

116TH CONGRESS
1ST SESSION

H. R. 3281

To prohibit deceptive practices in Federal elections.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2019

Mr. MCEACHIN (for himself, Mr. NADLER, Mr. DEUTCH, Mr. GALLEGO, Ms. MOORE, Ms. WILD, Mr. EVANS, Mr. GRIJALVA, Ms. NORTON, Mr. COHEN, Ms. KAPTUR, Ms. CASTOR of Florida, Mr. ROUDA, Ms. JACKSON LEE, Mr. LUJÁN, Ms. HAALAND, Mr. SARBANES, Mr. O'HALLERAN, Ms. PRESSLEY, Ms. OCASIO-CORTEZ, Mr. BLUMENAUER, Mr. CLAY, Mr. DAVID SCOTT of Georgia, Mr. CISNEROS, Mr. MEEKS, Mrs. CRAIG, Ms. LEE of California, Mr. BROWN of Maryland, Ms. CLARKE of New York, Mr. RYAN, Ms. JAYAPAL, Mr. ENGEL, Ms. DEGETTE, Mr. ESPAILLAT, Mr. TAKANO, Mr. HASTINGS, Mr. SIRES, Mr. MORELLE, Mrs. DEMINGS, Mr. JOHNSON of Georgia, Mr. HIGGINS of New York, Ms. OMAR, Mrs. LOWEY, Mr. GARCÍA of Illinois, Mrs. LURIA, Mrs. LEE of Nevada, Ms. SCHAKOWSKY, Mr. PHILLIPS, Mr. COOPER, Mr. RUSH, Mrs. KIRKPATRICK, Mr. CASTEN of Illinois, Mr. PALLONE, Mrs. DAVIS of California, Mrs. HAYES, Mr. SCOTT of Virginia, and Mr. SERRANO) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prohibit deceptive practices in Federal elections.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Deceptive Practices
5 and Voter Intimidation Prevention Act of 2019”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The right to vote by casting a ballot for
4 one's preferred candidate is a fundamental right ac-
5 corded to United States citizens by the Constitution,
6 and the unimpeded exercise of this right is essential
7 to the functioning of our democracy.

8 (2) Historically, certain citizens, especially ra-
9 cial, ethnic, and language minorities, were prevented
10 from voting because of significant barriers such as
11 literacy tests, poll taxes, and property ownership re-
12 quirements.

13 (3) Some of these barriers were removed by the
14 15th, 19th, and 24th Amendments to the Constitu-
15 tion.

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

1 (5) Furthermore, since the decision in Shelby
2 County v. Holder in which the Supreme Court
3 struck down the coverage formula used by the Vot-
4 ing Rights Act of 1965 to determine which States
5 with a history of racial discrimination must affirma-
6 tively receive government permission before changing
7 local voting laws, there have been Federal court de-
8 cisions finding or affirming that States or localities
9 intentionally discriminated against African Ameri-
10 cans and other voters of color.

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

20 (7) For the last few decades, there have been
21 a number of instances of deceptive or intimidating
22 practices aimed towards suppressing minority access
23 to the voting booth that demonstrates the need for
24 strengthened protections.

1 (8) In addition, in at least one instance in
2 1990, thousands of voters reportedly received post-
3 cards providing false information about voter eligi-
4 bility and warnings about criminal penalties for
5 voter fraud. Most of the voters who received the
6 postcards were African American.

7 (9) During the 2004 elections, Native American
8 voters in South Dakota reported being required to
9 provide photographic identification in order to vote,
10 despite the fact that neither State nor Federal law
11 required such identification.

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

19 (11) In 2008, fliers were distributed in pre-
20 dominantly African-American neighborhoods falsely
21 warning that people with outstanding warrants or
22 unpaid parking tickets could be arrested if they
23 showed up at the polls on Election Day. In the same
24 year, there were reports of people receiving text mes-

1 sages on Election Day asking them to wait until the
2 following day to vote.

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

6 (13) In the 2016 elections, there were reports
7 of students receiving fliers stating that in order to
8 vote in a local precinct, they had to pay to change
9 their driver's license and re-register vehicles in the
10 city in which the precinct was located.

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

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

21 (16) The Federal Government has a compelling
22 interest in "protecting voters from confusion and
23 undue influence" and in "preserving the integrity of
24 its election process". *Burson v. Freeman*, 504 U.S.
25 191, 199 (1992).

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

15 **SEC. 3. PROHIBITION ON DECEPTIVE PRACTICES IN FED-**
 16 **ERAL ELECTIONS.**

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

19 (1) by striking “No person” and inserting the
 20 following:

21 “(1) IN GENERAL.—No person”; and

22 (2) by inserting at the end the following new
 23 paragraphs:

24 “(2) FALSE STATEMENTS REGARDING FEDERAL
 25 ELECTIONS.—

1 “(A) PROHIBITION.—No person, whether
2 acting under color of law or otherwise, shall,
3 within 60 days before an election described in
4 paragraph (5), by any means, including by
5 means of written, electronic, or telephonic com-
6 munications, communicate or cause to be com-
7 municated information described in subpara-
8 graph (B), or produce information described in
9 subparagraph (B) with the intent that such in-
10 formation be communicated, if such person—

11 “(i) knows such information to be ma-
12 terially false; 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) INFORMATION DESCRIBED.—Infor-
18 mation is described in this subparagraph if such
19 information is regarding—

20 “(i) the time, place, or manner of
21 holding any election described in para-
22 graph (5); or

23 “(ii) the qualifications for or restric-
24 tions on voter eligibility for any such elec-
25 tion, including—

1 “(I) any criminal penalties asso-
2 ciated with voting in any such elec-
3 tion; or

4 “(II) information regarding a
5 voter’s registration status or eligi-
6 bility.

7 “(3) FALSE STATEMENTS REGARDING PUBLIC
8 ENDORSEMENTS.—

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

17 “(i) knows such statement to be false;
18 and

19 “(ii) has the intent to impede or pre-
20 vent another person from exercising the
21 right to vote in an election described in
22 paragraph (5).

23 “(B) DEFINITION OF ‘MATERIALLY
24 FALSE’.—For purposes of subparagraph (A), a
25 statement about an endorsement is ‘materially

1 false' if, with respect to an upcoming election
2 described in paragraph (5)—

3 “(i) the statement states that a spe-
4 cifically named person, political party, or
5 organization has endorsed the election of a
6 specific candidate for a Federal office de-
7 scribed in such paragraph; and

8 “(ii) such person, political party, or
9 organization has not endorsed the election
10 of such candidate.

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

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

1 (b) PRIVATE RIGHT OF ACTION.—

2 (1) IN GENERAL.—Subsection (c) of section
3 2004 of the Revised Statutes (52 U.S.C. 10101(c))
4 is amended—

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

7 “(1) Whenever any person”; and

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

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

18 (2) CONFORMING AMENDMENTS.—

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

23 (B) Subsection (g) of section 2004 of the
24 Revised Statutes (52 U.S.C. 10101(g)) is

1 amended by striking “subsection (c)” and in-
2 serting “subsection (c)(1)”.

3 (c) CRIMINAL PENALTIES.—

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

6 (A) by striking “Whoever” and inserting
7 the following:

8 “(a) INTIMIDATION.—Whoever”;

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

13 (C) by adding at the end the following new
14 subsections:

15 “(b) DECEPTIVE ACTS.—

16 “(1) FALSE STATEMENTS REGARDING FEDERAL
17 ELECTIONS.—

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

1 mation described in subparagraph (B) with the
2 intent that such information be communicated,
3 if such person—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (3) SENTENCING GUIDELINES.—

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

20 (B) AUTHORIZATION.—The United States
21 Sentencing Commission may amend the Federal
22 Sentencing Guidelines in accordance with the
23 procedures set forth in section 21(a) of the Sen-
24 tencing Act of 1987 (28 U.S.C. 994 note) as

1 though the authority under that section had not
2 expired.

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

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

10 (a) CORRECTIVE ACTION.—

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

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

4 (A) shall—

5 (i) be accurate and objective;

6 (ii) consist of only the information
7 necessary to correct the materially false in-
8 formation that has been or is being com-
9 municated; and

10 (iii) to the extent practicable, be by a
11 means that the Attorney General deter-
12 mines will reach the persons to whom the
13 materially false information has been or is
14 being communicated; and

15 (B) shall not be designed to favor or dis-
16 favor any particular candidate, organization, or
17 political party.

18 (b) WRITTEN PROCEDURES AND STANDARDS FOR
19 TAKING CORRECTIVE ACTION.—

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

1 (2) INCLUSION OF APPROPRIATE DEADLINES.—

2 The procedures and standards under paragraph (1)
3 shall include appropriate deadlines, based in part on
4 the number of days remaining before the upcoming
5 election.

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

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

16 **SEC. 5. REPORTS TO CONGRESS.**

17 (a) IN GENERAL.—Not later than 180 days after
18 each general election for Federal office, the Attorney Gen-
19 eral shall submit to Congress a report compiling all allega-
20 tions received by the Attorney General of deceptive prac-
21 tices described in paragraphs (2), (3), and (4) of section
22 2004(b) of the Revised Statutes (52 U.S.C. 10101(b)), as
23 added by section 3(a), relating to the general election for
24 Federal office and any primary, run-off, or a special elec-

1 tion for Federal office held in the 2 years preceding the
2 general election.

3 (b) CONTENTS.—

4 (1) IN GENERAL.—Each report submitted
5 under subsection (a) shall include—

6 (A) a description of each allegation of a
7 deceptive practice described in subsection (a),
8 including the geographic location, racial and
9 ethnic composition, and language minority-
10 group membership of the persons toward whom
11 the alleged deceptive practice was directed;

12 (B) the status of the investigation of each
13 allegation described in subparagraph (A);

14 (C) a description of each corrective action
15 taken by the Attorney General under section
16 4(a) in response to an allegation described in
17 subparagraph (A);

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

21 (E) to the extent information is available,
22 a description of any civil action instituted under
23 section 2004(c)(2) of the Revised Statutes (52
24 U.S.C. 10101(c)(2)), as added by section 3(b),

1 in connection with an allegation described in
2 subparagraph (A); and

3 (F) a description of any criminal prosecu-
4 tion instituted under section 594 of title 18,
5 United States Code, as amended by section
6 3(c), in connection with the receipt of an allega-
7 tion described in subparagraph (A) by the At-
8 torney General.

9 (2) EXCLUSION OF CERTAIN INFORMATION.—

10 (A) IN GENERAL.—The Attorney General
11 shall not include in a report submitted under
12 subsection (a) any information protected from
13 disclosure by rule 6(e) of the Federal Rules of
14 Criminal Procedure or any Federal criminal
15 statute.

16 (B) EXCLUSION OF CERTAIN OTHER IN-
17 FORMATION.—The Attorney General may deter-
18 mine that the following information shall not be
19 included in a report submitted under subsection
20 (a):

- 21 (i) Any information that is privileged.
22 (ii) Any information concerning an
23 ongoing investigation.

1 (iii) Any information concerning a
2 criminal or civil proceeding conducted
3 under seal.

4 (iv) Any other nonpublic information
5 that the Attorney General determines the
6 disclosure of which could reasonably be ex-
7 pected to infringe on the rights of any in-
8 dividual or adversely affect the integrity of
9 a pending or future criminal investigation.

10 (c) REPORT MADE PUBLIC.—On the date that the
11 Attorney General submits the report under subsection (a),
12 the Attorney General shall also make the report publicly
13 available through the internet and other appropriate
14 means.

15 **SEC. 6. SEVERABILITY.**

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

○