

116TH CONGRESS  
2D SESSION

**H. R. \_\_\_\_\_**

To amend the Federal Election Campaign Act of 1971 to prohibit online platforms from disseminating political advertisements which are targeted to an individual or to a group of individuals on any basis other than the recognized place in which the individual or group resides, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Ms. ESHOO introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Federal Election Campaign Act of 1971 to prohibit online platforms from disseminating political advertisements which are targeted to an individual or to a group of individuals on any basis other than the recognized place in which the individual or group resides, 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 “Banning Microtargeted Political Ads Act”.

**SEC. 2. RESTRICTIONS ON DISSEMINATION OF  
TARGETED POLITICAL ADVERTISEMENTS BY  
ONLINE PLATFORMS.**

(a) RESTRICTIONS.—

(1) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101 et seq.) is amended by adding at the end the following new section:

**“SEC. 325. RESTRICTIONS ON DISSEMINATION OF  
TARGETED POLITICAL ADVERTISEMENTS BY  
ONLINE PLATFORMS.**

“(a) RESTRICTIONS ON ADVERTISEMENTS TARGETED AT INDIVIDUALS OR AT SPECIFIC GROUPS OF INDIVIDUALS.—

“(1) RESTRICTIONS.—A covered online platform or an agent, affiliate, vendor, or other person acting on behalf of such a platform may not target the dissemination of a political advertisement on such platform to an individual or to a specific group of individuals on any basis.

“(2) ACTIONS CONSTITUTING TARGETING.—A covered online platform or an agent, affiliate, vendor, or other person acting on behalf of such a platform shall be considered to target the dissemination of a political advertisement to an individual or to a specific group of individuals if such platform—

“(A) performs or causes to perform any computational process (including one based on algorithmic models, machine learning, statistical analysis, or other data processing or artificial

intelligence techniques) designed to transmit or display the advertisement to a subset of the users of such platform selected based on personal information pertaining to the individuals who make up the subset of users; or

“(B) allows another person to instruct a covered online platform to display the advertisement to a subset of the users of such platform, including by providing to such platform a list of individuals, contact information of individuals, or other personal information that can be used to identify individuals.

“(b) EXCEPTIONS.—

“(1) TARGETING TO INDIVIDUALS WITHIN RECOGNIZED PLACE.—Subsection (a) does not apply to the targeting of the dissemination of a political advertisement to an individual residing in, or to a device located in, a recognized place.

“(2) TARGETING TO INDIVIDUALS GIVING EXPRESS CONSENT.—Subsection (a) does not apply to the targeting of the dissemination of a political advertisement to an individual if—

“(A) the sponsor of the advertisement provides the covered online platform with a truthful written attestation that the individual has provided express affirmative consent to—

“(i) receive a targeted political advertisement from the sponsor; and

“(ii) allow the sponsor to disclose personal information pertaining to the individual to another person for the purpose of advertising;

“(B) the attestation includes a statement affirming that the consent provided by the individual was freely given, specific, informed, unambiguous, not received through or by the aid of the covered online platform, and has not been revoked by such individual; and

“(C) the sponsor certifies to the platform that the sponsor permits an individual who provides consent to easily revoke such consent.

“(c) RULES OF CONSTRUCTION.—

“(1) TARGETING ON RANDOM BASIS.— Nothing in subsection (a) shall be construed to prohibit the dissemination of a political advertisement to an individual or to a specific group of individuals on a random basis, including on a random basis under any of the exceptions described in subsection (b).

“(2) RULE OF CONSTRUCTION FOR OPT-OUTS.— Nothing in subsection (b) shall be construed to require or authorize a covered online platform, a sponsor of a political advertisement, or an agent, affiliate, vendor, or other person acting on behalf of such a platform or sponsor to disseminate a political advertisement to an individual who has opted out of receiving a political advertisement or any other form of communication from the platform, the sponsor, or any agent, affiliate, vendor, or other person acting on

behalf of the platform or sponsor, including opting out of receiving a specific type of advertisement or communication, an advertisement or communication from a particular sponsor, or any other opt-out preference.

“(d) PRIVATE RIGHT OF ACTION.—

“(1) ENFORCEMENT BY INDIVIDUALS.—

“(A) IN GENERAL.—Any person alleging a violation of this section by a covered online platform may bring a civil action in any court of competent jurisdiction, State or Federal.

“(B) RELIEF.—In a civil action brought under this paragraph in which the plaintiff prevails, the court may award—

“(i) an amount not less than \$100 and not greater than \$1,000 per violation against any person who negligently violates a provision of this section;

“(ii) an amount not less than \$500 and not greater than \$5,000 per violation against any person who recklessly, willfully, or intentionally violates a provision of this section;

“(iii) reasonable attorney’s fees and litigation costs; and

“(iv) any other relief, including equitable or declaratory relief, that the court determines appropriate.

“(C) INJURY IN FACT.—A violation of this section constitutes a concrete and particularized injury in fact to an individual.

“(2) INVALIDITY OF PRE-DISPUTE ARBITRATION AGREEMENTS AND PRE-DISPUTE JOINT ACTION WAIVERS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, no pre-dispute arbitration agreement or pre-dispute joint action waiver shall be valid or enforceable with respect to a dispute arising under this section.

“(B) APPLICABILITY.—Any determination as to whether or how this subsection applies to any dispute shall be made by a court, rather than an arbitrator, without regard to whether such agreement purports to delegate such determination to an arbitrator.

“(C) DEFINITIONS.—In this subsection:

“(i) PRE-DISPUTE ARBITRATION AGREEMENT.—The term ‘pre-dispute arbitration agreement’ means any agreement to arbitrate a dispute that has not arisen at the time of making the agreement.

“(ii) PRE-DISPUTE JOINT-ACTION WAIVER.—The term ‘pre-dispute joint-action waiver’ means an agreement, whether or not part of a pre-dispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement

to participate in a joint, class, or collective action in a judicial, arbitral, administration, or other forum, concerning a dispute that has not yet arisen at the time of making the agreement.

“(iii) DISPUTE.—The term ‘dispute’ means any claim related to an alleged violation of this section and between an individual and a covered organization.

“(e) DEFINITIONS.—In this section:

“(1) COVERED ONLINE PLATFORM.—The term ‘covered online platform’ means any website, web application, mobile application, smart device application, digital application (including a social network, or search engine), or advertising network (including a network disseminating advertisements on another website, web application, mobile application, smart device application, or digital application) that receives payment to disseminate political advertisements, except that such term does not include a website, application, or network (in combination with any subsidiaries and affiliates of such a website, application, or network) that, during the 12-month period ending on the date of the dissemination of the political advertisement involved, collected or processed personal information pertaining to fewer than 50,000,000 individuals.

“(2) INDIAN LANDS.—

“(A) INDIAN LANDS.—In this section, the term ‘Indian lands’ includes—

“(i) any Indian country of an Indian Tribe, as defined under section 1151 of title 18, United States Code;

“(ii) any land in Alaska owned, pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), by an Indian Tribe that is a Native village (as defined in section 3 of that Act (43 U.S.C. 1602)) or by a Village Corporation that is associated with an Indian Tribe (as defined in section 3 of that Act (43 U.S.C. 1602));

“(iii) any land on which the seat of the Tribal Government is located; and

“(iv) any land that is part or all of a Tribal designated statistical area associated with an Indian Tribe, or is part or all of an Alaska Native village statistical area associated with an Indian Tribe, as defined by the Census Bureau for the purposes of the most recent decennial census.

“(B) OTHER DEFINITIONS.—In subparagraph (A)—

“(i) the term ‘Indian’ has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304);



“(ii) the term ‘Indian Tribe’ has the meaning given the term ‘Indian tribe’ in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); and

“(iii) the term ‘Tribal Government’ means the recognized governing body of an Indian Tribe.

“(3) PERSONAL INFORMATION.—The term ‘personal information’ means any information that is linked or reasonably linkable to a specific individual or a specific device, including de-identified information.

“(4) POLITICAL ADVERTISEMENT.—The term ‘political advertisement’ means—

“(A) an electioneering communication (as defined in section 304(f)(3));

“(B) an independent expenditure; or

“(C) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate).

“(5) RECOGNIZED PLACE.—The term ‘recognized place’ means any of the following:

“(A) Each State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

“(B) Indian lands.

“(C) A county, municipality, city, town, township, village, borough, or similar unit of general government that is—

“(i) incorporated pursuant to a State law;  
or

“(ii) is an ‘incorporated place’ (as such term is defined in the most recent glossary of the Census Bureau).

“(D) A ‘census designated place’ (as such term is defined in the most recent glossary of the Census Bureau).

“(E) A congressional district.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect 3 months after the date of the enactment of this Act.

(b) EXPANSION OF CERTAIN DEFINITIONS.—

(1) EXPANSION OF THE DEFINITION OF ELECTIONEERING COMMUNICATION.—

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

(i) 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”.

(ii) 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 a covered online platform (as defined in section 325(e)).”

(B) 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”.

(C) 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;”.

(2) EXPANSION OF THE DEFINITION OF PUBLIC COMMUNICATION.—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, paid promotion”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to communications made on or after the expiration of the 3-month period which begins on the date of the enactment of this Act.