

115TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To prohibit deceptive practices in Federal elections.

---

IN THE SENATE OF THE UNITED STATES

---

Mrs. MCCASKILL (for herself, Mr. CARDIN, Mr. JONES, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

---

**A BILL**

To prohibit deceptive practices in Federal elections.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Deceptive Practices  
5       and Voter Intimidation Prevention Act of 2018”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

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

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

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

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

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

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

1       receive government permission before changing local  
2       voting laws, there have been Federal court decisions  
3       finding or affirming that States or localities inten-  
4       tionally discriminated against African Americans  
5       and other voters of color.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(1) IN GENERAL.—No person”; and

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

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

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

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

4 “(i) knows such information to be ma-  
5 terially false; and

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

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

13 “(i) the time, place, or manner of  
14 holding any election described in para-  
15 graph (5); or

16 “(ii) the qualifications for or restric-  
17 tions on voter eligibility for any such elec-  
18 tion, including—

19 “(I) any criminal penalties asso-  
20 ciated with voting in any such elec-  
21 tion; or

22 “(II) information regarding a  
23 voter’s registration status or eligi-  
24 bility.

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

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

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

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

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

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



1 specific candidate for a Federal office de-  
2 scribed in such paragraph; and

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

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

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

21 (b) PRIVATE RIGHT OF ACTION.—

22 (1) IN GENERAL.—Subsection (c) of section  
23 2004 of the Revised Statutes (52 U.S.C. 10101(c))  
24 is amended—

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

3 “(1) Whenever any person”; and

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

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

14 (2) CONFORMING AMENDMENTS.—

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

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

23 (c) CRIMINAL PENALTIES.—

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

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

3 “(a) INTIMIDATION.—Whoever”;

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

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

10 “(b) DECEPTIVE ACTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           (3) SENTENCING GUIDELINES.—

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

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

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

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

2 (a) CORRECTIVE ACTION.—

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

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

21 (A) shall—

22 (i) be accurate and objective;

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

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

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

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

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

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

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



1 protection groups, and other interested community  
2 organizations.

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

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

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

17 (b) CONTENTS.—

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

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

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

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

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

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

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

22 (2) EXCLUSION OF CERTAIN INFORMATION.—

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

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

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

9 (i) Any information that is privileged.

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

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

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

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

1   **SEC. 6. SEVERABILITY.**

2       If any provision of this Act or any amendment made  
3 by this Act, or the application of a provision or amend-  
4 ment to any person or circumstance, is held to be uncon-  
5 stitutional, the remainder of this Act and the amendments  
6 made by this Act, and the application of the provisions  
7 and amendments to any person or circumstance, shall not  
8 be affected by the holding.