

fight between the public good, between an important public security issue and a private special interest that is defending itself, that is defending its right to pollute, that is defending its ability to compromise our atmosphere, compromise our health, and compromise our great oceans and waters. This should be an easy struggle. This should be an easy struggle, but it is not. And it will be a mark of shame on this generation, and it will be a mark of shame on this building that given the choice between the clear information from the scientists, the clear experience of what is happening in all of our States and the power of the special interests, we ignored the first and yielded to the power of those special interests.

I yield the floor.

“PROTECTING OLDER WORKERS AGAINST DISCRIMINATION ACT”

Mr. LEAHY. Mr. President, I am pleased to join Senators HARKIN and GRASSLEY in reintroducing the Protecting Older Workers Against Discrimination Act. This bipartisan bill seeks to restore crucial worker protections that were cast aside by five justices of the Supreme Court in the 2009 case *Gross v. FBL Financial, Inc.* The bill reaffirms the contributions made by older Americans in the workforce and ensures that employees will be evaluated based on their performance and not by arbitrary criteria such as age.

Congress has long worked to enact civil rights laws to eliminate discrimination in the workplace. In 1967, Congress passed the Age Discrimination and Employment Act, ADEA, extending protections against workplace discrimination to older workers. We strengthened and codified these protections in the Civil Rights Act of 1991, which passed the Senate with an overwhelming, bipartisan vote of 93-5. These statutes established not only our clear congressional intent, but also a clear legal standard: an employer's decision to fire or demote an employee may not be motivated in whole or in part by the employee's age.

However, the Supreme Court's *Gross* decision unilaterally erased that longstanding standard. A narrow 5-4 majority threw out a jury verdict in favor of Jack Gross, a 32-year employee of a major financial company, who had sued his employer under the ADEA. That jury concluded that age was a motivating factor in the company's decision to demote Mr. Gross and to reassign a younger, significantly less-qualified worker to take his place. But the Supreme Court ignored the fact finder, its own precedent, and congressional intent to overturn the jury verdict.

Five justices shifted the burden from the discriminators to the discriminated, deciding that workers like Mr. Gross must now prove that age was the only motivating factor in a demotion or termination. The court's decision re-

quired workers to essentially introduce a “smoking gun” in order to prove discrimination. By imposing such high standards, the Court sided with big business and made it easier for employers to discriminate on the basis of age as long as they could cloak it with another reason. The Protecting Older Workers Against Discrimination Act rejects the Supreme Court's reasoning in the *Gross* decision, not only in those cases under the ADEA but also under similar civil rights provisions.

The Supreme Court's holding has created uncertainty in our civil rights laws, making it incumbent on Congress to clarify our intent and the statutory protections that all hardworking Americans deserve. The Protecting Older Workers Against Discrimination Act restores the original intent of the ADEA and three other Federal anti-discrimination statutes. The bill reestablishes Congress' intent that age discrimination is unlawful even if it is only part of the reason to demote or terminate a worker. It makes it clear that employers cannot get away with age discrimination by simply coming up with a reason to terminate an employee that sounds less controversial. Under the bill, a worker would also be able to introduce any relevant admissible form of evidence to show discrimination, whether the evidence is direct or circumstantial.

I commend Senator HARKIN for his efforts over the past 4 years to negotiate a bipartisan bill to restore the civil rights protections that all Americans deserve in the workplace. I also thank Senator GRASSLEY, the ranking member of the Judiciary Committee, for his commitment to this issue. I once again urge my fellow Senators to join this bipartisan effort and show their commitment to ending age discrimination in the workplace.

VOTING RIGHTS ACT

Mr. LEAHY. Mr. President, nearly 50 years ago, Martin Luther King, Jr., gave his historic “I Have a Dream” speech in front of hundreds of thousands of people on the National Mall. At the time, I was entering my last year of law school. I was inspired by the March on Washington and knew that history was being made before my very eyes. The youngest speaker at the March was a compelling man by the name of JOHN LEWIS. Many spoke of their unyielding support for civil rights legislation, but JOHN LEWIS demanded more. He demanded that the civil rights bill protect the right of every American to vote free from discrimination. With his strong and forceful voice, he proclaimed that “One man, one vote is the African cry. It is ours too. It must be ours.”

A year and a half later, JOHN LEWIS would lead another march across the Edmund Pettus Bridge in Selma, AL. There, State troopers brutally beat, bloodied, and trampled JOHN LEWIS and the group of peaceful marchers he led.

Those powerful images from “Bloody Sunday” were captured on television and in vivid photographs, and would become a catalyst for the passage of the Voting Rights Act. When President Lyndon Johnson signed the act into law several months later, he fittingly gave one of the pens to JOHN LEWIS.

The Voting Rights Act has become the most successful piece of civil rights legislation in this Nation's history. It has worked to protect the Constitution's guarantees against racial discrimination in voting for nearly five decades. It has helped minorities of all races overcome major barriers to participation in the political process, through the use of such devices as poll taxes, intimidation by voting officials, registration and language barriers, and systematic vote dilution.

Despite the continuing evidence of racial discrimination in voting that Congress amassed in 2006, the Supreme Court recently issued a ruling that makes it more difficult to protect all Americans in exercising their sacred right to vote. In *Shelby County v. Holder*, a narrow majority of the Supreme Court held that the coverage formula for section 5 of the Voting Rights Act was unconstitutional. Section 5 provides a remedy for unconstitutional discrimination in voting by requiring certain jurisdictions with a history of discrimination to “pre-clear” all voting changes before they can take effect. This remedy is both necessary and important because it stops the discriminatory voting practice before our fellow Americans' rights are violated. By striking down the coverage formula for section 5, the Court's ruling leaves this effective protection unenforceable.

Two weeks ago, I began a bipartisan conversation to restore the protections of the Voting Rights Act when I chaired a hearing before the Senate Judiciary Committee. The hearing included meaningful testimony from JOHN LEWIS and JIM SENSENBRENNER. Both agreed that protecting the right to vote from discriminatory practices is neither a Democratic issue nor a Republican issue. It is an American issue.

At this hearing, Republican City Commissioner Luz Urbáez Weinberg of Aventura, FL, also testified to the need to restore the protections of section 5 of the Voting Rights Act. She urged Congress to demonstrate a “clear and principled commitment to equal voting rights for all Americans regardless of race, language spoken, and to also act swiftly to restore the protections.” Moreover, she made clear that maintaining the Voting Rights Act “is not a partisan issue. It is a nonpartisan issue. It is an issue for all Americans. Whether Republicans or Democrats, all Americans strongly believe in fair and equal electoral opportunities.”

It is true that America has made a lot of progress since the Voting Rights Act was first enacted. Nobody denies this. But we are far from achieving the dream that Dr. King spoke of on that