

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

September 9, 2008

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Chairman, Senate Judiciary Committee

"Protecting the Right to Vote: Oversight of the Department of Justice's Preparations for the 2008 General Election"

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The Committee today continues its crucial role overseeing the Department of Justice by examining the plans of the Civil Rights Division and Criminal Division to ensure that the voting rights of all Americans are protected in the upcoming national election. Protecting the precious right to vote is one of the primary missions of the Justice Department. Today, less than two months from a presidential election, we examine the adequacy of the Department's preparation to safeguard the rights of all Americans to vote and have their votes count. I thank Senator Cardin for chairing this important hearing.

For the past several months, our Nation has been engaged in a critical debate over the future direction of our country. This national discussion will be meaningless if Americans are prevented from casting their votes and having them counted. Not only does the right to vote secure the effective exercise of all other rights, it also protects a basic principle of our democracy: All American citizens deserve to have their voices heard in their government. The government's duty to ensure Americans' fundamental right to vote should be above politics.

Yet, during the most recent mid-term elections, we witnessed partisan attempts to obstruct the path to the ballot box for political gain. In Arizona, we saw overt threats by armed vigilantes attempting to intimidate Hispanic-American voters at the polls. 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. Two years after opening investigations into these incidents, we still await answers from the Justice Department on who will be held accountable for these organized efforts to suppress voters.

We also know that photo ID laws have already disenfranchised voters this year. In a committee hearing four months ago, Stanford Law Professor Pam Karlan informed us that "[t]here are already more nuns in Indiana that have been disenfranchised in one election than all the proven in-person vote fraud in Indiana history." I remain disappointed that the acting head of the Civil Rights Division - an institution long committed to expanding voter access - asked the Nation's High Court to uphold Indiana's photo ID law, even though it will limit minority voters' access to the ballot.

These observations come at a time when the Justice Department's reputation has already been tarnished by revelations that it allowed politics to affect - and infect - the Department's priorities, from law enforcement to the operation of the crucial Civil Rights Division. On the brink of an important and historic presidential election, the American people deserve a Justice Department that will protect the right to vote without even a hint of partisanship.

I look forward to learning what preparation the Department has made in advance of Election Day to safeguard the right to vote. First, what is the Justice Department doing prior to Election Day to prevent problems at the polls? During the recent reauthorization of the Voting Rights Act, we learned that the ongoing presence of discrimination in voting underscored the continued need for Federal oversight of elections. I hope today the Department will offer us more transparency on how many Federal observers and monitors it will use this November, where it plans to send them, and how it chooses where they go. I also look forward to hearing if the Department will consult and coordinate with civil rights organizations to identify potential voter suppression hotspots.

Second, I want to know that the Justice Department has a comprehensive plan for responding to emergencies on Election Day. Last May, in a hearing on protecting the right to vote, we heard from civil rights organizations about new concerns that could potentially disenfranchise significant numbers of newly registered minority voters. I want to know the Department's Election Day plan to address the problems that may arise from the anticipated large turnout of new voters attempting to cast their ballots. For example, how will the Department address the need to extend hours at polling places, in case of long lines or lack of ballots, to ensure that all eligible voters can cast their ballots?

On a related matter, I am concerned about the Department's practice of using the FBI and U.S. Attorney's offices to provide election coverage. Because law enforcement officials are primarily trained to combat election crimes, I worry that their use in election coverage could be perceived by voters - especially minority voters - as intimidating and, ultimately, chill voter participation.

I also hope the Department will assure us that its prosecutors are currently being trained to avoid influencing election outcomes. My concern is exacerbated by the recent rewriting of the Justice

Department's guidebook on "Federal Prosecution of Election Offenses." It not only changed from the "red book" to the "green book," but the traditional practice of not bringing last-minute investigations and actions was turned on its head. I hope the Department will assure us that these guidelines will be changed back to the time-honored rules.

I want to hear the Department's plans for vigorously enforcing the recently reauthorized Voting Rights Act. I am particularly concerned about the Civil Rights Division's recent shift away from enforcing statutes mandating access to the ballot toward a new emphasis on measures that restrict access to the ballot, namely the partisan pursuit of phantom in-person voter fraud.

Last May, I joined several members of this Committee in 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 received an insufficient response to our letter. I want to know if the Department will enforce the Voting Rights Act's anti-discrimination provisions against state photo ID laws that deter minority voter participation.

Recent election controversies remind us of the critical role the Justice Department has in protecting the fundamental right to vote. I believe that vigorous oversight - combined with a proactive Civil Rights Division and a reactive Criminal Division - is part of the formula for ensuring that the 2008 Presidential Election will be as open and fair as possible. We continue that process today. I welcome today's witnesses, and I look forward to their testimony.

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