

117TH CONGRESS
1ST SESSION

S. 1840

To prohibit deceptive practices in Federal elections.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2021

Mr. CARDIN (for himself, Ms. KLOBUCHAR, Mr. BLUMENTHAL, Mr. WYDEN, Ms. HIRONO, Mrs. FEINSTEIN, Mr. MERKLEY, and Mr. VAN HOLLEN) 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 2021”.

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) On January 6, 2017, the Office of the Di-
25 rector of National Intelligence published a report ti-

1 tled “Assessing Russian Activities and Intentions in
2 Recent U.S. Elections”, noting that “Russian Presi-
3 dent Vladimir Putin ordered an influence campaign
4 in 2016 aimed at the U.S. Presidential election.”.
5 Moscow’s influence campaign followed a Russian
6 messaging strategy that blends covert intelligence
7 operation—such as cyber activity—with overt efforts
8 by Russian Government agencies, State-funded
9 media, third-party intermediaries, and paid social
10 media users or “trolls.” These influence operations
11 included messaging that targeted African-American
12 voters with misinformation.

13 (14) On April 18, 2019, Special Counsel Robert
14 Mueller released a report titled “Report on the In-
15 vestigation into Russian Interference in the 2016
16 Presidential Election”, which concluded that “the
17 Russian government interfered in the 2016 presi-
18 dential election in sweeping and systematic fash-
19 ion.”. The report details that Russia interfered in
20 the 2016 presidential election principally through
21 two operations: first, through a Russian government
22 sponsored social media influence campaign, and sec-
23 ond, by Russian intelligence “computer-intrusion”
24 operations against those associated with both presi-
25 dential campaigns. The Mueller Report details how

1 Russian agents intentionally targeted black social
2 justice groups and created fake accounts purporting
3 to represent black social justice groups in order to
4 spread disinformation and sow division.

5 (15) Social media makes the mass dissemina-
6 tion of misleading information easy and allows per-
7 petrators to target particular audiences with preci-
8 sion. One analysis documented hundreds of messages
9 on Facebook and Twitter designed to discourage or
10 prevent people from voting in the 2018 election. In
11 2016, these false statements were extremely preva-
12 lent with both domestic and foreign actors. Russian
13 operatives engaged in a concerted disinformation
14 and propaganda campaign over the internet that
15 aimed, in part, to suppress voter turnout, especially
16 among Black voters. These efforts by the Russian
17 government continued and became more aggressive
18 in the 2020 election cycle.

19 (16) During the 2020 presidential election,
20 Texas voters received robocalls stating that the
21 Democratic primary would be taking place after its
22 actual date. In the same year, communities of color
23 in Michigan, Pennsylvania, Ohio, Illinois, and New
24 York were targeted by robocalls sharing false infor-
25 mation about how their data would be shared if they

1 voted by mail. Widespread disinformation was tar-
2 geted at Latino communities in Florida and other
3 States, particularly through social media.

4 (17) During the 2020 presidential election, vot-
5 ers in some precincts faced voter intimidation during
6 early voting and on election day. The Election Pro-
7 tection hotline received nearly 32,000 calls on elec-
8 tion day. Reports from the Voting Rights Defender
9 and Prepared to Vote project teams and the NAACP
10 Legal Defense and Educational Fund, Inc. showed
11 that minority voters were disproportionately im-
12 pacted by voter intimidation. Incidents included
13 3,000,000 robocalls telling people to stay home on
14 election day and armed people at polling sites on
15 election day in Florida, North Carolina, and Lou-
16 isiana. Additionally, election officials, volunteers, and
17 electors faced unprecedented intimidation including
18 doxxing, death threats, and other intimidating com-
19 munication.

20 (18) Those responsible for these and similar ef-
21 forts should be held accountable, and civil and crimi-
22 nal penalties should be available to punish anyone
23 who seeks to keep voters away from the polls by pro-
24 viding false information.

1 (19) Moreover, the Federal Government should
2 help correct such false information in order to assist
3 voters in exercising their right to vote without confu-
4 sion and to preserve the integrity of the electoral
5 process.

6 (20) The Federal Government has a compelling
7 interest in “protecting voters from confusion and
8 undue influence” and in “preserving the integrity of
9 its election process”. *Burson v. Freeman*, 504 U.S.
10 191, 199 (1992).

11 (21) The First Amendment does not preclude
12 the regulation of some intentionally false speech,
13 even if it is political in nature. As the Supreme
14 Court of the United States has recognized, “[t]hat
15 speech is used as a tool for political ends does not
16 automatically bring it under the protective mantle of
17 the Constitution. For the use of the known lie as a
18 tool is at once at odds with the premises of demo-
19 cratic government and with the orderly manner in
20 which economic, social, or political change is to be
21 effected. . . . Hence the knowingly false statement
22 and the false statement made with reckless disregard
23 of the truth, do not enjoy constitutional protection.”.
24 *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964).

1 **SEC. 3. PROHIBITION ON DECEPTIVE PRACTICES IN FED-**
2 **ERAL ELECTIONS.**

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

5 (1) by striking “No person” and inserting the
6 following:

7 “(1) IN GENERAL.—No person”; and

8 (2) by inserting at the end the following new
9 paragraphs:

10 “(2) FALSE STATEMENTS REGARDING FEDERAL
11 ELECTIONS.—

12 “(A) PROHIBITION.—No person, whether
13 acting under color of law or otherwise, shall,
14 within 60 days before an election described in
15 paragraph (5), by any means, including by
16 means of written, electronic, or telephonic com-
17 munications, communicate or cause to be com-
18 municated information described in subpara-
19 graph (B), or produce information described in
20 subparagraph (B) with the intent that such in-
21 formation be communicated, if such person—

22 “(i) knows such information to be ma-
23 terially false; and

24 “(ii) has the intent to impede or pre-
25 vent another person from exercising the

1 right to vote in an election described in
2 paragraph (5).

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

6 “(i) the time, place, or manner of
7 holding any election described in para-
8 graph (5); or

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

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

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

18 “(3) FALSE STATEMENTS REGARDING PUBLIC
19 ENDORSEMENTS.—

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

1 municated, a materially false statement about
2 an endorsement, if such person—

3 “(i) knows such statement to be false;

4 and

5 “(ii) has the intent to impede or pre-
6 vent another person from exercising the
7 right to vote in an election described in
8 paragraph (5).

9 “(B) DEFINITION OF ‘MATERIALLY
10 FALSE’.—For purposes of subparagraph (A), a
11 statement about an endorsement is ‘materially
12 false’ if, with respect to an upcoming election
13 described in paragraph (5)—

14 “(i) the statement states that a spe-
15 cifically named person, political party, or
16 organization has endorsed the election of a
17 specific candidate for a Federal office de-
18 scribed in such paragraph; and

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

22 “(4) HINDERING, INTERFERING WITH, OR PRE-
23 VENTING VOTING OR REGISTERING TO VOTE.—No
24 person, whether acting under color of law or other-
25 wise, shall intentionally hinder, interfere with, or

1 prevent another person from voting, registering to
2 vote, or aiding another person to vote or register to
3 vote in an election described in paragraph (5).

4 “(5) ELECTION DESCRIBED.—An election de-
5 scribed in this paragraph is any general, primary,
6 run-off, or special election held solely or in part for
7 the purpose of nominating or electing a candidate
8 for the office of President, Vice President, presi-
9 dential elector, Member of the Senate, Member of
10 the House of Representatives, or Delegate or Com-
11 missioner from a Territory or possession.”.

12 (b) PRIVATE RIGHT OF ACTION.—

13 (1) IN GENERAL.—Subsection (c) of section
14 2004 of the Revised Statutes (52 U.S.C. 10101(e))
15 is amended—

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

18 “(1) Whenever any person”; and

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

21 “(2) Any person aggrieved by a violation of
22 subsection (b)(2), (b)(3), or (b)(4) may institute a
23 civil action for preventive relief, including an appli-
24 cation in a United States district court for a perma-
25 nent or temporary injunction, restraining order, or

1 other order. In any such action, the court, in its dis-
 2 cretion, may allow the prevailing party a reasonable
 3 attorney’s fee as part of the costs.”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) Subsection (e) of section 2004 of the
 6 Revised Statutes (52 U.S.C. 10101(e)) is
 7 amended by striking “subsection (e)” and in-
 8 serting “subsection (e)(1)”.

9 (B) Subsection (g) of section 2004 of the
 10 Revised Statutes (52 U.S.C. 10101(g)) is
 11 amended by striking “subsection (e)” and in-
 12 serting “subsection (e)(1)”.

13 (c) CRIMINAL PENALTIES.—

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

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

18 “(a) INTIMIDATION.—Whoever”;

19 (B) in subsection (a), as inserted by sub-
 20 paragraph (A), by striking “at any election”
 21 and inserting “at any general, primary, run-off,
 22 or special election”; and

23 (C) by adding at the end the following new
 24 subsections:

25 “(b) DECEPTIVE ACTS.—

1 “(1) FALSE STATEMENTS REGARDING FEDERAL
2 ELECTIONS.—

3 “(A) PROHIBITION.—It shall be unlawful
4 for any person, whether acting under color of
5 law or otherwise, within 60 days before an elec-
6 tion described in subsection (e), by any means,
7 including by means of written, electronic, or tel-
8 ephonic communications, to communicate or
9 cause to be communicated information de-
10 scribed in subparagraph (B), or produce infor-
11 mation described in subparagraph (B) with the
12 intent that such information be communicated,
13 if such person—

14 “(i) knows such information to be ma-
15 terially false; and

16 “(ii) has the intent to mislead voters,
17 or the intent to impede or prevent another
18 person from exercising the right to vote in
19 an election described in subsection (e).

20 “(B) INFORMATION DESCRIBED.—Infor-
21 mation is described in this subparagraph if such
22 information is regarding—

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

1 “(ii) the qualifications for or restric-
2 tions on voter eligibility for any such elec-
3 tion, including—

4 “(I) any criminal penalties asso-
5 ciated with voting in any such elec-
6 tion; or

7 “(II) information regarding a
8 voter’s registration status or eligi-
9 bility.

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

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

15 “(1) PROHIBITION.—It shall be unlawful for
16 any person, whether acting under color of law or
17 otherwise, to corruptly hinder, interfere with, or pre-
18 vent another person from voting, registering to vote,
19 or aiding another person to vote or register to vote
20 in an election described in subsection (e).

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

24 “(d) ATTEMPT.—Any person who attempts to commit
25 any offense described in subsection (a), (b)(1), or (c)(1)

1 shall be subject to the same penalties as those prescribed
2 for the offense that the person attempted to commit.

3 “(e) ELECTION DESCRIBED.—An election described
4 in this subsection is any general, primary, run-off, or spe-
5 cial election held solely or in part for the purpose of nomi-
6 nating or electing a candidate for the office of President,
7 Vice President, presidential elector, Member of the Senate,
8 Member of the House of Representatives, or Delegate or
9 Commissioner from a Territory or possession.”.

10 (2) MODIFICATION OF PENALTY FOR VOTER IN-
11 TIMIDATION.—Section 594(a) of title 18, United
12 States Code, as amended by paragraph (1), is
13 amended by striking “fined under this title or im-
14 prisoned not more than one year” and inserting
15 “fined not more than \$100,000, imprisoned for not
16 more than 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, as amend-
3 ed by this section.

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

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

17 **SEC. 4. CORRECTIVE ACTION.**

18 (a) CORRECTIVE ACTION.—

19 (1) IN GENERAL.—If the Attorney General re-
20 ceives a credible report that materially false informa-
21 tion has been or is being communicated in violation
22 of paragraphs (2) and (3) of section 2004(b) of the
23 Revised Statutes (52 U.S.C. 10101(b)), as added by
24 section 3(a), and if the Attorney General determines
25 that State and local election officials have not taken

1 adequate steps to promptly communicate accurate
2 information to correct the materially false informa-
3 tion, the Attorney General shall, pursuant to the
4 written procedures and standards under subsection
5 (b), communicate to the public, by any means, in-
6 cluding by means of written, electronic, or telephonic
7 communications, accurate information designed to
8 correct the materially false information.

9 (2) COMMUNICATION OF CORRECTIVE INFORMA-
10 TION.—Any information communicated by the Attor-
11 ney General under paragraph (1)—

12 (A) shall—

13 (i) be accurate and objective;

14 (ii) consist of only the information
15 necessary to correct the materially false in-
16 formation that has been or is being com-
17 municated; and

18 (iii) to the extent practicable, be by a
19 means that the Attorney General deter-
20 mines will reach the persons to whom the
21 materially false information has been or is
22 being communicated; and

23 (B) shall not be designed to favor or dis-
24 favor any particular candidate, organization, or
25 political party.

1 (b) WRITTEN PROCEDURES AND STANDARDS FOR
2 TAKING CORRECTIVE ACTION.—

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

8 (2) INCLUSION OF APPROPRIATE DEADLINES.—
9 The procedures and standards under paragraph (1)
10 shall include appropriate deadlines, based in part on
11 the number of days remaining before the upcoming
12 election.

13 (3) CONSULTATION.—In developing the proce-
14 dures and standards under paragraph (1), the Attor-
15 ney General shall consult with the Election Assist-
16 ance Commission, State and local election officials,
17 civil rights organizations, voting rights groups, voter
18 protection groups, and other interested community
19 organizations.

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

23 **SEC. 5. REPORTS TO CONGRESS.**

24 (a) IN GENERAL.—Not later than 180 days after
25 each general election for Federal office, the Attorney Gen-

1 eral shall submit to Congress a report compiling all allega-
2 tions received by the Attorney General of deceptive prac-
3 tices described in paragraphs (2), (3), and (4) of section
4 2004(b) of the Revised Statutes (52 U.S.C. 10101(b)), as
5 added by section 3(a), relating to the general election for
6 Federal office and any primary, run-off, or a special elec-
7 tion for Federal office held in the 2 years preceding the
8 general election.

9 (b) CONTENTS.—

10 (1) IN GENERAL.—Each report submitted
11 under subsection (a) shall include—

12 (A) a description of each allegation of a
13 deceptive practice described in subsection (a),
14 including the geographic location, racial and
15 ethnic composition, and language minority-
16 group membership of the persons toward whom
17 the alleged deceptive practice was directed;

18 (B) the status of the investigation of each
19 allegation described in subparagraph (A);

20 (C) a description of each corrective action
21 taken by the Attorney General under section
22 4(a) in response to an allegation described in
23 subparagraph (A);

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

4 (E) to the extent information is available,
5 a description of any civil action instituted under
6 section 2004(c)(2) of the Revised Statutes (52
7 U.S.C. 10101(c)(2)), as added by section 3(b),
8 in connection with an allegation described in
9 subparagraph (A); and

10 (F) a description of any criminal prosecu-
11 tion instituted under section 594 of title 18,
12 United States Code, as amended by section
13 3(e), in connection with the receipt of an allega-
14 tion described in subparagraph (A) by the At-
15 torney General.

16 (2) EXCLUSION OF CERTAIN INFORMATION.—

17 (A) IN GENERAL.—The Attorney General
18 shall not include in a report submitted under
19 subsection (a) any information protected from
20 disclosure by rule 6(e) of the Federal Rules of
21 Criminal Procedure or any Federal criminal
22 statute.

23 (B) EXCLUSION OF CERTAIN OTHER IN-
24 FORMATION.—The Attorney General may deter-
25 mine that the following information shall not be

1 included in a report submitted under subsection

2 (a):

3 (i) Any information that is privileged.

4 (ii) Any information concerning an
5 ongoing investigation.

6 (iii) Any information concerning a
7 criminal or civil proceeding conducted
8 under seal.

9 (iv) Any other nonpublic information
10 that the Attorney General determines the
11 disclosure of which could reasonably be ex-
12 pected to infringe on the rights of any in-
13 dividual or adversely affect the integrity of
14 a pending or future criminal investigation.

15 (c) REPORT MADE PUBLIC.—On the date that the
16 Attorney General submits the report under subsection (a),
17 the Attorney General shall also make the report publicly
18 available through the Internet and other appropriate
19 means.

20 **SEC. 6. SEVERABILITY.**

21 If any provision of this Act or any amendment made
22 by this Act, or the application of a provision or amend-
23 ment to any person or circumstance, is held to be uncon-
24 stitutional, the remainder of this Act and the amendments
25 made by this Act, and the application of the provisions

- 1 and amendments to any person or circumstance, shall not
- 2 be affected by the holding.

○