

117TH CONGRESS  
1ST SESSION

# H. R. 4955

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

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 2021

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

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## A BILL

To amend the Federal Election Campaign Act of 1971 to prohibit covered online platforms from disseminating political advertisements which are targeted to an individual, a connected device, or to a group of individuals or connected devices on any basis other than the recognized place in which the individual resides or the device is located, 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,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Banning Microtargeted  
3 Political Ads Act of 2021”.

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

7       (a) RESTRICTIONS.—

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

12 **“SEC. 325. RESTRICTIONS ON DISSEMINATION OF TAR-**  
13 **GETED POLITICAL ADVERTISEMENTS BY ON-**  
14 **LINE PLATFORMS.**

15       “(a) RESTRICTIONS ON ADVERTISEMENTS TAR-  
16 GETED AT INDIVIDUALS OR AT SPECIFIC GROUPS OF IN-  
17 DIVIDUALS.—A covered online platform, a sponsor of a po-  
18 litical advertisement, or an agent, affiliate, vendor, or  
19 other person acting on behalf of such a platform or spon-  
20 sor may not—

21           “(1) target the dissemination of a political ad-  
22 vertisement on a covered online platform to an indi-  
23 vidual, a connected device, or to a group of individ-  
24 uals or connected devices; or

25           “(2) knowingly enable a third party to target  
26 the dissemination of a political advertisement, in-

cluding by providing the third party a list of individuals or connected devices, contact information of individuals, or other personal information that can be used to identify individuals or connected devices.

“(b) EXCEPTIONS.—

“(1) TARGETING 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 connected devices 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 individual has provided freely given, express, specific, informed, and unambiguous consent directly to the sponsor—

“(i) to be an individual to whom the dissemination of a political advertisement is targeted by the sponsor; and

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

1           “(B) such consent is revocable and was not  
2           received through or by the aid of the sponsor or  
3           the covered online platform; and

4           “(C) the sponsor and any agent, affiliate,  
5           vendor, or other person disseminating a political  
6           advertisement on behalf of the sponsor, does  
7           not use personal information generated by or  
8           pertaining to the individual except information  
9           that was expressly and affirmatively provided  
10          by the individual directly to the sponsor.

11          “(3) CONTEXTUAL ADVERTISING.—Subsection  
12          (a) does not apply to the targeting of the dissemina-  
13          tion of a political advertisement to an individual if  
14          the political advertisement—

15               “(A) is disseminated based on informa-  
16               tion—

17                       “(i) that the individual is viewing or  
18                       with which the individual is otherwise en-  
19                       gaging; or

20                       “(ii) for which the individual  
21                       searched; and

22               “(B) is displayed or otherwise dissemi-  
23               nated in close proximity to information de-  
24               scribed in subparagraph (A).

1           “(4) TARGETING ON RANDOM BASIS.—Sub-  
2       section (a) does not apply to the targeting of the dis-  
3       semination of a political advertisement to an indi-  
4       vidual on a random basis, including on a random  
5       basis within any of the exceptions described in this  
6       subsection.

7           “(5) RULE OF CONSTRUCTION.—Nothing in  
8       this subsection shall be construed to require a cov-  
9       ered online platform, a sponsor of a political adver-  
10      tisement, or an agent, affiliate, vendor, or other per-  
11      son acting on behalf of the platform or the sponsor  
12      to disseminate a political advertisement to an indi-  
13      vidual who has opted out of receiving a political ad-  
14      vertisement or any other form of communication  
15      from the platform, the sponsor, or any agent, affil-  
16      iate, vendor, or other person acting on behalf of the  
17      platform or the sponsor, including opting out of re-  
18      ceiving a specific type of advertisement or commu-  
19      nication, an advertisement or communication from a  
20      particular sponsor, or any other opt-out preference.

21      “(c) PRIVATE RIGHT OF ACTION.—

22           “(1) ENFORCEMENT BY INDIVIDUALS.—

23           “(A) IN GENERAL.—Any individual alleg-  
24       ing a violation of this section by a covered on-  
25       line platform or an agent, affiliate, vendor, or

1 other person acting on behalf of a covered on-  
2 line platform may bring a civil action in any  
3 court of competent jurisdiction, State or Fed-  
4 eral.

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

8 “(i) an amount—

9 “(I) not less than \$100 and not  
10 greater than \$1,000 per violation  
11 against any person who negligently  
12 violates a provision of this section;  
13 and

14 “(II) not less than \$500 and not  
15 greater than \$5,000 per violation  
16 against any person who recklessly,  
17 willfully, or intentionally violates a  
18 provision of this section;

19 “(ii) disgorgement or compensation  
20 for unjust enrichment;

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

23 “(iv) any other relief, including equi-  
24 table or declaratory relief, that the court  
25 determines appropriate.

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

4           “(2) INVALIDITY OF PRE-DISPUTE ARBITRA-  
5           TION AGREEMENTS AND PRE-DISPUTE JOINT ACTION  
6           WAIVERS.—

7           “(A) IN GENERAL.—Notwithstanding any  
8           other provision of law, no pre-dispute arbitra-  
9           tion agreement or pre-dispute joint action waiv-  
10          er shall be valid or enforceable with respect to  
11          a dispute arising under this section.

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

18          “(3) NO EFFECT ON ENFORCEMENT BY COM-  
19          MISSION.—The authority of an individual to bring a  
20          civil action under this subsection shall not be con-  
21          strued to affect any authority of the Commission to  
22          take any action under this Act with respect to an al-  
23          legation of a violation of this section.

24          “(d) DEFINITIONS.—In this section, the following  
25          definitions apply:

1           “(1) CONNECTED DEVICE.—The term ‘con-  
2       nected device’ means any electronic equipment that  
3       is—

4           “(A) primarily designed for or marketed to  
5       consumers;

6           “(B) capable of connecting to the internet  
7       or another communication network; and

8           “(C) capable of sending, receiving, or proc-  
9       essing personal information.

10          “(2) CONTENTS.—The term ‘contents’, when  
11       used with respect to any communication, has the  
12       meaning given such term in section 2510(8) of title  
13       18, United States Code.

14          “(3) COVERED ONLINE PLATFORM.—The term  
15       ‘covered online platform’ means any website, web ap-  
16       plication, mobile application, connected device appli-  
17       cation, digital application (including a social net-  
18       work, or search engine), or advertising network (in-  
19       cluding a network disseminating advertisements on  
20       another website, web application, mobile application,  
21       connected device application, or digital application)  
22       that disseminates political advertisements, except  
23       that such term does not include a website, applica-  
24       tion, or network (or a subsidiary or affiliate of such  
25       a website, application, or network) that, during the



1 12-month period ending on the date of the dissemi-  
2 nation of the political advertisement involved, col-  
3 lected or processed personal information relating to  
4 fewer than 50,000,000 individuals.

5 “(4) DISPUTE.—The term ‘dispute’ means any  
6 claim related to an alleged violation of this section  
7 and between an individual and a covered online plat-  
8 form.

9 “(5) DISSEMINATE.—The term ‘disseminate’  
10 means, with respect to a political advertisement, to  
11 transmit, display, or otherwise disseminate the polit-  
12 ical advertisement.

13 “(6) DISSEMINATION.—The term ‘dissemina-  
14 tion’ means, with respect to a political advertise-  
15 ment, the transmission, display, or other dissemina-  
16 tion of the political advertisement.

17 “(7) INDIAN LANDS.—The term ‘Indian lands’  
18 includes—

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

22 “(B) any land in Alaska owned, pursuant  
23 to the Alaska Native Claims Settlement Act (43  
24 U.S.C. 1601 et seq.), by an Indian Tribe that  
25 is a Native village (as such term is defined in

1 section 3 of that Act (43 U.S.C. 1602)) or by  
2 a Village Corporation (as such term is defined  
3 in section 3 of that Act (43 U.S.C. 1602)) that  
4 is associated with an Indian Tribe; and

5 “(C) any land that is part or all of a Trib-  
6 al designated statistical area associated with an  
7 Indian Tribe, or is part or all of an Alaska Na-  
8 tive village statistical area associated with an  
9 Indian Tribe, as defined by the Bureau of the  
10 Census for the purposes of the most recent de-  
11 cennial census.

12 “(8) INDIAN TRIBE.—The term ‘Indian Tribe’  
13 has the meaning given the term ‘Indian tribe’ in sec-  
14 tion 4 of the Indian Self-Determination and Edu-  
15 cation Assistance Act (25 U.S.C. 5304).

16 “(9) PERSONAL INFORMATION.—The term ‘per-  
17 sonal information’ means data that is linked or rea-  
18 sonably linkable to an individual or a connected de-  
19 vice, including—

20 “(A) data inferred or derived about the in-  
21 dividual or connected device from other col-  
22 lected data, if such data is still linked or rea-  
23 sonably linkable to the individual or connected  
24 device;

25 “(B) contents of communications;

1           “(C) internet browsing history and online  
2           activity; and

3           “(D) an identifier used to assign an indi-  
4           vidual to a group for the purposes of targeting  
5           the dissemination of an advertisement.

6           “(10) POLITICAL ADVERTISEMENT.—The term  
7           ‘political advertisement’ means—

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

10           “(B) a communication expressly advo-  
11           cating the election or defeat of a clearly identi-  
12           fied candidate for election for Federal office, or  
13           which is the functional equivalent of express ad-  
14           vocacy because, when taken as a whole, it can  
15           be susceptible of no reasonable interpretation  
16           other than as an appeal to vote for or against  
17           a candidate for election for Federal office;

18           “(C) a paid public communication or a  
19           public communication promoted for payment  
20           that refers to a clearly identified candidate for  
21           Federal office (regardless of whether a can-  
22           didate for State or local office is also mentioned  
23           or identified) and that promotes or supports a  
24           candidate for that office, or attacks or opposes  
25           a candidate for that office (regardless of wheth-

er the communication expressly advocates a  
vote for or against a candidate); or

“(D) any advertisement (including search  
engine marketing, display advertisements, video  
advertisements, native advertisements, and  
sponsorships) that is made by or on behalf of  
a candidate.

“(11) 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.

“(12) 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.

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

“(A) A State.

“(B) Indian lands.

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

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

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

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

12          “(E) A congressional district.

13          “(F) A designated market area (as defined  
14          in section 122(j) of title 17, United States  
15          Code).

16          “(14) STATE.—The term ‘State’ means any  
17          State of the United States, the District of Columbia,  
18          the Commonwealth of Puerto Rico, the Virgin Is-  
19          lands of the United States, Guam, American Samoa,  
20          the Commonwealth of the Northern Mariana Is-  
21          lands, and any possession of the United States.

22          “(15) TARGET.—The term ‘target’ means, with  
23          respect to the dissemination of a political advertise-  
24          ment, to perform or cause to be performed any com-  
25          putational process designed to select an individual,

1 connected device, or group of individuals or con-  
2 nected devices to which to disseminate the political  
3 advertisement based on personal information per-  
4 taining to the individual or connected device or to  
5 the individuals or connected devices that make up  
6 the group.

7 “(16) THIRD PARTY.—The term ‘third party’  
8 includes, with respect to a covered platform, a cor-  
9 porate affiliate or other related party of the covered  
10 platform.”.

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

14 (b) EXPANSION OF DEFINITION OF ELECTION-  
15 EERING COMMUNICATION.—

16 (1) EXPANSION TO ONLINE COMMUNICA-  
17 TIONS.—

18 (A) APPLICATION TO QUALIFIED INTER-  
19 NET AND DIGITAL COMMUNICATIONS.—

20 (i) IN GENERAL.—Subparagraph (A)  
21 of section 304(f)(3) of the Federal Election  
22 Campaign Act of 1971 (52 U.S.C.  
23 30104(f)(3)(A)) is amended by striking  
24 “or satellite communication” each place it  
25 appears in clauses (i) and (ii) and insert-

ing “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(d)(3)).”.

(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 bona fide news story, commentary, or edi-

1           torial distributed through the facilities of  
2           any broadcasting station or any online or  
3           digital newspaper, magazine, blog, publica-  
4           tion, or periodical, unless such broad-  
5           casting, online, or digital facilities are  
6           owned or controlled by any political party,  
7           political committee, or candidate;”.

8           (2) EXPANSION OF DEFINITION OF PUBLIC  
9           COMMUNICATION.—Paragraph (22) of section 301 of  
10          the Federal Election Campaign Act of 1971 (52  
11          U.S.C. 30101(22)) is amended by striking “or sat-  
12          ellite communication” and inserting “satellite, paid  
13          internet, or paid digital communication, paid pro-  
14          motion”.

15          (3) EFFECTIVE DATE.—The amendments made  
16          by this subsection shall apply with respect to com-  
17          munications made on or after the expiration of the  
18          3-month period which begins on the date of the en-  
19          actment of this Act.

20          (c) SEVERABILITY.—If any provision of this Act or  
21          the amendments made by this Act, or the application  
22          thereof, is held unconstitutional or otherwise invalid, the  
23          validity of the remainder of the Act, the amendments, and



- 1 the application of such provision shall not be affected
- 2 thereby.

