CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

THURSDAY, DECEMBER 3, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:09 a.m., in room 2141, Rayburn House Office Building, the Honorable Jerrold Nadler (Chairman of the Subcommittee) presiding.

Present: Representatives Nadler, Conyers, Watt, Scott, Johnson, Cohen, Chu, Sensenbrenner, Smith, Franks, King, Jordan, and Gohmert.

Staff present: (Majority) David Lachman, Subcommittee Chief of Staff; Elliott Mincberg, Chief Oversight Counsel; and Crystal Jezierski, Minority Counsel.

Mr. NADLER. This hearing of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order. Today I will first recognize myself for a 5-minute opening statement.

Today this Subcommittee continues its oversight of the civil rights division of the Department of Justice. With the authority to enforce this Nation's civil rights laws the division is the guardian of our fundamental values: freedom of religion, the right to be treated fairly, the right to cast a vote in a free and fair election, the right to a job, the right to a home, the right to an education without discrimination, and with the enactment of the Hate Crimes Prevention Act recently, the right to live one's life free from the threat of violent hate crimes.

As our Subcommittee has documented, the division has been deeply troubled over the past 8 years. Career civil rights attorneys were routinely overruled by political appointees, hiring was illegally politicized, enforcement was in some key areas grossly neglected, and morale was as bad as at any time since the division's establishment. The loss of dedicated career staff was alarming.

We now have a new Assistant Attorney General, Tom Perez, who will be our first witness. He is a career civil rights lawyer and he has a tremendous job ahead of him.

In addition to the historically challenging work of the civil rights division he must rebuild a decimated and demoralized office and he must do so with such monumental tasks as the decennial redistricting on the horizon. We would have liked to have had him here

sooner but some of our colleagues in the other body apparently didn't have the same sense of urgency in getting him on the job.

I hope to hear from Mr. Perez how he plans to meet these challenges.

We will also hear from the Government Accountability Office, which has produced two extensive reports on the civil rights division at the request of Chairman Conyers, Mr. Watt, and myself. I think the analysis and recommendations will help move the division forward as it meets the challenges of the next few years.

I want to welcome all our witnesses, and I look forward to their testimony.

I will now recognize the distinguished Ranking Member of the Subcommittee, Mr. Sensenbrenner, for 5 minutes for an opening statement.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I guess we on this side of the aisle have a little different view of what happened in the last 8 years, and in the second panel Ms. Becker will be able to, I think, maybe educate the Chairman and my Democratic colleagues as Mr. Perez, I guess, is going to educate those of us on this side of the aisle. That being said, let me say that the legitimacy of our elected leaders depend upon the legitimacy of our election process, and the civil division of the—civil rights division of the Justice Department plays a role in safeguarding that process.

During the last election one organization became notorious for threatening the integrity of our election through a massive campaign of improper election activity. That organization, called ACORN, is mired in criminal investigations in at least 12 states, which now include New York, Louisiana, Pennsylvania, Florida, and Nevada.

While the national reach of ACORN's corruption firmly established, it is time for this Committee to conduct an investigation of its own. Let me read a few sections of ACORN's extensive rap sheet, which spans from coast to coast and has led the Census Bureau of the IRS, major foundations, and the Nation's most prominent banks to cut ties with ACORN over the last several months, notwithstanding the fact that there have been appropriations writers cutting them off of Federal money.

In Seattle local prosecutors indicted seven ACORN workers following a scheme the Washington secretary of state called "the worst case of voter registration fraud in the state's history." Of the 2,000 names submitted by ACORN over 97 percent were fake.

In Missouri, officials found that over 1,000 voter addresses submitted by ACORN didn't exist. Eight ACORN employees pled guilty to Federal election fraud there.

In Ohio, an employee of one ACORN affiliate was given crack cocaine in exchange for fraudulent registrations that included underage voters and dead people.

In my own state of Wisconsin, the Special Investigations Union of the Milwaukee Police Department issued a report that concluded that eight people were sworn in as deputy registrars who were convicted felons under the supervision of the State Department of Corrections. ACORN was their sponsoring organization.

The 67-page Wisconsin report generally describes what it calls "an illegal organized attempt to influence the outcome of the 2004 election in the state of Wisconsin." The report found that between 4,600 and 5,300 more votes were counted in Milwaukee than the number of voters recorded as having cast ballots. Nice if you can do it, having more votes than voters.

Mike Sandvick, the head of the unit, said that the problems his unit, said that the problems his unit found in 2004 are only the tip of the iceberg of what could happen today. Sure enough, during the 2008 election ACORN's executive director had to admit that, of the 1.3 million new voters ACORN claimed to have registered, only a third of those, or 450,000, were legitimate, and that the organization was forced to fire 829 of the canvassers that it hired for job-related problems, including falsifying voter registration forms.

Beyond voting fraud, the New York Times revealed that ACORN chose to treat the embezzlement of nearly $1 million as an internal matter and didn't even notify its board or law enforcement. The Louisiana attorney general, who is conducting an investigation in the state where ACORN is headquartered, has since indicated the embezzlement may amount to as much as $5 million.

It is tragic enough when voluntary donations are used illegally, but ACORN also receives millions of taxpayer dollars and it is eligible to receive millions more if the prohibition on its funding Congress recently enacted beyond its current sunset in mid-December.

The Justice Department has funded a loan of a couple thousand dollars to ACORN or its affiliates, as most of its funding comes from housing programs administered by HUD. But even so, the Justice Department's inspector general found just last month what limited funds the department distributed to ACORN or its affiliates were largely mismanaged in programs involving crime prevention and tax counseling—yes, I said crime prevention and tax counseling.

Astonishingly, in the midst of all of this, the lawyer for President Obama's election campaign wrote a letter to the Justice Department last October demanding that it investigate not ACORN, but the McCain campaign for daring to mention what the lawyer referred to as "manufactured allegations targeting the organization." That lawyer, Robert Bauer, is now White House counsel.

Mr. Bauer may be interested in reading an internal June 2008 memorandum prepared by ACORN's own lawyer that recently became public. The memo found systematic problems with ACORN and its associated entities, which it described as operating like a family business more than an accountable organization. The same memo also described the potentially improper use of charitable dollars for political purposes, illicit money transfers, and potential conflicts created by employees working for multiple affiliates.

I would ask Mr. Perez to please relay ACORN's rap sheet to Mr. Bauer just in case he hasn't gotten the memo, and I yield back the balance of my time.

Mr. NADLER. I thank the gentleman.

I will now recognize the distinguished Chairman of the full Committee for an opening statement.

Mr. CONYERS. Thank you, Mr. Chairman.

I wanted to thank the Chairman emeritus for pointing out how important it is that we investigate ACORN, and would the gentleman—does the gentleman need any more time to—he looked like he had more to add to his dissertation.

Mr. SENSENBRENNER. Well, if the gentleman will yield, I appreciate your generosity, but more will come at a later date.

Mr. CONYERS. Okay.

Well, I take it, then, from you and Lord knows what Steve King is going to say, that this is the most important issue for the civil rights division and the voter rights section to consider. Is that fair, Mr. Sensenbrenner?

Mr. SENSENBRENNER. If the gentleman will yield, I think that the whole Justice Department is sworn to uphold the law and it doesn't matter which division is upholding the law and enforcing it against those who break it; it doesn't make any difference as long as people who are suspected of breaking the law are brought to justice.

Mr. CONYERS. So that is a long way of saying yes, I take it?

Mr. SENSENBRENNER. If the gentleman will yield further——

Mr. CONYERS. Yes, I will yield again.

Mr. SENSENBRENNER [continuing]. No, I didn't say yes. I said what I said.

Mr. CONYERS. Oh, you didn't say yes? Okay. You didn't say no and you didn't say yes, but you said what you said.

Well, that is not as helpful as I thought it would be. Now, could I ask my friend, Mr. Sensenbrenner, were you at the hearing on Tuesday at 1 o'clock that was sponsored by Republican members of this Committee that talked about ACORN?

Mr. SENSENBRENNER. If the gentleman will yield, I was not because I had a conflicting engagement.

Mr. CONYERS. I see.

Well look, you have lots of important considerations, and this one is so important that here we are discussing the responsibilities of the civil rights division containing voter rights enforcement for the first time in a new Administration and——

Mr. SENSENBRENNER. Will the gentleman yield to me?

Mr. CONYERS. Of course.

Mr. SENSENBRENNER. Was the gentleman from Michigan at that hearing on Tuesday?

Mr. CONYERS. No, sir, I wasn't.

Mr. SENSENBRENNER. Will the gentleman further yield to me?

Didn't the gentleman, at a hearing of this Subcommittee in February, suggest that we have an investigation of ACORN?

Mr. CONYERS. No.

Mr. SENSENBRENNER. If the gentleman will further yield, I distinctly remember him saying that, and if the gentleman will further yield, if there was representation of why we should investigate ACORN why has not the Chairman called for that hearing?

Mr. CONYERS. Couldn't we just meet on this without taking up the time of all of our witnesses? I would be happy——

Mr. SENSENBRENNER. Well, I will be glad to yield back whatever time he had.

Mr. NADLER. Thank you. I would just like to observe that whatever the merits of—or demerits, in my view—of a hearing on ACORN may have been previously, now that Congress has repeat-

edly passed the bill of attainder cutting off ACORN from all funds there is no further subject for an investigation. There may be law enforcement issues for various law enforcement agencies, but Congress has already taken action.

Normally we would hold an investigation and then, depending on what one finds in that investigation, take action. We put the cart before the horse so I don't think there is any need for the horse at this point.

But we have already taken the action. I view it as an unconstitutional action; I think the courts will overturn it because it is a bill of attainder.

But Congress has already done everything it could conceivably do. We don't declare people or organizations—at least we shouldn't—guilty of crimes except in rhetoric. It is now up to state investigations—to other investigating agencies to do whatever they may want about Mr. Sensenbrenner's and others' various accusations.

I will yield back.

I now yield 5 minutes to the distinguished gentleman from Texas.

[Cross talk.]

Mr. SMITH. Thank you, Mr. Chairman.

In his confirmation hearing Attorney General Holder stated that "law enforcement decisions and personnel actions must be untainted by partisanship. Under my stewardship the Department of Justice will serve justice, not the fleeting interests of any political party." Yet, since taking over at the helm of the Justice Department there have been troubling decisions that can only be explained by just such partisanship, and nowhere have they been more apparent than in the civil rights division.

One of the most troubling of these is the department's decision in May to dismiss charges of voter intimidation arising out of the 2008 presidential election. On Election Day 2008, two members of the New Black Panther Party brandished a baton in a threatening manner and made verbal threats to those who wanted to vote at a Philadelphia polling location.

According to the department's complaint, the individuals "made statements containing racial threats and racial insults at both Black and White individuals and made menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters." One individual carried credentials as a member of the local Democratic committee.

In January, the civil rights division filed a complaint against the New Black Panther Party and three of its members for violating the Voting Rights Act, which prohibits any attempt to intimidate, threaten, or coerce any voter and those aiding voters. Neither the New Black Panther Party nor its members responded to the lawsuit.

The department effectively won the case when the judge directed the civil rights division to file a final motion, but in May the department suddenly and inexplicably dismissed all but one of the charges. No facts had changed; no new evidence was uncovered.

Would the Justice Department have dismissed these charges if the defendants had been members of the KKK, dressed in robes

and hoods, brandishing a nightstick and taunting voters outside a polling place, say, in Alabama? Very unlikely.

When Members of Congress asked for an explanation as to why the department dismissed the case, we were met with silence. For 5 months we have sought answers from the department, and still no response from the self-proclaimed "most transparent Administration in history."

Continued silence by the Justice Department is an implied admission of guilt that the case was dropped for purely political reasons. The department owes the American people the truth, not another round of empty excuses.

Of equal concern is the department's apparent inaction with regard to the numerous examples of improper and possibly illegal conduct committed by employees of ACORN. On Tuesday Republican members of the Judiciary and Oversight and Government Reform Committees held a joint forum to examine the numerous allegations of wrongdoing allegedly committed by ACORN employees, especially involving voter fraud, which falls within the civil rights division's portfolio.

We heard whistleblower testimony from former ACORN employee Anita MonCrief and state law enforcement and elections officials who pleaded for Federal law enforcement to initiate a nationwide investigation into ACORN. As one of the witnesses, a former Justice Department attorney himself stated, "The government has initiated major investigations of businesses and government contractors on much less evidence of possible wrongdoing."

I would like to insert their statements into the record for this hearing, Mr. Chairman.

Mr. NADLER. Without objection.

[The information referred to follows:]

My name is Anita MonCrief and I've been referred to as "the ACORN whistleblower."

I attended the University of Alabama and began my advocacy and human rights efforts with the American Bar Association. I traveled to Canada to promote understanding of the United Nations System and volunteered in several countries. In 2002, I served as an election observer with the Organization for Security and Cooperation in Europe on its mission to Macedonia to maintain stability during a crucial presidential election.

In 2005, I turned down a promotion to move to Maryland with a company that has offices worldwide. Instead, I accepted an offer from ACORN's Nathan Henderson-James to move to DC to work in ACORN's national office. Though the cost of living was higher and the pay lower, I felt ideologically connected to ACORN's mission. I joined the staff of ACORN affiliate Project Vote's development department. I worked for both ACORN and Project Vote. I worked with grassroots organizers across the country to fund one of the largest voter registration drives in United States history.

After leaving ACORN in January 2008, I worked with the Grameen Foundation and the labor-affiliated American Rights at Work.

While at ACORN/Project Vote, I worked in the Strategic Writing and Research Department (SWORD) within ACORN's Political Operations (POLOPS). As part of the SWORD staff my title was Writer/Researcher. My salary was paid by Project Vote, with which I held the title of Development Associate, but I had an ACORN email address.

During my time with ACORN I served in various capacities within the POLOPS family. A summary of my main duties can be broken into two categories, ACORN Political Operations and Project Vote:

ACORN Political Operations

- Provided assistance and sample boilerplate proposals to local political offices to use in local fundraising efforts (most of these assignments supported voter participation programs and the election administration work of various members of the COUNCIL of organizations).
- Worked with state Head Organizers in such states as Maryland, Ohio and Colorado to devise and implement a state political plan that could be used to demonstrate to funders, partner organizations and other political professionals that state's 2006 electoral plan.
- Researched the Maryland citizens of voting age to produce an estimated number of unregistered Latinos and African Americans.
- In 2005, 2006 and 2007, was primarily responsible for creating the Political Operations YEYB presentation presented every year at an internal meeting of ACORN staff members and focused on political participation.
- Created various PowerPoints for other COUNCIL organizations including Community Voting Together and a presentation for ACORN's Precinct Action Leader (PAL) program.

Project Vote

- Worked with the ACORN National fundraising staff out of Brooklyn, New York, and was responsible for the migration of all donor database functions to a database called DonorPerfect.
- Served as the DonorPerfect system administrator for Project Vote and provided administrative support, training, and tracking for Project Vote's grant-based fundraising for a myriad of

purportedly 501(c)(3)-compliant voter participation efforts.

- Utilized DonorPerfect and the accounting system Navision and reconciled all data in DonorPerfect with existing Citizens Consulting Inc. and Project Vote data (this reconciliation involved accounting for almost $9,000,000 of unaccounted funds given to Project Vote since 2004).
- Provided ongoing administrative support to all fundraising activities including: financial document-marshaling support for the 501(c)(3) fundraising program (boiler-plates, Project Vote budget, c3 voter registration budget creation, gathering of audits and financial reports from CCI, etc.), understanding funders and maintaining funding relationships.
- Assisted Project Vote with a fifty-state survey examining how states implemented HAVA's provisional voting requirement and conducted survey interviews with election officials across the country.
- Created materials and assisted in providing training to ACORN state political directors on 501 (c)(4) fundraising so that they could solicit funds locally for voter registration programs.
- Maintained and updated the Project Vote Election website.

While employed with ACORN/Project Vote, I noticed ACORN's practice of poorly training employees and sometimes covertly encouraging people to skirt the rules during voter registration programs. After working on voter fraud research for ACORN political, I saw a pattern of employees being prosecuted for shenanigans during election years. I decided to take action and contacted the Employment Policies Institute (EPI). EPI ran a site called Rotten ACORN. I spoke to a Bret Jacobson about my concerns regarding ACORN management and how they treated their employees. Instead of trying to use me for information, Mr. Jacobson took into account my personal situation as a new mother of a preemie and suggested that I call back after securing other employment.

I was eventually terminated from Project Vote in January of 2008. I never hated ACORN as a result of my termination. In fact, I kept attending rallies and fighting the fight, until the true nature of one of ACORN's shake-down efforts, a campaign against the Carlyle Group (detailed below), was exposed to me. At that time, I told the head organizer that I would no longer get involved or be seen at events. I knew what they were doing and it really scared me. I realized the true nature of ACORN and this time I decided to fight against ACORN to really help poor people who were being used by ACORN.

In July of 2008, I contacted New York Times reporter Stephanie Strom after reading her article, "Funds Misappropriated at 2 Nonprofit Groups" (July 9, 2008). I provided information and documents about the inner workings of ACORN and Project Vote to Strom and passed information from ACORN board member Marcel Reid to Strom. Articles produced by Strom during this time include:

- "Head of Foundation Bailed Out Nonprofit Group After Is Funds Were Embezzled" (August 16, 2008)
- "Lawsuit Adds to Turmoil for Community Group" (September 9, 2008)
- "On Obama, ACORN and Voter Registration" (October 10, 2008)
- "ACORN Working on Deal to Sever Ties with Founder" (October 15, 2008"
- "ACORN Report Raises Issues of Legality" (October 21, 2008)

In the late summer of 2007, I reported to Strom that the Obama Presidential Campaign had sent its entire second quarter 2007 donor list to Project Vote Development Director, Karyn Gillette. Gillette

instructed me to work from the list to identify maxed out Obama donors and to separate the lists by states for fundraising for Project Vote's voter registration drive and Get Out the Vote efforts run by ACORN.

On October 21, 2009, Strom was set to come to Washington to meet me and to receive from me proof of contact between ACORN and staff of the Obama campaign. By this time, I no longer trusted her as I had earlier and would only give the proof to her in person. I had provided Strom with the list of donors from the Obama and Clinton second quarter donor list as well a DNC, DSCC and Kerry donor lists prior to her scheduled visit. That day, Strom reported to me via a voice mail that her editors at the New York Times told her to "stand down." In a subsequent telephone conversation that day Strom told me that it was not the policy of the New York Times to print a story that close to the election that could be considered a "game changer" for either side.

Testimony in the Commonwealth of Pennsylvania

That same day, October 21, 2008, I spoke to Marcel Reid and she provided information about a case in Pennsylvania and a telephone number for attorney Heather Heidelbaugh. Later that day I spoke to Ms. Heidelbaugh and told her that I had worked for ACORN/Project Vote in their Washington, DC office for a few years and had heard about her lawsuit. I informed her that I had information about ACORN and agreed to testify voluntarily at an upcoming hearing in the case. Heidelbaugh came to Washington, DC the next day and we spent several hours talking about my time in the ACORN DC office. I informed her about the circumstances of my termination from Project Vote and of my whistleblower work with the New York Times.

On October 29, 2008, I testified for more than two hours in Harrisburg, Pennsylvania, at a hearing on a request for a preliminary injunction before the Commonwealth Court. The Complaint against the Secretary of State and ACORN alleged violations of the Pennsylvania Election code, Fraud and Misrepresentation and Violation of Equal Protection and Due Process.

A memo prepared by Heidelbaugh in March of 2009 and submitted to a House Judiciary subcommittee outlines some of the relevant aspects of my testimony (which is available in full online).

My testimony covered the following significant facts:

- November 2007 – Project Vote contacted by Obama presidential campaign
- Project Vote received Obama donor list from Obama campaign
- Project Vote solicited Obama donors to pay for voter registration and to "get out the vote"
- Project Vote received donor lists from other Democratic and labor union sources: John Kerry campaign, [Hillary] Clinton campaign, Barack Obama campaign, Democratic National Committee, America Coming Together ("ACT")
- Project Vote development plan was to "approach maxed out presidential donors" and allegedly use the funds raised for voter registration drives
- ACORN "employees" were paid through Project Vote for partisan campaign activities, such as telling voters "**don't vote for Albert Wynn (sic) or vote for this person"**
- In reality, there was no division between the staff of ACORN and Project Vote and persons working for one entity performed work for either or both organizations
- ACORN chose the states in which Project Vote would conduct voter registration drives, based on political considerations

- Registration drives (by Project Vote) conducted in 'battleground states" where "by coming in and registering new voters, it could change the outcome of the election"
- The Obama campaign's donor list was part of the evidence admitted into the hearing on the injunction in October 2008
- ACORN Political is the 'strategic planning arm' of ACORN, and it looks at contested congressional districts, ballot measures, initiatives like minimum wage, etc.
- Project Vote had a $28,000,000 budget which was funneled through Citizens Consulting Incorporated ("CCI")
- CCI is an ACORN affiliated entity that receives and disburses all funds, including charitable contributions from the Rockefeller Fund, the Vanguard Charitable Endowment and other private foundations and donors, to over 175 affiliated ACORN entities
- In 2007, there was a $9,000,000 discrepancy in the ACORN affiliated accounts

My testimony also shed light on a little known program within ACORN called "Muscle for the Money" and Heidelbaugh also summarized the lengthy court transcript to highlight this program:

ACORN has official and unofficial programs called "Muscle for the Money"

ACORN's Official "Muscle for the Money" Program:

- The "official" program is the name for the ACORN voter registration drives.
- The Obama campaign paid ACORN affiliate Citizens Services International ("CSI") almost $900,000 for voter registration, voter identification, turnout and get-out-the-vote services.
- Obama campaign reported to the FEC that the expenditure was for "sound and lighting equipment," which does not exist.
- ACORN/CSI markets its programs to campaigns, which pay ACORN/CSI for the "services"
- ACORN is paid not only to register voters, but to also convert those voter registrations into votes at the polls for specific candidates.
- ACORN is supposed to get the voters to the polls by bus or to make sure the voters get an absentee ballot and to make sure the votes are cast.
- CSI used the political canvassers and others employed by ACORN for its voter turnout programs.

ACORN's Unofficial "Muscle for the Money" Program:

- This is an "unofficial" corporate directed program for donations
- Payments from SEIU were made to ACORN's DC office to harass The Carlyle Group and, specifically, Mr. David Rubenstein, a founder of the company
- Even though DC ACORN had no interest in The Carlyle Group, they were paid by SEIU to go break up a banquet and protest at his house.
- It was called "Muscle for Money" because they would go intimidate people and protest.
- Targets of the paid protests included Sherwin-Williams, H&R Block, Jackson Hewitt and Money Mart, among others

- The purpose was to get money from the targeted entities for ACORN, to force the companies to "negotiate"

In addition to my prior testimony, I can provide information regarding the following:

1) Project Vote may have violated its 501(c)(3) status since its inception by using government and private grants that ultimately go directly or indirectly to ACORN
   - The internal accounting system Navision could be used to prove that Project Vote acted as part of ACORN political operations while purporting to be a 501(c)(3) organization to better promote ACORN's political agenda.
   - Staffing lists would illustrate the overlap in staff and name several employees from the Project Vote payroll who were part of ACORN Political Operations.
2) ACORN, Project Vote and Citizen Services Inc (CSI) are the same organization with different tax designations that are used to facilitate the transfer of money among the organizations
   - Documents may show what the functions of CSI are and would then tie those activities back to Project Vote.
   - Documents may also show that CSI is intricately involved in the donor management system, DonorPerfect, which is used by ACORN and its affiliates.
3) ACORN has promoted a culture of dishonesty motivated by a desire to reach target Voter Registration goals and senior staff portrayed an attitude that allowed for some "bad" cards in order to reach these goals
   - ACORN hires canvassers to conduct voter registrations. Some canvassers are employed as paid political canvassers on salary.
   - ACORN does have a "quota system" for their voter registration canvassers that required each canvasser to turn in at least 20 cards per day.
   - Evidence supports the allegation that canvassers who did not turn in the minimum of 20 cards per day were fired.
   - Evidence also supports that in order to meet the daily quota, ACORN pressured contractual employees, the part-time, temporary employees to perform.
   - Contractual employees must sign a document agreeing to prosecution if fraudulent cards are found but in some instances supervisors appeared to be encouraging filling out incomplete cards.
   - I have knowledge of employees being paid in cash, in some instances.
   - ACORN had several hiring frenzies during the voter registration drives and the "ramp-up" period and ACORN was aware of the problems associated with this period
4) Karyn Gillette, Project Vote Development Director, Jeff Robinson, senior Project Vote "money man" and Nathan Henderson James, Project Vote Research and Political Director are all employed by CSI (Citizens Services Inc.) and may have worked directly with anyone seeking the services of CSI. Money paid to CSI would have obvious ACORN ties.
   - Facts exist that may tie Project Vote staff back to the payroll of CSI.
   - Jeffrey Robinson is listed as CSI Executive Vice President and the national deputy political

director for campaigns and elections for ACORN. Robinson is also head of the 527 group Communities Voting Together.

5) Zach Polett, former Executive Director of Project Vote and former director of ACORN Political Operations, mentioned that Obama had worked for "us" and that he even supervised him during an ACORN Political staff retreat in November 2007.

   - The statement was made during a November 2007 ACORN Political Operations meeting in Arkansas.

6) In late 2007, I received a call from the campaign asking if this was the same Project Vote that Obama worked for in the 90's. With the staff retreat fresh in mind I answered yes and sent an email to Zach Polett, Karyn Gillette, Nathan Henderson James, and Kevin Whelan stating that the campaign wanted someone to call them back regarding some media questions that were being asked at the time.

   - Documents may exist that will show coordination between the Obama campaign and ACORN outside of just the sharing of the donor lists.
   - A meeting took place between the senior management of ACORN and the Obama campaign in late 2007 and was confirmed by Stephanie Strom of the New York Times using a board member as a source as well. This meeting took place sometime in November of 2007 and may have even been a conference call between the campaign and PV.

7) In late 2007, Karyn Gillette approached me to tell me that she had direct contact with the Obama campaign and had obtained their donor lists.

   - Gillette spoke of a direct link to the campaign, and I was given an excel spreadsheet to work with in cultivating new donors.
   - When I had trouble because of the duplicates, Karyn stated that she would contact her person at the campaign and see if they had another one.

8) Karyn Gillette also provided list obtained from the Kerry and Clinton campaigns, as well as the 2004 DNC donor lists.

   - These lists were shared with the Political directors of roughly 12 ACORN battleground states in order to raise money for a $28,000,000 (number as of 11/2007) voter registration drive.

9) ACORN and Project Vote used CCI to transfer money between the organizations.

   - CCI is an acronym for Citizens Consulting Incorporate. CCI is the accounting arm for ACORN and all of the money is placed in CCI first.
   - CCI controls how the organization operates and its cash flows and makes sure its bills are paid.
   - CCI makes disbursements either directly into ACORN affiliate accounts or arranges transfers between the different organizations.
   - All donations to ACORN or any of the over 300 affiliate organizations are deposited into bank accounts held by CCI.
   - CCI has dozens of accounts in the accounting system, Navision, and each affiliate is given an accounting code. Project Vote is known as VOTE in Navision.

10) Questions have been raised by ACORN's own lawyers about the shredding or destruction of documents:

- Documents from former board members show that ACORN lawyer Steve Bachmann was concerned about documents being destroyed and sent out a memo in the summer of 2008 reminding ACORN employees about the destruction of documents.
- Former board member Marcel Reid recounted walking into the DC ACORN office and witnessing the destruction of documents using a shredder. This information was shared with the New York Times in 2008 and Heidelbaugh.

11) Misappropriation of Government Grants

- Documents and emails from ACORN/Project Vote employees will demonstrate a willingness to facilitate falsification of grant reports to the Election Assistance Committee.
- Current ACORN/Project Vote management staff encouraged their administrative support staff to create and file false documents to the Federal Government.

Based on my testimony and evidence, I respectfully submit that (1) ACORN, Project Vote and the rest of the Council of Organizations should be investigated by the United States Justice Department for Voter Registration Fraud and possible RICO violations; (2) the IRS should audit the affiliated entities to determine if tax laws were violated and 501(c)(3) tax exempt status was abused; and (3) the FEC should also investigate possible violations of federal law related to my testimony and evidence of illegal coordination between ACORN/Project Vote and the Obama presidential campaign.

ACORN has shown itself to be a thoroughly corrupt organization that cannot be reformed and whose activities are detrimental to minorities, the poor and America as a whole.

JOINT FORUM ON ACORN

Before Members of Oversight and Government Reform Committee and Judiciary Committee
House of Representatives

December 1, 2009

Statement of Hans A. von Spakovsky

Thank you for the opportunity to testify at your investigative forum about the possibly illegal activities of the Association of Community Organizations for Reform Now (ACORN) and its many affiliates and subsidiaries. I am currently a Senior Legal Fellow and Manager of the Civil Justice Reform Initiative at the Heritage Foundation. However, the opinions I am expressing are my own and not those of the Heritage Foundation.

Prior to my work at the Heritage Foundation, I spent two years as a Commissioner on the Federal Election Commission and four years as a career lawyer at the Department of Justice, my last three as a Counsel to the Assistant Attorney General for Civil Rights.

What do we know about ACORN? A great deal of work has been done looking at ACORN from the outside with publicly available information including by the Capital Research Center and the Employment Policies Institute. It is a far flung operation with dozens if not hundreds of affiliates – one report discovered almost 200 ACORN affiliates operating out of its headquarters in New Orleans and ACORN itself claims operations in 110 cities. Some of these organizations engage in political work while others have a tax-exempt, charitable status. Yet the $126.4 million in donations and tax dollars that ACORN is reported to have taken in since 1993 are apparently moved around its network of organizations and commingled with no concern over the propriety or legality of doing so.

Congressman Darrell Issa released a report on July 24 that concluded that ACORN "has repeatedly and deliberately engaged in systemic fraud." According to the report, "[b]oth structurally and operationally, ACORN hides behind a paper wall of nonprofit corporate protections to conceal a criminal conspiracy on the part of its directors, to launder federal money in order to pursue a partisan political agenda and to manipulate the American electorate."

The report accuses ACORN of evading taxes, obstructing justice, covering up a $1 million dollar embezzlement, committing investment fraud, submitting false filings to the IRS and the Dept of Labor, as well violating the Fair Labor Standards Act. In fact, the reported million dollar embezzlement may actually

have been $5 million according to information uncovered by the Louisiana Attorney General and hidden by ACORN for ten years.

On September 22, Senator Grassley released a review of ACORN's abuse of the tax-exempt status of its subsidiary organizations (ACORN itself is not a tax-exempt organization). Senator Grassley found almost 50 such tax-exempt subsidiaries and affiliates, many of which receive charitable contributions. He concluded that "the flow of money among the ACORN family of organizations is a big shell game. Dollars raised for charitable activity appear to be used for impermissible lobbying and political activity."

As the *Washington Post* reported, the "leaders of the ACORN community organizing network transferred several million dollars in charitable and government money meant for the poor to arms of the group that have political and sometime profit-making missions." ACORN's affiliate, Citizens Services Inc., alone received more than $800,000 from the Obama presidential campaign in 2008 for get-out-the-vote activity.

In 2008, Elizabeth Kingsley, a Washington lawyer hired by ACORN, prepared a report dated June 18, 2008, that was labeled "Sensitive report – do not distribute beyond initial recipient list." The leaked report outlines the internal organization of ACORN with its interlocking directorates, its lack of documentation about transfers of money between ACORN and its affiliates, the possible use of tax-deductible charitable contributions for political purposes, and the conflicts of interest between ACORN employees who have dual roles in tax-exempt entities and other affiliates that engaged in political activity.

Kingsley concluded that ACORN "may not be able to prove that 501(c)(3) resources are not being directed....based on impermissible partisan considerations," an obvious reference to the provisions of the federal tax code governing charitable organizations. ACORN fired some of its own directors after they started asking for information on the flow of money and the internal operations of the organization.

The internal structure of ACORN, a tangled mess of interlocking directorates where a small group controls all of the dozens of shell companies that routinely (and possibly illegally) transfer millions of dollars, is the classic pattern used by criminals to launder money and control their operations. In fact, the *Arkansas Democrat-Gazette* reported that former Arkansas ACORN chair Dorothy Perkins said ACORN was "run like a Jim Jones cult" where all the ACORN money ended up under the control of Wade Rathke, the founder and long-time head of the organization.

Then we get to the undercover videos. They show ACORN employees providing willing assistance and advice to a couple posing as a prostitute and

her pimp on how to commit tax and mortgage fraud. The couple also make clear they are smuggling in underage girls from South America for prostitution. Not only do the employees not disapprove of human trafficking in sex slaves for prostitution, they provide advice on how to successfully cover up such an operation from authorities.

This did not just occur in one office, it occurred in five. As the Inspector General of the Department of Justice summarized in a report released in November on DOJ grants to ACORN, the videos show ACORN employees "providing advice on operating an illegal business, tax evasion, and money laundering," all of which are illegal under various provisions of state and federal laws.

ACORN has had dozens of its employees convicted of voter registration fraud in many different states over the course of numerous elections. In Washington State, ACORN agreed to a civil settlement in which it paid a large fine and agreed to follow strict rules in its voter registration practices to avoid prosecution. There are many different organizations that engage in voter registration activity on both a partisan and nonpartisan basis, but there is only one with such a record of repeated criminal activity by its employees, a clear and obvious sign of problems within the organization itself, including its supervision and training of employees. One former ACORN employee, Nate Toler, said "There's no quality control on purpose, no checks and balances." Such voter registration fraud is a criminal violation of federal law, 42 U.S.C. 1973gg-10, punishable by up to five years in prison.

This criminal activity by ACORN not only results in the submission of fraudulent voter registration forms to election officials, it interferes with the ability of regular voters to participate in the election process. Election officials will tell you that they dread the arrival of ACORN at their offices. ACORN has a habit of dumping voter registration forms on local election officials just before the registration deadline for an upcoming election.

At a time when officials are trying to process the registration forms of legitimate voters so they will be able to vote, they have to spend disproportionate amounts of limited time and resources sorting through thousands of incomplete and fraudulent forms created by ACORN employees. One state audit alone in Virginia found that 83% of registrations filed by ACORN and its affiliate, Project Vote, were invalid. ACORN lawyer Kingsley found that the "tight relationship between Project Vote and Acorn made it impossible to document that Project Vote's money had been used in a strictly nonpartisan manner."

Thus, there appear to be numerous possible violations of federal law by an organization that has received millions of federal tax dollars in grants and that may have abused its tax-exempt and charitable status under federal tax

law. Yet to date, the executive branch department that is the chief law enforcement agency of the United States, the U.S. Department of Justice, and the Federal Bureau of Investigation, which is part of the Justice Department, has been almost entirely silent and seemingly negligent in carrying out its duty to investigate and prosecute violations of federal law. As has been the Internal Revenue Service. A number of states have opened local investigations, such as Nevada and Louisiana, and full credit should go to the officials of those states for doing so.

But as the reports make clear, ACORN is a sprawling, multi-layer organization with offices all over the country. It operates in a multitude of different areas, from elections and voting to housing and radio and television stations – it even provided tax assistance through the Internal Revenue Service's Volunteer Income Tax Assistance Program until the IRS recently terminated its participation.

Only the FBI and the Justice Department have the power to perform a complete and thorough, nationwide investigation of such a large organization. There is more than enough evidence from the undercover videos and various other reports to provide a basis for a federal investigation. The government has initiated major investigations of businesses and government contractors on much less evidence of possible wrongdoing.

The complexity of the internal operations of ACORN as outlined by their own lawyer, Elizabeth Kingsley, and its transfer of millions of tax dollars and charitable contributions between its many different affiliates, also make it clear that only a forensic audit would come anywhere close to uncovering what ACORN has been doing with the money it has been receiving. Such an audit is necessary to answer the question of whether ACORN has violated federal tax, mortgage, election and campaign finance laws – or even the federal RICO statute.

The use ACORN made of its charitable arms alone is, as Senator Grassley's report termed it, "similar to the use of charities by Jack Abramoff." We all know about the vigorous investigation and prosecution of Abramoff. So where is the federal investigation of ACORN's similar activities?

Immediate action by federal law enforcement is particularly important given the recent actions of ACORN in California. After California Attorney General Jerry Brown announced he was going to open an investigation into ACORN's activities in San Diego, one of the offices targeted in an undercover video, news reports indicate that office dumped more 20,000 pages of its documents into the trash. If true, it is possible evidence of the willingness of ACORN to destroy potential evidence and obstruct a law enforcement investigation.

Congress should not only hold direct hearings on ACORN and its activities, but also oversight hearings of the FBI, the Justice Department, and the Internal Revenue Service to obtain information on any investigations they are conducting into ACORN. If those agencies are not conducting any investigations, they should be required to explain why they are not carrying out their enforcement duties to investigate and prosecute violations of federal law.

SECRETARY OF STATE
STATE OF INDIANA

Todd Rokita
Secretary of State

Comments to US House of Representatives Joint Committee Hearing on ACORN – Washington, DC, Tuesday, December 1st 2009

Thank you to Ranking Members Issa and Smith and the other leaders and members of the House Oversight and Government Reform and the Judiciary Committees for recognizing the need for today's hearing on the matter of ACORN.

Today, as Indiana's Chief Election Officer, I will overview for the Committee evidence of ACORN involvement in "large scale" – criminal voter registration fraud in Lake County during the 2008 Election cycle.

As you know, Indiana has successfully seen itself through an era of tremendous reform when it comes to the election process. We've worked hard to ensure that the great strides our state and nation have taken to increase voter participation and turnout are not accompanied by loss of integrity, accountability, and voter confidence.

We are fortunate that through the efforts of many, systemic voter disenfranchisement has been eradicated from our electoral system. However, another type of disenfranchisement still plagues our elections. Disenfranchisement also occurs when honest votes are diluted by overzealous supporters of candidates, causes, or parties who would intentionally cheat the system. Important election reforms in Indiana have served Hoosiers well through a balancing of access and integrity.

Examples of recent election reforms in Indiana include…

1. Indiana's model Voter ID law which serves as a high example of our state's commitment to integrity. Since Indiana's voter-ID law went into place, participation in our elections has increased – a sign of improved voter confidence. Opinion polls tell us our citizens have overwhelmingly favored this reform.

2. Indiana was one of the first states in the nation to build and activate a fully functioning Statewide Voter Registration System. Our state-of-the-art centralized database provides real-time access to every county in the state. Through this improvement more than 600,000 duplicate or inactive voter registrations have been identified and removed. Because the system prevents double voting, some of our counties now offer voters the

Todd Rokita
Secretary of State

convenience of "vote anywhere" vote centers. Our statewide voter registration system has also paved the way for online voter registration – which Indiana will inaugurate next summer.

3. Recent absentee voting reforms in Indiana now require a voter's signed affidavit, restrict third-party handling of ballots, and set harsh punishments for electioneering, tampering, or fraud.

My job as Indiana's Chief Election Officer is to increase participation in elections *and* maintain public confidence in the process. To accomplish this, we rely on and welcome, *responsible* partners to help with the registration of voters. I find it intolerable, however, that any participant in our open elections process, a volunteer, a paid worker, partisan, or nonpartisan… might be allowed to engage in practices that damage voter confidence in our elections. Obviously the solution doesn't lie in more bureaucracy and limiting voter registration assistance to government workers. In a truly free society, government doesn't conduct elections – ***people*** conduct elections. People – not government – select their representatives in government. The distinction is an important one, but lost on many. It is important to recognize the role that responsible, third-party organizations can and should play in our elections.

As early as February, 2008, in the year that was to be an historic election for Indiana, my office began receiving alarming reports from constituents in Lake County, Indiana, about the voter registration activities of the Northwest Indiana ACORN Chapter located in Gary, Indiana.

In early October, my office was flooded with reports that Northwest Indiana ACORN "dropped" approximately 5,000 voter registration applications at the Lake County Voter Registration Office during the last few days, even hours, of the voter registration period for the 2008 General Election. Many of these forms appeared to the Lake County Board of Elections and Registration to be suspicious, incomplete, or unverifiable. Officials at the county voter registration office reported that there was hardly enough time to adequately verify the information on the applications, but that on quick review, thousands of the applications appeared invalid.

Because these reports – which were widely published and not even disputed by the director of the local ACORN chapter – had the potential to significantly impact voter confidence in the region, I asked Lake County election officials to preserve the original

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voter registration applications and send copies of the questionable applications to my office for review.

My office studied copies of 1,438 voter registration applications that had been flagged by the Lake County Board of Elections and Registration. Evidence of a pattern of voter registration fraud was striking:

- 61% of the applications had one or more critical defects observable on the face of the applications - rendering them invalid and useless.

- 88% of the names on the 1,438 ACORN supplied applications could not be verified through the Indiana Bureau of Motor Vehicles database or by 4-digit Social Security Number matching with other name and address verification databases.

- 26% of the applications evidenced that a third party had assisted the intended voter in completing, correcting or altering required data. Indiana law requires the *identification of anyone* altering, completing, or updating a voter registration application. However only three of the altered applications identified the third party.

- 22% of the ACORN applications appeared to be multiple applications prepared by the same individual.

Attorneys for ACORN defended the submission of only a handful of the voter registration applications in Indiana (including one in the name of "Jimmy John's" – with the address of a local sandwich shop) offering a tortured interpretation of law. ACORN attorneys and staff viewed Indiana's law making it a crime to destroy a voter registration application as a large loophole in the law – authorizing the organization to submit any semblance of a voter registration application – without regard to incompleteness or the likelihood that forgery or fraud was involved. For example, though it may well be a crime to destroy someone else's income tax return, surely no one would seriously think that such a law would allow a paid tax return preparer to submit knowingly false returns. At least in Indiana, no court of law has yet had the opportunity to consider ACORN's defenses.

ACORN's defenders also failed to explain what legitimate purpose the organization would have had to collect and hold onto thousands of voter registration applications for

Todd Rokita
Secretary of State

months, only to submit them in large batches very near the close of voter registration for the 2008 General Election.

Of various alternatives that ACORN could have chosen – the most obvious of which might have included proper training, not providing financial incentives to workers to defraud or cut corners, and careful compliance with the law, ACORN took a route that appeared most likely to result in the election board's acceptance of numerous fraudulent or incomplete registrations.

ACORN's defenders also claim that the organization should not be responsible for the actions of their paid employees. Again however, the laws of agency – and common sense, refute this defense.

It was apparent from my office's relatively quick analysis, that strong evidence exists that ACORN violated multiple state and federal election laws.

The evidence, which our office promptly turned over to the United States Attorney for the Northern District and the Lake County Prosecutor suggests that ACORN may have violated the following criminal Federal election Laws:

- **The National Voter Registration Act (42 U.S.C. 1973-10(2) (c)).**
  - "Section 1973i(3) makes it a federal offense, in an election in which a federal candidate is on the ballot, to knowingly and willfully (1) give false information as to name, address, or period of residence to an election official for the purpose of establishing one's eligibility to register or to vote; (2) to pay, offer to pay, or accept payment for registering to vote or for voting; or (3) conspire with another person to vote illegally. Violations are punishable by imprisonment for up to five years."[1]
  - **In Indiana** it is illegal to:
    (a) conspire to submit a false application for voter registration;
    (b) knowingly conspire with an individual for the purpose of encouraging an individual to submit a false application;
    (c) pay or offer to pay an individual for registering to vote;

1 Donsanto, C. & Simmons, N. (1995). Federal Prosecution of Election Offenses. The Department of Justice, Sixth Ed. Page 32.

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(d) knowingly apply or procure a false application for voter registration;
(e) fraudulently subscribe another person's name to an affidavit of registration;
(f) subscribe the name of another person on a voter registration affidavit without writing on it the person's own name and address as an attesting witness;
(g) recklessly registering to vote more than once;
(h) destruction of failure to file or deliver a registration affidavit;
(i) knowingly applying to vote in one's own name and a false name (Indiana Code 3-14-2 *et. seq.*). These crimes are classified as either Class A misdemeanors or Class D felonies.

- **Conspiracy against the exercise of voting rights (18 U.S.C. 241).**

  - "Section 241 makes it a federal offense for two or more persons to "conspire to injure, oppress, threaten, or intimidate any person in any state… in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States."… (This law) "has been interpreted to include any effort to derogate a right which flows from the Constitution or from federal law."[2] Including: (1) destroying voter registration applications[3] and illegal registration of voters.[4] "The election fraud conspiracy need not be successful to violate this statute.[5] Nor need there be proof of an overt act.[6]

    "Section 241 reaches conduct affecting the integrity of the federal election process as a whole, and does not require fraudulent action with respect to any particular voter."[7]

  - **In Indiana**, it is a Class D felony to:
    (a) interfere with free and equal elections;
    (b) knowingly submit or procure false, fictitious or fraudulent registration

2 Donsanto & Simmons Page 29 – 30.
3 United States v. Haynes, 977 F. 2d 583 (6th Cir. 1992).
4 United States v. Weston. 417 F. 2d 181 (4th Cir. 1969), cert. denied, 396 U.S. 1062 (1970).
5 United States v. Brandberry, 517 F. 2d 498 (7th Cir. 1975).
6 Williams v. United States, 179 F. 2d 644 (5th Dir. 1950).
7 Donsanto & Simmons Page 30; United States v. Nathan, 238 F. 2d 401 (7th Cir. 1956), cert. denied, 353 U.S. 910 (1957).

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applications or:
(c) obstruct or interfere with an election officer in the discharge of the officer's duty (Indiana Code 3-14-3-1.1 and 3-14-3-4).

- **Federal RICO statutes (18 U.S.C. 1962 (c).**

  - ACORN's voter registration activity in Indiana was clearly a well organized and orchestrated activity. Reports of voter registration fraud investigation in several other states suggest that ACORN's 2008 voter registration activity was more in the nature of a national political campaign than the "grass roots" activity that its attorneys and leaders suggest.

    Racketeer Influenced and Corrupt Organization laws are designed to focus on the patterns of criminal "enterprise," not just individual criminals. A RICO case requires three elements: (i) a "person," who is part of an (ii) "enterprise" which includes any legal entity (including a non-profit organization or association) (iii) which engages in a pattern of racketeering activity" (defined as committing any 2 of 35 named crimes within a 10-year period). Fraud is one of the crimes that can trigger RICO.[8]

  - **Indiana's Racketeer Influenced and Corrupt Organization's Law** (RICO), virtually mirrors federal RICO law: "A person who is employed by or associated with an enterprise and who knowingly or intentionally conducts or participates in the activities of that enterprise through a pattern of racketeering activity (including forgery and perjury) commits Corrupt Business Influence, a Class C Felony" (Indiana Code 35-45-6 *et. seq.*).

I am attaching and submitting a copy of the report supplied to the U.S. Attorney and Lake County Prosecutor with my written testimony for the record.

Though I serve as Indiana's Chief Election Officer, my authority to investigate election law violations is limited under Indiana Law, to the extent that my office is without authority to issue subpoenas, conduct formal investigations, or file criminal charges. The examination conducted in 2008 was undertaken without the resources and authority of a law enforcement agency. Therefore, I presume that oversight and law enforcement agents with sufficient resources would provide a much clearer picture of ACORN's activities.

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8 http://niagaratimes.blogspot.com/2009/09/why-isnt-acorn-vote-fraud-criminal-rico.html.

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Todd Rokita
Secretary of State

Over the past year, I have received assurances from the Office of the U.S. Attorney and Lake County Prosecutor that an investigation is ongoing. I have attached a copy of a recent letter to the U.S. Attorney for the Northern District, on behalf of the citizens of the state of Indiana, reiterating our interest in this case.

For the sake of the rule of law, as well as public confidence in elections, I would respectfully ask your committees to demand the engagement of federal government investigation and law enforcement agencies to bring about clarity and justice in the matter of ACORN's voter registration activities in Indiana and elsewhere. Nothing less than public confidence in our grand Constitutional election process is at stake.

Again, I wish to sincerely thank the minority committee's leadership and members for this opportunity to testify on this important matter. I welcome your questions and comments.

Todd Rokita,
Indiana Secretary of State

Enc.: - Summary of investigation on '08 Voter Registration fraud in Lake County.
- Letter to U.S. Attorney for the Northern District of Indiana.

The Statehouse, Indianapolis, Indiana 46204, (317) 232-6531, Fax (317) 233-3283

ATTACHMENT 1

INDIANA SECRETARY OF STATE ATTACHMENT 1.
TESTIMONY TO US HOUSE MINORITY COMMITTEE 12-1-09

SECRETARY OF STATE
STATE OF INDIANA

Todd Rokita
Secretary of State

October 22, 2008

To: The Honorable Todd Rokita, Secretary of State of Indiana

From: Jerry Bonnet, General Counsel

Re: Summary of Investigation on '08 Voter Registration fraud in Lake County, Indiana

1) Background

In Indiana, the voter registration season for the 2008 election year extended from December 1, 2007, to the hour of the close of business in each voter registration office, on October 6, 2008.[1][2] During this period voter registration application affidavits, on a VRG-7 form, may be submitted to the county voter registration office, circuit court clerk or in some counties, separately established voter registration offices. In order to be eligible to vote in the November 6, 2008, General Election, individuals who were not already registered voters[3] would have to have submitted their VRG-7 forms to their voter registration offices by the close of business on October 6, 2008.[4]

During the week prior to the close of voter registration for the 2008 General Election, the Indiana Secretary of State, the state's Chief Election Official, received information that between 4,700 and 5,000 voter registration applications had just recently been delivered to the Lake County Board of Elections and Voter Registration (LCEB). Eric Weathersby, Executive Director of the North West Indiana Chapter of the Association of Community Organizations for Reform Now (NWI-ACORN) has acknowledged that the Gary, Indiana affiliate office of ACORN was the source of these

[1] IC 3-7-13-10.
[2] With the exception of April 8 through May 20, 2008 (the Primary Election period).
[3] Individuals who were already registered and have been voting in previous elections are not required to register every election year, in fact, pursuant to IC 3-14-2-4 it is a Class-A misdemeanor for a person to recklessly register or offer to register more than one time.
[4] Or had their applications postmarked by October 6, if mailed.

The State House, Room 201, Indianapolis, Indiana 46204. (317) 232-6531. FAX (317) 233-3283
email: aa@sos.IN.gov www.sos.IN.gov

applications.[5] NWI-ACORN has also acknowledged that during the summer months, the organization paid 82 employees to solicit voter registration applications in and around Gary, Indiana.

Almost immediately Sally LaSota, Director of the LCEB and Ruthann Hoagland, LCEB Assistant Registration Administrator, reported to state election officials that "many" of these applications appeared to be incomplete, forged or fraudulent. NWI-ACORN officials acknowledge that the organization was aware that many of the applications "appeared suspicious" or "could not be verified" by their staff, but that their interpretation of the law was that the applications had to be submitted to the LCEB anyway.

Eric Weathersby, of NWI-ACORN and Charles Jackson, spokesman for the national ACORN organization have made statements indicating that ***some*** of the 5,000 applications (approximately 2,500) were sorted into three groups, bundles or stacks: "ones which were verified, ones which were incomplete and ones which were questionable or suspicious."[6]

On October 10, 2008, the Secretary of State requested copies of the suspect voter registration applications turned in by NWI-ACORN and requested that the LCEB take steps to retain and preserve the original applications, even if the board determined that they were incomplete, forged or fraudulent. The LCEB provided copies of 1,438 completed VRG-7 forms. Though the LCEB advises that the forms were turned in by NWI-ACORN, and NWI-ACORN acknowledges this, the forms examined do not contain any markings to indicate that they were collected by NWI-ACORN, that they had been pre-screened by NWI-ACORN or the date that they were submitted to the LCEB.

The Office of the Secretary of State (the Agency) has examined the copies provided by the LCEB to determine if criminal activity has occurred which would warrant further investigation and prosecution and if non-criminal election laws have been systematically violated to the extent that injunctions against further violations are warranted.

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[5] www.post-trib.com/news/lake/1224594,levote.articl "Lake County vote fight takes new turn." Retrieved 10/16/2008.

[6] http://www.indystar.com/apps/pbcs.dll/article?AID=/20081017/NEWS0502/810170513 "ACORN followed the law on suspect registrations". Retrieved 1-/18/2008.

2) **Issues:**

a) Did NWI-ACORN violate, conspire with or induce others to violate Indiana law pertaining to the solicitation, completion, verification and submission of incomplete, forged or fraudulent voter registration applications?

b) Did NWI-ACORN violate, conspire with or induce others to violate Indiana law pertaining to the submission of ***multiple*** voter registration applications?

c) In submitting thousands of voter registration applications, some of which were known to be or suspected of being incomplete, forged or fraudulent, did NWI-ACORN violate Indiana law pertaining to the interference with election administration?

d) Did NWI-ACORN's method and practice of voter registration activity violate Indiana's Racketeer Influenced and Corrupt Organizations Law (RICO)?

e) Did NWI-ACORN's method and pattern of vote registration activity result in the obstruction of individuals rights to register to vote and vote under state and federal law?

f) Was NWI-ACORN ***required*** under Indiana law, to submit voter registration applications which the organization knew or suspected were incomplete, forged or fraudulent? And did the submission of voter registration applications which NWI-ACORN knew or suspected to be incomplete, forged or fraudulent shield the organization or others from criminal liability?

3) **Summary of Statutes Referred to:**

1. **IC 3-7-22-5(3)** A voter registration application must contain the acknowledgement that the voter is a U.S. citizen.

2. **IC 3-7-22-5(4)** A voter registration application must contain the acknowledgement that the voter is 18 years old or will be 18 years old on or before Election Day.

3. **IC 3-7-13-13(a)** ***If an individual has a driver's license*** they are ***required*** to place their driver's license number on their voter registration application.

4. **IC 3-7-13-13(b)** If an individual does not have a driver's license, then they are ***required*** to put the last four digits of their Social Security Number on their voter registration application.

5. **IC 3-7-22-5 etc.** Voter registration form must contain: a) the prime voter eligibility requirements (U.S. Citizenship and age); b) an attestation (affidavit) the voter meets the eligibility requirements and; c) the voter's signature under the penalty of perjury.

6. **IC 3-7-22-9** Voter registration forms may be accepted by the county voter registration offcie from: 1) the U.S. postal service; 2) the individual or; 3) a person presenting the form on behalf of the individual who is registering.

7. **IC 3-7-32-1 (a)** Each voter ***shall*** execute an original registration form. (b) an applicant's original registration form ***may not*** be signed by a person acting for the applicant under IC 30-5-5-14 (power of attorney).

8. **IC 3-7-32-2** Applications must be signed in indelible ink or indelible pencil.

9. **IC 3-7-32-7** ***If*** the voter is unable to write, ***the voter*** may procure another individual to write the voter's name…that person ***shall*** also write the person's own name and address on the affidavit.

10. **IC 3-7-34-2** A complete voter registration application is one which allows the county voter registration office to determine if the voter is eligible to register. If a voter registration form is incomplete the VRB shall make one attempt to contact the voter by mail (if possible) and one attempt to contact the voter by phone if a phone number has been given.

11. **IC 3-7-34-3** An incomplete voter registration form (lacking affirmation of citizenship and age) that is submitted to the VRB may only be corrected with a written statement received from the applicant no later than the end of the voter registration period. Other errors or omissions may be corrected by the voter registration office upon receiving information ***from the voter***.

12. **IC 3-14-2-1 (1)** Conspiracy to submit false application for registration to vote illegally. Knowingly conspiring with an individual for the purpose of encouraging an individual to submit a false application for registration is a Class D felony.

13. **IC 3-14-2-1 (3)** Paying or offering to pay an individual for registering to vote is a Class D felony.

14. **IC 3-14-2-1 (4)** Accepting payment of any property for registering to vote is a Class D felony.

15. **IC 3-14-2-2** Fraudulent application for registration or procurement of registration. A person who, knowing that the person is not a voter and will not be a voter at the next election who applies or procures registration as a voter commits a Class A misdemeanor.

16. **IC 3-14-2-3** Fraudulent subscription of another person's name to affidavit of registration or absentee ballot. A person who (1) subscribes the name of another person to an affidavit of registration… knowing that the application contains a false statement…or subscribes the name of another person to an affidavit of registration…without writing on it the person's own name and address as an attesting witness commits a Class D felony.

17. **IC 3-14-2-4** Registering to vote more than once. A person who recklessly registers or offers to register to vote more than once commits a Class A misdemeanor.

18. **IC 3-14-2-5 (b)** Destruction or failure to file or deliver a registration affidavit or form after execution. A person who recklessly destroys or fails to file or deliver to the proper officer a registration affidavit or form of registration after the affidavit or form has been executed commits a Class A misdemeanor.

19. **IC 3-14-2-12 (1)** Voting or applying to vote in false name and own name. A person who knowingly votes or makes application to vote in an election in a name other than the person's own name…commits a Class D felony.

20. **IC 3-14-3-1.1** Interference with Free and Equal Elections. False, fictitious or fraudulent registration applications or ballots. A person who knowingly does any of the following commits a Class D felony:

(a) Procures or submits voter registration applications known by the person to be materially false, fictitious or fraudulent.

21. **IC 3-14-3-4** Obstruction of, interference with, or injury of election officer or voter. (a) A person who knowingly obstructs or interferes with an election officer in the discharge of the officer's duty commits a Class D felony.

22. **IC 3-14-3-21.5** Voter intimidation. A person who knowingly or intentionally intimidates, threatens, or coerces an individual for: (3) exercising any power or duty under this title concerning registration or voting commits voter intimidation, a Class D felony.

23. **IC 35-41-2-3** Liability of corporation, partnership, or unincorporated association. (a) A corporation, limited liability company, partnership or unincorporated association may be prosecuted for any offense; it may be convicted of an offense only if it is proved that the offense was committed by its agent acting within the scope of his authority.

24. **IC 3-14-5-3** Enforcement Provisions. Duty to report violations to prosecuting attorney and violator; presentation to grand jury.[7] (b) The Indiana Election Commission and each county election board shall report a felony or misdemeanor violation of the election code to the appropriate prosecuting attorney and the alleged violator. (c) The commission and boards may have the report transmitted and presented to the grand jury of the county in which the violation was committed at its first session. The commission and boards shall furnish the grand jury ay evidence at their command necessary in the investigation and prosecution of the violation.

25. **IC 35-41-2-1** Voluntary conduct. (a) A person commits an offense only if he voluntarily engages in conduct in violation of the statute defining the offense. However, a person who omits to perform an act commits an offense only if he has a statutory duty, common law or contractual duty to perform the act.

26. **IC 35-41-2-2** Culpability.

    a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so.

    b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

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[7] Note: This section does not apply to violations of the NVRA or IC 3-7

c) A person engages in conduct "recklessly" if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

27. **IC 35-41-2-4** Aiding, inducing, or causing an offense. A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person: (1) has not been prosecuted for the offense; (2) has not been convicted of the offense; or (3) has been acquitted of the offense.

28. **IC 35-43-5-2** Forgery. A person who knowingly or intentionally makes or utters a written instrument in such a manner that it purports to have been made by another, at another time, with different provisions, or by authority of those who did not give authority, commits a Class D felony.

29. **IC 35-44-2-1 Perjury**. A person who makes a false, material statement under oath of affirmation, knowing the statement to be false or not believing it to be true, commits a Class D felony.

30. **IC 35-45-6 *et. seq***. Indiana's Racketeer Influenced and Corrupt Organizations Law (RICO). Corrupt business influence. IC 35-43-5-2 Forgery, IC 35-43-5 (1 – 10) Fraud, IC 35-44-2-1 Perjury. A person who is employed by or associated with an enterprise and who knowingly or intentionally conducts or participates in the activities of that enterprise through a pattern of racketeering activity (including forgery and perjury) commits Corrupt Business Influence, a Class C Felony.

31. **IC 35-50-3-1** A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than 1 year and may be fined not more than $5,000.00.

32. **IC 35-50-2-1** A person who commits a Class C felony shall be imprisoned for a fixed term of between 2 and 8 years, in addition the person may be fined not more than $10,000.00.

33. **IC 35-50-2-7** A person who commits a Class D felony shall be imprisoned for a fixed term of between 6 months and 3 years, in addition the person may be fined up to $10,000.00.

34. **42-USC Chapter 20**, Subchapter I-HH National Voter Registration (NVRA). Sec. 1973gg Requirements with respect to administration of voter registration (a) (5) (B) Penalties (to be) provided by law for submission of a false voter registration application.

4) Allegation of Illegal Activity

Information in the form of reports received from local and state election officials[8], media reports and complaints from individuals suggest the strong likelihood that with the assistance, coordination and financial support of the national ACORN organization(s), officials, employees, agents and associates of NWI-ACORN through corporate and individual actions, with knowledge, intent, recklessness or both, engaged in an organized enterprise activity to collect and create voter registration applications, thousands of which were submitted to the LCEB, which were known by NWI-ACORN to be incomplete, fraudulent or forged, in violation of state and federal laws.

It is further alleged that some 83 paid employees of NWI-ACORN, acting in the capacity of supervised, authorized agents of the organization, engaged in individual and conspiratorial actions to procure or produce voter registration applications through encouragement, deception, or bribery, which were incomplete, fraudulent or forged, with knowledge, intent or recklessness in violation of state and federal laws.

It is further alleged that the timing of NWI-ACORN's submission of approximately 5,000 voter registration applications (more than 1,000 of which NWI-ACORN, has acknowledged, were likely to be incomplete, forged or fraudulent) evidences enterprise intent to obstruct or interfere with an election and election officer's duties, in violation of Indiana law.

5) Evidence Examined by the Agency

At the request of the Agency, on October 10, 2008, the LCEB provided copies of 1,438 voter registration applications (Form VRG-7) which they report had been submitted the previous week by NWI-ACORN, for review. Each of the applications was given a serial number (45-0001 – 45-1438) for identification and digitally scanned into a

[8] Letter from Thomas Wheeler, Chairman of the Indiana Election Commission, dated 10/1/2008, in which an e-mail communication from Michelle R. Fajman, LCEB Election Administrator, dated 9/24/2008, is quoted and paraphrased.

series of PC data files for ease of handling and safe keeping. Over a five day period (October 12-16, 2008) the Agency reviewed the applications for evidence of incompleteness, fraud or forgery as well as evidence of organized, corporate activity.[9]

Investigators for the Agency examined each application and used statistical analysis to determine the following:

1) 61% of the applications had one or more critical defects, observable on the face of the applications. A critical defect was defined as: a) incomplete data; b) indications of fraud; or c) indications of forgery. See Exhibits A, B, C, D, E, F and G attached.

2) 39% of the applications did not have an apparent critical defect, however, an independent random sampling (n=1,438) suggested that 88% of the applications ***did not*** show a match on the STARS[10] database for name, driver's license, address or last 4-digts of a Social Security number. 54% of the applications which did not have a STARS match had ***no*** verifiable information, suggesting that they may be entirely fictitious.

3) On facial examination (no reference to external data) 30% of the applications displayed information that was obviously incorrect, incomplete or illegible.

4) 26% of the applications evidenced that someone had assisted the intended voter by the pre- or post, filling in of data, making corrections or altering the information (i.e. changing the affidavit signature date). However only 3 of the applications (< .1%) contained the identification of the person assisting the voter with the application (as required by IC 3-7-32-7).

5) 22% of the applications appeared to be multiple applications prepared by the same individuals. On many of these, the affidavits appear to be forgeries.

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[9] The LCEB had previously determined that approximately 400 of the 1,438 applications were incomplete, could not be verified, or appeared to be fraudulent or forged.

6) The majority of these applications indicate having originated within five zip code areas in and around Gary, Indiana.

7) Based on LCEB spot checking, verified by the Agency on the SVRS[11] system, it appears that many of the voter registration applications were submitted on behalf of persons already registered to vote.

Given the significant findings and indication of a pattern of incomplete, forged or fraudulent voter registration applications, the Agency believes that further investigation is warranted. With sufficient time and resources all of the 5,000 voter registration applications submitted by NWI-ACORN should be verified by:

a) STARS database matching;
b) SVRS database matching;
c) Public Records database matching;
d) Phone directory and reverse phone directory matching;
e) Locating and interviewing individuals indicated as registrants;
f) Analyzing LCEB voter registration acknowledgement notices (post cards sent during the first two weeks of October) which were returned as undeliverable;
g) Interviewing the 83 NWI-ACORN employees hired to solicit voter registration applications;
h) Analyzing NWI-ACORN payroll records to identify employees most active in voter registration solicitation and those who were allegedly fired for falsification of voter registration applications;
i) Identifying and interviewing NWI-ACORN employees who were involved in training, supervision and oversight of the voter registration gathering employees;
j) Indiana State Police expert handwriting and forged document analysis.

[10] Indiana BMV System Transaction and Data Support system.
[11] Statewide Voter Registration System.

6) **Analysis**

A. Did the NWI-ACORN organization, its officers, agents and/or employees commit D felony and Class A misdemeanor crimes involving incomplete, fraudulent or forged voter registration applications?

Several Indiana statutes in Title 3 (Indiana Election Code) identify crimes related to the submission of a false application for registration, conspiracy to submit a false registration application, giving or receiving any type of payment for a registration application (whether false or not), subscription of another's name unless they are actually unable to subscribe their own name, and then only when the subscriber includes their own name and address on the application, recklessly registering more than once, conspiring, inducing or coercing a voter to register more than one time. See: IC 3-14-2-1 (2), IC 3-14-2-1 (3), IC 3-14-2-1 (4), IC 3-14-2-1, IC 2-14-2-3, IC 3-14-2-4, IC 3-14-2-12 (1) and IC 3-14-3-21.5[1] attached.

From the brief review of the 1,438 voter registration applications reviewed by the Agency, it would be difficult not to conclude that incomplete, fraudulent or fictitious voter registration applications were collected by NWI-ACORN employees and submitted to the LCEB by NWI-ACORN officials, in violation of numerous Indiana statutes.

Indiana election law prescribes specific statutory duties and obligations on individuals who would engage in assisting voters with the completion or submission of voter registration forms. Pursuant to IC 35-41-2 (1) - (3) ***ignoring*** a statutory duty or intentionally or knowingly violating a law, or conspiring, inducing or coercing others to violate a law, or acting with reckless disregard of laws, would give rise to individual or corporate (organizational) criminal liability.

B. Did ACORN, NWI-ACORN, its officers, agents and/or employees violate, conspire with, or induce voters to violate Indiana law prohibiting the reckless submission of multiple voter registration applications from the same or previously registered voters?

Pursuant to IC 3-14-2-4, a person who recklessly registers or offers to register to vote more than once commits a Class A misdemeanor. Pursuant to IC 53-41-2-3 (Aiding,

inducing, or causing an offense) a person who knowingly or intentionally aids, or causes another person to commit an offense, even if that person is not charged, convicted or acquitted of the offense, is liable for the commission of that offense. The evidence and reports suggests that NWI-ACORN advised voters that they should register multiple times, that it was "o.k." and a "safe, even wise practice" to complete additional voter registration applications, and that NWI-ACORN employees disregarded voter's protests that they were already registered to vote.

It is the Agency's conclusion that officials, agents and employees of NWI-ACORN with knowledge and intent caused multiple registrations for voters to be submitted to the LCEB.

C. Did NWI-ACORN, its officials, employees or agents (with intent, knowledge or reckless disregard) interfere with free and equal elections or obstruct and interfere with the duties of election officers in submitting 5,000 voter registration applications (more than 1,000 of which were known or suspected to be incomplete, fraudulent or forged) during the very last days of an 11 month long voter registration season?[12]

The evidence and reports indicate that NWI-ACORN "dropped" its lot of 5,000 voter registration applications very late in the voter registration season (December 1, 2007 – October 6, 2008) knowing that some, many or all, were incomplete, fraudulent or forged, with the intention that the LCEB would not have sufficient time to perform lawful verification duties in time to meet statutory deadlines for entering registrations into the local rolls and statewide voter registration database. The facts suggest that NWI-ACORN knowingly and intentionally placed itself in a position where either of two statutes have been violated. Pursuant to IC 3-14-2-12 (1) it is a Class D felony (interference with free and equal elections) – in the procurement or submission of voter registration applications known to be false, fictitious or fraudulent. Also, however,

[12] Over 100 NWI-ACRON voter registration applications reviewed by the Agency appeared to have the affidavit signing date changed (moved forward in all cases) in an apparent attempt to create the illusion that the applications had been acquired in late September. Individual and media reports however suggest that in fact NWI-ACORN employees were engaged in collecting voter registration applications throughout the spring and summer months.

pursuant to IC 3-14-3-4 it is a Class D felony to obstruct or interfere with an election officer in the discharge of their official duties.

Based on the evidence and information received, the Agency concludes that officials, agents employees of NWI-ACORN with intent and knowledge, acted in such a way as to obstruct and interfere with the LCEB's duties and obligations with respect to voters and its administration of the 2008 General Election.

D. Is the pattern of methodology, conduct and business practice employed by ACORN and NWI-ACORN in violation of the Indiana Racketeer Influenced and Corrupt Practices Act (RICO)?

Pursuant to IC 35-45-6, a person who is employed by or associated with an enterprise and who knowingly or intentionally conducts or participates in activities of that enterprise through a pattern of racketeering activity commits Corrupt Business Influence, a Class C felony. Racketeering activity is defined as the commission, attempt to commit, or conspiracy to commit, in a multiple pattern, any of a series of crimes, of which ***forgery*** and ***perjury*** are included.

It appears that NWI-ACORN uses a practiced, refined business model using money from political organizations (it is unclear whether political organizations "contribute" to ACORN or "hire" the organization) to train and employ "independent contractors" to solicit voter registration applications. ACORN's business practices appear to be quite intentionally arranged in an attempt to "shield" or "screen" the political organization sponsors, the ACORN organization, its affiliated organization and its officers from criminal liability. RICO statutes are designed to deal with this type of activity.

The Agency is aware of reports of the ACORN organization and its affiliated organizations engaging in the same pattern of using contract employees, who are placed in situations and environments where they are likely to knowingly engage in multiple or serial violations of state election laws. It appears that ACORN workers are encouraged and even rewarded for engaging in illegal conduct and encouraging others to do so as well.

The Agency believes that NWI-ACORN has engaged in an intentional, knowing conspiracy to commit multiple, serial violations of Indiana Election laws. The state RICO statute should be employed in the prosecution of the offenses they have caused, aided or induced. For a more complete picture of the ACORN's business and political activity, see Exhibits H, I, J and K. Additional investigation by law enforcement is called for.

E. Has NWI-ACORN's method and pattern of voter registration activity resulted in the obstruction of individual's rights to register to vote under state and federal law?

The Agency has viewed evidence and received reports that the NWI-ACORN organization, its officers, agents or employees have with intent, knowledge or recklessness disregard for the statutory obligations and duties of an organization or individual that assists an individual with a voter registration application and undertakes the obligation of submitting an individual's voter registration form. Pursuant to IC 3-14-2-5 (b) it is a crime to destroy or fail to deliver a voter registration application.

The Agency has been advised by LCEB officials that they have received several complaints from individuals who provided a voter registration application to employees of NWI-ACORN ***who have not subsequently received notice of their registration from the LCEB.*** NWI-ACORN's practice and method of gathering voter registration applications from individuals seems to have increased the likelihood that individuals who responded to their solicitation to register to vote will be disenfranchised.

F. Was NWI-ACORN required to submit voter registration applications which they know or suspect to be incomplete, fraudulent or forged – and did this submission absolve the organization or individuals involved from criminal liability?

Logical reasoning would hold that a ***predicate event*** to the submission of a voter registration application is the application be completed, i.e. the blanks on the form filled in, the questions answered and the affidavit signed by the voter. IC 3-14-3-1.1 makes it a Class D felony to knowingly ***procure*** or submit "voter registration applications known by the person to be materially false, fictitious or fraudulent." IC 3-14-2-3 provides that it is

a Class D felony for a person to "subscribe(s) the name of another person to an affidavit of registration. It appears from the voter registration applications examined that these crimes were statutorily complete at the time the voter registration forms were filled out. Based on their claim that "their hands were tied" by IC 3-14-2-5 (b) (a Class A misdemeanor) NWI-ACORN officials submitted applications which they knew were incomplete and "suspicious" to the LCEB. However what they choose to do with the voter registration applications that they knew or suspected were already tainted with criminal acts would not affect the status of the predicate Felony crimes.

Similarly, IC 3-14-2-1 makes it a Class D felony for a person to conspire "with an individual for the purpose of encouraging the individual for the purpose of encouraging the individual to submit a false application for registration." The act of conspiring or encouraging the submission of a false application would logically happen before the actual submission of a false application. Whether or not actual submission of a false application is a required element of this crime does not appear to be statutorily defined, and would likely be a matter of judicial fact finding and determination.

It is evident that the NWI-ACORN organization, through its officers, agents and employees engaged in, and likely encouraged violations of laws with the more serious penalty (IC: 3-14-2-1) - (leading to outcome the organization desired). Because it also suited their objectives (and multiplied the difficulty of LCEB's pre-election work) it appears that NWI-ACORN chose to strictly follow only the law with the lesser penalty. NWI-ACORN cannot reasonably argue that their feeling of "obligation" to follow one particular law (of their choosing) will absolve the organization or its members from the consequences of other (more serious) laws which were previously violated.[13]

VII Conclusion

A cursory examination of 1,438 voter registration application forms submitted by NWI-ACORN to the LCEB during the last week of September, 2008, reveals significant, credible evidence that the organization, its officers, agents and employees, through direct action, conspiracy or inducement:

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[13] See Exhibit L attached. Memo from J. Bradley King, Indiana Election Division Co-Director.

- Violated Indiana election laws with respect to the solicitation, completion and submission of incomplete, forged or fraudulent voter registration applications.

- Violated Indiana election law with respect to the submission of multiple voter registration applications for the same person.

- Violated Indiana election laws with respect to obstruction of elections and interference with election officials.

- Violated Indiana's Racketeer Influenced and Corrupt Organizations law.

- Violated Indiana and Federal laws protecting individual rights to register and vote in elections.

The evidence provided by the LCEB was not comprehensive. The documents were analyzed by the General Counsel and staff of the office of the state's Chief Election Officer and not by an investigative law enforcement agency such as the Indiana Attorney General, the United States Attorney for the Northern District, the F.B.I. or the Lake County Prosecutor. The investigation and analysis of the activities of NWI-ACORN, its officers, agents and employees during the 2008 voter registration season is incomplete and should be continued and expanded all of the organizations and individuals involved.

Based on information received, media reports and expressions of great concern and distress from Indiana citizens, the Indiana Secretary of State, as the Chief Election Officer for the state of Indiana, strongly urges the appropriate law enforcement agencies to conduct a through investigation of these matters as quickly as possible.

[1] Published reports, reports in court records and reports received by the Agency indicate that ACORN employees approach individuals on the street and at their homes and harass them, to the point of intimidation to sign voter registration form, disregarding information that the individuals have already registered to vote. ACORN will offer compensation, such as a cigarette or the opportunity to be left alone, if a person will sign a voter registration application. ACORN employees have also been reported to provide misinformation to individuals in order to induce them to sign a voter registration application for example telling an individual that: a) they are no longer registered to vote; b) that their name, or all of the names of Democrats in a neighborhood have been purged from voter registration rolls or; c) that is lawful, even wise to submit multiple registrations to vote – "just to be safe".

ATTACHMENT 2

INDIANA SECRETARY OF STATE ATTACHMENT 2
TESTIMONY TO U.S. HOUSE MINORITY COMMITTEE 12-1-09

SECRETARY OF STATE
STATE OF INDIANA

TODD ROKITA
SECRETARY OF STATE

October 5, 2009

David Capp, Esq.
United States Attorney
Office for the Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, IN 46320

Re: ACORN organization 2008 General Election voter registration activities

Dear Mr. Capp:

As the anniversary of our historic 2008 General Election approaches – and my office begins work with county election officials to prepare for 2010 elections, I would appreciate an update from your office detailing any progress that has been made in the ACORN voter registration investigation and the likelihood that indictments will be sought.

During the months leading up to the 2008 General Election in Indiana, my office and the Indiana Election Division received complaints and evidence implicating the ACORN organization and its employees in numerous instances of violation of voter registration laws. A preliminary investigation conducted by my staff indicated that the complaints of felony voter registration fraud were credible, with the largest concentration of incidents occurring in Lake County. In October of 2008, my office provided you and the Lake County Prosecutor with our report and copies of the suspicious voter registration affidavits.

Based on our meetings and conversations during the past year, it was my understanding that your attorneys and investigators were making significant strides in the development of a case. I would like to be updated on the progress. Also, please advise if there is any way that my office can be of assistance.

Truly yours,

Todd Rokita
Indiana Secretary of State

The State House, Room 201, Indianapolis, Indiana 46204, (317) 232-6531, FAX (317) 233-3283
email: aa@sos.IN.gov website: www.sos.IN.gov

Testimony of David Caldwell for the
U.S. House of Representatives Committees on Oversight and Government Reform and the Judiciary
regarding
the ACORN Forum
December 1, 2009
2:30 P.M, Rayburn 2237

I want to thank Ranking Member Issa and Ranking Member Smith for inviting me and my office to appear at this Forum today.

The Louisiana Attorney General's Office began its investigation into potential violations of Louisiana State law by ACORN and its affiliated entities in early 2008. In October 2008 a group of ACORN board members, now known as the "ACORN 8," were removed from ACORN'S national board after requesting an independent audit of all ACORN finances; this audit was requested after it was discovered that Dale Rathke, brother of founder Wade Rathke, had embezzled up to five million dollars beginning in 1998, and that this embezzlement was never reported to law enforcement. While this embezzlement ostensibly occurred outside the four year prescriptive period (statute of limitations) for institution of prosecution under Louisiana law, we interviewed several witnesses, including some of ACORN's former board members and other cooperating ACORN employees, to determine whether the source of these funds is either private donor money used against donator intent or taxpayer dollars which would potentially suspend the running of time limitations and make the embezzlement prosecutable under Louisiana law. Interviews from these cooperating employees have also yielded other areas of inquiry which we are currently investigating, including the failure to file (and pay) withholding taxes to the State of Louisiana.

The above mentioned areas of inquiry all require the same type of investigation: to "follow the money." To that end, we have issued several subpoenas. The first two were for records from ACORN International and Whitney bank of New Orleans, who holds the financial records for hundreds of ACORN affiliated accounts, issued in the summer of 2008. Part of the probable cause for the issuance of the subpoena came from the Staff Report entitled "Is ACORN Intentionally Structured as a Criminal Enterprise?" issued by the Committee on Oversight and Government Reform at the U.S. House of Representatives. We have also subpoenaed accounting records from ACORN and CCI (Citizens Consulting Inc.). In the midst of responding to a protective order to the accounting records filed by ACORN's accounting firm at the request of ACORN, we learned that some hard drives had been removed from the New Orleans office, and that these hard drives may contain information pertinent to our investigation. We then immediately obtained a search warrant and executed it at ACORN's main headquarters in New Orleans. We seized 178 hard drives, servers, and other relevant documentation. We have since electronically preserved and physically returned the most vital electronic media to the New Orleans ACORN office.

The purpose of our appearance today is to ask for assistance in coordinating any state and federal law enforcement and regulatory agencies who may be interested in benefitting from a shared investigative effort. The task of properly investigating almost 400 entities and over 600 bank accounts is massive to say the least. Estimates we received from an outside computer forensic firm to do even a targeted forensic review of the hard drives and servers obtained indicate a cost of around $3.5 million. This cost does not include the necessary forensic accounting review of the 600 + ACORN affiliated accounts. A coordinated effort is the only way to fully and effectively investigate this case.

Mr. SMITH. With regard to the GAO report that will be discussed during the second panel, it is important to remember that we are here today to conduct oversight on the current civil rights division. Playing the Bush blame game is not effective oversight of the Obama administration. We can certainly learn things from the past, but this hearing is about determining whether the Obama ad-

ministration is going to effectively, fairly, and without prejudice, enforce civil rights laws in the future.

Thank you, Mr. Chairman, and I will yield back.

Mr. CONYERS. Mr. Chairman?

Mr. NADLER. Gentleman from Michigan?

Mr. CONYERS. I mentioned my good friend Steve King's name during my presentation. I know you don't usually let everyone make opening statements, but could we allow Steve King to make any response or observations he would like?

Mr. NADLER. I will recognize the gentleman from Iowa briefly for a response.

Mr. KING. Thank you, Mr. Chairman.

And I thank the Chairman of the full Committee, Mr. Conyers, for opening this discussion up. I think there is a point of clarification that needs to be made. When the inquiry was made of Mr. Conyers, did he show interest in or speak about the hearings on ACORN in February, I think Mr. Conyers' answer was precisely correct. It was actually March 19 that he indicated that interest, and I would point out also that in that dialogue that took place in that hearing that day, when Mr. Conyers stated that he believed that it was worthy of our interest, the Chairman of the Constitution Subcommittee, Mr. Nadler, responded to the effect of, "When I see credible evidence." And then the response that came back——

Mr. NADLER. Finish the sentence. When I see credible evidence what?

Mr. KING. When I see credible evidence I will consider hearings.

Mr. NADLER. Exactly.

Mr. KING. I think it is important that that clarification also be made.

And then the response from Mr. Conyers—and this is from memory, not from data in front of me, so it may not be precisely right—was, "I think we see evidence in front of us of our interest."

Heather Heidelbaugh had already testified, or prepared to, that she had achieved a partial injunction against ACORN in Pennsylvania, and I had pointed out the—I will say the openness in the election laws across the country. So I think it is very, very important that we have this discussion about hearings on ACORN, and it appears to me that ACORN has corrupted the election process in the United States so much that it threatens the very Constitution itself, and it very much is the business of this Committee, and it is the business of the Civil Rights Commission as well.

And one of the things that I hope that we can resolve is, whether there is any determination or resolve on the part of Chairman Conyers and Chairman Nadler to look into this most outrageous corruption of our election process in the history of the United States of America, will we follow through with our constitutional duty? I don't believe it pays to have any more private conversations about this; it is time for this Congress to move in more than one Committee, but especially the Judiciary Committee and specifically the Constitution Subcommittee.

So that is my position and view on it, Mr. Conyers, and I appreciate you giving me that opportunity to say so at this time. I yield back.

Mr. CONYERS. And I appreciate hearing from you about this, Steve.

Mr. NADLER. If the gentleman would yield, let me just respond to that. I will repeat essentially what I said a few minutes ago. Congress has done everything it could do against the private organization. We have defunded ACORN. I believe that that action is unconstitutional; the courts will determine that. But we have done that.

There is no further thing that Congress could do. There is no function for congressional investigation leading toward possible action because we have already taken the action.

All these allegations are allegations—are just that, allegations. I think it is a little stretching the point to say it is the worst conspiracy ever, but forgetting that, these are all allegations. Allegations ought to be investigated if there is anything to them by state, local, Federal law enforcement agencies at their discretion if they think there is anything to those allegations. It is up to them, not to us.

Now I hope we can get back——

Mr. SENSENBRENNER. Will the gentleman kindly yield to me?

Mr. KING. I would yield. It is my time.

Mr. SENSENBRENNER. Given the argument that the gentleman from New York has made, that means that we shouldn't be investigating anything the Bush administration did during its 8 years in office because the voters took care of that, and that is a matter of history as well.

Mr. KING. And reclaiming my time, the continuing resolution that shut off funding to ACORN expires December 18—that is this month, in just a couple of weeks. And so at that point any action Congress may have taken will have also been negated.

And furthermore, the Congress has passed in the past rescissions bills, where we have shut off funding after it passed the President's desk, and that is all that happened with the continuing resolution. And the bill of attainder, there is no case precedent that would be a precedent that is on point on this particular subject. And I would yield back.

Mr. NADLER. I thank the gentleman.

And now maybe we can get back to the subject of the hearing, which is the civil rights division, not ACORN. In the interest of proceeding to our witnesses and mindful of our busy schedules, I ask that other Members submit their statements for the record.

Without objection all Members will have 5 legislative days to submit opening statements for inclusion in the record. Without objection the Chair will be authorized to declare a recess of the hearing, which we will do only in case there are votes or something unforeseen.

We will now turn to our first panel. As we ask questions of our witnesses, the Chair will recognize Members in the order of their seniority in the Subcommittee alternating between majority and minority provided that the Member is present when his or her turn arrives. Members who are not present when their turns begin will be recognized after the other Members have had the opportunity to ask their questions.

The Chair reserves the right to accommodate a Member who is unavoidably late or only able to be with us for a short time.

Our first panel consists of one witness, Thomas Perez, who was nominated by President Obama to serve as the Assistant Attorney General for the Civil Rights Division and was sworn in on October 8, 2009, a mere 2 months ago. Mr. Perez previously served as the secretary of Maryland's Department of Labor, Licensing, and Regulation.

From 2002 until 2006 he was a member of the Montgomery County Council. He was the first Latino ever elected to the council and served as council president in 2005.

Earlier in his career he spent 12 years in Federal public service, most of them as a career attorney with the Civil Rights Division of the Justice Department. As a Federal prosecutor for the division he prosecuted and supervised the prosecution of some of the department's most high profile civil rights cases, including a hate crimes case in Texas involving a group of White supremacists who went on a deadly racially-motivated crime spree.

Mr. Perez later served as Deputy Assistant Attorney General for Civil Rights under Attorney General Janet Reno. He also served as special counsel to the late Senator Edward Kennedy and was Senator Kennedy's principal advisor on civil rights, criminal justice, and constitutional issues.

For the final 2 years of the Clinton administration Mr. Perez served as the director of the Office for Civil Rights at the United States Department of Health and Human Services. Mr. Perez was a law professor for 6 years at the University of Maryland School of Law and was a part-time professor at the George Washington School of Public Health.

He received a Bachelor's degree from Brown University, a Master's of public policy from the John F. Kennedy School of Government, and a Juris Doctorate from Harvard Law School in 1987.

I am pleased to welcome you, sir. Your written statement in its entirety will be made part of the record. I would ask that you summarize your testimony in 5 minutes or less.

To help you stay within that time there is a timing light at your table. When 1 minute remains the light will switch from green to yellow, and then red when the 5 minutes are up. I will advise this witness, as I will others, that I am a little loose with the timing, but not too loose.

Before we begin it is customary for the Committee to swear in its witnesses. If you would please stand and raise your right hand to take the oath?

[Witness sworn.]

Mr. NADLER. Let the record reflect that the witness answered in the affirmative.

You may be seated. I thank you and you are recognized for 5 minutes.

TESTIMONY OF THE HONORABLE THOMAS E. PEREZ, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. PEREZ. Thank you, Mr. Chairman. I appreciate your leadership on this and so many other issues, and I want to acknowledge

Chairman Conyers' longstanding leadership on a wide range of issues. It is great to be back before your Committee today, Mr. Chairman.

And Ranking Member Smith, thank you for your courtesy throughout. And I look forward to working with all of you on a wide range of issues.

It really is a great privilege to be back home in the Department of Justice civil rights division, where I learned how to be a lawyer, and I look forward to an active and open dialogue with this Committee on a wide range of issues. My goals today are to respond to the GAO report and offer my perspective on the challenges and opportunities confronting the Civil Rights Division.

I want to thank you again for your leadership in commissioning these two GAO reports, and let me state right at the outset, we accept them, we intend to implement their recommendations, and we have already begun to do so, plain and simple, and we will be moving forward in this regard.

This is the first time I have had the privilege of appearing before this Committee so I wanted to take a moment simply to tell you a little bit about my past work in the Civil Rights Division. I have been on the job for less than 2 months, as you correctly point out, but I am no stranger to the department and to the division.

My first job was a summer clerk under Attorney General Ed Meese in 1986. I entered the department in the honors program in 1989 under Attorney General Thornberg, had the privilege of serving on the honors committee in 1992, 1993, and 1994, and I stayed in the department until 1999 when I was deputy assistant attorney general for civil rights and I moved over to the Department of Health and Human Services. And I am equally proud of my service under both Republican and Democratic administrations—my service as both a career and a non-career person in the Civil Rights Division.

I know firsthand the commitment and dedication of the career staff and I have great respect for the work that they do. More than 50 years after its creation the division's mission and scope have grown exponentially and the division continues to serve as the conscience of the Nation within the Federal Government.

Our mandate in the Civil Rights Division is clear: to enforce all—and I underscore all—of the civil rights laws under our jurisdiction fairly, independently, and in a nonpartisan fashion. Regrettably, as documented in the two GAO reports we will discuss today and an earlier report of the inspector general that was dated January 2009, there have been times when the division has failed to fully live up to this mission.

Upon becoming assistant attorney general my goal has been very straightforward: Find out what is working and continue it, and find out what is broken and fix it. That is my job plain and simple. The GAO report has been very instructive in this regard, as was the I.G. report.

And when I entered the division I observed that there were a number of initiatives that had been put in place in the Bush administration that were very productive, and I intend to continue them—initiatives in human trafficking; initiatives to combat racial—religious discrimination; and initiatives to enforce the lan-

guage minority provisions of the Voting Rights Act. And I want to commend Congressman Sensenbrenner and so many others on this Committee for his leadership in the renewal—reauthorization of the Voting Rights Act.

You played a very important role, and I wanted to acknowledge that here today.

However, as I said, our obligation is to enforce the civil rights law—all of the laws—and to use all available, lawful tools in our arsenal. The GAO report and the data clearly document civil rights areas where enforcement waned or was virtually nonexistent. For instance, during the years covered in the report the division pursued very few pattern or practice cases in the employment context.

Despite considerable evidence of abusive, discriminatory behavior by lenders and servicers that contributed to the foreclosure crisis, the division did not make any use in the Bush administration of critical tools in its law enforcement arsenal—the Equal Credit Opportunity Act, the Fair Housing Act—to hold lenders accountable.

In the Clinton administration, the appellate section filed 643 briefs in courts of appeal; in the Bush administration, 424. In the Clinton administration the disability rights section brought 228 lawsuits, compared with 126 in the Bush administration. In the Clinton administration, the housing section brought 676 cases, compared with 324 in the Bush administration.

From 2005 till 2007 a total of 16 USERRA cases—these are cases where we protect our servicemembers who serve our Nation overseas and come home and find that they don't have their job back—16 cases were brought from 2005 to 2007. In the first 8 months of the Obama administration, 18 such cases have been filed.

In the Clinton administration, the voting section filed 35 Section 2 cases, compared with 15 filings in the Bush administration. In fiscal year 2006 the division prosecuted the lowest number of hate crimes cases in more than a decade—10—compared with 43 in 1995, when I was a deputy chief in that section. Human trafficking is critically important and righteous, but it shouldn't come at the expense of hate crimes prosecutions.

In addition to these troubling facts, a number of changes took place in the longstanding operating practices that have greatly hampered the division's effectiveness. For instance, the career staff in most instances was frozen out of the hiring process by the noncareer staff. As a result, section chiefs were frequently notified the week before that a new person, whom they had never interviewed and never seen, was going to show up and serve in their office.

When I served on the hiring committee, under both Republican and Democratic administrations, the hiring process was governed by the same principle: Search for the best qualified candidates, plain and simple. As the I.G. report has documented, hiring in the past years under the Bush administration was frequently governed by improper ideological considerations.

Communications between sections and between career and noncareer staff, which has been a lynchpin to the effective operation of the division for decades, waned. For instance, the appellate section in the Bush administration was prohibited from having case-related discussions with other sections. How can you get the casework done if you can't communicate with the trial lawyer?

These sorts of issues and challenges were one of many reasons why, in 2003, if you took a snapshot of the lawyers who were in the division, and then you took a snapshot in 2007, 70 percent of the lawyers who were there in 2003 had departed the division by 2007. From the moment the new Administration took office the division, with the Attorney General's full backing, took decisive steps to emphasize core enforcement priorities in each of the four litigating sections that are the subject of the report and throughout the division as a whole.

With respect, as I said earlier, to all of the recommendations of GAO, I concur with them all and I thank them for their diligent service.

I also want to thank my predecessor, Loretta King, for her work in making sure that we moved forward in the interim during the 9 months between January and my confirmation in October. She did a wonderful job. I think it is equally important to thank former Attorney General Mukasey, who began the process of depoliticization during his tenure as Attorney General.

Our task ahead is a task of restoration and transformation. Our goal is not to create the Civil Rights Division capable of years back, but to create a division capable of responding to today's and tomorrow's challenges, both emerging and longstanding. It is a formidable task, but it is one that can and will be accomplished.

We recognize that committed career attorneys and professional staff are the most critical single ingredient to fulfilling this mission, and one of our first priorities has been to revamp the hiring process to ensure that we select the best qualified candidates for the job. And if you look on our Web site today you will see the new hiring process—transparent, posted so anyone who wants to apply can see how the process works from soup to nuts.

Working with the career staff, we are implementing a number of other important changes. We will continue to invest resources in areas such as religious discrimination, human trafficking, and Section 203 enforcement, which were well done in the prior Administration, but we can and will do much more in a wide range of areas, including lending discrimination, hate crimes, and voting rights.

By better leveraging our current resources, making the most of additional resources that are in the President's fiscal year 2010 budget, and through more effective management we will enforce all of the laws in the division's arsenal aggressively and comprehensively. We are actively engaged in the enforcement of the new hate crimes bill and I was proud to have testified recently on the Senate side on the Employment Nondiscrimination Act.

And last week, just in the disability area alone, we filed briefs in three separate cases urging enforcement of the Supreme Court's landmark decision in Olmstead, which stands for the proposition that unnecessary institutionalization of people with disabilities is a form of discrimination under the ADA, including a seminal case in New York State that I believe will enable us to really move the ball forward. Last month we obtained the largest monetary settlement ever by the department in a Fair Housing Act case, when the owners of numerous Los Angeles apartment buildings located in the Koreatown section of the city agreed to pay $2.7 million to set-

tle allegations that they discriminated against African Americans and Latinos and families with children.

I know this will not be easy, but I am absolutely confident that we can get the job done and I look forward to implementing the recommendations set forth in the GAO report. I look forward to working with all of the Members of this Committee and I appreciate the time that you have given me this morning. And I am more than willing to answer any questions that you have.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Perez follows:]

PREPARED STATEMENT OF THE HONORABLE THOMAS E. PEREZ

Department of Justice

STATEMENT OF

THOMAS E. PEREZ
ASSISTANT ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS,
AND CIVIL LIBERTIES
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

ENTITLED

"THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE"

PRESENTED

DECEMBER 3, 2009

Statement of
Thomas E. Perez
Assistant Attorney General
Department of Justice
Before the
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
United States House of Representatives
At a Hearing Entitled
"The Civil Rights Division of the Department of Justice"
December 3, 2009

Chairman Nadler, Chairman Conyers, Ranking Member Sensenbrenner and members of the Subcommittee, thank you for the opportunity to testify today. It is a great privilege to appear before you as the newly installed Assistant Attorney General for the Civil Rights Division at the Department of Justice. I look forward to an active and ongoing dialogue with this Subcommittee and the full Judiciary Committee regarding the work of the Division. Today's hearing marks an auspicious beginning for that dialogue.

This hearing comes at a pivotal time for the Division. Attorney General Holder in recent months repeatedly has called the Civil Rights Division the crown jewel of the Justice Department. More than 50 years after its creation, the Division's mission and scope have grown exponentially, but the Division continues to serve as the conscience of the nation within the Federal government.

However, there can be no denying that there have been times when the Division failed to fully live up to its mission. The two GAO reports that provide the impetus for this hearing,[1] along with the January 2009, Inspector General's report, underscore the point that the Division, in recent years, was not doing all that it could to fulfill our responsibility to enforce all the civil rights laws fairly and aggressively. That changed immediately this past January.

From the moment the new Administration took office, the Division, with the Attorney General's full backing, took decisive steps to emphasize our traditional enforcement priorities in each of the four litigating sections that were the subject of the GAO reports, and throughout the Division as a whole. With respect to the three recommendations regarding case management that are contained in the GAO report, I concur with all of them, and we are working to comply fully with the GAO's recommendations.

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[1] *DOJ's Civil Rights Division: Opportunities Exist to Improve Its Case Management System and Better Meet Its Reporting Needs*, GAO-09-938R (September 30, 2009); *U.S. Department of Justice: Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001 through 2007*, GAO-10-75 (October 2009).

In the months before my arrival, much was accomplished under the leadership of the Attorney General and Acting Assistant Attorney General Loretta King, as the Division recommitted to using all the arrows in its quiver and vigorously enforcing all the laws for which it has responsibility. I want to personally and publicly thank Loretta for her service as the senior career attorney in the front of the Civil Rights Division across multiple administrations. Our mission in the coming months and years is one of restoration – recommitting to the Division's core mission – and transformation – equipping ourselves to address effectively the challenges of the 21st Century.

First and foremost, we recognize that committed career attorneys and professional staff are the most critical single ingredient to fulfilling our enforcement responsibilities. Unfortunately, between 2003 and 2007 more than 70 percent of the Division's attorneys left, leading to a significant depletion of capabilities and institutional knowledge. Although many of these attorneys were replaced through new hires, many of those who left were seasoned and dedicated litigators, and their departure represented a significant loss for the Division. One of the Division's first priorities has therefore involved revamping our hiring processes to ensure that the very best candidates for the job are selected through a process that is conducted fairly, transparently and without any consideration of the candidates' political views.

We have just completed this year's hiring for the Attorney General's Honors program, a process that was conducted successfully under our revised Honors hiring policy, which is publicly available on the Division's website. Our Honors hiring program was directed by two longtime career lawyers in the Division, and every lawyer who participated in the interview process is a career lawyer who was recommended by a career section chief. The Honors hiring policy provided guidance in the development of new hiring policies for other positions in the Division as well, and we look forward to using those policies in the coming fiscal year as we hire the best and brightest new attorneys to strengthen the Division's ranks.

Meanwhile, during the first ten months of this Administration, the Division has worked to significantly expand our enforcement activities, including in the four litigating sections – Employment, Voting, Housing and Special Litigation – which were the subject of the GAO report. This expansion is entirely consistent with the Civil Rights Division's obligation to enforce *all* the laws for which it has enforcement responsibilities, rather than picking and choosing which laws to enforce.

Equal Employment Opportunity

Our Employment Litigation Section enforces Title VII of the Civil Rights Act and the Uniformed Services Employment and Reemployment Rights Act (USERRA) on behalf of service members in the civilian workforce. The GAO report noted the increased number of USERRA matters. In FY 2009, we received 175 USERRA referrals from the Department of Labor, a 75 percent increase over FY 2008, and we established a "fast track" program to address and resolve suitable cases administratively, thereby preventing a backlog.

Since January 20th of this year, we have filed a total of 27 Title VII and USERRA suits – a record number. Nine of these suits were filed under Title VII. The remaining 18 suits were filed under USERRA – almost double the number (11) of such suits filed during all of FY 2008. Also, the number of cases resolved through consent decree or settlement has more than doubled over FY 2008, from 16 to 41.

Restoring vigorous enforcement of Title VII, including pattern and practice cases, is one of our highest priorities. Since January 20th, we have filed three Title VII pattern or practice suits, obtained settlements in five pattern or practice cases that provided significant prospective and remedial relief, and opened ten full pattern or practice investigations of State and local governmental employers with respect to employment opportunities for African Americans, Latinos and women. Also, in July, we obtained a highly significant victory in *U.S. v. City of New York, NY,* when the district court granted summary judgment for the United States and plaintiffs-intervenors on the issue of liability. In the *City of New York* case, we challenged the city's use of two written examinations for entry-level firefighters as having unlawful disparate impact on African Americans and Latinos. In the relief phase, we are seeking, among other things, priority hiring and monetary relief for nearly 300 African-American and Hispanic victims of the challenged examinations.

Fair Housing

The Housing and Civil Enforcement Section has worked since January to step up its enforcement of the Fair Housing Act. Over the past 10 months, the Section filed 36 cases under the Act, including 19 pattern or practice cases. During this same period, the Housing Section obtained 21 Fair Housing Act consent decrees, including 17 pattern or practice consent decrees. Because the Division depends to a significant extent upon HUD to refer cases under the Fair Housing Act, Section 504, and Title VI of the Civil Rights Act of 1964, the Division also is working to strengthen and expand our working relationship and collaboration with HUD.

Last month, in a landmark Fair Housing Act case, the Division announced that the owners of numerous Los Angeles apartment buildings located in the Koreatown section of the city agreed to pay $2.7 million to settle allegations that they discriminated against African-Americans, Hispanics and families with children, preferring to rent units instead to Korean tenants. This was the largest monetary settlement ever obtained by the Justice Department in a Fair Housing Act case alleging discrimination in the rental of apartments, and it sent a clear message that the Civil Rights Division is open for business.

The Division also won a major victory (as friend of the court) when the full U.S. Court of Appeals for the Seventh Circuit recently ruled that the Fair Housing Act applies to post-acquisition discrimination in a case brought on behalf of Jewish condominium owners who were instructed by the condominium association to remove the traditional *mezuzah* from the outside doorframe of their residence.

In response to the housing crisis, moreover, the Division has ramped up fair lending enforcement, and recently filed two lawsuits. We brought one suit against a bank that charged African-Americans a higher interest rate than whites for home mortgage refinance loans and redlined majority-African-American areas of west central Alabama. The other suit, brought against a bank that made car loans, alleged national origin discrimination, where the dealerships working with the bank were charging higher markups for African-American and Latino borrowers. We also authorized suit and ongoing investigations of major players in the subprime market.

Finally, in enforcing the Servicemembers Civil Relief Act (SCRA), the Division won an important victory when a court ruled that lienholders are strictly liable under SCRA for selling cars belonging to servicemembers without a court order.

Voting Rights

The voting rights of all Americans are at the core of equal opportunity and equal justice, and the Voting Section has been working to renew its efforts to protect these rights. In FY 2009, the Section filed ten affirmative lawsuits – five more than were filed during the previous fiscal year – and increased the number of amicus briefs filed as well.

In September, we achieved an important victory on behalf of American military personnel and other overseas citizens when a Federal court in Virginia ruled that the State violated the voting rights of these citizens by failing to mail absentee ballots in sufficient time for them to be counted in the November 2008 general election, as required by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The brave women and men who risk their lives to protect our nation must be given the opportunity to vote and to have their votes counted, and this case will help to ensure that opportunity. Also, I am grateful to the Congress for passing the Military and Overseas Voters Empowerment Act amendments to the UOCAVA this fall, which we believe will significantly facilitate voting by our military and U.S. citizens living overseas.

We have also stepped up our voting rights enforcement in Indian Country. In October, the Division notified Shannon County, South Dakota, that it had authorized a lawsuit under Section 203 of the Voting Rights Act to protect the voting rights of American Indians who speak the Lakota language and have limited English proficiency; we currently are seeking to negotiate a resolution. This would be the first new lawsuit to protect the voting rights of Native Americans since 2000.

Additionally, the Voting Section is working to prepare for a massive influx of redistricting submissions that will result from the 2010 Census. The Section's role in ensuring that the redistricting process does not undermine the voting rights of minority communities remains a critical component of our efforts to protect the franchise for all Americans, and we will be ready.

Civil Rights of Institutionalized Persons and Discriminatory Policing

The Special Litigation Section has been engaged in investigations, litigation and compliance activities to protect the constitutional rights of institutionalized persons. In September, for example, the Division filed suit under the Civil Rights of Institutionalized Persons Act (CRIPA), against Erie County, New York, regarding unconstitutional conditions at two correctional facilities. After an extensive investigation, the Division concluded that the institutions violated the constitutional rights of pre- and post-trial inmates confined at the facilities. Our suit addresses immediate constitutional concerns regarding suicide prevention and mental health care, protection from harm, medical care and environmental health and safety.

In addition, we have continued to investigate, litigate and monitor compliance in a number of other cases involving psychiatric hospitals, correctional institutions, residences for persons with developmental disabilities, and juvenile facilities.

The Section has also opened several investigations where we are evaluating whether there is evidence of a pattern or practice of discriminatory policing in violation of section 14141 of the Violent Crime Control and Law Enforcement Act of 1994. These include an investigation, begun in September 2009, of the police departments in East Haven, Connecticut, looking into discriminatory police practices, unlawful searches and seizures, and excessive use of force; and Suffolk County, New York, examining allegations that police have failed to investigate hate crimes involving Hispanics, failed to protect Hispanics from hate crimes, and discouraged reporting of such crimes.

The four sections examined in the GAO report and discussed above play a critical role in advancing the nation's civil rights agenda, but they do not represent the full breadth of the Civil Rights Division's work. We have made important strides in other areas as well. Some examples of our recent work in other areas follows.

Educational Opportunities

In an effort to advance civil rights in the educational arena, we have worked to ensure that students receive equal educational opportunities without respect to race, gender, religion, national origin, language barrier or disabilities. The Division's Educational Opportunities Section continues to engage in compliance and enforcement activities in school districts throughout the nation.

In July 2009, the Section helped achieve a victory for female high school athletes, filing an *amicus* brief in support of Florida parents who filed suit under Title IX after the State's high school athletic association adopted discriminatory reductions in the game schedule for female student athletes. Our work helped prompt a resolution, pursuant to which the high school athletic association agreed to restore the full schedule and to refrain from making any policy changes that treat one gender differently from the other.

Criminal Civil Rights Enforcement

In our civil rights criminal enforcement efforts, the Civil Rights Division's Criminal Section in Fiscal Year 2009 filed more civil rights criminal cases than ever before and more hate crimes cases than it did during any of the previous eight years. Hate crime enforcement is one of the Administration's and the Department's top civil rights priorities. Sadly, as the recently released 2008 FBI statistics make clear, bias motivated violence remains disturbingly prevalent across the United States. According to the most recent FBI Hate Crimes Report, in 2008, over 50 percent of the reported hate crimes were motivated by racial bias and the number of reported crimes directed at Latinos increased for the fifth year in a row, amounting to a 40 percent increase between 2003 and 2008. Using our previously existing hate crimes authority, as well as the additional authority we now have due to the passage of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, which is discussed below, we will continue to vigorously prosecute those who threaten and harm others out of hate.

We also have successfully prosecuted numerous significant cases involving official misconduct of law enforcement officials, including Federal and State corrections officers, local police, and sheriff's deputies. For example, last month, two Tennessee state corrections officers pled guilty to violating the civil rights of an inmate and then lying about it during state and federal investigations. The officers had repeatedly kicked and punched a handcuffed inmate without provocation and in violation of the inmate's constitutional right to be free from cruel and unusual punishment. In another plea last month, a Wyoming state trooper was sentenced by a federal judge to 15 years for kidnapping a Wal-Mart truck driver and for using his official firearm to commit a crime. The trooper had planned to kill the driver, stage an accident, and use the incident to extract a monetary settlement from Wal-Mart.

Finally, we have continued the Division's commitment to combating human trafficking, a form of modern-day slavery that deprives its victims of their fundamental rights guaranteed by the Thirteenth Amendment. The Criminal Section has been the leader in this fight since the 1930s, and this past year, we continued its record of bringing unprecedented numbers of involuntary servitude and slavery prosecutions, restoring the Constitutional rights and dignity of human trafficking victims and bring traffickers to justice. In recent months, for example, we secured sentences of 30, 35, and 40 years, respectively, for the five lead defendants, and successfully prosecuted five other defendants, in a sex trafficking scheme that compelled young Guatemalan women and girls into prostitution in the Los Angeles area.

Disability Rights

The Division's Disability Rights Section has been conducting a wide range of enforcement activities, including its Project Civic Access to increase compliance by State and local governments with Title II of the Americans with Disabilities Act of 1990 (ADA). The Project sends investigators, architects and attorneys to conduct on-site reviews of State and local government facilities. These reviews have resulted in agreements reached with the State and local government entities to address compliance issues by rectifying access issues at a wide range of facilities, including administrative buildings, courthouses, police and fire stations and jails, transportation facilities, parks and recreation facilities, libraries, museums, polling places, and emergency and domestic violence shelters.

The Administration also has declared it a priority to enforce the Supreme Court's *Olmstead* decision – to enable persons with disabilities to live in an appropriate, integrated, and community-based setting . In June, President Obama commemorated the 10th anniversary of the *Olmstead* decision by launching the "Year of Community Living," a new effort by Department of Health and Human Services and the Department of Housing and Urban Development to assist Americans with disabilities by improving access to housing, community supports, and independent living arrangements. In keeping with the Administration's commitment, the Division has moved to intervene in the remedial phase of a major case brought in New York, in which the State was found to be in violation of Title II of the ADA and Section 504 of the Federal Rehabilitation Act because the State's practice of segregating institutionalized individuals with mental illness and placing them in adult homes was not the most integrated setting available. The Division is also filing "friend of the court" briefs in two other cases. The first challenges the State of Virginia's decision to build a new 75-bed institution for persons with mental disabilities that will isolate persons with disabilities who have already been determined to be capable of living successfully in the community rather than placing them in community-based housing. The second case in Connecticut challenges the State's system of housing persons with disabilities in nursing homes rather than in supported housing that will allow them to become participants in their communities.

In addition, the Division has been following through on its proposal to amend its Title II and Title III ADA regulations applicable to State and local governments and public accommodations. The Division is currently working to finalize the revised ADA regulations and intends to issue final regulations in 2010.

The Division is also continuing its hugely successful, multi-pronged ADA outreach program that includes a major website with links to the ADA, federal regulations, policies, and informal guidance along with updates about recent developments in ADA enforcement, a full-time professionally staffed telephone line responding daily to questions from the public, and an active technical assistance program providing speakers and written materials in response to requests from individuals and organizations nationwide.

Finally, the Division is preparing regulations to implement the Title II and Title III provisions of the Americans with Disabilities Act Amendments Act of 2008, which overturns several Supreme Court decisions and broadens the definition of disability. The Department is jointly sponsoring a series of four town hall meetings this fall with the Equal Employment Opportunity Commission (EEOC), which has responsibility for the Act's employment provisions, and expects to have its proposed rule for Titles II and III published early in 2010.

Coordination and Review

Finally, the Division's Coordination and Review Section, which has responsibility for ensuring that Federal agencies and federally-assisted programs comply with civil rights laws, held a major conference in July that focused on Title VI of the Civil Rights Act of 1964. The conference, which was attended by about 450 representatives of most Federal funding agencies, major community and advocacy groups and funding recipients, was the first of its kind since 1977. The conference was highly successful and received overwhelmingly positive reviews.

A Civil Rights Division for the 21st Century

These are just a few examples of the stepped up activities of the Civil Rights Division during the past ten months. I must emphasize, however, that while fully restoring the Division's commitment to its traditional mission is absolutely essential, it is not enough. The Civil Rights Division also must be transformed to meet the civil rights challenges of the 21st century.

As the late Senator Ted Kennedy often reminded us, civil rights remain the unfinished business of America. In 2009 and beyond, meeting current-day and emerging civil rights challenges means not only continuing to combat the sort of blatant discrimination that persists, but also tackling the more subtle, yet equally dangerous, forms of discrimination that infect so many of our institutions.

Today, despite great gains, too many people of color find themselves powerless in the face of discriminatory housing and lending. Too many students still lack the quality education all children are guaranteed by law. Too many Americans with disabilities find themselves shut out or set apart from professional and personal activities that non-disabled Americans take for granted. Too many new Americans who came to this nation seeking the same freedom and opportunities that our parents and grandparents sought, find themselves the targets of bigotry and hate.

A Civil Rights Division for the 21st Century must and will address the vast injustice done by the explosion in inappropriate subprime lending and the subsequent foreclosure crisis, which, though it has touched every corner of our nation, has impacted people of color and threatened the stability of their communities at far greater rates than their white counterparts. There are Federal laws ensuring fair lending and fair housing, and these laws must be enforced to address the persistent inequalities that are on the books.

It must and will work to create services, programs and public facilities that are accessible to individuals with disabilities, recognizing that they have a vast contribution to make to our society and our communities that can only be maximized if they have equal access. It means recognizing – as the Supreme Court did in its landmark *Olmstead* decision – that segregating people with disabilities in institutions is every bit as wrong as segregating children of color in inferior schools.

A Civil Rights Division for the 21st Century understands how our nation's reaction to the 9/11 terrorist attacks affected the Arab-American and Muslim-American communities, and is working to be sure we don't fall into the trap of believing that we either have national security and safe streets *or* we protect civil rights. Continuing the Division's work to combat religious discrimination, to promote religious freedom, and to support the civil rights of religious minorities to practice their faith, we are litigating employment discrimination cases on behalf of Muslim-Americans and Sikh-Americans who have been denied their right to wear religious head-covering in their place of employment.

It understands that civil rights are human rights, and that America must set an example for others. We are actively engaging with the State Department to ensure that the Civil Rights Division has the opportunity to contribute its expertise and experience in dialogues about civil rights issues in the international context.

A Civil Rights Division for the 21st Century recognizes that there are places where our laws fall short, and we are working to fill the gaps. The recent passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act stands at the forefront of our efforts to fill one of those gaps to strengthen our civil rights enforcement. I am grateful to Congress for passing this landmark legislation, which has been over a decade in the making.

For the first time in the history of this nation, the Federal government has authority to prosecute violent hate crimes committed because of the victim's sexual orientation, gender, gender identity, or disability. The new law also enhances our ability to prosecute hate crimes based on the victim's race, religion, or national origin, or military status, and enables us to provide assistance to State, local, and tribal officials in their investigation and prosecution of hate crimes. This is the first significant expansion of Federal criminal civil rights laws in over a decade, since passage of the church arson statute in the mid-1990s.

Immediately after the new hate crimes bill became law, the Department began implementing it. I sent a letter to all United States Attorneys announcing the law's passage and encouraging them to partner with us and utilize its provisions in appropriate cases. In addition, the Division is preparing guidance and training for those who are responsible for enforcing this new law.

While lesbian, gay, bisexual, and transgender (LGBT) individuals now have Federal protection from hate crimes, they still lack fundamental protection for their right to earn a living. In the United States today, millions of hardworking LGBT individuals are not even protected

from workplace discrimination by our nation's civil rights laws, and have no legal recourse when they are subjected to adverse employment actions. That is why we strongly support Federal legislation like ENDA.

Finally, a Civil Rights Division for the 21st Century cannot measure its performance solely by the number of cases filed and successfully concluded. Outreach to specific communities and constituencies, as well as to the public at large, is critical to proactively deterring and combating discrimination, rather than just reacting to discriminatory acts that have already occurred. However, historically, the Division has taken a largely reactive approach to communicating its work and accomplishments. As a result, we have missed the opportunity to play a role in the broader national dialogues about race and civil rights, even though we have considerable value to add to those conversations. Although I have been serving as Assistant Attorney General for less than two months, this already has begun to change.

Conclusion – The Road Ahead

A little more than one year ago, this nation elected its first African-American President, undeniably a historic achievement for a nation with such a long and complicated history of race relations. But as we look back over the history of the advancement of civil rights in our nation, each moment of great progress was followed by periods of great challenge. In 1963, Dr. Martin Luther King wrote "we have waited for more than 340 years for our constitutional and God given rights." He and many others helped to secure those rights with the Civil Rights Act of 1964 and the Voting Rights Act the following year. And yet, today, 45 years later, injustice persists.

As a nation, we have made great progress on civil rights, and for more than 50 years, the Civil Rights Division has been an important player in achieving that progress, but as we pass each benchmark, we must turn to face the new challenges ahead.

Establishing a Civil Rights Division for the 21st Century therefore requires restoring *and* transforming the Division – not in an effort to re-create the Civil Rights Division of an earlier era, but rather to prepare ourselves to tackle the challenges before us today, and to ensure we are nimble enough to address the challenges on the horizon.

I know it will not be easy, but the Civil Rights Division will meet the new challenges it faces. We will implement the GAO's recommendations and do much more by enforcing all the laws in fair, aggressive and independent fashion, using all the tools available to us. We will need your help, input, and support, in fulfilling our mission, and I look forward to working with you in the months and years ahead.

Thank you once again for the opportunity to testify. I welcome your questions.

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Mr. NADLER. I thank you.

And I will begin the questioning by recognizing myself for 5 minutes.

Mr. Perez, I was very concerned about the examples that the GAO found during 2001 to 2007 of civil rights cases, particularly in employment and voting, in which career civil rights attorneys wanted to pursue investigations but were forbidden from doing so, as we have discussed. For example, the GAO found that the career staff at the voting section wanted to pursue a claim that African American voters were illegally intimidated by state officials over

the course of a voter fraud investigation, but that officials at the division front office where political appointees work refused to even allow "any further contact with state authorities on this matter."

In employment, the career attorney wanted to go forward with a supplemental investigation in a pattern and practice case, but all the file said was that the matter was closed with no further information as to why it was closed or anything else.

As the top political appointee in the division, what would you do or instruct your staff to do in those types of cases where career attorneys want to pursue investigations?

Mr. PEREZ. Thank you for your question, Mr. Chairman. In connection with the voting case that you mentioned, first of all, my first learning of that was when I read the GAO report, and we have taken further action once I learned of it in the GAO report. I can't comment further regarding the specifics other than to say that, thank you for having the GAO report, which brought it to our attention. And similarly, the other matters that you mentioned.

It is really important—I think part of the restoration part of the agenda of the Civil Rights Division involves communication, and we have implemented a number of systems, Mr. Chairman, which ensure that we have active communication with our attorneys. We have had to make a number of critical calls in various cases and I have met with career staff and I have gone around the room, "What is your opinion? What is your opinion? What is your opinion?" because I want everyone's opinion. I don't care if everyone has the same opinion; I believe that decision making is best when you have the robust dialogue that existed when I worked for John Dunne and existed when I worked for Deval Patrick, and that is the dialogue that I think leads to good decision making.

Mr. NADLER. Thank you. Well, I assume you would not tolerate a case being closed for political reasons.

Mr. PEREZ. Correct.

Mr. NADLER. And can we get an assurance from you that you will look into the cases specified in the GAO report and report back to us as to what you find?

Mr. PEREZ. Yes.

Mr. NADLER. And to what actions you end up taking?

Mr. PEREZ. Yes.

Mr. NADLER. Thank you.

As I have stated at previous hearings, I have been very concerned—and you mentioned—the decrease in pattern and practice cases in the division under the last Administration. As you know, these pattern and practice cases are the cases that really have the most impact in employment, housing, and other areas because they are general cases.

Can you explain what steps you are taking or will take to restore the bipartisan tradition of aggressively pursuing pattern and practice cases, including cases based on disparate impact?

Mr. PEREZ. Yes. Again, there are two types of discrimination. There are two ways to prove discrimination, as you have correctly pointed out—proving intentional discrimination or proving that there was a policy and practice that had a disproportionate adverse impact. And those cases, the facts demonstrate, were few and far between over the last 8 years.

And so in the lending context, for instance, which is a top priority of the Attorney General and a top priority of mine, we are using that too. And every circuit that has looked at the issue of whether disparate impact is a viable theory, whether it is housing, whether it is voting, whether it is employment, has said that disparate impact is indeed a viable theory.

So both in the housing context, and the employment context, in the Section 2 voting context, where you can show effects and intentional discrimination, we will be using all of the tools in our arsenal as we move forward assuming the facts support moving forward under that theory.

Mr. NADLER. And thank you.

Now, a third subject: As you may know, our Subcommittee has had a series of oversight hearings on the division in the past, and I have become very concerned about how under the last Administration the bipartisan tradition of effective civil rights enforcement was severely damaged in a number of areas. You have indicated that your goal for the division—and you have stated several times this morning—is restoration and transformation.

Can you explain more specifically what you intend to do to restore that bipartisan tradition?

Mr. PEREZ. Well again, I came to the civil rights division when Ed Meese was the Attorney General. I entered as a career hire under Dick Thornberg. I have profound respect for John Dunne. I served on the hiring committee under Republican and Democratic administrations.

And everything I have learned in my professional career was built upon the foundation of serving as a career attorney during this period of time. And that bipartisan tradition of decision making that is governed by a careful review of the facts and the application of the facts to the law, that is what we will ensure exists in 100 percent of the matters that we review in this division.

Mr. NADLER. Thank you.

And my last question is, we are coming up on the census in the next couple years, and I am very concerned about the census and the need to avoid undercounting and the significant amount of redistricting that will result based on the data that the census collects. I know the Commerce Department has the responsibility for the census, but your division is responsible for reviewing districting plans, both to consider whether plans in Section 5 jurisdiction should be pre-cleared and to consider whether other redistricting plans have discriminatory effects under Section 2.

Can you explain what you are planning to do or have done in these areas, particularly to get ready for the significant work you will have to do on redistricting in the next few years?

Mr. PEREZ. We are meeting regularly with our colleagues in the Census Bureau. I actually have a call later today with the general counsel at the Department of Commerce, Mr. Kerry, to continue our discussion on a host of issues.

We are ramping up staffing-wise and we are very grateful that the President's budget includes a healthy increase for the Department of Justice. If the budget is adopted—and hopefully when the budget is adopted—there will be 102 new slots and I am quite confident that a substantial portion of those slots will be allocated not

only for attorneys but for analysts, because when the data comes in we need to have that core competency to review that data and make the requisite judgments about various plans that are under submission.

And so we have a very robust agenda so that we are going to be prepared for not only the census but for the redistricting that follows it and to implement the Northwest Austin decision so if we get requests for bailout we are prepared for that.

Mr. NADLER. Thank you very much.

My time is expired. I now recognize the gentleman from Arizona.

Mr. FRANKS. Well thank you, Mr. Chairman.

Thank you, Mr. Perez, for being here. Mr. Perez, I know we are all familiar with the mass shooting tragedy at Fort Hood.

Mr. PEREZ. Yes, sir.

Mr. FRANKS. Major Hassan, the alleged shooter in that situation, has made statements in the past suggesting that crimes like this should be expected by the military due to the religious motivations of military personnel who would balk at being sent to fight in Islamic lands. He also said that military members or those who are not Islamic would be targets of such crimes.

And so I guess my question to you: If a crime is motivated by animus toward a group who failed to belong to a certain religious group—are you with me?—if a crime is motivated by animus toward a group who failed to belong to a certain religious group, as in the case of Major Hassan's stated rationale of crimes, then does that mean that Major Hassan—that his crime was actually a hate crime as well?

Mr. PEREZ. The crimes that occurred in Fort Hood were unspeakable——

Mr. FRANKS. But were they hate crimes? Was it a hate crime?

Mr. PEREZ. I have not been involved in the investigation of that. It is a criminal investigation and so I don't have——

Mr. FRANKS. In the situation that I have given you, if—let me just put in hypothetical. If a crime is motivated by animus toward a group who failed to belong to a certain religious group, as in the case of Mr. Hassan's crime, would that then be a hate crime? If someone perpetrated a violent crime based on someone not being a member of a particular religious group would that be a hate crime?

Mr. PEREZ. We have prosecuted a number of cases——

Mr. FRANKS [continuing]. The question, Mr. Perez?

Mr. PEREZ. I am attempting to, sir.

Mr. FRANKS. Okay.

Mr. PEREZ. We have prosecuted a number of cases in the civil rights division under 18 of the United States Code, Section 245, which prohibits force or threats of force against another person on account of a person's race, color, national origin, religion. And so if there are racial—if there are religiously-motivated acts of violence and we can demonstrate that that person acted on account of that religious animus and on account of the person exercising what is called a federally-protected right, under Section 245, then those are the types of cases that are brought under Section 245. And there have been a number of cases relating to desecrations of

mosques, desecrations of synagogues, desecrations of other places of worship.

Mr. FRANKS. Well, I think that is a close as I am going to get, and I appreciate it, because I think under your answer that Mr. Hassan's crimes would be hate crimes. But that is—we will let the other people decide.

I don't think I have time to ask a second question, but it is related to the Black Panthers case. My understanding from Ms. Loretta King, who was acting as a political appointee at the time, is the person most likely for being responsible for ordering the dismissal of this case. And because of this decision by the Department of Justice the department was taken to task by the U.S. Commission on Civil Rights for dismissing this case that would have been probably a slam-dunk case for the department.

And in what is arguably the worst and most egregious and most high profile nationally-televised violation of Voting Rights Act in broad daylight, in which members of the New Black Panthers wield nightsticks at a voting poll entrance while shouting racial slurs—I mean, that is a pretty high profile case—the department dismissed the case and they failed to answer questions about this dismissal that have come from Members of this Committee, other Members of Congress, and now even the U.S. Commission on Civil Rights.

And I understand that the department policy may prevent you from speaking to the media about pending investigations, but there is an exception for matters of the public interest. And further, your internal policy shouldn't undo the duty that you have to answer to the oversight committees of the people's Congress. And of course there are Federal statutes that require all Federal agencies to cooperate fully with the Civil Rights Commission.

And my understanding is that Chris Coats and Christian Adams, two lawyers at the DOJ who had responsibility for this case, have received subpoenas from the U.S. Commission on Civil Rights. And I also understand that the two of them have been instructed not to comply with these subpoenas by the department, and that at least one of them has hired a lawyer to assist him in how to handle the conflicting mandates of complying with Federal law by telling the U.S. Commission on Civil Rights the truth versus complying with the demands of the political appointees by the Obama Department of Justice.

So my question is, will you cooperate with the U.S. Civil Rights Commission subpoenas to the department employees regarding the dismissal of the lawsuit against the Black Panthers—New Black Panthers case for voter intimidation in Philadelphia by instructing your employees to comply with the commission's subpoenas, and will you instruct your employees to tell the truth to the U.S. Commission on Civil Rights? Will you do that?

Mr. PEREZ. Sir, thank you for your question, and a number of things I want to correct. Loretta King is a career attorney, has been a career attorney for roughly 30 years, has never been a political appointee in the civil rights division.

Mr. FRANKS. I stand corrected.

Mr. PEREZ. The case was not dismissed. The case was reviewed by two attorneys, including Loretta, who have a combined total of

60 years of experience, and they made the determination that, based on the law of the third circuit, that the case against the person who wielded the stick, that we should indeed seek the maximum penalty, and that maximum penalty was sought and obtained, and the case against the other defendant should be dismissed, and the case against the national party should also be dismissed. So that was the determination that was made and so I needed to correct the record because the case was not indeed dismissed and those two career attorneys, with 60 years of experience, made that decision.

The requests from the Civil Rights Commission to which you refer were received shortly before Thanksgiving and the Civil Division, which handles all such requests, sent a letter to the Civil Rights Commission shortly after that receipt outlining the very extensive protocols that exist, and have been in existence for decades under DOJ policy, for handling requests of this nature. And we are awaiting word from the Civil Rights Commission because that letter, as I understand it, because the Civil Division is handling that request—that letter made a number of requests of the Civil Rights Commission and the ball is in their court to respond.

So those protocols, which again, are nonpartisan protocols that have been in place pursuant to a 1951 Supreme Court decision and regulations that were promulgated there too, those protocols will govern and we look forward, under the leadership of the Civil Division, to getting the answers to some of the questions that Civil Division asked of the Civil Rights Commission as we move forward.

Mr. FRANKS. Thank you, sir.

And thank you, Mr. Chairman.

Mr. NADLER. Thank you.

I will now recognize the distinguished gentleman from North Carolina for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Welcome, Attorney Perez.

Mr. PEREZ. Thank you.

Mr. WATT. Great to see you here. I welcome the tenor and tone and content of your opening statement, and never like to miss the opportunity publicly—although Mr. Sensenbrenner generally disappears after he beats up ACORN—I never like to miss the opportunity publicly to join with you in praising him for his role in the extension of the Voting Rights Act. We differ on a number of issues, but I don't think there was a more ardent fighter for the extension of the Voting Rights Act than Chairman Sensenbrenner—or Ranking Member Sensenbrenner, I guess it was at the time that that reauthorization was going on.

You mentioned a couple of times—once in your opening statement and I think once in response to Chairman Nadler's question—that one of the things you are planning to do is pursue lending discrimination cases, and I just wanted to delve a little bit into that further because I understand that Attorney General Holder has set up a kind of a task force or a division or something special to deal with the kind of meltdown financial crisis issues, as I understand it, that got us into the economic meltdown substantially.

One part of that is a gross, obvious pattern of discrimination against minorities in the extension of credit because even well fi-

nancially qualified minorities ended up getting disproportionately subprime loans. And it seems to be that that part of it has a civil rights component to it.

Can you talk to us a little bit about how the Civil Rights Division will work with this new task force and your perception of whether it may be possible to, as a sub-part of that larger task force responsibility, delve further into the massive financial services discrimination that was taking place with respect to loan decisions made about extending credit to minorities?

Mr. PEREZ. Thank you for your question. And I am part of the task force. The Attorney General set up this task force.

It is an interagency task force so it doesn't simply involve the Department of Justice. It involves HUD; it involves people at the Fed; it involves people at Treasury, et cetera.

And I am a co-chair of the nondiscrimination working group in that task force, and you are indeed right. The foreclosure crisis has touched every community, but the data is overwhelmingly that it has disproportionately touched communities of color. I saw that as I spearheaded Governor O'Malley's foreclosure prevention efforts in Maryland, where African Americans and Latinos were disproportionately victimized and subjected to discrimination, quite frankly. And that is why there is a civil rights dimension to this challenge.

There are two jurisdictional hooks that the Civil Rights Division has: the Fair Housing Act and the Equal Credit Opportunity Act. In the Clinton administration, these provisions were used to hold accountable lenders who had engaged in the precise types of practices that you describe. Decatur Federal Savings & Loan in Georgia is one example; Chevy Chase Bank is another example.

And we will and must use those tools again to ensure that both, in the origination side and in the modification side, there is not discrimination. And that is precisely what we will do in the Civil Rights Division.

Mr. WATT. So you view that civil rights component—the discrimination component—as being part and parcel of this—the responsibilities of this task force that the Attorney General has set up?

Mr. PEREZ. And the Attorney General views it that way as well. And it gets back to Chairman Nadler's question about disparate impact, because many of these cases are made by using disparate impact theory, and that was how Decatur—well, Decatur was both an intent and a disparate impact theory, but that is a very important component in our arsenal as we move forward.

Mr. WATT. Thank you, Mr. Chairman. My time is expired, and I yield back.

Mr. NADLER. I thank the gentleman.

And I now recognize the gentleman from Iowa for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

Mr. Perez, thank you for your testimony. There are a number of subjects I would like to take up.

One of them that caught my interest in your response to one of the other Members was that in the Philadelphia case of the New Black Panthers voter intimidation, which I believe was the most clear cut open and shut case of voter intimidation in the history of the United States of America, you stated that the case was not dismissed but it was reviewed and that the maximum penalty was ob-

tained for one individual. What was the charge and what was the maximum penalty that was obtained, and was that a confession? What was the case of the disposition of that penalty?

Mr. PEREZ. The maximum penalty available under the relevant provision of the Voting Rights Act, Section 11, is injunctive relief, and that was the penalty that was obtained in that particular case against that particular person.

Mr. KING. In other words, don't do this again.

Mr. PEREZ. And the injunction is in place until 2012. Those are the statutory tools that we have. If Congress chooses to amend those statutory tools to provide additional penalties we will, of course, enforce the statutory tools that you provide us.

Mr. KING. But to make this clear, for the clearest case of voter intimidation, a paramilitary—similar paramilitary uniformed individual standing in front of the polling place in Philadelphia with what has been described as a billy club and uttering racial epithets to people coming in to vote, the only penalty—the strongest penalty that you have available is injunctive relief.

Mr. PEREZ. That is the statute—that is what the statute provides, sir, and that was the penalty that was sought and obtained against that individual——

Mr. KING [continuing]. Charges that might have applied that were outside the Voting Rights Act?

Mr. PEREZ. I am sorry?

Mr. KING. Did you review if there were any other charges that might have applied outside of voter intimidation?

Mr. PEREZ. Well again, I wasn't here at the time. It is my understanding that a criminal review was conducted and the judgment was made to decline prosecution of that matter. The local authorities also showed up——

Mr. KING. Would you be willing to go back and take another look at that case, Mr. Perez?

Mr. PEREZ. Pardon me?

Mr. KING. Would you be willing to go back and take another look at that case?

Mr. PEREZ. Well, there are multiple reviews of—going on by the Office of Professional Responsibility and I look forward to the results of their review, and I welcome their review.

Mr. KING. Okay. Then on the issue that has to do—I am going to first take you down through a couple of empiration questions if I can. You are familiar with the DREAM Act——

Mr. PEREZ. Yes, sir.

Mr. KING [continuing]. The DREAM Act that provides for in-state tuition discounts for students who are unlawfully present in the United States. And I am looking at a quote from you that says, "We have a legal obligation to make the same commitment to hundreds of immigrant high school students who have made Maryland their home." You don't say illegal immigrant high school students; I presume that is what you mean. Did you say that? And if so, what would be the legal obligation to provide tuition discounts to those that are in the United States illegally and otherwise deportable?

Mr. PEREZ. The DREAM Act and similar provisions have been enacted across this country by Republican and Democratic gov-

ernors—Texas, California, Utah, New York, and other places, and when I was serving in state government—or in local government, I think that is the context of that—I talked about how people who came here at the age of three or four through actions of their parents——

Mr. KING. You are referencing the state statute of this DREAM Act in Maryland.

Mr. PEREZ. Correct.

Mr. KING. Are you aware of the Federal statute that prohibits those tuition discounts from being offered to any student unless they are offered to every student who is also lawfully present in the United States, regardless of their state of residence?

Mr. PEREZ. I am aware of the fact that this is an issue that has been under discussion in Congress for a number of years. I haven't participated in that debate.

Mr. KING. Were you aware of the Federal statute that I was referencing?

Mr. PEREZ. I am aware of the fact that—the statute that I was referring to in Maryland was a statute that would mirror Texas, Utah, California, and other states that allowed in-state tuition for people who had been living in their state and who made a commitment to adjust their status as soon as they became eligible to do so.

Mr. KING. With regard to the state statute in Maryland versus the Federal statute that prohibits a special discount for illegals unless that same discount, in-state tuition, is offered to every American citizen student whatsoever—were you aware that there is a conflict between the state statute and the Federal statute?

Mr. PEREZ. Well, the other states have—a number of other states have implemented this and it is my understanding that——

Mr. KING. Without regard to other states, I am speaking of Maryland.

Mr. PEREZ. Yes. It is my understanding that there are ways to devise that legislation at a state level, as Republican and Democratic governors have done——

Mr. KING. You really weren't so sure that what you said here, "We have a legal obligation to make the same commitment to hundreds of illegal immigrant high school students who have made Maryland their home"—you really weren't that confident, I don't think, Mr. Perez, and I regret that my time has expired. I do appreciate your testimony.

Mr. PEREZ. Thank you, sir.

Mr. KING. I yield back to the Chairman.

Mr. NADLER. Thank the gentleman.

I now recognize for 5 minutes the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

And welcome, Mr. Perez.

Just very briefly on the ACORN case, there is obviously a lot of fraud. People were being paid for registrations and they were submitting to their employer registrations that were fraudulent to make the money. My question is, how many people, on the evidence that you have available, actually voted as a result of this fraud?

Mr. PEREZ. I can't answer that question, sir.

Mr. SCOTT. Is there any evidence that anybody voted?

Mr. PEREZ. I don't know the answer to that, sir.

Mr. SCOTT. Okay. Under the Voting Rights Act felony disenfranchisement is alive and well in many states. Is there anything that the Federal Government can do to address that where the felony disenfranchisement has the effect or was instituted with the intent to have an adverse effect on the minority community?

Mr. PEREZ. Well, the issue of felony disenfranchisement has been addressed by a number of states in recent years, and obviously I appreciate your leadership on this issue. I recall my time with Senator Kennedy and your leadership on this issue. And again, it continues to be an issue that is the subject of discussion as we move forward.

Mr. SCOTT. Is there anything the Federal Government can do constitutionally to restore the right felons and states where the felony disenfranchisement laws have had the effect or were implemented with the intent of diluting minority voting strength?

Mr. PEREZ. If we receive an allegation of that nature we will certainly investigate it.

Mr. SCOTT. Is there anything you can do in light of the constitutional provisions that the states get to decide who registers and felony disenfranchisement is legal?

Mr. PEREZ. I would have to review specific factual circumstances. It is very difficult to talk in generalities about this.

Mr. SCOTT. On housing, there are reports that there is still widespread discrimination in housing. Hopefully your answer to that issue will be too long for my little 5 minutes, so if you could provide information on your strategies to reduce discrimination in housing I would appreciate it.

Mr. PEREZ. Happy to.

Mr. SCOTT. And also, on widespread discrimination in employment, we have had reports that if your resume sent in reflects ethnic minority—the person is a minority—that alone will diminish the opportunities they may have. And if you could provide information on strategies of reducing employment discrimination I would appreciate that.

A couple years ago the Bush administration Office of Legal Counsel issued a memo suggesting that the Religious Freedom Restoration Act actually overruled statutory antidiscrimination laws. Are you familiar with that Office of Legal Counsel memo?

Mr. PEREZ. I have not reviewed it myself, sir.

Mr. SCOTT. You know what I am talking about?

Mr. PEREZ. I am aware of the issue in general terms, yes.

Mr. SCOTT. Well, if you could take a look at that, because it was not the intent of anybody who was involved in the passage of the Religious Freedom Restoration Act, and there are a number of groups—religious groups—that have complained that it was inaccurate.

Since 1965 to 2001 anybody running a federally-funded program could not discriminate based on race, religious, race, color, creed, national origin, or sex. The Bush administration changed that so that some can, in fact, discriminate based on religion, and inferentially, probably race. When is the Administration going to restore the law the way it was from 1965 to 2001?

Mr. PEREZ. I think this Administration—I know the Administration is committed to ensuring that we partner with faith-based organizations in ways that are consistent with both our laws and our values——

Mr. SCOTT. The law changed, and we want to know when they are going to change the law back. The President, during his campaign, said that he would have faith-based organizations with no discrimination, no prostelization. My question is, when are we going to get around to implementing that?

Mr. PEREZ. Again, I think the department will continue to evaluate these legal questions that arise with these programs to ensure——

Mr. SCOTT. It is not a legal question; it is a policy question.

Let me get one more question in. You mentioned trafficking—Section 1593(a) has a lower standard for prosecuting trafficking. It says, "Whoever knowingly benefits financially or by receiving anything of value from participating in a venture which was engaged in any act in violation of Section 1581(a), knowingly or recklessly disregard the fact that the venture was engaged in such violations shall be fined and imprisoned."

That removes the requirement that you have to prove force or coercion in terms of a pimp forcing or coercing a prostitute from engaging in the activity. It just says if he benefits financially that is all you have to prove. Can you get back with me and let me know how the Administration is using 1593(a) instead of the more problematic statute—a lot of people it is hard to get the testimony because people are intimidated. If you could get back to us and let us know how you are using 1593(a) rather than the other statutes I would appreciate——

Mr. PEREZ. I am happy to get back to you.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. NADLER. I thank the gentleman.

I now recognize the gentlelady from California for 5 minutes.

Ms. CHU. Thank you, Mr. Chair.

Mr. Perez, you said that the GAO report indicated that during the last 7 years of the last Administration that was examined by that report, hate crime prosecutions dropped. I was particularly shocked by this. I was the chair of California State Assembly's select committee on hate crimes and I know that hate crimes increased in California by 300 percent in the year following 9/11, particularly against Arabs and Muslims and those thought to be Arab or Muslim.

Can you explain what happened and also how, under your leadership, enforcement of hate crime laws will be different from that of your predecessors?

Mr. PEREZ. Sure. Again, by way of reference, in 1994 there were 35 hate crime prosecutions; in 1995 there were 43; in 1996 there were 38. By comparison, in 2005 there were 12, 2010 there were—2006 there were 10, 2007 there were 12, 2008 there were 21, 2009 there were 24, trending in the right direction but still a ways to go. And again, it gets to my point that trafficking is a very important priority and will continue to be a priority but we can't do these cases at the expense of other cases.

We certainly have seen and the data demonstrates increases in hate crime activity across the country, and we know that the FBI data understates the extent of the problem because a number of jurisdictions don't report. So we have the new statute that I started working on in 1996 when I was working with Senator Kennedy that is going to give us additional tools to address some of the jurisdictional hurdles that have prevented us from bringing some of these cases in recent years, and I think that will really allow us to put our best foot forward.

The Attorney General is very personally committed to moving forward on these and we have, I think, a very—again, with the resources that will hopefully flow from the budget that we hope will be passed in the near future, that will provide us with opportunities to expand our hate crimes enforcement.

Ms. CHU. Thank you. That is very good news.

On another topic, the Voting Rights Act, of course we know it is critical to ensuring the democratic participation of all citizens, especially racial and language minorities. But the GAO report found that when compared with the Clinton administration there was a significant drop in the enforcement, and it found a sharp decline of that enforcement from more than four cases a year under Mr. Clinton to fewer than two cases a year under Mr. Bush.

The Voting Rights Act is particularly important to my district, with its large number of Latino and Asian Americans who are primarily proficient in other languages. What emphasis will you place on Section 203 issues, which does have to do with language minority persons, and how will you ensure that protecting the democratic rights of communities with large percentages of non-English speaking people is still a priority for the Civil Rights Division?

Mr. PEREZ. The Section 203 work that was done by the Bush administration was very important and very effective, and we will continue that. However, you cannot do Section 203 work at the expense of Section 2. In the Clinton administration the voting section filed 35 section 2 cases; in the Bush administration 15 were filed.

Section 2 is a lynchpin of the Voting Rights Act and our voting rights protection in the country, and I think we can do both. I don't think it is an either/or question. If we leverage our resources properly we have the additional resources coming that I mentioned, and the partnerships that we can put in place with the U.S. attorneys' offices, I think all of these—and frankly, working smarter and working more efficiently, I am confident that we can accomplish everything that we need to accomplish to ensure that we enforce the laws—all of the laws.

Ms. CHU. Okay. Thank you.

And finally, the January report by the department's inspector general cited internal e-mail and personnel files and it confirmed that in the last Administration that political appointees sought to hire conservatives and block liberals to career positions, contrary to civil service laws. I understand that the Attorney General is committed to making the Civil Rights Division one of the strongest in the department, and to that end you are expecting to hire 60 to 100 additional employees.

What will you do to ensure that these new staffers have a range of diverse backgrounds and experiences? And what departments

within the Civil Rights Division will you focus these additional staff resources? And how does this reflect your priorities?

Mr. PEREZ. Sure. Three of the priority areas that I have discussed a number of times have been our fair lending work, our voting rights work, and our hate crimes work, and so I expect that a substantial portion of the new resources will be focused in those areas. We haven't made the final staffing allotments yet, but budgets should reflect your priorities and so those areas will receive substantial attention as we move forward.

Ms. CHU. And the diversity of the——

Mr. PEREZ. Oh, yes. And again, our Web site has our new, written hiring policy. I apologize for not addressing that. And I am confident our—the new policy, which is much more transparent and available to anyone who is interested in applying, specifically sets forth that we are looking for the best qualified people, and I believe that we can—for instance, in the 203 context I have been—I have spent a lot of time in California in my short tenure in this job and there are many people out there—I keep encouraging them to apply—a lot of 203 experts and advocates, and I am confident that in the end of the day we will recruit both the best qualified candidates and candidates that reflect those diverse backgrounds. That is certainly the best way to restore and to carry out our mission.

Ms. CHU. Thank you.

I yield back.

Mr. NADLER. Thank you.

I will now recognize the gentleman from Georgia for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Perez, the stats that you just gave to us about the number of cases that the Civil Rights Division has handled insofar as hate crimes—are those statistics right there, are they based on data that was acquired during the Bush administration?

Mr. PEREZ. This is data—for instance, the criminal prosecutions that I just described, I have data going back to 1993. When I was a career attorney in the section we kept data every year, and so that is why I can tell you that in fiscal year 1994 there were 35 hate crimes cases brought. Of those 35 cases, 16 were cross-burning cases and the remainder were other sorts of cases. So this data has been collected throughout a number of years.

Mr. JOHNSON. Now, your record-keeping—the GAO report talks about the record-keeping and it being a real problem for this division under the Bush administration. What specific steps have you taken to improve your information systems and does that deficiency have any connection to the recent data that you rattled off to us over this current decade?

Mr. PEREZ. The data on the number of cases, I am confident, are accurate data, but that does not obviate the need for us to implement the recommendations that were set forth in the GAO report. I actually am having a meeting next week with a technology working group that we are putting together so that we can ensure that we are in the 21st century technologically, that we have systems in place that can capture almost any question that you might pose to use regarding the casework that we do.

So we have plenty of room for improvement, and that was documented in the GAO report, and we remain committed to implementing those steps.

Mr. JOHNSON. In a particular division where the deficiencies are greater than the others——

Mr. PEREZ. I am sorry, I was unable to hear you.

Mr. JOHNSON. Is record-keeping at any of the divisions——

Mr. PEREZ. Yes.

Mr. JOHNSON [continuing]. Of civil rights—are there any particular departments that seem to stand out as far as these statistics are concerned?

Mr. PEREZ. Well, the statistics in terms of——

Mr. JOHNSON. Well, let me ask the question——

Mr. PEREZ [continuing]. Cases going up and down, or just the data collection capacity?

Mr. JOHNSON. Let me ask a question. The Civil Rights Division, the voter rights division—the division that deals with voting rights—have those been particularly problematic during the course of the last 10 years?

Mr. PEREZ. The data speaks for itself. I mean, there were certainly a lesser number of Section 2 cases that were brought. There was enhanced enforcement in Section 203; there were a number of cases brought there. And there were other areas where there wasn't as much done. The data certainly bears that out.

Mr. JOHNSON. Are there any officials in your department—high level officials—who were appointed under the Bush administration and their positions turned into career positions so that they could stay?

Mr. PEREZ. I think you are referring to the phenomenon of burrowing in—non-career people who became career people. I would want to confirm that and get back to you. I am unaware of any non-career people who burrowed in, but I haven't examined it carefully enough to feel 100 percent confident in that answer as it relates to the Civil Rights Division, and I will be happy to get back to you.

Mr. JOHNSON. And a problem with burrowing in is the fact that new policies could be changed somehow. Will you get back to me on——

Mr. PEREZ. Absolutely.

Mr. JOHNSON [continuing]. On that issue?

Mr. PEREZ. I will certainly. Thank you, sir.

Mr. JOHNSON. Thank you.

Mr. NADLER. Thank you.

I now recognize the gentleman from Texas for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

Thank you for being here, Mr. Perez.

Mr. PEREZ. Good morning, sir.

Mr. GOHMERT. I appreciate that very much.

Hypothetical: If in November 2010 you receive evidence that two members of the KKK in Mobile, Alabama appear, from the evidence you receive, to have been intimidating potential voters what would be the reaction of your office?

Mr. PEREZ. We will receive the allegation, we will conduct an investigation, we will apply the facts to the law and reach a conclusion.

Mr. GOHMERT. If you have people who are long-term employees of the Department of Justice and the Attorney General's office who indicate that this is clearly abuse and you can take action against the individuals and on getting a judgment you would be able to pursue discovery and find out whether it was a widespread plot or just locally, wouldn't you go ahead and pursue that?

Mr. PEREZ. We will include all of the people involved in the decision making process——

Mr. GOHMERT. Then why would you not do that with the Black Panthers when you got the video of what occurred in Philadelphia instead of ordering the dismissal of what was clearly going to be a judgment and could have allowed for discovery to be forthcoming and sought out whether or not there was a widespread conspiracy or whether this intimidation was limited to Philadelphia?

Mr. PEREZ. Sir, two career attorneys with over 60 years of experience reviewed the decisions that were made on January 7, 2009 by the previous Administration, reached a conclusion that the charges against one of the defendants were warranted, sought and obtained the maximum penalty, and concluded that based on the facts and the application of the facts to the law that the charges were not sustainable against the remaining defendant. And——

Mr. GOHMERT. Were you aware that they did not even file an answer? How is that not sustainable? They didn't file an answer. They were going to get a judgment. And what were the names of those two career officers who could not figure out that the judgment that the judge had asked for and to be prepared and submitted that it certainly appeared he would sign, there was no response—what are the names of those two individual brilliant legal jurists who said they couldn't get a judgment?

Mr. PEREZ. The law of the third circuit requires that before a default——

Mr. GOHMERT. Okay. But what were the names of the two career individuals——

Mr. PEREZ. Loretta King and Steve——

Mr. GOHMERT. My question is——

Mr. PEREZ. Loretta King and Steve Rosenbaum, sir——

Mr. GOHMERT. I guess, okay, thank you. Loretta King and who else?

Mr. PEREZ [continuing]. And they came up and made themselves available——

Mr. GOHMERT. Loretta King and who else?

Mr. PEREZ. Steve Rosenbaum, who was the Acting Deputy Assistant Attorney General for Civil Rights.

Mr. GOHMERT. Had those two been handling the case?

Mr. PEREZ. They were the two people in the front office—the two career people—who were overseeing that case.

Mr. GOHMERT. They were overseeing but they were not handling that case, were they?

Mr. PEREZ. They were reviewing the case, and they reviewed the entire record and made the judgment regarding the application of the fact to the law.

Mr. GOHMERT. Is it your opinion, with your distinguished career and your great education and experience, that when you have a judgment that the judge has asked for and the respondents have not responded that you could not get a judgment in that case? Is that your opinion?

Mr. PEREZ. Sir, it is my view that we have to follow the laws of the circuit, and in the third circuit the law is that if you are going to seek a default judgment you need to be able to represent to the court—there is a rule, Rule 11, that requires you to be able to represent to the court that the charges you are putting forth are charges that are supported by the facts and the evidence, and——

Mr. GOHMERT. Did you review the video of those guys out in front of that polling place?

Mr. PEREZ. Whenever a case is brought to anyone's attention——

Mr. GOHMERT. My question is, did you review the video of the individuals out in front of that polling place?

Mr. PEREZ. It is important, Congressman, to review the totality of the circumstances and not make——

Mr. GOHMERT. And I am asking you to get to the totality you reviewed, if anything, did you review the video of those guys out in front of the polling place, and one of them with a billy club?

Mr. PEREZ. Sir, I am not the person who reviewed the case because it was—I was not working——

Mr. GOHMERT. So your answer to my question is no, you did not review that video. Is that correct?

Mr. PEREZ. Sir, I have incredible confidence in the judgment of the two career people who made the judgment——

Mr. GOHMERT. So the answer to my question is no, you never saw the video. Isn't that right?

Mr. PEREZ. I have actually seen the video, sir——

Mr. GOHMERT. Okay, there we go. Thank you.

Mr. PEREZ [continuing]. But I——

Mr. GOHMERT. Thank you. That was the question. That helps me know whether you reviewed the totality of the circumstances yourself.

Mr. PEREZ. No, I haven't reviewed the totality of the circumstances myself, and I look forward to the report of the Office of Professional Responsibility, which was asked for by this Committee and——

Mr. GOHMERT. And Mr. Perez, as smart as you are you know how important around the world that it is to avoid voter fraud and voter intimidation, and so in Iraq they dip their finger, under threat of death, in purple permanent ink knowing that they would be subjected to death. And here we can't even get the Justice—I don't care which Administration——

Mr. NADLER. Time is expired, but I will let the witness answer the question.

Mr. GOHMERT. But you understand——

Mr. NADLER. The gentleman's time is expired. The witness may answer the question.

Mr. KING [continuing]. Unanimous consent the gentleman be recognized for an additional minute.

Mr. PEREZ. I am not sure what the question is, sir.

Mr. NADLER. We cannot do that. We have 6 minutes left on the vote on the floor.

The witness may answer the question.

Mr. PEREZ. I wasn't sure that there was a question——

Mr. GOHMERT. The question started with, were you aware? Or, you are aware of how important——

Mr. PEREZ. Sir, I certainly share your desire and interest in ensuring that elections are carried out in a manner that is free of intimidation, and I also share your desire to ensure that investigations are fully and fairly carried out. I look forward to the results of the OPR investigation. We have cooperated fully; we will continue to do so and await their results.

Mr. GOHMERT. Please do so with the KKK or anybody else that you find there is evidence of voter intimidation.

Mr. PEREZ. Yes, sir.

Mr. NADLER. Thank you.

Without objection the gentleman from Virginia is recognized for—briefly to ask a question which the witness will give an answer to later.

Mr. SCOTT. Thank you.

If you could get back to me on the answer, under Parents Involved in Community Schools v. Seattle and the Michigan affirmative action cases the court has made it clear that voluntary desegregation programs and affirmative action programs are legal but only if they are done correctly. My question to you is if you could provide us the guidance you are providing to local school systems and universities and others about how to fashion desegregation programs and affirmative action programs so that they can pass constitutional muster? And if you could get back to me on that I would appreciate it.

Mr. PEREZ. I look forward to discussing that issue with you.

Mr. NADLER. So I thank the witness. I thank the Members. So that we don't miss the votes on the floor—there are now four votes on the floor; there is 4 minutes and 45 seconds left on the first vote. So we will recess the hearing until the conclusion of those votes.

I ask the Members and the witnesses to be back as soon as the votes conclude, as rapidly as possible thereafter.

Mr. Perez, you are excused with our thanks.

Mr. PEREZ. Thank you.

Mr. NADLER. And the hearing is recessed until the conclusion of the votes on the floor.

Mr. PEREZ. Thank you, Mr. Chairman.

[Recess.]

Mr. NADLER. The Subcommittee will come back to order again. I thank everyone for waiting while we were voting.

We will now proceed with our second panel, and I would ask the witnesses to take their places. In the interest of time I will introduce you once you have taken your seats, which you have.

Eileen Regan Larence currently serves as director of the homeland security and justice issues at the U.S. Government Accountability Office. In this capacity she manages congressional requests to assess various law enforcement and Department of Justice issues as well as the state of terrorism-related information sharing

since 9/11. Ms. Larence has a Master's in public administration degree and extensive experience at GAO.

Grace Chung Becker served as the Acting Assistant Attorney General for the Civil Rights Division at the United States Department of Justice from 2007 until the beginning of 2009. She previously served as an associate deputy general counsel at the Department of Defense.

She also has worked as a Federal prosecutor in the Criminal Division of the Justice Department, the Assistant General Counsel of the United States Sentencing Commission, counsel to the Senate Judiciary Committee, and an associate at the law firm of Williams and Connolly. Earlier in her career Ms. Becker clerked for Judge James L. Buckley of the United States Court of Appeals for the District of Columbia circuit and Judge Thomas Penfield Jackson on the United States District Court for the District of Columbia.

She graduated magna cum laude from the Wharton School of Finance through the University of Pennsylvania and obtained her law degree magna cum laude from the Georgetown University Law Center, where she was a member of the Order of the Coif and was an associate editor on the Georgetown Law Journal.

Joseph Rich is the director of the Fair Housing Project at the Lawyers' Committee for Civil Rights Under Law. He has served in this position since 2005.

Before joining the Lawyers' Committee Mr. Rich spent his entire legal career in the Department of Justice's civil rights division, where he litigated and supervised hundreds of civil rights cases. From 1999 to 2005 he has served as chief of the voting section.

Prior to his tenure in the voting section, Mr. Rich spent 12 years as deputy chief in the Housing and Civil Enforcement Section of the Civil Rights Division. Additionally, he served as deputy chief and trial attorney in the Civil Rights Division's Educational Opportunities Section, where he litigated and supervised approximately 100 school desegregation and other equal education cases.

Mr. Rich received his J.D. degree cum laude from the University of Michigan Law School and his B.A. in history from Yale University.

I am pleased to welcome all of you. Your written statements will be made part of the record in its entire—in their entirety. I would ask each of your to summarize your testimony in 5 minutes or less.

To help you stay within that time there is a lighting—a timing light at your table. When 1 minute remains, the light will switch from green to yellow, and then red when the 5 minutes are up.

Before we begin it is customary for the Committee to swear in its witnesses. If you would please stand and raise your rights hands to take the oath?

[Witnesses sworn.]

Mr. NADLER. Let the record reflect that the witnesses answered in the affirmative.

You may be seated.

I will now recognize in order, first, Ms. Larence for 5 minutes.

TESTIMONY OF EILEEN REGEN LARENCE, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Ms. LARENCE. Thank you, Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to summarize the results of our review of the activities of the voting, employment, housing, and special litigation sections at the Justice civil rights division from 2001 through 2007. We hope this information will serve as a useful baseline for the new Administration's future plans.

In general, the sections have obtained leads about possible civil rights violations from agency referrals, the Congress, advocacy groups, the public, media coverage, and other means. Sections pursue matters or cases based on their legal merit. They close matters without pursuing the case, for example, because of a lack of merit or evidence or because the issue can be resolved without litigation.

Sections have both statutory mandates and discretion for deciding what matters and cases to pursue. They respond to division or section priorities, and some sections give priority to matters and cases that address the pattern or practice of discrimination because resolving these can have the greatest impact.

The voting section is responsible enforcing statutes that protect the rights of racial and language minorities, disabled and illiterate persons, and overseas and military voters in addition to laws that address voter registration, voting systems, and other issues. Most of the section's 442 matters and 56 plaintiff cases involved language minorities, especially Spanish speakers under Section 203 of the Voting Rights Act, which requires bilingual voting materials.

One section chief noted this was a shift in priorities for this section, given progress in addressing racial discrimination in at-large voting systems and emerging tensions over immigration, although the current section chief said concerns with at-large systems still exist. The section pursued about a third of its matters and a fourth of its cases under Section 2 with half of these matters and three of these cases on behalf of African Americans and one case on behalf of Whites.

The section also pursued cases involving the purge of ineligible voters from registration lists, a division priority, and spent half of its time on its mandate to pre-clear almost 120,000 proposals from jurisdictions to change voting procedures. The section objected to 42 changes primarily involving redistricting.

The employment section focused most of its 3,200 matters on issues of employment discrimination against individuals and because of referrals from other agencies, although the number of referrals declined of the 7 years. The section filed 60 cases as plaintiff, including 11 pattern or practice cases, mostly involving sex and racial discrimination, including the section's first two pattern or practice cases brought on behalf of Whites.

Current section staff would not speculate on why the section focused its efforts in particular areas. We could not determine the subject and protected class of more than 80 percent of the matters for this section because the division did not require all sections to record these data or the reasons matters are not pursued in their case management system.

The housing section is responsible for enforcing statutes prohibiting discrimination in housing, credit transactions, and public accommodations as well as religious discrimination and land use. The section had discretion, except for certain referrals from HUD, which the section had to file in court.

Most of its 947 matters and 277 cases were pursued under the Fair Housing Act and involved a pattern or practice of discrimination. They addressed discrimination based on race and disabilities, in part because of section priorities, and land use, zoning, and rental issues.

The section's workload decreased during the 7 years. According to the section, this was in large measure due to HUD referrals decreasing.

As to discrimination in lending, matters addressed age and marital status discrimination and cases addressed race and national origin issues.

The special litigation section focused most of its efforts on addressing conditions of those confined in institutions, such as correctional or mental health facilities, with priority on juvenile correctional facilities. The section also enforced statutes prohibiting law enforcement misconduct, although the time spent on these issues decreased over the 7 years. At the direction of division management, the section placed lower priority on enforcing religious freedoms of institutionalized persons, including prisoners.

In closing, Mr. Chairman, I wanted to reemphasize that because the division did not require sections to record key data in its case management system the division could not fully account for its actions to the department, the Congress, or the public. We recommended that the department require sections to record data on the subject and the protected class in its case management system as well as consider how to record data on the reasons for closing matters as it explores its future case management system needs. The department agreed and is already taking actions division-wide.

Mr. Chairman, that concludes my statement, and I would be happy to answer any questions.

[The prepared statement of Ms. Larence follows:]

PREPARED STATEMENT OF EILEEN REGEN LARENCE

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, House of Representatives

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U.S. DEPARTMENT OF JUSTICE

Opportunities Exist to Strengthen the Civil Rights Division's Ability to Manage and Report on Its Enforcement Efforts

Statement of Eileen R. Larence, Director
Homeland Security and Justice

GAO-10-256T

December 3, 2009

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Highlights

Highlights of GAO-10-256T, a testimony before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, House of Representatives

U.S. DEPARTMENT OF JUSTICE

Opportunities Exist to Strengthen the Civil Rights Division's Ability to Manage and Report on Its Enforcement Efforts

Why GAO Did This Study

The Civil Rights Division (Division) of the Department of Justice (DOJ) is the primary federal entity charged with enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin (i.e., protected classes). GAO was asked to review the Division's enforcement efforts and its Interactive Case Management System (ICM). This testimony addresses (1) the activities the Division undertook from fiscal years 2001 through 2007 to implement its enforcement responsibilities through its Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation sections, and (2) additional data that could be collected using ICM to assist in reporting on the four sections' enforcement efforts. This statement is based on GAO products issued in September and October 2009.

What GAO Recommends

GAO previously recommended that the Division, among other things, require sections to record data on protected class and subject in the Division's case management system, and determine how sections should be required to record data in the system on the reasons for closing matters. DOJ concurred. The Division plans to require all Division sections to record data on protected class and subject in its case management system as well as upgrade the system to include a field on reasons for closing matters and require all sections to record data in this field.

View GAO-10-256T or key components. For more information, contact Eileen R. Larence (202) 512-8777 or larencee@gao.gov.

What GAO Found

From fiscal years 2001 through 2007, the Civil Rights Division initiated matters and filed cases to implement its enforcement responsibilities through the four sections. The Employment Litigation Section initiated 3,212 matters and filed 60 cases as plaintiff under federal statutes prohibiting employment discrimination. Most matters (3,087) were referred by other agencies. Of the 11 pattern or practices cases—cases that attempt to show that the defendant systematically engaged in discriminatory activities—9 involved claims of discrimination in hiring and the most common protected class was race (7). The Housing and Civil Enforcement Section initiated 947 matters and participated in 277 cases under federal statutes prohibiting discrimination in housing, credit transactions, and certain places of public accommodation. Most (456 of 517) Fair Housing Act (FHA) matters were initiated under its pattern or practice authority, primarily alleging discrimination on the basis of race or disability and involving land use/zoning/local government or rental issues. Most (250 of 269) cases filed as plaintiff included an FHA claim. The FHA cases primarily involved rental issues (146) and alleged discrimination on the basis of disability (115) or race (70). The Voting Section initiated 442 matters and filed 56 cases to enforce federal statutes that protect the voting rights of racial and language minorities, and disabled and illiterate persons, among others. The Section initiated most matters (367) and filed a majority of cases (39) as plaintiff under the Voting Rights Act, primarily on behalf of language minority groups (246 and 30). The Special Litigation Section initiated 693 matters and filed 31 cases as plaintiff to enforce federal civil rights statutes on institutional conditions (e.g., protecting people in nursing homes), the conduct of law enforcement agencies, access to reproductive health facilities and places of worship, and the exercise of religious freedom of institutionalized persons. The largest number of matters initiated and closed (544 of 693) involved institutional conditions (373), as did the cases filed (27).

Information on the specific protected classes and subjects related to matters and cases and the reasons for closing matters were not systematically maintained in ICM because the Division did not require sections to capture these data. As a result, the availability and accuracy of these data varied among the sections. For example, the Employment Litigation Section did not capture protected class and subject data for more than 80 percent of its matters. In contrast, these data were consistently recorded in ICM for the Housing and Civil Enforcement Section, which requires that protected class and subject data be recorded in ICM. In addition, congressional committees have requested information on reasons the Division did not pursue matters, including instances in which Division managers did not approve a section's recommendation to proceed with a case. However, ICM does not include a discrete field for capturing the reasons that matters are closed and Division officials we interviewed could not identify instances in which Division managers did not approve a section's recommendation to proceed with a case. By requiring sections to record such information, the Division could strengthen its ability to account for its enforcement efforts.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the enforcement efforts of the Civil Rights Division's (Division) Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation[1] sections from fiscal years 2001 through 2007, as well as the case management system the Division uses to track and manage these efforts.[2] Established after the passage of the Civil Rights Act of 1957,[3] the Division of the Department of Justice (DOJ) is the primary federal entity charged with enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin. The Division's mission has expanded to include the enforcement of laws prohibiting discrimination in employment, housing, voting, public accommodations, education, and the rights of institutionalized persons. To carry out these broad enforcement responsibilities, the Division initiates thousands of matters (e.g., an investigation of a complaint or an allegation of discrimination referred by another federal agency) and hundreds of cases each year. In October 2000, the Division implemented the Interactive Case Management System (ICM) as its official system to track, count, and capture performance measurement information for all matters and cases from their inception to their conclusion and to assist staff in their casework. According to Division documentation, ICM was also designed to serve as a tool for senior management to oversee the Division's work and to assist senior managers in, among other things, reporting accurate matter and case data at all levels of the organization, improving accountability, and responding to congressional inquiries about the work of the Division.

In September 2000, we reported on the reasons that the Division's Employment Litigation, Housing and Civil Enforcement, and Voting sections pursued a selection of cases and closed a selection of matters.[4] We stated that legal merit (i.e., the strength of evidence in a case) was the

[1]The Special Litigation Section is responsible for the enforcement of federal civil rights statutes in four primary areas: conditions of institutional confinement, conduct of law enforcement agencies, access to reproductive health facilities and places of religious worship, and the exercise of religious freedom of institutionalized persons.

[2]The Division has 11 sections—10 program-related sections and an Administrative Management section.

[3]Pub. L. No. 85-315, 71 Stat. 634.

[4]GAO, *Civil Rights Division: Selection of Cases and Reasons Matters Were Closed*, GAO/GGD-00-192 (Washington, D.C.: Sept. 2000).

predominant reason in the Sections' decisions to pursue allegations of discrimination as cases. We also reported that the reasons generally given for closing a matter were, among others, insufficient evidence to support allegations and corrective action was taken by the jurisdiction investigated. In addition, in February and September 2000, we reported on how the Division tracked and managed matters and cases using its Case Management System and described the new system—ICM—that the Division was implementing at the time of our review.[5] In March 2006, DOJ began the Litigation Case Management System (LCMS) project, intended to replace litigating components' individual case management systems, including ICM, with a single, integrated case management system for DOJ. However, as of September 2009, DOJ was uncertain if LCMS would be implemented in six of the seven litigating components, including the Division, raising questions as to whether the Division will need to continue to rely on ICM.[6]

My comments are based on our October and September 2009 reports on the enforcement efforts of the four sections within the Division[7] and the case management system the Division uses to track and manage these efforts.[8] My testimony will discuss the following key issues in our reports: (1) the activities that the Division undertook from fiscal years 2001 through 2007 to implement its enforcement responsibilities through each of the four sections and (2) additional data that could be collected using ICM to assist in reporting on the sections' enforcement efforts. Our September 2009 report also includes a discussion on the extent to which

[5]GAO, *Civil Rights Division: Policies and Procedures for Establishing Litigation Priorities, Tracking and Managing Casework, and Disseminating Litigation Results*, GGD-00-58R (Washington, D.C.: Feb. 2000) and GAO/GGD-00-192.

[6]DOJ's seven litigating components in place at the time LCMS was planned were the Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, and Tax Divisions and the Executive Office for United States Attorneys, which is the administrative office for the 94 U.S. Attorneys Offices.

[7]GAO, *U.S. Department of Justice: Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001 through 2007*, GAO-10-75 (Washington, D.C.: Oct. 23, 2009).

[8]GAO, *DOJ's Civil Rights Division: Opportunities Exist to Improve Its Case Management System and Better Meet Its Reporting Needs*, GAO-09-938R (Washington, D.C.: Sept. 30, 2009).

the Division has conducted and documented assessments of ICM's performance since its implementation.[9]

For our reports, we analyzed DOJ documents, such as annual reports, hearing statements, speeches, and budget documents, that described the Division's enforcement efforts (including special initiatives and areas of focus) from fiscal years 2001 through 2007. We also analyzed data from ICM on the matters initiated and cases pursued by each section for the 7-year period. We assessed the accuracy, completeness, and reliability of ICM data by analyzing data on matters initiated and closed and cases pursued by the four sections from fiscal years 2001 through 2007. To supplement our analysis and further assess the reliability of the data, we compared ICM data with information contained in documentation, such as correspondence included in files, for a nongeneralizable sample of closed matters from ICM data for each of the four sections.[10] Because our samples were not representative, we were unable to generalize the results to all closed matters the sections investigated during the period of our review. Nevertheless, our file reviews provided examples of how the ICM matter data compared to the same information in the matter files, how the sections investigated matters, and why the sections closed them. We interviewed senior officials in DOJ's Justice Management Division, which is the management arm of DOJ; the Acting Assistant Attorney General for the Division; and Division information technology officials, who are the Division officials responsible for managing and maintaining ICM. We also interviewed section chiefs, deputy chiefs, and other section staff to obtain information on the four sections' enforcement efforts during the 7-year period and how they used ICM to manage and report on these efforts. We conducted this work in accordance with generally accepted government auditing standards. More detail about our scope and methodology is included in our September 2009 and October 2009 reports.[11]

[9]GAO-09-938R. We recommended that the Acting Assistant Attorney General of the Division conduct annual assessments of the performance of the Division's case management system and ensure that these assessments are documented and maintained so they can be used to improve the performance of the system. DOJ agreed.

[10]A nongeneralizable sample may be either a nonprobability sample where observations are selected in a manner that is not completely random or a probability sample where random sampling is used, but the sample size is too small to allow the results to be generalized to the broader population.

[11]GAO-10-76 and GAO-09-938R.

Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001 through 2007

Employment Litigation Section

From fiscal years 2001 through 2007, the Employment Litigation Section initiated more than 3,200 matters and filed 60 cases as plaintiff under federal statutes prohibiting employment discrimination.[12] About 90 percent of the matters initiated (2,846 of 3,212) and more than half of the cases filed (33 of 60) alleged violations of section 706 of Title VII of the Civil Rights Act, which involves individual claims of employment discrimination.[13] Much of the Section's matters are driven by what the Section receives from other agencies. During the 7-year period, about 96 percent of the matters (3,087 of 3,212) initiated were as a result of referrals from the Equal Employment Opportunity Commission and the Department of Labor. The number of matters initiated under section 706 and the Uniformed Services Employment and Reemployment Rights Act (USERRA) declined in the latter fiscal years, which a Section Chief attributed to a decline in referrals from these two agencies.[14] In addition to addressing discrimination against individuals, the Section also initiated

[12]GAO-10-75 includes information on the process the Sections follow for handling matters and cases.

[13]Section 706 provides the Attorney General with the authority to file suit based upon an individual charge of discrimination against a state or local government employer that the Equal Employment Opportunity Commission has referred to DOJ. 42 U.S.C. § 2000e-5.

[14]USERRA prohibits discrimination in employment and related practices based on military service as well as protects individuals who have not been timely and properly reemployed following their return from military service. 38 U.S.C. §§ 4301-35. The Attorney General transferred responsibility for USERRA enforcement to the Civil Rights Division in September 2001.

more than 100 pattern or practice matters at its own discretion.[15] Because the Section did not require staff to maintain information in ICM on the subjects (e.g., harassment and retaliation) of the matters or the protected class (e.g., race and religion) of the individuals who were allegedly discriminated against, we could not determine this information for more than 80 percent of the matters the Section closed from fiscal years 2001 through 2007. According to Section officials, staff are not required to do so because the Section does not view this information as necessary for management purposes. The Section also does not systematically collect information in ICM on the reasons matters were closed; therefore, we were not able to readily determine this information for the approximately 3,300 matters the Section closed over the time period of our review. Division officials stated that when planning for ICM's implementation with Section officials, the Division did not consider requiring sections to provide protected class and subject data or the need to capture in ICM the reasons that matters are closed.[16] However, by conducting interviews with agency officials and reviewing files for a nongeneralizable sample of 49 closed matters, we were able to determine that the reasons the Section closed these matters included, among others, the facts in the file would not justify prosecution, the issue was pursued through private litigation, and the employer provided or offered appropriate relief on its own.

In addition to the matters initiated, the Employment Litigation Section filed 60 cases in court as plaintiff from fiscal years 2001 through 2007, and filed more than half (33 of 60) under section 706 of Title VII. According to a Section Chief and Deputy Section Chief, the primary reason for pursuing a case was that the case had legal merit. Other priorities, such as those of the Assistant Attorney General, may also influence the Section's decision to pursue particular kinds of cases. For example, according to Section officials, following the terrorist attacks of September 11, 2001, the Assistant Attorney General asked the various sections within the Division to make the development of cases involving religious discrimination a priority. During the 7-year period, the majority of the section 706 cases (18

[15]Section 707 of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-6, provides the Attorney General with authority to bring lawsuits against state and local governments where there is reason to believe that there has been a pattern or practice of employment discrimination. Pattern or practice cases attempt to show that the defendant systematically engaged in discriminatory activities.

[16]Similar to the Employment Litigation Section, because the other three sections did not systemically collect information in ICM on the reasons for closing matters, we could not systematically identify their reasons for closing matters.

of 33) involved sex discrimination against women, and one-third (11 of 33) involved claims of race discrimination, with six cases filed on behalf of African Americans and five cases filed on behalf of whites.[17] In addition to these 33 cases, the Section filed 11 pattern or practice cases. Most of the 11 pattern or practice cases involved claims of discrimination in hiring (9 of 11) and the most common protected class was race (7 of 11), with four cases filed on behalf of African Americans, two on behalf of whites,[18] and one on behalf of American Indians or Alaska Natives.[19] In July 2009, Section officials told us that given that the Assistant Attorneys General who authorized suits from fiscal years 2001 through 2007 and the Section Chief who made suit recommendations to the Assistant Attorneys General during that period are no longer employed by DOJ, it would be inappropriate for them to speculate as to why the Section focused its efforts in particular areas.

Housing and Civil Enforcement Section

From fiscal years 2001 through 2007, the Housing and Civil Enforcement Section initiated 947 matters and participated in 277 cases under federal statutes prohibiting discrimination in housing, credit transactions, and certain places of public accommodation (e.g., hotels). The Section has the discretion to investigate matters and bring cases under all of the statutes it enforces, with the exception of certain cases referred under the Fair Housing Act (FHA)[20] from the Department of Housing and Urban Development (HUD), which the Section is statutorily required to file.[21] The Section, however, has discretion about whether to add a pattern or practice allegation to these HUD-referred election cases, if supported by the evidence. Furthermore, the Section has the authority and discretion to independently file pattern or practice cases and to pursue referrals from

[17]Individual cases can involve multiple protected classes and subjects.

[18]In July 2005, the Section filed its first case involving an allegation of a pattern or practice of discrimination against white males.

[19]The Section also filed 16 cases under USERRA from fiscal year 2005 through 2007.

[20]The FHA allows individuals who believe they have been injured by a discriminatory housing practice to file complaints with the Department of Housing and Urban Development and DOJ to bring suit where there is reason to believe that a person or entity has engaged in a pattern or practice of discrimination. 42 U.S.C. § 3601 *et seq.*

[21]DOJ is required to file HUD-referred election cases in federal district court. These nondiscretionary referrals are called "election cases" because either the complaining party or the respondent has elected to have the case heard in federal court rather than through a HUD administrative hearing.

other sources. During the 7-year period, the Section initiated more matters (517 of 947) and participated in more cases (257 of 277) involving discrimination under the FHA than any other statute or type of matter or case. The Section initiated nearly 90 percent of the FHA matters (456 of 517) under its pattern or practice authority; these primarily alleged discrimination on the basis of race or disability and involved land use/zoning/local government or rental issues. According to Section officials, the large number of land use/zoning/local government matters it initiated was due to the Section regularly receiving referrals from HUD and complaints from other entities on these issues. Additionally, Division officials identified that a Section priority during the 7-year period was to ensure that zoning and other regulations concerning land use were not used to hinder the residential choices of individuals with disabilities. During this time, the Section experienced a general decline in HUD election matters, with the Section initiating the fewest number of total matters, 106, in fiscal year 2007. Section officials attributed the decrease, in part, to a decline in HUD referrals because state and local fair housing agencies were handling more complaints of housing discrimination instead of HUD. The Section initiated the second largest number of matters (252 of 947) under the Equal Credit Opportunity Act (ECOA).[22] About 70 percent (177 of 252) of these ECOA matters included allegations of discrimination based on age, marital status, or both.

The majority (250 of 269) of the cases that the Section filed as plaintiff included a claim under the FHA. Similar to the Employment Litigation Section, the Housing Section considers legal merit and whether the plaintiff has the resources to proceed on his or her own should the Section choose not to get involved, among other reasons, when deciding whether to pursue a matter as a case. The number of cases filed by the Section each year generally decreased from fiscal years 2001 through 2007—from 53 to 35—which, similar to matters, Section officials generally attributed to

[22]15 U.S.C. § 1691 *et seq.* The 252 matters include those initiated either solely under ECOA or in combination with other statutes. During the 7-year period, the Section also had responsibility for enforcing provisions of Title II of the Civil Rights Act, 42 U.S.C. §§ 2000a to a–6. Additionally, in the spring of 2001, the Section received responsibility for enforcing the land use provisions of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*; and, in July 2006, received responsibility for enforcing the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501–96. The Section is also responsible for enforcing several statutes that prohibit discrimination in, among other things, programs where the operator of the program receives federal funds.

fewer HUD referrals.[23] The FHA cases primarily involved rental issues (146). According to Section officials, the number of rental-related issues is reflective of larger national trends in that discrimination in rental housing may be more frequently reported or easier to detect than in home sales. Most of the FHA cases alleged discrimination on the basis of disability (115) or race (70)—66 of which involved racial discrimination against African Americans. The Section filed 9 cases under ECOA, of which 5 were in combination with the FHA. All 9 complaints involved lending issues. Seven of the 9 complaints included at least one allegation of racial discrimination and 4 included at least one allegation of discrimination on the basis of national origin/ethnicity.[24]

Voting Section

From fiscal years 2001 through 2007, the Voting Section initiated 442 matters and filed 56 cases to enforce federal statutes that protect the voting rights of racial and language minorities,[25] disabled and illiterate persons, and overseas and military personnel, among others. The Voting Section has the discretion to initiate a matter or pursue a case under its statutes, with the exception of the review of changes in voting practices or procedures, which it is statutorily required to conduct under section 5 of the Voting Rights Act (VRA).[26] According to Section officials, the Section had as its priority the enforcement of all the statutes for which it was responsible throughout the period covered by our review.[27] However,

[23]Among HUD-referred cases are election cases, which the Section is statutorily required to file.

[24]Four of the 9 complaints included allegations of discrimination both on the basis of race and national origin.

[25]The term "language minorities" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. 42 U.S.C § 1973aa-1a(c).

[26]Under section 5 of the Voting Rights Act, state and local jurisdictions in certain parts of the country may not change their voting practices or procedures, which include moving a polling place or changing district lines in the county, until they obtain federal "preclearance" that the change has neither the purpose nor the effect of discriminating against protected minorities in exercising their voting rights. Preclearance may be obtained either from the United States District Court for the District of Columbia or the Attorney General. 42 U.S.C. § 1973c.

[27]In addition to the VRA, the Section enforced the National Voter Registration Act, 42 U.S.C. §§ 1973gg–1973gg-10; the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff–1973ff-6; and beginning in fiscal year 2002, the Help America Vote Act of 2002, 42 U.S.C. §§ 15301-54. GAO-10-75 includes a discussion of the Section's enforcements efforts related to these acts.

Section and Division officials identified shifts in the Section's priorities beginning in 2002. For example, the Assistant Attorney General in place from November 2005 through August 2007 stated that since 2002, the Section had increased its enforcement of the minority language provisions of the VRA and instituted the most vigorous outreach efforts to jurisdictions covered by the minority language provisions of the act. During the 7-year period, the Section initiated nearly 70 percent of VRA matters (246 of 367) on behalf of language minority groups, primarily Spanish speakers (203 of 246). The Section also initiated 162 matters under section 2 of the VRA.[28] The Section initiated about half of these matters on behalf of language minority groups (80), primarily Spanish speakers (71), and about half on behalf of racial minorities (88 of 162), primarily African American voters (71 of 88).[29]

During the 7-year period, the Voting Section filed 56 cases, primarily under the VRA (39).[30] The majority of the cases the Section filed in court under the VRA were on behalf of language minority groups (30 of 39), primarily Spanish speakers (27). The Acting Assistant Attorney General reported in September 2008 that the Division had brought more cases under the VRA's minority language provisions during the past 7 years—a stated priority—than in all other years combined since 1975. While cases involving language minority groups were filed under various VRA provisions, the largest number of cases (24 of 30) involved claims under section 203[31] alleging that the covered jurisdiction had failed to provide voting-related materials or information relating to the electoral process in the language of the applicable minority group. The Section filed 13 cases involving a claim under section 2 of the VRA—5 on behalf of language minority groups and 10 on behalf of racial minority groups (6 on behalf of Hispanics, 3 on behalf of African Americans, and 1 on behalf of whites).[32] In October 2007,

[28]Section 2 prohibits discriminatory practices or procedures that result in a denial or abridgment of the right to vote on account of race, color, or membership in a language minority group. 42 U.S.C. § 1973.

[29]Seven matters involved both a language minority and a racial minority group and in one matter the specific protected class was not identified.

[30]The Section also filed 10 cases involving the provisions of Help America Vote Act, subsequent to its enactment in 2002; 10 cases involving allegations under provisions of the National Voter Registration Act; and seven cases involving allegations under the Uniformed and Overseas Citizens Absentee Voting Act on behalf of overseas voters.

[31]42 U.S.C. § 1973aa-1a.

[32]Two cases involved both racial and language minority groups.

the Section Chief who served from 2005 through late 2007 told us that while at-large election systems that discriminated against African Americans remained a priority of the Section, not many of these systems continued to discriminate, and new tensions over immigration had emerged; therefore, the Section had been pursuing cases of voting discrimination against citizens of other minority groups.[33] However, in September 2009, Voting Section officials stated that while many at-large election systems that diluted minority voting strength have been successfully challenged, the Section continued to identify such systems that discriminate against African American, Hispanic, and Native American residents in jurisdictions throughout the country and that taking action against at-large election systems remained a high priority for the Section. The Section also carried out its responsibilities under section 5 of VRA, which requires certain jurisdictions covered under the act to "preclear" changes to voting practices and procedures with DOJ or the United States District Court for the District of Columbia to determine that the change has neither the purpose nor the effect of discriminating against protected minorities in exercising their voting rights. The Section reported that over the 7-year period it made 42 objections to proposed changes,[34] of which almost 70 percent (29 of 42) involved changes to redistricting plans. More than half (17) of the 29 objections were made in fiscal year 2002, following the 2000 census, and two were made from fiscal years 2005 through 2007.[35]

Special Litigation Section

From fiscal years 2001 through 2007, the Special Litigation Section initiated 693 matters and filed 31 cases as plaintiff to enforce federal civil rights statutes in four areas—institutional conditions (e.g., protecting persons in nursing homes), conduct of law enforcement agencies (e.g., police misconduct), access to reproductive health facilities and places of worship, and the exercise of religious freedom of institutionalized persons.[36] Because the Section had discretion to pursue an investigation or

[33]An at-large election system is one in which a public official is selected from the whole of a political unit or election district rather than from a subdivision of the larger unit.

[34]Some objections addressed more than one proposed change.

[35]The Section reported that it made one objection in fiscal year 2001, five in fiscal year 2003, and four in fiscal year 2004. Section officials explained that the number of redistricting plans submitted for review had increased early in the decade (2001 through 2003), following the release of the 2000 Census, as has occurred after each census.

[36]According to Special Litigation Section officials, the Section did not experience significant changes in its statutory responsibilities during the 7-year period.

case under all of the statutes it enforced, it considered all of its work to be self-initiated. Of the matters initiated and closed (544 of 693), most involved institutional conditions (373) and conduct of law enforcement agencies (129).

Of the 31 cases that the Section filed as plaintiff, 27 alleged a pattern or practice of egregious and flagrant conditions that deprived persons institutionalized in health and social welfare (13), juvenile corrections (7), and adult corrections (7) facilities of their constitutional or federal statutory rights, and 3 cases involved the conduct of law enforcement agencies. According to Section officials, in deciding whether or not to pursue a case, they considered the conditions in a particular facility or misconduct of a particular police department and whether the system (e.g., state correctional or juvenile justice system) or department alleged to have violated the statute had taken corrective action or instead had accepted the behavior in question as its way of doing business. However, they said that even if the system or department were taking corrective action, the Section might pursue a case depending on the severity of the situation (e.g., sexual abuse) or if Section officials believed that the facility or local entity were incapable of addressing the problem. Additionally, according to Section officials, the Section sought to ensure its work reflected geographic diversity. Our analysis of the 31 plaintiff cases showed that the Section had filed cases in 21 states and the District of Columbia. During the 7-year period, the Section did not file any cases involving violations of the exercise of religious freedom of institutionalized persons under the Religious Land Use and Institutionalized Persons Act (RLUIPA).[57] Section officials stated that there was a time when the Section's enforcement of RLUIPA was directed to be a lower priority than its enforcement of other statutes.[58] However, in April 2009, these officials told us that the Section was reviewing a number of preliminary inquires under RLUIPA, but had not yet filed any complaints because it was still investigating these matters.

[57]42 U.S.C. § 2000cc *et seq.*

[58]These provisions differ from the land use provisions enforced by the Housing and Civil Enforcement Section.

By Requiring Sections to Collect Data on Protected Class, Subject, and Reasons for Closing Matters in Its Case Management System, the Division Could Provide Better Accountability to Congress on Its Enforcement Efforts

As previously discussed, information regarding the specific protected classes and subjects related to matters and cases and the reasons for closing matters were not systematically maintained in ICM because the Division did not require Sections to capture these data.[30] As a result, the availability and accuracy of protected class and subject data—information that is key to ensuring that the Division executes its charge to enforce statutes prohibiting discrimination on the basis of protected class—varied among the sections. Additionally, neither we nor the Sections could systematically identify the Sections' reasons for closing matters, including the number of instances in which the Section recommended to proceed with a case and Division management did not approve the Section's recommendation.

By collecting additional data on protected class and subject in ICM, the Division could strengthen its ability to account for the four sections' enforcement efforts. In October 2006, the Principal Deputy Assistant Attorney General issued a memorandum to section chiefs stating that Division leadership relies heavily on ICM data to, among other things, report to Congress and the public about its enforcement efforts, and should be able to independently extract the data from ICM needed for this purpose. However, over the years, congressional committees have consistently requested information for oversight purposes related to data that the Division does not require Sections to collect in ICM, including information on the specific protected classes and subjects related to matters and cases. While ICM includes fields for collecting these data, the Division has not required sections to capture these data. Some section officials said that they did not believe it was necessary to maintain this information in ICM for internal management purposes. As a result, we found that the availability and accuracy of these data varied among the sections. For example, when comparing data obtained from the 60 complaints the Employment Litigation Section filed in court with data maintained in ICM, we identified that the protected class and subject data in ICM were incomplete or inaccurate for 12 and 29 cases, or about 20 and 48 percent, respectively. Additionally, we found that the Section's protected class and subject data were not captured in ICM for 2,808 and 2,855 matters, or about 83 and 85 percent, respectively. In contrast, according to the Housing and Civil Enforcement Section, it requires that

[30]Because of the nature of the statutes enforced by the section, the data for protected class are not relevant for most of the work done by the Special Litigation Section. Given the statutory responsibilities of the section, it requires staff to capture data in ICM on the type of facility involved in a matter or case and, where appropriate, protected class information.

protected class and subject data be recorded in ICM for all matters and cases, and we found that these data were consistently recorded in ICM.

To help respond to information inquiries, all four sections maintain data in ancillary data systems, although some of the data are also recorded in ICM. For example, the Employment Litigation Section maintains broad information on protected class and uses this information in conjunction with data in ICM to report on its enforcement efforts. Section officials reported using ancillary data systems in part because it was easier to generate customized reports than using ICM. We previously reported that agencies with separate, disconnected data systems may be unable to aggregate data consistently across systems, and are more likely to devote time and resources to collecting and reporting information than those with integrated systems.[40] Requiring sections to record these data in ICM would assist the Division in, among other things, responding to inquiries from Congress by ensuring access to readily available information and by reducing reliance on ancillary data systems.

Additionally, congressional committees have requested information regarding reasons the Division did not pursue matters, including instances in which Division managers did not approve a section's recommendation to proceed with a case. However, ICM does not include a discrete field for capturing the reasons that matters are closed and Division officials we interviewed could not identify instances in which Division managers did not approve a section's recommendation to proceed with a case. Moreover, sections do not maintain this information in other section-level information systems. ICM does have a comment field that sections can use to identify the reasons matters are closed, although these data are not required or systematically maintained in ICM and the Division could not easily aggregate these data using the comment field.[41] According to Division officials, when Division and section officials were determining

[40]GAO, *Telecommunications: FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed*, GAO-08-125 (Washington, D.C.: Feb. 15, 2008).

[41]In contrast, another component within DOJ, the Executive Office for United States Attorneys (EOUSA), requires the litigating sections it supervises to capture information on the reasons for declining matters in its case management system, the Legal Information Office Network System. According to EOUSA, it uses the information internally to understand why matters are declined and make management decisions. For example, according to EOUSA officials, if matters are declined because of weak evidence, U.S. Attorney's offices could work with law enforcement to make improvements in practices used to collect evidence.

which data were to be captured in ICM, they did not consider the need to include a discrete field to capture the reasons that matters were closed. As a result, we had to review Division matter files to determine the reasons that matters were closed, and in some instances this information was not contained in the files. For example, for 7 of the 19 section 706 closed matter files we reviewed for the Employment Litigation Section, the reason the matter was closed was not contained in the file documentation we received, and Section officials attributed this to a filing error. Moreover, Division officials stated that because the Division did not track the reasons for closing matters in ICM, they have had to review files and talk with section attorneys and managers to obtain this information. They said that it was difficult to compile this information because of turnover among key section officials. Capturing information on the reasons matters were closed in the Division's case management system would facilitate the reporting of this information to Congress and enable the Division to conduct a systematic analysis of the reasons that matters were closed. This would also help the Division to determine whether there were issues that may need to be addressed through actions, such as additional guidance from the Division on factors it considers in deciding whether to approve a section's recommendation to pursue a case.

In our September 2009 report, we recommended that to strengthen the Division's ability to manage and report on the four sections' enforcement efforts, the Acting Assistant Attorney General of the Division, among other things, (1) require sections to record data on protected class and subject in the Division's case management system in order to facilitate reporting of this information to Congress, and (2) as the Division considers options to address its case management system needs, determine how sections should be required to record data on the reasons for closing matters in the system in order to be able to systematically assess and take actions to address issues identified. DOJ concurred with our recommendations and, according to Division officials, the Division plans to (1) require sections divisionwide to record data on protected class and subject/issue in its case management system by the end of calendar year 2009 and (2) upgrade the system to include a field on reasons for closing matters and require sections divisionwide to record data in this field.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions that you or other members of the subcommittee may have.

Contacts and Acknowledgements

For questions about this statement, please contact Eileen R. Larence at (202) 512-8777 or larencee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony are Maria Strudwick, Assistant Director, David Alexander; R. Rochelle Burns; Lara Kaskie; Barbara Stolz; and Janet Temko.

Mr. NADLER. Thank you.

I now recognize Ms. Becker for 5 minutes.

TESTIMONY OF GRACE CHUNG BECKER, FORMER ACTING ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. BECKER. Thank you, Chairman Nadler.

And good morning, or good afternoon, to Chairman Franks and the other Members of the Committee.

It is an honor and a privilege to appear before you today to talk about the work of the Civil Rights Division in the prior Administration. The 700 men and women that I supervised in the division set new records, spearheaded enforcement of over a half dozen new civil rights statutes while continuing to vigorously pursue traditional voting right—civil rights matters.

For example, the voting section filed substantially more cases in the 8 years of the Bush administration than in the 8 years of the Clinton administration. In calendar year 2006 alone the men and women in the section filed 18 lawsuits. That is more than twice the annual average over the preceding 30 years.

They filed more cases under the language minority provisions of the Voting Rights Act than the Clinton, Bush I, Reagan, Carter, and all other previous Administrations combined, including the first case ever on behalf of Korean, Filipino, and Vietnamese voters. They set new records in the number of cases filed on the voter assistance provisions of the Voting Rights Act, including the first case ever on behalf of Haitian voters.

They set record high numbers in sending Federal monitors and observers to the polls in 2004. They filed 15 lawsuits under Section 2 of the Voting Rights Act, including 27 on behalf of African Americans, and worked with the appellate section and the solicitor general's office to successfully defend the Voting Rights Act—the reauthorized Voting Rights Act—from constitutional challenge.

The men and women in the criminal section also set new records. In fiscal year 2008 they filed the highest annual number of cases in the history of the division, and in 2006 they had a 98 percent conviction rate, the highest ever in the division's history. They increased human trafficking prosecutions by 600 percent and charged 200 defendants in 135 hate crime cases.

Similarly, the men and women in the employment litigation section filed more lawsuits in 2008 than in any previous year of the division's history. They also broke the record then for the highest number of lawsuits filed in a single year under the Uniformed Services Employment and Reemployment Rights Act, and I am heartened to hear that the new Administration has already broken that record.

The men and women of the special litigation section more than tripled the number of settlements of police departments in the last Administration. In the first 6 years of that Administration they increased by over 250 percent the number of juvenile justice investigations that they opened. And in calendar year 2007, they opened 17 new investigations, as compared to the annual average of 10 in the preceding 13 years.

The men and women of the disability rights section helped over 3 million individuals with disabilities through its Project Civic Access agreements in all 50 states. They brought accessible seating to the largest football college stadium in the country, the University of Michigan, and worked with the International Spy Museum to create state-of-the-art technology to help visitors who are hard of hearing or who have low vision or are blind.

The men and women in the housing and civil enforcement section set new records in the number of undercover fair housing tests in fiscal year 2007, pursuant to an attorney general initiative called

Operation Home Sweet Home. They then broke that record again in 2008.

And they increased by 36 percent the number of sexual harassment cases filed under the Fair Housing Act in the last Administration. And as the GAO report indicates, they spent 90 percent of their time working on pattern and practice cases.

The men and women in the appellate section were also very productive and successful. In fiscal year 2007, their 95 percent success rate was the highest since they started keeping statistics over 30 years ago.

And lastly, the men and women in the employment, education, appellate, special litigation, and housing and civil enforcement sections worked to protect perhaps one of the most traditional civil rights that we have, one dating back to the colonists who first came to this country to avoid religious persecution. The work of these individuals helped fight religious discrimination against Jews, Muslims, Sikhs, Hindus, Christians, Buddhists, Native American religious assemblies, and others. And during that time period the division won virtually every religious discrimination case in which it was involved and sharply increased the enforcement of religious liberties throughout the country.

As a career attorney who worked for over a decade in all three branches of the Federal Government before being selected for a leadership position at the Civil Rights Division, I appreciate the hard work and dedication of these fine men and women, and I am confident that they will continue to carry on the proud tradition of the Civil Rights Division. Thank you.

[The prepared statement of Ms. Becker follows:]

STATEMENT OF

GRACE CHUNG BECKER

FORMER ACTING ASSISTANT ATTORNEY GENERAL

CIVIL RIGHTS DIVISION

UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION,

CIVIL RIGHTS AND CIVIL LIBERTIES

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

"THE CIVIL RIGHTS DIVISION AT THE DEPARTMENT OF JUSTICE"

DECEMBER 3, 2009

The Civil Rights Division was created by the Civil Rights Act of 1957, and its initial mandate was limited to protecting the rights of racial minorities. Through Congressional mandate, the Division has become the primary government entity responsible for enforcing many federal laws prohibiting discrimination on the basis of race, sex, disability, religion, national origin, and other protected categories. The Civil Rights Division's role has broadened considerably over the years, as Congress has entrusted it with the enforcement of groundbreaking legislation such as the Civil Rights Act of 1964, the Voting Rights Act of 1965, Title IX of the Education Amendments of 1972, and the Americans with Disabilities Act of 1990. The modern Division employs approximately 700 employees and is responsible for the enforcement of dozens of federal statutes and executive orders covering topics such as voting rights, employment, housing discrimination, human trafficking and law enforcement misconduct.

Under both Republican and Democratic administrations, the Civil Rights Division has been focused on making the lofty promise of our nation's civil rights laws a reality for all Americans. The previous Administration was no exception. The Administration's record reflects aggressive and principled enforcement of an ever-increasing number of laws entrusted to the Division's care. In many areas, in fact, these years were the most prolific in the Division's history.

The primary duty of the Division, as with all components of the Department of Justice, is to enforce the laws as they are written. Such principled, nonpartisan law enforcement consistently characterized the Civil Rights Division during my tenure. As with other Divisions of the Department of Justice, the priorities and resources of the Civil Rights Division may shift over time to reflect the broader policies of the elected

President, the Attorney General and this changing world. As with most executive branch institutions, the Civil Rights Division is led by leaders selected by each Administration, whose job is, in part, to ensure that the Division's actions comport with broader Department of Justice and Administration policy. The Civil Rights Division's enforcement record in the prior Administration reflects not only a commitment to traditional civil rights concerns such as racial and religious discrimination and the freedoms guaranteed by the Thirteenth Amendment, but also a commitment to taking on new responsibilities, such as the protection of the rights of military servicemembers.

I. Fighting Race and National Origin Discrimination

The bread and butter of the Division's work—in both Republican and Democratic Administrations—has been the enforcement of federal civil rights statutes that prohibit discrimination on the basis of race, color, and national origin. That continued commitment is reflected in the accomplishments of the Division's men and women in areas such as hate crimes, civil rights era murders, housing, fair lending, public accommodations, employment, education and voting.

The success of the Division's Criminal Section also demonstrates the Administration's commitment to the vigorous prosecution of those who attack others because of the victims' race, color, national origin, or religious beliefs. In recent years, the Division brought a number of difficult and high profile hate crime cases.

For example, in 2008, the Division secured convictions in *United States v. Eye and Sandstrom.* The defendants in that case hunted down and killed an African-

American man, whom they did not know, because of his race. The defendants both received life sentences.

In the 2006 prosecution of *United States v. Saldana*, four members of a violent Latino street gang were convicted of participating in a conspiracy aimed at threatening, assaulting, and even murdering African Americans in a neighborhood claimed by the defendants' gang. All four defendants received life sentences. These are merely two examples of the Criminal Section's tireless efforts to identify and prosecute those who perpetuate hate through criminal means. Between 2001 and 2008, the Division charged 200 defendants in 135 cases of bias-motivated crimes.

The previous Administration devoted significant resources to identify and aggressively investigate unresolved civil rights era murders. President Bush supported the passage of the Emmett Till bill and I testified before this very Committee in support of that legislation. In June 2007, the Division secured the conviction of James Seale on two counts of kidnapping and one count of conspiracy for his role in the 1964 abduction and murder of two African-American teenagers, Charles Moore and Henry Dee, in Franklin County, Mississippi. He received triple life sentences in prison.

In 2003, the Division successfully prosecuted Ernest Avants, who murdered an African-American man in 1966 in the Homochitto National Forest in Mississippi. Without the Administration's commitment to resolving these heinous crimes, justice would not have been done for the victims, their families, and their communities. In both cases, the trial team won the Attorney General's highest award for their stellar performance.

Another area of prosecutions that shockingly and tragically still exists today is cross burnings. From Fiscal Year 2001 to 2007, the Division charged 62 defendants in 41 cross burning cases across the country. For example in *United States v. Shroyer and Milbourn,* two individuals burned a cross in Muncie, Indiana at the home of a white woman and her three bi-racial children. In June 2008, one defendant was sentenced to serve 10 years and 30 days in prison. The other defendant was sentenced to 15 months.

The Housing and Civil Enforcement Section's enforcement of the Fair Housing Act and the Equal Credit Opportunity Act also saw some important accomplishments on behalf of victims of color. For example, over 80% of the fair lending cases filed in the previous Administration alleged race or national origin discrimination. These filings resulted in the recovery of over $25 million in monetary relief for aggrieved persons.

Moreover, in 2006, the Attorney General launched Operation Home Sweet Home. This was a concentrated initiative to expose and eliminate housing discrimination in America. As a result, the Division set new all-time high records in undercover housing testing in fiscal years 2007 and 2008. As an example of the Division's efforts in this area, it secured the second largest damage award ever obtained by the Division in a Fair Housing Act case against a former landlord in the Dayton, Ohio, area for discriminating against African Americans and families with children. The court ordered the defendant to pay a total of $535,000 in compensatory and punitive damages to 26 victims. Operation Home Sweet Home also resulted in the first testing case ever brought on behalf of Asian Americans, which resulted in $158,000 in monetary relief.

The Division also vigorously enforced Title II of the Civil Rights Act of 1964, which prohibits discrimination in places of public accommodation, such as restaurants,

movie theaters, and hotels. For example, in 2007, the Division successfully resolved a Title II lawsuit against the owner of a Milwaukee nightclub that discriminated against African-American patrons by denying them admission for false reasons, claiming, for example, that the nightclub was too full or that it was being reserved for a private party. The consent decree required the nightclub to implement comprehensive changes to its policies and practices in order to prevent such discrimination.

Similarly, in 2004, the Division obtained a consent order in a Title II lawsuit against Cracker Barrel Old Country Stores, which alleged that this family restaurant chain allowed white servers to refuse to wait on African-American customers, segregated customer seating by race, seated white customers before African-American customers who arrived earlier, provided inferior service to African-American customers after they were seated, and treated African-Americans who complained about the quality of Cracker Barrel's food or service less favorably than white customers who lodged similar complaints. The Justice Department's investigation revealed evidence of such conduct in approximately 50 different Cracker Barrel restaurants in seven states: Alabama, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, and Virginia. The consent decree required the restaurant chain to adopt and implement effective nondiscrimination policies and procedures; implement new and enhanced training programs to ensure compliance with Title II and the consent order; develop and implement an improved system for investigating, tracking, and resolving discrimination complaints; retain an outside contractor to test the compliance of Cracker Barrel restaurants with Title II and the order; and publicize the company's nondiscrimination policies.

In the employment context, the Division sued public employers who discriminated in hiring on the basis of race, color, or national origin under Title VII of the Civil Rights Act of 1964. One example is *United States v. City of Chesapeake, Virginia*, in which the Division alleged that the City's use of the mathematics component of the National Police Officer Selection Test ("POST") as a pass/fail screening device in the selection process for the position of entry-level police officer had a disparate impact on African American and Hispanic candidates, as prohibited by Title VII. The Division's extensive investigation began in 2004, led to the filing of a complaint in 2006, and culminated in a consent decree entered in 2007. The decree required the City to alter the tests it uses to screen applicants to the police department and established a settlement fund for the benefit of applicants who had been harmed by the City's discriminatory hiring practices. The Division's Employment Litigation Section filed more Title VII lawsuits in 2008 than in any other year in its history.

In the Bush Administration, the Division's work to eliminate unlawful discrimination against racial minorities also extended to protecting the rights of language minorities. The Division continued vigorously to enforce the Equal Educational Opportunities Act of 1974 to ensure, among other things, that school districts provide appropriate instruction and services to English Language Learners. For example, in 2007, the Division entered into a settlement agreement with a public school district in Maine to ensure that the district provides appropriate instruction and services to its large population of Somali refugees.

The Division also worked to ensure access to federally assisted and federally conducted programs for individuals who are limited English proficient (LEP), under

Executive Order 13166. In addition to coordinating major federal interagency LEP Conferences attended each year by about 400 people from federal, state and local governments as well as community and advocacy groups, the Division conducted investigations and worked with state and local authorities across the country to ensure access for LEP individuals.

II. Protecting the Right to Vote

The Voting Rights Act of 1965 was enacted to remedy a century of pervasive racial discrimination in voting, which resulted in the disenfranchisement of minorities in certain areas of the country. The Civil Rights Division enforces the Voting Rights Act of 1965, which prohibits discriminatory voting practices.

Notably, the Bush Administration supported reauthorization of the Voting Rights Act in 2006, a statute that often is referred to as one of the most important pieces of civil rights legislation passed in this country. During the signing ceremony at the White House, President Bush made clear that the Administration would "vigorously enforce the provisions of this law," and "defend it in court." The Justice Department made good on that promise. The Division's Voting and Appellate Sections worked with the Solicitor General's Office to mount successful defenses to a Constitutional challenge to Section 5 of the reauthorized Voting Rights Act, which requires certain state and local jurisdictions to pre-clear any changes to their voting procedures with the Department of Justice or the United States District Court for the District of Columbia. Both a lower three-judge panel and the Supreme Court of the United States upheld the provision last term.

Under Section 5 of the Act, the Division's Voting Section is charged with reviewing changes proposed by covered jurisdictions to ensure that those changes do not have a discriminatory purpose or a retrogressive effect. The prior Administration was the busiest in the history of the Division's enforcement of Section 5. In 2008 alone, the Voting Section objected to preclearance applications filed by jurisdictions in Texas, Alabama, and South Dakota, and filed two Section 5 enforcement lawsuits against jurisdictions in Texas and Alabama that had not complied with preclearance requirements.

Section 2 of the Voting Rights Act prohibits state and local officials from adopting or maintaining voting laws or procedures that discriminate on the basis of race, color, or membership in a language minority group. The Division's prosecution of Section 2 lawsuits is a highly complex, time-consuming and resource-intensive endeavor. Extensive background research by the Voting Section is required prior to initiating a lawsuit alleging that state or local voting procedures have impermissibly discriminatory effects. Nevertheless, the Division filed fifteen cases enforcing Section 2 in the last Administration. For example, in 2008, the Department filed a complaint against the Euclid City School District Board of Education in Ohio alleging violations of Section 2. The complaint alleged that the at-large system of electing members of the school board diluted the voting strength of African American citizens due to racially polarized voting. As a result of the Division's lawsuit, the first African-American City Council member was elected from a majority-black voting district in Euclid.

In addition to Section 2, the Civil Rights Division also used other provisions to ensure that persons of color were not being subjected to voting discrimination. For

example, in the Bush Administration, the Division brought more cases under the language minority provisions of the Voting Rights Act than in all previous Administrations combined. It brought the first case on behalf of Korean, Filipino and Vietnamese voters. The cases on behalf of language minority voters have made a remarkable difference in the accessibility of the election process to those voters. As a result of those lawsuits, Boston now employs five times more bilingual poll workers than before, and San Diego added over 1,000 bilingual poll workers. Hispanic voter registration in San Diego increased by over 20 percent between the settlement with that city in July 2004 and the November 2004 general election. There was a similar increase among Filipino voters in San Diego, and Vietnamese voter registration rose 37 percent. The Division's lawsuits also spurred voluntary compliance. For example, after the San Diego lawsuit, Los Angeles County added over 2,200 bilingual poll workers, an increase of over 62 percent.

Another example of the Division's aggressive enforcement of the voting laws is its enforcement of Section 208 of the Voting Rights Act, which protects the right of voters who have disabilities or who cannot read or write English to choose a person to assist them in voting. In the previous Administration, the Division filed over three times as many cases under Section 208 as had been filed in the previous 24-year history of the law, including the first case ever brought under the Voting Rights Act to protect the rights of Haitian Americans.

The Division's vigorous enforcement of the National Voter Registration Act of 1993 (NVRA), and the Help America Vote Act of 2002 (HAVA) also frequently overlapped with its ongoing efforts to end racial discrimination in voting. In a lawsuit

against Cibola County, New Mexico, which initially involved claims under Sections 2 and 203, the Division brought additional claims under the NVRA after the County failed to process voter registration applications of Native American voters, removed Native American voters from the rolls without the notice required by the NVRA, and failed to provide provisional ballots to Native American voters in violation of HAVA. In a case in Philadelphia, the Division supplemented its Section 203 and 208 claims with additional counts under Sections 2 and 4(e) of the Act to protect Hispanic voters, a count under the NVRA pursuant to which the City agreed to remove the names of over 10,000 dead persons from the rolls, and a count under HAVA to assure that accessible machines are available to voters with disabilities. Cases like these demonstrated the Division's efforts to further its enforcement efforts by enhancing the Division's ongoing commitment to remedy traditional civil rights violations -- such as racially discriminatory voting practices -- that have always been at the heart of the Division's work.

The Division's work on the 2008 federal election further demonstrated the commitment of the Division to ensuring fair and equal access to the ballot box. The Division trained and coordinated more than 800 federal observers and Department personnel to 59 jurisdictions in 23 states to monitor polling places during the November 4th, 2008 general election. Earlier in the election year, the Division sent a total of 415 federal observers and 167 Department personnel to monitor 55 primary elections in 50 jurisdictions in 18 states.

Given the concerns in the weeks leading up to the election and the historic turnout on November 4th, 2008, it is heartening that the Division observed relatively few incidents that warranted its attention. Unfortunately, some of the incidents it saw were

serious. On November 20, 2008, a federal grand jury in Memphis, Tennessee returned an indictment against two men who engaged in an alleged plot to threaten then-presidential candidate Obama and an alleged killing spree of African-Americans. On January 7, 2009, the Division filed a voter intimidation lawsuit against the New Black Panther Party and three of its members for allegedly issuing racial threats while brandishing a weapon outside a polling place in Philadelphia, Pennsylvania. The same day, the Division announced that three New Yorkers were charged with allegedly conspiring to assault African-Americans in retaliation for President-Elect Obama's election victory. The indictment in the New York case describes multiple alleged victims, including an African-American teenager who was allegedly beaten with a metal pipe and collapsible police baton. Unfortunately, these incidents show that while we have made tremendous progress in our country, the work of the Division continues.

III. Ensuring the Integrity of Law Enforcement

From 2001 to 2008, the Criminal Section of the Civil Rights Division continued to vigorously enforce federal criminal civil rights statutes, setting prosecution records in several areas. In over one thousand cases brought during that time, the Criminal Section's overall conviction rate was above 90%, and the 98% conviction rate achieved in 2006 was the highest since they started keeping statistics twenty years ago.

The largest portion of the Criminal Section's docket was the prosecution of color of law crimes committed by law enforcement officers who violated the constitutional bounds of their authority. Although the vast majority of law enforcement officers around the country serve and protect the public within the bounds of the law, those who violated

the law were pursued aggressively by the Division. In the prior Administration, the Criminal Section brought 327 cases alleging official misconduct as compared to the 253 cases brought during the eight years immediately preceding the Bush Administration. Similarly, from 2001 through 2007, the Division obtained convictions of 53% more law enforcement officials for color of law violations than in the preceding seven years. In the 2005 prosecution of *United States v. Walker and Ramsey*, for example, the Criminal Section successfully prosecuted two men for the politically-motivated assassination of the county sheriff-elect at the direction of the incumbent sheriff. In previous state court trials, the sheriff had been convicted of murder and sentenced to life in prison, but the other defendants had been acquitted of murder charges. The Department stepped in and obtained federal convictions of two of the defendants, including a former deputy sheriff.

The Special Litigation Section of the Civil Rights Division also vigorously enforced laws that prohibit a pattern or practice of unconstitutional policing under the Violent Crime Control and Law Enforcement Act of 1994. From 2001 to 2008, the Section worked to improve the integrity of law enforcement by more than tripling the number of settlements negotiated with police departments as compared to the Clinton Administration. The Division provided technical assistance to police departments seeking advice on how to protect civil rights, issuing 20 technical assistance letters from 2001 to January 20, 2009, compared to 3 issued during the preceding eight-year period.

In addition, the Employment Litigation Section ensures that public entities, including police departments, do not unlawfully discriminate against employees or job applicants. For example, the Division secured a consent decree under which the Delaware State Police agreed to provide $1,425,000 to qualified African Americans who

applied for entry-level state trooper positions between 1992 and 1998 but were denied employment as a result of the State's unlawful use of a discriminatory written examination.

IV. Protecting the Rights of Women

As the first Presidentially-nominated woman to lead the Civil Rights Division, I am particularly proud of the work it did on behalf of female victims. For example, the Bush Administration took on the new responsibility of enforcing the Trafficking Victims Protection Act, which was signed into law in January 2001. Human trafficking is a horrific crime that involves the use of force, fraud or coercion to compel labor or services. Victims of human trafficking in the United States are typically poor, primarily women and children of color, who are exploited in the commercial sex industry or forced into manual or domestic labor. Many do not speak English well and have only recently entered the United States. The Attorney General's initiative on human trafficking made the prosecution of these crimes a top priority for the Division, and the emphasis resulted in a remarkable increase in enforcement. As a result of this work, from fiscal years 2001 through 2008, the Civil Rights Division and U.S. Attorneys' Offices increased the number of human trafficking cases filed by over 600% compared to the number of cases brought in the preceding eight years. The Division secured 99 human trafficking convictions in 2006 and 104 in 2007. The previous high for convictions in a single year was 33.

In 2007, the Division created the Human Trafficking Prosecution Unit (HTPU) within the Criminal Section to consolidate the expertise of some of the nation's top

trafficking prosecutors. HTPU prosecutors worked closely with United States Attorneys and local law enforcement agencies to streamline trafficking investigations, ensure consistent application of trafficking statutes, and identify multijurisdictional trafficking networks. Under the Division's leadership, the federal government successfully prosecuted human trafficking crimes in agricultural fields, factory sweatshops, suburban mansions, brothels, escort services, bars, and strip clubs. For example, in 2008, eight defendants were convicted for their roles in a scheme to smuggle young Central American women into the United States. The defendants threatened violence against the women and their families to compel them into service at restaurants, bars, and cantinas. The two lead defendants each were sentenced to 180 months in prison, and all the defendants were ordered to pay a total of $1.7 million in restitution. In another case, in 2006, six defendants pleaded guilty to operating a human trafficking ring that smuggled young Mexican women and girls into the United States and forced them into prostitution through threats, violence, and psychological manipulation. Two defendants each were sentenced to 50 years in prison, and a third was sentenced to 25 years. In addition to prosecuting the perpetrators of these horrible crimes, the Division also helped victims by working with other agencies to facilitate the process of normalizing their immigration status, obtaining work visas or applicable benefits. Under the Trafficking Victims Protection Act of 2000, the Division assisted 1166 trafficking victims from 75 countries.

Another area of enforcement that saw remarkable growth in the prior Administration was in the number of sexual harassment cases filed under the Fair Housing Act, including the number of complex and comprehensive "pattern or practice" cases. In the Bush Administration, the number of sexual harassment cases in this area

increased by 36 percent. With regard to pattern or practice cases in this area, the Division filed 17 in the last Administration as compared to six in the Clinton Administration. In 2004, the Division obtained its largest jury verdict ever in a case alleging sexual harassment violations under the Fair Housing Act--$1.1 million in *United States v. Veal.* In 2008, it also set a new record high for the largest monetary settlement in such a case of $1 million. And the Division, in *United States v. First National Bank of Pontotoc,* brought its first lawsuit under the Equal Credit Opportunity Act alleging sexual harassment of female borrowers and loan applicants by a former vice president of a bank in Mississippi. That case was settled favorably in 2007 for $350,000 in monetary relief.

The Employment Litigation Section set new records in the prior Administration as well. In Fiscal Year 2008, it filed more lawsuits than in any other year of its history. The Division brought numerous lawsuits protecting women from pregnancy discrimination, sexual harassment, hostile work environments and other Title VII violations in Florida, North Carolina, South Carolina, New Mexico, New York, Louisiana, Michigan, Missouri, Pennsylvania, Texas, Puerto Rico and elsewhere.

Also in 2008, the Coordination and Review Section organized a federal interagency symposium on Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally assisted education programs and activities. The same year, the Special Litigation Section of the Civil Rights Division entered into a comprehensive agreement to ensure adequate mental health care at the Taycheedah Correctional Institution, Wisconsin's only prison for women.

V. Safeguarding the First Freedom

Perhaps one of the most fundamental and traditional civil rights we have is the first one set forth in the Bill of Rights: the free exercise of religion. Under previous Administrations, the Division had not emphasized these protections, and enforcement actions aimed at religious discrimination were rare. Following the attacks of 9/11 and the resulting increase in discriminatory actions against Muslims, the Bush Administration created the position of Special Counsel for Religious Discrimination. The Special Counsel is tasked with coordinating the Division's enforcement of the various laws within its jurisdiction that protect religious freedom and to oversee education and outreach in this area. From the time this position was created until January 2009, the Division won virtually every religious discrimination case in which it was involved and sharply increased the protection of religious liberties throughout the country.

Title IV of the Civil Rights Act of 1964 prohibits religious discrimination in public schools as well as public colleges and universities. In the prior Administration, the Division reviewed nearly 100 cases and opened over 33 investigations involving various types of religious discrimination in education. The largest category of such cases involved patterns of harassment based on religion. As an example, the Division reached a settlement in 2003 in a case involving a Muslim girl who had been barred from wearing a head scarf to school when other students had been allowed to wear head coverings for various reasons. The Division also placed a priority on facilitating the reporting, identification and investigation of bias-based assaults, threats, vandalism, arson and other crimes against Muslims, Sikhs, Arabs and South Asians, who have experienced an increase in such offenses since the 9/11 attacks. Under the Attorney General's Initiative

to Combat Post-9/11 Discriminatory Backlash, the Division brought charges against 46 defendants in these cases, resulting in 41 convictions in the last Administration. With the help of the Justice Department in many cases, state and local authorities have brought more than 160 such bias crime prosecutions since 9/11.

Another category of education-related religion cases involved students who were barred from engaging in religious expression where comparable secular expression is permitted. In 2006, the Division filed an amicus brief in federal court in New Jersey on behalf of a student who was barred from singing a Christian song at a school talent show. The court adopted the Division's reasoning and ruled, in favor of the student, that the singing was the student's constitutionally protected expression and not religious speech by the government. In another such case, the Division reached a settlement with a school district in Texas that had forbidden Muslim high school students from praying during lunch in a common area where other students gathered for secular purposes.

In the employment context, in which religious discrimination is prohibited by Title VII of the Civil Rights Act of 1964, the Division has responsibility for bringing suits against public employers, who are required to make reasonable accommodations for employees' religious observances and practices unless doing so would cause the employer undue hardship. Researching and proving a "pattern or practice" of religious discrimination by public employers is a laborious process. Notably, the Employment Litigation Section filed four such pattern-or-practice cases alleging religious discrimination, including a case where the Division secured an agreement with the Los Angeles Metro Transit Authority under which the city is required to accommodate bus drivers whose faith required them to refrain from working on the Sabbath.

Religious discrimination is also prohibited by the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA). In the previous Administration, the Division's Housing and Civil Enforcement Section opened 18 FHA and ECOA investigations and filed five lawsuits involving religious discrimination. These lawsuits involved a variety of circumstances, including the denial of housing based on religion, harassment based on religion, and the unlawful collection of religious information on credit applications.

In addition, the Division opened seven investigations involving religious discrimination in public accommodations, which is prohibited by Title II of the Civil Rights Act of 1964. For example, the Division settled a case with a restaurant that told a Sikh man he had to remove his turban to enter the restaurant. In response to the Division's investigations, similar cases were resolved by other establishments without the need for a lawsuit.

Moreover, the Civil Rights Division under the Bush Administration was entrusted with the enforcement of newly enacted legislation designed to protect religious freedom in the Religious Land Use and Institutionalized Persons Act (RLUIPA). Among other things, the RLUIPA prohibits zoning and land-marking laws that substantially burden the religious exercise of churches and other religious assemblies or that treat religious institutions on less than equal terms with nonreligious institutions. Congress unanimously enacted the RLUIPA in 2000 after finding that minority religions are frequently disproportionately disadvantaged in local zoning processes and that even well-established denominations often face discrimination and exclusionary zoning practices. In the Bush Administration, the Division reviewed over 200 RLUIPA matters and opened 48 full investigations. The Division's work in this area protected the free exercise and

assembly rights of Christian, Jewish, Muslim, Sikh, Hindu, Buddhist, and Native American religious assemblies. Seventeen of these investigations were resolved favorably without the filing of a lawsuit. Six have resulted in RLUIPA lawsuits, at least three of which were resolved in the Division's favor prior to January 2009. One RLUIPA lawsuit that resulted in a favorable settlement involved the denial of a building permit to an Orthodox Jewish synagogue in a residential neighborhood where such permits were routinely granted to other houses of worship and nonreligious assemblies. In addition, in the last Administration, the Division's Appellate Section filed eight amicus curiae briefs in federal courts of appeals in cases raising similar issues under RLUIPA.

VI. Protecting the Rights of Military Servicemembers

Particularly during this time of war, the Division embraced its responsibility to support our men and women in uniform by enforcing federal laws that protect their civil rights. In the prior Administration, the Division's Employment Litigation Section, Voting Section, Housing and Civil Enforcement Section, and Special Litigation Section brought several significant cases on behalf of servicemembers and veterans under a variety of statutes, some of which have only recently come under the Division's purview.

For example, in 2004, the Attorney General transferred enforcement responsibility for the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to the Civil Rights Division from the Civil Division, and from 2004 to January 20, 2009, it vigorously enforced the statute. USERRA seeks to ensure that returning servicemembers will not be penalized in their civilian jobs for their uniformed service to our nation. In fiscal year 2008, the Division filed a record number of USERRA

suits and obtained a record number of settlements. In an example of a typical case, the Division filed suit on behalf of Mary Williams, a National Guard reservist who was not properly reemployed and promoted by her employer, Gibson County, Tennessee, upon her return from two years of active duty in Iraq. On May 21, 2008, attorneys in the Division's Employment Litigation Section secured a consent decree under which Ms. Williams was reemployed, promoted to the position to which she was entitled under USERRA, and paid $17,000 to compensate for lost wages and other damages she suffered as a result of the county's unlawful actions.

Also among the Division's USERRA successes was the first class action USERRA lawsuit, which was filed against American Airlines, the nation's largest commercial air carrier. In August 2008, the federal district court in Dallas, Texas, approved a settlement agreement under which American Airlines agreed to pay restitution to 382 affected pilots for the vacation and sick leave benefits they lost while serving military duty. The settlement also requires American Airlines to modify its policies to ensure that, in the future, all pilots who are called to serve in the military will continue to accrue appropriate benefits.

Another area of emphasis for the Division was the protection of the right of servicemembers stationed or deployed abroad to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA). In fiscal years 2001-2008, the Voting Section took legal action or obtained relief without the need for litigation in Texas, Oklahoma, Pennsylvania, Georgia, North Carolina, Connecticut, Tennessee, Vermont, Alabama and Virginia to ensure that states are meeting their obligation under UOCAVA to send out timely absentee ballots to military and overseas voters.

The Division's Housing and Civil Enforcement Section enforces the Servicemembers Civil Relief Act of 2003 (SCRA), which provides financial protections for military personnel when they enter active duty. The prior Administration viewed the safeguarding of servicemembers' SCRA benefits as a very serious matter – again, especially during a time of war – and the Division was proud to be of service to the nation's men and women in uniform. Enforcement authority for SCRA was transferred to the Civil Rights Division from the Civil Division in 2006. In the years following that transfer until January 20, 2009, the Civil Rights Division assisted numerous servicemembers and military legal assistance attorneys in understanding and enforcing their rights under the SCRA. For example, in 2008, the Division sued a company that towed and sold a soldier's car while he was deployed in Iraq, in violation of the SCRA. The complaint also alleged that the defendants may have injured other servicemembers by enforcing storage liens on their vehicles without court orders.

The Division also addressed a number of related SCRA matters. It investigated the imposition of loan prepayment penalties against servicemembers, the charging of servicemembers more than a 6% interest rate, and the enforcement of storage liens against servicemembers, all of which are unlawful under the SCRA. In one such case, it reached an agreement with Homecomings Financial, LLC under which Homecomings agreed to waive prepayment penalties assessed against servicemembers who sold their homes after being transferred to different bases. The agreement covers previously assessed penalties and changes the company's policy prospectively to eliminate such penalties in the future.

With the Division's help, in 2008, the U.S. Attorney's Office in the Western District of Michigan conducted the first criminal SCRA prosecution against a landlord who evicted an Army soldier's pregnant wife and children from a rented trailer, removed the family's belongings, and changed the locks. A federal magistrate sentenced the defendant to six months imprisonment and ordered $15,300 in restitution.

Finally, the Division's Special Litigation Section pursued numerous significant matters involving the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) to protect the rights of veterans in public institutions. For example, after investigating allegations of deficient care in the Tennessee State Veterans' Home facilities in Humboldt and Murfreesboro, the Division issued a findings letter on February 8, 2008, recommending remedial action. When I left the Division in January 2009, the Special Litigation Section was working with the state to address these concerns.

VII. Protecting the Rights of Persons With Disabilities

Following the January 2001 signing of the President's New Freedom Initiative, which affirmed the Administration's commitment to tearing down the barriers to equality that individuals with disabilities still face, the Civil Rights Division obtained favorable outcomes for persons with disabilities in over 2,600 Americans with Disabilities Act (ADA) actions, including formal settlement agreements, informal resolution of complaints, successful mediations, consent decrees, and court decisions. Many individuals with disabilities are able to enjoy life much more fully as a result of the Division's enforcement activities.

The Division's ADA work involved cases all across the country and in a variety of settings, including hospitals, public transportation, restaurants, movie theaters, college campuses, and retail stores. Examples of high-profile successes include a precedent-setting settlement agreement with The International Spy Museum in Washington, D.C. to improve access to its exhibits, theaters, restaurant, and museum shop for visitors with vision, hearing and mobility disabilities. The agreement establishes a new level of access for cultural and informal educational settings. In another case, the Division reached a consent decree resolving a lawsuit against the University of Michigan to ensure accessible seating in its football stadium, the largest collegiate stadium in the country. The stadium, which was undergoing a $226 million expansion, will have over 300 pairs of wheelchair and companion seats by 2010. In addition, the Division worked to eliminate disability discrimination in the housing context. From 2001-2008, 46 percent of the Division's Fair Housing Act cases (129 of 279) have alleged discrimination based on disability.

Throughout the previous Administration, the Division's Education Opportunities Section worked diligently to protect the rights of children with disabilities. For example, on November 4, 2008, the United States intervened in *Lopez & United States v. Metropolitan Government of Nashville and Davidson County*, a lawsuit alleging sexual abuse of a student with disabilities on a special needs bus in the Nashville Public School System. The United States' complaint asserts that the district violated Title IX of the Education Amendments of 1972, as the district was deliberately indifferent to known instances of severe, pervasive and objectively offensive sexual harassment of students

with disabilities transported on district school buses, effectively barring the students' equal access to educational opportunities or benefits.

The Division's Special Litigation Section's CRIPA enforcement helps ensure that institutionalized individuals with disabilities receive adequate habilitation, appropriate medical and mental health treatment, and service in the most integrated setting appropriate to their needs. For example, in June 2008, the Division executed a comprehensive settlement agreement with the City of San Francisco to address outstanding deficiencies at Laguna Honda Hospital and Rehabilitation Center, which is the largest publicly-operated, single-site nursing home in the United States. The settlement agreement requires the city to develop and implement appropriate community services and supports for residents, and improve safety, health care, psychiatric care, and other important services and supports at the nursing home.

In addition to its enforcement efforts, the Division created Project Civic Access (PCA), a wide-ranging initiative to ensure that towns and cities across America comply with the ADA. The goal of Project Civic Access was to ensure that persons with disabilities have an equal opportunity to participate in civic life. By the end of the last Administration, the Division had reached 161 agreements with 147 communities in all 50 states, the District of Columbia, and Puerto Rico to make public programs and facilities accessible. Each of these communities agreed to take specific steps, depending on local circumstances, to make core government functions more accessible to individuals with disabilities. The agreements have improved access to many aspects of civic life, including courthouses, libraries, parks, sidewalks, and other facilities, and address a wide range of accessibility issues, such as employment, voting, law enforcement activities,

domestic violence shelters, and emergency preparedness and response. Quite literally, they have opened civic life up to individuals with disabilities throughout the country.

The Division expanded its PCA focus to include emergency preparedness for individuals with disabilities. Activities related to recovery from the hurricanes in the Gulf region in 2005 included reviewing draft specifications and sample floor plans for accessible travel trailers and mobile homes. The Division also provided guidance to FEMA on constructing accessible ramps, trained FEMA's equal rights staff on best practices in addressing the emergency-related needs of individuals with disabilities, and began working with local governments to ensure that their emergency management plans appropriately address the needs of individuals with disabilities. Moreover, under Executive Order 13347, Individuals with Disabilities in Emergency Preparedness, the Division collaborated with the Department of Homeland Security's Office for Civil Rights and Civil Liberties in its emergency management activities. The dedication of the men and women on this project is just one example of the prior Administration's commitment to helping individuals with disabilities.

* * *

As a former career attorney who worked for over a decade in all three branches of the federal government before being selected for a leadership position at the Civil Rights Division, I can appreciate the hard work, dedication and professionalism of the career staff. These hardworking individuals are committed to vigorously enforcing this country's civil rights laws. As the Division transitions to its new leadership, I am confident that they will find a healthy and productive institution that, if kept on the course

I saw during my tenure, will continue to carry on the proud tradition of the Civil Rights Division.

Mr. NADLER. Thank you.
And I now yield Mr. Rich 5 minutes.

TESTIMONY OF JOSEPH D. RICH, DIRECTOR, FAIR HOUSING PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, WASHINGTON, DC

Mr. RICH. I was invited today to offer comments on the Civil Rights Division's record primarily in the period of 2001 to 2007 because that was the period that the GAO addressed in their report that is being released today. On prior occasions I have testified, spoken, and written about the Civil Rights Division during this same period. Most pertinent to this hearing is testimony I presented in March of 2007 to this Committee and a report I helped prepare entitled "The Erosion of Rights: Declining Civil Rights."

My testimony and the report focused on the unprecedented politicization of the division during the Bush administration and the enforcement record of three sections: the criminal, employment, and voting sections from January 2001—January 20, 2001—through the beginning of 2007. And it is worth noting that that period is a little different than the GAO report that covered fiscal year 2001, which was partly in the Clinton administration.

Initially, I want to emphasize that the most serious concern in my 2007 testimony and in the "Erosion of Rights" report was the unprecedented politicization that permeated the division in this period and the impact this politicization had on the morale of the career staff. Politicization of the hiring process in the department has already been carefully documented in four inspector general reports, including one which discussed only the Civil Rights Division. The impact of this politicization was especially severe.

In a September 1 New York Times article it was reported that a transition report before the Obama administration found that there were close to—there was close to a 70 percent attrition rate in division staff during this period from 2003 to 2007, an especially shocking statistic which reflects the devastating impact on career staff from the politicization.

While the GAO report does not directly address issues concerning the impact of the politicization there is data in the report that confirms this alarming statistic. It reports high attrition rates in the employment section from 23 percent in 2003, to 35 percent in 2004, to 22 percent in 2005. Voting section similarly was 31 percent attrition rate in 2005, 27 percent in 2006, 21 percent in 2007, and similar statistics for the special litigation section.

Turning to analysis of enforcement records, I have limited my—primarily limited my written testimony to looking at employment and voting, which were the two sections that we looked at most carefully during the writing the report, and it shows two major shortcomings: first, the reduction in systemic enforcement actions in both section, pattern or practice employment cases, and vote dilution cases under Section 2 of the Voting Rights Act. I would add a third area, which Mr. Perez alluded to, was the reduction in fair lending cases, something that has been documented in another report that I participated in last year with the Lawyers' Committee called the Future of Fair Housing.

In this report there was only nine pattern or—in the period that we looked at there were only nine pattern or practice employment cases filed and only one alleged discrimination against African Americans. By contrast, in the first 2 years alone, Clinton's administration filed 13 pattern or practice employment cases, eight of which had race discrimination.

Similarly, Section 2 vote dilution cases, which have been the highest priority of the Administrations going back to 1982 when Section 2 was amended, came to a virtual standstill during the Bush administration. We found that in the first 6 years there were only five vote dilution cases, only one of which could be credited to the Bush administration, which was brought on behalf of African Americans. And since this report there were only two other cases filed for the remaining period of the Administration.

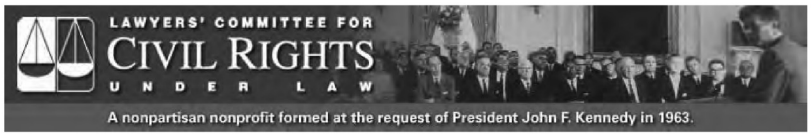
The damage to the Civil Rights Division from 8 years of politicization has been extremely serious. The GAO report, while neutral in its presentation, contains data that confirms my earlier testimony and "The Erosion of Rights." I know I speak on behalf of almost all former employees who left in this period in our fervent hope that this and other reports will be vigorously addressed by the Obama administration.

The signs are very favorable to hear Mr. Perez talk about enforcing all the laws, which was, I think, the biggest shortcoming in the enforcement record of the Bush administration, is encouraging, as well as the major change in the hiring process.

Thank you.

[The prepared statement of Mr. Rich follows:]

PREPARED STATEMENT OF JOSEPH D. RICH



TESTIMONY FOR THE HEARING ON THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE TO BE HELD BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES ON DECEMBER 3, 2009

Joseph D. Rich
Director, Fair Housing Project
Lawyers' Committee for Civil Rights Under Law
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My name is Joe Rich. Since May, 2005, I have been Director of the Fair Housing Project at the Lawyers' Committee for Civil Rights Under Law. Previously, I worked for the Department of Justice's Civil Rights Division for almost 37 years. From 1999 to 2005, I was Chief of the Division's Voting Section. Prior to that, I served as Deputy Chief of the Housing and Civil Enforcement Section for twelve years and Deputy Chief for the Education Section for ten years.

I want to thank the Committee for the opportunity to testify at this hearing concerning the Civil Rights Division. In preparation for this hearing, I have concentrated on reviewing the GAO report entitled "Information on Employment Litigation, Housing and Civil Enforcement, Voting and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001-2007." On several prior occasions, I have testified and written about the Civil Rights Division during this same period. Most pertinent to this hearing is testimony I presented on March 22, 2007 before this Committee at an oversight hearing for the Division.

I. SUMMARY OF PREVIOUS TESTIMONY AND ARTICLES

My March 22, 2007 testimony coincided with the release of a report by the Citizens' Commission on Civil Rights entitled "The Erosion of Rights: Declining Civil Rights Enforcement During the Bush Administration," which I helped edit. It includes articles focusing on two areas by myself and four other former career Division attorneys. First was the unprecedented politicization of the Division during the Bush Administration, particularly (1) the hostile attitude of Bush Administration political appointees toward career staff which resulted in severe damage to the morale of career staff - the longtime backbone of the Division that had historically maintained not only a

deep commitment to civil rights enforcement, but also built an expertise and institutional knowledge of how to enforce our civil rights laws tracing back to the passage of our modern civil rights statutes; (2) the alarming exodus of career attorneys resulting from that hostility; and (3) the major change in hiring procedures which virtually eliminated career staff input into the hiring of career attorneys, resulting in the hiring of new staff attorneys with little if any experience in, or commitment to, the enforcement of civil rights laws and, more seriously, injecting political factors into the hiring of career attorneys. Second was a careful analysis of the enforcement record of the Bush Administration from January, 2001 through the beginning of 2007.

A. The Politicization of the Civil Rights Division During the Bush Administration

The most disturbing facts in the report concerning the politicization of the Division and its effects on career staff are the following:

- Starting in April, 2002, longtime career supervisors who were considered to have views that differed from those of the political appointees were reassigned or stripped of major responsibilities. Four section chiefs, two deputy chiefs, and a special counsel were either removed or marginalized because they were disfavored for political reasons or perceived to be disloyal.

- In the Voting Section, of the five persons in section leadership at the beginning of 2005 (the chief and four deputy chiefs), only one deputy chief remained in the section at the time of the report. Similarly, 20 of the 35 attorneys in the section (over 57%) had either left the Department, transferred to other sections (in some cases involuntarily), or gone on details from from April 2005 until March, 2007. At the professional level, the number of civil rights analysts responsible for reviewing over four to five thousand submissions received every year pursuant to Section 5 of the Voting Rights Act, dropped by almost two-thirds from 26 to 10.

- In the Employment Section, the section chief and one of four deputy chiefs were involuntarily transferred to the Civil Division in April, 2002. Shortly after that, a special counsel was involuntarily transferred to the Civil Division. And, since then, two other deputy chiefs left the section or retired. Overall, since 2002, the section chief and three of the four deputy chiefs have been involuntarily reassigned or left the section. In addition, over that period, 21 of the 32 attorneys in the section in 2002 (over 65%) left the Division or transferred to other sections.

- The change in Division hiring procedures plainly politicized that process. A July, 2006, report in the *Boston Globe*, based on the resumes of persons hired and other hiring data for successful applicants to the voting, employment, and appellate sections from 2001 to 2006, indicated that: (1) only 19 of the 45 [42%] lawyers hired since 2003 in the employment, appellate, and voting sections were experienced in civil rights law, and, of those, nine gained their experience either by defending employers against discrimination lawsuits or by fighting against

race-conscious policies. By contrast, "in the two years before the change, 77 percent of those who were hired had civil rights backgrounds;" and (2) the conservative credentials of those hired sharply increased, with seven hires listed as members of the Republican National Lawyers Association, including two who volunteered for Bush-Cheney campaigns. Eleven were members of the conservative Federalist Society.

- Most disturbing was evidence laid out in "The Erosion of Rights" about substantive decision-making by political appointees on the basis of partisan political factors with respect to Section 5 consideration of redistricting plans in Mississippi and Texas and the Georgia voter identification law. By allowing partisan political concerns to influence the Division's decision-making, the Bush administration damaged the Section 5 process, undermined the credibility of the Justice Department and the Civil Rights Division, and approved discriminatory voting changes.

B. **The Enforcement Record of the Civil Rights Division from 2001-2007**

Discussion of the Bush Administration's enforcement record in "The Erosion of Rights" focuses on the enforcement programs of the Criminal, Employment, and Voting sections. Because the GAO report did not examine the Criminal Section's work, I summarize here the review of the enforcement record of the Employment and Voting sections in "The Erosion of Rights. This review focused on two major shortcomings in this record: (1) the reduction in systemic enforcement actions in both sections; and (2) the major reduction in the number of cases brought alleging illegal discrimination against African-Americans. These failings are demonstrated by the following:

1. **Employment Section**

- Through mid-2006, the Bush Administration filed 32 Title VII employment discrimination cases, an average of approximately five cases per year. By comparison, the Clinton Administration filed 34 cases in its first two years in office and, by the end of its term in office, had filed 92 employment discrimination complaints or more than 11 cases per year.

- Of the 32 Title VII cases brought by the Bush administration in this period, only nine were pattern or practice cases. Pattern or practice employment discrimination cases are the most important and significant cases brought by the Employment Section because they have the greatest impact. Not only do pattern or practice cases affect a large number of employees, they often break new legal ground. The number of pattern or practice cases is a strong indicator to the employer community that the Justice Department is actively enforcing Title VII.

- Of the nine pattern or practice cases, five raised allegations of race discrimination. Two of the race discrimination cases were "reverse" discrimination cases, alleging discrimination against whites, and another case alleged discrimination

against Native Americans. Of the two cases filed alleging discrimination against African-Americans, one was filed by the U.S. Attorney's Office for the Southern District of New York. Thus, the Employment Litigation Section can lay claim to filing exactly *one* pattern or practice case in five years that alleged discrimination against African Americans, and that case was not filed until February 7, 2006, more than five years into the Bush Administration. In its first two years alone, the Clinton Administration filed 13 pattern or practice cases, eight of which raised race discrimination claims.

2. Voting Section

- Section 2 cases brought pursuant to the Voting Rights Act, particularly vote dilution cases challenging discriminatory methods of election, are almost all cases which attack systemic discrimination and are the most important and complex litigation brought by the Voting Section. From 1982, when Congress amended Section 2 to its current form, until 2001, such cases were a priority of both Republican and Democratic administrations. The Bush administration, however, deviated significantly from this consistent policy and brought fewer Section 2 cases, bringing them at a significantly lower rate than any other administration since 1982.

- In the six years reviewed in the "The Erosion of Rights," the records show that the Bush Administration's enforcement of Section 2 came to a virtual standstill and reflected a decision by the administration that developing these cases was no longer a priority. For example during the Reagan Administration, 33 Section 2 cases were filed (involving vote dilution and/or other types of claims) during the 77 months of the Reagan Administration that followed the 1982 amendment of Section 2; during the 48 months of the Bush I Administration, eight Section 2 cases were brought; during the 96 months of the Clinton Administration, 34 were brought. During the first six years of the Bush II Administration, however, only 10 Section 2 cases were brought. Thus, the overall rate of Section 2 claims per year for the Bush Administration was the lowest ofany administration following the 1982 amendments; in descending order they were Reagan: 5.1 per year; Clinton: 4.25 per year; Bush I: 2 per year; Bush II: 1.67 per year.

- Vote dilution cases are the most important Section 2 cases, yet it is clear that the Bush administration significantly de-emphasized this kind of enforcement. During the first six years of the Bush Administration filed only 10 Section 2 cases of any type, and only five involved vote dilution claims. By contrast, during the final six years of the Clinton Administration, 22 Section 2 cases were filed (a rate of 3.67 cases per year), 14 of which raised vote dilution claims.

- The review of Section 2 enforcement reflected that the de-prioritization of Section 2 enforcement by the Bush Administration was especially apparent in Section 2 cases brought on behalf of African-American and Native American voters. Whereas eight of the 22 Section 2 cases filed in the last six years of the Clinton

administration were on behalf of African American citizens and six were on behalf of American Indians, only two Section 2 cases were filed by the Bush Administration on behalf of African-American citizens and none were filed on behalf of Native American citizens.

- Furthermore, attributing the filing of five Section 2 vote dilution cases to the Bush Administration is, if anything, overly charitable because two of these five cases filed after January 20, 2001 resulted from investigations during the Clinton Administration. *United States v. Crockett County, Tennessee*, one of only two cases filed on behalf of African-Americans since 2001, more fairly should be attributed to the Clinton Administration because it was a case investigated and approved for pre-suit negotiations during the final months of the Clinton Administration with the complaint and completed consent decree then filed in April, 2001 shortly after the beginning of the Bush administration. Similarly, *United States v. Alamosa County, Colorado*, brought in 2001 on behalf of Hispanic voters, was, like *Crockett County*, fully investigated during the Clinton Administration. Moreover, the only Section 2 vote dilution case on behalf of African-Americans fairly attributed to the Bush Administration - *United States v. City of Euclid, Ohio* – was not brought until July 10, 2006.

II. THE GAO REPORT

The Government Accountability Office reports released today are pursuant to a June 14, 2007 request by Chairman Conyers and Chairman Nadler asking the GAO to examine the enforcement priorities, and data collection through case management information system of the Civil Rights Division. The first report, entitled "*DOJ's Civil Rights Division: Opportunities Exist to Improve its Case Management System and Better Meet its Reporting Needs,*" focuses on the Division's case management system, and my testimony is not directed at that report. Rather, I am providing observations about the second report, entitled *U.S. Department of Justice: Information on Employment Litigation, Housing and Civil Enforcement, Voting and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001 through 2007*. Because the analysis done in "The Erosion of Rights" does not include sections on the Housing and Special Litigation sections, my comments are directed primarily to information in the report about the enforcement records of the Employment and Voting sections. It also includes information about the time and personnel resources available and expended by each section as well as charts demonstrating the attrition rates for each section.

The GAO report is an objective recitation that focuses primarily on the number and types of matters opened and closed and includes a review of the cases filed by each section from FY 2001 through FY 2007. There are conclusions or observations about this data, but there is no data available to permit a comparison of the enforcement record of the Bush Administration to that of previous administrations. Indeed, because part of the period covered includes the last three and one-half months of the Clinton Administration (October 1, 2000, the beginning of FY 2001, through January 20, 2001), the data in the report includes information about enforcement in both the Clinton and Bush

Administrations. Nonetheless, a careful reading of the GAO report confirms the data and observations made in the "The Erosion of Rights," as set forth below:

First, the data in the GAO report is consistent with data in "The Erosion of Rights" demonstrating a decline in cases brought by the Employment section.

- The GAO found that the Employment Section brought only 11 cases claiming a pattern or practice or systemic discrimination under Title VII during the seven year period.[1] It noted that seven of these cases alleged race discrimination. But closer examination of these cases in "The Erosion of Rights" reflects that only three of the pattern or practice cases brought during the Bush Administration alleged discrimination against African-Americans, the first of which was not brought until April, 2006. Furthermore, prior to the filing of these three cases, two reverse discrimination cases were brought on behalf of whites. By comparison, 13 pattern or practice cases were brought during the first two years of the Clinton Administration alone, of which eight concerned racial discrimination, all against minorities.

- The GAO found that, over the seven year period it examined, only 44 lawsuits were brought by the Employment Section to enforce Title VII. As noted above, data in "The Erosion of Rights" indicate that, under the Clinton Administration, 92 such cases were filed during its eight years, an average of 11 per year.

- The GAO found that the Employment Section brought only 33 cases claiming Title VII discrimination against individuals during the seven year period. According to "The Erosion of Rights," there were 73 such cases filed under the Clinton Administration, more than double the number from 2001 to 2007.

- The GAO found that over the seven year period, only 44 lawsuits were brought by CRD to enforce Title VII, which prohibits race and gender discrimination in employment, about 6 per year. By comparison, CRD under the Clinton Administration brought 92 such cases over its eight years, an average of 11 per year.

- The GAO found that the Employment Section brought only 33 cases claiming Title VII discrimination against individuals during the seven year period. Yet there were more than 3,200 referrals of such complaints sent by the EEOC to CRD from 2000 to 2006, and there were 73 such cases filed under the Clinton Administration, more than double the number filed in the FY 2001-2007 period.

Second, the GAO Report confirms the problems catalogued in "The Erosion of Rights" concerning enforcement by the Voting Section during the Bush Administration:

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[1] Furthermore, an examination of the Employment section website indicates that one of these eleven cases was filed on January 10, 2001 during the Clinton administration.

- The GAO found that the Voting Section brought a total of 13 cases pursuant to Section 2 of the Voting Rights Act during the seven year period examined,[2] including only one that can be attributed to the Bush Administration alleged discrimination against African-Americans.[3] By comparison, "The Erosion of Rights" report found that during the last six years of the Clinton Administration, 22 Section 2 cases were brought, eight of which concerned discrimination against African-Americans.

- The GAO found a significant drop-off in Section 2 activity during the seven year period. Of the 162 Section 2 inquiries or matters initiated by the Voting Section during that time, 121 or 75% were started during 2001-03.

- The GAO also found a drop-off during the seven year period in the enforcement of Section 5 of the Voting Rights Act, under which the Voting Section reviews proposed voting changes in states and municipalities with histories of discrimination and can prevent the implementation of those with discriminatory purpose or effect. Statistics in the report indicate that 75% (31 of 42) of objections to changes by the CRD were during 2001-03 and 88% (37 of 42) were before 2005, even though the number of proposed changes was higher during 2006-07 (over 40,000) than in any other two year period. GAO figures also show that the amount of time spent on Section 5 matters also decreased, even though the number of submissions did not.

- While the GAO report does not address the issue of politicization of the Division during the period examined, there is material in the report that confirms this phenomenon. At the outset, it should be noted that there were four reports issued by the Inspector General of the Department of Justice in 2008 and 2009 which confirmed how politicized the hiring process in the Department was. Furthermore, one of the most damaging and revealing of these reports was that concerning hiring practices in the Civil Rights Division.

Indications of the impact of this politicization on the Division can be found in the GAO Report. There was a press report in the September 20, 2009 *New York Times* that documented close to 70% attrition in Division staff during the period from 2003-2007, an especially shocking statistic which reflects the devastating impact of the politicization on career Division staff. The GAO report has data setting forth the attrition rates that is consistent with this newspaper report. These statistics indicate that (1) in the Employment Section, shortly after the section chief and longtime deputy were removed in 2002, the attrition rates was 23% in 2003, 35% in 2004, and 22% in 2005; (2) in the Voting Section, after the section chief and one deputy left the Division in April 2005 because of the

[2] According to the Voting Section website twelve, not thirteen, Section 2 cases were initiated in the FY 2001-2007 period.

[3] The GAO found three race discrimination cases filed during the period examined. But one of those cases -- *United States v. Charleston County* – was filed during the Clinton Administration; and, as noted above, another -- *United States v. Crockett County, Tennessee* – grew out of an investigation completed during the Clinton Administration.

hostility of political appointees and the stripping of many responsibilities, the attrition rate was 31% in 2005, 27%, in 2006 and 21% in 2007. In the same years in the Special Litigation Section, the attrition rate was 31% in 2005, 24% in 2006, and 18% in 2007.

III. CONCLUSION

The damage to the Civil Rights Division from eight years of politicization during the Bush Administration was extremely serious. The GAO report, while neutral in its presentation, contains data that confirms the extensive evidence of politicization set forth in "The Erosion of Rights" report by former Division employees. I know I speak on behalf of most former employees who left during this period in expressing our fervent hope that this and other reports will be vigorously addressed by the Obama Administration.

And, the signs are very hopeful. Already, the new Attorney General and Assistant Attorney General for Civil Rights have declared that the restoration and transformation of the Division is a top priority, and they are determined to enforce all the civil rights laws. As Attorney General Holder stated at the installation of Assistant Attorney General Perez on November 13th:

> "The Civil Rights Division that Tom leads today is stronger than it was nine months ago, but there is much more work to be done. The Civil Rights Division may be "back open for business," as I often say but that cannot be enough. We must commit ourselves not just to restoring the Civil Rights Division. We must commit ourselves to making the Division stronger and better than it has ever been before and ready to confront the 21st century issues that have already begun to present themselves. This will take time – but not too much time. The quest for justice must be an impatient thing – for we all know what happens when justice is delayed. So I am an impatient Attorney General."

Mr. NADLER. Thank you very much.

I will yield myself 5 minutes to begin the questioning.

Ms. Larence, your report explains that you were not able to look comprehensively at the reasons various civil rights cases were

closed in 2001 to 2007 because of insufficient record-keeping. You did look at the underlying files in a number of the closed cases, and I am very concerned about what you found.

In employment and voting, you found a number of cases where career civil rights attorneys wanted to pursue investigations but were forbidden from doing so by the political appointees on top, as we have discussed earlier in this hearing. Do you have any additional information on these cases or copies of the files?

Ms. LARENCE. We had three files in the voting section that indicated that the division did not agree to move the cases or matters forward. We don't have——

Mr. NADLER. Were there any reasons given for that?

Ms. LARENCE. In two of the cases no; in one of the cases, the division raised concerns about the resources—the relative resources that would be used in that case versus the outcome. We do have data that would allow us to track those cases or those matters back to the original files, but we do not have information on the parties involved in those cases.

Mr. NADLER. Were you allowed to keep copies of the files you looked at?

Ms. LARENCE. No. We looked at files on site.

Mr. NADLER. But you were not allowed to copy copies—to make copies?

Ms. LARENCE. No. We just tracked information from the files.

Mr. NADLER. Is that the normal procedure?

Ms. LARENCE. Pardon?

Mr. NADLER. When you examine a government department, when you have examined the Department of Justice prior to 2001, is it the normal procedure that you can't copy documents, you can only inspect them?

Ms. LARENCE. In some cases the department asks us to not keep files because of the sensitivities of the people under investigation. And so in some matters we do agree to honor their concerns about that and use those file on site——

Mr. NADLER. Were there sensitivities of those natures present in these cases?

Ms. LARENCE. In some cases I think the parties under investigation may not have been aware that they were under investigation, so that was sensitive information and we agreed to honor that concern by the department.

Mr. NADLER. Thank you.

Mr. Rich, you were a career attorney, head of the voting section until 2005. Do you have any information about these cases or the other voting cases at page 142 of the GAO report?

Mr. RICH. I am looking at it right now.

Mr. NADLER. Can you talk a little louder, please?

Mr. RICH. The first matter was on—was a complaint on behalf of Native Americans and involved a possible violation of Section 2 of the Voting Rights Act based on the county's use of an at-large collection system. This is the very type of vote dilution case which had been tremendously reduced that I discussed——

Mr. NADLER. And this was a case that was closed?

Mr. RICH. This was a case that the recommendation from the staff was just to investigate it, not to—we weren't——

Mr. NADLER. This is a vote dilution case based on a county at-large representation system——

Mr. RICH. Yes, and——

Mr. NADLER. The recommendation from the staff was to investigate and the decision was——

Mr. RICH. It was denied, and to me it was a—one of the examples of a political decision making in the department at that time.

Mr. NADLER. And what were the politics?

Mr. RICH. Pardon me?

Mr. NADLER. What do you think the politics were?

Mr. RICH. The politics had to do with the fact that the reason given to us for not pursuing this was that they thought the results of the election were because there was a vast majority of Republicans in that jurisdiction and that because of that there was no basis for us suspecting that there was a discrimination against Native Americans.

Mr. NADLER. I don't understand that. Because a lot of Republicans are in a jurisdiction, therefore you can't—nobody can discriminate against Native Americans?

Mr. RICH. Well, in a Section 2 vote dilution case one of the key elements is to show that there is polarized voting, that the minorities are polarized from the White, and we suspected that was very much the case when we recommended this. The decision was that no, just because there are so many Republicans in the district that we are not going to investigate it, and I thought that that reflected a political motive for it.

I would add, too, that the—subsequently the ACLU did bring a case against this very jurisdiction and brought it successfully.

Mr. NADLER. So the courts found that not only should it have been investigated, but had it been investigated it would have been a successful investigation.

Ms. Becker, you were at the division beginning in 2006. Do you have any information on the cases that the GAO found that career attorneys were stopped from pursuing? On the voting case I mentioned, in particular, can you tell us anything about why even further contact with state officials was forbidden?

Ms. BECKER. Thank you, Chairman Nadler.

I was not given the opportunity that Mr. Rich was to analyze the GAO report prior to coming here today. I was given a copy of it after I submitted my testimony.

I was not at the division when that particular case arose. I can tell you, based upon my experience working in the Civil Rights Division for almost 3 years in the Bush administration, that disagreements are rare, and certainly while they——

Mr. NADLER. Excuse me. Disagreements between the career officials and the political officials——

Ms. BECKER. The non-career and the career officials in a management setting is very rare. And so I would not——

Mr. NADLER. Your testimony that it is very rare, is from the time you were there after 2000-and-when?

Ms. BECKER. Well, I can only speak based upon my personal experience——

Mr. NADLER. Which was starting in——

Ms. BECKER [continuing]. But I also can tell you, based upon my personal experience, responding to subpoena requests by this Committee while we were there looking at certain time periods at voting records that even at that time period we found very, very small numbers—I mean, you can count them on one had—the number of disagreements even within the voting section.

Mr. NADLER. Well, that is exactly the opposite of what the GAO found and what Mr. Rich testifies to.

Ms. BECKER. I think they were talking anecdotally about a specific case; I don't know if they were saying that it was pervasive, sir.

Mr. NADLER. Okay. My time is expired.

The gentleman from Arizona is recognized.

Mr. FRANKS. Well thank you, Mr. Chairman.

I am going to, if I could, direct this to Ms. Becker first, and then ask the others to respond as there is time. We have—lay a little foundation here, Mr. Chairman.

Ms. Anita MonCrief, former ACORN employee, has given testimony under oath, and I would like to summarize parts of that testimony and ask for your reaction. Ms. MonCrief's testimony reflects the following facts: In November 2007 Project Vote was contacted by the Obama presidential campaign. Project Vote received an Obama donor list from the Obama campaign. Project Vote solicited Obama donors to pay for the voter registration and to "get out the vote."

Project Vote received donor lists from other Democrat and labor unions sources. Project Vote developed a plan to approach maxed-out presidential donors and allegedly use the funds for voter registration drives.

ACORN employees were paid through Project Vote for partisan campaign activities telling voters to not vote for certain candidates. There were inadequate divisions between the staff of ACORN and Project Vote, and persons working for one entity actually performed work for either or both organizations.

ACORN chose which states in the Project Vote would conduct voter registration drives based on political considerations. Registration drives by Project Vote were conducted in battleground states that could change the outcome of the election.

So I would like to ask—this is her testimony, the things that I just delineated. This is Anita MonCrief.

So I would like to ask each of the witnesses whether they think that these statements raise any issues regarding violations of the Federal Elections Campaign Act of 1971, as amended, which prohibits corporate contributions to campaigns of Federal candidates or corporate expenditures to support or oppose a Federal candidate and to also prohibit expenditures by nonprofit or corporations such as ACORN and Project Vote, which are made in coordination with, at the request, behest, or suggestion, or the material involvement of a Federal campaign such as the presidential campaign of Mr. Obama.

I know that is a mouthful, but can—Ms. Becker, if you would respond first, and I will ask the others to respond after that.

Ms. BECKER. Thank you, Chairman Franks. Those do sound like very serious allegations, but the campaign finance laws are laws

that are not enforced by the Civil Rights Division, and so my experience in the Civil Rights Division it sounds like it is a campaign finance issue and may be outside of our jurisdiction.

Mr. FRANKS. That was pretty short and sweet.

Mr. Rich?

Mr. RICH. Pretty much my answer, too. I would say——

Mr. FRANKS. Mike, please, again.

Mr. RICH. In my experience the—we work closely with criminal election branch during election, and when you get allegations of fraud or campaign misspending of this nature they are referred to the criminal division's election crimes branch, and they are the ones with the expertise on these laws and they are the ones to ask this question to. I don't feel I have the expertise in these laws to comment on whether they have been violated.

Mr. FRANKS. Thank you.

Ms. Larence?

Ms. LARENCE. Well, I can't speak to the legality of these particular instances. We have initiated, at the request of a number of Members of the Senate and House, a review of Federal agencies' grants to ACORN and the way in which Federal agencies are providing internal controls, and tracking the use of, those grants.

Mr. FRANKS. Well, thank you.

And thank you, Mr. Chairman. I am going to go ahead and ask unanimous consent to place into the record the testimony on the New Black Panther Party for Self-Defense and Malik Zulu—if you—and the declaration of Bartle Bull, without objection.

Mr. NADLER. Without objection.

[The information referred to follows:]

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA, Plaintiff, v. NEW BLACK PANTHER PARTY FOR SELF-DEFENSE, an unincorporated association, MALIK ZULU SHABAZZ, MINISTER KING SAMIR SHABAZZ aka MAURICE HEATH, and JERRY JACKSON, Defendants.	)	CIVIL ACTION NO.: 09-0065 SD

DECLARATION OF BARTLE BULL

Comes now the declarant, BARTLE BULL, pursuant to 28 U.S.C. § 1746, and declares the following:

1. I am an attorney. On November 4, 2008, I was an attorney poll observer in the City of Philadelphia.

2. I have experience as a civil rights attorney in voting matters. In the mid-1960s, I served as a lawyer working with the Lawyers Committee for Civil Rights Under Law in Mississippi to help enforce the voting rights of Mississippians who had been disenfranchised by *de jure* impediments to the ballot and, threats and intimidation. I participated in civil rights lawsuits against municipalities in Mississippi. I worked closely with Charles Evers on a variety of maters to help defend Voting Rights of African-Americans in Mississippi. I also have extensive experience in politics and election campaigns. In 1968, I served as a campaign manger

in the state of New York for Senator Robert F. Kennedy in his campaign for President. I similarly aided President Jimmy Carter in his 1976 campaign in New York. I have a great deal of familiarity with proper Election Day polling place procedures.

3. On the morning of November 4, 2008, I was deployed pursuant to these duties as an attorney poll observer for a political party to polling places in the City of Philadelphia, including the polling place at 1221 Fairmount Street. There, I observed two men wearing black uniforms with New Black Panther Party insignia, black boots and black berets. The two men were positioned directly in front of the entrance to the polling place at 1221 Fairmount Street. The shorter of the two men possessed a weapon in the form of a billy-club or nightstick. I watched the shorter man with the weapon point it at individuals and slap it in his hand. I observed these two men for a period of time stationed at the entrance to the poll. They were not merely in transit when I saw them. They were present when I arrived. I do not know how long they were there prior to my arrival.

4. I watched the two uniformed men confront voters, and attempt to intimidate voters. They were positioned in a location that forced every voter to pass in close proximity to them. The weapon was openly displayed and brandished in plain sight of voters.

5. I watched the two uniformed men attempt to intimidate, and interfere with the work of other poll observers ~~with~~ B.B. whom the uniformed men apparently believed did not share B.B. their preferences politically.

6. In my opinion, the men created an intimidating presence at the entrance to a poll. In all of my experience in politics, in civil rights litigation, and in my efforts in the 1960's to secure the right to vote in Mississippi through participation with civil rights leaders and the Lawyers Committee for Civil Rights Under Law, I have never encountered or heard of another

instance in the United States where armed and uniformed men blocked the entrance to a polling location. Their clear purpose and intent was to intimidate voters with whom they did not agree. Their views were, in part, made apparent by the uniform of the organization the two men wore and the racially charged statements they made. For example, I heard the shorter man make a statement directed toward white poll observers that "you are about to be ruled by the black man, cracker." To me, the presence and behavior of the two uniformed men was an outrageous affront to American democracy and the rights of voters to participate in an election without fear. It would qualify as the most blatant form of voter intimidation I have encountered in my life in political campaigns in many states, even going back to the work I did in Mississippi in the 1960's. I considered their presence to be a racially motivated effort to intimidate both poll watchers aiding voters, as well as voters with whom the men did not agree.

7. I have since learned that the shorter man is the Defendant King Samir Shabazz and the taller man is Defendant Jerry Jackson. I have since learned that these two men are the leaders of the Philadelphia chapter of the New Black Panther Party.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on 7 April, 2009

Bartle Bull

Bartle Bull, Esq.

Mr. FRANKS. Thank you, and I yield back.

Mr. NADLER. The gentleman from Virginia is recognized.

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. Larence and Mr. Rich, Ms. Becker said that the disagreements between career and political were not pervasive but occasional. Was that your experience and what you found?

Ms. LARENCE. We were able to look at a small set of files for matters across the four sections, and within—so, for example, we only looked at maybe about 50 files per each of the sections, and

within those—for example, in the voting section we were—those files only contained three instances in which the information we had indicated that there may have been a disagreement with the division.

Mr. SCOTT. Okay.

Mr. Rich?

Mr. RICH. I think in my experience in the voting section up until 2005 there were a significant number of disagreements. In the "Erosion of Rights" report there is details about decision making, for instance, on the Mississippi redistricting plan, on the Texas redistricting plan, and on the Georgia voter ID plan, all of which were highly controversial and major disagreements between the career attorneys, including myself, and political appointees.

I think worse, though, is what happened in the division that had never happened before. There was a complete breakdown in communication in the period I was there; I was not there when Ms. Becker was there.

But when I was there, there was a complete breakdown, almost a conscious effort to separate the career management people from political appointees, something that made absolutely no sense in a law enforcement agency. And I have laid that out also in the testimony I gave 2 years ago and in the "Erosion of Rights" report. But that lack of communication led to a situation in which we did not know what priorities were except when they arose and it became very apparent to us that political considerations were being injected into the decision making, something that never had happened before.

Mr. SCOTT. Thank you.

Ms. Becker, I had asked the previous panel about the Office of Legal Counsel memo that concluded that the Religious Freedom Restoration Act overrode statutory nondiscrimination provisions. Are you familiar with that memo?

Ms. BECKER. I am sorry, I haven't seen that memo, sir.

Mr. SCOTT. Okay. Well, are you familiar—employment discrimination is a significant portion of the Civil Rights Division's work. Is that——

Ms. BECKER. That is correct.

Mr. SCOTT. Under the faith-based initiative, the faith-based group sponsors a federally-funded program and hires people with Federal money. Are they able to discriminate in employment with the Federal money?

Ms. BECKER. Congressman, I think that would be a question that is better directed to the current Justice Department.

Mr. SCOTT. Well, under the Bush administration could they discriminate in employment?

Ms. BECKER. You cannot discriminate on the basis of religion in an employment in Title 7 context, sir—in an employment context.

Mr. SCOTT. So if it is a faith-based organization with Federal money, can the sponsoring organization decide to hire people based solely on religion?

Ms. BECKER. Congressman, I need to know a little bit more about the facts and the law under which they are presumably acting to see whether or not it is a legal basis. I——

Mr. SCOTT. Wait a minute. Wait a minute. Wait a minute. Under the faith-based—the whole faith-based initiative is the ability to discriminate in employment, and you don't know whether they can discriminate in—you give a vague answer under whether or not a sponsor of a federally-funded program calling itself faith-based can discriminate and have a policy of not hiring people of certain religions? You don't know?

Ms. BECKER. Congressman, you are referring to a memo that I have not had an opportunity to look at. I apologize, but I don't——

Mr. SCOTT. I went off the memo. The memo went further than the initiative. The initiative just lets you discriminate. What the memo did—it says—lets you discriminate notwithstanding statutory prohibitions.

Mr. Rich, were you there when—do you have anything to do with employment discrimination?

Mr. RICH. I did not. That is an employment matter and I did not have any knowledge about the memo or how it would apply to the—normally——

Mr. SCOTT. Well, under the faith-based initiative the sponsoring organization can discriminate, just decide as a matter of policy, "We are not going to hire you because of your religion." That is the faith-based initiative. That is the sum and substance of what you get with the faith-based initiative. Everything else under the faith-based initiative is present law.

The one thing you get under the executive order under faith-based initiative is the termination of the 1965 executive order that prohibited discrimination in any Federal contract. And what the—it is either a 2001 or 2002 Bush executive order said, well, if you are faith-based you can discriminate. You are already not covered by Title 7; you are not covered by Title 6; and you are not covered by the executive order, so you are free to discriminate. And your testimony today is you weren't aware of that?

Ms. BECKER. No. My testimony today was that I am not aware that the faith-based initiative violated any of the civil rights laws that we were enforcing when I was there.

Mr. SCOTT. My question to you was, can the sponsoring organization discriminate based on religion under the faith-based initiative——

Ms. BECKER. And I don't know. What I am saying is that the faith-based initiative—I am not aware that the faith-based initiative violated the civil rights laws that I——

Mr. SCOTT. I didn't ask you whether they violated the civil rights laws. I asked you whether or not a sponsor of a federally-funded program calling itself faith-based has the right, under the—during the Bush administration, to deny employment opportunities based on religion?

Ms. BECKER. And Congressman, I am telling you I don't have enough information to answer that question. I don't know what federally-funded program you are referring to; I don't know who the sponsor is that you are referring to.

It is hard for me to answer a hypothetical without the factual details. I apologize but I just don't have enough information to talk about this particular hypothetical that you are mentioning.

Mr. SCOTT. It is not hypothetical. The fact is, under the Bush administration they allowed it. And you are saying as the Acting Assistant Attorney Feneral for Civil Rights you weren't aware of that?

Ms. BECKER. No. I am saying that as the Acting Assistant Attorney General for the Civil Rights Division I have no reason to believe that the faith-based initiatives violated any of the civil rights laws that the division——

Mr. SCOTT. I didn't say it violated civil rights laws. I asked you a simple question: Can the sponsor of a——

Mr. Chairman, you know, I would like a straight answer to this question, if I could.

Under the Bush administration was it the law—not violating anything, but I mean did you have the policy to allow discrimination based on religion with federally-funded projects—federally-funded, in hiring with Federal money, if the sponsoring organization was a faith-based organization?

Ms. BECKER. The policy when I was at the Civil Rights Division was to vigorously enforce the Federal civil rights laws under our jurisdiction.

Mr. NADLER. Let me rephrase—if the gentleman will yield——

Mr. SCOTT. I will yield.

Mr. NADLER. Let me rephrase the question. The policy was to vigorously enforce the civil rights laws. Was it the view of the department that vigorously enforcing the civil rights law did not include or did include—which one?—cracking down on discrimination by faith-based groups in hiring based on religion? Was that viewed as a violation of civil rights law——

Mr. SCOTT. With Federal money.

Mr. NADLER. With Federal money—was that viewed as a civil rights violation or was that viewed as permitted under the policy?

Ms. BECKER. Congressman, maybe I am misunderstanding the question here that the two of you are saying.

Mr. SCOTT. If the sponsoring organization said, "We don't hire Jews," would that be legal under the—with Federal money—would that be legal under the Civil Rights Division during the Bush administration?

Ms. BECKER. Again, I would want to see what law they are purporting to act under that gives them the authority to do that and whether or not——

Mr. SCOTT. Is there a prohibition?

Ms. BECKER. Congressman, I am not aware that the faith-based initiatives violated the civil rights laws. I am not. I don't know how much more clearly I can say that. I apologize.

Mr. SCOTT. So if it was legal that, "We don't hire Jews," was legal under civil rights laws you wouldn't have a problem with that?

Ms. BECKER. Well, Congressman, if there is a requirement for a change in the laws certainly, you know, we——

Mr. NADLER. I think you have answered the question. I would hope you could get a response in writing to us on the very specific question, was it the view of the department that a faith-based organization with Federal dollars could require that the hiring be only from the—for example, the same religious group?

Could a Presbyterian church say, "We don't want to hire Catholics with Federal—for this federally-funded program"? Yes or no? That should be an easy question to answer. What was your view? Was that a violation of civil rights laws or was it not? And I hope you will give us that answer in writing since you obviously won't give it to us now.

The gentleman's time has expired.

The gentleman from Iowa?

Mr. KING. Thank you, Mr. Chairman.

I thank the witnesses for your testimony. I am not quite adjusted to the testimony I received from Mr. Perez in the previous panel, and recall his words when he said that the case of the Philadelphia voter intimidation, which I characterized as being the most open and shut case of voter intimidation in the history of the United States, they had the—a single perpetrator had received the maximum—that "the maximum penalty was obtained."

That maximum penalty was injunction. That simply says, "Don't do this again." And I am going to suspect that perhaps, Ms. Becker, you have some knowledge of this case and I would ask you if that would be the maximum penalty allowed under the statue.

Ms. BECKER. Under Section 11(b) of the Voting Rights Act the relief that the Justice Department can seek is declaratory relief—a declaration that there has been a violation of law—as well as an injunction. In terms of maximums, what you are talking about here is the scope of the injunction, and certainly the question would be whether or not the injunction—what it is that the Justice Department sought to enjoin and whether or not that scope of the injunction could have been wider or larger, or to incorporate other forms of threat, intimidation, and coercion.

Mr. KING. When the witness testified that the maximum penalty was obtained, if that—and I am understanding that that injunction was specifically for that particular area of Philadelphia, not even the entire city of Philadelphia, let alone the state of Pennsylvania or the United States of America, and that it was limited to a weapon. Is that your understanding as well, Ms. Becker?

Ms. BECKER. That is my understanding, sir.

Mr. KING. Then it would be a more clear understanding of the maximum penalty that could be obtained under the injunction would be a nationwide injunction prohibiting not just the brandishment of a weapon at a polling place, but also the intimidation components that also are a part of the statute. Wouldn't that be true?

Ms. BECKER. That certainly would be something that—a question to be asked to the Justice Department, sir.

Mr. KING. And so I will speak as to my interpretation of the response that I have gotten here. I think Mr. Perez was a very difficult witness to get an answer from, and when he was asked repeatedly, "Have you reviewed the film of the Philadelphia voter intimidation case?" over and over again—I have to go back to the film to tell you how many times. I am going to say six or eight times Mr. Gohmert asked him that specific question and finally at the end of that series of repetition of the question he finally said, yes, he had seen the film.

The man could not give a declarative answer to a simple question like that but he could, in a declarative fashion, tell this Committee that one perpetrator in the voter intimidation case of Philadelphia received the maximum penalty. And yet I think we have established here he didn't receive that maximum penalty.

So I am going to make this position, Mr. Chairman: I do not believe Mr. Perez was truthful with this panel. And I believe the question comes up as to whether we want to look into the penalty for being dishonest with this Committee.

And I would point out that there have been large issues made by this Judiciary Committee on significantly smaller issues and that there have been people that have gone to jail for what I am implying may well have happened before this Committee. And I want to go back and review the record precisely.

Mr. NADLER. I think the gentleman is approaching or may have exceeded the bounds of the rules in implying that a witness should go to jail. You may want to rephrase that.

Mr. KING. Mr. Chairman, I have suggested. If you review the record I don't believe I have crossed the line. I referred to it as an implication, and the implications of being untruthful to this Committee is something we should be able to speak up openly in this panel.

And this entire panel, Democrats and Republicans, should be outraged by any corruption of law, any corruption of the electoral process, any kind of a criminal enterprise that might be involved in undermining the integrity of our voting rights or our votes themselves.

And so I would then pose another question, and that would be, Ms. Becker, if you have an organization that is registering voters and they openly go about registering voters that happen to be Caucasian, and exclusively or with a pattern of Caucasians, would that be a violation of the Voting Rights Act? And would it be a violation of the Civil Rights Act, to your knowledge?

Ms. BECKER. Congressman, based upon that alone I would need additional facts to determine whether or not there would be an appropriate violation of law.

Mr. KING. And I would go further and ask this question: If there is a statute that specifically sets aside benefits from the taxpayer for women and minorities could you tell me the distinction between that definition of women and minorities and the language that would read, "anybody but White men"?

Ms. BECKER. Again, Congressman, I would need to look at the specifics of the set-asides that you are talking about.

Mr. KING. Then I will just conclude this by my own observation, and that is, I ask these questions because ACORN is known to have gone out into shopping malls and publicly registered voters and gone to only minority voters repetitively. I believe that that is a pattern that we should look into from a civil rights perspective, and I say that in this panel for that purpose, to bring a focus on those kind of issues. And I believe when this legislature—when this Congress—defines anything in legislation as set aside for women and minorities it says the same as this: "anybody but White men."

I thank you all for your testimony, and I yield back the balance of my time.

Mr. NADLER. Gentleman's time has expired.

Since some question has arisen I will place in the record the order actually entered into in the New Black Panther case which will reveal what, in fact, was actually ordered. It will be in the record of the Committee.

No further questions. I want to thank the witnesses. I want to thank the witnesses for your cooperation and for your attendance and for your answers.

Without objection all Members have 5 legislative days to submit to the Chair additional written questions for the witnesses which we will forward and ask the witnesses to respond as promptly as they can so that their answers may be made part of the record. Without objection all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

And with that, this hearing is adjourned.

[Whereupon, at 1:13 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CIVIL ACTION
	:	
v.	:	
	:	
THE NEW BLACK PANTHER PARTY	:	
FOR SELF-DEFENSE, et al.	:	NO. 09-65

ORDER

AND NOW, this 18th day of May, 2009, upon consideration of the Government's motion for default judgment against defendant Minister King Samir Shabazz a/k/a Maurice Heath[1] (docket entry #18), and the Court finding that:

(a) The Government alleged that the defendant stood in front of the polling location at 1221 Fairmount Street in Philadelphia, wearing a military-style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b)[2];

(b) The Government properly served a copy of the

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[1]The Government has voluntarily dismissed all of the other defendants in this case pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i).

[2]No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.

complaint on the defendant; the Clerk of Court entered default against the defendant;

(c) Default judgment is appropriate if (1) there is prejudice to the plaintiff if default is denied, (2) the defendant does not appear to have any litigable defense, and (3) the delay is due to defendant's culpable conduct, Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000);

(d) The Government satisfies all three of these requirements: (1) without an injunction against such behavior the defendant escapes all consequences of his acts and is free to act in this manner during the next election; (2) no defense to the claim that the defendant intimidated people in and around a polling center is apparent from the facts alleged; and (3) the defendant was personally served with the complaint, provided a notice by the Government that it would seek default, and sent a copy of the entry of default; and thus any delay is due to the defendant's informed lack of action;

(e) Here, the Government seeks an injunction; in order for an injunction to be warranted, the moving party must show (1) a likelihood of success on the merits, (2) irreparable harm to the movant if the injunction is not granted, (3) that the injunction would not cause greater harm to the other party than

that which the movant seeks to avoid, and (4) the injunction serves the public interest, Shields v. Zuccarini, 254 F.3d 476, 482 (3d Cir. 2001);

(f) We cannot properly address the likelihood of success on the merits because by definition a defaulted defendant means the adversarial process is absent, but when a defendant defaults we accept the allegations of the plaintiff when we shape relief, see Broadcast Music, Inc. v. Spring Mount Area Bavarian Resort, 555 F. Supp. 2d 537, 543 (E.D. Pa. 2008), and so the Government has sufficiently alleged a violation of 42 U.S.C. § 1973i(b);

(g) The Government seeks to prevent potential future violations of 42 U.S.C. § 1973i(b) by preventing the defendant from displaying a weapon within 100 feet of a polling location;[3] without such an injunction nothing other than the promise of future litigation prevents the defendant from repeating his conduct, and such repeated behavior would palpably constitute

[3]Preventing such future statutory violations can justify issuance of an injunction. See, e.g., United States v. Berks County, 277 F. Supp. 2d 570, 578 (E.D. Pa. 2003); United States v. Metro. Dade County, 815 F. Supp. 1475, 1478 (S.D. Fla. 1993); Dillard v. Crenshaw County, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986); PROPA v. Kusper, 350 F. Supp. 606, 611 (D.C. Ill. 1973).

irreparable harm;

(h) The scope of the injunction sought -- i.e., prohibiting the defendant from displaying a weapon within 100 feet of a polling location -- provides the Government with the appropriate, prophylactic protection against another violation of 42 U.S.C. § 1973i(b), and only prohibits the defendant from displaying a specific type of object at a focused area, and thus the defendant suffers no material harm if we grant the Government the injunction it seeks;

(i) Finally, preventing people from intimidating others at the polls always serves the public interest, and there is no reason we can find to distinguish the present injunction from any other issued for the purpose of preserving the order and dignity of a polling location;

It is hereby ORDERED that:

1. The Government's motion is GRANTED;

2. The defendant Minister King Samir Shabazz is ENJOINED from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b);

3. This Court shall maintain jurisdiction over this matter until November 15, 2012 to enforce this Order as

necessary; and

4. The Clerk of Court shall CLOSE this case statistically.

BY THE COURT:

/s/ Stewart Dalzell, J.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 28, 2010

The Honorable Jerrold Nadler
Chairman
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Please find enclosed responses to questions arising from the appearance of Assistant Attorney General Thomas E. Perez before the Subcommittee on December 3, 2009, at a hearing concerning the Civil Rights Division of the Department of Justice. We hope that information is of assistance to the Subcommittee. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable F. James Sensenbrenner
Ranking Minority Member

Hearing before the
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Committee on the Judiciary
United States House of Representatives

On
The Civil Rights Division of the Department of Justice

December 3, 2009

Questions for the Record
Submitted to
Thomas E. Perez
Assistant Attorney General
Department of Justice

Questions Submitted by Representative Bobby Scott:

1) *Although enforcement of some provisions of the Voting Rights Act, such as minority language provisions, have been pursued during the last 8 years, much of the core work of the Voting Section has been significantly diminished. What assurances can the new Administration give that these long-standing complaints will be investigated and that appropriate enforcement action will be taken if any laws have been violated? What steps will the Civil Rights Division take to ensure that if complaints alleging intimidation or vote caging arise next year (in an election year), they will receive immediate attention at the highest level of the Division?*

As I indicated in my testimony before the Subcommittee, the mandate of the Civil Rights Division is to enforce all of the Federal civil rights laws under its jurisdiction fairly, independently, and in a nonpartisan fashion. We will not pick and choose which statutes to enforce, but rather will use all the enforcement tools at our disposal. That is especially true in the voting rights context, as the 2009 GAO Report, which was the subject of that hearing, documented that enforcement in certain areas of our voting rights jurisdiction waned during the previous Administration. While the Division's Voting Section will continue its outstanding work in the area of minority language discrimination under the Voting Rights Act, we also will take great care to ensure aggressive enforcement of, among other things, Section 2 of the Voting Rights Act and the National Voter Registration Act. As another Federal election cycle approaches, please be assured that we will be especially sensitive to reports of possible voter intimidation, vote caging, or other conduct aimed at preventing persons from accessing the vote, and will be prepared to take prompt action as appropriate to ensure the right to vote. In brief, as we are tasked to do, we will investigate complaints of

violation of voting rights statutes if warranted, develop the facts, and apply the law to the facts to determine if Department action is appropriate.

2) *As you know, in recent years, prosecution of employment cases by the Division has been drastically reduced. A review of the Division's enforcement activity in recent years reveals a considerable decline in the number of Title VII lawsuits being undertaken, particularly as related to the issue of "disparate impact." Strong evidence suggests that the problem of systemic employment discrimination persists, and because these cases are complex and difficult, the Justice Department is oftentimes the only entity that can successfully intervene. What kind of strategies will you use to ensure that these kinds of cases remain high priority, given how systemic reform is needed to improve employment selection and promotion practices for women and minorities?*

Under this Administration, the Civil Rights Division has vigorously enforced Title VII under both disparate treatment and disparate impact theories of discrimination. For example, in July 2009, the Division obtained a very significant victory in *United States v. City of New York*, when District Judge Nicholas Garaufis found that New York City's use of two written examinations to hire firefighters resulted in an unlawful disparate impact on black and Hispanic applicants, and granted summary judgment in favor of the United States. In addition, we have obtained substantial settlements in *United States v. City of Dayton, Ohio* and *United States v. City of Portsmouth, Virginia*. In *City of Portsmouth*, our complaint alleged that Portsmouth's use of a written examination resulted in an unlawful disparate impact on black and Hispanic applicants. In the *City of Dayton* case, we alleged that Dayton's selection practices for both police officers and firefighters had an unlawful disparate impact on blacks. In addition, we recently filed a lawsuit against the Massachusetts Department of Corrections, *United States v. State of Massachusetts & Massachusetts Department of Corrections*, alleging that the defendants' use of a particular physical test had an unlawful disparate impact against female applicants for jobs as correctional officers. And most recently, on January 7, we filed a complaint in *United States v. State of New Jersey*, alleging that New Jersey's examinations for promotion to police sergeant, which are used by all of the municipalities in the state that are part of the civil service system, has had a disparate impact upon both blacks and Hispanics, in violation of Title VII. As these cases illustrate, the Division has a very active disparate impact litigation docket. However, we will not be content to stop there. In addition to our litigation docket, the Civil Rights Division currently has twelve active pattern or practice investigations under Section 707 of Title VII. Many of these investigations include potential disparate impact claims on behalf of female or minority applicants. All of them were initiated since January 2009.

3) *Under the previous administration, the Department of Education issued a guidance on Parents Involved in Community Schools v. Seattle School District No. 1, which gave no guidance at all. The Kennedy concurrence in the case makes clear that voluntary integration is still allowed. What will the Civil Rights Division do to correct the guidance and encourage*

school districts to draw boundaries and site schools and programs in ways that will integrate schools by cutting across segregated neighborhood housing lines?

The Civil Rights Division, as well as the U.S. Department of Education, is closely reviewing the Supreme Court decisions in *Parents Involved in Community Schools v. Seattle School District No.,1 Grutter v. Bollinger ,and Gratz v. Bollinger.* In addition to closely working with the Department of Education, the Division has had, and continues to have, extensive communications with civil rights organizations and members of the public about these decisions and the consideration of race in school decisions. In *Grutter*, the Supreme Court held that institutions of higher education have a "compelling interest in attaining a diverse student body" and that the benefits are "substantial," "important and laudable." Additionally, a majority of the Justices in *Parents Involved* concluded that school districts in the K-12 context have a compelling interest in both achieving diversity and in avoiding racial isolation. As you point out, Justice Kennedy went on to say that "[s]chool boards may pursue the goal of bringing together students of diverse backgrounds and races through . . . means[] including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; [and] recruiting students and faculty in a targeted fashion . . . . " The Division recognizes these compelling interests in seeking diversity and avoiding racial isolation. With the Department of Education, we will continue to examine the Supreme Court decisions, the prior Administration's guidance, and school district plans, and we will work with school districts that seek to achieve diversity or to avoid racial isolation.

4) *Under the Clinton administration, the Department of Justice did not get many referrals for prosecution from the Department of Education. What will you do to change that? What kinds of cases will you prioritize? How will the Civil Rights Division obtain these types of cases, particularly cases where states continue to allow disparate funding in defiance of state court orders to fix their funding systems? For example, states such as Ohio and New York are in violation of their own state Supreme Court decisions. What will you do to bring them into compliance?*

The Division has enjoyed a long and cordial working relation with the Department of Education and its Office for Civil Rights; that relationship continues today. We believe that enhanced collaboration, coordination, and negotiation will result in an appreciation by the two Departments of the ways that they can not only work together in a harmonious manner, but can also augment enforcement of civil rights laws and fulfill our respective missions to secure greater compliance with those laws. At this time, the Division is setting priorities with respect to cases that involve issues of: (1) racial segregation/discrimination in schools where the school administrators continue to fail to meet their desegregation/nondiscrimination obligations; (2) failure to provide appropriate/adequate English-language services; and (3) failure to prevent and/or eliminate policies/activities that discriminate against Native American students. It must be borne in mind that the Department of Education is a separate Cabinet-level agency in the Executive branch of government and

that the authority to execute a referral is lodged solely within that Department. We believe, though, that the enhanced collaboration mentioned above will result in referrals from Education in appropriate cases. Additionally, this Department is without authority to take legal action against state/local entities for their failure to comply with their respective state constitutions and/or state court orders.

5) *Under the previous administration, Department of Education issued an inaccurate and misleading guidance on Grutter v. Bollinger, 539 U.S. 306 (2003). What will the Civil Rights Division do to correct this?*

Please see answer to Question 3.

6) *The Department of Education has hundreds of existing consent decrees such as Adams v. Richardson. What will the Civil Rights Division do to see that they stay enforced and are complied with?*

The Civil Rights Division vigorously monitors the school districts under court orders in which the United States is a party. We routinely conduct compliance reviews, including reviewing and analyzing data, meeting with community members, interviewing school officials and students, evaluating school policies, and conducting site visits. For those districts that have not met their desegregation obligations, we work with the districts to comply with the law and seek court approval for negotiated consent decrees and, if this is not successful, we seek relief from the court. *Adams v. Richardson* was a case brought by African-American parents who asserted that the Department of Education had a policy of not enforcing Title VI, including its prohibitions on illegal segregation. By 1987, it was undisputed that the policy on non-enforcement has ended and, in 1990, the case was dismissed. The Department of Justice's enforcement of Title VI was not at issue in *Adams*. However, in other cases, including two cases with similar names, the Civil Rights Division has been actively addressing the school districts' desegregation obligations. In *Adams, et al. and U.S. v. Matthews, et al*, (Longview, Texas), Civ. Action No. 6:04-cv-0291-LED (E.D. Tx.), the Division negotiated a new Consent Order (Aug. 4, 2008) addressing the district's violations of prior orders concerning student transfers and authorizing the closure of an elementary school in preparation for a district-wide school construction and renovation project. The Division is presently reviewing proposed revisions to the Longview ISD's attendance zones, which the parties are developing in light of the construction of several new schools within the district. Likewise, between December 14 and 17, 2009, the Department conducted a site visit as part of its periodic review in *U.S. v. Richardson Indep. Sch. Dist.*, Civ. Action No. 3:70-cv-04101-O (N.D. Tx.). During this site visit, attorneys for the Division met with community members and Richardson Independent School District officials, and visited 12 of the district's schools. In addition to the school districts governed by court orders that the Civil Rights Division actively monitors for compliance with desegregation obligations, the Department of Education (then the Department of Health, Education, and Welfare) entered into numerous voluntary desegregation plans with school

districts both before and after *Adams v. Richardson*. Concerning those plans, the Department of Education is charged with monitoring compliance and, if the Department of Education is unable to obtain voluntary compliance, it then can refer the matter to the Division for enforcement purposes.

7) *What are your plans for the work of Eric Treene, Special Counsel for Religious Discrimination, U.S. Department of Justice, Civil Rights Division? Under the previous administration, the Department of Justice filed briefs supporting the Child Evangelism Fellowship and permitting religious activity in public schools. It also permitted religious discrimination social services with public funds. What does the Division plan to do to correct these actions?*

The Civil Rights Division works to protect the religious freedom of all, in large part by enforcing a wide range of laws that prohibit religious discrimination. These include laws that bar discrimination based on religion in employment, public education, housing, credit, and access to public facilities and public accommodations; laws that bar zoning authorities from discriminating against houses of worship and religious schools; laws that protect the religious rights of institutionalized persons; and criminal statutes such as the Church Arson Prevention Act that make it a Federal crime to attack persons or institutions based on their religion, or otherwise interfere with religious exercise. For example, the Division's Special Litigation Section enforces the Civil Rights of Institutionalized Persons Act ("CRIPA"), which prohibits State deprivation of institutionalized persons' constitutional right to religious liberty. Prohibiting religious discrimination in public schools continues to be a top priority for the Division. Towards that end, the Division's Educational Opportunities Section enforces Title IV of the Civil Rights Act of 1964, which prohibits discrimination based on religion in public primary and secondary schools, as well as public colleges and universities. Eric Treene continues to work on these and other issues within the jurisdiction of the Civil Rights Division.

Questions Submitted by Representative Steve King:

1) *On November 4, 2008, three members of the New Black Panther Party intimidated voters outside a polling location in Philadelphia. These individuals were wearing paramilitary-style uniforms, waving weapons, and uttering racial epithets. Only one of the three individuals received a penalty for his actions. Mr. Shabazz received narrow injunction against him, which prohibits him from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia. During your testimony before the House Subcommittee on the Constitution, you stated: "the maximum penalty under the relevant provision of the Voting Rights Act, Section 11, is injunctive relief, and that was the penalty that was obtained in that particular case against that particular person." Isn't it true that a broad injunction against Mr. Shabazz could have been sought prohibiting him from displaying a weapon within 100 feet of any open polling location across the United States?*

The civil litigation filed by the Department in January 2009, against the New Black Panther Party and three individuals (*United States v. New Black Panther Party for Self Defense, et al.*, C.A. No. 09-cv-0065-SD (E.D. Pa.)) was brought to enforce Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973i(b).[1] Section 11(b) prohibits coercion or intimidation, or attempted coercion or intimidation, of individuals who are, among other things, voting or attempting to vote, or aiding or attempting to aid individuals to vote. As I indicated in my December 3, 2009 testimony before the Subcommittee, in a civil lawsuit brought by the Department to enforce Section 11(b), the penalty we are entitled to seek is injunctive, or preventive, relief. 42 U.S.C. 1973j(d). This is exactly the kind of relief we sought and obtained in this litigation – a permanent injunction against Mr. Shabazz that will remain under the supervision of the Federal judge in the case until 2012. Other kinds of remedies or penalties, such as imprisonment, monetary fines, or monetary damages, are not available in a Section 11(b) action. Indeed, Congress specifically repealed the criminal penalties for a violation of Section 11(b) in 1968. The scope of the injunctive relief sought by the United States and ultimately obtained in this case was based on an analysis of the facts and application of the law to those facts. The Federal judge in the case determined that the relief sought by the United States in the case was appropriate, as evidenced by the entry of the court's May 18, 2009 Order granting our requested relief.

[1] To our knowledge, only two of the three individuals named in the complaint were actually present at a Philadelphia polling place on election day in November 2008.

2) *Is it true that this narrow injunction against Mr. Shabazz does not prohibit him from carrying weapons to any open polling location if the weapons are hidden under his paramilitary uniform?*

The court injunction against defendant Minister King Samir Shabazz prohibits him from "displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b)." A determination as to whether the conduct described in this question would constitute a violation of the injunction would have to be made based on an analysis of the specific facts involved and an application of the law to such facts. If the defendant's particular actions were such that they violated the cited anti-intimidation provisions of the Voting Rights Act, they would be covered by the injunction. There also may be local statutes that criminalize the carrying of a concealed weapon at any location, including at a polling place. Such statutes are enforced by local authorities.

3) *Is it true that this narrow injunction does not prohibit Mr. Shabazz from making intimidating comments to potential voters outside any open polling location in the United States?*

As previously indicated, the court's injunction against defendant Minister King Samir Shabazz prohibits him from "otherwise violating 42 U.S.C. § 1973i(b)." A determination as to whether the conduct described in this question would constitute a violation of the injunction would have to be made based on an analysis of the specific facts involved and an application of the law to such facts. If the defendant's particular actions were such that they violated the cited anti-intimidation provisions of the Voting Rights Act, they would be covered by the injunction.

4) *Is it true that the initial case against all three members of the New Black Panther Party sought a broad injunction that would prohibit these individuals from intimidating voters outside any polling location in the United States?*

The complaint in this case was filed in January 2009 against the New Black Panther Party and three individuals and sought relief then determined as appropriate by the Department. Following a review of the facts developed in the case and the applicable law, however, the United States concluded that the claims should be dismissed against three of the four defendants. As previously indicated, and as I have testified, the relief which the United States can obtain in Section 11(b) litigation is injunctive relief. The Federal judge in the case determined that the relief the United States sought with respect to the claims against the remaining defendant was appropriate.

5) *So, the maximum penalty under Section 11 of the Voting Rights Act was not obtained for Mr. Shabazz?*

As previously indicated, in a lawsuit to enforce Section 11(b), the penalty we are entitled to seek is injunctive, or preventive, relief, which is the kind of relief sought and obtained in this litigation. As a general rule, injunctions must be narrowly tailored to prevent recurrence of the unlawful conduct described in the complaint, and a court must review the scope of an injunction sought to ensure that it does not sweep too broadly. *Louis W. Epstein Family Partnership v. Kmart Corp.*, 13 F.3d 762, 771 (3rd Cir. 1994) (invalidating catch-all portion of an injunction prohibiting Kmart from building on easement, noting that "injunctions, which carry possible contempt penalties for their violation, must be tailored to remedy the specific harms shown rather than to enjoin all possible breaches of the law" (citations omitted)). In this matter, an injunction was obtained against the individual, Minister King Samir Shabazz, who held a baton on one Election Day, at a single polling place in Philadelphia. The Federal judge in the case determined that the injunction obtained was appropriate under the circumstances. His May 18, 2009, order provides:

> The scope of the injunction sought – i.e., prohibiting the defendant from displaying a weapon within 100 feet of a polling location – provides the Government with the appropriate, prophylactic protection against another violation of 42 U.S.C. 1973, and only prohibits the defendant from displaying a specific type of object at a focused area, and thus the defendant suffers no material harm if we grant the Government the injunction it seeks".

6) *It is my understanding that the Sec. 203 foreign language voting assistance requirements of the Voting Rights Act are triggered when the limited English proficient population of a particular state or county rises above a certain threshold. The Census Bureau is counting voters who identify themselves as speaking English "well" as "limited English proficient" for the purpose of making coverage determinations under Sec. 203. It seems to me that counting people who speak English "well" as "limited English proficient" is artificially inflating the number of jurisdictions covered under Sec. 203, to include states and counties where the true limited English proficient population does not rise above the 5 percent or 10,000 voter trigger. Is this correct? Should the Department of Justice limit and define "limited English proficient" to those that speak English "not at all" or "not well"? What is the Department of Justice's rationale for including those that identify themselves as speaking English "well"?*

Section 203 of the Voting Rights Act identifies the standard for "limited-English proficient" to be those persons "unable to speak or understand English adequately enough to participate in the political process." 42 U.S.C. 1973aa-1a(3)(B). The Act charges the Director of the Census with the responsibility to determine those jurisdictions in which the population within a jurisdiction consists of the requisite number of persons who meet that standard and to publish those determinations in the Federal Register. It is the Director's decision as to the most appropriate methodology to review the responses that the Census Bureau receives to its surveys to make that determination.

7) *It has been the policy of the Department of Justice to utilize surname analysis of voter registration rolls to make statistical determinations that are used to require voter outreach to "limited English proficient" populations. This policy is not required or specifically allowed by the Voting Rights Act. This is an unsound policy because in our diverse society an individual's last name frequently has nothing to do with the language he or she speaks. Women often take their husband's name they marry. In our American melting pot, a person's last name is not a good indicator of whether someone knows English. Surname analysis demeans naturalized Americans and their descendants because it assumes that people with certain last names do not speak English well enough to vote. Do you support the use of surname analysis? Do you believe a person's last name is a legitimate indicator of a person's English-speaking abilities? Do you believe the Department of Justice should rely on more accurate census data, where people describe their language ability themselves and not use discriminatory surname analysis?*

The Department does not utilize a surname analysis to estimate the relative language ability of individuals within a jurisdiction, or to identify "limited English proficient" communities. Rather, as we have detailed in our response to the previous question, we rely on the data contained in the Census Bureau's tabulations concerning language abilities, which form the basis for determinations of coverage under Section 203 of the Voting Rights Act.

The Department makes no assumption that all voters with Spanish surnames, or all Hispanic voters, are limited English proficient. The Department, along with Federal courts in many judicial circuits, has, however, used a surname analysis to estimate the number of registered voters of Spanish, Hispanic, or Latino origin in a jurisdiction or a voting precinct. For example, in assessing the areas or precincts within jurisdictions covered by Section 203 where bilingual poll workers may be needed, surname data is a useful tool for identifying precincts with significant numbers of Hispanic registered voters.

8) *Throughout your career, you have served on the board of CASA de Maryland from 1995 – 2002 and was [sic] the President of the Board from 2001 – 2002. You have also supported in-state college tuition rates for illegal aliens. In fact, you have stated, "we have a legal obligation to make the same commitment to hundreds of immigrant high school students who have made Maryland their home." Why do you believe we have an "obligation" to secure a place at a college or university for an illegal alien over an American citizens or legal immigrant and then allow the illegal alien to pay less than the American citizens or legal immigrant for attending that school? Do you believe in a path to citizenship for illegal aliens? Do you believe we should be rewarding immigration lawbreakers with the objective of their crime?*

As Assistant Attorney General, I work to ensure that the Civil Rights Division enforces the Federal laws under its jurisdiction in a fair and even-handed manner. Several laws within our jurisdiction aim to ensure the equal treatment of immigrants, in the education context and otherwise. For example, the Educational Opportunities Section of the Civil Rights Division

enforces the Equal Educational Opportunities Act of 1974, of which Section 1703(f) requires state educational agencies and school districts to take action to overcome language barriers that impede English Language Learner students from participating equally in school districts' educational programs. In the employment context, the Office of Special Counsel for Immigration-Related Unfair Employment Practices enforces the anti-discrimination provision of the Immigration and Nationality Act, which prohibits citizenship or immigration status discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with four or more employees

9) *In its April 2009 "100 Day Progress Report," the Department of Justice characterized the opening of an investigation of the Maricopa County Sheriff's Office "as combating police misconduct." Do you believe this characterization presupposes that misconduct took place at the Maricopa County Sheriff's Office? Is it the Department policy to tout the mere opening of an investigation as a Department-wide success, when evidence has yet to be collected and no witnesses have yet to be interviewed?*

The Civil Rights Division does not presuppose the outcome of any investigation it undertakes, and the report to which you refer was not intended to suggest otherwise. We recognize that law enforcement officers put their lives on the line every day to protect public safety, and most serve admirably. However, when there are credible allegations of a pattern or practice of police misconduct by law enforcement agencies, the Civil Rights Division has authority to conduct an investigation under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

The Division's investigation of the Maricopa County Sheriff's Office under section 14141 and other civil statutes is open and ongoing, and the Department has reached no decision regarding the outcome of the investigation.

10) *On March 4, 2009, there was a House Homeland Security hearing on the 287(g) program. During this hearing, Rich Stana from the GAO was asked whether the Government Accountability Office found any complaints of racial profiling when investigating the 287(g) program for their January 2009 report. Mr. Stana stated, "We didn't see any complaints in the files of any jurisdiction or in the OPR about any jurisdiction . . . And I don't know how to reconcile that with media reports about problems with these programs in certain jurisdictions." As the Assistant Attorney General, do you plan on pursuing allegations made against the Maricopa County Sheriff's Office for allegations of racial profiling?*

As noted in response to Question 9, the Division's investigation of the Maricopa County Sherriff's Office includes investigating allegations of discriminatory policing. The investigation remains open and ongoing.

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