

Congress of the United States
Washington, DC 20515

November 9, 2017

Neven F. Stipanovic
Acting Assistant General Counsel
Federal Election Commission
999 E. Street NW
Washington, D.C., 20463

Re: Comments on REG 2011-02- Internet Communication Disclaimers

Dear Mr. Stipanovic:

These comments are submitted jointly by the undersigned Members of Congress in response to the reopened Federal Election Commission (“Commission”) Advanced Notice of Proposed Rulemaking (ANPRM) 2017-12, 76 Fed. Reg. 63567 (October 13, 2017), seeking comment on “whether to begin a rulemaking to revise its regulations concerning disclaimers on certain internet communications and, if so, on what changes should be made to those rules.” *Id.*

On September 20, 2017, several Members of Congress wrote to the Commission to encourage the development of “new guidance for advertising platforms on how to prevent illicit foreign spending in U.S. elections,” requesting the Commission “take immediate action to preserve the integrity of our election law and our elections.”¹ In his response, Commission Chairman Walther announced the reopening of a comment period on a six-year-old ANPRM on “Internet Communication Disclaimers” and stated “any comments from [Congress] would be most welcome and appreciated.”² We welcome the opportunity to provide comment on this matter and beyond.

We applaud the Commission’s willingness to revisit the issue of internet communication disclaimers and their relation to the “small items exception.” As we have learned, foreign interests placed paid political advertisements on internet platforms during the 2016 election. It is clear that gaps in our political advertising disclosure regime may have enabled these hostile actors to do so without fear of disclosure.

¹ Sarbanes, John P., & Heinrich, Martin T. et al., Members of Congress to FEC, Washington, D.C. (September 20, 2017) Available at https://sarbanes.house.gov/sites/sarbanes.house.gov/files/House_Senate_Dem_Letter_to_FEC.pdf

² Walther, Steven T., Federal Election Commission, FEC to Member of Congress, Washington, D.C. (October 4, 2017) Available at https://sarbanes.house.gov/sites/sarbanes.house.gov/files/FEC_Reply_to_Sept_20_2017_Ltr_from_20_Members_of_Congress_0.pdf

We believe it is past time for the Commission to take action to harmonize disclaimer requirements for paid internet communications, regardless of size, on internet platforms with advertisements served on other media, such as broadcast television or radio. Put simply, it makes little sense that a political advertisement run on the internet would be subject to a lower standard of disclosure than that of an advertisement aired on television.³ Moreover, there is reason to believe that if we had a more effective disclaimer regime for political internet advertisements during the 2016 election cycle, a portion of the illicit foreign campaign spending might have been prevented.

But issuance of new guidelines for internet communication disclaimers is not enough. We strongly encourage the Commission to schedule a separate, broader rulemaking that addresses head-on the topic of illicit foreign activity in U.S. elections. As we now know, foreign interests engaged in a sustained campaign of political interference in the 2016 elections. We believe it is critical the Commission address this reality directly.

To be sure, existing federal law constrains the Commission's potential regulatory response to these foreign attacks on our elections. Still, we believe a separate rulemaking on foreign interference would provide a much-needed venue to underscore the threat our nation faces and to give space for an important and serious discussion of potential remedies – even if some of those remedies fall outside the bounds of the Commission's existing authority. As Commissioner Weintraub wrote in June, “This is an all-hands-on-deck moment for our democracy... Every part of our government that has jurisdiction over these issues must exercise every scrap of its jurisdiction as fully as it can.”⁴ We agree and implore the Commission to act.

The 2018 election cycle is fast-approaching. As such, it is imperative the Commission exercise its full authority to convene a separate rulemaking on the topic of foreign interference and to issue new regulations where appropriate, including on the matter of internet communication disclaimers. We look forward to the Commission's action and appreciate the opportunity to present these comments.

Sincerely,

³ During the past comment periods on the ANPRMs on internet disclaimers, some respondents raised concerns that the limited size of many internet advertisements made the inclusion of a disclaimer impracticable. These considerations, while legitimate in part, should not confound the Commission's efforts. As the Commission has noted, technological advancements in internet advertising present the Commission with innovative options for effective disclosure that promote transparency, while avoiding burdensome limits on political speech. For example, in formats where ad size may legitimately preclude inclusion of a disclaimer, the Commission may consider alternative means of display, such as a roll-over display, a uniform click through that displays the full disclaimer on some other platform or some other alternative means of display.

⁴ Federal Election Commissioner Ellen L. Weintraub, *MEMO: Discussion of Commission's Response to Alleged Foreign Interference in American Elections* (June 21, 2017) https://s3-us-gov-west-1.amazonaws.com/cg-47928592-406c-4536-8234-99b896e8d57d/cms-content/documents/mtgdoc_17-28-a.pdf


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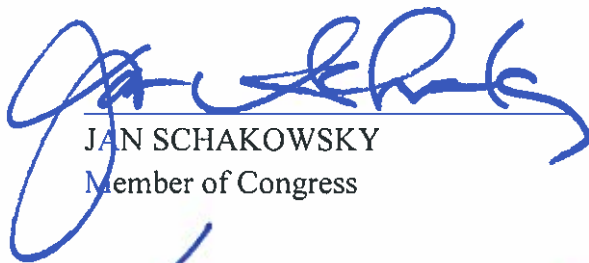

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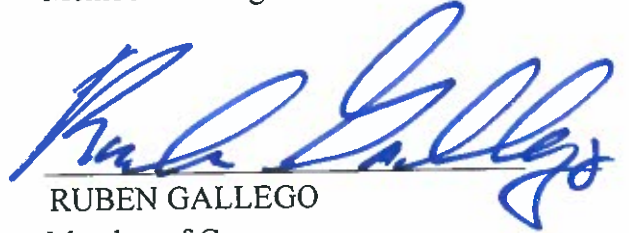
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