

Yeshiva University, Cardozo School of Law

LARC @ Cardozo Law

AEJ Blog

Journal Blogs

3-16-2021

Political Campaigns and Microtargeting

Jen Endick

Cardozo Arts & Entertainment Law Journal

Follow this and additional works at: <https://larc.cardozo.yu.edu/aelj-blog>



Part of the [Law Commons](#)

Recommended Citation

Endick, Jen, "Political Campaigns and Microtargeting" (2021). *AEJ Blog*. 275.
<https://larc.cardozo.yu.edu/aelj-blog/275>

This Article is brought to you for free and open access by the Journal Blogs at LARC @ Cardozo Law. It has been accepted for inclusion in AELJ Blog by an authorized administrator of LARC @ Cardozo Law. For more information, please contact christine.george@yu.edu, ingrid.mattson@yu.edu.

Political Campaigns and Microtargeting

BY [JEN ENDICK](#)/ ON MARCH 16, 2021



Photo by Bicanski on Pixnio

On January 6, 2021, rioters overcame police barricades and unlawfully entered the United States Capitol.¹ In the weeks leading up to the attack on the Capitol, Facebook had been displaying ads for tactical gear and military equipment next to content that contained election misinformation.² Facebook accounts that followed extremist content were targeted to receive these kinds of ads.

This is an example of microtargeting that enables companies and politicians alike to “deliver messaging to narrowly segmented audiences” using characteristics including “age, education, Zip code, income, relationship status, interests or political leanings.”³ In theory, microtargeting works because it allows advertisers to harness big data to target specific ads to users. There is some debate about whether microtargeting works and to what extent. On the one hand, there is evidence that microtargeting works in a commercial setting.⁴ For example, one study in a commercial setting found that ads targeted to a personality type could result in 40 percent more clicks.⁵ In a political setting, however, the evidence of the effectiveness of microtargeting

is largely anecdotal. One small study found that ad congruence to personality traits could improve a voters' feelings toward a candidate, but did not change the propensity to vote.⁶

Despite the mixed evidence about the effectiveness of microtargeting, political campaigns have embraced the strategy. For example, reporting in October 2020 found that Trump's 2016 campaign determined that it could only win the state by persuading Hillary Clinton supporters to not come to the polls.⁷ Using big data, the campaign analyzed Black communities in Miami-Dade County, a heavily Democratic county, identifying wavering Hillary Clinton supporters.⁸ Over 50% of Black voters in Miami-Dade County were targeted for "deterrence."⁹ Once identified, the campaign targeted these individuals with "deterrence" messages—advertisements "designed to convince them to lose faith in Clinton and not show up to the polls."¹⁰ In Miami Gardens, a city in Miami-Dade County, overall voter turnout among "voters in the Trump data fell five percentage points, but it dropped almost seven percentage points for those labeled deterrence."¹¹

Critics of microtargeting point to the practice as destructive for American democracy.¹² The primary rationale is that microtargeting results in such a multitude of ads that are nearly impossible to track.¹³ According to disinformation experts, microtargeting in the political context "opens the door to distortions because no outside observer has a full view of the torrent of tailored messages being delivered."¹⁴ Former Facebook security chief Alex Stamos has further explained the damage that might be caused by political microtargeting: "Instead of two Americas, you're potentially looking at hundreds of thousands of Americas . . . I don't think our democracy can survive that kind of Balkanization of the electorate."¹⁵

This point of view has been proffered by Federal Election Commissioner Ellen Weintraub as the rationale for limiting microtargeting of political advertisements.¹⁶ According to Weintraub, the ads are not seen by a large group, so they cannot be fact checked or countered.¹⁷ Commissioner Weintraub has stated that "counterspeech" is necessary to address lies in politics, and microtargeting of political advertisements has prevented that from happening.¹⁸ Weintraub stated that "[c]ounterspeech is most possible [where] a broad public can hear the speech and respond."¹⁹

In response to this relatively new technology (especially when compared to political ads in print or on television), Congress has been playing catch-up in regulating political ads on the internet. In 2020, two members of Congress introduced bills that would put restrictions on microtargeting political ads to fill the regulation vacuum. For example, Congresswoman Eshoo introduced the Banning Microtargeted Political Ads Act in May 2020.²⁰ The bill would ban microtargeting except for within broad geographies including states, municipalities, and congressional districts, and only when an end user opts into receiving political ads.

Limiting microtargeting in political ads could lead to backlash from a constitutional perspective. There is a potential First Amendment argument that Congress would be

regulating political speech – sacred First Amendment ground. By regulating microtargeting, Congress would be regulating data. This implicates the question of whether data is speech – an unsettled matter. For example, University of Arizona professor Jane Bambauer has argued that data is speech, explaining that data in and of itself communicates by telling “a narrative just as effectively as prose.”²¹

Instead of regulating microtargeting, Congress and the Biden Administration should pass The Honest Ads Act, which requires additional disclosures for political ads, including of who is paying for the spot, and would also require public files of election-related messages, along with additional steps to prevent foreign actors from purchasing political ads to influence American voters.²² The Honest Ads Act has passed in the House and has Facebook’s support.²³ If Congress and the Biden Administration believe regulating political ads is a priority, it should take the path of least resistance.

Jen Endick is a Second Year Law Student at the Benjamin N. Cardozo School of Law and a Staff Editor at the Cardozo Arts & Entertainment Law Journal. She is interested in employment and administrative law.

1. Mark Mazzetti, Helene Cooper, Jennifer Steinhauer, Zolan Kanno-Youngs & Luke Broadwater, Inside a Deadly Siege: How a String of Failures Led to a Dark Day at the Capitol, N.Y. Times (Jan. 10, 2021), <https://www.nytimes.com/2021/01/10/us/politics/capitol-siege-security.html>.
2. Ryan Mac & Craig Silverman, Facebook Has Been Showing Military Gear Ads Next to Insurrection Posts, BuzzFeed News (Jan. 13, 2021), <https://www.buzzfeednews.com/article/ryanmac/facebook-profits-military-gear-ads-capitol-riot>.
3. Tony Romm, Isaac Stanley-Becker & Craig Timberg, Facebook won’t limit political ad targeting or stop false claims under new ad rules, Wash. Post (Jan. 9, 2020), <https://www.washingtonpost.com/technology/2020/01/09/facebook-wont-limit-political-ad-targeting-or-stop-pols-lying/>.
4. Brian Resnick, Cambridge Analytica’s “psychographic microtargeting”: what’s bullshit and what’s legit, Vox (March 26, 2018) <https://www.vox.com/science-and-health/2018/3/23/17152564/cambridge-analytica-psychographic-microtargeting-what>.
5. Id.
6. Lennart J. Krotzek, Inside the Voter’s Mind: The Effect of Psychometric Microtargeting on Feelings Toward and Propensity to Vote for a Candidate. 13 Int’l J. of Comm. 3609, 3622 (2019)
7. Sarah Baskey, Nicholas Nehamas, C. Isaiah Smalls II, Christina Saint Louis, Ana Claudia Chacin, David Smiley, Shirsho Dasgupta & Yadira Lopez, How the Trump campaign used big data to deter Miami-Dade’s Black communities from voting, Miami Herald (Oct. 22, 2020), <https://www.miamiherald.com/news/politics-government/article246429000.html>.
8. Id.

9. Id.
10. Id.
11. Id.
12. Ellen L. Weintraub, Don't Abolish Political Ads On Social Media. Stop Microtargeting, Wash. Post (Nov. 1, 2019), <https://www.washingtonpost.com/opinions/2019/11/01/dont-abolish-political-ads-social-media-stop-microtargeting/>.
13. Barbara Ortutay & Amanda Seitz, How Microtargeted Political Ads Are Wreaking Havoc On Our Elections, L.A. Times (Feb. 1, 2020), <https://www.latimes.com/business/technology/story/2020-02-01/how-microtargeted-political-ads-are-wreaking-havoc-on-our-elections>.
14. Craig Timberg, Critics Say Facebook's Powerful Ad Tools May Imperil Democracy. Put Politicians Love Them., Wash. Post (Dec. 9, 2019) <https://www.washingtonpost.com/technology/2019/12/09/critics-say-facebooks-powerful-ad-tools-may-imperil-democracy-politicians-love-them/>.
15. Id.
16. Ellen L. Weintraub, Don't Abolish Political Ads On Social Media. Stop Microtargeting, Wash. Post (Nov. 1, 2019), <https://www.washingtonpost.com/opinions/2019/11/01/dont-abolish-political-ads-social-media-stop-microtargeting/>.
17. Id.
18. Id.
19. Id.
20. Press Release, Office of Congresswoman Anna G. Eshoo, Rep. Eshoo Introduces Bill to Ban Microtargeted Political Ads (May 26, 2020), <https://eshoo.house.gov/media/press-releases/rep-eshoo-introduces-bill-ban-microtargeted-political-ads>.
21. Jane Bambauer, Is Data Speech?, 66 STAN. L. REV. 57, 70 (2014).
22. Lauren Feiner & Megan Graham, Congress has failed to pass Big Tech legislation in 4 years leading up to the next election, CNBC (Oct. 31, 2020), <https://www.cnbc.com/2020/10/31/congress-fails-to-pass-big-tech-legislation-ahead-of-election.html>.
23. Ella Nilsen, House Democrats' Massive Voting Rights Bill, Explained, Vox (March 3, 2021), <https://www.vox.com/2021/3/3/22309123/house-democrats-pass-voting-rights-bill-hr1>.