

115TH CONGRESS
2D SESSION

S. 3279

To prohibit deceptive practices in Federal elections.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2018

Mrs. McCASKILL (for herself, Mr. CARDIN, Mr. JONES, and Mr. LEAHY) 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 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The right to vote by casting a ballot for
9 one’s preferred candidate is a fundamental right ac-
10 corded to United States citizens by the Constitution,

1 and the unimpeded exercise of this right is essential
2 to the functioning of our democracy.

3 (2) Historically, certain citizens, especially ra-
4 cial, ethnic, and language minorities, were prevented
5 from voting because of significant barriers such as
6 literacy tests, poll taxes, and property ownership re-
7 quirements.

8 (3) Some of these barriers were removed by the
9 15th, 19th, and 24th Amendments to the Constitu-
10 tion.

11 (4) Despite the elimination of some of these
12 barriers to the polls, the integrity of today's elec-
13 tions is threatened by newer tactics aimed at sup-
14 pressing voter turnout. These tactics include "decep-
15 tive practices," which involve the dissemination of
16 false or misleading information intended to prevent
17 voters from casting their ballots, prevent voters from
18 voting for the candidate of their choice, intimidate
19 the electorate, and undermine the integrity of the
20 electoral process.

21 (5) Furthermore, since the decision in Shelby
22 County v. Holder in which the Supreme Court
23 struck down the coverage formula used by the Vot-
24 ing Rights Act of 1965 to determine which States
25 with a history of racial discrimination must affirma-

1 tively receive government permission before changing
2 local voting laws, there have been Federal court de-
3 cisions finding or affirming that States or localities
4 intentionally discriminated against African Ameri-
5 cans and other voters of color.

6 (6) Denials of the right to vote, and deceptive
7 practices designed to prevent members of racial, eth-
8 nic, and language minorities from exercising that
9 right, are an outgrowth of discriminatory history, in-
10 cluding slavery. Measures to combat denials of that
11 right are a legitimate exercise of congressional power
12 under article I, section 4 and article II, section 1 of,
13 and the 14th and 15th Amendments to, the United
14 States Constitution.

15 (7) For the last few decades, there have been
16 a number of instances of deceptive or intimidating
17 practices aimed towards suppressing minority access
18 to the voting booth that demonstrates the need for
19 strengthened protections.

20 (8) In addition, in at least one instance in
21 1990, thousands of voters reportedly received post-
22 cards providing false information about voter eligi-
23 bility and warnings about criminal penalties for
24 voter fraud. Most of the voters who received the
25 postcards were African-American.

1 (9) During the 2004 elections, Native American
2 voters in South Dakota reported being required to
3 provide photographic identification in order to vote,
4 despite the fact that neither State nor Federal law
5 required such identification.

6 (10) In the 2006 midterm elections, thousands
7 of Latino voters received mailings warning them in
8 Spanish that voting in a Federal election as an im-
9 migrant could result in incarceration—despite the
10 fact that any immigrant who is a naturalized citizen
11 of the United States has the same right to vote as
12 any other citizen.

13 (11) In 2008, fliers were distributed in pre-
14 dominantly African-American neighborhoods falsely
15 warning that people with outstanding warrants or
16 unpaid parking tickets could be arrested if they
17 showed up at the polls on Election Day. In the same
18 year, there were reports of people receiving text mes-
19 sages on Election Day asking them to wait until the
20 following day to vote.

21 (12) In 2012, there were reports of voters re-
22 ceiving calls falsely informing them that they could
23 vote via telephone.

24 (13) In the 2016 elections, there were reports
25 of students receiving fliers stating that in order to

1 vote in a local precinct, they had to pay to change
2 their driver's license and re-register vehicles in the
3 city in which the precinct was located.

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

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

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

19 (17) The First Amendment does not preclude
20 the regulation of some intentionally false speech,
21 even if it is political in nature. As the Supreme
22 Court of the United States has recognized, "[t]hat
23 speech is used as a tool for political ends does not
24 automatically bring it under the protective mantle of
25 the Constitution. For the use of the known lie as a

1 tool is at once at odds with the premises of demo-
 2 cratic government and with the orderly manner in
 3 which economic, social, or political change is to be
 4 effected. . . . Hence the knowingly false statement
 5 and the false statement made with reckless disregard
 6 of the truth, do not enjoy constitutional protection.”.
 7 *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964).

8 **SEC. 3. PROHIBITION ON DECEPTIVE PRACTICES IN FED-**
 9 **ERAL ELECTIONS.**

10 (a) PROHIBITION.—Subsection (b) of section 2004 of
 11 the Revised Statutes (52 U.S.C. 10101(b)) is amended—

12 (1) by striking “No person” and inserting the
 13 following:

14 “(1) IN GENERAL.—No person”; and

15 (2) by inserting at the end the following new
 16 paragraphs:

17 “(2) FALSE STATEMENTS REGARDING FEDERAL
 18 ELECTIONS.—

19 “(A) PROHIBITION.—No person, whether
 20 acting under color of law or otherwise, shall,
 21 within 60 days before an election described in
 22 paragraph (5), by any means, including by
 23 means of written, electronic, or telephonic com-
 24 munications, communicate or cause to be com-
 25 municated information described in subpara-

graph (B), or produce information described in subparagraph (B) with the intent that such information be communicated, if such person—

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

“(ii) has the intent to impede or prevent another person from exercising the right to vote in an election described in paragraph (5).

“(B) INFORMATION DESCRIBED.—Information is described in this subparagraph if such information is regarding—

“(i) the time, place, or manner of holding any election described in paragraph (5); or

“(ii) the qualifications for or restrictions on voter eligibility for any such election, including—

“(I) any criminal penalties associated with voting in any such election; or

“(II) information regarding a voter’s registration status or eligibility.

1 “(3) FALSE STATEMENTS REGARDING PUBLIC
2 ENDORSEMENTS.—

3 “(A) PROHIBITION.—No person, whether
4 acting under color of law or otherwise, shall,
5 within 60 days before an election described in
6 paragraph (5), by any means, including by
7 means of written, electronic, or telephonic com-
8 munications, communicate, or cause to be com-
9 municated, a materially false statement about
10 an endorsement, if such person—

11 “(i) knows such statement to be false;
12 and

13 “(ii) has the intent to impede or pre-
14 vent another person from exercising the
15 right to vote in an election described in
16 paragraph (5).

17 “(B) DEFINITION OF ‘MATERIALLY
18 FALSE’.—For purposes of subparagraph (A), a
19 statement about an endorsement is ‘materially
20 false’ if, with respect to an upcoming election
21 described in paragraph (5)—

22 “(i) the statement states that a spe-
23 cifically named person, political party, or
24 organization has endorsed the election of a

specific candidate for a Federal office described in such paragraph; and

“(ii) such person, political party, or organization has not endorsed the election of such candidate.

“(4) HINDERING, INTERFERING WITH, OR PREVENTING VOTING OR REGISTERING TO VOTE.—No person, whether acting under color of law or otherwise, shall intentionally hinder, interfere with, or prevent another person from voting, registering to vote, or aiding another person to vote or register to vote in an election described in paragraph (5).

“(5) ELECTION DESCRIBED.—An election described in this paragraph is any general, primary, run-off, or special election held solely or in part for the purpose of nominating or electing a candidate for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate or Commissioner from a Territory or possession.”.

(b) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—Subsection (c) of section 2004 of the Revised Statutes (52 U.S.C. 10101(c)) is amended—

1 (A) by striking “Whenever any person”
 2 and inserting the following:

3 “(1) Whenever any person”; and

4 (B) by adding at the end the following new
 5 paragraph:

6 “(2) Any person aggrieved by a violation of
 7 subsection (b)(2), (b)(3), or (b)(4) may institute a
 8 civil action for preventive relief, including an appli-
 9 cation in a United States district court for a perma-
 10 nent or temporary injunction, restraining order, or
 11 other order. In any such action, the court, in its dis-
 12 cretion, may allow the prevailing party a reasonable
 13 attorney’s fee as part of the costs.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Subsection (e) of section 2004 of the
 16 Revised Statutes (52 U.S.C. 10101(e)) is
 17 amended by striking “subsection (e)” and in-
 18 serting “subsection (e)(1)”.

19 (B) Subsection (g) of section 2004 of the
 20 Revised Statutes (52 U.S.C. 10101(g)) is
 21 amended by striking “subsection (e)” and in-
 22 serting “subsection (e)(1)”.

23 (c) CRIMINAL PENALTIES.—

24 (1) DECEPTIVE ACTS.—Section 594 of title 18,
 25 United States Code, is amended—

1 (A) by striking “Whoever” and inserting
2 the following:

3 “(a) INTIMIDATION.—Whoever”;

4 (B) in subsection (a), as inserted by sub-
5 paragraph (A), by striking “at any election”
6 and inserting “at any general, primary, run-off,
7 or special election”; and

8 (C) by adding at the end the following new
9 subsections:

10 “(b) DECEPTIVE ACTS.—

11 “(1) FALSE STATEMENTS REGARDING FEDERAL
12 ELECTIONS.—

13 “(A) PROHIBITION.—It shall be unlawful
14 for any person, whether acting under color of
15 law or otherwise, within 60 days before an elec-
16 tion described in subsection (e), by any means,
17 including by means of written, electronic, or tel-
18 ephonic communications, to communicate or
19 cause to be communicated information de-
20 scribed in subparagraph (B), or produce infor-
21 mation described in subparagraph (B) with the
22 intent that such information be communicated,
23 if such person—

24 “(i) knows such information to be ma-
25 terially false; and

1 “(ii) has the intent to mislead voters,
 2 or the intent to impede or prevent another
 3 person from exercising the right to vote in
 4 an election described in subsection (e).

5 “(B) INFORMATION DESCRIBED.—Infor-
 6 mation is described in this subparagraph if such
 7 information is regarding—

8 “(i) the time or place of holding any
 9 election described in subsection (e); or

10 “(ii) the qualifications for or restric-
 11 tions on voter eligibility for any such elec-
 12 tion, including—

13 “(I) any criminal penalties asso-
 14 ciated with voting in any such elec-
 15 tion; or

16 “(II) information regarding a
 17 voter’s registration status or eligi-
 18 bility.

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

22 “(c) HINDERING, INTERFERING WITH, OR PRE-
 23 VENTING VOTING OR REGISTERING TO VOTE.—

24 “(1) PROHIBITION.—It shall be unlawful for
 25 any person, whether acting under color of law or

1 otherwise, to corruptly hinder, interfere with, or pre-
 2 vent another person from voting, registering to vote,
 3 or aiding another person to vote or register to vote
 4 in an election described in subsection (e).

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

8 “(d) ATTEMPT.—Any person who attempts to commit
 9 any offense described in subsection (a), (b)(1), or (c)(1)
 10 shall be subject to the same penalties as those prescribed
 11 for the offense that the person attempted to commit.

12 “(e) ELECTION DESCRIBED.—An election described
 13 in this subsection is any general, primary, run-off, or spe-
 14 cial election held solely or in part for the purpose of nomi-
 15 nating or electing a candidate for the office of President,
 16 Vice President, presidential elector, Member of the Senate,
 17 Member of the House of Representatives, or Delegate or
 18 Commissioner from a Territory or possession.”.

19 (2) MODIFICATION OF PENALTY FOR VOTER IN-
 20 TIMIDATION.—Section 594(a) of title 18, United
 21 States Code, as amended by paragraph (1), is
 22 amended by striking “fined under this title or im-
 23 prisoned not more than one year” and inserting
 24 “fined not more than \$100,000, imprisoned for not
 25 more than 5 years”.

1 (3) SENTENCING GUIDELINES.—

2 (A) REVIEW AND AMENDMENT.—Not later
3 than 180 days after the date of enactment of
4 this Act, the United States Sentencing Commis-
5 sion, pursuant to its authority under section
6 994 of title 28, United States Code, and in ac-
7 cordance with this section, shall review and, if
8 appropriate, amend the Federal sentencing
9 guidelines and policy statements applicable to
10 persons convicted of any offense under section
11 594 of title 18, United States Code, as amend-
12 ed by this section.

13 (B) AUTHORIZATION.—The United States
14 Sentencing Commission may amend the Federal
15 Sentencing Guidelines in accordance with the
16 procedures set forth in section 21(a) of the Sen-
17 tencing Act of 1987 (28 U.S.C. 994 note) as
18 though the authority under that section had not
19 expired.

20 (4) PAYMENTS FOR REFRAINING FROM VOT-
21 ING.—Subsection (c) of section 11 of the Voting
22 Rights Act of 1965 (52 U.S.C. 10307) is amended
23 by striking “either for registration to vote or for vot-
24 ing” and inserting “for registration to vote, for vot-
25 ing, or for not voting”.

1 **SEC. 4. CORRECTIVE ACTION.**

2 (a) CORRECTIVE ACTION.—

3 (1) IN GENERAL.—If the Attorney General re-
4 ceives a credible report that materially false informa-
5 tion has been or is being communicated in violation
6 of paragraphs (2) and (3) of section 2004(b) of the
7 Revised Statutes (52 U.S.C. 10101(b)), as added by
8 section 3(a), and if the Attorney General determines
9 that State and local election officials have not taken
10 adequate steps to promptly communicate accurate
11 information to correct the materially false informa-
12 tion, the Attorney General shall, pursuant to the
13 written procedures and standards under subsection
14 (b), communicate to the public, by any means, in-
15 cluding by means of written, electronic, or telephonic
16 communications, accurate information designed to
17 correct the materially false information.

18 (2) COMMUNICATION OF CORRECTIVE INFORMA-
19 TION.—Any information communicated by the Attor-
20 ney General under paragraph (1)—

21 (A) shall—

22 (i) be accurate and objective;

23 (ii) consist of only the information
24 necessary to correct the materially false in-
25 formation that has been or is being com-
26 municated; and

1 (iii) to the extent practicable, be by a
 2 means that the Attorney General deter-
 3 mines will reach the persons to whom the
 4 materially false information has been or is
 5 being communicated; and

6 (B) shall not be designed to favor or dis-
 7 favor any particular candidate, organization, or
 8 political party.

9 (b) WRITTEN PROCEDURES AND STANDARDS FOR
 10 TAKING CORRECTIVE ACTION.—

11 (1) IN GENERAL.—Not later than 180 days
 12 after the date of enactment of this Act, the Attorney
 13 General shall publish written procedures and stand-
 14 ards for determining when and how corrective action
 15 will be taken under this section.

16 (2) INCLUSION OF APPROPRIATE DEADLINES.—
 17 The procedures and standards under paragraph (1)
 18 shall include appropriate deadlines, based in part on
 19 the number of days remaining before the upcoming
 20 election.

21 (3) CONSULTATION.—In developing the proce-
 22 dures and standards under paragraph (1), the Attor-
 23 ney General shall consult with the Election Assist-
 24 ance Commission, State and local election officials,
 25 civil rights organizations, voting rights groups, voter

1 protection groups, and other interested community
2 organizations.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to the Attorney General
5 such sums as may be necessary to carry out this Act.

6 **SEC. 5. REPORTS TO CONGRESS.**

7 (a) IN GENERAL.—Not later than 180 days after
8 each general election for Federal office, the Attorney Gen-
9 eral shall submit to Congress a report compiling all allega-
10 tions received by the Attorney General of deceptive prac-
11 tices described in paragraphs (2), (3), and (4) of section
12 2004(b) of the Revised Statutes (52 U.S.C. 10101(b)), as
13 added by section 3(a), relating to the general election for
14 Federal office and any primary, run-off, or a special elec-
15 tion for Federal office held in the 2 years preceding the
16 general election.

17 (b) CONTENTS.—

18 (1) IN GENERAL.—Each report submitted
19 under subsection (a) shall include—

20 (A) a description of each allegation of a
21 deceptive practice described in subsection (a),
22 including the geographic location, racial and
23 ethnic composition, and language minority-
24 group membership of the persons toward whom
25 the alleged deceptive practice was directed;

1 (B) the status of the investigation of each
2 allegation described in subparagraph (A);

3 (C) a description of each corrective action
4 taken by the Attorney General under section
5 4(a) in response to an allegation described in
6 subparagraph (A);

7 (D) a description of each referral of an al-
8 legation described in subparagraph (A) to other
9 Federal, State, or local agencies;

10 (E) to the extent information is available,
11 a description of any civil action instituted under
12 section 2004(c)(2) of the Revised Statutes (52
13 U.S.C. 10101(c)(2)), as added by section 3(b),
14 in connection with an allegation described in
15 subparagraph (A); and

16 (F) a description of any criminal prosecu-
17 tion instituted under section 594 of title 18,
18 United States Code, as amended by section
19 3(c), in connection with the receipt of an allega-
20 tion described in subparagraph (A) by the At-
21 torney General.

22 (2) EXCLUSION OF CERTAIN INFORMATION.—

23 (A) IN GENERAL.—The Attorney General
24 shall not include in a report submitted under
25 subsection (a) any information protected from

1 disclosure by rule 6(e) of the Federal Rules of
2 Criminal Procedure or any Federal criminal
3 statute.

4 (B) EXCLUSION OF CERTAIN OTHER IN-
5 FORMATION.—The Attorney General may deter-
6 mine that the following information shall not be
7 included in a report submitted under subsection
8 (a):

9 (i) Any information that is privileged.

10 (ii) Any information concerning an
11 ongoing investigation.

12 (iii) Any information concerning a
13 criminal or civil proceeding conducted
14 under seal.

15 (iv) Any other nonpublic information
16 that the Attorney General determines the
17 disclosure of which could reasonably be ex-
18 pected to infringe on the rights of any in-
19 dividual or adversely affect the integrity of
20 a pending or future criminal investigation.

21 (c) REPORT MADE PUBLIC.—On the date that the
22 Attorney General submits the report under subsection (a),
23 the Attorney General shall also make the report publicly
24 available through the Internet and other appropriate
25 means.

1 **SEC. 6. 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.

○