

Statement of the Honorable Christopher J. Dodd
in the Senate Committee on Rules and Administration

March 12, 2008

The Myth of In-Person Voter and Voter Disenfranchisement

Madame Chairman, thank you for calling this hearing today to shed further light on the facts regarding the myth of widespread in-person voting fraud, and for your leadership on the issue of voter identification.

The word “myth” is not idly chosen by me, or I know by you in titling this hearing. It is clear that the notion of widespread vote fraud based on individual voters misrepresenting who they are at the polling place is a popular myth, propagated by those with a particular political agenda, and that adoption of widespread photo ID voting requirements would have the effect of suppressing the voting rights of legitimate voters all across the country. By securing enactment of sweeping state or federal laws requiring all voters – including the elderly, the disabled, low-income people, and minorities, many of whom do not routinely carry photo ID cards – to present a valid photo ID in order to exercise their most basic civil rights, proponents of this approach could effectively disenfranchise millions of Americans. The problem is that this phantom of in-person voter fraud drives policies like photo ID requirements which can disenfranchise actual voters, without offering any corresponding actual benefit.

Some believe that kind of disenfranchisement is already happening, because too many Americans already think they must present a valid photo ID in order to vote in federal elections. For voters who don’t have such IDs, and can’t afford the time or money it takes to get them – including getting copies of birth certificates as proof citizenship which serve as a prerequisite to obtaining IDs in some states – photo ID requirements dissuade them from registering and going to the polls to vote.

There is a long history here. Because Congress was acutely aware of the risks of disenfranchising millions of otherwise eligible voters who did not have proper forms of photo ID, the 2002 bipartisan Help America Vote Act (HAVA), which I co-authored, offered a balanced compromise on this issue. That compromise required that only a narrow class of voters (those who register by mail and who have not previously voted in a federal election in the state) must present one of a range of different kinds of identification before casting their regular ballot in a federal election.

Those of us who were intensely involved in HAVA negotiations were keenly aware that a too-strict voter identification requirement would potentially disenfranchise millions of otherwise eligible voters, and so we settled on this formula allowing a range of possible alternatives means of voter identification, including either a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. This standard does not apply to those who submitted copies of such forms of ID with their mailed-in registration forms, nor does it apply to

those who submit with their registration the last four digits of their Social Security number, or their driver's license number – if it can be matched against federal or state government records.

These limited ID requirements were not hortatory; they were not intended merely as a set of best practices or guidelines, which states could observe, scale back, or expand upon as they saw fit. They are national requirements for the conduct of federal elections to which states must conform—purposefully designed to assure that no eligible citizen loses his or her opportunity to vote because of unduly restrictive state regulations. While HAVA did not explicitly prohibit states from establishing its own requirements on election administration and technology, it did make clear that any state initiatives of this kind must be consistent with HAVA. Universal photo ID requirements like those contained in the Indiana law clearly are not, since they do not allow the broader range of forms of identification that HAVA required. The Indiana law, which the Supreme Court is currently scrutinizing – in perhaps the most historic voting rights case since *Bush vs. Gore* – is an attempt by Indiana officials to try to substitute their judgment for that of Congress in this sensitive area. I hope the Supreme Court will forcefully reject Indiana's approach. I note that HAVA, including this compromise on voter ID, was adopted by the Senate in an overwhelming bipartisan vote of 98-2.

Why are we so concerned about disenfranchising eligible voters? Because, Madame Chairman, the right to vote is uniquely precious, long recognized by Congress and the courts as one of the most fundamental civil rights accorded to citizens by the United States Constitution. It is the cornerstone of our democratic form of government; it is at the heart of all we do here, and precedes other rights because it is the means by which we choose those who represent us. The free and unencumbered exercise of the franchise is a core pre-condition of a government that is of the people, by the people and for the people. State laws which impose additional undue burdens upon this right jeopardize Congressional efforts to balance the traditional requirements of ballot access and ballot security; impinge unnecessarily on those fundamental rights; and create a disparate impact on whole classes of our citizens -- including persons with disabilities, the elderly, low-income Americans, and certain minority populations who do not regularly carry photo IDs. While it is difficult for many to imagine living without a photo ID, the fact is that 6-10 percent of Americans do not carry one, and it costs time and money to obtain one.

Let me make one additional historical point about HAVA that may be of interest to this committee. During all of the hearings that the Rules Committee held on election reform following the debacle of the 2000 Presidential elections, including those held by my distinguished friend Senator McConnell, Chairman of the Rules Committee at the time, not one witness testified to widespread fraud by individuals appearing in person at the polls claiming to be someone they were not.

Likewise, the administration, despite its best efforts, has had a hard time coming up with examples of actual documented voter fraud. Media reports last year revealed a major, years-long effort to identify and prosecute voter fraud by the Department of Justice, called the Voting Access and Integrity Initiative, in which its prosecutors found virtually none among the hundreds of millions of voters cast. Despite its being a top priority for US attorneys across the country, this initiative resulted in around 25 convictions for this kind of voter fraud. Bipartisan experts

contracted by the Election Assistance Commission similarly found, in a 2006 report, no widespread existence of voter fraud.

Congress and the DOJ are not the only bodies which have failed to find more than anecdotal evidence of such fraud. In 2005, the bipartisan Carter-Baker Commission on Federal Election Reform, co-chaired by former President Jimmy Carter and former Secretary of State James Baker, also failed to find widespread voter fraud.

A comprehensive study released in March 2007 by Columbia University Professor Lorraine Mittite and sponsored by Project Vote again found that actual voter fraud is extremely rare. The report concluded that at the federal level, records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. Her review of available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, also found such fraud negligible. The report also detailed a long history in America of elites using voter fraud allegations to restrict and shape the electorate. I won't rehearse that history here, but I commend the report to my colleagues and their staff, for background on what is truly at stake here in this debate.

So even though neither Congress, nor the esteemed private Carter-Baker Commission, nor the Department of Justice, nor major academic studies have found the type of fraud that would justify a national citizenship voting card, some would jeopardize the voting rights of American citizens in order to combat this phantom fraud. I think that would be a terrible mistake, and intend to continue to resist it as forcefully as I have in the past.

Madame Chairman, I hope this hearing will underscore the importance of basing further election reforms on the basis of fact, not myth; on the basis of data, not preconceived political preferences. I know that some of our witnesses today will elaborate the data they have developed on these questions. It is the duty of this Congress to ensure continued open ballot access to all eligible American voters, and I intend to continue to press to ensure that result. I look forward to hearing from the distinguished panel of witnesses assembled here today.