BEYOND TRANSPARENCY: REGULATING ONLINE POLITICAL ADVERTISING

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EXECUTIVE SUMMARY

The need for quality information about politics, especially during campaigns, is vital—as the world has learned in the last few years. In the wake of the UK Brexit vote and election of President Donald Trump in 2016, the problems of mis/disinformation online drew new public scrutiny. But while the European Union has begun to tackle these challenges with regulation, the United States, by and large, has not.

The US does not have many laws governing election advertisements and messaging online. The Federal Election Commission (FEC) provides guidance on advertising and disclaimers on any public communication made by a political committee, but tech companies such as Google and Facebook often request and are granted exemptions (Lightman 2019).

Failure to address online political advertising is a serious problem for our democracy. This report, after surveying the impact of online political ads and the regulatory state of play in the US, in Europe, and on the part of the platforms themselves, provides a set of solutions. Each addresses different challenges associated with online political advertising.

Solutions include updated proposals for disclosure of online political advertising, rules against microtargeting, rules for consumer protection, and the provision of quality information. Full disclosure of the funding sources and reach of paid online political communications is imperative. Consumer protection laws, privacy laws, and a "Voluntary Fairness Doctrine" tailored to the particulars of online communications may also help ensure the quality of information without stumbling over the obstacles presented by current First Amendment jurisprudence.

INTRODUCTION

Much has changed since the last time the federal government passed major election legislation in the early 2000s. The rise of social media has dramatically altered elections in many countries, as false information goes viral and affects political outcomes. These communications present unique threats because they are highly targeted, blur the lines between paid political advertising and "issue" messaging, and often masquerade as news content shared organically rather than being spread by organized campaigns.[1]

While current First Amendment jurisprudence makes direct regulation of false content in the US fraught if not impossible (*United States v. Alvarez* 2012), this report creates a framework for what might be possible in this legal climate. First, it addresses the effects of information and advertising on elections, citing research finding that high-quality information is important for democracies to function. Next, it contrasts the regulatory climate in Europe with the current US environment and suggests ideas that could realistically be implemented here. Finally, it argues that in the US, both government regulation and better voluntary practices by the tech companies will be essential.

The most obvious way to regulate is to strengthen disclosure requirements for all aspects of paid communications, including who is paying for the production of the content and its targeting. This is based on the tradition of campaign finance laws, which require disclosure of who is paying for express advocacy or for communications that clearly refer to a candidate in political advertisements, as well as requiring reports on campaign expenditures. The US Supreme Court has upheld this disclosure, reasoning that such information can help the public to ferret out corruption, or the appearance of corruption, and make educated decisions about candidates and issues. The measures put in place by the tech platforms, including their ad libraries, are an insufficient nod in the same direction, falling short of what's needed.

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[1] For more information see: Gabby Deutch, "A Website Wanted to Restore Rrust in the Media. It's Actually a Political Operation," *Washington Post*, February 6, 2020. As well, Gordon Crovitz, co-founder of NewsGuard, notes that: "These typically take names intended to make them sound like traditional local newspapers—my favorite is the Copper Courier in Arizona, which sounds like it dates from the copper rush of the 1840s when it was actually recently launched—and their About sections claim they are simply trying to fill the news vacuum with non-partisan local reporting. These often write puff pieces about their favorite politicians and hatchet jobs on the other side, then buy ads on Facebook and Twitter to promote their stories."

BACKGROUND: THE ROLE OF INFORMATION IN ELECTIONS AND GOVERNANCE

There is a venerable pedigree to the idea that quality information provided by disinterested parties is essential for healthy societies. For example, the scholarly literature reinforces a view that journalists have long held: By playing a watchdog role (Coronel 2009) and helping frame the agenda for public discussion (Norris 2009), journalists provide information that helps societies understand key policy questions and make sound decisions (Stearns 2018).

Because people get their information from many different sources and filter that information through their own preconceived ideas, the political impact of media persuasion is highly contested. It's exceedingly difficult, if not impossible, for researchers to parse the precise effect of online political advertising, talk radio, Fox News, amplification of messages by politicians, or Russian propaganda.

But it's clear that paid online communications, especially where money is spent on paying individuals and bots or microtargeting particular recipients, can go viral very quickly—as can paid messaging from groups operating essentially in the dark. An Ohio State University study found that "fake news" depressed support for Hillary Clinton in 2016. The study found that of the 25 percent of Obama supporters who believed the false information to be true, only 45 percent voted for Clinton. In contrast, 89 percent of those who didn't believe the stories voted for Clinton (Gunther, Beck, and Nisbet 2018). In other words, exposure to "fake news" had a significant impact on voting decisions. The precise microtargeting of groups with fictitious photos, videos, and communications had the intended result of dampening turnout (Blake 2018).

The absence of quality information can simultaneously distort voting patterns, election outcomes, and government policies. However, the mere presence of quality information is not enough to combat democratic corrosion; such information must be easily accessible and must be provided simultaneously with the false information (Anderson and Rainie 2017).

For more than a century, US law and policy have held that the way to counter false speech is with true or high-quality speech. But in the age of social media,

it's not clear who will hear high-quality speech. While the circulation of mis/disinformation during political campaigns goes back hundreds of years, the volume of information available today makes it harder for people to distinguish what is quality information and what is not (Grosser, Hase, and Wintterlin, 2019) (Tambini 2017) (Shu et al. 2017). As sociologist Zeynep Tüfekçi has warned, "It is increasingly clear that more speech can in fact threaten democracy. The glut of information we now face, made possible by digital tools and social media platforms, can bury what is true, greatly elevate and amplify misinformation and distract from what is important" (Tüfekçi 2018).

All of this has enormous implications for the conduct of free and fair elections (Tambini 2017). Voters targeted by personalized advertising or mis/disinformation before elections may become confused about the candidates (Allcot and Gentzkow 2017) (DiFranzo and Gloria-Garcia 2017). Other researchers have documented paid advertising aimed at voter suppression in the 2016 election and 2018 midterms. Tactics included ads giving false information about voting times and locations of polling places, as well as "calls for boycott and voter intimidation or threats" (Kim 2018). It is unclear if these ads had a significant impact, but in 2019, Facebook announced a ban on paid advertisements that encourage people not to vote or that provide false voting information (Rosen et al. 2019).

There are several characteristics of online political advertising that make it worthy of attention: its volume, its virality, and the fact that it's highly targeted. Online ads are also more partisan and ideological than ads on television. They are less informative, less issue-based, and more focused on mobilizing the base (Fowler et al. 2018, 33). Although campaigns still spend most of their money on television advertising, spending on online advertising is increasing rapidly. In the US alone, political advertising expenditures are expected to be around $10 billion in 2020, with $2.8 billion spent on online political advertising and Facebook expected to sell 59 percent of all digital political advertising (Bruell 2019). Another estimate puts Facebook's online political advertising revenue at $420 million, which is some 0.5 percent of its projected 2020 revenues of $84 billion (Ivanova 2019).

Because digital ads are so much cheaper than broadcast, the number of advertisements is staggering. On an average day in 2016, Trump's digital campaign ran 40,000 to 50,000 variations of their ads on Facebook, and at key moments, that number was much higher; on the night of one debate, the campaign ran 175,000 different ads on Facebook (Lapowsky 2016).

RELEVANT REGULATION IN EUROPE

The spread of disinformation and destabilization of democratic processes have increased interest in regulation throughout the world. In 2019, the European Union asked the tech companies to set up a digital ad registry, and the new presidency has since said the EU would strengthen laws on online political advertising. These new laws build on a foundation of privacy laws and a long tradition of election-advertising and equal-time laws that apply offline.

In April 2019, the European Commission introduced new sanctions, amounting to 5 percent of the annual budget of any European political party or foundation that violates data protection rules in their campaigning (European Commission 2019). The General Data Protection Regulation, implemented in the EU in 2018, made it more difficult for campaigns to perform microtargeting (McGee 2019). Even so, the GDPR includes carve-outs for political advertising, and these were upheld recently by a Spanish court (Morrow 2019).

A number of countries place ceilings on what can be spent and ban foreign funding of campaigns, and many limit politicians' spending on their campaigns. Government limits on election advertising and/or government support for advertising and equal-time rules during campaigns minimize the need for spending on the level of US campaigns (Waldman 2014).

French election-spending laws ban foreign funding, place ceilings on spending, require disclosure of spending, and prohibit paid advertising for three months before an election. In France, online political campaigns must disclose their donors and how much they receive from them (Tidman 2019). This disclosure rule applies to all information that concerns the public debate.

In the UK, the landmark April 2019 Online Harms report from the government's Digital, Culture, Media and Sport Committee described the electoral law as "not fit for purpose" and called for more regulation, asserting that the platforms have a "duty of care" to their users (House of Commons 2019).

Further regulation in Europe is expected after the EU publishes its assessment of the 2019 EU parliamentary elections (originally scheduled for 2020). Already, officials have said they plan to implement more precise transparency requirements for political parties and place further sanctions on the infringement of Europe's data protection laws (Berger 2019). Other countries, including Ireland, are considering a raft of transparency, labeling, and reporting requirements (Quain and Cheallacháin 2019).

In addition to laws, norms have made a difference in some cases, as when French media said they would not cover the Macron leaks (Vilmer 2019) in part because they were released too close to the French elections and the timing seemed "suspicious" (Schiffrin 2019). The purportedly hacked Macron emails appeared on May 5, 2017—just before the election news blackout was about to begin. Under Article L49 of the French electoral code, no news that is material to a political campaign can be published or broadcast within 44 hours of a national election campaign ("Article L49" 2011).[2][3]

POTENTIAL SOLUTIONS

While the EU is studying regulations for online political advertising and plans to announce them in 2020, the US has moved slowly on this front, hampered by political disagreement and First Amendment concerns; even the tech giants have acted more quickly than Congress. The Brennan Center for Justice and many other groups have called on Congress to act, and have made practical suggestions, such as a ban on dark money from organizations that spend on politics anonymously, and an expansion of the current ban on election advertising funded by foreign nationals to include US companies with substantial foreign ownership or control.

The tech companies have begun addressing some of these problems, with Facebook, Google, and Twitter (Singer 2018) (Lomas 2019) launching ad libraries in 2018. More recently, Facebook and Twitter have been more aggressive about downranking and de-platforming than they were before. Twitter, in particular, has become more assertive about labeling false information.

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[2] The emails released during the hack (some true and others false) made a number of allegations about Macron. One alleged that he owned hidden bank accounts in the Cayman Islands. Although this rumor was not covered by French media outlets, it spread on Twitter and Facebook and could be seen by French citizens online. For more information, see (*The Observers* 2017).

[3] In *Mills v. Alabama* (1966), the US Supreme Court reversed the Alabama Supreme Court's decision and concluded that a state law placing criminal liability on an election-day newspaper editorial violated the First Amendment.

Faced with a morass of false political advertising and a barrage of public criticism, Twitter announced in October 2019 that it would ban all paid political ads, while Google said it would ban microtargeting of political advertising.

But far more must be done. Below are six potential solutions:

SOLUTION 1:

Revive the Honest Ads Act to Induce More Expansive Disclosure of Political Advertisements

The Honest Ads Act—sponsored in October 2017 by Sen. Mark Warner (D-VA) and Sen. Amy Klobuchar (D-MN), as well 26 other senators (including the late John McCain)—would mandate that social media companies disclose who funded political and other ads and who their target audiences were. The bill would:

- Amend the definition of electioneering communication (set by the Bipartisan Campaign Reform Act of 2002) to include paid digital ads.

- Require digital platforms to maintain a public file of all political communications purchased at more than $500. It would include:

  - A digital copy of the ad and a description of the audience it targets.

  - The number of views generated, the dates and times of publication, the rates charged, and the contact information of the buyer.

- Require online platforms to make efforts to ensure that foreign actors don't purchase political ads in order to influence the American electorate.

The bipartisan Honest Ads Act was the first congressional measure to address disinformation after the 2016 election. Though the bill has languished since its introduction, a number of amendments would address some of the types of political disinformation that have become more prevalent since 2017.

Amendments Relating to the Scope of the Honest Ads Act

- Expand the time period covered. The present proposal follows the original law, which was applicable to broadcast media, allowing regulation of those communications that were close in time to the primary and general elections. However, there is a case to be made for a longer time span, as messaging often begins more than a year prior to elections.

- Broaden the definition of paid digital ads to include messages for which money is spent to produce the ads; to pay for the microtargeting of the ads; to pay for bots, algorithms, individuals, or groups to spread the ads; or to pay the platform for the placing of the ads. The amount and sources of all those expenditures should be disclosed.

Amendments Relating to Enforcement

- The act should require auditing of the platform's public ad database by regulators and researchers, to assure compliance with the act.

SOLUTION 2:

Make Ad Libraries More Consistent and Transparent

In the years since Twitter, Facebook, and Google launched their ad libraries (Shukla 2019) (Hatmaker 2019) (Ha 2018), Facebook and Twitter have begun verifying the identities and locations of political ad buyers and disclosing this information in their libraries. Extensive studies of these initial registries show that much was omitted (Edelson et al. 2019) and that more must be done. One step the platforms themselves can take immediately is to improve their ad libraries.

Facebook bans foreign funding for ads targeting people in the US about "social issues"; these can only be bought by officially recognized US citizens (Daskal 2019). However, enforcement is incomplete.

Scholars and journalists have noted inconsistency among the platforms' ad libraries (Ravel 2019) and criticized them for providing inadequate information about content—who was targeted and how, how far ads reached, and how fully users engaged with them (Edelson et al. 2019) (Leerssen et al. 2019).

In particular, a 2020 study of the European archives funded by the EU philanthropy Civitates and carried out by the European Partnership for Democracy found that "a major shared shortcoming is the lack of meaningful, complete and accurate data provided in the libraries, including targeting criteria, data on the intended and reached audiences, exact spend, ad performance, and targeting mechanisms. These libraries were also found to be missing content depending on the time and location of the user, and there is **no comprehensive repository of all paid content**, which makes it impossible to verify the accuracy, completeness and consistency of political ads libraries."

Tech platforms should be required to maintain detailed records about their customers (i.e., political advertisers), to be released when necessary, similar to the "Know Your Customer" rule for banks (Wood and Ravel 2018, 1267—68) (Kornbluh and Goodman 2019).[4]

Facebook's privacy policy, which has many loopholes, allows the company to collect much information that is used for targeting. It is crucial, therefore, that independent reviewers be able to determine what is being used to influence people in ads. To ensure that there is no violation of Facebook's requirements under the law and to assuage concerns about the potential release of personally identifiable information, reviews could be conducted under confidentiality agreements or without such information attached to the data.

DISCLOSURE RELATED TO CONTENT

Beyond disclosing who paid for political ads and whom they targeted, the tech companies could do far more to label, flag, and provide context. Facebook has taken some cautious first steps, labeling political figures' posts when they violate

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[4] One limitation: Just as with offshore bank accounts, while it may be possible to register which US entity is paying for online political advertising, it's impossible to know whether that US entity is getting its funds from overseas.

company hate speech rules and adding links to correct voting information on any posts related to voting. But such measures are inadequate given the volume of mis/disinformation on the platforms.

"Labels can and should travel with misinformation" said Gordon Crovitz, the co-founder of NewsGuard. For platforms like Microsoft that have integrated NewsGuard, their labels travel when the posts include links to news stories. In the absence of links to news stories, platforms like WhatsApp can use their Misinformation Fingerprints product, which catalogs popular hoaxes and examples of misinformation and is written so that social media platforms (and their cybersecurity contractors) can apply AI tools to identify posts that spread the same misinformation.

The platforms should also:

- Adopt disclosure-based rules that would provide context for ads not attributable to the campaigns—for example, letting audiences know who paid for a political ad that was not paid for by a campaign;

- Adopt disclosure-based rules that indicate that candidate ads have not been checked for accuracy (or have been deemed suspect by the platform's fact-checkers);

- Reject political advertising that does not contain a picture or voice of the candidate (similar to the FEC's "stand by your ad" rule for TV and radio); and

- Require disclosure of the ways content has been "boosted" by algorithms or bots.

A 2019 report from the Stanford Cyber Policy Center, *Securing American Elections: Prescriptions for Enhancing the Integrity and Independence of the 2020 US Presidential Election and Beyond*, included additional recommendations, such as:

- Asking or requiring social media companies to promote disclaimers on news items run by news agencies that are registered foreign agents, such as RT America and Sputnik;

- Requiring them to "develop and publicize industry-wide guidelines for labeling content from producers engaged in disinformation and information warfare"; and

- Encouraging them to develop the tools they need to "identify disinformation and hacked content more rapidly and remove it with higher precision, removing content before harm is done."

SOLUTION 3:

Provide Detailed Information Related to Targeting

The tech companies should provide far more information about online political ad targeting, including who has been targeted (Wood and Ravel 2018) (Edelson et al. 2019) (Leerssen et al. 2019), the funding sources for that targeting, and the specific content of the ads that were targeted.

In particular:

- There should be mandated disclosure of the precise parameters for the targeting of the ads, as well as the revenue that the platforms are receiving as a result; information about the algorithms used to disseminate the ads to users; and—as outlined in the Honest Ads Act section above—information about who's paying for targeted ads.

- Any information given to the advertiser should be released to the public as well. "The same level of granularity in information on targeting of criteria and practices should be available to users as to advertisers" (Civitates 2020).

SOLUTION 4:

Limit Microtargeting Altogether and Expand Privacy Regulations

Sen. Mark Warner said in June 2020 that lack of a uniform standard on privacy regulations in the US shows a "dramatic failure of American leadership." This can be redressed by limiting the platforms' ability to use microtargeting, as well as expanding privacy regulations that effectively accomplish the same thing.

For instance, in their May 2020 report for the New America Foundation, Maréchal, MacKinnon, and Dheere argue that platforms should be prohibited from using "third-party data to target specific individuals, as well as discriminatory advertising that violates users' civil rights."

Two bills were introduced in Congress in 2020 to address microtargeting. Rep. David Cicilline (D-RI) has proposed prohibiting targeting by platforms or intermediaries arranging for the dissemination of political ads to individuals on the basis of online behavioral data or demographic data. Rep. Anna Eshoo (D-CA) wants to prohibit targeting individuals or groups other than on the basis of the place where the person or persons reside.[5]

Maréchal, MacKinnon, and Dheere (2020) argue that a strong federal privacy law with robust enforcement "is perhaps the strongest tool at Congress' disposal to stem the tide of online misinformation and dangerous speech by disrupting the algorithmic systems that amplify such content."

Users should have more control over the collection and sharing of their information and should be able to opt out completely from all political advertising and the collection of data that enables it. In June, Facebook took a limited step in that direction, announcing that it would allow people in the US to hide social-issue or political ads from candidates or political action committees in their Facebook or Instagram feeds (Isaac 2020).

SOLUTION 5:

Commit to a True Marketplace of Ideas

Much has been written about the flaws in the traditional theory of the marketplace of ideas (Stiglitz 2020), but counter-speech is important. Historically in the US, the rights of the listener have been valued as well as the rights of the speaker;[6] per that standard, tech giants should provide quality election and political information to their audiences. In doing so, they would be extending the information "cards" already being provided by Google and the new Voting Information Center being provided by Facebook (Zuckerberg 2020). Below are principles to guide the creation of such an election information feed:

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[5] Many activists on both the left and right believe that a ban on microtargeting will help incumbents as political messaging and advertising are essential for fundraising as well as movement-building.

[6] For a discussion of this principle among members of the 1947 Hutchins Commission, please see chapter 6 of *Free Speech & Unfree News* by Sam Lebovic (Harvard University Press 2016).

Preserve the best of journalism and the best of social media.

At its best, social media excels at gathering quality information from audiences and quickly disseminating information on important subjects. But if the information is of low quality, then the false information becomes a public harm. In that case, social media's reach not only has no value but in fact has negative value. Therefore, something must be done to guarantee the quality of information that is distributed widely. As the coronavirus pandemic has made clear, the tech companies are willing to make what amount to editorial decisions ensuring the accuracy of virus coverage, which means they have the wherewithal to deal with falsehoods. Why not go a step further and provide an accurate information feed of high-quality election-related information? If it comes from trusted news sources then, of course, fees should be paid to those news sources, as has recently been required in France and Australia (Browne 2020).

Provide free access to the posting and transmission of information online.

There should not be a market for access to the marketplace of ideas. The right to convey factual and relevant information for elections should be open to all political parties and candidates, not just to those who can pay for it. This is why many countries have laws giving equal time to different political parties or providing free advertising on public broadcasters. In the US, it is most likely that such provisions would be weighted to the two mainstream parties. The space given to lesser parties or candidates could be determined by a basket of factors, including their polling numbers, votes garnered in previous elections, number of donors, and other criteria, such as those used to determine who is included in debates before presidential primaries.

Distribute the same information to all audiences.

Unless this happens, societies do not have a shared baseline of information from which they can make decisions. One of the media's key roles has been to provide quality information about contemporary issues so that the public and policymakers can make decisions about what matters (McCombs 1997).

The reason microtargeting can be dangerous is not just that it invades the user's privacy but that the information provided is shaped for the intended target. Politicians may tailor messages to their audiences, but a message delivered to just one Facebook user can be completely different from the message delivered to a neighbor with different political beliefs. A deep-fake video can be shown to one person or community and not another.

In his book, *This Is Not Propaganda*, journalist Peter Pomerantsev describes how the 2016 Trump campaign, the Five Star movement in Italy, and the Vote Leave groups in the UK microtargeted potential voters with completely different ideas and desires (Pomerantsev 2019). Five Star published posts on Facebook devoted to entirely different subjects, one complaining about potholes and the other about immigration. Vote Leave targeted people who thought the EU was cruel to animals and then broke that down into subgroups, "sending more graphic ads with photos of mutilated animals and gentler ads with pictures of cuddly sheep to others" (Pomerantsev 2019).

The 2020 New America Foundation report reiterates the dangers of microtargeting, arguing that it violates the rights not only of individuals but of entire categories of people: "For example, catering to advertisers' desire to reach potential job applicants who are demographically similar to their current workforce leads digital platforms to enable their advertiser clients to illegally target job ads by gender, race, ethnicity, and other protected attributes" (Maréchal, MacKinnon, and Dheere 2020, 27). A more recent example: During the COVID-19 pandemic, Facebook created an advertising category for people interested in pseudoscience and allowed people to deliver false information about the disease to people in that category until the end of April 2020 (Waddell 2020) (Sankin 2020).

Banning microtargeting would help reduce the spread of mis/disinformation: "Absent the detailed data on users' political beliefs, age, location, and gender that currently guide ads and suggested content, disinformation has a higher chance of being lost in the noise" (Campbell 2019).

Find a way to make high-quality information salient.

Because of the crowding-out problem—that is, the excess of low-quality information online—there has to be a way to highlight high-quality information for voters. This requires flows of solid information that are clearly placed—for example, at the top of Google search results, in place of advertising. The principle is similar to that of health warnings on cigarette packages or nutrition information on cereal boxes: Quality information and content labels must be visible. Making information salient and clear and commanding attention is precisely what social media platforms know how to do. What they need is the commitment to do it.

While the tech companies have said repeatedly that they are platforms, not publishers, it's clear that they make editorial judgements constantly. Rather than simply circulating and highlighting paid false content, they should find a way to bury it. That burial should also be done in a transparent and predictable fashion and, ideally, would discourage people from trying to circulate false information to begin with.

SOLUTION 6:

Provide Free Political Ads and Free High-Quality Information

Having signed on to the principles outlined above, the social media platforms could then make a voluntary commitment to provide quality election-related information during US campaigns. In doing so, they would help strengthen democracy. Since the platforms seem to believe that companies are more capable than governments, and that social media is a force for good, this is a chance for them to test their beliefs. The provisioning could extend Facebook's decision in the spring of 2020 to provide information about voter registration and voting locations.

Tech companies should look at and apply broadcasters' principles on providing equal access and equal information (Zuckerman 2019) (Pickard 2018).

Under a "Voluntary Fairness Doctrine," the tech companies could take responsibility for providing equal information to voters at no cost. For example, they could provide equal amounts of campaign advertising for free to Democrats and Republicans and target all US citizens who use their services in the months before the 2020 election. Each item would be labeled as to where it comes from and, ideally, fact-checked. But if not, each piece of information should be labeled with a disclaimer that the information within has not been factually verified and a list of verified websites to encourage audiences to use their critical thinking skills and check facts that might be fabricated or presented out of context (Berger 2019). As stated above, such information would need to be highlighted so as not to exacerbate the attention scarcity problem.[7]

A different approach would be to **provide free ads equally to registered parties only**, since providing free ad slots to other entities promoting various causes might be too demanding (Berger 2019). In some ways, this would resemble proposals made by Norman Ornstein and Paul Taylor (2002) to provide free airtime to candidates.

Or the tech companies **could abolish political advertising altogether and disseminate equal amounts of news about each campaign's position on key issues** for six months before the election. This could include livestreaming debates and town halls or transmitting clearly labeled information from the campaigns in prominent locations.

If the social media platforms don't want to simply disseminate campaign information, they could embrace their publisher role and curate posts on a particular topic and then explain where the candidates stand on each issue, providing links for more information from trusted news sources. This would involve curation and making editorial decisions, but since the companies already evaluate and reject some political advertising and make editorial decisions with a mix of algorithms and moderators, this proposal would not be much of a reach (Mac and Hirji 2019).

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[7] Thanks to Lili Levi for making this point.

The public-service duties would simply be giving the tech companies a new function, which is to consciously add relevant information about public affairs to the online conversation rather than simply ranking or suppressing it. This use of counter-speech is not dissimilar to what YouTube does with its Creators for Change program, which finds and fosters influencers who can post quality videos in order to counter false and inflammatory videos (Jahromi 2019).

Critics of platform power may feel that the job of curating political speech should not be given to the large tech companies. However, the tech companies are already circulating political speech (including false information) globally and are profiting from it. Why not give them a public-interest mandate as well? This was how US spectrum allocation was determined in the past and is part of the mandate of the major European public service broadcasters as well (Pickard 2018) (Napoli 2019). This proposal is not just constructive but realistic, because it accepts the key role the tech companies play but builds on it by imposing a public-service requirement rather than simply punishing them. Ensuring equal access to quality information is perfectly in keeping with First Amendment principles.

CONCLUSION

Current regulation and self-regulation of online advertising fall far short of what is necessary for fair and democratic elections. The ongoing battle to change American voting laws to allow for more disclosure and transparency has lasted decades (Allen and Stevens 2019). Setbacks like the Supreme Court's 2010 *Citizens United* decision and the subsequent *Speech Now* decision by the Court of Appeals for the DC Circuit have hampered efforts to stop the flood of corporate money, as has the lack of disclosure of foreign and independent money in the political system. Drastic changes must be made. The solutions described above are an essential start, and the time to begin is now.

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