

OPENING STATEMENT OF

U.S. SENATOR BENJAMIN L. CARDIN OF MARYLAND

AT THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

HEARING ON

“PROTECTING THE RIGHT TO VOTE:

OVERSIGHT OF THE DEPARTMENT OF JUSTICE’S PREPARATIONS

FOR THE 2008 GENERAL ELECTION”

TUESDAY, SEPTEMBER 9, 2008

The hearing will come to order.

Today the Senate Judiciary Committee will receive testimony on the subject of “Protecting the Right to Vote: Oversight of the Department of Justice’s Preparations for the 2008 General Election.”

Let me thank Chairman Leahy for asking me to chair this hearing. Let me also give a special thanks to Senator Kennedy, as we continue to pray for his speedy recovery and return to this Committee and to the Senate. Senator Kennedy is a true leader on so many issues, in particular on the critical civil rights issue of voting before the Committee today. His staff has been instrumental in preparing for today’s hearing.

During the 2008 presidential primary season, many states have witnessed record-breaking new voter registrations and voter turnout at the elections. I have particularly been encouraged to see so many young people becoming energized about the candidates in this election, which will shape our nation’s future for many years to come.

I am gravely concerned, however, that due to poor civil rights enforcement efforts at the Justice Department and numerous new election laws and rules on the books, that many eligible voters will be disenfranchised in the upcoming general election.

Today’s hearing will focus on to what extent the Department of Justice is prepared, or unprepared, for the new challenges we expect to face in the 2008 general election, based in part on our experiences in the 2000 and 2004 general elections. I must tell you that I am not convinced that the Justice Department is planning to do everything in its power to make sure that every eligible vote is counted, and to make sure that no eligible voters are denied the right to fully and fairly participate in elections.

Over the past 2 years this Committee has undertaken extensive investigations into the improper role that politics has played at the Department of Justice. When it comes to the Civil Rights Division, specifically, I am gravely concerned that the Division has lost its way from its historical mission to protect the civil rights of all Americans, particularly the most vulnerable among us.

The Civil Rights Division, in particular, has suffered terrible stains on its reputation under the Bush Administration, in particular during the tenure of former Attorney General Alberto Gonzales. The Division has a poor record of filing disparate impact and pattern and practice cases, and has not made it a priority to file cases to protect African-Americans from discrimination. The Civil Rights Division failed to authorize a single case alleging discrimination in voting on behalf of African-American voters between 2001 and 2006. In particular I have been concerned that the Justice Department has been reluctant to file Section 2 Voting Rights Act cases alleging minority vote dilution.

I am disturbed that the Civil Rights Division has also let partisan politics influence its personnel and litigation decisions, including the preclearance of Georgia's restrictive voter identification law in 2005 (which overruled and was contrary to the recommendations of career staff).

I understand that the Office of Professional Responsibility and the Office of the Inspector General are continuing their inquiry into the mismanagement of the Civil Rights Division, and I look forward to reviewing their report in the near future. In particular I want to know what administrative or legislative changes are needed to stop these types of abuses in the future.

I look forward to hearing from today's witnesses from the Department of Justice as to what steps they are going to take before the election to ensure that all eligible votes are counted and that voters are not disenfranchised. Will DOJ send letters to States outlining federal voting rights statute requirements regarding voter purges and voter registration, including deadlines for action? Will DOJ proactively contact States with evident problems that could violate federal voting rights statutes, such as lack of adherence to minority language requirements or areas with a history of deceptive practices designed to suppress minority vote turnout? Will DOJ provide Congress, jurisdictions, and advocacy groups a list of planned election coverage before the election, with its reasoning process? Will DOJ improve its training on "voter access" issues that have taken a backseat to preventing "voter fraud" at the polls?

I look forward to hearing from our distinguished witnesses today on Panel II. Professor Gilda Daniels will testify about her experience as the Deputy Chief of the Voting Section of the Civil Rights Division from 2000 to 2006. Keshia Anderson will tell the Committee what happened when she tried to vote in the February 2008 presidential primary in Chesterfield County, Virginia.

I want to again ask the Justice Department if they have the tools necessary to combat deceptive practices in the upcoming election. If so, enforce the law. If not, help us enact our legislation to give you the tools you need. I chaired a Committee hearing on this issue last year and the Judiciary Committee reported out legislation, S. 453, to address this issue. The House has already passed the bill by voice vote. But I must tell you that the Justice Department has still been much too slow to cooperate to help us fine tune and tweak this bill so that it could pass before this Congress adjourns, so that we can clearly criminalize activities that deliberately attempt to suppress the vote.

After having served in elective office in Annapolis for 20 years and in Washington for 20 years, I understand that campaigns are a rough and tumble business. I expect that candidates will question and criticize my record and judgment, and voters ultimately have a right to choose their candidate.

What goes beyond the pale is when a campaign uses deceptive tactics to deliberately marginalize and disenfranchise minority voters. Sadly, the tactics we saw in

the 2006 elections are not new. These tactics seem to deliberately target minority neighborhoods and are blatant attempts to reduce minority turnout.

In previous elections we have seen deceptive literature distributed which gave the wrong date for the election, the wrong times when polling places were open, and even suggested that people could be arrested if they had unpaid parking tickets or unpaid taxes and tried to vote. Other literature purported to give a different general election day for Republicans and Democrats. And in at least one state election, deceptive literature was handed out literally on election day by the polling places in specifically-targeted minority communities. These voter “guides” were handed out by major candidates’ campaigns, and contained false and misleading endorsements in an effort to diminish the impact of minority voters in this election.

It has been 138 years since Congress and the states ratified the Fifteenth Amendment to the Constitution in 1870, which states that “the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race [or] color...” The Amendment also gave Congress power to enforce the article by “appropriate legislation.” African-Americans suffered through nearly another 100 years of discrimination at the hands of Jim Crow laws and regulations, designed to make it difficult if not impossible for African-American to register to vote due to literacy tests, poll taxes, and outright harassment and violence. It took Congress and the states nearly another century until we adopted the Twenty-Fourth Amendment to the Constitution in 1964, which prohibited poll taxes or any tax on the right to vote. In 1965 Congress finally enacted the Voting Rights Act, which once and for all was supposed to prohibit discrimination against voters on the basis of race or color.

It is time for Congress and the Department of Justice to once again take action to stop the latest reprehensible tactics that are being used against African-American, Latino, and other minority voters to interfere with (a) their right to vote or (b) their right to vote for the candidate of their choice, as protected in the Voting Rights Act. These tactics undermine and corrode our very democracy and threaten the very integrity of our electoral process.

Let me close by recalling the voting rights march outside Selma, Alabama. Our own House colleague, Congressman John Lewis from Georgia, was savagely beaten and tear-gassed by police for peacefully marching and protesting on what we now call “Bloody Sunday.” He and so many others, including the Rev. Dr. Martin Luther King, Jr., ultimately led a peaceful march to Montgomery help their fellow citizens register to vote. Media coverage of the mistreatment of our own American citizens garnered worldwide attention, and led to the introduction by President Johnson in Congress of the proposed Voting Rights Act. Congress passed this historic act and President Johnson signed it into law less than five months after its introduction.

Today we have the obligation and duty to fulfill the promises made by Congress and the states nearly 140 years after the end of the Civil War, and over 40 years after the enactment of the Voting Rights Act. I hope the Department of Justice understands the

serious obligation it has to fully enforce and carry out the law to protect all voters, as this Congress, the nation, and the world will be closely watching this historic election.