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TESTIMONY OF

TANYA CLAY HOUSE

DIRECTOR OF PUBLIC POLICY

LAWYERS' COMMITTEE

FOR CIVIL RIGHTS UNDER LAW

SUBMITTED TO:

THE U.S. SENATE

COMMITTEE ON THE JUDICIARY

**“Deceptive Practices and the Impact on
Minority Voters in the 2012 Election”**

On

June 26, 2012

**Testimony of Tanya Clay House
Public Policy Director, Lawyers' Committee for Civil Rights Under Law**

Before the U.S. Senate Committee on the Judiciary

June 26, 2012

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INTRODUCTION

Mr. Chairman and members of the Committee, thank you for inviting me to testify today to talk about the harmful impact of deceptive voting practices on historically disenfranchised communities, particularly against communities of color. My name is Tanya Clay House, Director of Public Policy for the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee is actively engaged in enforcing the right to vote and ensuring the integrity of our elections through litigation and policy advocacy.

Voting and fair elections are at the center of who we are as a country. The right to vote is one of our nation's most fundamental rights. Throughout our history, various communities have organized and exercised this right to achieve equality and greater access to the American Dream. That is why it is particularly distressing when individuals and groups use deception and intimidation with the sole purpose of preventing eligible Americans from participating in our democracy. The rights of minority voters and other vulnerable communities are severely threatened when deceptive election practices, which disseminate information to voters in order to deliberately misinform them about the time, place or manner of an election, are allowed to go unchecked and unpunished. Unfortunately, current law is insufficient in preventing these nefarious actions. The Lawyers' Committee applauds this committee's efforts to investigate the prevalence of deceptive practices before the November election.

Mr. Chairman, thank you for your leadership in calling for this hearing. I especially wish to thank Senators Charles Schumer (D-NY) and Ben Cardin (D-MD) for their leadership in reintroducing the Deceptive Practices and Voter Intimidation Prevention Act of 2011, S. 1994. This bill will clarify the definition of deceptive practices for law enforcement officials, making it easier for these officials to prosecute perpetrators of deceptive practices. Additionally, the bill's criminal provisions create deterrence measures to prevent future acts intended to intimidate and mislead voters, and also ensure that perpetrators face real consequences when they mislead voters. Finally,



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the bill will also require the federal government to investigate allegations of deceptive practices. This is necessary so that it can take an active role in protecting voters against false information regarding the ability to participate in elections by immediately taking action and publicizing corrective information if it receives credible reports of deceptive voting practices. The immediate dissemination of this information will mitigate the potentially disenfranchising confusion perpetrators of these actions are trying to sow. The Lawyers' Committee supports the Deceptive Practices Bill because it includes direly needed reform provisions also recommended in the Lawyers' Committee/Common Cause upcoming report on deceptive practices. Thus, the focus of my testimony today will be on our findings in this report, and why the Deceptive Practices Bill must be adopted to protect the integrity of our elections.

BACKGROUND

The Lawyers' Committee was founded in 1963 following a meeting in which President John F. Kennedy charged the private bar with the mission of providing legal services to address racial discrimination. We continue to work with private law firms as well as public interest organizations to advance racial equality in our country by increasing educational opportunities, fair employment and business opportunities, community development, fair housing, environmental health and criminal justice, and meaningful participation in the electoral process.

Indeed, since our inception, voting rights has been at the center of our work. As part of our voting and elections work, we are also leaders in the Election Protection coalition. Election Protection works throughout the election cycle to expand access to our democracy for all eligible Americans, educates and empowers voters through various tools, including the 1-866-OUR-VOTE and 1-888-VE-Y-VOTA hotlines, collects data about the real problems with our election system, and puts a comprehensive support structure in place on Election Day. Since its inception, the 1-866-OUR-VOE hotline has received calls from over half a million voters. Most recently, the Election Protection hotline received over 1500 calls from voters seeking assistance during the Wisconsin recall election.

The Voting Rights Project of the Lawyers' Committee has an integrated program that includes litigation, Election Protection, research, advocacy, and voter education. The Lawyers' Committee has consistently been at the forefront of legislative efforts to protect voting rights, including all of the reauthorizations of the Voting Rights Act of 1965 (VRA). The 2006



reauthorization resulted in large part from the advocacy efforts of a voting rights coalition lead by the Lawyers' Committee. The coalition organization the National Commission on the Voting Rights Act created a report which illustrated the continuing need for the protections afforded by the VRA.

The Lawyers' Committee continues to be extremely active in defending the constitutionality of Section 5 of the Voting Rights Act, having intervened in *Shelby County, Alabama v. Holder*, in which both the District and Circuit Courts have upheld its constitutionality.¹ We have also intervened to enforce Section 5 and defend its constitutionality in the following cases:

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- (1) ***Mi Familia Vota v. Detzner*** – On June 8, 2012, the Lawyers' Committee filed suit with the American Civil Liberties Union and the law firm of Weil, Gotshal & Manges LLP under Section 5 of the VRA to challenge Florida's efforts to make lawful citizens and already legally registered voters re-verify their citizenship or lose their ability to vote.
- (2) ***Florida v. United States*** – On June 21, 2012, the Lawyers' Committee argued in D.C. federal court that Florida's recent restrictions on third-party voter registration drives and early voting violate Section 5 of the VRA because they disproportionately impact minority communities. Indeed, minority communities rely on registration drives to register to vote and utilize early voting at far higher rates than the population as a whole. The suit, filed with the Brennan Center for and the law firm of Bryan Cave, also argues that new requirements permitting recent movers to only vote via provisional ballot also violate Florida's Section 5 obligations.
- (3) ***Texas v. Holder*** – The Lawyers' Committee, along with the law firm of Dechert LLP and the Brennan Center for Justice, represent the Texas State Conference of NAACP Branches and the Mexican American Caucus of the Texas House of Representatives ("MALC") as interveners in litigation to oppose preclearance under Section 5 of the Voting Rights Act of a photo ID requirement for in-person voting that the State of Texas enacted in 2011.

¹ *Shelby County, Ala. v. Holder*, 679 F. 3d 848 (C.A.D.C. 2012).



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(4) ***Texas v. United States*** - The Lawyers' Committee is serving as local counsel for the Mexican American Legislative Caucus of the Texas House of Representatives ("MALC") in litigation to oppose preclearance under Section 5 of the Voting Rights Act of redistricting plans adopted by the State of Texas for Congress and the Texas House of Representatives.

(5) ***South Carolina v. United States*** – The Lawyers' Committee represents defendant interveners, a private individual and the state conference of the NAACP, in this litigation asserting that South Carolina's voter photo ID law violates Section 5 of the VRA.

We also have filed cases to enforce states' obligations to provide registration opportunities at public assistance agencies under the National Voter Registration Act (NVRA), including:

(1) ***Delgado v. Galvin*** - The Lawyers' Committee serves a co-counsel for Bethsaida Delgado, the National Association for the Advancement of Colored People (NAACP) and New England United for Justice (NEU4J), who on May 15, 2012 filed suit in response to Massachusetts's violations of the National Voter Registration Act of 1993 (NVRA) that make it difficult for public-assistance clients to register to vote.

(2) ***NCLR v. Miller*** - On June 11, 2012, the Lawyers' Committee, together with law firm pro bono counsel Dechert LLP and Woodburn & Wedge and other litigation partners, filed suit in federal court to remedy the failure of Nevada state officials to provide voter registration services at state public assistance offices, as required by the National Voter Registration Act of 1993 (NVRA).

(3) ***Gonzales v. Arizona*** - The Lawyers' Committee and several other legal organizations represented a broad coalition of Arizonans – including the Inter Tribal Council of Arizona, Inc. (ITCA), the Hopi Tribe, the League of Women Voters of Arizona (LWVAZ), the League of United Latin American Citizens (LULAC), People for the American Way Foundation (PFAWF), the Arizona Advocacy Network (AzAN), and State Representative Steve Gallardo – in *Gonzales v. Arizona*, where we have challenged the voting-related provisions of Proposition 200. Proposition 200 disenfranchises qualified and eligible voters by requiring citizens to present documentary proof of their citizenship status when registering to vote, and further requiring qualified and

registered voters to present additional identification at the polling place on Election Day.

Overall, our NVRA litigation has resulted in about 1 million voters being able to register to vote.

Furthermore, as a result of our Election Protection work in Minnesota, the Lawyers' Committee participated in a successful defense of the decision of the Minnesota election officials preventing the use of "Please ID Me" buttons in the polling place because the buttons gave the false impression that voters needed to provide photo identification in order to vote. The Court agreed with the arguments in our *amicus curiae* brief that the buttons were meant to deceive voters and wearing them into polling places was not protected by the First Amendment. As a result, the court, in *Minnesota Majority v. Mansky*, denied Plaintiffs' request for a temporary restraining order against the injunction preventing the use of the buttons.²

DECEPTIVE PRACTICES DISENFRANCHISE VOTERS

Current instances of voter deception are the latest variation of an ugly recurring theme in our nation's politics: attempting to prevent certain populations in this country from casting their vote. Earlier in our history, major obstacles for voters included threats of violence, poll taxes, party primaries that only allowed white voters to participate ("white primaries"), and educational and property requirements. Many hoped and expected the Voting Rights Act of 1965 to eradicate such blatant instances of voter suppression. Almost 50 years after the passage of the Voting Rights Act, however, historically disenfranchised voters continue to be the target of deceptive election practices and voter intimidation. The practices are often more subtle than the instances we have seen the past. Nonetheless, they have been responsible for frightening and misleading voters, convincing many of them that they cannot or should not exercise their fundamental right to vote.

Deceptive election practices occur when individuals, political operatives, and organizations intentionally disseminate misleading or false election information that prevents voters from participating in the electoral process. These tactics often target traditionally disenfranchised communities, which typically are communities of color, persons with disabilities, persons with low income, seniors, young people, and naturalized citizens. These deceptive tactics often take the form of flyers or robocalls giving voters false

² *Minnesota Majority v. Mansky*, 789 F. Supp. 2d 1112 (D. Minn. 2011).



information about the time, place or manner of an election, political affiliation of candidates, or criminal penalties associated with voting.

The advancement of technology has enabled these types of deceptive tactics to become more sophisticated and nuanced, which creates a greater potential for certain voters to be targeted. The internet and social media platforms like Facebook and Twitter, enable deceptive tactics to have a greater impact by reaching larger audiences and thus potentially depriving a larger amount of voters their fundamental right to vote.

EXAMPLES

The most common types of deceptive practices used in recent elections are: (1) individuals using official-looking seals or insignias to influence or intimate voters; (2) flyers with bogus election rules; (3) flyers advertising the wrong election date; (4) deceptive online messages; (5) robocalls with false information; and (6) Facebook messages containing misleading information.

For instance, on Election Day in 2010, Election Protection received reports to the 1-866-OUR-VOTE Hotline that voters in predominantly African-American jurisdictions in Maryland were receiving strange robocalls. These calls, it turns out, were authorized by the campaign manager for Republican gubernatorial candidate Robert Ehrlich, and claimed that his opponent, Democrat Martin O'Malley, had won the election and implying that there was no longer a need to vote. The call said, "I'm calling to let everyone know that Governor O'Malley and President Obama have been successful. Our goals have been met. The polls were correct, and we took it back. We're OK. Relax. Everything is fine. The only thing left is to watch on TV tonight. Congratulations and thank you."

Election Protection and the Lawyers' Committee received numerous reports of voters being misled by deceptive practices on Election Day in 2008 including:

- (1) Voters in Arizona Legislative District 20 received robocalls directing them to a polling location that was incorrect and far from their actual polling place. On that same day, another voter called to report a text message received from an unknown number saying that because of the long lines at the polls, supporters of one major presidential candidate should vote on Wednesday instead of Election Day. The text also advised people to send the text along to all their friends.

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- (2) Voters in Colorado received text messages stating that supporters of one major presidential candidate should vote the next day, on Wednesday, due to long lines.
- (3) In Florida, students at the University of Florida received text messages trying to trick them into voting on the wrong day. One text message stated, “[d]ue to high voter turnout Republicans are asked to vote today and Democrats are asked to vote tomorrow. Spread the word!” Another read, “News Flash: Due to long lines today, all Obama supporters are asked to vote on Wednesday. Thank you!! Please forward to everyone.” Some students even received text messages purporting to be from the vice president of the university.
- (4) In Virginia, an email was circulated at 1:16 am on Election Day to students and staff at George Mason University, purportedly from the University Provost falsely advising that the election had been postponed until Wednesday. Later, the Provost sent an email stating that his account had been hacked and informing students the election would take place that day as planned.
- (5) Voters in Virginia reported fake flyers claiming to be from the Virginia State Board of Election. They were distributed in the southern part of the state, and on the Northern Virginia campus of George Mason University falsely stating that, due to larger than expected turnout, “[a]ll Republican party supporters and independent voters supporting Republican candidates shall vote on November 4th...All Democratic party supporters and independent voters supporting Democratic candidates shall vote on November 5th.”

These are just a few examples of the reports that the Lawyers’ Committee has received. This intentional dissemination of fraudulent deceptive information is an affront to the very core of our democracy. To protect a citizen’s fundamental right to vote, the law must contain clear protections to combat this type of election fraud. By doing so, the law will provide attorneys general with the clarity they need to pursue these acts as election crimes, direct the Department of Justice and relevant state authorities to immediately correct the false information, and serve as a warning to the perpetrators themselves that their deceptive election practices are subject to prosecution.

COMBATTING DECEPTIVE PRACTICES ADDRESSES THE REAL FRAUD

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Recent attention has been given to the alleged problem of voter impersonation fraud, causing a new wave of suppressive legislation requiring restrictive voter identification and proof of citizenship at the polls. However, it has been well documented that voter impersonation fraud is extremely rare.³ Instead, these voter identification laws threaten to disenfranchise a large number of voters, particularly voters of color, in order to address a nearly non-existent problem.

On the other hand, deceptive practices are in fact regularly occurring. This has been documented not only through the Election Protection database, but also numerous media reports and investigations throughout the country. Like other forms of voter intimidation, deceptive practices can intimidate or frighten voters into casting a ballot for a candidate for whom they may not otherwise have voting, causing elections to fail to be a reliable indicator of voters' choices. Moreover, based upon our expertise developed through our extensive work to protect voters before, during and after they cast their ballot, we believe deceptive practices prevent many voters from exercising their right to freely cast a ballot because of the dispersal of arguably fraudulent information. Using misinformation to prevent eligible voters, who otherwise would have voted, from casting ballots, can change the outcome of an election.

If we are truly committed to combating real voter fraud, Congress should enact the Deceptive Practices and Voter Intimidation Prevention Act (S. 1994) without delay.

³ WENDY R. WEISER & LAWRENCE NORDEN, VOTING LAW CHANGES IN 2012, 4 (2011), available at http://www.brennancenter.org/content/resource/voting_law_changes_in_2012/.

CURRENT VOTING RIGHTS STATUTES ARE INSUFFICIENT

While we agree that proper enforcement of current voting rights statutes provides a significant deterrent against many forms of intimidation, they are not always sufficient. In particular, some point to Section 11(b) of the Voting Rights Act and state statutes addressing voter intimidation and voter fraud as adequate measures in preventing deceptive voting practices. However, Section 11(b) of the Voting Rights Act, commonly known as the anti-intimidation provision, does not contain criminal penalties to punish those who perpetuate voter deception.

Moreover, only some states have passed laws protecting voters from deceptive practices and those that have done so have banned only some of the practices highlighted in our Deceptive Practices report and our testimony today.

Further, to the extent that there are laws on the books, legal standards for determining whether a voter practice is deceptive remain murky. For example, both Colorado and Arizona have laws against using “any corrupt means” to influence an election and voter intimidation, respectively. However, no state appellate court in Colorado has defined the term “any corrupt means,” and law enforcement agencies have yet to bring a claim under the anti-intimidation statute in Arizona, despite the multiplicity of deceptive voting practices the Lawyers’ Committee has documented in that state.

In sum, state laws have been largely ineffective in deterring or punishing deceptive election practices and voters continue to pay the price. The laws that do address certain variations of deceptive election practices tend to be either too narrow in scope or are ambiguous about their application. As a result, prosecutions are rare, corrective information is not disseminated in a timely manner, and similar practices continue to influence and undermine the integrity of the elections. A consistent standard across the country is direly needed to ensure that all voters have the same protections and can cast their ballots properly, without fear of having received deliberately false information about the voting process or the election.

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RECOMMENDATIONS FROM 2012 DECEPTIVE PRACTICES REPORT

Because state and federal laws addressing deceptive practices have provided little deterrence, the Lawyers' Committee recommends several legal and policy reforms to combat deceptive practices (these recommendations are included in its upcoming report it co-authored with Common Cause). These reforms should be implemented before the November 2012 election to protect voters' rights. The report contains the following recommendations:

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- (1) The law must provide a clear and precise legal definition of deceptive practices. With a clear definition provided in the law, law enforcement will have less difficulty determining whether a practice intimidating voters falls under the purview of the law, and may then take a more active role in enforcing legal prohibitions on deceptive practices. This definition must include clarity about the forms of communication through which messages intended to mislead voters may be conveyed.
- (2) A private right of action must be included in the law to empower voters to actively protect their voting rights. Without a private right of action, laws prohibiting deceptive voting practices will be largely ineffective. The few states with a statute permitting the prosecution of perpetrators of deceptive practices have little track record of enforcement. However, if local, state or federal authorities fail to appropriately redress such practices, victims must be allowed to proceed. For example, over a month and a half before the 2008 election, a Philadelphia voter reported that people were handing out flyers which stated that individuals would be arrested when they went to vote if they had outstanding warrants or parking tickets. If the law had allowed a private right of action, the voter could have brought suit and enjoined the distribution of the flyers.
- (3) Federal and state governments must take steps to implement corrective action in addition to passing statutes prohibiting deceptive practices. When a deceptive practice occurs on Election Day, voters may not have enough time to bring a private action to stop the practice. Virginia State Police set a positive example of government intervention to correct a deceptive practice when, one week before Election Day in 2008, they issued a press release announcing that it was investigating "the source responsible for an erroneous election



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flyer circulating in the Hampton Roads region and via the Internet. The one-page flyer falsely claims to be from the State Board of Elections and provides incorrect voting dates. The same flyer has apparently been scanned and is now circulating by email.” Indeed, as this in example, the impact of deceptive practices may be minimized if voters are fully informed about their voting rights and federal and state governments must institute voter education programs to combat this misinformation.

- (4) In order to rapidly respond to voters’ complaints about deceptive practices, federal, state and local law enforcement officials should coordinate a rapid response plan with voting rights and other civil rights organizations working in the state. For example, Election Protection received a call in July 2011 in which the caller stated that voters registered for a particular political party received recorded calls claiming to be from an anti-abortion rights group saying that they did not need to go to a polling place to vote, and that they did not need to worry because their absentee ballot was in the mail. The calls came on the last day polling places were open – too late to submit an absentee ballot. In this case, it is likely that a voter would not have sufficient time to file suit to stop the practice, but a rapid response plan to empower local organizations would help distribute accurate information and mitigate confusion.
- (5) States must take a proactive role in collecting data for post-election studies of deceptive practices. The location, date, and details as well any corrective action taken should be monitored so that states may reassess how they may best protect voters from and misleading information in the future.

DECEPTIVE PRACTICES DO NOT CONSTITUTE PROTECTED SPEECH

Some critics have raised the concern that criminalizing deceptive election practices unconstitutionally restricts freedom of speech. The importance of freedom of speech to democracy is immeasurable and should be fiercely guarded by courts and legislators. The constitutional right to free speech, however, cannot be used to prevent another person from exercising an equally fundamental right: the right to vote. The model law we propose does not infringe on freedom of speech because it captures only unprotected speech. Furthermore, we support constructive efforts to



ensure that S. 1994 does not unconstitutionally infringe upon freedom of speech while vigorously protecting the right to vote.

Supreme Court jurisprudence has long established that certain categories of low-value speech are outside the realm of First Amendment protection. Obscenity, defamation, incitement, and fraud have historically been considered by the Court as unworthy of First Amendment protection.⁴ Deceptive election speech regarding voting is fraudulent and therefore unprotected.

This is for good reason. False statements have little constitutional value.⁵ They do little to contribute to the “uninhibited, robust, and wide-open debate” on public issues, the key principle underlying freedom of speech protection.⁶ Spreading lies about an election to prevent certain people from voting certainly does not comport with this principle. Though the falsity of a statement is not dispositive of its constitutionality, the distinguishing element between false statements which are protected and those which are unprotected is the existence of a *malicious intent*.⁷ The Court has steadfastly held that when an individual communicates a false statement of fact about a matter of public concern, the speaker can be held to account only upon a showing of intent; this avoids the risk of punishing innocent mistakes.⁸ The Lawyers’ Committee supports the regulation of unprotected speech which requires, in addition to a false statement, the showing of intent to deprive another of the right to vote. To hold a person accountable under this standard, the complainant must show that the defendant made a false representation of a material fact knowing that the representation was false and demonstrate that the defendant made the representation with the intent to mislead the audience.⁹

Lawmakers should be mindful that even where unprotected speech is implicated, a statute must be carefully crafted to target only the proscribed conduct so as not to chill protected speech. The Lawyers’ Committee supports this limitation.

Even if analyzed under heightened scrutiny, the model law proposed by the Lawyers’ Committee would pass constitutional muster because states have a compelling interest in protecting the right to vote. In *Burson v. Freeman*, the Court upheld a provision of the Tennessee Code, which prohibited the solicitation of votes and the

⁴ *U.S. v. Stevens*, 130 S.Ct. 1577, 1584 (2010).

⁵ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

⁶ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

⁷ *United States v. Alvarez*, 617 F.3d 1198, 1206-07 (9th Cir. 2010) *cert. granted*, 132 S. Ct. 457, 181 L. Ed. 2d 292 (U.S. 2011) (*citing Gertz* 418 U.S. at 347).

⁸ *Alvarez*, 617 F.3d at 1206-07 (*citing Sullivan*, 376 U.S. at 283).

⁹ *See Illinois ex rel. Madigan v. Telemarketing Assocs.*, 538 U.S. 600 (2003).

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display or distribution of campaign materials within 100 feet of the entrance to a polling place. 504 U.S. 191, 210 (1992). The Court reasoned that the 100 foot boundary served a compelling state interest in protecting voters from interference, harassment, and intimidation during the voting process.¹⁰ It clearly follows from this holding that the state has a compelling interest in protecting the actual act of voting, which is precisely what deceptive election practices seek to prevent. Losing the opportunity to vote through no fault of the voter is an irreparable harm. Once polls close on Election Day, there is nothing the victim of deceptive election practices can do at that point. That person's vote is lost and that loss cannot be recovered or remedied.

THE DECEPTIVE PRACTICES BILL PROTECTS VOTERS' RIGHTS

The Lawyers' Committee is pleased that the Deceptive Practices and Voter Intimidation Prevention Act of 2011 follow the recommendations of the 2012 Lawyers' Committee and Common Cause report. We believe these are the best legislative solutions to successfully combat deceptive practices. Similar language creating more severe penalties and monitoring requirements is also included in the Voter Empowerment Act, introduced by Congressman John Lewis and the over 100 cosponsors the U. S. House of Representatives.

The Lawyers' Committee has actively supported legislation addressing deceptive voting practices in several past Congresses, including when it was first introduced in 2005 (S. 1975) by then-Senator Barak Obama. With the upcoming presidential election in November, Congress can no longer continue to wait to enact comprehensive electoral reform prohibiting the use of deceptive practices to influence voters.

As we have recommended, the Deceptive Practices and Voter Intimidation Prevention Act defines a deceptive practice in a federal election as when a person communicates, through any means of written, electronic, or telephone communication, or produces information he or she knows to be false with the intent to "mislead" voters, or discourage a voter from casting his or her ballot, within 90 days of an election. This definition would cover acts of deception committed using new technology, such as the previously mentioned incident in Virginia in 2008 when the email account of George Mason University's provost was hacked and an email went out instructing students to falsely vote on Wednesday.

¹⁰ *Id.*



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Furthermore, the bill would prohibit a person from releasing false statements about political endorsements if the person knows that the statement is false and intends to mislead voters. This provision is important because of instances like in Maryland in 2006 where people, who claimed they were hired by a candidate, handed out flyers falsely claiming two candidates were from the other party and that they had been endorsed by prominent African-American officials when they had not.

Because state and federal laws currently addressing deceptive practices fail to provide a clear definition of a deceptive practice, courts are unable to consistently enforce a prohibition on deceptive practices. The bill creates a clear definition so that judges as well as law enforcement can take the necessary actions. This definition may also serve as deterrence so that future elections are not marred by voter deception.

One of the most important changes created by this bill is the implementation of a private right of action for persons whose right to vote has been impacted by a deceptive voting practice, so that voters, like the voter from Philadelphia mentioned previously, can take action to stop these practices from impacting their communities. The remedies allowed under the bill to address harms created by deceptive voting practices permit a court to issue an injunction, restraining order, or other order to stop the deceptive practice.

Perhaps even more important, the Act requires the Attorney General to take corrective action when state and local election officials have not adequately addressed deceptive voting practices. Under the bill's provisions, the Attorney General must intervene to ensure that accurate information correcting any false statements is effectively disseminated. The intent of the examples listed above is to sow enough confusion among certain voters that they vote against their preferred candidate or not at all. Therefore, simply prosecuting a perpetrator does not solve the immediate problem. Instructing the government, a trusted source, to immediately publicize corrective information will help mitigate any damage created by the deceptive practice.

Finally, under the provisions of the bill, the Attorney General is required to submit a report to Congress within 180 days after an election describing allegations of deceptive voting practices and any action taken in response. This report must also be distributed to the public. In aggregating data and assessing any responsive action taken, the Attorney General can then determine whether there has been any progress in deterring these activities, and then implement a revised strategy to address this pervasive attack on the voting rights of Americans.



Deceptive voting practices have created an atmosphere of fear and intimidation for voters, discouraging participation in elections. In passing the Deceptive Practices and Voter Intimidation Prevention Act of 2011, Congress will be restoring confidence in our electoral system. We must make every effort to ensure that all Americans are empowered to cast their vote in the 2012 election, fulfilling our country's democratic promise.

CONCLUSION

Mr. Chairman, I want to thank you and the Committee for your commitment to protecting the vitality of our democracy in ensuring that every eligible citizen has an equal opportunity to make her voice heard by casting a ballot on Election Day. Deceptive practices continue to disenfranchise millions of American voters by interfering with their right to freely cast a ballot. For too long, Congress had not taken affirmative action to deter deceptive voting practices. The current political climate of deception and intimidation has kept us from reaching our goal of voting equality. In order to realize the full potential of our democratic government under our Constitution which protects the liberty of the individual, Congress must act as a guardian of our fundamental right to vote and pass the Deceptive Practices and Voter Intimidation Prevention Act of 2011.

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