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BEFORE THE MICHIGAN HOUSE COMMITTEE ON ETHICS AND ELECTIONS
HEARING ON HB 4880
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We can all agree that there is no place for fraud and deception in the democratic process. Today you have an opportunity to support legislation that will protect Michigan citizens from fraudulent and deceptive tactics that are purposefully aimed at intimidating or confusing voters, and preventing them from exercising their right to vote.

What are “deceptive practices”? The types of fraud that this bill seeks to criminalize are “deceptive practices,” false or misleading information about the voting process that is intentionally perpetrated to prevent an eligible voter from casting their ballot, thereby skewing election results. Examples include:

- Emails with wrong information about where or when to vote (“Democrats must vote on Tuesday and Republicans must vote on Wednesday”) (Florida, 2004);
- “Robocalls” warning voters that citizens with outstanding parking tickets will be arrested if they show up to vote on Election Day (Virginia, 2006);
- Flyers or automated telephone calls announcing that a precinct location has changed and giving incorrect polling place information (Missouri, 2006);
- Phone calls to voters the days before an election claiming that registrations were cancelled and that if the voters tried to vote they would be arrested (New Mexico, 2006);
- Rumors spread online via websites and blogs that citizens with foreclosed homes are ineligible to vote and if they show up to vote their eligibility will be challenged (Michigan, 2008).

No Federal Protections. There is no clear federal law presently that contains criminal penalties against this type of voter fraud that targets voters and seeks to rob them of their right to vote. Even in a case where a person knowingly spreads false information about voting, and regardless of how many voters are deceived, the current federal law may not subject that person to criminal prosecution or civil injunction.

First Amendment Concerns. This legislation will withstand the heightened scrutiny required under the First Amendment protections of the United States Constitution, so long as it is limited to criminalizing fraudulent and deceptive speech that intentionally seeks to interfere with the act of voting. In that way it is similar to Michigan law 168.931, which prohibits “electioneering” within 100 yards of the polling place, the manipulation of or tampering with ballots and voting machines, and any behavior meant to harass, intimidate, or bribe voters.

I would like to thank the House Committee on Ethics and Elections for holding a hearing on this important legislation to protect voters against fraud and deception. This law is a necessary addition to the quilted fabric of the Michigan Election Code and I urge you to act swiftly to ensure its passage. Thank you for the opportunity to present this testimony today.