



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**JUL 02 2012**

Dear Chairman Leahy:

This letter presents the views of the Department of Justice on S. 1994, the “Deceptive Practices and Voter Intimidation Prevention Act of 2011,” as introduced on December 14, 2011. This bill would ban deceptive election-related practices and allow the Department of Justice to better protect the voting rights of all Americans. The Department supports the enactment of legislation to address such practices, and agrees with the goals and overall approach of S. 1994. However, we recommend one important modification, discussed below.

When persons or organizations seek to gain an unfair advantage in a Federal election by engaging in deceptive practices, it undermines our system of democratic governance. These practices include, but are not limited to, mass communications that make misleading or outright dishonest claims to manipulate voters. Such incidents of deceptive practices, especially when targeting historically disenfranchised communities, undermine democratic government – which relies on a fair electoral process for its legitimacy.

S. 1994 would take important steps to prevent a wide range of deceptive practices in Federal elections. The bill would prohibit knowingly communicating misleading information about an election’s time or place, voter eligibility, or public endorsements. Moreover, the bill would prohibit any person from “hindering, interfering with, or preventing another person from voting, registering to vote, or aiding another person in voting or registering to vote in a Federal election.” These strong provisions would prohibit the deceptive practices that have been most common in recent years.

The bill gives private actors and the Department of Justice important tools to enforce prohibitions on deceptive practices. It criminalizes the deceptive practices listed above, penalizing violations with monetary fines and imprisonment of up to five years. For private citizens, it creates a right of action for anyone aggrieved by deceptive practices. Additionally, it requires the Attorney General, after receiving a credible report that materially false information has been communicated, to communicate to the public accurate and objective information in response.

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There is one way in which we believe this strong bill can be improved. The bill's corrective action provision (section 4) requires the Attorney General to take corrective action – in the form of communicating accurate information to the public – when deceptive practices take place. We believe it would be more appropriate to authorize, rather than require, such action. Given the multiple enforcement tools provided for by the bill and the importance of maintaining flexibility in responding to a diverse range of deceptive practices, we believe discretion is an important tool for the Attorney General in this context.

Finally, with respect to the bill's requirements regarding a biennial report from the Attorney General to Congress (section 5), we note that the Department's long-standing policy is not to disclose information regarding specific sources of evidence, litigation preparations, and work product, given that doing so could undermine the Department's charge of effectively and independently enforcing Federal law. We applaud the bill's sponsors for including an "exclusion from reporting" provision that effectively prevents disclosure of this type of information. The Attorney General should continue to be afforded latitude in choosing not to disclose information that the Department has a legitimate interest in protecting.

The strong prohibitions set out in the bill, along with the multiple means of redressing violations, will be a key tool in protecting the voting rights of all Americans. The Department is firmly committed to preventing deceptive election-related practices and voter intimidation. We thank you for your leadership on this bill and look forward to working with you on this bill and in the future, to protect the voting rights of all Americans.

Thank you for the opportunity to present our views. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



Judith C. Appelbaum  
Acting Assistant Attorney General

cc: The Honorable Charles E. Grassley  
Ranking Minority Member