

By Brendan Fischer & Maggie Christ / March 2019

## DIGITAL DECEPTION

### How a Major Democratic Dark Money Group Exploited Digital Ad Loopholes in the 2018 Election

Majority Forward was one of the top-spending “dark money” groups in the 2018 elections, reporting approximately \$46 million in independent expenditures to the Federal Election Commission (FEC) in 2018 while keeping its donors hidden from the public.<sup>1</sup>

But new evidence shows Majority Forward secretly spent more on undisclosed digital political ads targeted at voters in states with competitive Senate seats.

Thanks to gaps in federal campaign finance law, Majority Forward never reported its spending on these digital ads to the FEC. Voters targeted by these ads—which stated only that they were paid for by “The Tax Scam”—were given no indication that a major Democratic dark money group was funding them.

Using the combined new tools of ProPublica’s Facebook ad archive and Facebook’s own ad archive, Campaign Legal Center (CLC) identified this little-noticed and unreported Majority Forward digital campaign in the 2018 elections. But this is likely only one example among many—indeed, Majority Forward’s tactics echo those employed elsewhere, such as in Alabama shortly before the December 2017 special election.<sup>2</sup>

For years, thanks in large part to obstruction by companies like Facebook, the FEC has exempted digital political ads from the disclaimer requirements that apply to ads run on any other medium, even as political ad activity moves increasingly online.<sup>3</sup> Meanwhile,

Congress has failed to update campaign finance law for the digital age, omitting many online ads from the reporting requirements that apply to political spending on other mediums.

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The story of The Tax Scam offers a glimpse into what greater transparency around digital political ads can reveal—and shows why Congress needs to codify and protect that transparency by updating our campaign finance laws for the 21st century.

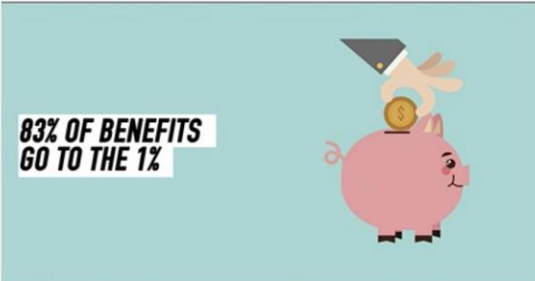
## The Tax Scam

In early 2018, a Facebook page called The Tax Scam began running targeted ads attacking Republican candidates for voting in support of the tax bill, and praising Democrats for voting against it.

The Tax Scam's early ads preceded Facebook's new disclosure requirements, but were captured by ProPublica's political ad collector. Ads run in March 2018, for example, only stated that they were "Sponsored" and suggested they were paid for by "The Tax Scam":<sup>4</sup>

**The Tax Scam**  
Sponsored · 🌐

Do you want to foot the bill for the 1%? Joe Donnelly doesn't want you to either. He voted no to a tax giveaway for billionaires



**83% OF BENEFITS  
GO TO THE 1%**


You're on the hook  
It's a handout to the 1%

REPUBLICANTAXSCAMS.COM [Learn More](#)

First seen: March 20, 2018 [Permalink to this ad](#)

**The Tax Scam**  
Sponsored · 🌐

Do you want to foot the bill for the 1%? Claire doesn't want you to either. She voted no to a tax giveaway for billionaires



**OUT-OF-STATE  
BILLIONAIRES  
ARE MAKING YOU  
PAY FOR  
THEIR TAX CUTS**

You're on the hook  
It's a handout to the 1%

REPUBLICANTAXSCAMS.COM [Learn More](#)

First seen: March 19, 2018 [Permalink to this ad](#)

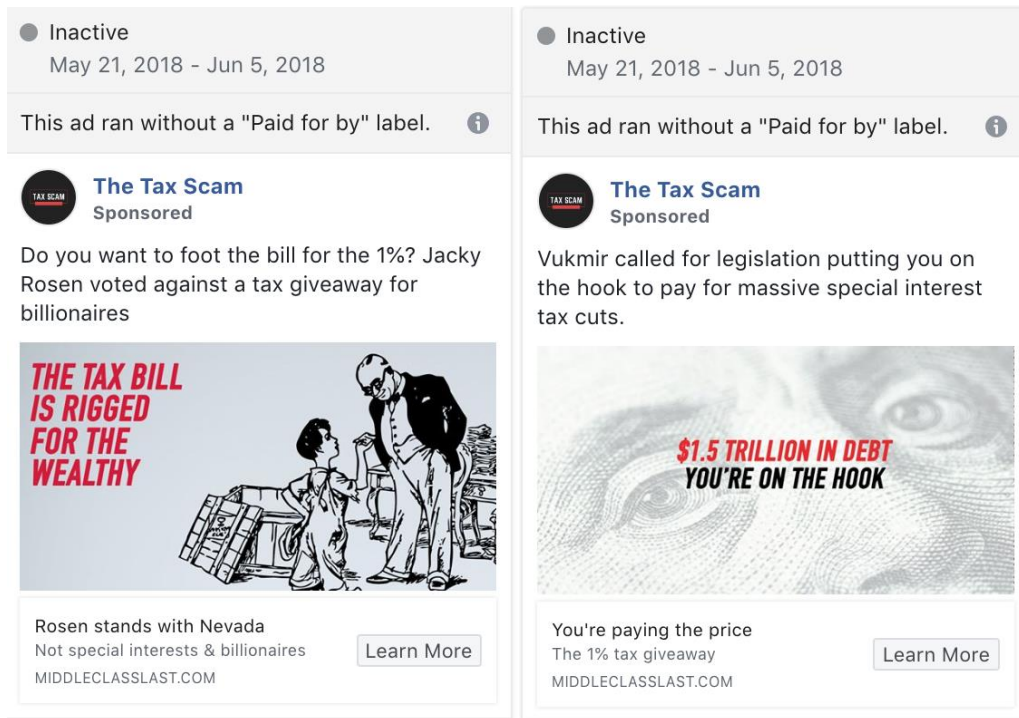
The Tax Scam is not registered as a political committee with the FEC. There is no record of it having incorporated in any state, or of having filed reports with the IRS.

The "about" section of The Tax Scam's Facebook page provided no details about the group.<sup>5</sup> The ads directed viewers to the website [RepublicanTaxScams.com](http://RepublicanTaxScams.com), which also gave no information about who was funding the ads, according to an archived version of the now-defunct website.<sup>6</sup> There was no "paid for by" disclaimer,<sup>7</sup> which is required for websites run by political committees. There wasn't even an "about us" page.<sup>8</sup>

The mysterious Tax Scam operation encountered an obstacle in May 2018, when Facebook began requiring that all political ads include a disclaimer stating who paid for them. Facebook also began placing all political ads in a public archive, even those that it ultimately took down.

According to Facebook's political ad archive, shortly after the new disclaimer requirements took effect, The Tax Scam attempted to continue running ads, but

Facebook took them down because the ads didn't include a "Paid for by" disclaimer:<sup>9</sup>



Facebook says it took the ads down once it determined they were in violation of Facebook's new policy,<sup>10</sup> but not before the ads had been running for about two weeks and had reached thousands of potential voters. For example, the ad mentioning Jacky Rosen gathered between 10,000 and 50,000 impressions from Facebook users in Nevada before it was taken down just a week before the Nevada primary.<sup>11</sup>

Then, after the first week of June 2018, The Tax Scam went silent.

## The Tax Scam benefitted from—and exploited—gaps in the law

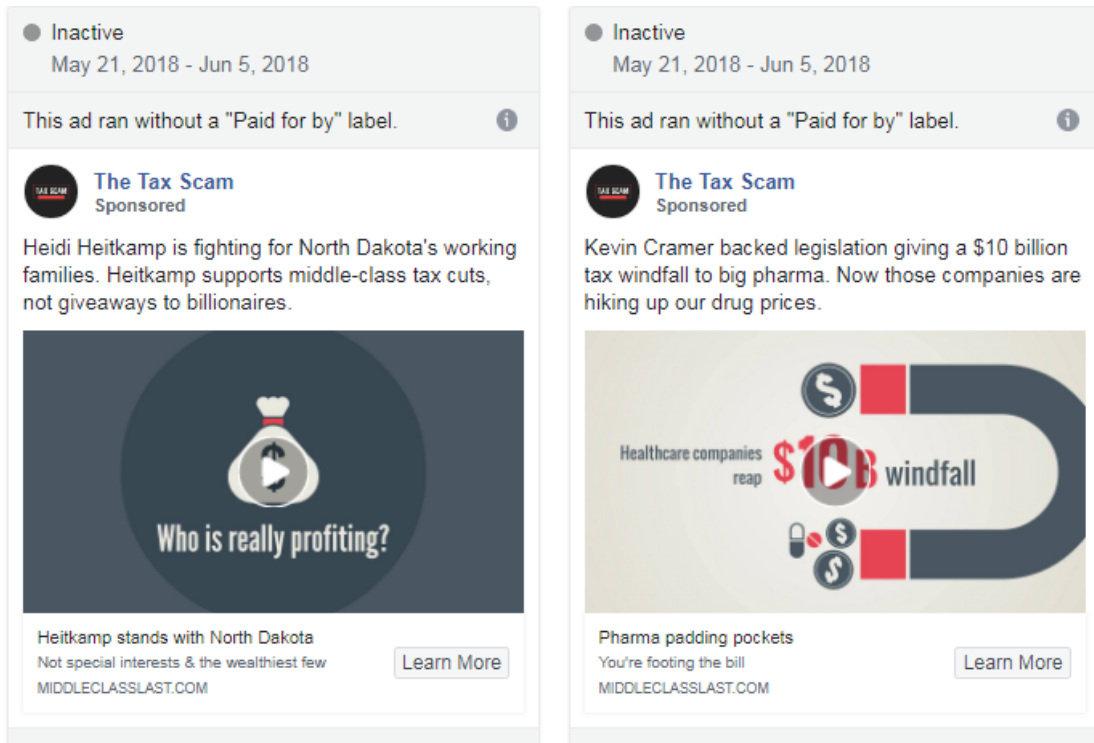
It turns out that The Tax Scam is a project of Majority Forward, the dark money nonprofit arm of the Senate Majority PAC (SMP), a Democratic super PAC.<sup>12</sup> But you wouldn't know it by looking at The Tax Scam's ads, or visiting The Tax Scam Facebook page, or reviewing The Tax Scam's websites.

If these ads had been run on TV, some would have been subject to legal disclaimer and reporting requirements.

Under current law, "electioneering communications" are defined as broadcast — but not digital — ads run near an election that name a candidate, and are targeted to that candidate's voters, even if they don't expressly tell viewers to vote for or against a

candidate.<sup>13</sup>

For example, ads targeting North Dakotans and praising then-Senator Heidi Heitkamp, or attacking her opponent Kevin Kramer, began running May 21, 2018, which fell within the electioneering communication period for the North Dakota primary.<sup>14</sup> These ads would have been legally required to include “paid for by” disclaimers if broadcast on TV or radio, and Majority Forward’s spending on them would have been reported to the FEC if it exceeded reporting thresholds:



But because these ads were run online, they could remain shrouded in secrecy without breaking any laws. The ads did not tell viewers that Majority Forward paid for them, nor did Majority Forward report its spending to the FEC.

Under current law, politically active nonprofits like Majority Forward need only report their spending on digital ads that expressly advocate for or against the election of candidates. Spending on digital ads that praise or attack candidates, but stop short of express advocacy, need not be reported—even when those ads are run shortly before an election.

Because these ads were run online, they could remain shrouded in secrecy without breaking any laws.

Majority Forward likely calculated that its ads would be more effective if they appeared to come from an issue-focused organization called The Tax Scam rather than from a national Democratic dark money group. Federal campaign finance law's digital blind spot allowed them to get away with it.

## Congress Should Bring the Law Into the 21st Century

Majority Forward's misleading Tax Scam project was not an outlier.

In the 2016 election, 25 percent of political ads run in the final weeks of the race mentioned the two major party presidential candidates, and therefore would have been subject to disclosure as "electioneering communications" if run on TV or radio, according to research by University of Wisconsin-Madison Professor Young Mie Kim and her team, Project DATA (Digital Ad Tracking & Analysis), which collected and analyzed millions of political ads.<sup>15</sup> The funding sources or organizations behind many of these Facebook ads remain unknown. Moreover, reports prepared for the Senate Intelligence Committee showed that Russia's online influence efforts stretched across several platforms—Facebook, Instagram, YouTube, Pokémon Go, and others—and similarly exploited digital transparency gaps to run ads and push messages under innocuous sounding names.<sup>16</sup>

Recent developments, like the launch of Facebook's political ad archive, have provided voters, journalists, and watchdogs more information than ever before about digital political advertising. At the same time, the limits of these self-regulatory efforts underscore why we cannot outsource our democracy solely to private tech companies whose ultimate responsibility lies with their shareholders rather than voters.

For example, when The Tax Scam refused to include disclaimers on its ads, Facebook took them down. But not before its ads were able to run disclaimer-free for weeks, including in states where the electioneering communication period had already begun and the primaries were rapidly approaching.

As the 2018 elections proceeded, other limits of Facebook's voluntary disclaimer requirements became more clear. Reporters at the *New York Times* and *Vice* found that Facebook ads could easily be run under names like "Mike Pence" or a "freedom loving American Citizen exercising my natural law right," because it turns out that Facebook allows advertisers simply to fill in the disclaimer field with whatever text they choose.<sup>17</sup>

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## What disclaimer requirements currently apply to dark money groups' digital ads?

For years, digital political ads routinely failed to include disclaimers stating who paid for them. In large part, this is because the FEC in a series of advisory opinions created a loophole where political advertisers could evade legal disclaimer obligations by claiming their digital ads were too small to accommodate a disclaimer.

In 2018, Facebook created the space to include disclaimers, and began asking advertisers to provide them. After that, advertisers could no longer assert that their ads fell under a legal exception from disclaimer requirements. They were legally obligated to publicly disclose the name of the committee paying for the ads.

The problem, however, is that the law's disclaimer obligations largely only apply to candidates, parties, and PACs. Dark money groups are only subject to disclaimer requirements if their online ads expressly advocate for or against candidates.

As a result, Majority Forward was not *legally* obligated to include a disclaimer on its Tax Scam ads, which attacked or promoted candidates but didn't expressly tell viewers how to vote. The only disclaimer obligations came from Facebook.

As a result, Facebook would likely have allowed the Tax Scam Facebook page to run ads with disclaimers stating they were “paid for by The Tax Scam,” even if they were actually paid for by Majority Forward. But the porous nature of Facebook's disclaimer standards was not yet apparent in early 2018.

Fortunately, there are some relatively easy fixes to these problems. Legislation like H.R. 1, the “For the People Act,” and the Honest Ads Act—first introduced in 2017 with bipartisan support—would formally subject online ads to the same disclaimer and disclosure requirements that currently apply to ads run on any other medium.<sup>18</sup>

Bills like these would update our campaign finance laws for the digital age by extending the “electioneering communication” definition to include digital ads, clarifying disclaimer requirements, and requiring large platforms to maintain copies of ads they host in a publicly searchable database, among other provisions.

If these requirements had been in place in 2018, Majority Forward would have had to report its spending on many of the Tax Scam ads to the FEC, and would have been legally required to include a disclaimer stating that the ads were paid for by Majority Forward.

These changes would shine a spotlight on the forces behind campaigns like the Tax Scam, and would provide the sponsors with fewer tools of deliberate obfuscation to use in the first place.

If Congress fails to bring our campaign finance laws into the 21<sup>st</sup> century, these tactics designed to keep voters in the dark will only return with greater force in 2020 and beyond.



<sup>1</sup> Michael Beckel, *In 2018 Midterms, Liberal Dark Money Groups Outspent Conservative Ones for First Time Since Citizens United*, ISSUE ONE (2019), <https://www.issueone.org/wp-content/uploads/2019/01/Post-CU-Dark-Money-Mini-Report.pdf>.

<sup>2</sup> Political operatives ran Facebook ads purporting to support Alabama's Republican U.S. Senate candidate under pages with misleading names (like "Dry Alabama") that gave little indication they were funded by Virginia-based Democratic donors. Scott Shane & Alan Blinder, *Democrats Faked Online Push to Outlaw Alcohol in Alabama Race*, N.Y. TIMES (Jan. 7, 2019), <https://www.nytimes.com/2019/01/07/us/politics/alabama-senate-facebook-roy-moore.html>. Other pages, tied to the same funders, used similarly deceptive techniques in the 2018 elections. Tony Romm, Elizabeth Dwoskin, & Craig Timberg, *Facebook is investigating the political pages and ads of another group backed by Reid Hoffman*, WASH. POST (Jan. 7, 2019), [https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/?utm\\_term=.2bd1003da7be](https://www.washingtonpost.com/technology/2019/01/07/facebook-is-investigating-political-pages-ads-another-group-backed-by-reid-hoffman/?utm_term=.2bd1003da7be).

<sup>3</sup> See, e.g., Advisory Opinion Request 2011-09 (Facebook); see also Sarah Frier & Bill Allison, *Facebook Fought Rules That Could Have Exposed Fake Russian Ads*, BLOOMBERG (Oct. 4, 2017), <https://www.bloomberg.com/news/articles/2017-10-04/facebook-fought-for-years-to-avoid-political-ad-disclosure-rules>.

<sup>4</sup> The Tax Scam, *You're On the Hook (Donnelly)*, ProPublica Facebook Political Ad Collector, <https://projects.propublica.org/facebook-ads/ad/23842779073950369> (last visited Mar. 4, 2019), The Tax Scam, *You're On the Hook (McCaskill)*, ProPublica Facebook Political Ad Collector, <https://projects.propublica.org/facebook-ads/ad/23842779065080369> (last visited Mar. 4, 2019).

<sup>5</sup> The Tax Scam, *About*, Facebook <https://www.facebook.com/pg/The-Tax-Scam-1573634609418028/about/> (last visited Mar. 4, 2019).

<sup>6</sup> Archived version of republican taxscams.com (Mar. 29, 2018), <https://web.archive.org/web/20180329170430/http://www.republicantaxscams.com:80/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Search results for "The Tax Scam," Facebook Political Ad Archive, [https://www.facebook.com/ads/archive/?active\\_status=all&ad\\_type=political\\_and\\_issue\\_ads&country=US&page\\_ids\[0\]=1573634609418028&q=%22the%20tax%20scam%22](https://www.facebook.com/ads/archive/?active_status=all&ad_type=political_and_issue_ads&country=US&page_ids[0]=1573634609418028&q=%22the%20tax%20scam%22) (last visited Mar. 4, 2019).

<sup>10</sup> According to Facebook, "This ad ran without a 'Paid for by' label. After the ad started running, we determined that the ad was related to politics and issues of national importance and required the label. The ad was taken down." Search results for "The Tax Scam," Facebook Political Ad Archive, *supra* note 9 (message viewable by hovering over the "i" following the text, "This ad ran without a 'Paid for by' label.>").

<sup>11</sup> *Id.* (viewership details available by following the "See Ad Performance" link beneath the third search result).

<sup>12</sup> Lisa Hagen, *Major Dem Group Goes on Offense Against GOP Tax Plan*, THE HILL (Mar. 6, 2018), <https://thehill.com/homenews/campaign/376882-major-dem-group-goes-on-offense-against-gop-tax-plan>.

<sup>13</sup> 52 U.S.C. 30104(f)(3), 11 C.F.R. 100.29.

<sup>14</sup> Search results for "The Tax Scam," Facebook Political Ad Archive, *supra* note 9. The North Dakota primary was June 12, 2018; the electioneering communication period ran from May 13, 2018 to June 12, 2018. *2018 Electioneering Communication Windows*, FEC.GOV [https://transition.fec.gov/info/charts\\_ec\\_dates\\_2018.shtml](https://transition.fec.gov/info/charts_ec_dates_2018.shtml) (last visited Mar. 4, 2019).

<sup>15</sup> CAMPAIGN LEGAL CTR., ISSUE ONE, & PROJECT DATA, *CLOSING THE DIGITAL LOOPHOLES THAT PAVE THE WAY FOR FOREIGN INTERFERENCE IN U.S. ELECTIONS* (2018), <https://campaignlegal.org/sites/default/files/04-16-18%20CLC-IO%20Issue%20Brief%20Young%20Mie%20Report%20FINAL.pdf>.

<sup>16</sup> RENEE DI RESTA, ET AL., *THE TACTICS & TROPES OF THE INTERNET RESEARCH AGENCY* (2018), <https://disinformationreport.blob.core.windows.net/disinformation-report/NewKnowledge-Disinformation-Report-Whitepaper-121718.pdf>.

<sup>17</sup> See Kevin Roose, *In Virginia House Race, Anonymous Attack Ads Pop Up on Facebook*, N.Y. TIMES (Oct. 17, 2018), <https://www.nytimes.com/2018/10/17/us/politics/virginia-race-comstock-wexton-facebook-attackads.html?ref=collection%2Fbyline%2Fkevin-roose>; William Turton, *We posed as 100 senators to run ads on Facebook. Facebook approved all of them*, VICE (Oct. 30, 2018), [https://news.vice.com/en\\_us/article/xw9n3q/we-posed-as-100-senatorsto-run-ads-on-facebook-facebook-approved-all-of-them](https://news.vice.com/en_us/article/xw9n3q/we-posed-as-100-senatorsto-run-ads-on-facebook-facebook-approved-all-of-them).

<sup>18</sup> For the People Act, H.R. 1, 116th Cong. (2019); Honest Ads Act, S. 1989, 115th Cong. (2017).