

**LIMITING FOREIGN MEDDLING IN U.S. CAMPAIGNS:  
KEY POLICY RECOMMENDATIONS**

Americans are rightly concerned about the continuing threat of foreign interference in U.S. elections.<sup>1</sup> Although Russia’s 2016 exploits have received much attention, intelligence agencies and national security experts warn that we are likely to face additional interference in our elections from a greater number of adversaries going forward. What can be done? There is no silver bullet. Tackling this problem requires a range of nuanced solutions that simultaneously preserve the integrity of U.S. elections, protect the constitutional rights of all Americans, and leave sufficient room for beneficial international exchanges. Below, we detail a menu of key recommendations to combat illicit foreign meddling in U.S. campaigns. Together with measures to reinforce the security of our election infrastructure,<sup>2</sup> we believe these reforms will go a long way towards reinforcing U.S. sovereignty in a manner consistent with bedrock American values.

Campaign Finance Reforms

**Shore up rules governing online political advertising by passing the Honest Ads Act.** Paid communications over major social media platforms like Facebook and Twitter were a lynchpin of Russia’s 2016 disinformation and propaganda campaign.<sup>3</sup> Some of these communications mentioned candidates; many others addressed divisive social issues in an effort to sow discord among U.S. voters and/or depress turnout, especially in communities of color.<sup>4</sup> The vast majority of the ads placed by Russian operatives were neither prohibited by U.S. law nor even subject to the most basic transparency requirements.

The most important step Congress can take to address this problem is to pass the bipartisan Honest Ads Act.<sup>5</sup> The Honest Ads Act would take several critical steps to address Russia’s tactics. First, it would make Internet campaign ads subject to the same basic rules as those run over broadcast, cable or satellite. Second, it would require each of the largest online platforms to create a public database of all its political ad sales, including both campaign ads and ads addressing “issues of national legislative importance.” Third, it would create stronger rules for online ad disclaimers in place of the lax rules promulgated by the Federal Election Commission (FEC). Finally, it would require online platforms to use reasonable efforts to avoid selling

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<sup>1</sup> See, e.g., Eric Tucker and Emily Swanson, “AP-NORC Poll: Majority Worry about 2020 Foreign Meddling,” *AP*, June 19, 2019, <https://www.apnews.com/ac56e80c296a49e593104d6575a18ce2>.

<sup>2</sup> See Lawrence Norden and Ian Vandewalker, *Securing Elections from Foreign Interference*, Brennan Center for Justice, 2017, <https://www.brennancenter.org/publication/securing-elections-foreign-interference>.

<sup>3</sup> Ian Vandewalker and Lawrence Norden, *Getting Foreign Funds Out of America’s Elections*, Brennan Center for Justice, 2018, 2, <https://www.brennancenter.org/publication/getting-foreign-funds-out-americas-elections>.

<sup>4</sup> *Ibid.*; see also Renee DiResta et al., *The Tactics & Tropes of the Internet Research Agency*, New Knowledge, 2018, 8, 81-82, <https://disinformationreport.blob.core.windows.net/disinformation-report/NewKnowledge-Disinformation-Report-Whitepaper.pdf>.

<sup>5</sup> Honest Ads Act, S. 1356, 116th Cong. (2019).

prohibited foreign ads. Had these reforms been in place, it is likely that at least some of Russia's efforts to influence the U.S. electorate would have come to light earlier. These are the minimum steps Congress needs to take to blunt future disinformation campaigns.

While passage of the Honest Ads Act is critical, we do recommend some changes to its database provisions. First, rather than having each platform maintain a separate database, there should be a central repository for all reportable information. This could be part of the FEC's website, provided the agency were given sufficient additional funds. Second, Congress should set forth a clear process for determining a list of "issues of national legislative importance"—for example, by requiring the FEC to empanel a committee of experts to develop it for each election cycle. The FEC's ability to effectively oversee this list of issues may be dependent on reforms to the agency discussed below. An alternative approach could give the duty to a newly chartered quasi-public entity, akin to the Public Company Accounting Oversight Board created by Sarbanes-Oxley.<sup>6</sup>

In addition, it would be helpful for Congress to provide more guidance on the "reasonable efforts" platforms must take to avoid selling prohibited ads. At a minimum, purchasers should be required to provide a physical address and a copy of identifying documents, with additional follow-up where there is reason to believe that the purchaser may be prohibited from spending money on U.S. campaigns.

**End dark money.** "Dark money" campaign spending by groups who are not required by federal law to disclose their donors is another source of vulnerability for U.S. elections. Dark money groups have poured well over \$1 billion into federal campaigns since 2010, mostly concentrating on the most competitive races.<sup>7</sup> These groups can easily raise money from foreign sources, including foreign governments, without the public having any knowledge.<sup>8</sup> For instance, investigative reporting has raised questions as to whether individuals with ties to the Russian government made substantial donations to at least one politically-active U.S. nonprofit, the National Rifle Association, which spent more than \$30 million on the 2016 presidential race.<sup>9</sup> Passage of the DISCLOSE Act, which has been introduced in every Congress since 2010, would finally eliminate the problem of dark money by requiring nonprofits like the NRA that engage in substantial campaign spending to reveal the donors who paid for that activity.<sup>10</sup>

**Improve advertisement disclaimers.** So that ad viewers know in real-time who paid for a particular ad, Congress should also set clear guidelines for the "paid for" disclaimers on ads. The Honest Ads Act tightens some of the especially lax disclaimer requirements that the FEC has

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<sup>6</sup> "About the PCAOB," Public Company Accounting Oversight Board, accessed August 2, 2019, <https://pcaobus.org/About>.

<sup>7</sup> Anna Massoglia, "State of Money in Politics: Billion-dollar 'dark money' spending is just the tip of the iceberg," *Center for Responsive Politics*, February 21, 2019, <https://www.opensecrets.org/news/2019/02/somp3-billion-dollar-dark-money-tip-of-the-iceberg/>.

<sup>8</sup> It would be illegal for any group to directly spend foreign money on elections, but the secrecy of dark money groups' funding makes it hard for the public or law enforcement to know the extent of foreign funding.

<sup>9</sup> Peter Stone, "NRA in crisis: how the gun group became ensnared in the Russia inquiry," *Guardian*, March 1, 2019, <https://www.theguardian.com/us-news/2019/mar/01/nra-russia-investigations-gun-lobby>.

<sup>10</sup> Peter Overby, "House Democrats Introduce Anti-Corruption Bill As Symbolic 1st Act," *NPR*, January 5, 2019, <https://www.npr.org/2019/01/05/682286587/house-democrats-introduce-anti-corruption-bill-as-symbolic-first-act>.

promulgated for online ads, but more needs to be done across all forms of advertisement. In particular, disclaimers should be required to identify (either in their text or via a link) the individuals who are ultimately responsible for the ad, such as the top five donors to a super PAC or 501(c)(4) entity. While this is important for all types of political advertising, it is especially vital for online ads that make use of the platforms' sophisticated targeting capabilities to reach key audiences while remaining invisible to the wider public.

**Restrict foreign corporations from spending money on U.S. campaigns.** Foreign money can also make its way into U.S. campaigns through foreign-owned or -controlled corporations. While foreign individuals and entities are themselves prohibited from spending money on U.S. elections, lax FEC rules permit foreign companies to spend money through U.S. subsidiaries, provided they put spending decisions in the nominal hands of a U.S. citizen employee. Congress can close this loophole by specifying that substantial foreign ownership or control of an entity is an absolute bar to spending on U.S. campaigns.<sup>11</sup>

**Clarify and strengthen rules governing campaigns' receipt of foreign intelligence and other things of value from foreign governments.** The Mueller Report revealed that there is also uncertainty about whether campaigns can solicit and accept intelligence (or "dirt") gathered by foreign governments, with the Report questioning whether such intelligence would fit within the definition of an in-kind campaign contribution.<sup>12</sup> This is not actually a hard question: federal law defines campaign contributions to include any "thing of value" donated to influence a federal election. But Congress should make absolutely clear that U.S. campaigns may not solicit or receive any donated benefit from a foreign government or political party, regardless of the benefit's monetary value. Knowing and willful receipt of any such benefit should be subject to criminal sanctions. Congress should also provide that any sharing of nonpublic campaign information with a foreign government or other foreign national will be deemed a solicitation of a prohibited contribution.<sup>13</sup> Finally, while campaigns are and should remain allowed to purchase goods and services from foreign nationals, all such payments should be specially disclosed on their reports with the FEC.

**Allow national parties to pay for cybersecurity upgrades for candidates.** While disinformation is the biggest long-term threat, Russia's most successful gambit related to the 2016 election was probably the hack and release of tens of thousands of embarrassing emails from Democratic party committees and the personal accounts of key operatives like John Podesta (the Republican party was also hacked, but those emails were not released).<sup>14</sup> To blunt future attacks, it is critical that not only the parties themselves but also their candidates have access to the latest cybersecurity technology. In an ideal world, the government would fund these enhanced protections, but even if Congress does not want to spend additional money, there are other legal changes that would help. A good place to start would be for Congress to amend federal campaign finance rules to allow national party committees to pay for cybersecurity

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<sup>11</sup> See Get Foreign Money Out of U.S. Elections Act, H.R. 746, 116th Cong. (2019).

<sup>12</sup> U.S. Department of Justice, Office of Special Counsel Robert S. Mueller III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, 2 vols. (Washington, D.C., 2019), 1:185-186.

<sup>13</sup> See Anti-Collusion Act, H.R. 3236, 116th Cong. § 2 (2019).

<sup>14</sup> U.S. Department of Justice, Office of Special Counsel Robert S. Mueller III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, 2 vols. (Washington, D.C., 2019), 1:3-4.

enhancements for their candidates without these payments counting towards otherwise applicable contribution and spending limits.

**Fix the FEC.** Many of our system’s current vulnerabilities, from lax disclaimer rules for online ads to the prevalence of dark money, are the result of legal loopholes created by gridlock at the dysfunctional Federal Election Commission. Even when the law is clear, moreover, the FEC’s enforcement of existing rules is extremely lax. Just recently, for example, the Commission deadlocked on whether to pursue allegations that Paul Manafort funneled illegal foreign donations to multiple congressional campaigns in 2016.<sup>15</sup> No new laws passed by Congress will be effective if the agency charged with interpreting and enforcing them is chronically incapable of doing its job. That is why an FEC overhaul along lines the Brennan Center has proposed is also essential to protecting against foreign meddling in the electoral process.<sup>16</sup>

### Platform Transparency

**Make platforms accountable for exposing deceptive foreign political influence operations and report on their efforts.** Major platforms like Facebook and Twitter sporadically announce that they have uncovered networks of fake accounts originating in foreign countries and spreading propaganda through unpaid posts. When the Internet Research Agency (IRA), a St. Petersburg troll factory with ties to Vladimir Putin, targeted the 2016 election, most of its activity consisted of unpaid posts.<sup>17</sup> Campaign finance tools are ill-suited to fully address this problem of deceptive online disinformation campaigns directed by foreign governments. But the most prominent platforms have been monitoring their own users to find it, although attribution continues to be a challenge and the methods used to identify these campaigns are hidden from the public.

These efforts should be conducted according to transparent, industry-wide standards that account for the evolving nature of disinformation campaigns. Policy makers need to explore whether uncovering deceptive activity online orchestrated by foreign governments can be mandated without infringing on civil liberties.

This is not a recommendation to require platforms to remove the content or take down foreign state operatives’ accounts; rather we recommend that policy makers explore whether platforms should be required to search for such content and publicly report what they find. Any requirement that burdens users’ speech should be undertaken using clear, publicly available criteria and accompanied by a robust appeal process. Platforms must be transparent about the means used to identify deceptive foreign state-directed activity, including the basis for the decision and whether it involved human review.

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<sup>15</sup> Kenneth P. Doyle, “Manafort Campaign-Finance Charges Dismissed by Deadlocked FEC,” *Bloomberg Government*, June 24, 2019, <https://about.bgov.com/news/manafort-campaign-finance-charges-dismissed-by-deadlocked-fec/>.

<sup>16</sup> Daniel I. Weiner, *Fixing the FEC: An Agenda for Reform*, Brennan Center for Justice, 2019, <https://www.brennancenter.org/publication/fixing-fec-agenda-reform>.

<sup>17</sup> See, e.g., Renee DiResta et al., *The Tactics & Tropes of the Internet Research Agency*, New Knowledge, 2018, 33, <https://disinformationreport.blob.core.windows.net/disinformation-report/NewKnowledge-Disinformation-Report-Whitepaper.pdf>.

Platforms should issue regular public reports of their findings as to deceptive activity directed by foreign states. This will alert their users and the broader public about the types of disinformation and messages that other nations may be using to influence American elections and offer guidance on accounts that are agents of a foreign state masquerading as Americans. In addition to publicizing deceptive foreign government influence, platforms should take actions appropriate for their services, such as contacting users who saw deceptive content, adding disclaimers or fact checks, or down-ranking. All such actions should be undertaken with maximum transparency.

A system like this could generate more information for the public, researchers, and government as they try to track, understand, and respond to foreign state-directed disinformation and propaganda online.

**Explore greater bot transparency and restrictions.** Computer programs can produce automated content for social media accounts, called “bots,” which have benefits but can also be used to attack democratic processes. When they present themselves as human, bots can be misused to make messages and accounts appear more popular than they really are. Policy makers should investigate ways to mitigate the deceptive power of bots, including through disclaimer rules that require bots to be labeled as such. This would require a transparent, easily understood definition of a “bot,” a disclosure protocol that is not unduly burdensome, and a robust appeal process. If it can be done effectively and without stifling civil liberties, this would make it harder to deceive users, while still allowing useful bots to continue to perform their functions. Social media platforms should give appropriate consideration to restricting the ability of bots to follow, like, share, retweet, etc., or not including them in counts of followers and engagements. Pioneering efforts along these lines should be studied: California has enacted a bot-labeling requirement, and Twitter has announced a voluntary plan to begin labeling bots.<sup>18</sup>

### Voting Reforms

**Pass the Deceptive Practices and Voter Intimidation Prevention Act.** A key goal of Russian interference in the 2016 elections was to discourage people from voting, especially African Americans.<sup>19</sup> This effort included lies about how to vote, such as directing people to vote by text message or vote on Wednesday.<sup>20</sup> Congress urgently needs to make it a crime for any actor, foreign or domestic, to spread disinformation with the intent of suppressing the vote. The

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<sup>18</sup> See, e.g., Noam Cohen, “Will California’s New Bot Law Strengthen Democracy?,” *The New Yorker*, July 2, 2019, <https://www.newyorker.com/tech/annals-of-technology/will-californias-new-bot-law-strengthen-democracy>; John Fritze and Maureen Groppe, “Social media hearing takeaways: Mea culpa from Facebook, Twitter as lawmakers call for regulation,” *USA Today*, September 5, 2018, <https://www.usatoday.com/story/news/politics/2018/09/05/sheryl-sandberg-jack-dorsey-say-theyre-addressing-foreign-influence/1203666002/>.

<sup>19</sup> See, e.g., Renee DiResta et al., *The Tactics & Tropes of the Internet Research Agency*, New Knowledge, 2018, 8, <https://disinformationreport.blob.core.windows.net/disinformation-report/NewKnowledge-Disinformation-Report-Whitepaper.pdf>. The European Commission found that Russian disinformation activities were in part aimed at suppressing voter turnout in the 2019 European Parliament elections. See European Commission, *Report on the implementation of the Action Plan Against Disinformation* (Brussels, 2019), 3, [https://eeas.europa.eu/sites/eeas/files/joint\\_report\\_on\\_disinformation.pdf](https://eeas.europa.eu/sites/eeas/files/joint_report_on_disinformation.pdf).

<sup>20</sup> Jon Swaine, “Russian propagandists targeted African Americans to influence 2016 US election,” *The Guardian*, December 17, 2018, <https://www.theguardian.com/us-news/2018/dec/17/russian-propagandists-targeted-african-americans-2016-election>.

Deceptive Practices and Voter Intimidation Prevention Act would help protect voters from such disinformation.<sup>21</sup>

**Restrict the use of voter data for ad targeting.** Microtargeting in online advertising allows political operatives to say different things to different demographics, as the Russians did in 2016, attacking Hillary Clinton’s candidacy from both the right and left. Data from state election officials’ voter files can facilitate this form of deception. The use of voter file data should be restricted, including by disclosing to ad audiences when they are targeted based on data from a voter file.<sup>22</sup> Ad sellers that use voter file data to target ads should be required to treat the ad as a political one subject to the transparency rules discussed above (source disclosure, in-ad disclaimers, and inclusion in online databases).

### Other Reforms

**Modernize FARA.** The revelations in the Mueller Report regarding the activities of Trump campaign officials like Paul Manafort and Michael Flynn and various Russian government controlled entities operating in the United States (including media outlets) illustrate the critical role of the Foreign Agents Registration Act (FARA), which imposes public registration and reporting requirements on agents of any foreign principle engaging in political and certain other activities in the United States.<sup>23</sup> While FARA does not prohibit any conduct, it provides much-needed transparency and public accountability. Had individuals like Manafort and Flynn complied with their registration obligations, they may well not have been tapped to help run a major presidential campaign. And had Russian government-backed media organizations like RT and Sputnik been registered, it would have been a helpful datapoint for the public to understand the motivations behind their messages.

None of these individuals and entities were in compliance with their FARA obligations because the statute has long been systematically under-enforced, as a 2016 Department of Justice inspector general report found.<sup>24</sup> The statute also contains a number of significant exemptions, including for registered lobbyists. Overhauling FARA has bipartisan support; several bills are currently pending before Congress.<sup>25</sup> At a minimum, any overhaul should 1) provide for civil enforcement of FARA in cases that do not warrant criminal prosecution; 2) allocate significantly greater resources for both criminal and civil enforcement of the statute; and 3) eliminate the loophole for registered lobbyists, given that lobbying disclosure rules are significantly weaker than FARA’s requirements. Congress should also consider a number of other changes, including providing further clarification on who qualifies as an “agent” of a foreign principal and narrowing other FARA exemptions, such as the exemption for bona fide commercial activities.

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<sup>21</sup> For the People Act of 2019, H.R. 1, 116th Cong. §§ 1301-1304 (2019); Deceptive Practices and Voter Intimidation Prevention Act of 2019, S. 1834, 116th Cong. (2019).

<sup>22</sup> See Chris Nolan, “Response to Federal Election Commission NPRM Reg. 2011-02 (Internet Communication Disclaimers),” Spot-On, May 25, 2018, <https://sers.fec.gov/fosers/showpdf.htm?docid=383394>.

<sup>23</sup> Foreign Agents Registration Act, 22 U.S.C. §§ 611-621 (1938).

<sup>24</sup> Taylor Gee, Mary Lee, Kaitlyn Burton, and Daniel Lippman, “FARA enforcement faulted in IG report,” *Politico*, September 7, 2016, <https://www.politico.com/tipsheets/politico-influence/2016/09/fara-enforcement-faulted-in-ig-report-216200>.

<sup>25</sup> See, e.g., Foreign Agents Disclosure and Registration Enforcement Act of 2019, S. 1762, 116th Cong. (2019); Protect Against Unlawful Lobbying (PAUL) Act of 2019, H.R. 1467, 116th Cong. (2019).

**Require more transparency from FARA-registered media entities and others.** Russian government-controlled media outlets like RT and Sputnik played a central role in spreading propaganda to manipulate the American electorate, leading the Department of Justice in 2017 to compel both entities to register as foreign agents under FARA.<sup>26</sup> Requiring RT and Sputnik to register under FARA helps, but many Americans are likely to remain unaware of their registration status. To address this concern, each FARA-registered media entity should be required to include prominent disclaimers in all communications explaining that it is registered as an agent of a foreign government, as a recent Stanford University report has recommended.<sup>27</sup> Congress should set minimum requirements for these disclaimers and then direct the FEC to develop more detailed rules. Congress should also consider whether to impose disclaimer requirements on all foreign government-controlled media (regardless of registration status) during certain periods, such as the months preceding a general election, and on certain public communications by other types of FARA registrants, like paid issue ads.<sup>28</sup>

**Require campaigns to report foreign government contacts.** The Mueller Report documents a number of instances where Russia attempted to interfere in the 2016 election through direct offers of assistance to the Trump campaign, none of which were known to the public or law enforcement until after the election.<sup>29</sup> Such offers from foreign governments, whether motivated by a sincere desire to help or as honey traps to generate kompromat, imperil U.S. sovereignty and in most cases likely violate U.S. law. Campaigns should be required to disclose all credible offers of assistance or collaboration from a foreign government or political party to the FEC and the FBI.

**Provide a statutory mandate for addressing disinformation and coordinating federal efforts.** Although multiple federal agencies have been working to address foreign disinformation—including the Department of Homeland Security (DHS), the Department of Justice, and the Federal Bureau of Investigation—it is not clear how effectively they have been coordinating. And only the State Department’s Global Engagement Center, founded to counter terrorist recruitment propaganda, currently has a statutory mandate to address foreign disinformation. Legislation should explicitly assign responsibility for addressing foreign disinformation directed at U.S. audiences to DHS and clarify various agencies’ roles and their responsibilities to coordinate.

**Promote media literacy and civic education.** Most proposals regarding foreign influence are directed at the supply of propaganda, but a comprehensive solution must address the demand side as well. The American public’s resilience in the face of foreign propaganda requires

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<sup>26</sup> Megan R. Wilson, “Russian news outlet Sputnik registers with DOJ as foreign agent,” *The Hill*, November 17, 2017, <https://thehill.com/business-a-lobbying/business-a-lobbying/360912-russian-news-outlet-sputnik-registers-with-doj-as>.

<sup>27</sup> Michael McFaul, ed., *Securing American Elections: Prescriptions for Enhancing the Integrity and Independence of the 2020 U.S. Presidential Election and Beyond*, Stanford Cyber Policy Center, 2019, 40, <https://cyber.fsi.stanford.edu/securing-our-cyber-future>.

<sup>28</sup> *Ibid.*

<sup>29</sup> U.S. Department of Justice, Office of Special Counsel Robert S. Mueller III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, 2 vols. (Washington, D.C., 2019), 1:1-199.

educating them about how to spot it.<sup>30</sup> Americans of all ages need to be better educated regarding media literacy, such as how to tell the difference between sources of disinformation and trustworthy journalism. Lessons should be incorporated in grade-school and post-secondary curricula, public service announcements, platforms' user outreach, and media coverage. Government and civil society should establish funding for grants to schools and community organizations serving vulnerable populations, including communities of color and older Americans. European nations have shown leadership in this area, and domestically, civic groups like the Digital Polarization Initiative and the News Literacy Project have made strides in creating and disseminating media literacy programs for schools.<sup>31</sup>

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<sup>30</sup> Cf. Michael McFaul, ed., *Securing American Elections: Prescriptions for Enhancing the Integrity and Independence of the 2020 U.S. Presidential Election and Beyond*, Stanford Cyber Policy Center, 2019, 51-52, <https://cyber.fsi.stanford.edu/securing-our-cyber-future>.

<sup>31</sup> Claire Wardle and Hossein Derakhshan, *Information Disorder: Toward an interdisciplinary framework for research and policy making (Council of Europe Report DGI(2017)09)*, Council of Europe, September 27, 2017, 68-70, <https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-research/168076277c>; *see also* Eliza Mackintosh, "Finland is winning the war on fake news. What it's learned may be crucial to Western democracy," *CNN*, 2019, <https://www.cnn.com/interactive/2019/05/europe/finland-fake-news-intl/>.



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