

Testimony of Senator Patrick Leahy
Before The Senate Committee on Rules & Administration
Hearing on:
“In-Person Voter Fraud: Myth and Trigger For Disenfranchisement?”
March 12, 2008

Chairman Feinstein and Ranking Member Bennett, thank you for allowing me to testify before the Senate Rules Committee today. As Chairman of the Senate Judiciary Committee, which has jurisdiction over constitutional and civil rights, I appreciate the opportunity to share my views on the subject you have chosen for this hearing, whether the myth of voter fraud leads to voter disenfranchisement.

Nothing is more critical to our democracy, and to American citizenship, than the right to vote. It is fundamental because it secures the effectiveness of other constitutional rights. The very legitimacy of our government depends on the access to the political process that all Americans should enjoy.

The way this administration and some other partisans have pursued political advantage under the guise of fighting purported “voter fraud” undermines our Nation’s core values. These efforts not only distract attention away from efforts to increase voter participation, they disenfranchise vulnerable communities. Over the past several years, the Senate Judiciary Committee has compiled significant evidence that the pursuit of purported “voter fraud” is often a partisan tool designed to influence elections.

The Judiciary Committee investigated the mass firings of U.S. Attorneys and the politicization of hiring within the Justice Department. We discovered evidence that senior White House officials focused on the political impact of Federal prosecutions in many states, including Wisconsin, Missouri and New Mexico. Several U.S. Attorneys testified that they were pressured by political appointees and White House officials to file purported “voter fraud” and corruption cases.

For example, evidence showed that Karl Rove raised political concerns, including those of New Mexico Republican leaders, about New Mexico U.S. Attorney David Iglesias. In fact, he was fired just a few weeks after Karl Rove complained to Attorney General Gonzales about the lack of purported “voter fraud” enforcement cases in his jurisdiction. I am glad Mr. Iglesias will be testifying before this Committee today. The Judiciary Committee found his testimony to be credible, and his treatment by this administration to be inappropriate.

The Judiciary Committee also discovered evidence that Karl Rove, in the run-up to the last national election, sent the then-Attorney General’s chief of staff a packet of information containing a 30-page report about alleged voter fraud in Wisconsin in 2004 and passed on complaints about the failure of the U.S. Attorney for the Eastern District of Wisconsin to pursue voter fraud cases. In fact, that U.S. Attorney’s name was also added to a list of U.S. Attorneys to be considered for firing in early 2005, two weeks after Karl Rove reviewed activity about alleged voter fraud in his district.

We learned that Todd Graves, U.S. Attorney in the Western District of Missouri, was fired after expressing reservations about a voter fraud suit urged by political appointees in the Justice Department. The Department filed a National Voter Registration Act suit against the State of Missouri and democratic Missouri Secretary of State Robin Carnahan over Mr. Graves' reservations, accusing the State and the Secretary of State of failing to eliminate ineligible people from Missouri's lists of registered voters. Shortly after Mr. Graves was forced to resign in January 2006, he was replaced by Bradley Schlozman, who as Principal Deputy Attorney General for the Civil Rights Division had advocated and approved the voter roll purge lawsuit. As interim U.S. Attorney, Mr. Schlozman aggressively pursued this case until it was tossed out by the U.S. District Court.

Even under a new Attorney General, the Justice Department has continued to keep up the partisan effort in this regard. In deciding to get involved in Indiana's photo ID law before the Supreme Court, the Justice Department defended what one Federal judge called "a thinly veiled attempt to discourage election-day turnout by certain folks believed to skew Democratic." Indeed, an analysis by one of today's witnesses, Justin Levitt of the Brennan Center, found that none of the alleged examples of voter fraud cited in briefs in that case as justification for Indiana's restrictive photo ID law showed any in-person voter impersonation.

In an April 2006 speech, Karl Rove identified key battleground states in the upcoming election, and not surprisingly, political appointees in many of these same states were pressured to seek out and prosecute voter fraud cases, many apparently losing their jobs when they did not. A former political director for the Republican Party explained in a recent *Houston Chronicle* article that "[a]mong Republicans it is an 'article of religious faith that voter fraud is causing us to lose elections...[and requiring photo IDs could] add three percent to the Republican vote.'" This partisan purpose clarifies the motivation and the willingness on the part of some partisans to corrupt Federal law enforcement for political gain.

I am pleased that Missouri Secretary of State Robin Carnahan will testify today. She joined former and present Secretaries of State from Georgia, Maryland, Ohio, and my home-state of Vermont in a brief to the Supreme Court noting that "in Federal elections between 1996 and the present, in which more than twenty-four million votes were cast," not a single case of voter impersonation fraud occurred at the polls. That is a remarkable fact in establishing the mythological nature of the so-called problem of voter fraud. Indeed, the Federal judge reviewing and dismissing the Justice Department's suit against the State of Missouri concluded: "It is ... telling that the United States has not shown that any Missouri resident was denied his or her right to vote as a result of deficiencies alleged by the United States. Nor has the United States shown that any voter fraud has occurred."

Despite lack of credible evidence, the myth of voter fraud has increasingly been used to justify policies that suppress political participation by passing laws that threaten to exclude millions of eligible voters, with a disproportionate impact on vulnerable populations, such as the elderly, low-income, disabled, and minority communities.

We should instead be focused on expanding access to the fundamental franchise of voting. That is what we proclaimed two years ago when we stood together on the steps of the Capitol in

support of reauthorizing the landmark Voting Rights Act. We should be working on ways to overcome barriers to the ballot box and make sure that all citizens have access to the political process. After nearly 20 hearings in the House and Senate on the Voting Rights Act reauthorization, the Judiciary Committees concluded that there is a continuing need for revitalized voting rights protections. That Judiciary Committee record, including state reports prepared by the civil rights community, was full of recent evidence that obstacles to full access to the constitutional right to vote have not been eliminated. The Senate extended the Voting Rights Act by a unanimous vote of 98-0.

When the President signed the Voting Rights Act reauthorization and revitalization into law, he committed to aggressive enforcement of its protections. The history of our democracy is one demonstrating that as people are able to register, vote and elect candidates of their choice, their interests receive attention and their other rights are protected.

Unfortunately, the interests of hundreds of thousands of potential eligible voters will not receive attention this November. In the Spring and Summer of 2007, with well-publicized fee increases on the horizon, a spike in naturalization applications was foreseeable. Now, the administration expects that those legal permanent residents filing naturalization applications will have to wait up to 18 months for those applications to be processed. We have demanded that the administration process naturalization petitions more swiftly so that immigrants who have followed the rules and applied for citizenship by May 1 will not be prevented from exercising their rights as citizens this November. It is unacceptable that the most vital aspect of our immigration system has been subjected to such bureaucratic disarray, and the pressure must be kept on the administration so that it is compelled to account for these needless barriers that have been erected against those who have worked so hard to gain the full rights and responsibilities of American citizenship. Bureaucratic impediments to the legitimate expectations of legal permanent residents who seek to become citizens in time to vote are contrary to this principle.

Prior to the Voting Rights Act, minorities faced major barriers to participation in the political process through the use of such devices as poll taxes, exclusionary primaries, voter intimidation, language barriers and systematic vote dilution. This year the Senate Judiciary Committee has moved forward to report another important measure, the Deceptive Practices and Voter Intimidation Prevention Act of 2007, S.453. This measure provides further protections against the use of deceptive practices to depress voting in minority communities and intimidate minority voters. Such practices are detailed in the hearings we held last summer and in the Committee report. I hope the Senate will move forward to adopt this legislation this year.

For far too long, our Nation tolerated the gulf between our foundational principles and the voting experience for many Americans. We endured a shameful history of major barriers erected around the ballot box designed to fence out minority populations under the guise of promoting the "purity" of the ballot box. We have made significant progress toward a more inclusive democracy. We have amended the Constitution to declare by means of the Fifteenth Amendment that former slaves have the right to vote, by means of the Nineteenth Amendment that women have the right to vote, by means of the Twenty-fourth Amendment to outlaw poll taxes that had been used to suppress minority voters, and by means of the Twenty-sixth Amendment to ensure that those 18-years-old who had been called into military service to fight

in the Vietnam War should have the right to vote and a voice in their present and in their future. Now is not the time to turn back the clock to the days of disenfranchising laws supposedly designed to “protect” the polls. The myth of voter fraud should not be used to suppress the democratic participation of the American people in choosing their elected representatives.

Last month, Hilary Shelton – the respected Director of the Washington Bureau of the NAACP – testified before the House Judiciary Committee that “[u]nless Americans, all Americans, feel that they are vested in our Nation and that they have a voice in their government, the promise and security of democracy is hollow and left unfilled.” As we approach an important national election, fulfilling the promise of democracy requires a government focused on protecting voters who suffer actual disenfranchisement rather than allowing partisan tactics to be employed to suppress voter participation. Denying a fundamental right – the right to vote – because a person is indigent, lacks a birth certificate, or has no access to a vehicle, goes against America’s better values. As the world’s model for democracy, we are a better Nation than that.

Again, I thank you for the opportunity to testify. I look forward to working to ensure that all Americans have unfettered access to the ballot this November.

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