



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 23, 2019
(House)

STATEMENT OF ADMINISTRATION POLICY

H.R. 4617 – Stopping Harmful Interference in Elections for a Lasting Democracy (SHIELD) Act

(Rep. Lofgren, D-CA, and 137 cosponsors)

The Administration opposes passage of H.R. 4617, the Stopping Harmful Interference in Elections for a Lasting Democracy (SHIELD) Act. The Administration agrees that transparency and accountability in elections are vital to the democratic process. The SHIELD Act, however, is redundant, overly broad, ambiguous, and unenforceable. The Federal Election Campaign Act (FECA) and current regulations already address the policy objectives of H.R. 4617, and the bill's expansive language would make impartial and predictable implementation of the law impossible.

H.R. 4617's ambiguous language would ensnare American citizens and entities acting in good faith in its web of requirements and prohibitions. Title I, Subtitle A, for example, would require political committees to self-report foreign contact to the Federal Bureau of Investigation (FBI) and the Federal Election Commission (FEC) within one week and require political committees to establish a compliance protocol on self-reporting, among other new requirements. H.R. 4617's broad definition of "reportable foreign contact," however, would result in significant over reporting to the FBI and FEC, leading to fruitless inquiries and wasted time and resources. Given that Subtitle A would authorize criminal penalties and up to \$1 million in civil fines, the parameters for self-reporting foreign contacts should not be ambiguous. In fact, the bill's expansive definitions seem designed to instill a persistent fear among Americans engaged in political activity that any interactions they may have with a foreign national could put them in legal jeopardy and jeopardize the political viability of the candidates or issues they support.

Title I, Subtitle B purports to provide additional transparency to the public about who is purchasing political advertisements by imposing disclosure requirements on certain online platforms. For example, Subtitle B defines a "qualified political advertisement" to include messages "relating to any political matter of national importance, including . . . a national legislative issue of public importance." The term "national legislative issue of public importance," however, is not defined. Moreover, the bill includes a safe harbor that will exempt many online platforms from disclosure obligations, which could ultimately produce less transparency. The safe harbor allows an online platform to avoid the transparency requirements if it independently makes the determination, using its "best efforts," that the request to purchase an advertisement was not subject to the statute's recordkeeping requirements. The contours and scope of this extremely vague safe harbor, however, will likely be defined, if at all, through

regulations, creating a high likelihood that some platforms will be able to secure advantages over their competitors.

The Administration also opposes Title II of H.R. 4617, which purports to close “loopholes” related to foreign nationals’ financial campaign contributions made online and to certain entities. In reality, the conduct it addresses—i.e., foreign nationals donating money to Super PACs or Corporate PACs—is already prohibited. Foreign nationals are precluded from directing, controlling, and directly or indirectly participating in the decision-making process of any person, including a political committee, pertaining to any election-related activities. Moreover, foreign nationals cannot make contributions, donations, expenditures, or disbursements in connection with any elections in the United States.

Furthermore, Title II would require a corporation, limited liability company, or partnership to file a certification that a foreign national was not involved in certain prohibited election activities with the FEC before speaking. This provision could have the effect of precluding certain categories of speakers from commenting on events of national importance in the final days before a Federal election.

While the Trump Administration seeks to limit foreign national interference in our elections by strengthening FECA and combatting illegal behavior, the SHIELD Act would produce harmful unintended consequences without achieving that goal. Accordingly, the Administration opposes H.R. 4617.

If H.R. 4617 were presented to the President in its current form, his advisors would recommend that he veto it.

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