

# United States Senate

WASHINGTON, DC 20510-4606

October 28, 2019

Mr. Mark Zuckerberg  
Chief Executive Officer  
Facebook, Inc.  
1 Hacker Way  
Menlo Park, CA 94025

Dear Mr. Zuckerberg,

I write you in the context of an ongoing debate about the impact of social media on our public institutions and on our political discourse. In the last two weeks, one facet of this debate has been the extent to which platforms like Facebook allow politicians to spread deliberate falsehoods through paid political advertising. While Facebook's advertising rules have long prohibited ads with "deceptive, false, or misleading content" – relying on its "third-party fact-checkers" to identify violations of these policies – Facebook subsequently revised these rules to exempt political ads run by politicians through a policy that withholds such ads from third-party fact-checker review.

The consequence of these policies came into sharp focus early this month, after a series of ads purchased by the Trump 2020 campaign containing falsehoods about former Vice President Biden were found in Facebook's political ad archive. I appreciate that these ads were discovered only as a result of Facebook's decision to voluntarily implement some of the Honest Ads Act, bipartisan legislation I drafted with Senator Klobuchar and the late Senator John McCain, which has allowed researchers, opposing campaigns, and journalists to track political advertising on Facebook. However, Facebook's refusal to provide targeting information used for political ads, and widely-reported defects in the API preventing large-scale data analysis, underscore that piecemeal, optional steps by individual companies are insufficient to protect our democracy from bad actors exploiting social media; I will continue to press to pass the Honest Ads Act into law and press your company to fully comply with the provisions in the Act.

Transparency, however, is but one value undergirding our nation's political discourse. A whole host of norms and laws have structured the public sphere – the space within civil society in which we debate important political, social, and cultural issues. The public sphere has been shaped by a mix of legal rules (traditionally based in communications and campaign finance laws) and norms that have worked to promote transparency, public deliberation and debate, openness, diversity of opinion, and accountability.

Undeniably, these norms have come under major strain in recent years, from a variety of different directions. Among political actors, norms of decency and probity – strained in the best of times – have been routinely flouted. This is particularly evident in today's digital age. As an avid user of digital media (and shrewd practitioner of how to exploit it), President Trump has in many ways helped to undermine these norms – and other candidates have chosen to follow suit.

But it is also true that these norms have been undermined at least in part because of the nature, architecture, policies, and operation of platforms like Facebook. The public nature of broadcast television, radio, print, cable, and satellite ensured a level of accountability for traditional political advertisements. In addition to being broadly accessible to the electorate, these communications are accessible to the press, fact-checkers, and political opponents through media monitoring services that track broadcast content across television and radio markets. As a result, strong disincentives exist for a candidate to disseminate materially false, inflammatory, or contradictory messages to the public. By contrast, social media platforms tout their ability to target portions of the electorate with direct, ephemeral advertisements—often on the basis of private information the platform has on individual users, facilitating political advertisements that are contradictory, racially or socially inflammatory, or materially false, without the same constraints as more traditional communications mediums, and without affording opposing candidates an equal opportunity to respond directly in front of the same targeted audience.

The consequences of Facebook’s decision not to apply the same standards to political advertisements on its platform are potentially enormous: Today, 79 percent of online Americans – 68 percent of all Americans – are Facebook users.<sup>[1]</sup> Over 160 million Americans use Facebook on a *daily* basis, spending an average of 35 minutes on the site each day.<sup>[2]</sup> By contrast, the most-watched television broadcast in U.S. history – Super Bowl XLIX – was viewed by 114 million Americans.<sup>[3]</sup> In the 2016 election, spending on digital advertising reached \$1.4 billion, a 789 percent increase from the \$159 million spent in 2012.<sup>[4]</sup> The use of social media – and the internet more broadly – to inform the decisions of the electorate only heightens the need for scrutiny of the ads placed on those sites.

In making strides not to continue contributing to the coarsening of our political debate, and the undermining of our public institutions, at a minimum, Facebook should at least adhere to the same norms of other traditional media companies when it comes to political advertising. In defending its refusal to remove false political advertisements by candidates, Facebook has pointed to provisions of the Communications Act that prohibit broadcast licensees from rejecting or modifying candidate ads, regardless of their accuracy. This comparison is inapt. Broadcast licensees face legal requirements to run these ads – in addition to a range of other obligations – as a condition of holding spectrum licenses. The prohibition to reject or modify the ad accompanies a statutory obligation to air ads of qualified federal candidates in the first place.

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<sup>[1]</sup> See Shannon Greenwood, Andrew Perrin, and Maeve Duggan, “Social Media Update 2016,” *Pew Research Center* (November 11, 2016), available at <http://www.pewinternet.org/2016/11/11/social-media-update-2016/>.

<sup>[2]</sup> James B. Stewart, “Facebook Has 50 Minutes of Your Time Each Day. It Wants More,” *New York Times* (May 5, 2016), available at <https://www.nytimes.com/2016/05/06/business/facebook-bends-the-rules-of-audience-engagement-to-its-advantage.html>.

<sup>[3]</sup> Eyder Peralta, “Super Bowl XLIX Was Most Watched Show In TV History,” *National Public Radio* (February 2, 2015), available at <http://www.npr.org/sections/thetwo-way/2015/02/02/383352809/super-bowl-xlix-was-most-watched-show-in-tv-history>.

<sup>[4]</sup> Kate Kaye, “Data-Driven Targeting Creates Huge 2016 Political Ad Shift: Broadcast TV Down 20%, Cable and Digital Way Up,” *Ad Age* (January 3, 2017), available at <http://adage.com/article/media/2016-political-broadcast-tv-spend-20-cable-52307346>.

A more appropriate comparison for a platform like Facebook would be cable networks, which (like Facebook) face no such prohibition on rejecting demonstrably false advertisements from political candidates – nor are they bound by related obligations such as rules on advertising rates and reasonable access requirements. Therefore, the industry norms Facebook should heed would more aptly be those followed by not by local broadcasters, but by cable networks. Notably, CNN refused to air the same demonstrably false ad Facebook allowed the Trump campaign to run. To the extent Facebook takes inspiration from the norms of local broadcasters, it should likewise require that candidates provide documented substantial of claims made in their advertisements.

Facebook’s apparent lack of foresight or concern for the possible damages caused by this policy concerns me. Thus, I am asking for a response from the company regarding the details of this policy and efforts to avert these negative effects:

- Under this policy, how is Facebook defining “politician”? What steps have you taken to prevent abuse of this definition?
- Mr. Nick Clegg, Facebook’s VP of Global Affairs, has noted that this policy has exceptions for speech which “can lead to real-world violence and harm” or “endangers people.”
  - How is Facebook defining these terms?
- Unlike online intermediaries like Facebook, traditional media outlets can be sued for defamation for the advertisements they run. Because of this, traditional media outlets have generally adopted norms of refusing to run advertisements with clear falsehoods, and of taking down ads where an opposing campaign or fact-checking organization has shown an ad to be false.
  - Would a regulatory regime establishing greater parity in liability between Facebook and traditional media outlets serve to simplify Facebook’s policies in this sphere?
- Will you commit to provide ad targeting information, as required under the Honest Ads Act, to better allow opposing campaigns to “correct the record” in responding to potentially misleading ads?

Thank you for your time and I look forward to receiving your responses within the next two weeks.

Sincerely,



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MARK R. WARNER  
United States Senator