



March 23, 2023

Dear Meta Oversight Board:

Campaign Legal Center (“CLC”)<sup>1</sup> respectfully submits the following comments regarding Case Number 2023-001-FB-UA and Meta’s ongoing policies with respect to political misinformation and attacks on democratic processes and institutions. Based on our expertise in campaign finance regulation and preservation of democratic institutions and norms, CLC makes specific recommendations herein on the following topics: (1) the importance of transparency as an election integrity tool; and (2) the risks of harm posed to the democratic process by mis- and disinformation disseminated during the period between when ballots are cast and election results are finalized, up to and including the assumption of office by the candidate(s) who received the most votes.

## **I. Transparency as an Election Integrity Tool**

Transparency is one of the most important tools available to secure elections. The public has a right to know who is paying for messages seeking to influence elections, as that information enables voters to evaluate the credibility of election-related content and the motivations of those who pay for and disseminate it, and to make informed decisions on how to react to it. Meta is well positioned to gather and make available to the public sponsorship information about the paid election-related content disseminated through its platform.

Under Meta’s current policies, all advertisers placing paid communications that pertain to “social issues, elections, or politics” must undergo a verification process, which requires the advertiser to submit a government-issued ID and mailing address in the country in which they will be running ads, and actually receive a piece of mail at that address. Social, political, and electoral ads must

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<sup>1</sup> CLC is a nonprofit, nonpartisan organization based in Washington, DC, that advances democracy through law, fighting for every American’s right to participate in and affect the democratic process. More information on CLC can be found at [campaignlegal.org/about](https://campaignlegal.org/about).

carry a “paid for by disclaimer,” and Meta is not supposed to run the ad without the disclaimer. Meta also permanently places information about social, political, and electoral ads in its Ad Library.<sup>2</sup> While advertisers are instructed to disclose whether their ads are about social issues, politics, or elections, Meta ultimately determines which ads fit into those categories and must adhere to its policies, based on its own review. Meta represents that it will refuse to run, or remove, noncompliant ads from its platforms.

While these policies seem effective on paper, in practice, Meta has a mixed history of adhering to its own requirements. One academic study from 2021 found that out of 189,000 disseminated Facebook advertisements that sponsors did not initially label as political, 117,000 actually met Meta’s definition of a political ad, yet Meta ran those advertisements without the benefit of a disclaimer.<sup>3</sup> Similarly, in 2022, nonprofit group Global Witness tested Meta’s enforcement measures by submitting ten advertisements related to Brazil’s upcoming election for review; Meta did not require *any* of the ten ads to display a disclaimer.<sup>4</sup>

Even more fundamentally, there seems to be a “black market” of already-verified accounts that bad actors sell to those seeking to run political ads who would not be able to satisfy the verification requirements on their own, *i.e.* groups located outside the country in which they are trying to run the ads.<sup>5</sup> When an account is fraudulent, even a facially accurate disclaimer has no value because it does not disclose the true source of the advertising.

These findings illustrate the need for Meta to make a greater investment in its enforcement mechanisms. Meta should search for users offering to sell already-verified accounts, remove those users from its platforms, and shut down all accounts connected to them. It should also engage in a more robust review of ads and develop comprehensive internal controls for defining what types of

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<sup>2</sup> The Ad Library includes detailed information about ads, including information regarding: (1) the dates the ad ran; (2) the range of impressions the ad received; (3) the range of money spent on the ad; (4) the geographic location(s) the ad ran; (5) the percent of people by age and gender who saw the ad; and (6) whether the ad appeared on Facebook or Instagram.

<sup>3</sup> Issie Lapowsky, *How Political Advertisers Skirted Facebook’s Rules in 2020—and Got Away with It*, PROTOCOL (Dec. 9, 2021), <https://www.protocol.com/policy/facebook-political-ad-study> (describing a paper published jointly by researchers at New York University and a Belgian research institution).

<sup>4</sup> *Facebook Fails to Tackle Election Disinformation Ads Ahead of Tense Brazilian Election*, GLOB. WITNESS (Aug. 15, 2022), <https://www.globalwitness.org/en/campaigns/digital-threats/facebook-fails-tackle-election-disinformation-ads-ahead-tense-brazilian-election/>.

<sup>5</sup> Sarah Emerson & Emily Baker-White, *Scammers Claim Their Wares Enable Buyers to Run Facebook Ads Including Political Ads in Countries Other Than Their Own – Without Complying with the Company’s Verification Requirements*, FORBES (Nov. 14, 2022), <https://www.forbes.com/sites/sarahemerson/2022/11/11/facebook-fraud-passports-political-ads/?sh=640954786927>.

advertisements touch on electoral, political, and social issues, so that those ads do not become public without a disclaimer and inclusion in the Ad Library. Finally, Meta would benefit from an enhanced review process for advertisements reported as mislabeled by users, so that those ads can be promptly and accurately labeled and added to the Ad Library.

## **II. Risks of Harm Caused by Misinformation During the Post-Election Period**

With respect to “[w]hen Meta’s election integrity efforts should begin and end, and what criteria should guide decisions about those timeframes,” we urge you to maintain your highest level of scrutiny and moderation of election-related content not only during the voting period culminating in Election Day, but also throughout the post-election period, including any periods of canvassing, tabulation, and certification of results, as well as during recounts, state-run election audits, and any other administrative processes that occur prior to the official finalization of election results. The removal and/or demotion of misleading or threatening content meant to disrupt the democratic process is a critical safeguard against attempts to subvert election results.

In particular, as detailed by the examples below from both the United States and Brazil, there is a direct link between election denialism, calls for offline mobilization on social media, and political violence. Meta and Facebook should take down or limit the exposure of content that is designed to or runs a significant risk of inciting political violence or coordinated disruption of post-election processes, especially during the critical post-election period when election results are tabulated, canvassed, and certified.

Recent elections have revealed that post-election administrative processes are just as vulnerable to manipulation, misinformation, and threats of violence as the voting process itself. The 2020 U.S. general election was particularly characterized by numerous attempts, many by the former President of the United States, his supporters, and others associated with his reelection campaign, to disrupt the post-voting administrative tasks critical to finalizing election results and allowing for peaceful transitions of power.<sup>6</sup> This coordinated misinformation campaign led to intimidation and harassment of federal, state, and local election officials for their roles in administering the 2020 election.

For example, President Trump and his personal attorney Rudy Giuliani’s repeated circulation of false conspiracies about election fraud in Michigan led

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<sup>6</sup> See Rosalind S. Helderman, *All the ways Trump tried to overturn the election – and how it could happen again*, WASH. POST (Feb. 9, 2022), <https://www.washingtonpost.com/politics/interactive/2022/election-overturn-plans>.

to a group of armed protesters gathering outside the home of Michigan Secretary of State Jocelyn Benson in an effort to stop the certification of the 2020 presidential election.<sup>7</sup> As a result of the misguided and inaccurate partisan review of Arizona’s 2020 election by the discredited firm Cyber Ninjas,<sup>8</sup> individuals impersonating election officials went door-to-door in Yavapai County, Arizona, harassing individual voters in a canvassing effort<sup>9</sup> that the Department of Justice warned could “have a significant intimidating effect on qualified voters that can deter them from seeking to vote in the future.”<sup>10</sup> And false statements by Giuliani to a Georgia Senate committee investigating the 2020 election results led to the targeted harassment of Shaye Moss and Ruby Freeman, two long-term election workers who resigned their jobs with the Fulton County Department of Registration and Elections after being subjected to repeated violent threats.<sup>11</sup> And finally, Trump and his allies’ misinformation campaign culminated in the incitement of a violent invasion of the United States Capitol by a mob of Trump’s supporters on January 6, 2021, to disrupt Congress’s certification and acceptance of the electoral votes that determined Joe Biden’s victory in the 2020 presidential election.<sup>12</sup>

Two years later, following the Brazilian presidential election, groups of rioters stormed government buildings in Brasília, seizing the Brazilian Congress, Supreme Court, and presidential office buildings before being beaten back by military police and other law enforcement. In an eerie echo of the January 6th attack on the U.S. Capitol, the rioters in Brasília were inflamed by misinformation and false claims of voter fraud amplified by the losing candidate—former Brazilian President Jair Bolsonaro—and shared via social

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<sup>7</sup> Miriam Marini, *Protesters descend on Secretary of State Jocelyn Benson’s home after dark*, DET. FREE PRESS (Dec. 6, 2020), <https://www.freep.com/story/news/local/michigan/2020/12/06/protesters-jocelyn-bensons-home-after-dark-oppose-certification/3850654001>.

<sup>8</sup> See Michael Wines, *Cyber Ninjas, Derided for Arizona Vote Review, Says It Is Shutting Down*, N. Y. TIMES (Jan. 7, 2022), <https://www.nytimes.com/2022/01/07/us/cyber-ninjas-arizona-vote-review.html>.

<sup>9</sup> Andrew Oxford, *People impersonating election officials are knocking on doors in Yavapai County, sheriff warns*, ARIZ. REPUBLIC (Jun. 14, 2021), <https://www.azcentral.com/story/news/politics/elections/2021/06/14/yavapai-county-sheriff-warns-imposters-asking-voting-history/7693805002/>.

<sup>10</sup> Letter from U.S. Department of Justice Civil Rights Division, Voting Section to Arizona Senate President Karen Fann (May 5, 2021), <https://www.justice.gov/crt/case-document/file/1424586/download>.

<sup>11</sup> Amy Gardner, *Election workers describe ‘hateful’ threats after Trump’s false claims*, WASH. POST (Jun. 21, 2022), <https://www.washingtonpost.com/national-security/2022/06/21/ruby-freeman-shaye-moss-jan6-testimony/>.

<sup>12</sup> See generally, H.R. REP. NO. 117-663, FINAL REPORT OF THE HOUSE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL, (Dec. 22, 2022), <https://www.govinfo.gov/committee/house-january6th?path=/browsecommittee/chamber/house/committee/january6th/collection/CRPT/congress/117>.

media.<sup>13</sup> The rioters, who were supporters of former Brazilian President Jair Bolsonaro (who, like President Trump, was defeated for reelection in 2022), “appear[ed] to be convinced that October’s presidential election was rigged against Mr. Bolsonaro, despite audits and analyses by experts finding nothing of the sort. Those beliefs [were] in part the product of years of conspiracy theories, misleading statements and explicit falsehoods spread by Mr. Bolsonaro and his allies.”<sup>14</sup>

These events in the United States and Brazil share several key attributes—they were motivated by false claims of election fraud amplified on social media by political actors and their allies for partisan gain in the days *after* an election took place. The risk of harm to the democratic process caused by election-related misinformation does not cease once polls close on election day, and recent history has made painfully clear that the proliferation of such misinformation can result in significant harm not only to voters, election officials, and volunteers, but to democracy itself.

We urge you to adopt clear policies governing the moderation and removal of election-related misinformation during the post-election period—which we define as the period between the close of polls on election day and the final certification of results or assumption of office by newly elected candidates, whichever comes first. This is particularly important when such misinformation includes or is accompanied by calls for organized action targeting individuals involved in the electoral process or offices and institutions engaged in essential post-election functions. This is especially critical when the content is being generated or shared by high-profile figures

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<sup>13</sup> Sheera Frankel, *The pro-Bolsonaro riot and Jan. 6 attack followed a similar digital playbook, experts say*, N.Y. TIMES, (Jan. 9, 2023), <https://www.nytimes.com/2023/01/09/technology/brazil-riots-jan-6-misinformation-social-media.html?smid=url-share>.

<sup>14</sup> Jack Nicas, *What Drove a Mass Attack on Brazil’s Capital? Mass Delusion*. N. Y. TIMES (Jan. 9, 2023), <https://www.nytimes.com/2023/01/09/world/americas/brazil-riots-bolsonaro-conspiracy-theories.html>.

