

Calendar No. 411

110TH CONGRESS
1ST SESSION

S. 453

[Report No. 110-191]

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, Mr. KENNEDY, Mr. LEVIN, Ms. LANDRIEU, Mr. BROWN, Mr. JOHNSON, Mrs. McCASKILL, Mr. WHITEHOUSE, Mr. WYDEN, Mr. DURBIN, and Mr. COBURN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 4, 2007

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The right to vote is a fundamental right ac-
4 corded to United States citizens by the Constitution
5 and the unimpeded exercise of this right is essential
6 to the functioning of our democracy.

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

11 (3) Some of these barriers were removed by the
12 15th, 19th, and 24th Amendments to the Constitu-
13 tion.

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

22 (5) Denials of the right to vote, and deceptive
23 practices designed to prevent members of racial mi-
24 norities from exercising that right, are an outgrowth
25 of discriminatory history, including slavery. Meas-
26 ures to combat denials of that right are a legitimate

1 exercise of congressional power under the 13th,
2 14th, and 15th Amendments to the United States
3 Constitution.

4 (6) Shortly before the 1990 midterm Federal
5 elections, 125,000 voters in North Carolina received
6 postcards providing false information about voter eli-
7 gibility and a warning about criminal penalties for
8 voter fraud. Ninety-seven percent of the voters who
9 received postcards were African American.

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

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

1 (9) In the same 2006 election, some Virginia
2 voters received automated phone messages falsely
3 warning them that the “Virginia Elections Commis-
4 sion” had determined they were ineligible to vote
5 and that they would face severe criminal penalties if
6 they tried to cast a ballot.

7 (10) In 2006 in Maryland, certain candidates
8 for Governor and United States Senator distributed
9 fliers in predominantly African-American neighbor-
10 hoods falsely claiming that the candidates had been
11 endorsed by their opponents’ party and by promi-
12 nent figures who had actually endorsed the oppo-
13 nents of the candidates.

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

19 (12) Moreover, the Federal Government should
20 help correct such false information in order to assist
21 voters in exercising their right to vote without confu-
22 sion and to preserve the integrity of the electoral
23 process.

24 (13) The Federal Government has a compelling
25 interest in “protecting voters from confusion and

1 undue influence” and in “preserving the integrity of
 2 its election process”. *Burson v. Freeman*, 504 U.S.
 3 191, 199 (1992).

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

18 **SEC. 3. PROHIBITION ON DECEPTIVE PRACTICES IN FED-**
 19 **ERAL ELECTIONS.**

20 (a) CIVIL ACTION.—

21 (1) IN GENERAL.—Subsection (b) of section
 22 2004 of the Revised Statutes (42 U.S.C. 1971(b)) is
 23 amended—

24 (A) by striking “No person” and inserting
 25 the following:

1 “(1) No person”;

2 (B) by inserting at the end the following
3 new paragraph:

4 “(2)(A) No person, whether acting under color
5 of law or otherwise, shall, within 60 days before an
6 election described in subparagraph (B), commu-
7 nicate or cause to be communicated information de-
8 scribed in subparagraph (C), or produce information
9 described in subparagraph (C) with the intent that
10 such information be communicated, if such person—

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

13 (ii) has the intent to prevent another per-
14 son from exercising the right to vote in an elec-
15 tion described in subparagraph (C).

16 “(B) An election described in this subparagraph
17 is any general, primary, run-off, or special election
18 for the office of President, Vice President, presi-
19 dential elector, Member of the Senate, Member of
20 the House of Representatives, or Delegate or Com-
21 missioner from a territory or possession.

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

24 (i) the time, place, or manner of any elec-
25 tion described in subparagraph (B);

1 “(ii) the qualifications for or restrictions
2 on voter eligibility for any such election, includ-
3 ing—

4 “(I) any criminal penalties associated
5 with voting in any such election by ineli-
6 gible voters; or

7 “(II) information regarding a voter’s
8 registration status or eligibility;

9 “(iii) the political party affiliation of any
10 candidate running in a closed primary election
11 for any office described in subparagraph (B) if
12 the communication of the information also con-
13 tains false information described in clause (i) or
14 (ii); or

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

18 (2) PRIVATE RIGHT OF ACTION.—

19 (A) IN GENERAL.—Subsection (e) of sec-
20 tion 2004 of the Revised Statutes (42 U.S.C.
21 1971(e)) is amended—

22 (i) by striking “Whenever any person”
23 and inserting the following:

24 “(1) Whenever any person”; and

1 (ii) by adding at the end the following
2 new paragraph:

3 “(2) Any person aggrieved by a violation of
4 subsection (b)(2) may institute a civil action or other
5 proper proceeding for preventive relief, including an
6 application in a United States district court for a
7 permanent or temporary injunction, restraining
8 order, or other order.”.

9 (B) CONFORMING AMENDMENTS.—

10 (i) Subsection (e) of section 2004 of
11 the Revised Statutes (42 U.S.C. 1971(e))
12 is amended by striking “subsection (e)”
13 and inserting “subsection (e)(1)”.

14 (ii) Subsection (g) of section 2004 of
15 the Revised Statutes (42 U.S.C. 1971(g))
16 is amended by striking “subsection (e)”
17 and inserting “subsection (e)(1)”.

18 (b) CRIMINAL PENALTY.—

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

21 (A) by striking “Whoever” and inserting
22 the following:

23 “(a) INTIMIDATION.—Whoever”; and

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

25 “(b) DECEPTIVE ACTS.—

1 “(1) PROHIBITION.—

2 “(A) IN GENERAL.—It shall be unlawful
3 for any person, within 60 days before an elec-
4 tion described in subparagraph (B), to commu-
5 nicate or cause to be communicated information
6 described in subparagraph (C), or produce in-
7 formation described in subparagraph (C) with
8 the intent that such information be commu-
9 nicated, if such person—

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

12 “(ii) has the intent to prevent another
13 person from exercising the right to vote in
14 an election described in subparagraph (C).

15 “(B) ELECTION DESCRIBED.—An election
16 described in this subparagraph is any general,
17 primary, run-off, or special election for the of-
18 fice of President, Vice President, presidential
19 elector, Member of the Senate, Member of the
20 House of Representatives, or Delegate or Com-
21 missioner from a territory or possession.

22 “(C) INFORMATION DESCRIBED.—Informa-
23 tion is described in this subparagraph if such
24 information is regarding—

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

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

6 “(I) any criminal penalties asso-
7 ciated with voting in any such election
8 by ineligible voters; or

9 “(II) information regarding a
10 voter’s registration status or eligi-
11 bility;

12 “(iii) the political party affiliation of
13 any candidate running in a closed primary
14 election for any office described in sub-
15 paragraph (B) if the communication of the
16 information also contains false information
17 described in clause (i) or (ii); or

18 “(iv) the explicit endorsement by any
19 person or organization of a candidate run-
20 ning for any office described in subpara-
21 graph (B).

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

25 “(c) ATTEMPT AND CONSPIRACY.—

1 “(1) ATTEMPT.—Any person who attempts to
2 commit any offense described in subsection (a) or
3 (b) shall be subject to the same penalties as those
4 prescribed for the offense that the person attempted
5 to commit.

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

12 (2) MODIFICATION OF PENALTY FOR VOTER IN-
13 TIMIDATION.—Section 594(a) of title 18, United
14 States Code, as amended by paragraph (1), is
15 amended—

16 (A) by inserting “by any means, including
17 by means of written, electronic, or telephonic
18 communications,” after “any other person”;
19 and

20 (B) by striking “one year” and inserting
21 “5 years”.

22 (3) SENTENCING GUIDELINES.—

23 (A) REVIEW AND AMENDMENT.—Not later
24 than 180 days after the date of enactment of
25 this Act, the United States Sentencing Commis-

1 sion, pursuant to its authority under section
2 994 of title 28, United States Code, and in ac-
3 cordance with this section, shall review and, if
4 appropriate, amend the Federal sentencing
5 guidelines and policy statements applicable to
6 persons convicted of any offense under section
7 594 of title 18, United States Code.

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

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the date of the enactment
17 of this Act.

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

19 (a) REPORTING.—Any person may report to the At-
20 torney General any communication of, or the causation of
21 any communication of, information, or the production of
22 information with the intent that such information be com-
23 municated, if the information is—

24 (1) information that is described in—

1 (A) subparagraph (C) of section
2 2004(b)(2) of the Revised Statutes (42 U.S.C.
3 1971(b)(2)(C)); or

4 (B) subparagraph (C) of section
5 594(b)(1)(C) of title 18, United States Code;
6 and

7 (2) false.

8 (b) CORRECTIVE ACTION.—

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

18 (A) undertake all effective measures nec-
19 essary to provide correct information to voters
20 affected by the false information;

21 (B) refer any matter under the jurisdiction
22 of the Civil Rights Division of the Department
23 of Justice to such division for prosecution; and

1 (C) refer the matter to the appropriate
2 Federal and State authorities for criminal pros-
3 ecution or civil action after the election.

4 (2) REGULATIONS.—

5 (A) IN GENERAL.—The Attorney General
6 shall promulgate regulations regarding the
7 methods and means of corrective actions to be
8 taken under paragraph (1). Such regulations
9 shall be developed in consultation with the Elec-
10 tion Assistance Commission, civil rights organi-
11 zations, voting rights groups, State and local
12 election officials, voter protection groups, and
13 other interested community organizations.

14 (B) STUDY.—

15 (i) IN GENERAL.—The Attorney Gen-
16 eral, in consultation with the Federal Com-
17 munications Commission and the Election
18 Assistance Commission, shall conduct a
19 study on the feasibility of providing the
20 corrective information under paragraph (1)
21 through public service announcements, the
22 emergency alert system, or other forms of
23 public broadcast.

24 (ii) REPORT.—Not later than 180
25 days after the date of the enactment of

1 this Act, the Attorney General shall submit
2 to Congress a report detailing the results
3 of the study conducted under clause (i).

4 ~~(c) REPORTS TO CONGRESS.—~~

5 ~~(1) IN GENERAL.—~~Not later than 90 days after
6 any primary, general, or run-off election for Federal
7 office, the Attorney General shall submit to the ap-
8 propriate committees of Congress a report compiling
9 and detailing any allegations of false information
10 submitted pursuant to subsection (a) and relating to
11 such election.

12 ~~(2) CONTENTS.—~~

13 ~~(A) IN GENERAL.—~~Each report submitted
14 under paragraph (1) shall include—

15 ~~(i)~~ detailed information on specific al-
16 legations of deceptive tactics;

17 ~~(ii)~~ statistical compilations of how
18 many allegations were made and of what
19 type;

20 ~~(iii)~~ the geographic locations of and
21 the populations affected by the alleged de-
22 ceptive information;

23 ~~(iv)~~ the status of the investigations of
24 such allegations.

1 (v) any corrective actions taken in re-
2 sponse to such allegations;

3 (vi) the rationale used for any correc-
4 tive actions or for any refusal to pursue an
5 allegation;

6 (vii) the effectiveness of any such cor-
7 rective actions;

8 (viii) whether a Voting Integrity Task
9 Force was established with respect to such
10 election; and, if so, how such task force
11 was staffed and funded;

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

14 (x) any suit instituted under section
15 2004(b)(2) of the Revised Statutes (42
16 U.S.C. 1971(b)(2)) in connection with such
17 allegations; and

18 (xi) any criminal prosecution insti-
19 tuted under section 594(b) of title 18,
20 United States Code in connection with
21 such allegations.

22 (B) EXCEPTION.—The Attorney General
23 may withhold any information that the Attorney
24 General determines would unduly interfere with
25 an on-going investigation.

1 ~~(3) REPORT MADE PUBLIC.~~—On the date that
2 the Attorney General submits the report required
3 under paragraph ~~(1)~~, the Attorney General shall also
4 make the report publicly available through the Inter-
5 net and other appropriate means.

6 ~~(d) DELEGATION OF DUTIES.~~—

7 ~~(1) IN GENERAL.~~—The Attorney General may
8 delegate the responsibilities under this section to a
9 Voting Integrity Task Force established under para-
10 graph ~~(2)~~.

11 ~~(2) VOTING INTEGRITY TASK FORCE.~~—

12 ~~(A) IN GENERAL.~~—The Attorney General
13 may establish a Voting Integrity Task Force to
14 carry out the requirements of this section with
15 respect to any general, primary, run-off, or spe-
16 cial election for Federal office.

17 ~~(B) COMPOSITION.~~—Any Voting Integrity
18 Task Force established under paragraph ~~(1)~~
19 shall be under the direction of the Assistant At-
20 torney General for the Civil Rights Division and
21 the Assistant Attorney General for the Criminal
22 Division, jointly.

23 ~~(e) FEDERAL OFFICE.~~—For purposes of this section,
24 the term “Federal office” means the office of President,
25 Vice President, presidential elector, Member of the Senate,

1 Member of the House of Representatives, or Delegate or
2 Commissioner from a territory or possession of the United
3 States.

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

7 **SEC. 5. SEVERABILITY.**

8 If any provision of this Act or any amendment made
9 by this Act, or the application of a provision or amend-
10 ment to any person or circumstance, is held to be uncon-
11 stitutional, the remainder of this Act and the amendments
12 made by this Act, and the application of the provisions
13 and amendments to any person or circumstance, shall not
14 be affected by the holding.

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “Deceptive Practices and*
17 *Voter Intimidation Prevention Act of 2007”.*

18 **SEC. 2. FINDINGS.**

19 *Congress makes the following findings:*

20 (1) *The right to vote through casting a ballot for*
21 *one’s preferred candidate is a fundamental right ac-*
22 *corded to United States citizens by the Constitution*
23 *and the unimpeded exercise of this right is essential*
24 *to the functioning of our democracy.*

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

5 (3) *Some of these barriers were removed by the*
6 *15th, 19th, and 24th Amendments to the Constitution.*

7 (4) *Despite the elimination of some of these bar-*
8 *riers to the polls, the integrity of today's elections is*
9 *threatened by newer tactics aimed at suppressing*
10 *voter turnout. These tactics include "deceptive prac-*
11 *tices", which involve the dissemination of false infor-*
12 *mation intended to prevent voters from casting their*
13 *ballots, prevent voters from voting for the candidate*
14 *of their choice, intimidate the electorate, and under-*
15 *mine 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. Measures*
20 *to combat denials of that right are a legitimate exer-*
21 *cise of congressional power under the 13th, 14th, and*
22 *15th Amendments to the United States Constitution.*

23 (6) *Shortly before the 1990 midterm Federal elec-*
24 *tions, 125,000 voters in North Carolina received post-*
25 *cards providing false information about voter eligi-*

1 *bility and a warning about criminal penalties for*
2 *voter fraud. Ninety-seven percent of the voters who re-*
3 *ceived postcards were African American.*

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

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

18 (9) *In the same 2006 election, some Virginia vot-*
19 *ers received automated phone messages falsely warn-*
20 *ing them that the “Virginia Elections Commission”*
21 *had determined they were ineligible to vote and that*
22 *they would face severe criminal penalties if they tried*
23 *to cast a ballot.*

24 (10) *In 2006 in Maryland, certain campaigns*
25 *for Governor and United States Senator distributed*

1 *fliers in predominantly African-American neighbor-*
2 *hoods falsely claiming that certain candidates had*
3 *been endorsed by their opponents' party and by*
4 *prominent figures who had actually endorsed the op-*
5 *ponents of the candidates.*

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

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

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

21 (14) *The First Amendment does not preclude the*
22 *regulation of some intentionally false speech, even if*
23 *it is political in nature. As the Supreme Court of the*
24 *United States has recognized, “[t]hat speech is used*
25 *as a tool for political ends does not automatically*

1 bring it under the protective mantle of the Constitu-
 2 tion. For the use of the known lie as a tool is at once
 3 at odds with the premises of democratic government
 4 and with the orderly manner in which economic, so-
 5 cial, or political change is to be effected Hence
 6 the knowingly false statement and the false statement
 7 made with reckless disregard of the truth, do not
 8 enjoy constitutional protection.”. *Garrison v. Lou-*
 9 *siana*, 379 U.S. 64, 75 (1964).

10 **SEC. 3. PROHIBITION ON DECEPTIVE PRACTICES IN FED-**
 11 **ERAL ELECTIONS.**

12 (a) *CIVIL ACTION*.—Subsection (b) of section 2004 of
 13 *the Revised Statutes (42 U.S.C. 1971(b))* is amended—

14 (1) by striking “No person” and inserting the
 15 following:

16 “(1) No person”; and

17 (2) by inserting at the end the following new
 18 paragraph:

19 “(2)(A) No person, whether acting under color of
 20 law or otherwise, shall, within 60 days before an elec-
 21 tion described in subparagraph (B), communicate or
 22 cause to be communicated information described in
 23 subparagraph (C), or produce information described
 24 in subparagraph (C) with the intent that such infor-
 25 mation be communicated, if such person—

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

2 “(ii) has the intent to prevent another per-
3 son from exercising the right to vote or from vot-
4 ing for the candidate of such other person’s
5 choice in an election described in subparagraph
6 (B).

7 “(B) An election described in this subparagraph
8 is any general, primary, run-off, or special election
9 held solely or in part for the purpose of electing a
10 candidate for the office of President, Vice President,
11 presidential elector, Member of the Senate, Member of
12 the House of Representatives, or Delegate or Commis-
13 sioner from a territory or possession.

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

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

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

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

23 “(II) information regarding a voter’s
24 registration status or eligibility; or

1 “(iii) the explicit endorsement by any per-
2 son or organization for the upcoming election of
3 a candidate to any office described in subpara-
4 graph (B).”.

5 (b) *CRIMINAL PENALTY.*—

6 (1) *IN GENERAL.*—Section 594 of title 18,
7 *United States Code, is amended—*

8 (A) by striking “Whoever” and inserting the
9 following:

10 “(a) *INTIMIDATION.*—Whoever”;

11 (B) by striking “at any election held solely
12 or in part for the purpose of electing such a can-
13 didate” and inserting “at any general, primary,
14 run-off, or special election held solely or in part
15 for the purpose of electing such a candidate”;
16 and

17 (C) by adding at the end the following:

18 “(b) *DECEPTIVE ACTS.*—

19 “(1) *PROHIBITION.*—

20 “(A) *IN GENERAL.*—It shall be unlawful for
21 any person, within 60 days before an election de-
22 scribed in subparagraph (B), to communicate or
23 cause to be communicated information described
24 in subparagraph (C), or produce information de-
25 scribed in subparagraph (C) with the intent that

1 *such information be communicated, if such per-*
2 *son—*

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

5 “(ii) *has the intent to prevent another*
6 *person from exercising the right to vote or*
7 *from voting for the candidate of such other*
8 *person’s choice in an election described in*
9 *subparagraph (B).*

10 “(B) *ELECTION DESCRIBED.—An election*
11 *described in this subparagraph is any general,*
12 *primary, run-off, or special election held solely*
13 *or in part for the purpose of electing a candidate*
14 *for the office of President, Vice President, presi-*
15 *dential elector, Member of the Senate, Member of*
16 *the House of Representatives, or Delegate or*
17 *Commissioner from a territory or possession.*

18 “(C) *INFORMATION DESCRIBED.—Informa-*
19 *tion is described in this subparagraph if such in-*
20 *formation is regarding—*

21 “(i) *the time, place, or manner of any*
22 *election described in subparagraph (B);*

23 “(ii) *the qualifications for or restric-*
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1 “(I) any criminal penalties asso-
2 ciated with voting in any such elec-
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4 “(II) information regarding a vot-
5 er’s registration status or eligibility; or

6 “(iii) the explicit endorsement by any
7 person or organization for the upcoming
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10 “(2) PENALTY.—Any person who violates para-
11 graph (1) shall be fined not more than \$100,000, im-
12 prisoned not more than 5 years, or both.

13 “(c) ATTEMPT.—Any person who attempts to commit
14 any offense described in subsection (a) or (b) shall be subject
15 to the same penalties as those prescribed for the offense that
16 the person attempted to commit.”.

17 (2) MODIFICATION OF PENALTY FOR VOTER IN-
18 TIMIDATION.—Section 594(a) of title 18, United
19 States Code, as amended by paragraph (1), is amend-
20 ed—

21 (A) by inserting “by any means, including
22 by means of written, electronic, or telephonic
23 communications,” after “any other person”; and

24 (B) by striking “one year” and inserting “5
25 years”.

1 (3) *SENTENCING GUIDELINES.*—

2 (A) *REVIEW AND AMENDMENT.*—Not later
3 than 180 days after the date of enactment of this
4 Act, the United States Sentencing Commission,
5 pursuant to its authority under section 994 of
6 title 28, United States Code, and in accordance
7 with this section, shall review and, if appro-
8 priate, amend the Federal sentencing guidelines
9 and policy statements applicable to persons con-
10 victed of any offense under section 594 of title
11 18, United States Code.

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

19 (c) *EFFECTIVE DATE.*—The amendments made by this
20 section shall take effect on the date of the enactment of this
21 Act.

22 **SEC. 4. REPORTING OF FALSE ELECTION INFORMATION.**

23 (a) *IN GENERAL.*—Any person may report to the At-
24 torney General any communication of, or the causation of
25 any communication of, information, or the production of

1 *information with the intent that such information be com-*
 2 *municated, if the information is—*

3 *(1) information that is described in—*

4 *(A) subparagraph (C) of section 2004(b)(2)*
 5 *of the Revised Statutes (42 U.S.C.*
 6 *1971(b)(2)(C)); or*

7 *(B) subparagraph (C) of section*
 8 *594(b)(1)(C) of title 18, United States Code; and*
 9 *(2) false.*

10 *(b) REFERRAL.—If a report under subsection (a) pro-*
 11 *vides a reasonable basis to find that a violation of section*
 12 *2004(b) of the Revised Statutes (42 U.S.C. 1971(b)) or sec-*
 13 *tion 594(b) of title 18, United States Code, has occurred,*
 14 *the Attorney General shall pursue any appropriate crimi-*
 15 *nal prosecution or civil action and shall refer the matter*
 16 *to the Civil Rights Division of the Department of Justice*
 17 *for criminal prosecution or civil action, but only if such*
 18 *matter is otherwise under the jurisdiction of such division.*

19 *(c) DELAY OF INVESTIGATION.—No investigation or*
 20 *legal action relating to a report under subsection (a) may*
 21 *begin until after the election with respect to which such re-*
 22 *port relates has been completed, unless the Attorney Gen-*
 23 *eral—*

1 (1) *reasonably believes that it is necessary to*
 2 *promptly pursue such investigation or legal pro-*
 3 *ceedings; and*

4 (2) *reasonably determines that such investigation*
 5 *or legal proceeding will not inhibit any person from*
 6 *exercising the right to vote.*

7 **SEC. 5. CORRECTIVE ACTION.**

8 (a) *ACTION BY ATTORNEY GENERAL.—*

9 (1) *IN GENERAL.—Immediately after receiving a*
 10 *report under section 4(a), the Attorney General shall*
 11 *consider and review such report. If the report pro-*
 12 *vides a reasonable basis to find that—*

13 (A) *false information relating to—*

14 (i) *the time or place of any general,*
 15 *primary, run-off, or special election held*
 16 *solely or in part for the purpose of electing*
 17 *a candidate for Federal office; or*

18 (ii) *the qualifications for or restric-*
 19 *tions on voter eligibility for any such elec-*
 20 *tion;*

21 *has been communicated, caused to be com-*
 22 *municated, or produced with the intent that*
 23 *such information be communicated; and*

1 (B) the communication of such false infor-
2 mation could materially hinder any citizen's
3 right to vote;

4 the Attorney General shall undertake all effective
5 measures necessary to correct such false information
6 by providing correct information relating to the time
7 or place of the election or the qualifications for or re-
8 strictions on voter eligibility to voters affected by the
9 false information. The information provided by the
10 Attorney General to affected voters under the pre-
11 ceding sentence shall only consist of information nec-
12 essary to correct the false information described in the
13 report.

14 (2) INVESTIGATION.—In reviewing a report
15 under paragraph (1), the Attorney General shall not
16 undertake any investigation relating to the report un-
17 less—

18 (A) such an investigation is necessary to de-
19 termine the need for, or the scope of, corrective
20 action under paragraph (1); and

21 (B) the Attorney General reasonably deter-
22 mines that such investigation will not inhibit
23 any person from exercising the right to vote.

24 (b) RIGHT OF ACTION.—If a person has made a report
25 under section 4(a) that provides a reasonable basis for find-

1 *ing that information described in subsection (a)(1)(A) has*
2 *been communicated, caused to be communicated, or pro-*
3 *duced with the intent that such information be commu-*
4 *nicated, and the Attorney General fails to take corrective*
5 *action required under subsection (a) within 72 hours of the*
6 *filing of such report (or sooner if necessary to permit timely*
7 *corrective action before an election), such person may apply*
8 *to a United States district court for an order requiring the*
9 *Attorney General to take such corrective action.*

10 *(c) STANDARDS FOR TAKING CORRECTIVE ACTION.—*

11 *(1) IN GENERAL.—*

12 *(A) BIENNIAL REPORT.—Not later than*
13 *January 1 of each year in which there is a regu-*
14 *larly scheduled general election for Federal office,*
15 *the Attorney General shall submit to the Com-*
16 *mittee on the Judiciary of the Senate and the*
17 *Committee on the Judiciary of the House of Rep-*
18 *resentatives a report on the procedures and*
19 *standards intended to be used to provide correc-*
20 *tive action under this subsection.*

21 *(B) SUPPLEMENTAL REPORTS.—If the At-*
22 *torney General revises or changes any procedures*
23 *or standards contained in the most recent report*
24 *submitted under subparagraph (A), the Attorney*
25 *General shall promptly submit to the Committee*

1 *on the Judiciary of the Senate and the Com-*
2 *mittee on the Judiciary of the House of Rep-*
3 *resentatives a report on such revised or addi-*
4 *tional procedures.*

5 (C) *CONSULTATION.*—*In developing or re-*
6 *vising any standards or procedures for the meth-*
7 *ods and means of corrective actions under this*
8 *subsection, the Attorney General shall consult*
9 *with the Election Assistance Commission, civil*
10 *rights organizations, voting rights groups, State*
11 *and local election officials, voter protection*
12 *groups, and other interested community organi-*
13 *zations.*

14 (2) *STUDY.*—

15 (A) *IN GENERAL.*—*The Attorney General,*
16 *in consultation with the Federal Communica-*
17 *tions Commission and the Election Assistance*
18 *Commission, shall conduct a study on the feasi-*
19 *bility of providing corrective information under*
20 *subsection (a) through public service announce-*
21 *ments, the emergency alert system, or other forms*
22 *of public broadcast.*

23 (B) *REPORT.*—*Not later than 90 days after*
24 *the date of the enactment of this Act, the Attor-*
25 *ney General shall submit to Congress a report*

1 *detailing the results of the study conducted under*
2 *subparagraph (A).*

3 *(d) FEDERAL OFFICE.—For purposes of this section*
4 *and section 6, the term “Federal office” means the office*
5 *of President, Vice President, presidential elector, Member*
6 *of the Senate, Member of the House of Representatives, or*
7 *Delegate or Commissioner from a territory or possession of*
8 *the United States.*

9 *(e) AUTHORIZATION OF APPROPRIATIONS.—There are*
10 *authorized to be appropriated to the Attorney General such*
11 *sums as may be necessary to carry out this section.*

12 **SEC. 6. REPORTS TO CONGRESS.**

13 *(a) IN GENERAL.—Not later than 90 days after any*
14 *general election for Federal office, the Attorney General*
15 *shall submit to the appropriate committees of Congress a*
16 *report compiling and detailing any allegations of false in-*
17 *formation submitted pursuant to section 4(a) which relate*
18 *to such election or to any primary or run-off election held*
19 *before such election and after the general election for Federal*
20 *office preceding the general election to which the report re-*
21 *lates.*

22 *(b) CONTENTS.—*

23 *(1) IN GENERAL.—Each report submitted under*
24 *subsection (a) shall include—*

1 (A) detailed information on specific allega-
2 tions of deceptive tactics;

3 (B) statistical compilations of how many
4 allegations were made and of what type;

5 (C) the geographic locations of and the pop-
6 ulations affected by the alleged deceptive infor-
7 mation;

8 (D) the status of the investigations of such
9 allegations;

10 (E) any corrective actions taken under sec-
11 tion 5(a) in response to such allegations;

12 (F) the rationale used for any such correc-
13 tive actions or for any refusal to pursue an alle-
14 gation relating to information described in sec-
15 tion 5(a)(1)(A);

16 (G) the effectiveness of any such corrective
17 actions;

18 (H) any legal actions filed against the At-
19 torney General under section 5(b), together with
20 the outcome of each such legal action;

21 (I) any referrals of information to other
22 Federal, State, or local agencies;

23 (J) any suit instituted under section
24 2004(b)(2) of the Revised Statutes (42 U.S.C.

1 1971(b)(2)) in connection with such allegations;
2 and

3 (K) any criminal prosecution instituted
4 under title 18, United States Code, in connection
5 with such allegations.

6 (2) *EXCEPTION.*—The Attorney General may
7 withhold any nonpublic information that the Attor-
8 ney General reasonably determines would infringe on
9 the rights of a criminal suspect or defendant or would
10 compromise an on-going investigation or prosecution.

11 (c) *REPORT MADE PUBLIC.*—On the date that the At-
12 torney General submits the report required under subsection
13 (a), the Attorney General shall also make the report publicly
14 available through the Internet and other appropriate
15 means.

16 **SEC. 7. SEVERABILITY.**

17 If any provision of this Act or any amendment made
18 by this Act, or the application of a provision or amendment
19 to any person or circumstance, is held to be unconstitu-
20 tional, the remainder of this Act and the amendments made
21 by this Act, and the application of the provisions and
22 amendments to any person or circumstance, shall not be
23 affected by the holding.

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110TH CONGRESS
1ST Session

S. 453

[Report No. 110-191]

A BILL

To prohibit deceptive practices in Federal elections.

OCTOBER 4, 2007

Reported with an amendment