UNDERSTANDING S. 1596
(The "REAL Political Advertisements Act")

Supposed AI transparency bill is not transparent about its intent and effects.

S. 1596 and its identical companion, H.R. 3044, purport to be straightforward transparency bills that simply require political campaign ads using content generated by artificial intelligence (AI) to include a disclaimer. **However, much of S. 1596 is a dishonest attempt to increase government control over political speech online by bootstrapping the perennially rejected "Honest Ads Act" to ongoing conversations about AI in Congress.**

A TROJAN HORSE FOR REGULATING POLITICAL SPEECH ON THE INTERNET

Section 3 of S. 1596 is taken directly from the "Honest Ads Act," a bill that has been introduced in multiple Congresses since 2017 and failed to advance each time. The dishonestly named proposal would restrict the free speech rights of American citizens and nonprofit organizations by creating a stunningly broad definition of paid political speech online and subjecting such messages to a complicated and vague set of reporting requirements. **Its intended effect is to silence groups of Americans that engage in nonpartisan education and other grassroots outreach in support of their mission.** Though supporters of S. 1596 are silent about this goal, their legislation brazenly adopts many of "Honest Ads'" speech-chilling definitions and concepts. These provisions are wholly unrelated to AI or its use in campaign ads.

"HONEST ADS" PROVISIONS TARGET ISSUE SPEECH

The "Honest Ads" provisions in S. 1596 would vastly expand the existing definition of so-called "electioneering communications" (ECs) to cover pure issue speech on the internet. Since their inception in a 2002 law, ECs have generally been defined as: (a) broadcast, cable, and satellite television and radio ads; that (b) refer to a candidate 30 days before a primary or 60 days before a general election; and (c) crucially, are *"targeted to the relevant electorate."* An ad is "targeted to the relevant electorate" if it is capable of reaching at least 50,000 persons in the jurisdiction a Congressional candidate seeks to represent. Together, these three standards regulate large-scale ad buys targeting specific voters during the peak of an election while leaving other forms of political speech and issue advocacy undisturbed.

S. 1596 incorporates an expanded EC definition from the "Honest Ads Act" that eliminates the electorate-targeting standard. The bill would regulate online messages that mention candidates – many of whom are elected officials – near an election, even if the ads never run in that candidate's district or state. **This significantly lower bar for regulation means ads about policy issues would be subject to far greater regulation when placed on the internet than on any other medium, despite the fact that online ads are among the most accessible and affordable forms of advertising.**

EXAMPLE 1

A "geofenced"[1] digital ad targeted at the Silicon Valley community urging tech workers to contact Senate Majority Leader Chuck Schumer to support S. 1596 could be regulated as a political campaign ad, even though voters in Silicon Valley cannot vote for or against the Senator from New York.

EXAMPLE 2

A "geofenced" digital ad targeted at New Yorkers urging them to contact House Speaker Kevin McCarthy to increase funding for the September 11th Victim Compensation Fund could be regulated as a political campaign ad, even though voters in New York cannot vote for or against the California Congressman.

Online ads can be easily targeted at particular audiences who may be interested in a message, so the bill's decision to dispense with the "targeted to the relevant electorate" standard can only be interpreted as an intentional ploy to deter issue speech through the threat of campaign finance regulation.

BURDENSOME REPORTING AND DISCLAIMER REQUIREMENTS HARM NONPROFITS AND THEIR SUPPORTERS

ECs are subject to complex reporting and disclaimer requirements enforced by the Federal Election Commission (FEC), including a requirement that sponsoring organizations must report certain donors. **Because S. 1596 would regulate a greater universe of speech, it poses a serious threat to the privacy of nonprofits and their supporters when organizations merely engage in speech about policy issues online.** Political operatives, media outlets, and social media mobs commonly exploit donor information on FEC reports to target Americans for harassment based on their beliefs. Citizens should be free to support social causes by donating to a nonprofit without fear of attacks, retribution, or cancellation.

"HONEST ADS" IS LIKELY UNCONSTITUTIONAL

The Supreme Court upheld the regulation of ECs based on an extensive, over 100,000-page legislative record establishing that Congress had precisely targeted "candidate advertisements masquerading as issue ads."[2] No such record exists to support the "Honest Ads Act." Despite introducing "Honest Ads" over many years, its sponsors still have not established any record that it precisely targets political campaign advertising – let alone a record as substantial as the one used to justify the regulation of ECs. Nor could they, since the current bill is expressly not limited to regulating ads "targeted to the relevant electorate." **The Supreme Court has warned "that the interests that justify the regulation of campaign speech might not apply to the regulation of genuine issue ads."**[3] "Honest Ads" ignores that warning and threatens to collide with the First Amendment.

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Despite arguments by its supporters that S. 1596 merely requires a disclaimer on political advertising that uses AI-generated content, the true intent and effects of this bill are clear: seize on existing conversations about AI to vastly expand regulations and reporting mandates for online speech about policy issues. This expansion poses a serious administrative and regulatory threat to the nonprofit community. Inevitably, Americans working to effect social change will struggle under these regulations, and their voices will be heard by fewer people. Moreover, this bill threatens Americans' ability to exercise their First Amendment rights to speak to their fellow citizens about policy issues on the internet. **For these reasons, the "Honest Ads" provisions of S. 1596 should be excised from this bill.**

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1 "Geofencing" is the use of GPS and cellular data to target advertising on mobile devices based on a user's geographical location. For laptop and desktop users, digital ads can similarly target a user's location based on their Internet Protocol (IP) address.

2 *McConnell v. FEC*, 540 U.S. 93, 132, 206 (2003); *Citizens United v. FEC*, 558 U.S. 310, 332 (2010).

3 *McConnell*, 540 U.S. at 206 n.88.

TRANSPARENCY IS FOR GOVERNMENT. PRIVACY IS FOR PEOPLE.