

# THE SHIELD ACT OF 2019



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## TITLE I – ENHANCED REPORTING REQUIREMENTS

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### Subtitle A—Establishing Duty to Report Foreign Election Interference

#### Sec. 101. Federal campaign reporting of foreign contacts.

Amends the Federal Election Campaign Act to create a reporting requirement of disclosing reportable foreign contacts. Creates an obligation for each political committee to notify the Federal Bureau of Investigation and the Federal Election Commission of the contact and provide a summary of circumstances not later than one week after said contact. Creates an individual obligation for each candidate to notify the treasurer or other designated official of the principal campaign committee of the reportable foreign contact and to provide a summary of the circumstances of the contact not later than three days after said contact. Requires each official, employee, or agent of a political committee to notify the treasurer or other designated official of the committee of a contact and provide a summary of the circumstances of the contact, not later than three days after said contact.

Defines “reportable foreign contact” to mean any direct or indirect contact or communication between a candidate, political committee, or any official, employee, or agent of such committee, and an individual that any of the aforementioned individuals knows, or has reason to know, or reasonably believes, is a “covered foreign national”; where any of the aforementioned individuals further knows, has reason to know, or reasonably believes the contact or communication involves an offer or other proposal for a contribution, donation, expenditure, disbursement, or solicitation forbidden in Section 319 of the Federal Election Campaign Act, or involves a coordination or collaboration with, an offer or provision of information or services to or from, or persistent and repeated contact in connection with an election with a covered foreign national. Creates an exception such that “reportable foreign contact” does not include contact or communication between a covered foreign national and an elected official or such official’s employee solely in their official capacity as an official or employee. Precludes contact or communication that involves a contribution, donation, expenditure, disbursement or solicitation as defined in Section 319 of the Federal Election Campaign Act from being considered exempt.

Defines a “covered foreign national” as a foreign principal that is a government of a foreign country or a foreign political party, an agent of such a foreign government or foreign political party, and persons on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury subject to sanctions related to the conduct of a foreign government or foreign political party. The agent definition applies to United States citizens only to the extent that person involved acts within the scope of that person’s status as the agent of a foreign government or foreign political party.

Renders this section applicable with respect to reportable foreign contacts occurring on or after the date of the Act’s enactment.

Establishes that required reports for any reportable foreign contact shall include the date, time, and location of the contact, the date and time a designated committee official was notified of the contact, the identity of the individuals involved, and a description of the contact, including the nature of any contribution, donation,

expenditure, disbursement, or solicitation involved or any prohibited activities discussed above. Renders this section applicable with respect to reports filed on or after the expiration of a 60-day period beginning on the date of this Act's enactment.

**Sec. 102. Federal campaign foreign contact reporting compliance system.**

Establishes a federal campaign foreign contact reporting compliance system, whereby each political committee must establish a policy requiring all officials, employees and agents of such committee to notify the treasurer or other designated official of the committee of any reportable foreign contact not later than three days following the contact. Requires each political committee to establish a policy that provides for retention and preservation of records and information related to reportable foreign contacts for no fewer than three years. When filing a statement of organization or certain reports, requires the treasurer of each political committee (except for an authorized committee) to certify that the committee has the aforementioned required policies in place, has designated an official to monitor compliance with such policies, and that not later than a week after the beginning of a formal or informal affiliation with the committee, all officials, employees, and agents of said committee will receive notice of such policies, be informed of contact restrictions, and sign a certification affirming their understanding of these policies and prohibitions. For authorized committees, the candidate shall make the required certification. Renders this section applicable with respect to political committees on or after the date of this Act's enactment. Allows existing political committees to file the aforementioned certification not later than 30 days after this Act's enactment.

**Sec. 103. Criminal penalties.**

Amends the Federal Election Campaign Act to include penalties such that anyone who knowingly and willfully commits a violation these provisions shall be fined not more than \$500,000, imprisoned not more than five years, or both. Further provides that anyone who knowingly and willfully conceals or destroys materials relating to a reportable foreign contact is to be fined not more than \$1,000,000, imprisoned not more than five years, or both.

**Sec. 104. Rule of construction.**

Establishes a rule of construction such that nothing in the title or amendments made by the title shall be construed to impede legitimate journalistic activities or to impose any additional limitation on the right to express political views or engage in public discourse for any individual who resides in the United States, is not a citizen or national, and is not lawfully admitted for permanent residence.

**Subtitle B—Strengthening Oversight of Online Political Advertising**

**Sec. 111. Short title.**

Establishes the subtitle may be cited as the "Honest Ads Act."

**Sec. 112. Purpose.**

Establishes that the purpose of this subtitle is to improve disclosure requirements for online political advertisements to enhance the integrity of American democracy and national security. Affirms that it does so to uphold the Supreme Court's well-established standard that the electorate bears the right to be fully informed.

**Sec. 113. Expansion of definition of public communication.**

Adds “paid internet or paid digital communication” to the definition of public communication. Amends the press exception to the definition of expenditure to account for online or digital outlets, including blogs and digital newspapers, unless such online or digital facilities are owned or controlled by any political party, political committee, or candidate.

**Sec. 114. Expansion of definition of electioneering communication.**

Adds “qualified internet or digital communication” to the definition of electioneering communication. Defines “qualified internet or digital communication” to mean any communication which is placed or promoted for a fee on an online platform. Does not require electioneering communications by means of online communications to be targeted to the relevant electorate. Amends the news exemption to the definition of electioneering communication to include communications appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station or any online or digital newspaper, magazine, blog, publication, or periodical, unless such broadcasting, online, or digital facilities are owned or controlled by any political party, political committee, or candidate. Provides that these amendments apply with respect to communications made on or after January 1, 2020.

**Sec. 115. Application of disclaimer statements to online communications.**

Substitutes “shall state in a clear and conspicuous manner” for “shall clearly state” when describing disclaimer requirements. Clarifies that communications are not made in a clear and conspicuous manner if it is difficult to read or hear or if the placement is easily overlooked. Provides special rules for disclaimers that apply to qualified internet or digital communications if the communication is disseminated through a medium in which providing all of the information is not possible. Specifically, requires the communication to include in a clear and conspicuous manner the name of the person who paid for the communication, and provide a means for the recipient of the communication to obtain the remainder of the information with minimal effort. Includes a safe harbor for clear and conspicuous statements for text, audio, and video communications. For text or graphic communications, letters must appear at least as large as the majority of the text in the communication, contained in a printed box, and printed with a reasonable degree of color contrast between the background and the printed statement. Audio statements must be clearly audible and intelligible at the beginning or end of a communication and last at least 3 seconds. Video with audio must include the statement at the beginning or end of the communication, and be both in a written format that appears for 4 seconds and with audio that is clearly audible and intelligible for at least 3 seconds. All other types of communications must be at least as clear and conspicuous as what is otherwise required for text, video, and audio. The “small items” regulatory exception for bumper stickers, pins, buttons, pens, and similar small items upon which disclaimers cannot be conveniently printed does not apply to qualified internet or digital communications, nor does the impracticability regulatory exception (for skywriting, water towers, wearing apparel) (specifically, 11 CFR 110.11(f)(1)(i) and (ii), or any successor to these rules). Modifies “stand by your ad” requirements for candidates or authorized persons by substituting “audio format” for “radio,” and “video format” for “television.”

**Sec. 116. Political record requirements for online platforms.**

Requires online platforms to maintain and make public in machine-readable format a complete record of any request to purchase qualified political advertisements made by a person whose aggregate requests on the online platform during the calendar year exceeds \$500. Requires advertisers to provide the online platform with the necessary information for the online platform to comply. Requires the contents of the record to include a digital copy of the political advertisement, a description of the audience targeted, the number of views generated and the date and timing that the advertisement was first and last displayed, the average rate charged for the advertisement, the name of the candidate to which the advertisement refers

(and the office sought) or the national legislative issue to which the advertisement refers. If a candidate is the advertiser, the record must include the name of the candidate, the committee of the candidate, and the treasurer of the candidate. All other records must include the name of the person purchasing the advertisement, the name and address of a contact person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person. Defines online platforms as any public-facing website, web application, or digital application (including a social network, ad network, or search engine) which sells qualified political advertisements and has 50,000,000 or more unique monthly United States visitors or users for a majority of the months during the preceding 12 months. Qualified political advertisements are defined to mean any advertisements (including search engine marketing, display advertisements, video advertisements, native advertisements, and sponsorships) that are made by or on behalf of a candidate, or communicate a message relating to any political matter of national importance, including (i) a candidate; (ii) any election to federal office, or (iii) a national legislative issue of public importance. Online platforms must make the record public as soon as possible and retain it for a period of not less than 4 years. Provides a safe harbor from enforcement for online platforms making their best efforts to identify requests which are subject to record maintenance requirements. The FEC will be responsible for crafting these best efforts rules. Provides penalties for failure to otherwise comply. Requires the FEC to establish rules, no later than 120 days after enactment, requiring common data formats for the online platform records so that they are machine-readable and publicly accessible, and establishing search interface requirements relating to such record, including searches by candidate name, issue, purchaser, and date. Requires FEC to report biannually to Congress on matters relating to compliance, recommendations for modifications, and identifying other ways to bring transparency to online political advertisements distributed for free.

**Sec. 117. Preventing contributions, expenditures, independent expenditures, and disbursements for electioneering communications by foreign nationals in the form of online advertising.**

Requires broadcasters, providers of cable or satellite television and online platforms to make reasonable efforts to ensure that political advertising is not purchased by foreign nationals, directly or indirectly. A reasonable effort requires that the station, provider, or online platform directly inquires from the individual or entity making the purchase whether the purchase is to be made by a foreign national, directly or indirectly. Establishes special rules constituting reasonable efforts for disbursements paid with credit card if, at the time of purchase, the purchaser had to disclose the credit verification value of the card, and the billing address associated with the card is in the United States, or, for United States citizens living abroad, the United States address used for voter registration purposes is provided.

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**TITLE II – CLOSING LOOPHOLES ALLOWING SPENDING BY FOREIGN NATIONALS IN ELECTIONS**

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**Sec. 201. Clarification of prohibition on participation by foreign nationals in election-related activities.**

Amends the Federal Election Campaign Act's ban on foreign nationals making contributions and expenditures in connection with elections by codifying language from an FEC regulation rendering it unlawful for a foreign national to direct, dictate, control, or directly or indirectly participate in the decision making process of any person (including a corporation, labor organization, political committee, or political organization) with regard to such person's election activity, including any decision making concerning the making of contributions, donations, expenditures, or disbursements in connection with elections; under certain circumstances, requires annual certification of compliance with ban on foreign national spending by

chief executive officer before any corporation makes any contribution, donation or expenditure in connection with an election.

**Sec. 202. Clarification of application of foreign money ban to certain disbursements and activities.**

Prohibits foreign national contributions to Super PACs; prohibits any foreign national from participating in decision making by any corporate PAC. Requires annual certification of compliance before any contribution or expenditure.

**Sec. 203. Audit and report on illicit foreign money in Federal elections.**

Requires the Federal Election Commission to conduct random audits to determine the incidence of illicit foreign money in each Federal election cycle. The FEC should submit a report to Congress no later than 180 days after the end of a Federal election cycle with the results of the audit as well as recommendations to address the presence of any illicit foreign money.

**Sec. 204. Prohibition on contributions and donations by foreign nationals in connections with ballot initiatives and referenda.**

Currently, the Federal Election Campaign Act prohibits the solicitation of a contribution or donation from a foreign national in connection with a Federal, state, or local election. This section extends that prohibition to apply to State or local ballot initiatives or referenda as well.

**Sec. 205. Expansion of limitations on foreign nationals participating in political advertising.**

Currently, the Federal Election Campaign Act prohibits foreign nationals from making an expenditure, independent expenditure, or a disbursement for electioneering communications. This section extends that prohibition to include: 1) disbursements for communications placed or promoted for a fee on a website, web application, or digital application that refer to a clearly identified candidate for Federal office and is disseminated within 60 days before a general, special, or runoff election, and within 30 days of a primary election or a convention or caucus of a political party to nominate a candidate; 2) disbursements for a broadcast, cable or satellite communication, or for communications placed or promoted for a fee on a website, web application, or digital application, that promotes, supports, attacks or opposes the election of a clearly identified candidate for Federal, State or local office; 3) a disbursement for a broadcast, cable, or satellite communication, or for any communication which is placed or promoted for a fee on an online platform that discusses an issue of national legislative importance (in an election year) but only if the disbursement is made by a covered foreign national as defined in Section 101 (such as foreign governments or foreign political parties or their agents); and 4) a disbursement by a covered foreign national (as defined in Section 101) to compensate any person for internet activity that promotes, supports, attacks or opposes the election of a clearly identified candidate.

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**TITLE III – DETERRING FOREIGN INTERFERENCE IN ELECTIONS**

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**Subtitle A—Deterrence under Federal Election Campaign Act of 1971**

**Sec. 301. Restrictions on exchange of campaign information between candidates and foreign powers.**

Amends the Federal Election Campaign Act to clarify that if a candidate or political campaign (or their agent) or a political committee or individual affiliated with a political committee provides or offers to

provide nonpublic campaign material to a covered foreign national, that act will be considered a solicitation for the purposes of the Federal Election Campaign Act. Nonpublic campaign material means campaign material that is produced by the candidate or the committee or produced at the candidate or committee's expense or request which is not distributed or made available to the general public or otherwise in the public domain, including polling and focus group data and opposition research.

**Sec. 302. Clarification of standard for determining existence of coordination between campaigns and outside interests.**

Amends the Federal Election Campaign Act to clarify that there does not need to be an agreement or formal collaboration in order to find "coordination" between a candidate and outside spender.

**Subtitle B—Prohibiting deceptive practices and preventing voter intimidation.**

**Sec. 311. Short title.**

Provides the title may be cited as the "Deceptive Practices and Voter Intimidation Prevention Act of 2019."

**Sec. 312. Prohibition on deceptive practices in Federal elections.**

Makes it unlawful to impede, hinder, discourage, or prevent another person from voting by knowingly providing false information about the time or place of voting or the qualifications for voting. Prohibits knowingly false written, electronic, telephonic, or other statements regarding Federal elections within 60 days of an election and allows criminal penalties for any infraction. Prohibits false written, electronic, telephonic, or other statements regarding public endorsements within 60 days of an election. Defines materially false information. Bans any person from intentionally interfering or hindering another person from voting, registering to vote, or aiding another person to vote or register to vote in a Federal election, includes a private right of action, and permits criminal penalties for any violation. Creates a private right of action for preventive relief by injunction, restraining order or other order. Provides a maximum penalty of \$100,000 and/or five years in prison for deceptive practices – including hindering, interfering with, or preventing voting or voter registration – in Federal elections. Provides the same penalties for those who attempt to commit the offense. Prohibits payments for refraining from voting. Authorizes the United States Sentencing Commission to amend the Federal Sentencing Guidelines.

**Sec. 313. Corrective action.**

Requires the Attorney General to communicate a correction upon receipt of a credible report of materially false information regarding elections and a determination that State and local election officials failed to clarify and correct the information. Provides that such information must, to the extent practicable, be disseminated by a means that will reach the persons to whom the materially false information has been or is being communicated, and further that the correction shall not be designed to favor or disfavor any particular candidate, organization, or political party.

Directs the Attorney General, in consultation with the Election Assistance Commission, State and local election officials, civil rights organizations, voter rights and protection groups, and other interested community organizations to publish written procedures and standards for determining corrective action under this section within 180 days of enactment.

**Sec. 314. Reports to Congress.**

Requires the Attorney General to submit a detailed report to Congress within 180 days of each general election and to make the report available to the public. The report should compile all allegations of deceptive practices and shall not include information that is privileged or otherwise protected from disclosure.

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## **TITLE IV – MISCELLANEOUS PROVISIONS**

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### **Sec. 401. Effective dates of provisions.**

States that each provision of this Act shall take effective without regard to whether or not the Federal Election Commission, the Attorney General, or any other person has promulgated regulations to carry out such provision or such amendment.

### **Sec. 402. Severability.**

Provides that if any provision of the Act is held to be unconstitutional, the remainder of the Act shall not be affected by the holding.