ITAL COMMUNICATIONS.—

19                 “(1) SPECIAL RULES WITH RESPECT TO STATE-  
20                 MENTS.—In the case of any qualified internet or  
21                 digital communication (as defined in section  
22                 304(f)(3)(D)) which is disseminated through a me-  
23                 dium in which the provision of all of the information  
24                 specified in this section is not possible, the commu-  
25                 nication shall, in a clear and conspicuous manner—

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

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

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

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

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

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

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

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

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

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

9                 “(ii) is made both in—

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

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

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

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

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

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

7 (1) in paragraph (1)(A)—

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

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

13 (2) in paragraph (1)(B)—

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

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

19 (3) in paragraph (2)—

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

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

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

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

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

8                 “(1) IN GENERAL.—

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

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

1               “(2) CONTENTS OF RECORD.—A record main-  
2 tained under paragraph (1)(A) shall contain—  
3               “(A) a digital copy of the qualified political  
4 advertisement;  
5               “(B) a description of the audience targeted  
6 by the advertisement, the number of views gen-  
7 erated from the advertisement, and the date  
8 and time that the advertisement is first dis-  
9 played and last displayed; and  
10              “(C) information regarding—  
11               “(i) the average rate charged for the  
12 advertisement;  
13               “(ii) the name of the candidate to  
14 which the advertisement refers and the of-  
15 fice to which the candidate is seeking elec-  
16 tion, the election to which the advertise-  
17 ment refers, or the national legislative  
18 issue to which the advertisement refers (as  
19 applicable);  
20               “(iii) in the case of a request made  
21 by, or on behalf of, a candidate, the name  
22 of the candidate, the authorized committee  
23 of the candidate, and the treasurer of such  
24 committee; and

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

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

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

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

20                  “(4) QUALIFIED POLITICAL ADVERTISEMENT.—

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

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

3                 “(i) is made by or on behalf of a candidate; or

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

8                     “(I) a candidate;

9                     “(II) any election to Federal office; or

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

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

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

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

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

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

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

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

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

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

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

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

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

