

Statement of Chairman Patrick Leahy (D-Vt.),
“Changing the Rules: Will limiting the scope of civil discovery diminish accountability and
leave Americans without access to justice?”
Subcommittee on Bankruptcy and the Courts
Senate Judiciary Committee
November 5, 2013

Today the subcommittee will consider the impact of changing the scope of civil discovery in our courts. I thank Senator Coons for chairing this important hearing.

While our civil justice system operates effectively to resolve disputes, it is not without flaws. Many courts are over-burdened and carry significant delays. Too often those with legitimate grievances are ill-equipped to go toe-to-toe with better-financed litigants. For some Americans, justice is simply too slow and too expensive. Reforming the system to address these concerns is certainly something worth considering.

Here, however, the amendments at issue provide for some of the most significant changes to the rules of civil discovery in decades. In a marked departure from past changes, these amendments would narrow the scope of discovery obligations. The changes would institute proportional discovery, limit the number of depositions and interrogatories, and impose uniform rules on sanctions when a litigant fails to preserve certain documents. We should proceed with caution, then, and be careful to gather the full scope of how these changes may impact litigants seeking to obtain justice through our Federal courts.

It can be a difficult balance between protecting access to legitimate discovery and preventing its exploitation. We all agree there must be some limitations on discovery. We cannot let the process be subject to unchecked abuse, or a vehicle for harassment or for needlessly driving up the cost of litigation. Fair discovery obligations, with proper judicial oversight, help ensure that cases are decided on the merits, not on distractions.

But we must also be mindful of the purpose of discovery: to obtain evidence necessary to level the playing field and, ultimately, to reveal the truth. The rules must protect the ability of everyday, hardworking Americans to seek justice in court. Without strong discovery obligations, deserving litigants will be left in the dark.

So it is imperative that we get this right. Today’s hearing is an important step in this process and I am confident it will help senators make informed and thoughtful judgments on how we can make our system of civil justice stronger, more efficient, and more fair. I thank Senator Coons for calling attention to this important topic and I thank today’s witnesses for their testimony.

#####