

Statement of

The Honorable Patrick Leahy

United States Senator
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Two hundred and twenty-five years ago this week, the American Constitution was formed and signed. Since that time, our path to a more perfect union has called upon generation after generation to build on the work of the Founders by breaking down barriers to enable more Americans to participate in our democracy and share in the Constitution's protections. The right to vote and to have your vote count is a foundational right because it secures the effectiveness of other protections. Yet on the eve of an important national election, I am concerned that recent Supreme Court decisions have dramatically altered the balance of our democracy by finding new rights for corporations to influence elections, while at the same time allowing new barriers to the right of individuals to vote.

Today, we will examine some of these recent decisions and how this trend affects Americans' ability to vote. This is a continuation of the series of hearings the Judiciary Committee has held in recent years examining how Supreme Court decisions have affected the rights of everyday Americans. Our hearing today also builds on the recent hearings held by Senator Durbin, the Chairman of the Subcommittee on Civil Rights, Human Rights and the Constitution, examining proposals for fixing the damage done by five Supreme Court Justices in *Citizens United*, and on the renewed effort in many states to deny millions of Americans access to the ballot box through voter purges and restrictive voter identification laws.

Almost every American who has watched television over the last two and a half years has seen the effects of the Supreme Court's decision in *Citizens United*. Few Supreme Court decisions in American history have been so corrosive for our political process. In June, those same five justices doubled down on *Citizens United* when they summarily struck down a 100-year-old Montana state law barring corporate contributions. In doing so, without even giving Montana a hearing, they overturned a century of state law designed to protect Montana's elections from the corruption of corporate spending. These two decisions turned on its head the idea of government of, by and for the people.

I am concerned that these same five Justices, who in *Citizens United* disregarded the evidence and a century of experience involving the power of money to corrupt elections, will soon be reviewing lower court decisions that examined significant evidence about the continuing need for the protections of the landmark Voting Rights Act. Will they show the same disregard for the evidence when reviewing this historic law? I hope not.

Only six years ago, members of Congress, Republican and Democratic, stood together on the Capitol steps to reaffirm our commitment to achieving full democratic participation by reauthorizing the Voting Rights Act. This Committee played a key role in reinvigorating and

reauthorizing that landmark law. After nearly 20 hearings in the House and Senate Judiciary Committees in 2006, we found that modern day barriers to voting continue to persist in our country. The legislation reauthorizing Section 5 of the Voting Rights Act was passed by both the Senate and House overwhelmingly and signed into law by President Bush. This overwhelmingly bipartisan effort sought to preserve the significant progress we have made since former President Lyndon Johnson signed the original Voting Rights Act into law.

In the last month, we were reminded anew of the continuing importance of this law. Panels of judges appointed by presidents of both parties have found that Texas intentionally discriminated against minority voters in redistricting, and that Texas failed to demonstrate that its voter ID law does not impose greater burdens on minority voters. We have also seen an African-American woman who would have been wrongly prevented from assuming her position as Chief Justice of the Louisiana Supreme Court but for the protections of this law. Without Section 5 of the Voting Rights Act, these changes to elections would be in effect, and the fundamental rights of many Americans would be diminished.

When Dr. Martin Luther King Jr. said that "the arc of the moral universe is long, but it bends toward justice," he captured the steady progress we have seen in America. Each generation of Americans since the nation's founding has worked to bend that arc further toward justice, seeking to fulfill the Constitution's stated purpose of forming "a more perfect Union." The result has been the expansion of that promise to encompass all Americans.

That journey began with improvements upon the foundation of our Constitution through the Bill of Rights. After the Civil War, we transformed our founding charter, the Constitution, into one that embraced equal rights and human dignity by abolishing slavery, guaranteeing equal protection of the law for all Americans, and prohibiting racial barriers to the right to vote. We continued with the 19th Amendment's expansion of the right to vote for women, the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the 26th Amendment's extension of the right to vote to young people. These actions have marked progress along the path of inclusion.

The historic struggle for individual voting rights reached a crucial turning point on March 7, 1965, on the Edmund Pettis Bridge in Selma, Alabama, when state troopers brutally attacked John Lewis and his fellow marchers who were trying to exercise their right to vote. The events of that day, now known as "Bloody Sunday," were captured in newspaper photos and on television, and those powerful images proved to be a catalyst for passage of the Voting Rights Act. John Lewis, now a Member of Congress, recently reminded us of what is at stake, when he said "your vote is precious, almost sacred. It is the most powerful, nonviolent tool we have to create a more perfect union." I agree with my friend that the right to vote is precious and powerful.

Our great nation has grown stronger as more people have been able to exercise the right to vote. Yet for the first time in generations that arc is at risk of bending away from justice, and away from our Constitution's core values.

Ushered in by the Supreme Court's decision three years ago in *Crawford v. Marion County* allowing Indiana's voter ID law to stand, we have seen state after state enact voter ID laws and erect new barriers to voting, barriers that remind us of a time when discriminatory practices such

as poll taxes, literacy tests, and grandfather clauses were commonplace and kept Americans from exercising their basic right to vote. The burden of these new barriers seems to fall heaviest on African-Americans, Hispanics, military veterans, college students, the poor, and senior citizens.

Just as we saw the Supreme Court in the Crawford case fail to act to protect the voting rights of elderly nuns who were turned away from the polls because they did not possess the required photo ID, we now see purges of voter rolls in Florida threaten the voting rights of a 91-year-old Bronze Star recipient. We have seen the Secretary of State in Ohio fire members of the Board of Elections for voting to maintain early voting hours. And we have seen states enact voter ID laws like the one in Pennsylvania that could disenfranchise over 750,000 voters even though the state has told a court that they have no evidence of in-person voter fraud or even evidence that it is likely to occur. Some Republican officials behind these barriers have been remarkably honest that they have enacted these laws so that their candidate would win. That is not a worthy reason to take away the right to vote. Suppressing votes in our democratic system is shameful and harmful.

In stark contrast to the widespread efforts now underway to restrict the right to vote for individuals Americans, we have seen corporations empowered to influence our elections by the decisions of five Justices. In gutting bipartisan campaign finance laws designed to protect elections from a flood of corporate spending, the five Justices of the Supreme Court rejected extensive fact-finding by the people's representatives in Congress, the long experience of many states, and the common sense of Vermonters and Americans around the country who know that corporations are not people. Those five Justices have upset the balance in our democracy necessary to protect the form of government Americans have fought and died for, what President Lincoln called our government of, by and for the people. Contrasting these combined threats that diminish the voices of hardworking Americans in our democracy, some have observed that it is being made more difficult for everyday Americans to be heard -- at the same time that billionaires no longer even need to "show ID" while anonymously pumping enormous sums into our political process.

Like Montana, Vermont is a small state. It would not take more than a tiny fraction of the corporate money being spent in other states to outspend all of our local candidates combined. We must ensure that the ability of Vermonters and all Americans to participate in our elections is not undercut by wealthy corporations dominating all mediums of advertising. The interests of the voters should control the outcomes in our elections, not the race for secret money and who can collect the largest amount of unaccountable, secret donations.

I thank the witnesses for being here today and look forward to their testimony.

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