

116TH CONGRESS
2D SESSION

H. R. 7014

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2020

Ms. ESHOO introduced the following bill; which was referred to the Committee on House Administration

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Banning Microtargeted
5 Political Ads Act”.

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

4 (a) RESTRICTIONS.—

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

9 **“SEC. 325. RESTRICTIONS ON DISSEMINATION OF TAR-**
10 **GETED POLITICAL ADVERTISEMENTS BY ON-**
11 **LINE PLATFORMS.**

12 “(a) RESTRICTIONS ON ADVERTISEMENTS TAR-
13 GETED AT INDIVIDUALS OR AT SPECIFIC GROUPS OF IN-
14 DIVIDUALS.—

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

21 “(2) ACTIONS CONSTITUTING TARGETING.—A
22 covered online platform or an agent, affiliate, ven-
23 dor, or other person acting on behalf of such a plat-
24 form shall be considered to target the dissemination
25 of a political advertisement to an individual or to a
26 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

1 the targeting of the dissemination of a political ad-
2 vertisement to an individual if—

3 “(A) the sponsor of the advertisement pro-
4 vides the covered online platform with a truth-
5 ful written attestation that the individual has
6 provided express affirmative consent to—

7 “(i) receive a targeted political adver-
8 tisement from the sponsor; and

9 “(ii) allow the sponsor to disclose per-
10 sonal information pertaining to the indi-
11 vidual to another person for the purpose of
12 advertising;

13 “(B) the attestation includes a statement
14 affirming that the consent provided by the indi-
15 vidual was freely given, specific, informed, un-
16 ambiguous, not received through or by the aid
17 of the covered online platform, and has not
18 been revoked by such individual; and

19 “(C) the sponsor certifies to the platform
20 that the sponsor permits an individual who pro-
21 vides consent to easily revoke such consent.

22 “(c) RULES OF CONSTRUCTION.—

23 “(1) TARGETING ON RANDOM BASIS.—Nothing
24 in subsection (a) shall be construed to prohibit the
25 dissemination of a political advertisement to an indi-

vidual 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.

1 “(B) RELIEF.—In a civil action brought
2 under this paragraph in which the plaintiff pre-
3 vails, the court may award—

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

8 “(ii) an amount not less than \$500
9 and not greater than \$5,000 per violation
10 against any person who recklessly, will-
11 fully, or intentionally violates a provision of
12 this section;

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

15 “(iv) any other relief, including equi-
16 table or declaratory relief, that the court
17 determines appropriate.

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

21 “(2) INVALIDITY OF PRE-DISPUTE ARBITRA-
22 TION AGREEMENTS AND PRE-DISPUTE JOINT ACTION
23 WAIVERS.—

24 “(A) IN GENERAL.—Notwithstanding any
25 other provision of law, no pre-dispute arbitra-

tion 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

1 a dispute that has not yet arisen at the
2 time of making the agreement.

3 “(iii) DISPUTE.—The term ‘dispute’
4 means any claim related to an alleged vio-
5 lation of this section and between an indi-
6 vidual and a covered organization.

7 “(e) DEFINITIONS.—In this section:

8 “(1) COVERED ONLINE PLATFORM.—The term
9 ‘covered online platform’ means any website, web ap-
10 plication, mobile application, smart device applica-
11 tion, digital application (including a social network,
12 or search engine), or advertising network (including
13 a network disseminating advertisements on another
14 website, web application, mobile application, smart
15 device application, or digital application) that re-
16 ceives payment to disseminate political advertise-
17 ments, except that such term does not include a
18 website, application, or network (in combination with
19 any subsidiaries and affiliates of such a website, ap-
20 plication, or network) that, during the 12-month pe-
21 riod ending on the date of the dissemination of the
22 political advertisement involved, collected or proc-
23 essed personal information pertaining to fewer than
24 50,000,000 individuals.

25 “(2) INDIAN LANDS.—

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

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

6 “(ii) any land in Alaska owned, pursu-
7 ant to the Alaska Native Claims Settle-
8 ment Act (43 U.S.C. 1601 et seq.), by an
9 Indian Tribe that is a Native village (as
10 defined in section 3 of that Act (43 U.S.C.
11 1602)) or by a Village Corporation that is
12 associated with an Indian Tribe (as de-
13 fined in section 3 of that Act (43 U.S.C.
14 1602));

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

17 “(iv) any land that is part or all of a
18 Tribal designated statistical area associ-
19 ated with an Indian Tribe, or is part or all
20 of an Alaska Native village statistical area
21 associated with an Indian Tribe, as defined
22 by the Census Bureau for the purposes of
23 the most recent decennial census.

24 “(B) OTHER DEFINITIONS.—In subpara-
25 graph (A)—

1 “(i) the term ‘Indian’ has the mean-
2 ing given the term in section 4 of the In-
3 dian Self-Determination and Education
4 Assistance Act (25 U.S.C. 5304);

5 “(ii) the term ‘Indian Tribe’ has the
6 meaning given the term ‘Indian tribe’ in
7 section 4 of the Indian Self-Determination
8 and Education Assistance Act (25 U.S.C.
9 5304); and

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

13 “(3) PERSONAL INFORMATION.—The term ‘per-
14 sonal information’ means any information that is
15 linked or reasonably linkable to a specific individual
16 or a specific device, including de-identified informa-
17 tion.

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

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

22 “(B) an independent expenditure; or

23 “(C) a public communication that refers to
24 a clearly identified candidate for Federal office
25 (regardless of whether a candidate for State or

1 local office is also mentioned or identified) and
2 that promotes or supports a candidate for that
3 office, or attacks or opposes a candidate for
4 that office (regardless of whether the commu-
5 nication expressly advocates a vote for or
6 against a candidate).

7 “(5) RECOGNIZED PLACE.—The term ‘recog-
8 nized place’ means any of the following:

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

14 “(B) Indian lands.

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

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

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

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

1 “(E) A congressional district.”.

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

5 (b) EXPANSION OF CERTAIN DEFINITIONS.—

6 (1) EXPANSION OF THE DEFINITION OF ELEC-
7 TIONEERING COMMUNICATION.—

8 (A) APPLICATION TO QUALIFIED INTER-
9 NET AND DIGITAL COMMUNICATIONS.—

10 (i) IN GENERAL.—Subparagraph (A)
11 of section 304(f)(3) of the Federal Election
12 Campaign Act of 1971 (52 U.S.C.
13 30104(f)(3)(A)) is amended by striking
14 “or satellite communication” each place it
15 appears in clauses (i) and (ii) and insert-
16 ing “satellite, or qualified internet or dig-
17 ital communication”.

18 (ii) QUALIFIED INTERNET OR DIGITAL
19 COMMUNICATION.—Paragraph (3) of sec-
20 tion 304(f) of such Act (52 U.S.C.
21 30104(f)) is amended by adding at the end
22 the following new subparagraph:

23 “(D) QUALIFIED INTERNET OR DIGITAL
24 COMMUNICATION.—The term ‘qualified internet
25 or digital communication’ means any commu-

1 nication which is placed or promoted for a fee
2 on a covered online platform (as defined in sec-
3 tion 325(e)).”.

4 (B) NONAPPLICATION OF RELEVANT ELEC-
5 TORATE TO ONLINE COMMUNICATIONS.—Sec-
6 tion 304(f)(3)(A)(i)(III) of such Act (52 U.S.C.
7 30104(f)(3)(A)(i)(III)) is amended by inserting
8 “any broadcast, cable, or satellite” before “com-
9 munication”.

10 (C) NEWS EXEMPTION.—Section
11 304(f)(3)(B)(i) of such Act (52 U.S.C.
12 30104(f)(3)(B)(i)) is amended to read as fol-
13 lows:

14 “(i) a communication appearing in a
15 news story, commentary, or editorial dis-
16 tributed through the facilities of any
17 broadcasting station or any online or dig-
18 ital newspaper, magazine, blog, publica-
19 tion, or periodical, unless such broad-
20 casting, online, or digital facilities are
21 owned or controlled by any political party,
22 political committee, or candidate;”.

23 (2) EXPANSION OF THE DEFINITION OF PUBLIC
24 COMMUNICATION.—Paragraph (22) of section 301 of
25 the Federal Election Campaign Act of 1971 (52

1 U.S.C. 30101(22)) is amended by striking “or sat-
2 ellite communication” and inserting “satellite, paid
3 internet, or paid digital communication, paid pro-
4 motion”.

5 (3) EFFECTIVE DATE.—The amendments made
6 by this subsection shall apply with respect to com-
7 munications made on or after the expiration of the
8 3-month period which begins on the date of the en-
9 actment of this Act.

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