



Office of the Secretary of State
State Capitol
Charleston, West Virginia 25305

Mac Warner
Secretary of State
State of West Virginia

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.gov

June 25, 2020

Ms. Rachel Holland
Facebook
U.S. Politics & Government Outreach
Via Email: [REDACTED]

Re: Facebook Transparency and Uniformity

Dear Ms. Holland,

Thank you for providing my office with updates on Facebook's progress and plans to improve election-related activities on its various platforms.

I support Facebook's plan to refer users to trusted, official sources for election information. Those sources include Secretaries of State, boards of elections, local election officials, EAC, DHS, NASS, and NASED. I also generally support Facebook's goal of providing accurate information to the public.

However, I am objectively concerned about Facebook's "Voting Information Center" project. Mr. Zuckerberg's opinion piece published in USA Today on June 16, 2020, appears to reflect his belief that Facebook has a role in election administration. He writes, in part, that "Facebook has a responsibility not just to prevent voter suppression . . . but also to actively support well-informed voter engagement, registration and turnout."

Facebook's VP of Product Management and Social Impact, Naomi Gleit, writes in her June 16, 2020 essay that Facebook seeks to "be a place where people can get information about registering to vote, or requesting an absentee or mail-in ballot[,] be a resource for "local election alerts . . . about changes to the voting process" and "registration periods, deadlines to request a vote-by-mail ballot, the start of early voting, and Election Day."

Based on the Voting Information Center project scope, it appears that Facebook believes it has a "responsibility" to become a trusted source of election information. Facebook—a company—has no constitutional or statutory duty to administer free, fair, and secure elections, or to provide election information to West Virginia voters; such is the role of election officials.

Creating and promoting state specific, election-related content via Facebook's proposed Voting Information Center will result in factual mistakes, errors, and inaccuracies. Most troubling, such mistakes may result in disenfranchisement. However, Facebook will not be responsible to West

Virginia voters for those mistakes. As the chief election official in my state, I will bear the brunt of any Facebook inaccuracy. Worst of all, the voters will have little pre-election recourse to remedy a mistake and make their voice heard.

My concerns are based on past experiences with Facebook. I have enclosed one of several examples of incorrect information that Facebook almost published on a mass scale. This specific example pertains to an incorrect voter registration deadline for West Virginia's 2020 Primary Election'. Thankfully, my staff reviewed the information and corrected it prior to publication. However, looking to the large list of topics and information Facebook's initiative seeks to provide its users, it is unlikely my office will always be able to review Facebook's state-specific election information in a timely manner, especially during an election.

Moreover, as an election approaches, I emphasize to voters the need to seek the most up-to-date information directly from their county clerk/local election official. Facebook's proposal will require my office and our local election officials to keep Facebook up-to-date with all relevant and important West Virginia election updates, which may include executive orders, law or regulation changes, precinct locations, natural disaster information, etc. Otherwise, voters who become accustomed to receiving updated election information from Facebook—rather than the trusted sources—may be disenfranchised or otherwise negatively affected.

If, however, Facebook would simply and uniformly refer all West Virginia users to the trusted sources, my objective concerns raised above will be mostly absolved.

Nevertheless, I recognize that companies often feel the need and, sometimes, have a duty to be responsible in matters beyond their enterprise. Facebook's civic desire to engage in election-related issues and information dissemination is, in Mr. Zuckerberg's opinion, one such venture appropriate for Facebook. While I disagree on the appropriateness and propriety of a company delegating to itself a chief election official's duties, Facebook's corporate decision leaves my office with little choice but to respond to your requests and provide accurate information, when possible, to limit misinformation. Absent a legislative change or injunctive relief, such cooperation is the only way my office can best protect voters from misinformation created, disseminated, or promoted by Facebook.

With reluctant willingness to provide Facebook with up-to-date accurate information when possible, West Virginia's voters must have sufficient assurances that your company will not use this information for improper purposes. In light of various previous and recent public allegations of Facebook's alleged ulterior political motives, whether true or not, I am concerned with the public's perception of Facebook's involvement in elections.

Congress, scholars, and election officials have widely debated the propriety and facts behind Facebook's private algorithms and human interjection, which allegedly promote content supporting one major political party's policies while suppressing content from the other. Fair elections depend on fair processes, which are free of improper third-party political agendas. If Facebook's algorithms favor one side or issue over another, non-disclosure of such an agenda is contemptible. If Facebook strives to be a trusted source, it must guarantee that all traces of political agendas are removed from its discourse. To be clear, this is not an accusation; it is a prediction

that anything short of completely unbiased content creation and publication may destroy the public confidence in our elections.

Facebook and Mr. Zuckerberg have publically denied those allegations. However, my small state agency has virtually no capability to vet the denials and learn the full truth. Therefore, to promote public confidence in our elections, which includes Facebook's plan to engage West Virginia users with election-related information, I respectfully submit to Facebook a list of requests. These requests promote transparency and the integrity of your project, and will help corroborate that Facebook has apolitical intentions. If Facebook's motives are in fact genuine, these requests are mutually beneficial to the voters, Facebook, and chief election officials around the county. Importantly, agreeing to my requests will show the public that Facebook—a company—is not being leveraged as a tool for improperly influencing voters' opinions, beliefs, or election outcomes.

My reasonable requests to Facebook are as follows:

1. Facebook does not publish, push, or promote any election-related information to any person until the chief election official in the appropriate jurisdiction first approves the message(s) and confirms the content.
2. Facebook engages in only factual, informative speech intended to educate the public on election dates, times, and statutory requirements.
3. Facebook wholly refrains from any actual or perceptible political, opinionated, or subjective speech. This includes opinions on candidates or policies, but excludes paid campaign advertisements that are subject to other transparency disclosure requirements.
4. Facebook publishes, pushes, or promotes election-related information in a completely uniform manner to all users without regard or favor to personal information, online activities, metadata, users' characteristics, particular demographics, party affiliation, etc.
5. Facebook completely removes ephemeral messaging, and provides an easily accessible public list or perpetual archive of all election-related content published in each jurisdiction. Such records should be kept and made available to any requestor at any time at no cost.
6. Personal information gathered or available to Facebook through its project will not be retained, sold, used, or transferred to any outside entity or organization for any purpose. All data and information obtained or retained by Facebook must be disclosed and made available to or deleted upon request from each individual user.
7. Violations will be publically investigated, and the appropriate election official(s) and general public shall be kept regularly informed of the investigation details for transparency purposes, and nefarious actors or activities will be turned over to the appropriate law enforcement agency.

If Facebook's true intent is to educate the general public and connect users to the trusted sources of information, then our requests will further support Facebook's claimed intent behind its plans to objectively and positively impact elections. Otherwise, a logical deduction would be that the allegations of Facebook's ulterior motives are true.

Finally, even if you ignore or reject the above requests, at the very least, I urge you to refrain from creating messaging and targeting users in an unfair or non-uniform manner. Democracy is founded on fairness, but politically charged Facebook engagement may offset the balance. Facebook has a right and the ability to engage in political speech through legally established political entities (*e.g.* a political action committee) and report its political activity in accordance with federal and state laws. However, using its massively popular social forum to sway voters will be impossible for election officials to counteract or prevent, much less protect the voters.


Ultimately, such actions may decrease voters' confidence in the results and integrity of our democratic system. Losing faith in the system and elected officials can result in dissension and apathy, which will undoubtedly amplify the societal polarization we have experienced and seen grow in recent years.

Thank you for your consideration and timely response.

Sincerely,

MAC WARNER
West Virginia Secretary of State

By Counsel:



Donald M. Kersey, III
General Counsel
West Virginia Secretary of State's Office
State Capitol, Bldg. 1, Ste. 157-K
Charleston, WV 25305
Main: (304) 558-6000
Email: [REDACTED]

Donald Kersey

Subject: Re: West Virginia Voter Registration Reminders

From: Rachel Holland <[REDACTED]>
Date: Monday, April 13, 2020 at 10:59 AM
To: Donald Kersey <[REDACTED]>
Subject: Re: West Virginia Voter Registration Reminders

Hi Donald – thank you SO much for flag, I must've completely missed this announcement. We are updating and will circle back with feedback/decisions shortly. Thanks!! -Rachel

From: Donald Kersey <[REDACTED]>
Date: Monday, April 13, 2020 at 10:56 AM
To: Rachel Holland <[REDACTED]>
Subject: RE: West Virginia Voter Registration Reminders

Rachel,

Thanks for letting us know. We may have more feedback, but I wanted to quickly inform you that the WV Primary Election date was delayed to June 9, 2020. As such, the voter registration deadline also changed, which is now May 19, 2020.

Thanks,
Deak

--
Donald M. Kersey, III
General Counsel
West Virginia Secretary of State's Office
[304-558-6000](tel:304-558-6000) (Office)
[REDACTED] (Direct Dial)
[304-558-0900](tel:304-558-0900) (Fax)

Email correspondence to and from this email address is subject to the West Virginia Freedom of Information Act and may be disclosed, in whole or in part, to third parties by an authorized State official. It may also be privileged or otherwise protected by work product immunity or other legal rules. Unauthorized disclosure of health, legally privileged, or otherwise confidential information, is prohibited by law. If you have received this email in error, please notify the sender immediately and delete all records of this email.

From: Rachel Holland <[REDACTED]>
Sent: Monday, April 13, 2020 11:10 AM
To: Mac Warner [REDACTED]; Chuck Flannery [REDACTED]; Mike Queen [REDACTED]; Brittany Westfall [REDACTED]
Subject: FW: West Virginia Voter Registration Reminders

Hi Secretary Warner and Team,

I hope everyone had a nice Easter weekend and is staying healthy. I wanted to give you a heads up that we will be launching our Voter Registration Reminder notification to residents of West Virginia this week (see initial email below). Folks will see the notification at the top of their News Feed and be directed to <https://ovr.sos.wv.gov/Register?source=facebook> if they click on it. It will read:

Headline: “[Username], the West Virginia Presidential Primary Election Is Coming Up”

Body: “Register to vote or help your friends register by sharing a voter registration link. The deadline to register online to vote in the West Virginia Presidential Primary Election is April 21.”

Link: <https://ovr.sos.wv.gov/Register?source=facebook>

Do you have any questions or concerns about the date, language, or link?

Let me know at your earliest. Thanks so much and I hope you are all staying healthy,

FACEBOOK

Rachel Holland

U.S. Politics & Government Outreach

