

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
November 16, 2006

Statement of Senator Patrick Leahy,  
Ranking Member, Judiciary Committee,  
On Department of Justice Civil Rights Division Oversight  
November 16, 2006

Today, the Committee is holding a long-awaited oversight hearing on the Civil Rights Division of the Justice Department. More than a year ago, the Washington Post ran two front page articles detailing how President Bush's political appointees within the Division were overriding career litigators' recommendations on crucial voting rights cases. Other newspapers like the Boston Globe have been investigating related issues, as well. A number of us have raised concerns for some time. I regret that it has taken so many months to schedule this hearing with the Assistant Attorney General of the Civil Rights Division, and that it has been delayed until this lame duck session.

For almost 50 years, the Civil Rights Division has stood at the forefront of America's march toward equality. Founded in 1957, the Division vigorously implemented civil rights laws during the turbulent era of the Civil Rights Movement. Its attorneys participated in landmark cases that helped transform the legal landscape of our country and brought us closer to the ideal of a "more perfect union." These cases included successfully prosecuting the murderers of civil rights workers, eliminating voter disenfranchisement laws, and battling discrimination in education and government services throughout the nation.

There are several reports from former career attorneys that under the current Administration the Civil Rights Division is retreating from its historic roots. I am concerned that President Bush's political appointees have reversed longstanding civil rights policies and impeded civil rights progress. There are disturbing reports that career lawyers have been shut out of the Division's decision-making process, that the Division's civil rights enforcement on behalf of racial minorities has sharply declined, and that the Department has packed the Division with attorneys who have no background in civil rights litigation.

## UNDUE POLITICAL INFLUENCE

Just a few months ago, President Bush signed into law the reauthorization of the Voting Rights Act (VRA). He proudly declared that "[m]y administration will vigorously enforce the provisions of this law, and we will defend it in court." We need to ensure that is so.

I fear that the Bush Administration may, in this instance as in so many other instances, be saying one thing, but doing another. Press accounts indicate that this Administration used weak enforcement and partisan manipulation to undermine the VRA in connection with last week's election. The Associated Press reports that the FBI is looking into complaints that callers tried to intimidate or confuse Democratic voters in the bitter contest between GOP Sen. George Allen and Democratic challenger Jim Webb. In Maryland, a state where Democrats outnumber Republicans by nearly 2-to-1, sample ballots suggesting Republican Gov. Robert L. Ehrlich and Senate candidate Michael Steele were Democrats were handed out by people bused in from out of state. The Associated Press reports that the ballots were paid for by the campaigns of Mr. Ehrlich, Mr. Steele and the Republican Party. Perhaps most disturbing, the Arizona Republic reports that in Tucson, three vigilantes, one man carrying a camcorder, one holding a clipboard, and one a holstered gun, stopped Hispanic voters and questioned them outside a Tucson polling place.

This manipulation has been most evident in Section 5 preclearance. The Supreme Court repeatedly has held that covered jurisdictions have the burden to prove that voting changes will not harm minority voters. If the jurisdiction failed to meet that burden, preclearance of the proposed electoral changes must be denied. Press reports indicate that contrary to the law, the Bush Administration has turned this principle on its head. Political appointees endorsed redistricting plans or restrictions on the franchise - in Arizona, Georgia, Texas, and Mississippi - despite the strong objections of career lawyers who expressed concerns about the potential for those plans to discriminate against minority voters.

Career attorneys in the Voting Section recommended that a Georgia law requiring a photo identification to vote not be precleared because it would reduce black voters' access to the polls and therefore harm minority voters. The career attorneys also found that state officials in Georgia failed to introduce key evidence regarding the racial impact of the law. Yet, political appointees overruled the career attorneys and approved the law. The Dallas Morning News broke a story that the Department adopted a new policy banning staff attorneys' opinions in voting rights cases. Under the new policy the career attorneys' "recommendation was stripped out of that document and was not forwarded to higher level officials" in the Division. This marked a significant change

in an institution that once took pride in insulating itself from politics. I note that a majority of Republican-appointed judges on a federal appellate court agreed with the career attorneys in this case when they later enjoined Georgia from enforcing the law, labeling it a "poll tax."

There is also evidence that the Bush Justice Department exerted undue political influence in cases that consistently favored Republicans. In a 2002 Mississippi redistricting case, the Voting Section stalled the redistricting process for so long that a pro-Republican redistricting plan went into effect by default. In the recent Texas redistricting case, the Washington Post noted how "highly unusual" it was for political appointees to overrule career attorneys' unanimous finding that a redistricting plan put the voting rights of minority citizens at risk. The Supreme Court recently agreed with the career attorney recommendation that the redistricting plan approved by the political appointees in the Division hurt Hispanic voters in Texas, and ordered Texas to redraw its plan.

All of these cases demonstrate the need for oversight at the Civil Rights Division, and the restoration of the principle that partisan politics has no place in the administration of justice.

## DISMAL ENFORCEMENT RECORD

The Bush Administration has compiled one of the worst civil rights records in modern American history. Over the last five years, the Civil Rights Division has filed only two disparate impact cases under Title VII. Vote dilution claims have come to a grinding halt. Only four Section 2 VRA suits have been filed by this Administration on behalf of any minority group. The Division's Appellate Section - which historically has intervened in key discrimination cases - filed only six amicus briefs in the courts of appeal in 2004, a number that represents less than a third of the 22 briefs that were filed in 1999. Even the number of criminal prosecutions brought by the Justice Department for violations of civil rights laws diminished from 83 in 2000 to 51 in 2003.

The lack of cases filed by the Bush Administration falsely gives the impression that overt discrimination against minorities is a thing of the past. In nearly six years of power, the Bush Administration has filed only one suit on behalf of African-American voters. Until July of 2006, the Division's only case alleging racial discrimination in voting sought to protect white voters in Mississippi. During the entire tenure of the Bush Administration, the Division has brought only seven pattern or practice employment discrimination cases, only three of which alleged claims of racial or national origin discrimination-- and one of those was a case challenging the affirmative

action policies of Southern Illinois University as discriminatory. Regrettably discrimination against racial and ethnic minorities persists. The Department must fulfill its duty to enforce the law in these cases as well.

## POLITICS IN HIRING AND FIRING

I am also concerned about reports that political ideology has harmed the Civil Rights Division's hiring practices and ability to retain experienced litigators. In the Voting Section alone, more than 20 attorneys, representing about two-thirds of the lawyers in the section, have left in the last few years - over a dozen have left the section in the last 15 months. Included in this talent drain were the chief of the section, three deputy chiefs, and many experienced trial lawyers, representing almost 150 years of cumulative experience in civil rights enforcement.

The departures are not my only cause for concern. The Bush Administration's political appointees implemented a major policy change in its hiring process. Until 2002, hiring for career jobs in the Civil Rights Division under all administrations, Democratic and Republican, had been handled by civil servants, not political appointees. After the Bush Administration disbanded the hiring committees - comprised of veteran career lawyers - a noticeable shift in backgrounds of its attorneys emerged. According to internal documents obtained by the Boston Globe, "only 42 percent of the lawyers hired since 2003 . . . have civil rights experience" which is a downward turn as compared to two years before the change where "77 percent of those [] hired had civil rights backgrounds." The Civil Rights Division apparently hired lawyers with strong conservative credentials but little experience in civil rights. Sound familiar? It should, this is the same hiring philosophy that brought us the disastrous aftermath of Katrina.

Over the past couple of years, we have witnessed a radical assault by the Bush Administration on fundamental assumptions about the exercise of power in our constitutional system. Neither Congress nor a majority of the American people favor radical departures from our nation's time-honored tradition of civil rights enforcement.

## A TIME FOR ACCOUNTABILITY

As the Committee responsible for overseeing the Justice Department, we must ensure that the Department is upholding its duty to protect the American people -- all the people -- from discrimination. Our civil rights laws provide our Federal Government with the authority to impose criminal and civil sanctions against individuals and institutions that violate our peoples'

civil rights. They provide meaning to our constitutional guarantees. If civil rights laws are ignored - particularly by the federal agency charged with their enforcement - discrimination will flourish, and the consequences for our nation will be great. The great civil rights champion Representative John Lewis rightly noted that "American citizens have a right to know whether the Justice Department is ignoring the law and bending to the will of politics." Accountability is overdue.

## CONCLUSION

We welcome Assistant Attorney General Wan Kim. We are glad to have you back before this Committee so that we may more fully explore these issues with you.

We also welcome the testimony of several practitioners who have served in the Civil Rights Division. We will hear from Joe Rich, a well-respected civil rights attorney, who worked in the Justice Department for 37 years and, until last year, served as Chief of the Voting Section. We are also pleased to hear from Ted Shaw, the current Director-Counsel and President of the NAACP Legal Defense Fund, who began his career as a trial attorney in the Civil Rights Division.