

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Senate Judiciary Committee
Hearing on "Maximizing Voter Choice: Opening the
Presidency to Naturalized Americans"
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This hearing addresses a topic that future Congresses may well consider seriously. Whether it continues to make sense in 21st century America to allow only "natural born citizens" to be elected President is certainly open to serious debate, and I welcome the views of the witnesses who will be testifying today, particularly my House counterpart John Conyers. Indeed, I believe this amendment is far worthier of consideration than the amendments the Chairman has made a priority during this Congress - the Federal Marriage Amendment and the Flag Desecration Amendment.

At this late date in the 108th Congress, however, it is clear that we will not be adopting any Constitutional changes that we are only now beginning to discuss and debate. Meanwhile, this Committee has completely ignored the pressing matter of voter access in the elections that will be held just four weeks from today. I had suggested to the Chairman that we use this hearing date to examine the allegations of voter suppression that have been raised from Florida to South Dakota to Michigan. That would have proved a more useful endeavor by allowing this Committee to exercise its oversight over the Justice Department's Civil Rights Division to ensure that its commitment to ensuring free access to the polls has not been eroded by partisan calculation. That suggestion was ignored, and we will instead focus on an issue that at the earliest would affect the Presidential election of 2008.

Since there will apparently not be an opportunity in this Committee to address voting issues before the election, I would like to take this opportunity to state some of my concerns for the record. Sadly, this Committee has done nothing during this Congress to protect the voting rights of all Americans. In this Congress and the last, we have seen the Chairman of the Committee and the Majority Leader offer floor amendments to extend the Voting Rights Act, which is slated to expire in 2007. On both occasions, those amendments were withdrawn after I and others argued that it would be deeply irresponsible to extend the VRA without building a record to support that step. Indeed, such cursory treatment of the VRA would practically invite the Supreme Court to invalidate the law.

One might think that after Republican VRA extension amendments twice had to be withdrawn on the same grounds, this Committee might at least have held hearings on the issue. Despite my repeated requests, however, such a hearing was never held.

It is thus hard to avoid the conclusion that the amendments offered by Senators Hatch and Frist were anything more than an empty gesture offered as political show.

Meanwhile, we have done nothing to investigate whether conditions for the upcoming election are fair, despite this Committee's clear interest in and oversight of compliance with the Voting Rights Act. We see almost daily press reports about questionable activities by both Federal and State law enforcement officials that threaten the ability of minority group members to participate fully on November 2. People for the American Way has released an excellent report entitled "The Long Shadow of Jim Crow," detailing the curtailment of voting rights across the country in recent years. (I would like to place a copy of this report in the Record.) We have read that the Justice Department has placed a great and unprecedented emphasis on "voter integrity," which has all too often in the past been a euphemism for suppressing the votes of your opponent.

At the same time, the New Yorker has reported that a leading official at the Civil Rights Division, traditionally the protector of voting rights, has publicly suggested that the Justice Department should leave its voter access mission to volunteers and concentrate on "integrity" instead. I suppose this should come as no surprise, since that official - Hans von Spakovsky - came to the Justice Department with a lengthy background in the "voting integrity" movement. In addition to membership in the Federalist Society, a virtual requirement for lawyers holding senior positions in the Bush Administration, von Spakovsky served on the board of directors for the so-called Voting Integrity Project. He also wrote an article for the Georgia Public Policy Foundation urging the sort of aggressive approach to purging felons from the voting rolls that worked so disastrously in Florida in 2000. Indeed, the Voting Integrity Project worked on the design of Florida's 2000 effort. It should probably go without saying that Mr. von Spakovsky also worked for the Bush campaign as a volunteer during the Florida recount.

While the Justice Department increases its focus on "voting integrity," President Carter publicly expressed his fear last week in The Washington Post "that a repetition of the problems of 2000 [in Florida] now seems likely." He decried the "highly partisan" Florida voting officials, the absence of paper ballot printouts for voters, and the lack of uniformity in voting procedures throughout the State. Of course, this last problem provided the justification for the Supreme Court's 5-4 ruling in Bush v. Gore awarding Florida's electoral votes, and thus the election, to President Bush. One wonders whether the Court's concern about this issue continues.

There is an explicit racial element to the problems in Florida that cries out for this Committee's attention. First, even after the felon purge in 2000, Florida election officials developed a purge list this year that included as alleged felons 22,000 African Americans, who generally vote for Democratic candidates, but only 61 Hispanics, a much friendlier ethnic group for Republicans in Florida. The list was discarded only after a judge ordered it to be made public at the request of CNN, Senator Bill Nelson, and others.

Second, according to The New York Times, Florida state troopers launched an investigation of alleged absentee ballot irregularities among elderly black voters in a March 2003 Orlando

election. Armed officers visited the homes of dozens of voters, many of whom are members of the Orlando League of Voters, an African-American group encouraging civic participation. The investigation continued into August even though the Florida Department of Law Enforcement found in May that "there was no basis to support the allegations of election fraud." These reports have led many to conclude that voter intimidation may be occurring in the state that decided the 2000 election and may well decide this one as well.

The problems facing minority voters are not limited to Florida. In Michigan, a Republican state legislator has spoken openly about the need to suppress the vote in Detroit, a city that is more than 80 percent African American. In South Dakota in June, Native Americans were not allowed to vote because they did not have photo identification, which was required under neither state nor Federal law.

There are so many issues that could give rise to a divisive and harmful national dispute following the election that it only makes sense to give them full airing now. Instead, we are devoting one of the year's final hearings to a topic that, however worthy, could as easily and valuably be held next year.

Today the Senate Judiciary Committee, in conjunction with the Secretary of the Senate's office, is providing closed-caption coverage of this hearing, under a pilot program that uses voice recognition technology, which is new to the Senate. The Judiciary Committee is proud of its groundbreaking role in testing this technology for the Senate. This pilot program will help the Committee and the Senate in reaching conclusions about the effectiveness of voice recognition technology and the feasibility of its use for our and for other committees, in ways that can expand access to our proceedings to those who are hearing impaired, as well as to others.

To help the Secretary of the Senate evaluate this project and its possible extension throughout the Senate, we invite all Senators and their staff to watch this hearing on Senate Channel 13 and to email their comments about the usefulness of this voice recognition technology us at this address: ccpilot@sec.senate.gov. The address again is: ccpilot@sec.senate.gov. Thank you.