

S 453 IS

**Deceptive Practices and Voter Intimidation Prevention Act of 2007**

110th CONGRESS  
1st Session  
**S. 453**

To prohibit deceptive practices in Federal elections.

**IN THE SENATE OF THE UNITED STATES**

**January 31, 2007**

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

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**A BILL**

To prohibit deceptive practices in Federal elections.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Deceptive Practices and Voter Intimidation Prevention Act of 2007'.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

- (1) The right to vote is a fundamental right accorded to United States citizens by the Constitution and the unimpeded exercise of this right is essential to the functioning of our democracy.
- (2) Historically, certain citizens, especially racial minorities, were prevented from voting because of significant barriers such as literacy tests, poll taxes, and property requirements.

- (3) Some of these barriers were removed by the 15th, 19th, and 24th Amendments to the Constitution.
- (4) Despite the elimination of some of these barriers to the polls, the integrity of today's elections is threatened by newer tactics aimed at suppressing voter turnout. These tactics include `deceptive practices', which involve the dissemination of false information intended to prevent voters from casting their ballots, intimidate the electorate, and undermine the integrity of the electoral process.
- (5) Denials of the right to vote, and deceptive practices designed to prevent members of racial minorities from exercising that right, are an outgrowth of discriminatory history, including slavery. Measures to combat denials of that right are a legitimate exercise of congressional power under the 13th, 14th, and 15th Amendments to the United States Constitution.
- (6) Shortly before the 1990 midterm Federal elections, 125,000 voters in North Carolina received postcards providing false information about voter eligibility and a warning about criminal penalties for voter fraud. Ninety-seven percent of the voters who received postcards were African American.
- (7) In 2004, Native American voters in South Dakota were prevented from voting after they did not provide photographic identification upon request, despite the fact that they were not required to present such identification in order to vote under State or Federal law.
- (8) In the 2006 midterm election, 14,000 Latino voters in Orange County, California received mailings from the California Coalition for Immigration Reform, warning them in Spanish that `if you are an immigrant, voting in a federal election is a crime that can result in incarceration...'. In fact, an immigrant who is a naturalized citizen of the United States has the same right to vote as any other citizen.
- (9) In the same 2006 election, some Virginia voters received automated phone messages falsely warning them that the `Virginia Elections Commission' had determined they were ineligible to vote and that they would face severe criminal penalties if they tried to cast a ballot.
- (10) In 2006 in Maryland, certain candidates for Governor and United States Senator distributed fliers in predominantly African-American neighborhoods falsely claiming that the candidates had been endorsed by their

opponents' party and by prominent figures who had actually endorsed the opponents of the candidates.

(11) Those responsible for these and similar efforts should be held accountable, and civil and criminal penalties should be available to punish anyone who seeks to keep voters away from the polls by providing false information.

(12) Moreover, the Federal Government should help correct such false information in order to assist voters in exercising their right to vote without confusion and to preserve the integrity of the electoral process.

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

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

### **SEC. 3. PROHIBITION ON DECEPTIVE PRACTICES IN FEDERAL ELECTIONS.**

(a) Civil Action-

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

(A) by striking 'No person' and inserting the following:

'(1) No person'; and

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

'(2)(A) No person, whether acting under color of law or otherwise, shall, within 60 days before an election described in subparagraph (B), communicate or cause to be communicated information described in subparagraph (C), or produce information described in subparagraph (C)

with the intent that such information be communicated, if such person--

- ` (i) knows such information to be false; and
- ` (ii) has the intent to prevent another person from exercising the right to vote in an election described in subparagraph (C).

` (B) An election described in this subparagraph is any general, primary, run-off, or special election 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.

` (C) Information is described in this subparagraph if such information is regarding--

- ` (i) the time, place, or manner of any election described in subparagraph (B);
- ` (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 by ineligible voters;
  - or
  - ` (II) information regarding a voter's registration status or eligibility;
- ` (iii) the political party affiliation of any candidate running in a closed primary election for any office described in subparagraph (B) if the communication of the information also contains false information described in clause (i) or (ii); or
- ` (iv) the explicit endorsement by any person or organization of a candidate running for any office described in subparagraph (B).'

(2) PRIVATE RIGHT OF ACTION-

(A) IN GENERAL- Subsection (c) of section 2004 of the Revised Statutes (42 U.S.C. 1971(c)) is amended--

- (i) by striking `Whenever any person' and inserting the following:

` (1) Whenever any person'; and

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

` (2) Any person aggrieved by a violation of subsection (b)(2) may institute a civil action or other proper proceeding for preventive relief, including an application in a United States district court for a permanent or temporary injunction, restraining order, or other order.'

(B) CONFORMING AMENDMENTS-

(i) Subsection (e) of section 2004 of the Revised Statutes (42 U.S.C. 1971(e)) is amended by striking `subsection (c)' and inserting `subsection (c)(1)'.

(ii) Subsection (g) of section 2004 of the Revised Statutes (42 U.S.C. 1971(g)) is amended by striking `subsection (c)' and inserting `subsection (c)(1)'.

(b) Criminal Penalty-

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

(A) by striking `Whoever' and inserting the following:

`(a) Intimidation- Whoever'; and

(B) by adding at the end the following:

`(b) Deceptive Acts-

`(1) PROHIBITION-

`(A) IN GENERAL- It shall be unlawful for any person, within 60 days before an election described in subparagraph (B), to communicate or cause to be communicated information described in subparagraph (C), or produce information described in subparagraph (C) with the intent that such information be communicated, if such person--

`(i) knows such information to be false; and

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

`(B) ELECTION DESCRIBED- An election described in this subparagraph is any general, primary, run-off, or special election 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.

`(C) INFORMATION DESCRIBED- Information is described in this subparagraph if such information is regarding--

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

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

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- `(I) any criminal penalties associated with voting in any such election by ineligible voters; or
      - `(II) information regarding a voter's registration status or eligibility;
    - `(iii) the political party affiliation of any candidate running in a closed primary election for any office described in subparagraph (B) if the communication of the information also contains false information described in clause (i) or (ii); or
    - `(iv) the explicit endorsement by any person or organization of a candidate running for any office described in subparagraph (B).
  - `(2) PENALTY- Any person who violates paragraph (1) shall be fined not more than \$100,000, imprisoned not more than 5 years, or both.
- `(c) Attempt and Conspiracy-
  - `(1) ATTEMPT- Any person who attempts to commit any offense described in subsection (a) or (b) shall be subject to the same penalties as those prescribed for the offense that the person attempted to commit.
  - `(2) CONSPIRACY- If 2 or more persons conspire to commit an offense described in subsection (a) or (b), and 1 or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than 5 years.'
- (2) MODIFICATION OF PENALTY FOR VOTER INTIMIDATION- Section 594(a) of title 18, United States Code, as amended by paragraph (1), is amended--
  - (A) by inserting `by any means, including by means of written, electronic, or telephonic communications,' after `any other person'; and
  - (B) by striking `one year' and inserting `5 years'.
- (3) SENTENCING GUIDELINES-
  - (A) REVIEW AND AMENDMENT- Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 594 of title 18, United States Code.

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

(c) Effective Date- The amendments made by this section shall take effect on the date of the enactment of this Act.

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

(a) Reporting- Any person may report to the Attorney General any communication of, or the causation of any communication of, information, or the production of information with the intent that such information be communicated, if the information is--

(1) information that is described in--

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

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

(2) false.

(b) Corrective Action-

(1) IN GENERAL- Immediately after receiving a report under subsection (a), the Attorney General shall consider and review such report and, if the Attorney General determines that there is a reasonable basis to find that false information described in subsection (a)(1) has been communicated or caused to be communicated, or has been produced with the intent that such information be communicated, the Attorney General shall--

(A) undertake all effective measures necessary to provide correct information to voters affected by the false information;

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

(C) refer the matter to the appropriate Federal and State authorities for criminal prosecution or civil action after the election.

(2) REGULATIONS-

(A) IN GENERAL- The Attorney General shall promulgate regulations regarding the methods and means of corrective actions to be taken under paragraph (1). Such regulations shall be developed

in consultation with the Election Assistance Commission, civil rights organizations, voting rights groups, State and local election officials, voter protection groups, and other interested community organizations.

(B) STUDY-

(i) IN GENERAL- The Attorney General, in consultation with the Federal Communications Commission and the Election Assistance Commission, shall conduct a study on the feasibility of providing the corrective information under paragraph (1) through public service announcements, the emergency alert system, or other forms of public broadcast.

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

(c) Reports to Congress-

(1) IN GENERAL- Not later than 90 days after any primary, general, or run-off election for Federal office, the Attorney General shall submit to the appropriate committees of Congress a report compiling and detailing any allegations of false information submitted pursuant to subsection (a) and relating to such election.

(2) CONTENTS-

(A) IN GENERAL- Each report submitted under paragraph (1) shall include--

(i) detailed information on specific allegations of deceptive tactics;

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

(iii) the geographic locations of and the populations affected by the alleged deceptive information;

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

(v) any corrective actions taken in response to such allegations;

(vi) the rationale used for any corrective actions or for any refusal to pursue an allegation;

- (vii) the effectiveness of any such corrective actions;
- (viii) whether a Voting Integrity Task Force was established with respect to such election, and, if so, how such task force was staffed and funded;
- (ix) any referrals of information to other Federal, State, or local agencies;
- (x) any suit instituted under section 2004(b)(2) of the Revised Statutes (42 U.S.C. 1971(b)(2)) in connection with such allegations; and
- (xi) any criminal prosecution instituted under section 594(b) of title 18, United States Code in connection with such allegations.

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

(3) REPORT MADE PUBLIC- On the date that the Attorney General submits the report required under paragraph (1), the Attorney General shall also make the report publicly available through the Internet and other appropriate means.

(d) Delegation of Duties-

(1) IN GENERAL- The Attorney General may delegate the responsibilities under this section to a Voting Integrity Task Force established under paragraph (2).

(2) VOTING INTEGRITY TASK FORCE-

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

(B) COMPOSITION- Any Voting Integrity Task Force established under paragraph (1) shall be under the direction of the Assistant Attorney General for the Civil Rights Division and the Assistant Attorney General for the Criminal Division, jointly.

(e) Federal Office- For purposes of this section, the term 'Federal office' means 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 of the United States.

(f) Authorization of Appropriations- There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out this section.

**SEC. 5. SEVERABILITY.**

If any provision of this Act or any amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of the provisions and amendments to any person or circumstance, shall not be affected by the holding.