

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
May 20, 2008

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Chairman, Senate Judiciary Committee  
Hearing on "Protecting the Constitutional Right to Vote for All Americans"  
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Two years ago, members of Congress 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 that landmark law. After nearly 20 hearings in the House and Senate Judiciary Committees, we found that modern day barriers to voting continue to persist in our country. Now, only months away from an important Federal election, we are here to examine barriers to the ballot box, and to look for ways to ensure that the democratic process will be open to all Americans.

Often times we associate voter disenfranchisement with actions from a foregone era. We all recall the courage and resilience of Americans who were bitten by dogs, sprayed by water hoses, or beaten by mobs simply for attempting to register to vote. We remember a time when stubborn and recalcitrant state officials used discriminatory devices such as poll taxes, grandfather clauses, and literacy tests to exclude certain segments of our population from voting. Progress has been made to forge a more inclusive democracy but new voter disenfranchisement tactics arise in every election year. This year is no different.

During the most recent mid-term elections, we witnessed overt threats by armed vigilantes attempting to intimidate Hispanic-American voters at the polls in Arizona. We witnessed cross burnings intended to intimidate African-American voters on the eve of an election in Louisiana. We also saw organized efforts in Maryland to deceive minority and low-income voters with false information about polling locations and phony endorsements.

We know from the recent hearing in the Senate Rules Committee that no credible evidence of widespread, in-person voter fraud exists. That lack of evidence, however, has not stopped efforts by Republican state legislators in some states to pass restrictive photo ID laws.

We also know that photo ID laws have already disenfranchised voters this year. Two weeks ago, a dozen elderly nuns in Indiana were turned away from the polls because they did not possess the required photo ID. I understand that several of them held expired photo IDs that were not sufficient under Indiana's restrictive law.

Fortunately, last week, the Missouri legislature opted not to follow Indiana's lead by passing a restrictive photo ID law. And just yesterday, Governor Kathleen Sebelius acted to protect voter access in Kansas. In her veto statement she declared that she could not "support creating any roadblock to prevent our citizens from adding their voices to the democratic discourse that makes our nation great."

Several members of this Committee recently sent a letter to the Attorney General asking him to direct the Department to vigorously enforce the Voting Rights Act so that novel photo ID laws would not infringe on the voting rights of racial minorities. We look forward to his response and to continuing our oversight of the Civil Rights Division on this issue. Last week, the White House withdrew the controversial nomination of former Department of Justice Civil Rights Division official Hans Von Spakovsky to serve on the important Federal Election Committee. While at the Division, Mr. Von Spakovsky played a critical role in politicizing the Department and reorienting the Civil Rights Division's focus away from its traditional mission of ensuring voter participation. The Senate's refusal to confirm him to the FEC sends a strong message that we will not reward his efforts at the Justice Department to obstruct the path to the ballot box.

On the brink of an election with record numbers of new voters, our government must remain vigilant in protecting our precious right to vote. That means now, more than ever, we need a Justice Department that will work to ensure ballot access for all Americans.

Federal courts are also critical to the protection of voting rights. At key moments in our nation's history, the Federal courts have acted to protect unfettered access to the ballot box. When Virginia passed a law four decades ago requiring voters to pay a \$1.50 poll tax the Supreme Court invalidated the law. Simply because the tax would apply to every voter did not make it permissible under the Constitution.

I regret that the current Supreme Court was not as protective of the fundamental right to vote last month when it failed to invalidate a restrictive Indiana law requiring voters to present specific types of photo ID. Had just two Justices been more protective of the right to vote, those Sisters of Mercy in Indiana would have been able to vote in the primary election two weeks ago. Because the burdensome law was allowed to stand, those sisters and untold others were disenfranchised. At a time when the Justice Department has departed from enforcement of voting rights in favor of advancing partisan goals, the Federal courts need to provide the check and balance that the Framers of our Constitution intended.

Our great Nation was founded on the radical idea of a participatory democracy. Our founding document begins with "We the People." Successive generations of Americans have come together to amend our Constitution six times to expand the participation of its citizenry in the election of the government--to former slaves, to women, to young people, to include the direct election of Senators, and to prohibit poll taxes. In this way, "We the people" have reiterated and affirmed the fundamental importance of the right to vote. We should all remember Judge Wisdom's analysis in the 1963 case of *United States v. Louisiana*, where he noted that a law that burdens a citizen from access to the franchise is a wall that must come down. His words are as true today as they were 45 years ago.

I welcome our distinguished panel of witnesses today. I look forward to your testimony.

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