

COMPONENTS OF AN EFFECTIVE LAW ON FOREIGN SPENDING

Americans have been wary of the influence of foreign powers on politics since the country's founding.¹ The 2016 elections provided a prominent example of this threat.²

In February 2018, Special Counsel Robert Mueller charged 13 Russian nationals with “information warfare” against the U.S., including charges of conspiracy to defraud the country, bank and wire fraud, and aggravated identity theft.³ This group was associated with the Internet Research Agency, a notorious “troll farm” in St. Petersburg.⁴ Posing as Americans, they created false social media personas and ran pages and groups designed to attract American audiences.⁵ Tens of millions of Americans saw the ads but were left in the dark about their true source.⁶

What is pernicious about spending online, and on social media in particular, is the leveraging effect of platforms like Twitter and Facebook. Russian trolls often began with paid, promoted posts appearing in recipients' feeds. But once users “liked” or “shared” any of these posts, they were automatically (and possibly unknowingly) subscribed to follow the accounts' “organic” unpaid-posts.⁷ It is estimated that over 126 million users were exposed to organic posts on Facebook alone.⁸

Legislators need to shore up campaign finance laws to address unaccountable dark money group spending that can disguise foreign funding sources. Dark money poses a unique danger at state and local levels, where races tend to be less costly and voters often have less information on which to base their decisions.⁹

Some already have shown leadership on this front. California has robust disclosure requirements that keep the levels of dark money in its elections low.¹⁰ To address the fact that corporations and other business entities with foreign ownership are another potential avenue for foreign election spending, Colorado law restricts spending by corporations that are majority foreign-owned.¹¹

¹ THE FEDERALIST NO. 68 (Alexander Hamilton) (defending the Electoral College's role in electing the president in part as a defense against allowing “foreign powers to gain an improper ascendant in our councils”).

² IAN VANDEWALKER & LAWRENCE NORDEN, GETTING FOREIGN FUNDS OUT OF AMERICA'S ELECTIONS 2 (2018), <https://www.brennancenter.org/sites/default/files/publications/Getting%20Foreign%20Funds%20Out%20of%20America%27s%20Elections.%20Final%20April9.pdf>.

³ Indictment, United States v. Internet Research Agency LLC, et al., No. 1:18-cr-00032-DLF, 2018 WL 914777 (D.D.C. Feb. 16, 2018), available at <https://www.justice.gov/file/1035477/download> (hereinafter “Internet Research Agency Indictment”).

⁴ *Id.* ¶ 2; Ian Vandewalker & Larry Norden, *California should require disclosure of political buys to fend off meddling*, S.F. CHRONICLE (Feb. 18, 2018) <https://www.sfchronicle.com/opinion/openforum/article/California-should-require-disclosure-of-political-12623972.php>.

⁵ Internet Research Agency Indictment ¶ 4.

⁶ VANDEWALKER & NORDEN, *supra* note 2, at 6-7.

⁷ *Id.* at 7-8.

⁸ *Id.* at 7.

⁹ CHISUN LEE ET AL., SECRET SPENDING IN THE STATES 3, 17-18 (2016), [https://www.brennancenter.org/sites/default/files/analysis/Secret Spending in the States.pdf](https://www.brennancenter.org/sites/default/files/analysis/Secret%20Spending%20in%20the%20States.pdf); VANDEWALKER & NORDEN, *supra* note 2, at 15.

¹⁰ LEE ET AL., *supra* note 9, at 3; VANDEWALKER & NORDEN, *supra* note 2, at 16.

¹¹ COLORADO REV. STAT. ANN. §§ 1-45-103(10.5)(b), 1-45-107.5(1) (2016); VANDEWALKER & NORDEN, *supra* note 2, at 19.

A strong foreign spending law would do the following:

- ❖ **Update laws to cover online spending.** Campaign finance laws should regulate internet spending like other mass media. Most importantly, laws should include online ads that mention candidates before an election, often called “electioneering communications,” in rules that ban foreign spending and require disclosure of funding sources.¹²
- ❖ **Require disclaimers for online ads.** Voters are entitled to know who paid for an online ad, just as they do for radio and television ads. Disclaimer rules should cover social media “shares” of paid political advertisements by requiring disclaimer language to follow a political ad when the ad is shared.¹³
- ❖ **Require major platforms to maintain public databases of political ads.** The databases should make available the content of an ad, the audience targeted, the timing, and the source of payment.¹⁴ For purposes of this requirement, the definition of “political” ads should be sufficiently broad and include any mention of a candidate or legislative issues of public importance.¹⁵ Lawmakers should also consider adding a safe harbor provision to this proposed requirement by allowing platforms to keep some identifying information out of the public file in instances where the ad buyer presents credible evidence that disclosure will subject the buyer to “threats, harassment, or reprisals.”¹⁶
- ❖ **Require ad sellers to make reasonable efforts to identify and block foreign purchases of political ads.**¹⁷ Ad sellers should require address information for credit card transactions and check addresses against those on file with card issuers.¹⁸ Sellers should make sure that the card holder has a U.S. address.¹⁹ Sellers should also be clear about their procedures for identifying ineligible buyers and provide a robust and transparent appeals process for buyers who are blocked in error.²⁰
- ❖ **Toughen disclosure laws.** To take away dark money as a potential hiding place for foreign spending, laws should require organizations that spend above a certain threshold on politics to disclose their donors. For example, California requires groups including nonprofits to report political expenditures above a certain amount, as well as the identities of recent donors.²¹ When one group makes significant political expenditures, other groups that have donated to that group may also be required to disclose their donors.²²

¹² *Id.* at 8, 13, 23.

¹³ *Id.* at 11.

¹⁴ *Id.* at 10, 23.

¹⁵ *Id.* at 23.

¹⁶ *Id.* at 10; *see also* Buckley v. Valeo, 424 U.S. 1, 74 (1976).

¹⁷ VANDEWALKER & NORDEN, *supra* note 2, at 11-12, 23.

¹⁸ *Id.* at 12.

¹⁹ *Id.*

²⁰ *Id.*

²¹ CAL. GOV'T CODE § 84222; VANDEWALKER & NORDEN, *supra* note 2, at 16.

²² VANDEWALKER & NORDEN, *supra* note 2, at 16.

- ❖ **Prohibit spending by foreign-controlled corporations.**²³ Corporations and other business entities with substantial foreign ownership should be included in bans on foreign election spending. For example, in [Colorado](#), a firm is prohibited from spending on state elections when foreign nationals have a stake larger than 50 percent.²⁴
- ❖ **Strengthen enforcement.** State and local governments should step up their efforts to enforce campaign finance disclosure laws to target foreign spending. Seattle provided a recent example of strong local enforcement when its Ethics and Elections Commission found Facebook in violation of a city campaign finance law requiring disclosure of ad purchasers' identities.

FOR MORE INFORMATION ON FOREIGN SPENDING

IAN VANDEWALKER & LAWRENCE NORDEN, *GETTING FOREIGN FUNDS OUT OF AMERICA'S ELECTIONS* (2018), <https://www.brennancenter.org/publication/getting-foreign-funds-out-americas-elections>

Ian Vandewalker & Larry Norden, *California should require disclosure of political ad buys to fend off meddling*, S.F. CHRONICLE (Feb. 18, 2018), <https://www.sfchronicle.com/opinion/openforum/article/California-should-require-disclosure-of-political-12623972.php>

Lawrence Norden & Ian Vandewalker, *This Bill Would Help Stop Russia From Buying Online Election Ads*, SLATE (Oct. 19, 2017), http://www.slate.com/articles/technology/future_tense/2017/10/the_honest_ads_act_would_help_stop_online_election_meddling_from_foreign.html

²³ *Id.* at 18-19.

²⁴ *Id.* at 19; COLORADO REV. STAT. ANN. §§ 1-45-103(10.5)(b), 1-45-107.5(1).