

112TH CONGRESS  
1ST SESSION

# S. 1994

To prohibit deceptive practices in Federal elections.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2011

Mr. SCHUMER (for himself, Mr. CARDIN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 2011”.

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 requirements.

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

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

20 (5) Denials of the right to vote, and deceptive  
21 practices designed to prevent members of racial, eth-  
22 nic, and language minorities from exercising that  
23 right, are an outgrowth of discriminatory history, in-  
24 cluding slavery. Measures to combat denials of that  
25 right are a legitimate exercise of congressional power

1 under article I, section 4 and article II, section 1 of,  
2 and the 14th and 15th Amendments to, the United  
3 States 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 2004, fliers were distributed in minority  
17 neighborhoods in Milwaukee, Wisconsin, falsely  
18 claiming, “If you’ve already voted in any election  
19 this year, you can’t vote in the presidential election;  
20 If anybody in your family has ever been found guilty  
21 of anything, you can’t vote in the presidential elec-  
22 tion; If you violate any of these laws, you can get  
23 ten years in prison and your children will get taken  
24 away from you.”.

1           (9) In 2004, in Franklin County, Ohio, a flyer  
2 was distributed urging voters of one political party  
3 to vote on Tuesday, Election Day, and voters of an-  
4 other political party to vote on Wednesday, the day  
5 after the election.

6           (10) In the 2004 general election, in Allegheny  
7 County, Pennsylvania, a flyer was distributed noting  
8 that due to “immense voter turnout” Republicans  
9 should vote on Tuesday and Democrats should vote  
10 on Wednesday. The flyer thanked voters “for cooper-  
11 ating with us in this endeavor to create a peaceful  
12 voting environment”.

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

22           (12) In the same 2006 election, some Virginia  
23 voters received automated phone messages falsely  
24 warning them that the “Virginia Elections Commis-  
25 sion” had determined they were ineligible to vote

1 and that they would face severe criminal penalties if  
2 they tried to cast a ballot.

3 (13) In 2006, in Maryland, certain campaigns  
4 for Governor and United States Senator distributed  
5 fliers in predominantly African-American neighbor-  
6 hoods falsely claiming that certain candidates had  
7 been endorsed by their opponents' party and by  
8 prominent figures who had actually endorsed the op-  
9 ponents of the candidates.

10 (14) In 2008, Ohio residents reported receiving  
11 misleading automated calls giving voters incorrect  
12 information about the location of their polling  
13 places.

14 (15) In the same year, fliers were distributed in  
15 predominantly African-American neighborhoods of  
16 Philadelphia, Pennsylvania, falsely warning that peo-  
17 ple with outstanding warrants or unpaid parking  
18 tickets could be arrested if they showed up at the  
19 polls on Election Day.

20 (16) In the same year, messages were sent to  
21 users of the social media website Facebook falsely  
22 stating that the election had been postponed a day.  
23 Students at some universities, including Florida  
24 State University, received text messages saying the  
25 same thing.

1           (17) In the same year, a local registrar of elec-  
2           tions in Montgomery County, Virginia, issued two  
3           releases incorrectly warning that students at Vir-  
4           ginia Tech who registered to vote at their college  
5           could no longer be claimed as dependents on their  
6           parents' tax returns and could lose scholarships or  
7           coverage under their parents' car and health insur-  
8           ance.

9           (18) In the 2010 election, in African-American  
10          neighborhoods of Houston, Texas, a group called the  
11          "Black Democratic Trust of Texas" distributed fly-  
12          ers falsely warning that a straight-ticket vote for the  
13          Democratic Party would not count and that a vote  
14          just for a single Democratic candidate would count  
15          for the entire Democratic ticket.

16          (19) In the 2010 election, in Maryland, a polit-  
17          ical consultant paid for robocalls on election night to  
18          thousands of African-American households that said,  
19          while the polls were still open, "I'm calling to let ev-  
20          eryone know that Governor O'Malley and President  
21          Obama have been successful. Our goals have been  
22          met. The polls were correct . . . We're okay. Relax.  
23          Everything is fine. The only thing left is to watch  
24          on TV tonight."

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

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

11          (22) The Federal Government has a compelling  
12          interest in “protecting voters from confusion and  
13          undue influence” and in “preserving the integrity of  
14          its election process”. *Burson v. Freeman*, 504 U.S.  
15          191, 199 (1992).

16          (23) The First Amendment does not preclude  
17          the regulation of some intentionally false speech,  
18          even if it is political in nature. As the Supreme  
19          Court of the United States has recognized, “[t]hat  
20          speech is used as a tool for political ends does not  
21          automatically bring it under the protective mantle of  
22          the Constitution. For the use of the known lie as a  
23          tool is at once at odds with the premises of demo-  
24          cratic government and with the orderly manner in  
25          which economic, social, or political change is to be





1           “(i) knows such information to be ma-  
2           terially false; and

3           “(ii) has the intent to mislead voters,  
4           or the intent to impede, hinder, discourage,  
5           or prevent another person from exercising  
6           the right to vote in an election described in  
7           paragraph (5).

8           “(B) INFORMATION DESCRIBED.—Infor-  
9           mation is described in this subparagraph if such  
10          information is regarding—

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

13           “(ii) the qualifications for or restric-  
14           tions on voter eligibility for any such elec-  
15           tion, including—

16           “(I) any criminal penalties asso-  
17           ciated with voting in any such elec-  
18           tion; or

19           “(II) information regarding a  
20           voter’s registration status or eligi-  
21           bility.

22          “(3) FALSE STATEMENTS REGARDING PUBLIC  
23          ENDORSEMENTS.—

24           “(A) PROHIBITION.—No person, whether  
25          acting under color of law or otherwise, shall,

1 within 90 days before an election described in  
2 paragraph (5), by any means, including by  
3 means of written, electronic, or telephonic com-  
4 munications, communicate, or cause to be com-  
5 municated, a materially false statement about  
6 an endorsement, if such person—

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

8 and

9 “(ii) has the intent to mislead voters.

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

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

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

23 “(iii) such person, political party, or  
24 organization—

1                   “(I) has publicly and explicitly  
2                   stated that it supports the election of  
3                   a different candidate for such Federal  
4                   office in the election; or

5                   “(II) has supported no candidate  
6                   for such Federal office in the election.

7                   “(4) HINDERING, INTERFERING WITH, OR PRE-  
8                   VENTING VOTING OR REGISTERING TO VOTE.—No  
9                   person, whether acting under color of law or other-  
10                  wise, shall corruptly hinder, interfere with, or pre-  
11                  vent another person from voting, registering to vote,  
12                  or aiding another person to vote or register to vote  
13                  in an election described in paragraph (5).

14                  “(5) ELECTION DESCRIBED.—An election de-  
15                  scribed in this paragraph is any general, primary,  
16                  run-off, or special election held solely or in part for  
17                  the purpose of nominating or electing a candidate  
18                  for the office of President, Vice President, presi-  
19                  dential elector, Member of the United States Senate,  
20                  Member of the United States House of Representa-  
21                  tives, or Delegate or Commissioner from a district,  
22                  territory, or possession.”.

23                  (b) PRIVATE RIGHT OF ACTION.—

1           (1) IN GENERAL.—Subsection (c) of section  
2           2004 of the Revised Statutes (42 U.S.C. 1971(c)) is  
3           amended—

4                   (A) by striking “Whenever any person”  
5                   and inserting the following:

6                   “(1) Whenever any person”; and

7                   (B) by adding at the end the following new  
8                   paragraph:

9                   “(2) Any person aggrieved by a violation of  
10                  subsection (b)(2), (b)(3), or (b)(4) may institute a  
11                  civil action for preventive relief, including an appli-  
12                  cation in a United States district court for a perma-  
13                  nent or temporary injunction, restraining order, or  
14                  other order.”.

15           (2) CONFORMING AMENDMENTS.—

16                   (A) Subsection (e) of section 2004 of the  
17                   Revised Statutes (42 U.S.C. 1971(e)) is amend-  
18                   ed by striking “subsection (c)” and inserting  
19                   “subsection (c)(1)”.

20                   (B) Subsection (g) of section 2004 of the  
21                   Revised Statutes (42 U.S.C. 1971(g)) is amend-  
22                   ed by striking “subsection (c)” and inserting  
23                   “subsection (c)(1)”.

24           (c) CRIMINAL PENALTY.—

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

3           (A) by striking “Whoever” and inserting  
4 the following:

5           “(a) INTIMIDATION.—Whoever”;

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

10          (C) by adding at the end the following new  
11 subsections:

12          “(b) DECEPTIVE ACTS.—

13           “(1) FALSE STATEMENTS REGARDING FEDERAL  
14 ELECTIONS.—

15           “(A) PROHIBITION.—It shall be unlawful  
16 for any person, whether acting under color of  
17 law or otherwise, within 90 days before an elec-  
18 tion described in subsection (e), by any means,  
19 including by means of written, electronic, or tel-  
20 ephonic communications, to communicate or  
21 cause to be communicated information de-  
22 scribed in subparagraph (B), or produce infor-  
23 mation described in subparagraph (B) with the  
24 intent that such information be communicated,  
25 if such person—

1           “(i) knows such information to be ma-  
2           terially false; and

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

8           “(B) INFORMATION DESCRIBED.—Infor-  
9           mation is described in this subparagraph if such  
10          information is regarding—

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

13           “(ii) the qualifications for or restric-  
14           tions on voter eligibility for any such elec-  
15           tion, including—

16           “(I) any criminal penalties asso-  
17           ciated with voting in any such elec-  
18           tion; or

19           “(II) information regarding a  
20           voter’s registration status or eligi-  
21           bility.

22          “(2) PENALTY.—Any person who violates para-  
23          graph (1) shall be fined under this title, imprisoned  
24          for not more than 5 years, or both.

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

3           “(1) PROHIBITION.—It shall be unlawful for  
4 any person, whether acting under color of law or  
5 otherwise, to corruptly hinder, interfere with, or pre-  
6 vent another person from voting, registering to vote,  
7 or aiding another person to vote or register to vote  
8 in an election described in subsection (e).

9           “(2) PENALTY.—Any person who violates para-  
10 graph (1) shall be fined under this title, imprisoned  
11 for not more than 5 years, or both.

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

16       “(e) ELECTION DESCRIBED.—An election described  
17 in this subsection is any general, primary, run-off, or spe-  
18 cial election held solely or in part for the purpose of nomi-  
19 nating or electing a candidate for the office of President,  
20 Vice President, presidential elector, Member of the United  
21 States Senate, Member of the United States House of  
22 Representatives, or Delegate or Commissioner from a dis-  
23 trict, territory, or possession.”.

24           (2) MODIFICATION OF PENALTY FOR VOTER IN-  
25 TIMIDATION.—Section 594(a) of title 18, United

1 States Code, as inserted and amended by paragraph  
2 (1), is amended by striking “one year” and inserting  
3 “5 years”.

4 (3) SENTENCING GUIDELINES.—

5 (A) REVIEW AND AMENDMENT.—Not later  
6 than 180 days after the date of enactment of  
7 this Act, the United States Sentencing Commis-  
8 sion, pursuant to its authority under section  
9 994 of title 28, United States Code, and in ac-  
10 cordance with this section, shall review and, if  
11 appropriate, amend the Federal sentencing  
12 guidelines and policy statements applicable to  
13 persons convicted of any offense under section  
14 594 of title 18, United States Code, as amend-  
15 ed by this section.

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

23 (4) PAYMENTS FOR REFRAINING FROM VOT-  
24 ING.—Subsection (c) of section 11 of the Voting  
25 Rights Act of 1965 (42 U.S.C. 1973i) is amended



1 by striking “either for registration to vote or for vot-  
2 ing” and inserting “for registration to vote, for vot-  
3 ing, or for not voting”.

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

5 (a) CORRECTIVE ACTION.—

6 (1) IN GENERAL.—If the Attorney General re-  
7 ceives a credible report that materially false informa-  
8 tion has been or is being communicated in violation  
9 of paragraphs (2) and (3) of section 2004(b) of the  
10 Revised Statutes (42 U.S.C. 1971(b)), as added by  
11 section 3(a), and if the Attorney General determines  
12 that State and local election officials have not taken  
13 adequate steps to promptly communicate accurate  
14 information to correct the materially false informa-  
15 tion, the Attorney General shall, pursuant to the  
16 written procedures and standards under subsection  
17 (b), communicate to the public, by any means, in-  
18 cluding by means of written, electronic, or telephonic  
19 communications, accurate information designed to  
20 correct the materially false information.

21 (2) COMMUNICATION OF CORRECTIVE INFORMA-  
22 TION.—Any information communicated by the Attor-  
23 ney General under paragraph (1)—

24 (A) shall—

25 (i) be accurate and objective;

1 (ii) consist of only the information  
2 necessary to correct the materially false in-  
3 formation that has been or is being com-  
4 municated; and

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

10 (B) shall not be designed to favor or dis-  
11 favor any particular candidate, organization, or  
12 political party.

13 (b) WRITTEN PROCEDURES AND STANDARDS FOR  
14 TAKING CORRECTIVE ACTION.—

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

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

1           (3) CONSULTATION.—In developing the proce-  
2           dures and standards under paragraph (1), the Attor-  
3           ney General shall consult with the Election Assist-  
4           ance Commission, State and local election officials,  
5           civil rights organizations, voting rights groups, voter  
6           protection groups, and other interested community  
7           organizations.

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

11       **SEC. 5. REPORTS TO CONGRESS.**

12          (a) IN GENERAL.—Not later than 180 days after  
13          each general election for Federal office, the Attorney Gen-  
14          eral shall submit to Congress a report compiling all allega-  
15          tions received by the Attorney General of deceptive prac-  
16          tices described in paragraphs (2), (3), and (4) of section  
17          2004(b) of the Revised Statutes (42 U.S.C. 1971(b)), as  
18          added by section 3(a), relating to the general election for  
19          Federal office and any primary, run-off, or special election  
20          relating to the general election for Federal office held in  
21          the 2 years preceding the general election.

22          (b) CONTENTS.—

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

1 (A) a description of each allegation of a  
2 deceptive practice described in subsection (a),  
3 including the geographic location, racial and  
4 ethnic composition, and language minority-  
5 group membership of the persons toward whom  
6 the alleged deceptive practice was directed;

7 (B) the status of the investigation of each  
8 allegation described in subparagraph (A);

9 (C) a description of each corrective action  
10 taken by the Attorney General under section  
11 4(a) in response to an allegation described in  
12 subparagraph (A);

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

16 (E) a description of any civil action insti-  
17 tuted under paragraph (2), (3), or (4) of sec-  
18 tion 2004(b) of the Revised Statutes (42 U.S.C.  
19 1971(b)), as added by section 3(a), in connec-  
20 tion with an allegation described in subpara-  
21 graph (A); and

22 (F) a description of any criminal prosecu-  
23 tion instituted under section 594 of title 18,  
24 United States Code, as amended by section  
25 3(e), in connection with the receipt of an allega-

1           tion described in subparagraph (A) by the At-  
2           torney General.

3           (2) EXCLUSION OF CERTAIN INFORMATION.—

4                 (A) IN GENERAL.—The Attorney General  
5           shall not include in a report submitted under  
6           subsection (a) any information protected from  
7           disclosure by rule 6(e) of the Federal Rules of  
8           Criminal Procedure or any Federal criminal  
9           statute.

10                (B) EXCLUSION OF CERTAIN OTHER IN-  
11           FORMATION.—The Attorney General may deter-  
12           mine that the following information shall not be  
13           included in a report submitted under subsection  
14           (a):

15                   (i) Any information which is privi-  
16           leged.

17                   (ii) Any information concerning an  
18           ongoing investigation.

19                   (iii) Any information concerning a  
20           criminal or civil proceeding conducted  
21           under seal.

22                   (iv) Any other nonpublic information  
23           that the Attorney General determines the  
24           disclosure of which could reasonably be ex-  
25           pected to infringe on the rights of any in-

1                   dividual or adversely affect the integrity of  
2                   a pending or future criminal investigation.

3           (c) REPORT MADE PUBLIC.—On the date that the  
4 Attorney General submits the report under subsection (a),  
5 the Attorney General shall also make the report publicly  
6 available through the Internet and other appropriate  
7 means.

8 **SEC. 6. SEVERABILITY.**

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

○