

117TH CONGRESS
1ST SESSION

S. 2338

To improve fairness in political speech, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2021

Mr. DAINES introduced the following bill; which was read twice and referred
to the Committee on Commerce, Science, and Transportation

A BILL

To improve fairness in political speech, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preserving Political
5 Speech Online Act”.

6 **SEC. 2. FAIRNESS IN POLITICAL ADVERTISING.**

7 (a) IN GENERAL.—Not later than 120 days after the
8 date of enactment of this section, the Commission shall
9 initiate a rulemaking proceeding in accordance with sec-
10 tion 553 of title 5, United States Code, to require any
11 online platform or third party advertiser that displays,

1 hosts, or otherwise allows the advertisement of a legally
2 qualified candidate in an election for Federal office to
3 abide by the following rules of fair access and equal oppor-
4 tunity:

5 (1) Any online platform or third party adver-
6 tiser who permits a legally qualified candidate in an
7 election for Federal office to display or otherwise
8 post an advertisement on such online platform or
9 through such third party advertiser shall afford
10 equal advertisement opportunities to any other le-
11 gally qualified candidate for such office in such elec-
12 tion.

13 (2) Any online platform or third party adver-
14 tiser shall charge comparable rates to each legally
15 qualified candidate for any advertising service de-
16 scribed in paragraph (1).

17 (3) Any online platform or third party adver-
18 tiser shall have no power of censorship over the con-
19 tent of any advertisement described in this sub-
20 section.

21 (b) TRANSPARENCY REQUIREMENT.—An online plat-
22 form shall maintain, and make available online for public
23 inspection in a machine readable format, a complete
24 record of any purchase of an advertising service by a le-

1 gally qualified candidate on such online platform within
 2 24 hours of such purchase.

3 (c) ENFORCEMENT BY THE COMMISSION.—

4 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
 5 TICES.—A violation of subsection (a) or (b) or a rule
 6 promulgated thereunder shall be treated as a viola-
 7 tion of a rule defining an unfair or a deceptive act
 8 or practice under section 18(a)(1)(B) of the Federal
 9 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

10 (2) POWERS OF THE COMMISSION.—

11 (A) IN GENERAL.—The Commission shall
 12 enforce this section in the same manner, by the
 13 same means, and with the same jurisdiction,
 14 powers, and duties as though all applicable
 15 terms and provisions of the Federal Trade
 16 Commission Act (15 U.S.C. 41 et seq.) were in-
 17 corporated into and made a part of this section.

18 (B) PRIVILEGES AND IMMUNITIES.—Any
 19 person who violates subsection (a) or (b) or a
 20 rule promulgated thereunder shall be subject to
 21 the penalties and entitled to the privileges and
 22 immunities provided in the Federal Trade Com-
 23 mission Act (15 U.S.C. 41 et seq.).

24 (C) AUTHORITY PRESERVED.—Nothing in
 25 this section shall be construed to limit the au-

1 thority of the Federal Trade Commission under
2 any other provision of law.

3 (d) DEFINITIONS.—In this section:

4 (1) COMMISSION.—The term “Commission”
5 means the Federal Trade Commission.

6 (2) ELECTION.—The term “election” has the
7 meaning given that term in section 301 of the Fed-
8 eral Election Campaign Act of 1971 (52 U.S.C.
9 30101).

10 (3) FEDERAL OFFICE.—The term “Federal of-
11 fice” has the meaning given that term in section 301
12 of the Federal Election Campaign Act of 1971 (52
13 U.S.C. 30101).

14 (4) LEGALLY QUALIFIED CANDIDATE.—The
15 term “legally qualified candidate” has the meaning
16 given that term for purposes of section 315 of the
17 Communications Act of 1934 (47 U.S.C. 315).

18 (5) ONLINE PLATFORM.—The term “online
19 platform” means any public-facing website, web ap-
20 plication, or digital application, including a social
21 network, video streaming service, advertisement net-
22 work, or search engine.

23 (6) THIRD PARTY ADVERTISER.—The term
24 “third party advertiser” means any advertisement
25 agency, company, or website developer that distrib-

1 utes or serves advertisements on an affiliated or un-
 2 affiliated online platform.

3 **SEC. 3. APPLICATION OF FEDERAL COMMUNICATIONS**
 4 **COMMISSION EQUAL OPPORTUNITY RE-**
 5 **QUIREMENTS TO ADDITIONAL LICENSEES.**

6 Part I of title III of the Communications Act of 1934
 7 (47 U.S.C. 301 et seq.) is amended by adding at the end
 8 the following:

9 **“SEC. 344. APPLICATION OF EQUAL OPPORTUNITY PRIN-**
 10 **CIPLES TO LICENSEES THAT SERVE POLIT-**
 11 **ICAL ADVERTISING THROUGH OTHER MEANS.**

12 “Not later than 180 days after the date of enactment
 13 of this section, the Commission shall initiate a rulemaking
 14 to apply the principles of equal opportunity under sections
 15 312(a)(7) and 315 to any licensee that—

16 “(1) displays, hosts, or otherwise allows the ad-
 17 vertisement of a legally qualified candidate for any
 18 public office; and

19 “(2) is not already subject to those principles
 20 under this Act or under a regulation promulgated by
 21 the Commission.”.

22 **SEC. 4. PROTECTION FOR “GOOD SAMARITAN” BLOCKING**
 23 **AND SCREENING OF OFFENSIVE MATERIAL.**

24 Section 230(c)(2) of the Communications Act of 1934
 25 (47 U.S.C. 230(c)(2)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the margins accordingly;

(2) in clause (i), as so redesignated—

(A) by striking “filthy,”; and

(B) by striking “harassing, or otherwise objectionable, whether or not such material is constitutionally protected” and inserting “harassing or threatening, or promoting illegal activity”;

(3) in clause (ii), as so redesignated, by striking “paragraph (1)” and inserting “clause (i)”;

(4) in the matter preceding clause (i), as so redesignated, by striking “No provider or user” and inserting the following:

“(A) IN GENERAL.—No provider or user”;

and

(5) by adding at the end the following:

“(B) PROHIBITION OF BAD FAITH BLOCKING AND SCREENING.—

“(i) IN GENERAL.—For purposes of subparagraph (A)(i), it shall not be considered good faith for a provider of an interactive computer service to block, censor, or screen material on the grounds of race,

1 color, religion, sex, national origin, or polit-
2 ical affiliation or speech.

3 “(ii) EXCEPTION.—Clause (i) shall
4 not apply to a provider of an interactive
5 computer service that operates services
6 dedicated to a specific set of issues, poli-
7 cies, beliefs, or viewpoints.”.

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