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Senate Bill 533 (as passed by the Senate)
Sponsor: Senator Mary Cavanagh
Committee: Elections and Ethics

Date Completed: 9-26-25

RATIONALE

According to testimony, the spread of false election information has increased over the past few years, especially in Michigan. For example, in October 2020 Attorney General (AG) Dana Nessel charged two men, John Burkman and Jacob Wohl, with multiple felonies. Nessel alleged that the defendants used robocalls to target voters of color in Detroit and other majority Black areas across multiple swing states to claim that voters would be placed in a database used to track down old warrants, collect debts, and impose mandatory vaccinations if they voted absentee.¹ Reportedly, in 2020 the AG also investigated false claims made by individuals on social media that the individuals had submitted multiple ballots, destroyed ballots, or otherwise interfered in the electoral process.² False election information has the potential to intimidate voters, reducing turnout and undermining the election process; however, states seeking to curb disinformation are also bound by the First Amendment of the U.S. Constitution, which generally protects false speech. In *United States v. Alvarez*, the Supreme Court noted that State regulations concerning content-based speech must be strictly scrutinized;³ however, the Supreme Court also acknowledges the constitutional right to vote without interference. In *Brnovich v. Democratic Nat'l Comm.*, the Supreme Court noted that "[e]nsuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest".⁴ According to the University of Georgetown's Institute for Constitutional Advocacy and Protection, states are thus permitted to regulate false speech concerning elections in a limited capacity. This includes the regulation of false or misleading speech about the voting process, such as when, where, or how to vote.⁵ Accordingly, it has been suggested that the Law be amended to increase penalties for intentionally spreading false information concerning election administration.

CONTENT

The bill would amend the Michigan Election Law to prescribe the following civil fines:

- For an individual who knowingly made a false statement or misrepresentation about an election with the intent to impede or prevent another individual from voting, a fine of up to \$1,000.

¹ As of August 1, 2025, the defendants pleaded no contest to intimidating voters, conspiracy to violate election law, using a computer to violate election law, and using a computer in a criminal conspiracy. Their sentencing is scheduled for December 1. For more information, see:

<https://www.freep.com/story/news/politics/elections/2025/08/01/wohl-burkman-robocall-scheme-2020-election-detroit-plea/85477274007/>

² Donahue, Allison, "Nessel issues cease-and-desist letters over voter misinformation", *Michigan Advance*, November 18, 2020.

³ *United States v. Alvarez*, 567 U.S. 709 (2012).

⁴ *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 19 (2021).

⁵ University of Georgetown Institute for Constitutional Advocacy and Protection, *Fact Sheet: Regulation of False, Misleading, or Intimidating Speech About Elections*, 2024.

- For an employer who employed, for election-related purposes, an individual who violated the above prohibition, a fine of up to \$10,000, unless the entity demonstrated no prior knowledge that the individual planned to make a false statement or misrepresentation.

MCL 168.931c

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a reintroduction of Senate Bill 707 from the 2023-2024 Legislative Session. The bill passed the Senate and was referred to the House of Representatives but received no further action. The bill is also similar to House Bill 5948 from the 2021-2022 Legislative Session.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The legislation would protect and strengthen the State's election process. Testimony before the Senate Committee on Elections and Ethics indicates that voters increasingly face the threat of election disinformation. This occurs on a large scale, such as the operation conducted by Burkman and Wohl, as well as on a smaller scale, attested to anecdotally. Reportedly, those spreading disinformation target non-English speakers, young voters, older voters, and voters of color, who may struggle to navigate or may already distrust the electoral system. Social media sites, commonly used by young voters, and closed-messaging apps like WhatsApp, commonly used by non-English speakers, further the spread of disinformation.⁶ The spread of disinformation threatens the legitimacy of the State's elections. Voters misinformed about the electoral system may distrust it. In February 2024, the Bipartisan Policy Center conducted a poll of voters, finding that only 69% (60% of respondents who identified as Republican and 85% of respondents who identified as Democrat) believed that their votes would be counted accurately in the 2024 general election.⁷ This also may reduce voter turnout, as voters told their votes won't count may not cast their ballots. Disinformation confuses and exhausts voters, which may discourage participation in an election. By punishing bad actors, the State could reduce and discourage the spread of further disinformation, ensuring voters could cast their ballots without interference.

Opposing Argument

The line between disinformation and misinformation could be difficult to distinguish, resulting in unfair penalization. Testimony indicates that disinformation is false information that is intentionally spread, whereas misinformation is false information unintentionally or accidentally spread. An individual could spread false information by posting the wrong election date on social media. Under the bill, if such a case were reported as disinformation, the prosecuting attorney would have to determine whether that individual purposefully or accidentally posted the wrong information to charge the individual. Previous cases concerning similar content demonstrate the difficulty in distinguishing intention. For example, in *United States v. Mackey*, the defendant was accused of intentionally misleading voters by posting on social media, shortly before the 2016 general election, information that falsely suggested supporters of then-candidate Hillary Clinton could vote by text message. The defendant was tried before a jury in the United States District Court for the Eastern District of New York,

⁶ Little, Olivia, "Election misinformation is going viral on TikTok", *Media Matters for America*, November 4, 2020; Nerbovig, Ashley, "Michigan's immigrant communities hit with misinformation on closed platforms", *Detroit Free Press*, November 27, 2020.

⁷ Allen, Jeff, et al., "Who Voters Trust for Election Information in 2024", *Bipartisan Policy Center*, February 26, 2024.

which found him guilty of conspiracy against citizens exercising their right to vote; however, the United States Court of Appeals for the Second Circuit reversed the lower court's decision, stating that the prosecution had failed to prove the defendant had *knowingly* agreed to join a conspiracy to defraud voters. In complex cases, the prosecutor could reach the wrong conclusion concerning intent, punishing individuals who were simply exercising their First Amendment rights.

Opposing Argument

Some believe the bill could be enforced inequitably. Currently, if an individual thinks the individual witnessed an instance of election disinformation, that individual can report the instance to the Secretary of State's office, which generally refers the matter to the Attorney General's office for investigation and prosecution. Both the Attorney General (AG) and the Secretary of State are elected based on a partisan ballot. As such, the punishments proposed by the bill could be used as part of a political agenda.

Response: While the Secretary of State and AG are partisan officials, both have a duty to protect Michiganders regardless of partisan affiliation. The bill would help them achieve this goal. Additionally, testimony indicates that the staff of both officials are composed of State workers who serve the State in a non-partisan fashion. Lastly, the AG would not be the only attorney prosecuting potential violators. Any prosecuting attorney could file a case against a person for disinformation under the bill.

Legislative Analyst: Abby Schneider

FISCAL IMPACT

The bill could have a positive fiscal impact on the State and local units of government. The bill would impose a civil fine of up to \$10,000. Revenue collected from civil fines is used to support local libraries. Additionally, \$10 of the civil fine would be deposited into the State Justice System Fund, which supports justice-related activities across State government in the Departments of Corrections, Health and Human Services, State Police, Treasury. The Fund also supports justice-related issues in the Legislative Retirement System and the Judiciary. The amount of revenue to the State or for local libraries is indeterminate and dependent on the actual number of violations.

Fiscal Analyst: Bobby Canell
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.