

110TH CONGRESS
1ST SESSION

S. 453

To prohibit deceptive practices in Federal elections.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2007

Mr. OBAMA (for himself, Mr. SCHUMER, Mr. LEAHY, Mr. CARDIN, Mr. FEINGOLD, Mr. KERRY, Mrs. FEINSTEIN, Mrs. CLINTON, Mrs. BOXER, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit deceptive practices in Federal elections.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Deceptive Practices
5 and Voter Intimidation Prevention Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The right to vote is a fundamental right ac-
9 corded to United States citizens by the Constitution
10 and the unimpeded exercise of this right is essential
11 to the functioning of our democracy.

1 (2) Historically, certain citizens, especially ra-
2 cial minorities, were prevented from voting because
3 of significant barriers such as literacy tests, poll
4 taxes, and property requirements.

5 (3) Some of these barriers were removed by the
6 15th, 19th, and 24th Amendments to the Constitu-
7 tion.

8 (4) Despite the elimination of some of these
9 barriers to the polls, the integrity of today’s elec-
10 tions is threatened by newer tactics aimed at sup-
11 pressing voter turnout. These tactics include “decep-
12 tive practices”, which involve the dissemination of
13 false information intended to prevent voters from
14 casting their ballots, intimidate the electorate, and
15 undermine the integrity of the electoral process.

16 (5) Denials of the right to vote, and deceptive
17 practices designed to prevent members of racial mi-
18 norities from exercising that right, are an outgrowth
19 of discriminatory history, including slavery. Meas-
20 ures to combat denials of that right are a legitimate
21 exercise of congressional power under the 13th,
22 14th, and 15th Amendments to the United States
23 Constitution.

24 (6) Shortly before the 1990 midterm Federal
25 elections, 125,000 voters in North Carolina received

1 postcards providing false information about voter eli-
2 gibility and a warning about criminal penalties for
3 voter fraud. Ninety-seven percent of the voters who
4 received postcards were African American.

5 (7) In 2004, Native American voters in South
6 Dakota were prevented from voting after they did
7 not provide photographic identification upon request,
8 despite the fact that they were not required to
9 present such identification in order to vote under
10 State or Federal law.

11 (8) In the 2006 midterm election, 14,000
12 Latino voters in Orange County, California received
13 mailings from the California Coalition for Immigra-
14 tion Reform, warning them in Spanish that “if you
15 are an immigrant, voting in a federal election is a
16 crime that can result in incarceration...”. In fact,
17 an immigrant who is a naturalized citizen of the
18 United States has the same right to vote as any
19 other citizen.

20 (9) In the same 2006 election, some Virginia
21 voters received automated phone messages falsely
22 warning them that the “Virginia Elections Commis-
23 sion” had determined they were ineligible to vote
24 and that they would face severe criminal penalties if
25 they tried to cast a ballot.

1 (10) In 2006 in Maryland, certain candidates
2 for Governor and United States Senator distributed
3 fliers in predominantly African-American neighbor-
4 hoods falsely claiming that the candidates had been
5 endorsed by their opponents' party and by promi-
6 nent figures who had actually endorsed the oppo-
7 nents of the candidates.

8 (11) Those responsible for these and similar ef-
9 forts should be held accountable, and civil and crimi-
10 nal penalties should be available to punish anyone
11 who seeks to keep voters away from the polls by pro-
12 viding false information.

13 (12) Moreover, the Federal Government should
14 help correct such false information in order to assist
15 voters in exercising their right to vote without confu-
16 sion and to preserve the integrity of the electoral
17 process.

18 (13) The Federal Government has a compelling
19 interest in "protecting voters from confusion and
20 undue influence" and in "preserving the integrity of
21 its election process". *Burson v. Freeman*, 504 U.S.
22 191, 199 (1992).

23 (14) The First Amendment does not preclude
24 the regulation of some intentionally false speech,
25 even if it is political in nature. As the Supreme

1 Court of the United States has recognized, “[t]hat
 2 speech is used as a tool for political ends does not
 3 automatically bring it under the protective mantle of
 4 the Constitution. For the use of the known lie as a
 5 tool is at once at odds with the premises of demo-
 6 cratic government and with the orderly manner in
 7 which economic, social, or political change is to be
 8 effected Hence the knowingly false statement
 9 and the false statement made with reckless disregard
 10 of the truth, do not enjoy constitutional protection.”.
 11 *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964).

12 **SEC. 3. PROHIBITION ON DECEPTIVE PRACTICES IN FED-**
 13 **ERAL ELECTIONS.**

14 (a) CIVIL ACTION.—

15 (1) IN GENERAL.—Subsection (b) of section
 16 2004 of the Revised Statutes (42 U.S.C. 1971(b)) is
 17 amended—

18 (A) by striking “No person” and inserting
 19 the following:

20 “(1) No person”; and

21 (B) by inserting at the end the following
 22 new paragraph:

23 “(2)(A) No person, whether acting under color
 24 of law or otherwise, shall, within 60 days before an
 25 election described in subparagraph (B), commu-

1 nicate or cause to be communicated information de-
2 scribed in subparagraph (C), or produce information
3 described in subparagraph (C) with the intent that
4 such information be communicated, if such person—

5 “(i) knows such information to be false;

6 and

7 “(ii) has the intent to prevent another per-
8 son from exercising the right to vote in an elec-
9 tion described in subparagraph (C).

10 “(B) An election described in this subparagraph
11 is any general, primary, run-off, or special election
12 for the office of President, Vice President, presi-
13 dential elector, Member of the Senate, Member of
14 the House of Representatives, or Delegate or Com-
15 missioner from a territory or possession.

16 “(C) Information is described in this subpara-
17 graph if such information is regarding—

18 “(i) the time, place, or manner of any elec-
19 tion described in subparagraph (B);

20 “(ii) the qualifications for or restrictions
21 on voter eligibility for any such election, includ-
22 ing—

23 “(I) any criminal penalties associated
24 with voting in any such election by ineli-
25 gible voters; or

1 “(II) information regarding a voter’s
2 registration status or eligibility;

3 “(iii) the political party affiliation of any
4 candidate running in a closed primary election
5 for any office described in subparagraph (B) if
6 the communication of the information also con-
7 tains false information described in clause (i) or
8 (ii); or

9 “(iv) the explicit endorsement by any per-
10 son or organization of a candidate running for
11 any office described in subparagraph (B).”.

12 (2) PRIVATE RIGHT OF ACTION.—

13 (A) IN GENERAL.—Subsection (c) of sec-
14 tion 2004 of the Revised Statutes (42 U.S.C.
15 1971(c)) is amended—

16 (i) by striking “Whenever any person”
17 and inserting the following:

18 “(1) Whenever any person”; and

19 (ii) by adding at the end the following
20 new paragraph:

21 “(2) Any person aggrieved by a violation of
22 subsection (b)(2) may institute a civil action or other
23 proper proceeding for preventive relief, including an
24 application in a United States district court for a

1 permanent or temporary injunction, restraining
 2 order, or other order.”.

3 (B) CONFORMING AMENDMENTS.—

4 (i) Subsection (e) of section 2004 of
 5 the Revised Statutes (42 U.S.C. 1971(e))
 6 is amended by striking “subsection (c)”
 7 and inserting “subsection (c)(1)”.

8 (ii) Subsection (g) of section 2004 of
 9 the Revised Statutes (42 U.S.C. 1971(g))
 10 is amended by striking “subsection (c)”
 11 and inserting “subsection (c)(1)”.

12 (b) CRIMINAL PENALTY.—

13 (1) IN GENERAL.—Section 594 of title 18,
 14 United States Code, is amended—

15 (A) by striking “Whoever” and inserting
 16 the following:

17 “(a) INTIMIDATION.—Whoever”; and

18 (B) by adding at the end the following:

19 “(b) DECEPTIVE ACTS.—

20 “(1) PROHIBITION.—

21 “(A) IN GENERAL.—It shall be unlawful
 22 for any person, within 60 days before an elec-
 23 tion described in subparagraph (B), to commu-
 24 nicate or cause to be communicated information
 25 described in subparagraph (C), or produce in-

1 formation described in subparagraph (C) with
2 the intent that such information be commu-
3 nicated, if such person—

4 “(i) knows such information to be
5 false; and

6 “(ii) has the intent to prevent another
7 person from exercising the right to vote in
8 an election described in subparagraph (C).

9 “(B) ELECTION DESCRIBED.—An election
10 described in this subparagraph is any general,
11 primary, run-off, or special election for the of-
12 fice of President, Vice President, presidential
13 elector, Member of the Senate, Member of the
14 House of Representatives, or Delegate or Com-
15 missioner from a territory or possession.

16 “(C) INFORMATION DESCRIBED.—Informa-
17 tion is described in this subparagraph if such
18 information is regarding—

19 “(i) the time, place, or manner of any
20 election described in subparagraph (B);

21 “(ii) the qualifications for or restric-
22 tions on voter eligibility for any such elec-
23 tion, including—

1 “(I) any criminal penalties asso-
2 ciated with voting in any such election
3 by ineligible voters; or

4 “(II) information regarding a
5 voter’s registration status or eligi-
6 bility;

7 “(iii) the political party affiliation of
8 any candidate running in a closed primary
9 election for any office described in sub-
10 paragraph (B) if the communication of the
11 information also contains false information
12 described in clause (i) or (ii); or

13 “(iv) the explicit endorsement by any
14 person or organization of a candidate run-
15 ning for any office described in subpara-
16 graph (B).

17 “(2) PENALTY.—Any person who violates para-
18 graph (1) shall be fined not more than \$100,000,
19 imprisoned not more than 5 years, or both.

20 “(c) ATTEMPT AND CONSPIRACY.—

21 “(1) ATTEMPT.—Any person who attempts to
22 commit any offense described in subsection (a) or
23 (b) shall be subject to the same penalties as those
24 prescribed for the offense that the person attempted
25 to commit.

1 “(2) CONSPIRACY.—If 2 or more persons con-
2 spire to commit an offense described in subsection
3 (a) or (b), and 1 or more of such persons do any
4 act to effect the object of the conspiracy, each shall
5 be fined under this title or imprisoned not more
6 than 5 years.”.

7 (2) MODIFICATION OF PENALTY FOR VOTER IN-
8 TIMIDATION.—Section 594(a) of title 18, United
9 States Code, as amended by paragraph (1), is
10 amended—

11 (A) by inserting “by any means, including
12 by means of written, electronic, or telephonic
13 communications,” after “any other person”;
14 and

15 (B) by striking “one year” and inserting
16 “5 years”.

17 (3) SENTENCING GUIDELINES.—

18 (A) REVIEW AND AMENDMENT.—Not later
19 than 180 days after the date of enactment of
20 this Act, the United States Sentencing Commis-
21 sion, pursuant to its authority under section
22 994 of title 28, United States Code, and in ac-
23 cordance with this section, shall review and, if
24 appropriate, amend the Federal sentencing
25 guidelines and policy statements applicable to

1 persons convicted of any offense under section
2 594 of title 18, United States Code.

3 (B) AUTHORIZATION.—The United States
4 Sentencing Commission may amend the Federal
5 sentencing guidelines in accordance with the
6 procedures set forth in section 21(a) of the Sen-
7 tencing Act of 1987 (28 U.S.C. 994 note) as
8 though the authority under that section had not
9 expired.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect on the date of the enactment
12 of this Act.

13 **SEC. 4. REPORTING FALSE ELECTION INFORMATION.**

14 (a) REPORTING.—Any person may report to the At-
15 torney General any communication of, or the causation of
16 any communication of, information, or the production of
17 information with the intent that such information be com-
18 municated, if the information is—

19 (1) information that is described in—

20 (A) subparagraph (C) of section
21 2004(b)(2) of the Revised Statutes (42 U.S.C.
22 1971(b)(2)(C)); or

23 (B) subparagraph (C) of section
24 594(b)(1)(C) of title 18, United States Code;
25 and

1 (2) false.

2 (b) CORRECTIVE ACTION.—

3 (1) IN GENERAL.—Immediately after receiving
4 a report under subsection (a), the Attorney General
5 shall consider and review such report and, if the At-
6 torney General determines that there is a reasonable
7 basis to find that false information described in sub-
8 section (a)(1) has been communicated or caused to
9 be communicated, or has been produced with the in-
10 tent that such information be communicated, the At-
11 torney General shall—

12 (A) undertake all effective measures nec-
13 essary to provide correct information to voters
14 affected by the false information;

15 (B) refer any matter under the jurisdiction
16 of the Civil Rights Division of the Department
17 of Justice to such division for prosecution; and

18 (C) refer the matter to the appropriate
19 Federal and State authorities for criminal pros-
20 ecution or civil action after the election.

21 (2) REGULATIONS.—

22 (A) IN GENERAL.—The Attorney General
23 shall promulgate regulations regarding the
24 methods and means of corrective actions to be
25 taken under paragraph (1). Such regulations

1 shall be developed in consultation with the Elec-
2 tion Assistance Commission, civil rights organi-
3 zations, voting rights groups, State and local
4 election officials, voter protection groups, and
5 other interested community organizations.

6 (B) STUDY.—

7 (i) IN GENERAL.—The Attorney Gen-
8 eral, in consultation with the Federal Com-
9 munications Commission and the Election
10 Assistance Commission, shall conduct a
11 study on the feasibility of providing the
12 corrective information under paragraph (1)
13 through public service announcements, the
14 emergency alert system, or other forms of
15 public broadcast.

16 (ii) REPORT.—Not later than 180
17 days after the date of the enactment of
18 this Act, the Attorney General shall submit
19 to Congress a report detailing the results
20 of the study conducted under clause (i).

21 (c) REPORTS TO CONGRESS.—

22 (1) IN GENERAL.—Not later than 90 days after
23 any primary, general, or run-off election for Federal
24 office, the Attorney General shall submit to the ap-
25 propriate committees of Congress a report compiling

1 and detailing any allegations of false information
2 submitted pursuant to subsection (a) and relating to
3 such election.

4 (2) CONTENTS.—

5 (A) IN GENERAL.—Each report submitted
6 under paragraph (1) shall include—

7 (i) detailed information on specific al-
8 legations of deceptive tactics;

9 (ii) statistical compilations of how
10 many allegations were made and of what
11 type;

12 (iii) the geographic locations of and
13 the populations affected by the alleged de-
14 ceptive information;

15 (iv) the status of the investigations of
16 such allegations.

17 (v) any corrective actions taken in re-
18 sponse to such allegations;

19 (vi) the rationale used for any correc-
20 tive actions or for any refusal to pursue an
21 allegation;

22 (vii) the effectiveness of any such cor-
23 rective actions;

24 (viii) whether a Voting Integrity Task
25 Force was established with respect to such

1 election, and, if so, how such task force
2 was staffed and funded;

3 (ix) any referrals of information to
4 other Federal, State, or local agencies;

5 (x) any suit instituted under section
6 2004(b)(2) of the Revised Statutes (42
7 U.S.C. 1971(b)(2)) in connection with such
8 allegations; and

9 (xi) any criminal prosecution insti-
10 tuted under section 594(b) of title 18,
11 United States Code in connection with
12 such allegations.

13 (B) EXCEPTION.—The Attorney General
14 may withhold any information that the Attorney
15 General determines would unduly interfere with
16 an on-going investigation.

17 (3) REPORT MADE PUBLIC.—On the date that
18 the Attorney General submits the report required
19 under paragraph (1), the Attorney General shall also
20 make the report publicly available through the Inter-
21 net and other appropriate means.

22 (d) DELEGATION OF DUTIES.—

23 (1) IN GENERAL.—The Attorney General may
24 delegate the responsibilities under this section to a

1 Voting Integrity Task Force established under para-
2 graph (2).

3 (2) VOTING INTEGRITY TASK FORCE.—

4 (A) IN GENERAL.—The Attorney General
5 may establish a Voting Integrity Task Force to
6 carry out the requirements of this section with
7 respect to any general, primary, run-off, or spe-
8 cial election for Federal office.

9 (B) COMPOSITION.—Any Voting Integrity
10 Task Force established under paragraph (1)
11 shall be under the direction of the Assistant At-
12 torney General for the Civil Rights Division and
13 the Assistant Attorney General for the Criminal
14 Division, jointly.

15 (e) FEDERAL OFFICE.—For purposes of this section,
16 the term “Federal office” means the office of President,
17 Vice President, presidential elector, Member of the Senate,
18 Member of the House of Representatives, or Delegate or
19 Commissioner from a territory or possession of the United
20 States.

21 (f) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to the Attorney General
23 such sums as may be necessary to carry out this section.

1 **SEC. 5. SEVERABILITY.**

2 If any provision of this Act or any amendment made
3 by this Act, or the application of a provision or amend-
4 ment to any person or circumstance, is held to be uncon-
5 stitutional, the remainder of this Act and the amendments
6 made by this Act, and the application of the provisions
7 and amendments to any person or circumstance, shall not
8 be affected by the holding.

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