

# Legislative Analysis



## PENALTY FOR MISINFORMING VOTERS ABOUT RIGHT TO VOTE

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House Bill 4880 (Substitute H-1)  
House Bill 4881 as introduced  
Sponsor: Rep. Mary Valentine  
Committee: Ethics and Elections

### First Analysis (8-25-10)

**BRIEF SUMMARY:** The bills would create a new felony crime to prohibit misinforming citizens about their right to vote, and set a maximum penalty of up to five years in prison.

**FISCAL IMPACT:** To the extent that persons are convicted of this offense, local and state incarceration costs could increase. For more detail, see *Fiscal Information*.

### THE APPARENT PROBLEM:

Under the Michigan Election Law, citizens are prohibited from "electioneering" within 100 yards of a polling place; manipulating or tampering with ballots and voting machines; and also from demonstrating other behavior meant to harass, intimidate, or bribe voters. However, neither state statute nor federal law makes it a crime to intentionally interfere with the act of voting by using fraudulent and deceptive speech.

According to committee testimony, the types of fraud or misleading speech and information that prevent eligible voters from casting their ballots include the following:

- E-mails with wrong information about where or when to vote, such as "Democrats must vote on Tuesday and Republicans must vote on Wednesday," which occurred in Florida in 2004;
- 'Robocalls' warning voters that citizens with outstanding parking tickets would be arrested if they show up to vote on Election Day, which occurred in Virginia in 2006;
- Flyers or automated telephone calls announcing that a precinct location had changed and giving incorrect polling place information, which occurred in Missouri in 2006;
- Phone calls to voters the day before an election claiming that registrations were cancelled, and threatening those electors with arrest if they tried to vote, which occurred in New Mexico in 2006; and,
- Rumors spread online via websites and blogs that citizens having foreclosed homes were ineligible to vote, and threatening that their eligibility would be challenged if they showed up at the polls, which occurred in Michigan in 2008.

Legislation has been introduced to criminalize speech and behavior that is undertaken with the intention to misinform citizens about their right to vote, and to imprison those who are convicted of violating this law.

## ***THE CONTENT OF THE BILLS:***

The bills would create a new felony crime to prohibit misinforming citizens about their right to vote, and set a maximum penalty of up to five years in prison. A more detailed explanation of each bill follows.

House Bill 4880 (H-1) would amend the Michigan Election Law (MCL 168.932c) to prohibit a person from knowingly or intentionally providing false or misleading information to a person concerning the person's eligibility to vote or to the time, place, or manner in which the person may cast his or her vote. A person who violated this section of the law would be guilty of a felony.

House Bill 4881 would amend the sentencing guidelines that are a part of the Code of Criminal Procedure (MCL 777.11d) in order to add a penalty for the new felony (misinforming voters about their right to vote). Under the bill, "Providing false or misleading information concerning voter's right to vote" would be categorized as a Class E Public Trust crime, and the maximum penalty for a violation of that crime would be a sentence of five years in prison.

House Bill 4881 is tie-barred to House Bill 4880 so that it would not go into effect unless House Bill 4880 also was enacted into law.

## ***FISCAL INFORMATION:***

Both House Bill 4880 and House Bill 4881 provide that a person who knowingly or intentionally provides false or misleading information to an elector concerning the elector's right to vote is guilty of a Class E felony punishable by not more than five years imprisonment. To the extent that persons are convicted of this offense, local and state incarceration costs could increase. Local incarceration costs at local jails vary by county. The average cost of incarceration in a state prison is roughly \$34,000 per prisoner per year. However, the incremental cost of adding one or more prisoners to the system can vary significantly around this average depending on the availability of open beds. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year.

Under House Bill 4880, the local court cost increase would depend on the number of cases brought under the provisions of the bill. Some of the costs may be offset through the payment of court costs and fees. Under the Michigan Constitution of 1963 (Article 8, Section 9) all criminal fines collected for breach of the penal laws are applied to support public libraries and county law libraries.

## ***ARGUMENTS:***

### ***For:***

The right to vote is the key to democracy--a right that is guaranteed by the U.S. Constitution and protected by federal law and state statutes. Indeed, in a broadly participatory democracy, the right to vote on a secret ballot at local, state, and national elections provides all citizens with the overarching framework that assures them liberty, freedom of choice, and the ability to constitute (and each election year reconstitute) their representative governments. There

should be, then, no place in our election contests for fraudulent and deceptive behavior that keeps citizens from casting their ballots to advance their goals and express their beliefs.

Proponents of these bills note that deceptive tactics have been used to purposely intimidate and confuse voters, and at times to deny them their right to exercise their vote. For example, (1) e-mails with the wrong information about where or when to vote; (2) 'Robocalls' threatening that voters with outstanding parking tickets would be arrested if they show up to vote on Election Day; (3) flyers and automated telephone calls announcing changes in precinct location; (4) phone calls to voters the day before an election claiming that registrations were cancelled, and threatening those electors with arrest if they tried to vote; and, (5) in Michigan in 2008, rumors spread online via websites and blogs that citizens having foreclosed homes were ineligible to vote, and threatening that their eligibility would be challenged if they showed up at the polls.

These bills would criminalize these kinds of intentional behavior and imprison people who were convicted of violating the law.

***Against:***

Critics of the bills have questioned how the bills could be enforced, since a lot of the fraudulent and deceptive behavior during the so-called campaign "silly season" is the result of "campaign mischief" perpetrated by partisan zealots during the course of hotly contested political races. How, for example, would misinformation about polling places that circulates on the Internet be regulated and stopped? And, how could prosecutors find violators of this law if the purposely inaccurate information that was circulated on a brochure had no identifying information or campaign committee authorization?

***Response:***

While proponents of these bills acknowledge that enforcement of the law could sometimes pose a challenge to state and local campaign and law enforcement officials, they argue that these deceptive electioneering practices are egregious violations of a citizen's most basic right in a participatory democracy--the right to vote. Proponents note that people in the United States--most recently African-Americans and women--have died or sustained serious injury as they have worked to ensure their right to register and vote. That right, they argue, must always be protected under law.

***POSITIONS:***

The American Civil Liberties Union supports House Bill 4880 as amended. (8-25-10)

Wayne State University Law School Associate Professor Jocelyn Benson testified in favor of House Bill 4881. (8-25-10)

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