

United States Senate

WASHINGTON, DC 20510

March 4, 2019

Ellen L. Weintraub
Chair
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Dear Chair Weintraub:

We write to express concern regarding the Commission's delay in issuing a final rule regarding disclaimer requirements for online political advertisements, and to request clarification regarding the application of current laws and regulations on digital political advertisements.

Disclaimers on political advertisements "ensure that the voters are fully informed" about the person or group in political ads and they allow the voters "to evaluate the arguments to which they are being subjected."¹ Disclaimer requirements, in making clear the sources of funding behind a particular ad, work to guard and promote the people's right to freely govern themselves without unknown or undue interference.

Americans know the dangerous effects associated with a failure to identify the purchasers of online political ads. In 2016, ads purchased by Russian operatives were used to attack our democracy. A foreign adversary took advantage of our weak online disclaimer and disclosure rules, which prevented voters from seeing the ads for what they were: deliberate attempts by a hostile foreign power to misguide and divide the American public.² On January 29, America's top intelligence officials testified to the Senate Intelligence Committee that foreign adversaries are continuing to target our elections by sowing division online and that the 2020 presidential election is a target. We must take stronger action to fortify our democracy from these attacks and the FEC is central to that effort.

The FEC's mission is to "protect the integrity of the federal campaign finance process by providing transparency and fairly enforcing and administering federal campaign finance laws." If the FEC fails to issue regulations to keep up with technological advancements in how campaigns spend money, it is failing in its mission. During the midterm elections, federal, state and local campaigns spent approximately \$2.3 billion online, compared to just \$35 million in the 2014 cycle.³ When ads purchased by outside groups are included, the figure jumps to nearly \$9 billion and projections for online spending for the 2020 elections are nearly double that of what was spent in 2018.⁴

¹ *Citizens United v. FEC*, 558 U.S. 310, 368 (quoting *Buckley v. Valeo*, 424 U.S. 1, 76 (1976)).

² 52 U.S.C. § 30121

³ Bowman, B., *The Future of Ads Is Digital - But Not Quite the Present*. (2018, December 11) <https://www.rollcall.com/news/politics/whats-next-digital-ads-spending-increases-still-slow-change>

⁴ Borrell Associates. "2019 Local Political Advertising Outlook." Borrell Associates, Nov. 2017, <https://www.borrelassociates.com/industry-papers/papers/2018-local-political-advertising-outlook-detail>

In addition to the proliferation of online ads, the nature of the user experience has also changed. Users no longer have to actively seek information online, platforms and digital applications target consumers and exposure to ads does not require action on behalf of the consumer.

The ability of advertisers to target segments of the American electorate without accountability or transparency is cause for alarm. In 2016, Russia made extraordinary efforts to target African Americans with misinformation related to voting and elections. A recent report prepared for the Senate Intelligence Committee notes that “the most prolific I.R.A. [Internet Research Agency] efforts on Facebook and Instagram specifically targeted black American communities and appear to have been focused on developing black audiences and recruiting black Americans as assets.”⁵ Online political advertising is like the Wild West and voters are being disenfranchised because of it. That is unacceptable.

Clear and conspicuous disclaimers on *all* political and issue advertisements are necessary to ensure the level of transparency and accountability that a healthy democracy demands. Americans deserve to know who is paying for online advertisements placed to influence their vote, regardless of whether those advertisements run on the radio, television, or online.

Given the dramatic increase in online spending and the fact that intelligence officials continue to warn that online platforms will be used to undermine elections, it is unacceptable that the FEC has failed to issue a final rule. We understand that you share our frustration and that you only recently took over as Chair of the Commission. As you begin your term as Chair, we ask you to provide answers to the following questions:

1. When does the Commission expect to issue a final rule on disclaimer requirements?
2. What is the primary cause for delay in issuing a final rule?
3. Under existing laws and regulations, as applied by the Commission, what disclaimers are required for political advertisements published online?

We appreciate your timely response to these questions and look forward to working with you to improve transparency for online political advertising.

Thank you for your prompt attention to this serious matter.

⁵ DiResta, Renee, et al. “The Tactics & Tropes of the Internet Research Agency.” *New Knowledge*, 2018, int.nyt.com/data/documenthelper/533-read-report-internet-research-agency/7871ea6d5b7bedafb19/optimized/full.pdf#page=1.

Sincerely,



Amy Klobuchar
United States Senator



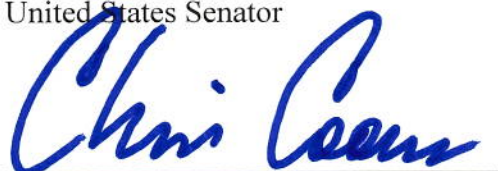
Mark R. Warner
United States Senator



Richard Blumenthal
United States Senator



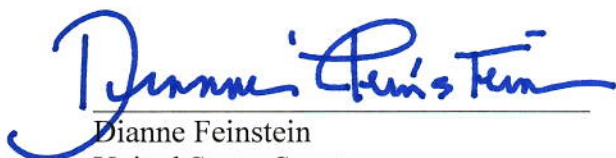
Cory A. Booker
United States Senator



Christopher A. Coons
United States Senator



Richard J. Durbin
United States Senator



Dianne Feinstein
United States Senator



Kirsten Gillibrand
United States Senator



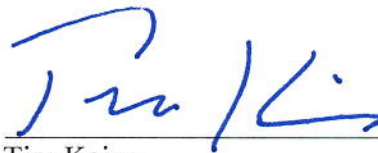
Margaret Wood Hassan
United States Senator



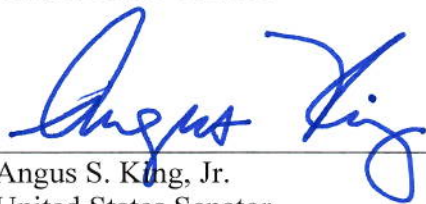
Martin Heinrich
United States Senator



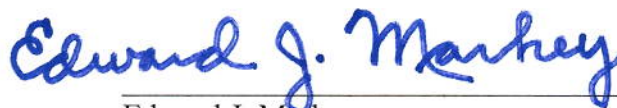
Maize K. Hirono
United States Senator



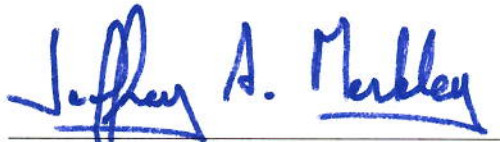
Tim Kaine
United States Senator



Angus S. King, Jr.
United States Senator



Edward J. Markey
United States Senator



Jeffrey A. Merkley
United States Senator



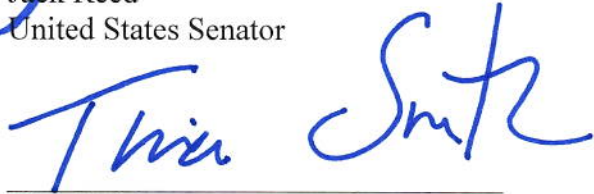
Gary C. Peters
United States Senator



Jack Reed
United States Senator



Jeanne Shaheen
United States Senator



Tina Smith
United States Senator



Jon Tester
United States Senator



Tom Udall
United States Senator



Chris Van Hollen
United States Senator



Sheldon Whitehouse
United States Senator



Ron Wyden
United States Senator