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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

MICHAEL O'NEILL, *Chief Counsel and Staff Director*
BRUCE A. COHEN, *Democratic Chief Counsel and Staff Director*

Honorable Patrick J. Leahy
United States Senate
Washington, DC

July 26, 2006

Dear Pat:

I want to thank you for all of your work and cooperation in enacting the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization Act. Once again, this Committee has completed an extraordinary amount of work in a short time. In less than three months, we have held nine hearings, received testimony from forty-six witnesses, collected thousands of pages of testimony, and tackled one of the most complex legal issues of the day. This is a record that the Senate can be proud of, and your cooperation was instrumental in achieving it.

We have one more step in this process – submitting a report on behalf of the Senate Judiciary Committee. In my judgment, this report is essential to the task of ensuring that the Supreme Court upholds this legislation, and it is essential that it be submitted before the President signs the bill into law on Thursday morning.

Your letter of last night troubles me because it indicates that you have been misinformed on several points.

You stated that in conformance with “Senate rules and our practice,” you are entitled to submit your additional views at the end of the day Thursday – after the President signs the bill. You also imply that I am somehow giving Members of this Committee less process than required, when I have gone above and beyond the call of duty to give you more process than required by the Senate and Committee rules.

The Standing Rules of the Senate, Rule XXVI section 10, provides: “If at the time of approval of a measure or matter by any committee (except for the Committee on Appropriations), any member of the committee gives notice of intention to file supplemental, minority, or additional views, that member shall be entitled to not less than three calendar days in which to file such views, in writing, with the clerk of the committee.” The three-day clock only runs if a Member requests additional or supplemental views at the mark-up, and no Member did. Accordingly, in these circumstances, the Standing Rules of the Senate do not provide any right to a three-day extension, and our Committee rules provide no additional time.

From the day I assumed Chairmanship of this Committee, I followed a practice of agreeing to significantly more process than the rules require.

The parliamentarian informs us that under Senate practice, the three-day clock, if properly triggered, is deemed to start when the Minority is given notice that the Chairman intends to file a Committee report. This notice has been given repeatedly and was, by any

standard, given by Friday July 22. Accordingly, the three calendar days allowed by custom expired two days ago -- on Monday.

Since May, our staffs have been discussing the necessity for the Committee to file a report. On Friday, July 14, my staff confirmed again that the Committee would file a report. Although nothing in the Senate rules or Committee rules required it, in the spirit of bipartisan cooperation, my staff sought your staff's input. On Saturday July 15, your staff sent an outline, and on Wednesday, July 20, your staff submitted a 145-page draft report that they proposed be filed the next day. On Thursday, July 21, my staff made it clear that I could not join that report.

On Friday, July 22, our staffs had a long conversation in which my staff outlined what would be acceptable to all Committee Members, stated that a draft would be sent to your staff the next day, and that any other materials would have to be submitted as additional views. Again, nothing in the Senate Standing Rules or the Committee's rules required my circulation of a draft report. But to further our efforts, my staff sent a draft report on Saturday to your staff for comment. Your staff sent some very helpful edits to that draft and indicated that, although you preferred that no report be filed on behalf of the Committee, you could support that draft. Indeed, that is the version I will be filing together with any supplemental or additional views that any Member seeks to offer.

Leader Frist had initially requested that the Committee report, including all supplemental and additional, views be filed by Monday pursuant to the Senate Rules. In accord with my policy of providing more process, however my staff personally asked the Leader's staff that Members be given an additional two days and be permitted to file on Wednesday; the Leader's staff agreed to that request.

I realize that the schedule has been difficult and has required staff to work late nights and weekends. We are used to that in the Senate Judiciary Committee -- having spent August recess preparing for Chief Justice Roberts's confirmation, the October, November, and Christmas recesses negotiating the PATRIOT Act and preparing for Justice Alito's nomination, and more recent recesses building a full record on the Voting Rights Act. I realize that having a full Committee report filed by close of business today requires staff to once again put in long hours. But, in my judgment, it is essential that the Committee file a report in order to present the strongest possible case for the Supreme Court to uphold this legislation. It is also my personal view that the Voting Rights Act is significant enough to justify this minor burden. Since the President is going to sign the bill on Thursday July 27, it is imperative we complete the report today.

Thank you again for all of your assistance on this historic legislation. We have only one more step to go to finish this process.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Specter', written over a horizontal line.

Arlen Specter

Hand Deliver