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

IN THE SENATE OF THE UNITED STATES

MAY 7, 2019

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. PURPOSE.

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

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) On April 18, 2019, Special Counsel Robert Mueller released a report titled “Report on the Investigation into Russian Interference in the 2016 Presidential Election”, which concluded that “the Russian government interfered in the 2016 presidential 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.

(2) On September 6, 2017, the Nation’s largest social media platform disclosed that between June 2015 and May 2017, Russian entities purchased $100,000 in political advertisements, publishing roughly 3,000 ads linked to fake accounts associated with the Internet Research Agency, a pro-Kremlin organization. According to the company, the ads
purchased focused “on amplifying divisive social and political messages . . .”.

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

(4) According to a study from Borrell Associates, in 2016, $1,415,000,000 was spent on online advertising, more than quadruple the amount in 2012.

(5) The reach of a few large internet platforms—larger than any broadcast, satellite, or cable provider—has greatly facilitated the scope and effectiveness of disinformation campaigns. For instance, the largest platform has over 210,000,000 American users—over 160,000,000 of them on a daily basis. By contrast, the largest cable television provider has 22,430,000 subscribers, while the largest satellite television provider has 21,000,000 subscribers. And
the most-watched television broadcast in U.S. history had 118,000,000 viewers.

(6) The public nature of broadcast television, radio, and satellite ensures a level of publicity for any political advertisement. These communications are accessible to the press, fact-checkers, and political opponents; this creates strong disincentives for a candidate to disseminate materially false, inflammatory, or contradictory messages to the public. Social media platforms, in contrast, can target portions of the electorate with direct, ephemeral advertisements often on the basis of private information the platform has on individuals, enabling political advertisements that are contradictory, racially or socially inflammatory, or materially false.

(7) According to comScore, 2 companies own 8 of the 10 most popular smartphone applications as of June 2017, including the most popular social media and email services—which deliver information and news to users without requiring proactivity by the user. Those same 2 companies accounted for 99 percent of revenue growth from digital advertising in 2016, including 77 percent of gross spending. 79 percent of online Americans—representing 68 percent of all Americans—use the single largest social
network, while 66 percent of these users are most likely to get their news from that site.

(8) In its 2006 rulemaking, the Federal Election Commission noted that only 18 percent of all Americans cited the internet as their leading source of news about the 2004 Presidential election; by contrast, the Pew Research Center found that 65 percent of Americans identified an internet-based source as their leading source of information for the 2016 election.

(9) The Federal Election Commission, the independent Federal agency charged with protecting the integrity of the Federal campaign finance process by providing transparency and administering campaign finance laws, has failed to take action to address online political advertisements.

(10) In testimony before the Senate Select Committee on Intelligence titled, “Disinformation: A Primer in Russian Active Measures and Influence Campaigns,” multiple expert witnesses testified that while the disinformation tactics of foreign adversaries have not necessarily changed, social media services now provide “platform[s] practically purpose-built for active measures[.]” Similarly, as Gen. (RET) Keith B. Alexander, the former Director of
the National Security Agency, testified, during the Cold War “if the Soviet Union sought to manipulate information flow, it would have to do so principally through its own propaganda outlets or through active measures that would generate specific news: planting of leaflets, inciting of violence, creation of other false materials and narratives. But the news itself was hard to manipulate because it would have required actual control of the organs of media, which took long-term efforts to penetrate. Today, however, because the clear majority of the information on social media sites is uncurated and there is a rapid proliferation of information sources and other sites that can reinforce information, there is an increasing likelihood that the information available to average consumers may be inaccurate (whether intentionally or otherwise) and may be more easily manipulable than in prior eras.”.

(11) Current regulations on political advertisements do not provide sufficient transparency to uphold the public’s right to be fully informed about political advertisements made online.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—
(1) the dramatic increase in digital political advertisements, and the growing centrality of online platforms in the lives of Americans, requires the Congress and the Federal Election Commission to take meaningful action to ensure that laws and regulations provide the accountability and transparency that is fundamental to our democracy;

(2) free and fair elections require both transparency and accountability which give the public a right to know the true sources of funding for political advertisements in order to make informed political choices and hold elected officials accountable; and

(3) transparency of funding for political advertisements is essential to enforce other campaign finance laws, including the prohibition on campaign spending by foreign nationals.

SEC. 5. EXPANSION OF DEFINITION OF PUBLIC COMMUNICATION.

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

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(b) Treatment of Contributions and Expenditures.—Section 301 of such Act (52 U.S.C. 30101) is amended—

(1) in paragraph (8)(B)—

(A) by striking “on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising” in clause (v) and inserting “in any public communication”;

(B) by striking “broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising” in clause (ix)(1) and inserting “public communication”; and

(C) by striking “but not including the use of broadcasting, newspapers, magazines, billboards, direct mail, or similar types of general public communication or political advertising” in clause (x) and inserting “but not including use in any public communication”; and

(2) in paragraph (9)(B)—

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

“(i) any news story, commentary, or editorial distributed through the facilities
of any broadcasting station or any print, online, or digital newspaper, magazine, blog, publication, or periodical, unless such broadcasting, print, online, or digital facilities are owned or controlled by any political party, political committee, or candidate;”; and

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

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

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

(2) by striking “solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising”
and inserting “solicits any contribution through any public communication”.

SEC. 6. EXPANSION OF DEFINITION OF ELECTIONEERING COMMUNICATION.

(a) EXPANSION TO ONLINE COMMUNICATIONS.—

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

(A) IN GENERAL.—Subparagraph (A) of section 304(f)(3) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30104(f)(3)(A)) is amended by striking “or satellite communication” each place it appears in clauses (i) and (ii) and inserting “satellite, or qualified internet or digital communication”.

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

“(D) QUALIFIED INTERNET OR DIGITAL COMMUNICATION.—The term ‘qualified internet or digital communication’ means any communication which is placed or promoted for a fee on an online platform (as defined in subsection (j)(3)).”.
(2) Nonapplication of relevant electorate to online communications.—Section 304(f)(3)(A)(i)(III) of such Act (52 U.S.C. 30104(f)(3)(A)(i)(III)) is amended by inserting “any broadcast, cable, or satellite” before “communication”.

(3) News exemption.—Section 304(f)(3)(B)(i) of such Act (52 U.S.C. 30104(f)(3)(B)(i)) is amended to read as follows:

“(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station or any online or digital newspaper, magazine, blog, publication, or periodical, unless such broadcasting, online, or digital facilities are owned or controlled by any political party, political committee, or candidate;”.

(b) Effective date.—The amendments made by this section shall apply with respect to communications made on or after January 1, 2020.

SEC. 7. APPLICATION OF DISCLAIMER STATEMENTS TO ONLINE COMMUNICATIONS.

(a) Clear and conspicuous manner requirement.—Subsection (a) of section 318 of the Federal Elec-
tion Campaign Act of 1971 (52 U.S.C. 30120(a)) is amended—

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

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

(b) Special Rules for Qualified Internet or Digital Communications.—

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

“(e) Special Rules Qualified Internet or Digital Communications.—

“(1) Special rules with respect to statements.—In the case of any qualified internet or digital communication (as defined in section 304(f)(3)(D)) which is disseminated through a medium in which the provision of all of the information specified in this section is not possible, the communication shall, in a clear and conspicuous manner—
“(A) state the name of the person who paid for the communication; and

“(B) provide a means for the recipient of the communication to obtain the remainder of the information required under this section with minimal effort and without receiving or viewing any additional material other than such required information.

“(2) Safe Harbor for Determining Clear and Conspicuous Manner.—A statement in qualified internet or digital communication (as defined in section 304(f)(3)(D)) shall be considered to be made in a clear and conspicuous manner as provided in subsection (a) if the communication meets the following requirements:

“(A) Text or Graphic Communications.—In the case of a text or graphic communication, the statement—

“(i) appears in letters at least as large as the majority of the text in the communication; and

“(ii) meets the requirements of paragraphs (2) and (3) of subsection (c).

“(B) Audio Communications.—In the case of an audio communication, the statement
is spoken in a clearly audible and intelligible manner at the beginning or end of the communication and lasts at least 3 seconds.

“(C) VIDEO COMMUNICATIONS.—In the case of a video communication which also includes audio, the statement—

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

“(ii) is made both in—

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

“(II) an audible format that meets the requirements of subparagraph (B).

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

(2) NONAPPLICATION OF CERTAIN EXCEPTIONS.—The exceptions provided in section 110.11(f)(1)(i) and (ii) of title 11, Code of Federal Regulations, or any successor to such rules, shall
have no application to qualified internet or digital communications (as defined in section 304(f)(3)(D) of the Federal Election Campaign Act of 1971).

(c) Modification of Additional Requirements for Certain Communications.—Section 318(d) of such Act (52 U.S.C. 30120(d)) is amended—

(1) in paragraph (1)(A)—

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

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

(2) in paragraph (1)(B)—

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

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

(3) in paragraph (2)—

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

(B) by striking “through television” in the second sentence and inserting “in video format”.

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SEC. 8. POLITICAL RECORD REQUIREMENTS FOR ONLINE PLATFORMS.

(a) In General.—Section 304 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30104) is amended by adding at the end the following new subsection:

“(j) Disclosure of Certain Online Advertisements.—

“(1) In General.—

“(A) Requirements for online platforms.—An online platform shall maintain, and make available for online public inspection in machine readable format, a complete record of any request to purchase on such online platform a qualified political advertisement which is made by a person whose aggregate requests to purchase qualified political advertisements on such online platform during the calendar year exceeds $500.

“(B) Requirements for advertisers.—Any person who requests to purchase a qualified political advertisement on an online platform shall provide the online platform with such information as is necessary for the online platform to comply with the requirements of subparagraph (A).
“(2) CONTENTS OF RECORD.—A record main-
tained under paragraph (1)(A) shall contain—

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

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

“(C) information regarding—

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

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

“(iii) in the case of a request made
by, or on behalf of, a candidate, the name
of the candidate, the authorized committee
of the candidate, and the treasurer of such
committee; and
“(iv) in the case of any request not described in clause (iii), the name of the person purchasing the advertisement, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

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

“(A) sells qualified political advertisements; and

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

“(4) QUALIFIED POLITICAL ADVERTISEMENT.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified political advertisement’ means any advertisement (including search engine marketing, display advertise-
ments, video advertisements, native advertisements, and sponsorships) that—

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

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

“(I) a candidate;

“(II) any election to Federal office; or

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

“(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.

“(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.”.

(b) Rulemaking.—Not later than 90 days after the date of the enactment of this Act, the Federal Election Commission shall establish rules—
(1) requiring common data formats for the
record required to be maintained under section
304(j) of the Federal Election Campaign Act of
1971 (as added by subsection (a)) so that all online
platforms submit and maintain data online in a com-
mon, machine-readable and publicly accessible for-
mat; and

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

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

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

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

(3) identifying ways to bring transparency and
accountability to political advertisements distributed
online for free.
SEC. 9. PREVENTING CONTRIBUTIONS, EXPENDITURES, INDEPENDENT EXPENDITURES, AND DISBURSEMENTS FOR ELECTIONEERING COMMUNICATIONS BY FOREIGN NATIONALS IN THE FORM OF ONLINE ADVERTISING.

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

“(c) Each television or radio broadcast station, provider of cable or satellite television, or online platform (as defined in section 304(j)(3)) shall make reasonable efforts to ensure that communications described in section 318(a) and made available by such station, provider, or platform are not purchased by a foreign national, directly or indirectly.”.