

DIGITAL AD DISCLOSURE: STOP SECRET SPENDING IN THE DIGITAL WORLD

THE PROBLEM:

Transparency is a fundamental feature of a healthy democracy: voters have a right to know who is trying to influence their vote. Disclosure requirements have long been considered central to the free and transparent functioning of our democracy.

But our democracy is modernizing, and our disclosure laws are not keeping up. Americans get most of their news and information online, and political groups have taken note of that: from the 2014 election cycle to 2018, digital political spending increased by an **astounding 2,400%**. Meanwhile, federal law governing transparency requirements for political ads hasn't been updated **since 2002**.

Our transparency laws are out of date and have become a critical vulnerability in our electoral system. This became painfully clear in 2016, when Russian operatives spread divisive political messages through online platforms. After a thorough investigation, the bipartisan Senate Intelligence Committee made an explicit recommendation: that Congress "examine legislative approaches to ensuring Americans know the source of online political advertisements."

THE SOLUTION

In the face of Congressional inaction on this critical issue, states have picked up the slack, and are passing effective digital ad disclosure policies.

Strong policy regarding digital ad disclosure will accomplish four main things:

- (1) It will **update our current laws** so that they explicitly apply to digital ads;
- (2) It will require that digital ads be made available for public view through **mandatory public archives**;
- (3) It will ensure that digital ads **clearly identify their sponsors**; and
- (4) It will clearly **delineate what counts as a foreign national**, expanding the definition to prevent foreign interests from spending in any American election.

UPDATING CURRENT LAW

One of the major problems with current law at the federal level and in many states is that necessary, long-standing disclosure requirements do not extend to digital ads, as logical of an extension as that is. It was this loophole that allowed much of the foreign spending in 2016 to go by undetected. At the federal level, necessary updates include:

- Expanding the definition of “public communication” to include digital forms of communication.
- Clarifying that disclaimer requirements apply to all public communications, regardless of medium.
- Extending the “electioneering communication” definition to include internet communications. Electioneering communications are ads that explicitly mention a candidate and are disseminated during short windows before primary and general elections. Electioneering communications require disclaimers as to who paid for the advertisement.

State updates will depend on the specific definitions in state law.

MANDATORY PUBLIC ARCHIVES

For more than 40 years, television stations have been required to maintain a record of who is purchasing broadcast political ads—but there is no equivalent requirement for digital political ads. The need for digital political ad databases is even more acute: ads placed online are unique in that they are often only viewable by a targeted audience.

These are the features of a good public archive:

- The archive should be maintained by a state-run agency.
- All advertisers whose annual aggregate digital ad buys exceed \$500 must file reports disclosing publicly available political advertisements.
- These reports should include a digital copy of the ad, the dates it was displayed, the targeted audience, the number of online hits it received, the name of the candidate and/or legislative issue the ad references, the true source of the ad’s funding, and contact information for the purchaser.
- These reports must be filed within 48 hours of spending more than \$500 in a calendar year.

By creating a publicly accessible archive of qualifying paid internet ads, law enforcement, watch dog groups, and the general public can all access the information they need to know who has been working to influence politics. This will prevent “dark ads”: ads that go by entirely undetected without any disclosure as to who paid for them.

IDENTIFYING TOP SPONSORS

It should be easy to find out who is paying for political messaging. Effective digital ad disclosure policy will include provisions that make that information immediately accessible to consumers. More specifically:

- Disclaimer requirements must be applied to internet ads, requiring that appropriate information is displayed on the ad clearly and conspicuously.
- If the ad format is not amenable to an on-ad disclaimer, the ad should provide a direct way to reach the disclaimer information – for example, via hyperlink.
- When a foreign national lawfully purchases political advertising, the ad must identify the foreign person that paid for it.

DEFINING “FOREIGN NATIONALS”

2016 made it clear that our democracy – particularly our digital democracy – is vulnerable to foreign special interests. Policy solutions must be proactive in preventing illegal foreign interference, and must be clear in defining what that means.

- The definition of a foreign national should be expanded to include foreign-influenced corporations/501(c)(4) organizations – where either a single foreign national owns more than 5% of its equity, or two or more foreign nationals own more than 20% in aggregate equity.
- The current ban on foreign design, production or dissemination of public communications in federal, state and local candidate elections should be extended to state and local ballot referenda.
- Every broadcast station, cable provider and internet provider must establish appropriate procedures to prevent foreign nationals from unlawfully purchasing election advertising, and if they do find it despite due diligence, must immediately remove the communication and report to FEC.
- Any person may not knowingly or recklessly provide substantial assistance to foreign nationals making unlawful campaign contributions.

TAKE ACTION

Here are three ways you can build support for a more secure digital democracy:

- Learn more about the obstacles to digital ad disclosure reform at www.campaignlegal.org/
- Connect with advocacy groups and individuals in your community who are already organizing for campaign finance reform.
- Identify potential champions in government. This means elected officials who support campaign finance reform, as well as elections/ethics officials who would be excited to promote these efforts.

ABOUT THE CAMPAIGN LEGAL CENTER

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization based in Washington, D.C. CLC holds candidates and government officials accountable regardless of political affiliation.