Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing on "The Voting Rights Amendment Act, S.1945:
Updating the Voting Rights Act in Response to *Shelby County v. Holder*"
June 25, 2014

One year ago today five justices on the Supreme Court disregarded extensive findings of Congress and gutted the Voting Rights Act. During oral argument, Justice Scalia foreshadowed the majority's view of the law when he asserted that Congress's support of the Voting Rights Act was based on the "perpetuation of racial entitlement." I could not disagree more with Justice Scalia. There is no right more fundamental to our existence as American citizens than the right to vote. Every eligible American is entitled to vote and no voter should have their vote denied, abridged, or infringed.

In the *Shelby County* decision, the justices made clear that Congress could update the Voting Rights Act based on current conditions. In response, I worked with Congressmen Sensenbrenner, Conyers, and Lewis to forge a bipartisan compromise to update and modernize the law. This bill was introduced six months ago on the eve of the weekend celebrating Dr. Martin Luther King's holiday. At the time, I was hopeful that Senate Republicans would join me in supporting this important bill. Despite repeated efforts, I am troubled to report that as of this hearing, not a single Senate Republican has stepped up to the plate. I thank my fellow Senate Democrats on this Committee, who have all joined as co-sponsors. I hope that my fellow Senate Republicans on Committee will do the same.

The House Republican leadership has shown a similar lack of willingness to act on this critical bill. Not only have House Republicans refused to vote on or markup the bill, but they refuse even to hold a hearing. This is unfortunate because the Voting Rights Act has never been a partisan issue. From its inception and through several reauthorizations, the Voting Rights Act has always been a bipartisan effort. In fact, when President George W. Bush signed the most recent reauthorization in 2006, the vote in the Senate was unanimous and the vote in the House was 390-33. Congress too often is gridlocked, but there is almost unanimous agreement on the principle that no American should be denied his or her right to vote or to participate in our democracy. I can only hope that Republicans will come to the table so we can work together as Americans to update and strengthen the foundation of this important law. It would be a travesty if the Voting Rights Act were to become partisan for the first time in our Nation's history.

The Voting Rights Amendment Act updates and strengthens the foundation of the original law to combat both current and future discrimination. It does so in a way that is based on current conditions and recent history.

Under the Voting Rights Amendment Act, all states and jurisdictions are eligible for Section 5 protections under a new coverage formula, which is based on repeated voting rights violations in the last 15 years. This coverage provision is based solely on a state's or local jurisdiction's recent voting rights record. Significantly, the 15-year period "rolls" or continuously moves to keep up with "current conditions," as the Supreme Court stated should be a basis for any coverage provision. If a state that is covered establishes a clean record moving forward, it will fall out of coverage. In addition, the existing bailout provision would still be available for states

or jurisdictions that can establish that they had a clean record in a 10-year span. These provisions ensure that the coverage provision is not over-inclusive because jurisdictions that have not repeatedly violated the voting rights of its constituents can come out from under preclearance requirements.

The bill would also improve the Voting Rights Act to allow our Federal courts to bail-in the worst actors for preclearance. Current law permits states or jurisdictions to be bailed in only for intentional voting rights violations, but to ensure that the worst discrimination in voting is captured, the bill would amend the Act to allow states or jurisdictions to be bailed in for discriminatory results-based violations, where the effect of a particular voting measure is to deny an individual his or her right to vote.

In recognition that voters need to be aware of changes in laws affecting their right to vote, the bill provides for greater transparency in elections. Sunlight is a great disinfectant, as Justice Brandeis once observed. And in this instance, the additional sunlight will protect voters from discrimination. The transparency provisions provide for public notice and information in three areas. The first part requires public notice of late breaking changes in Federal elections. The second part requires information on polling place resource allocation for Federal elections. And the third part requires information on changes to electoral districts, including demographic information, to deter racial gerrymandering, impermissible redistricting, and infringement on minority voters. The last part requires this information for Federal, state and local elections because impermissible conduct oftentimes occurs in state and local elections.

And finally, the bill revises the preliminary injunction standard for voting rights actions. The principle behind this part of the proposal is the recognition that when voting rights are at stake, obtaining relief after the election has already concluded is too late to vindicate the individuals' voting rights. We recognize that there will be cases where there is a special need for immediate, preliminary relief where the plaintiff can establish that the voting measure is likely to be discriminatory.

This proposal responds to the Supreme Court's *Shelby County* decision in order to ensure that all Americans are protected against racial discrimination in voting. And a year after the *Shelby County* decision, it is clear that voters need more protection from racial discrimination in voting. As we approach a national election, it is not hard to see that attempts to deny and infringe upon the right to vote are only increasing. Just last week, the Brennan Center for Justice released a report called "The State of Voting in 2014." According to this report, since 2010, 22 states have passed new voting restrictions that make it more difficult to vote. Of the 11 states with the highest African-American turnout in 2008, 7 of those states have new restrictions in place. Of the 12 states with the largest Hispanic growth from 2000 to 2010, 9 have passed laws making it harder to vote.

A separate report issued yesterday entitled "Shelby County: One Year Later," demonstrates how harmful election law changes have occurred because of the Court's decision.

In addition, the Leadership Conference on Civil and Human Rights released a report last week entitled "The Persistent Challenge of Voting Discrimination," which details nearly 150 voting rights violations since 2000. And each of these cases impact thousands and sometimes tens of

thousands of voters. Racial discrimination in voting clearly remains a significant problem in our democracy. And the persistent refrain that the Federal government should not involve itself in local elections is clearly wrong, as the report demonstrates that the vast majority of voting violations takes place in local elections. I ask unanimous consent that these reports be included in the Record.

The statistics and evidence in these reports reaffirm Chief Justice Roberts's acknowledgment that "voting discrimination still exists; no one doubts that." Recognizing this, it is time for Congress to act.

There are some who argue that nothing more needs to be done because other provisions of the Voting Rights Act are still in effect. But these same individuals who praise the existence of the other sections of the Voting Rights Act are often the very same ones who are working to undermine and strike down this landmark law. The hypocrisy of some of these individuals gives me pause as to whether they are truly concerned with discrimination in voting, or whether their true goal is to see the Voting Rights Act removed from the books altogether.

Section 2 of the Voting Rights Act continues to be a critical component of the Act. It is a general anti-discrimination provision that prohibits voting practices that have the purpose or result of discriminating on the basis of race, color, or membership in a minority language group. Plaintiffs may bring a lawsuit in Federal court challenging the voting practice, but the burden is on the plaintiffs to establish that there is a purpose or effect of discrimination. While Section 2 provides one avenue for plaintiffs to pursue an attempt to stop voter discrimination, history shows us that Section 2, on its own, is insufficient to resolve all our voter discrimination problems. This was confirmed by the 2006 Report from the House Judiciary Committee, which stated that "failure to reauthorize the temporary provisions [Section 5 and its coverage formula], given the record established, would leave minority citizens with the inadequate remedy of a Section 2 action."

Not only is Section 2 on its face an insufficient protection, but there simply are not enough resources to prosecute all the instances of discrimination through litigation. Section 5 provides for an alternative administrative mechanism that helps resolve certain voting issues without having to go through long, protracted litigation. Litigation and the courts are not the only answer when trying to root out discrimination in voting. This is a principle that both Democrats and Republicans should be able to support.

Next week marks the 50th anniversary of the signing of the Civil Rights Act. Just as Congress came together five decades ago to enact the Civil Rights Act, Democrats and Republicans must work together now to renew and to strengthen the Voting Rights Act. I hope all Republicans will work with us to enact the meaningful protections in the Voting Rights Amendment Act.

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