

**OVERSIGHT OF THE U.S. DEPARTMENT OF  
JUSTICE, CIVIL RIGHTS DIVISION**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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## OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION

TUESDAY, APRIL 20, 2010

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The Committee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, presiding.

Present: Senators Cardin, Franken, and Sessions.

### OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. The Judiciary Committee will come to order. Today's hearing will be an oversight hearing for the Civil Rights Division of the Department of Justice. I want to thank Chairman Leahy for giving me the opportunity to chair today's hearing. It is always a pleasure to have my fellow Marylander with us, Tom Perez, who heads up the Civil Rights Division.

Before we get started, I just want to acknowledge—this hearing deals with the Civil Rights Division. It is, I think, appropriate to acknowledge the great loss of one of our great civil rights leaders, Dorothy Height, who passed away. She was the long-time Chairwoman of the National Council of Negro Women. She was a strong fighter for equal justice based on gender and race, and her leadership was critically important during the civil rights movement with her insistence for racial justice and gender equality.

The saying that I think I will always remember about Dorothy Height was, "If times aren't ripe, you have to ripen the times." And I think that her legacy will stick with us as we meet the current challenges for equality in America.

For more than 50 years, the Civil Rights Division has been charged with protecting all Americans against discrimination throughout our society. The Division is our Nation's moral compass. As Senator Ted Kennedy said, civil rights is "the unfinished business" of the Nation, and there is much work to be done.

Whether it is in discrimination in employment, education, housing, voting, personal liberties, or hate crimes, the Civil Rights Division must take action and not stand on the sidelines against those who violate our laws.

The Civil Rights Division has a proud tradition of fighting to enforce anti-discrimination laws in the areas of voting rights, civil rights, housing, elections, employment, and hate crimes. However, during the last administration, the Division had an alarming lack

of civil rights enforcement and a multitude of politicization, so much so that their own Office of Professional Responsibility and the Office of Inspector General began independent investigations of the political appointees at the Department of Justice.

Year after year, more evidence of corruption and lack of enforcement came to the surface. Between 2001 and 2006, the Voting Section failed to file any cases on behalf of African-American voters. During the same time period, there was one case, just one case, filed for minority vote dilution. In 2008, in the height of the economic downturn and housing collapse, the Division played no role in holding lenders accountable for discrimination. Disability lawsuits declined almost 50 percent under the last administration. Only ten hate crimes were prosecuted, the lowest number of hate crime cases brought in more than a decade. And, by the way, there is evidence that there was a rise in hate crime activity during that same period.

There is a lot to be done in the Civil Rights Division to restore its role in protecting civil rights. When President Obama nominated Tom Perez to be Assistant Attorney General for Civil Rights, I was confident that he would restore the morale in the Division because he came from the Division. Tom Perez served for 10 years beginning as a trial attorney in the Criminal Section. Through the years, he moved up the ladder, first as trial attorney and eventually as Deputy Assistant Attorney General for Civil Rights.

So he knew the importance of setting aside political and ideological affiliations when hiring new attorneys. Tom Perez knew from firsthand experience the need to ensure protection and legal recourse for those who have been discriminated against. For all these reasons, as well as leadership from Attorney General Holder and President Obama, I was confident that in Tom Perez's hands the Division would return to its roots of providing a voice for the voiceless and help to our most vulnerable citizens because he knew what civil rights attorneys should do.

The administration has taken action, and I look forward to hearing about what the Civil Rights Division is doing under your new leadership. Specifically, what types and how many cases have been initiated, filed, and brought within the Housing and Civil Enforcement Sections, the Fair Housing Section, the Criminal Section, the Voting Section, the Employment Section, and the Disability Section. That is the purpose for today's hearing. We look forward to a dialog with the Division chief and carrying out our responsibility to oversight the Civil Rights Division.

With that, let me turn to Senator Sessions.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM  
THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Senator Cardin, and thank you for recognizing Dorothy Height. I got to know her on a number of occasions, and what a delightful, wonderful lady she was and what a history she has in advocating for civil rights in America.

This Division is important. Properly exercised, it provides tremendous benefit to American citizens, and I think that the Chairman is right to recognize that politics is inappropriate in the De-

partment and politics can be evident from both sides of the aisle, certainly, and we need to be concerned.

One of the purposes, I do believe, of this hearing is to make sure that the Civil Rights Division is exercising its authority to shield and protect individuals from discrimination, but not as a sword to assert inappropriate claims that have the effect of promoting political agendas. So I cannot—you know, civil rights principles need to be professionally analyzed, and with regard to the housing collapse, there is strong evidence to indicate that pressure to make loans to individuals in ways that demonstrated clearly that there was no housing prejudice could well have resulted in an institution making bad loans that they really should not have made, and threats and pressures can cause some of that. So I think that was a part of the housing collapse.

On election day in November 2008, members of the New Black Panther Party intimidated voters at a precinct in Philadelphia, with one member wielding a nightstick. The activity was described by prominent civil rights activists as “the most blatant form of voter intimidation” that he had seen even during the voting rights crisis in Mississippi where he had worked a half-century before. Despite this characterization and direct evidence of guilt that appeared on behalf of the New Black Panther Party members, the Department of Justice decided not to fully pursue every avenue to ensure that guilty parties did not disenfranchise other voters in the future. In fact, one of the intimidators recently worked at another voting precinct recently.

So the United States Commission on Civil Rights—the U.S. Commission on Civil Rights has many of the same goals as the Civil Rights Division—are concerned about this matter, and a majority of the Commissioners are not satisfied that the Department of Justice has fully pursued every avenue of behalf of the voters to make sure that these actions do not strike again in Philadelphia or elsewhere.

But instead of coordinating with the Commission, the Justice Department has put up a steel barrier and attempted to thwart every effort the Commission has raised about this case. This does not bode well for an administration that has promised to be open and transparent, it seems to me. So I am concerned that this new culture might be producing some harmful results.

For the last several months, my office and I am sure others have gotten a lot of telephone calls and messages about the abuses of ACORN. This is an organization that Congress voted to de-fund because of voting practices that have proven to be corrupt, yet it is reported that in March of 2009, this administration discontinued a criminal investigation into two voter fraud complaints. In 2008, at least two individuals filed complaints against ACORN and produced documents demonstrating that ACORN representatives were registering underage individuals and individuals in the country illegally, not eligible to vote. The FBI and the Department of Justice opened investigations for fraudulent voter registration card submissions. This administration apparently has let ACORN off the hook, saying that no laws were violated even though it was stated by the Department “questionable hiring and training practices” occurred. Does that mean that they made errors and moved forward with ac-

tivities that were illegal? And shouldn't more be done about it than that?

In Kinston, North Carolina, the voters there decided they wanted to do away with party affiliations in local elections—that is, city elections—where many have that. Kinston is a majority African-American community. According to an article in the Washington Times and other articles, this administration overruled the voters in Kinston because partisan elections, you apparently concluded, were needed so that African-American voters could elect their “candidates of choice.”

Well, I agree with the assessment of Abigail Thernstrom, a member of the United States Commission on Civil Rights, in regards to this case. She said the following: “The Voting Rights Act is supposed to protect against situations when black voters are locked out because of racism. There is no entitlement to elect a candidate they prefer on the assumption that all black voters prefer Democratic candidates.”

So I know that we have heard a lot of rhetoric about the Division being back open for business and the voting booth once again being protected, but I am concerned about some of these actions and whether or not the administration has any plans to enforce Section 8 of the motor-voter bill of the Voting Rights Act, which required dead and duplicate voters to be removed from the rolls.

I am concerned about some of the disparate impact cases, especially in light of the Supreme Court's ruling in Ricci, which we had so much discussion about during the Sotomayor confirmations.

So, Mr. Chairman, I would note that after this financial crisis, lawsuit—the administration is planning, I understand, to file disparate impact lawsuits against financial institutions because of practices that do not appear to be discriminatory, but might have disproportionate results. The New York Times reported that the DOJ “is beginning a major campaign against banks and mortgage brokers suspected of discriminating against minority applicants in lending.” Some critics have contended that the Government rules punishing banks—pushing banks to lend to minority and low-income borrowers contributed to the financial meltdown. The campaign could rekindle that debate. So we will need to understand with clarity just how you intend to approach that idea because it is one thing to make sure that people are not discriminated against. It is another to pressure banks to make loans that are not sound. That is not good for the borrowers, and it is not good for the country.

Thank you, Mr. Chairman.

Senator CARDIN. Thank you, Senator Sessions.

We will now hear from the Assistant Attorney General, the head of the Civil Rights Division, Tom Perez.

**STATEMENT OF HON. THOMAS E. PEREZ, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE**

Mr. PEREZ. Thank you, Mr. Chairman. It is an honor to be here, as always, in front of my home Senator and a champion of civil rights not only in Maryland but across America. So it is always great to be here in front of someone who, parenthetically, has one



of the remarkable wives in America as well. Please give my regards to Myrna.

Senator CARDIN. I am glad you put that in the record.

Mr. PEREZ. Yes, absolutely. And, Senator Sessions, I have always had great respect for you and appreciate the respect you accorded me dating back to 1989, when I was in Mobile, Alabama, prosecuting Danny Miller in a case that you supported 100 percent of the way. So it is always a pleasure to be here in front of you as well. And I appreciate both of your acknowledging Dr. Height. It has been a sad week or so for the civil rights movement in the aftermath of Benjamin Hooks and now Dr. Height, who, when the Equal Pay Act—today is Equal Pay Day, and when the Equal Pay Act was signed in 1963 by President Kennedy, who was standing next to him? Dorothy Height, a real civil rights icon. So thank you for the opportunity to be here today to testify.

Senator SESSIONS. Thank you for being in Birmingham.

Mr. PEREZ. I had three wonderful days in Birmingham, as I told Senator Sessions, at the Civil Rights Institute, at the Sixteenth Street Church meeting with civil rights leaders. I met an old colleague of mine that I had prosecuted a case with in Alabama in 1991 when I was a career civil servant under Dick Thornburgh, and it was great to reacquaint. And I had one of the best meals I have ever had, Senator, in Birmingham that evening. Good vittles, as we say in the business.

Senator SESSIONS. And I would just say how proud I am of Birmingham for its principled and sincere effort to confront its past where racial discrimination was far too prevalent, and much of it was very, very destructive and damaging to that whole city. But it has confronted its past in an honest and forthright way. I think other cities can learn from what Birmingham has done.

Mr. PEREZ. I look forward to bringing my children there, and I look forward to bringing my children to the museum in Greensboro that I had the privilege of participating in the grand opening of, so two remarkable tributes to our Nation's history.

It really is a pleasure to be here. The Attorney General has called our Division the "Crown Jewel of the Department of Justice." The President singled out the Civil Rights Division in his State of the Union. You have been very supportive of our budget requests, and we are very, very grateful because that has enabled us to step up our enforcement efforts in a number of ways.

My first priority upon confirmation was to take immediate steps to restore trust between career staff and political leadership, to restore public confidence, and to de-politicize decisionmaking. We worked quickly to return principled responsibility for hiring experienced career attorneys to the career securities themselves. Our new written hiring policies for career personnel are now on our website. Our honors hiring process, which had been taken away from career people in the prior administration, is now back in the hands of career people, and we hired a bumper crop of 16 new raw graduates who will be starting this summer and this fall.

We have also made it a lot easier for lawyers in the Division to do their jobs by eliminating a wide range of needless bureaucratic obstacles that were standing in the way of doing their job. We have restored communication between career and non-career staff, and

as a former—I will always consider myself a career attorney because I spent 10 of the best years of my life in that Division. So, for instance, before we make decisions on Section 5 cases, I now want to hear from all the career attorneys and the analysts what their opinions were. The policy was changed in the prior administration so that they were not allowed to offer that viewpoint. We may not always agree on the final outcome, but every voice will indeed be heard.

We are encouraging our lawyers, rather than forbidding them, to conduct aggressive outreach to key stakeholders in communities across this country. We have stepped up enforcement across the board, and we are focusing enforcement not simply on quantity but on quality of cases filed and maximizing the number of people that we can help. And I have given you a detailed analysis of some of the cases, and I wanted to give you a few highlights.

In the wake of the national housing crisis, the enforcement of fair housing and fair lending protections are among our most—our top priorities. Working with the President's Financial Fraud Enforcement Task Force, we have established a dedicated Fair Lending Unit and hired a Special Counsel for Fair Lending. We currently have 39 open matters in the Fair Lending Unit. Last month, we announced a landmark settlement with two subsidiaries of AIG to resolve allegations of discrimination against African-American borrowers by brokers with whom these subsidiaries had contracted. The borrowers were being subjected—the African-American borrowers were being subjected to excessive fees, and we have sent a clear signal in this settlement to lenders that they must take steps to ensure that brokers with whom they partner are not engaged in discrimination. Twenty-five hundred African-American borrowers who were subjected to unnecessarily excessive fees will receive relief in the context of this settlement.

In the fair housing case in Southern California, we reached the largest settlement ever in a case involving rental discrimination.

Meanwhile, as President Obama said in the State of the Union, we are once again working to combat all forms of employment discrimination. We have reinvigorated our pattern and practice enforcement program, and as a result, the Employment Litigation Section has more than a dozen active pattern-and-practice investigations.

In a significant case against the New York Fire Department for hiring discrimination, the trial judge granted summary judgment to the United States, and this was after the Ricci decision, and he explicitly discussed how the Ricci decision did not apply to the particular facts of this case. And, in fact, he found so much evidence of difficulty and discrimination historically in the fire department that he ruled that the evidence constituted evidence of intentional discrimination, not simply disparate impact.

We have also ramped up our enforcement of the Uniformed Services Employment and Reemployment Rights Act, or USERRA. Since the new administration began, we have filed 19 USERRA lawsuits compared with 16 that were filed during the previous 3 years combined.

In addition, just last week, we closed an investigation of the State of Oregon regarding a law dating back to 1923 that banned

public school teachers from wearing religious clothing, and we worked heavily on that case because we felt that it was discriminatory. And the Governor signed a bill repealing the law, and we were able to settle the case.

In the education context, you need look no further than the front page of today's Washington Post to see the work that we are doing in that section. And, regrettably, and very troublingly, we continue to see a need to combat the resegregation of schools to ensure that all students have equal access to quality education. The Walthall, Mississippi, school district case is a case that is an outgrowth of a 1970 court desegregation order. The district in recent years, through a transfer policy, created what many local members of the community called a "white" school and a "black" school. And what happened was through this transfer policy, the segregation of the schools was furthered again. And to make matters worse, in the predominantly African-American school, classrooms were then being segregated by race so that the remaining non-minority students in the "black" school were being segregated by classroom. This was wrong. This was illegal. We attempted to settle the case with the school district. They rejected the settlement, and we were forced to go to court, and the court ordered the relief that is noted in today's Washington Post.

I wish I could say that was the only case of this nature. In Monroe County, Louisiana, we had a case involving a school district, 87 percent African American. They have two high schools. One is 100 percent African American; one is 57 percent African American, 43 percent white. In the school district that has 100 percent African-American students, there were no AP classes offered and five gifted and talented or honors courses. In the other school that was 43 percent white, there were 70 such courses offered. This is not fair, this is not legal, and we reached a settlement to correct this. Regrettably, we continue to see that our education docket is ripe and continuing our work.

In our criminal enforcement, the prosecution of hate crimes remains a top priority, and we are working to implement the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, training lawyers, law enforcement officers, State and local across the country. In the meantime, we have seen an increase in the number of hate crime cases that we have brought. Late last year, we announced the indictment of five individuals, including three police officers, on charges related to the fatal racially motivated beating of a Latino immigrant in Shenandoah, Pennsylvania, and the subsequent cover-up of the incident by three members of the police department. A very, very troubling incident. I have great respect for law enforcement officers and the work that they do, but when they cross the line, they must be held accountable for their actions.

In addition to Shenandoah, we have a number of cases pending involving the New Orleans Police Department. In one case involving police-involved fatal shootings following Hurricane Katrina, four officers have pleaded guilty in the investigation into this and the other incidence is ongoing. At the most recent plea hearing, the district judge said the following, after our attorney read the underlying facts into the record supporting the plea agreement:

“I do not think you can listen to that account without being sickened by the raw brutality of the shooting and the craven lawlessness of the cover-up. We will continue our work in New Orleans.”

On the voting front, we are actively preparing for the upcoming round of redistricting. The Voting Section has received the largest complement of new resources so that we will be prepared for redistricting. We are continuing the critical work of protecting the rights of language minorities to access the ballot while stepping up our enforcement of Section 2 of the Voting Rights Act and the National Voter Registration Act. We are preparing guidance on Section 7 and Section 8 of motor-voter so that States and others understand their obligations in that area. The section has an initiative underway to ensure compliance with critical provisions of motor-voter, requiring that eligible voters be able to register at State social service agencies. Already under this initiative, we have begun inquiries of six States, and we will expand those inquiries elsewhere. In March, we won a favorable ruling, a summary judgment motion, in a case against the State of New York to ensure voter registration opportunities required by motor-voter are available at offices serving college students with disabilities and State-funded institutions of higher education.

We also have a robust disability rights practice. We are feverishly working on the ADA regulation as we prepare for the 20th anniversary of the ADA. We have dramatically stepped up efforts to prevent the unnecessary institutionalization of people with disabilities, including significant cases in Georgia, New York, Arkansas, and elsewhere, and to ensure that the conditions in the facilities are safe.

My memory banks are seared with the nightmare of a 14-year-old girl with mental health issues who was in an institution in Georgia. She did not need to be there, but she was there. She had treatment for her condition, and one of the side effects from that treatment was constipation. She was in so much pain, but the condition—the people did not treat her. She literally exploded—or I should say imploded, and died in that institution. These are real people suffering real problems, some of the most vulnerable people in our community, and I cannot sleep at night when I think about things like that that are happening in institutions across this country. And we will continue to work on those efforts to make sure that institutions are safe and that only people who should be there are there.

In short, the Civil Rights Division is again open for business, and we are indeed using all of the tools in our law enforcement arsenal, including litigation, education, outreach, and numerous forms of technical assistance. We have forged new partnerships with State and local law enforcement. I met with local law enforcement in Birmingham when I was out there to discuss issues of mutual interest, including our hate crimes enforcement, human trafficking, and other issues of church arsons, et cetera. And we have numerous partnerships with our Federal partners. We have made a lot of progress, but as you correctly point out, Senator, as Senator Kennedy said, civil rights remains “the unfinished business” of America. I wish I could be that Maytag repairman waiting for the phone

to ring, but, regrettably, we continue to be the Toyota mechanic, and I am here to answer any questions you may have, and I look forward to your questioning.

[The prepared statement of Mr. Perez appears as a submission for the record.]

Senator CARDIN. Well, thank you for energy and your passion on these issues. I share your concern about what we can do to help, and it is frustrating that we cannot move faster to provide the opportunities for all the people in this country.

I also very much acknowledge the great results in recruitment. That is a clear sign that the right climate has returned to the Civil Rights Division, and we have heard and you have told us about the regular meetings between the career attorneys and the political appointments so that you have a seamless system taking the best advice from the career attorneys. And we very much appreciate that, and we applaud your efforts in that regard.

I also appreciate that you started with fair lending because I think in these economic times fair lending is an area that we really need to put a spotlight on.

I agree with Senator Sessions that we do not want to put a climate out there that causes institutions to do things that are irresponsible. That is not our intention, and I agree with Senator Sessions. But I think we can learn from history. You go back to before World War II, where we had housing programs in this country that were administered by FHA, and the color coding was adopted in redlining which had at least tried to be justified based upon economic realities, when what it did was hold down a class of people. And the net result was that wealth accumulation, which many times was based upon the ability to own a home and get the equity of that home, was denied to the minority population in our country. Statistics showed that by 1980 when the GI bill's mortgages matured, the net worth of white families was close to \$40,000, whereas compared to black households it was a little over \$3,000.

That has its own rippling effect as we look at trying to develop businesses. The first source of capital that you look at is the wealth that has been accumulated within your own community, and if you do not have wealth accumulations, it holds down business growth, it holds down our whole economy. And the same type of issues could be mentioned in a lot of other areas.

Predatory lending occurred in this recent crisis. There were black families in Maryland that were targeted in minority communities that could have gotten traditional loans, but instead were steered by brokers into a more expensive type of financing and ultimately found themselves in a situation that they could not get out of. So I just really want to applaud you for focusing on the lending issue, setting up a separate unit, because the lending discrimination in this country is having a profound effect not just on the mortgage for homes, but also as it relates to businesses and education, et cetera.

So I just really want to encourage you to continue, and I want to give you a little bit more time just to talk about what you are doing about the predatory lending practices to make sure that all communities in our country have equal access to credit.

Mr. PEREZ. Sure. Thank you for that question, Senator, and thank you for your longstanding support of these efforts to curb predatory lending.

As you know, I had the good privilege of serving as Governor O'Malley's point person on foreclosure prevention, and I met with many families who were days and in some cases hours away from losing their home. I learned a lot about this issue in the course of traveling across our great State of Maryland, and first and foremost, I think what I learned most is that consumer protection and preserving a sound lending climate go hand in hand. We sometimes live in an unnecessarily binary universe where we say you either do one or the other. We can and must do both. And when we passed the series of reforms in Maryland that were very aggressive, we passed them with the absolute support of the mortgage bankers, the mortgage brokers. They actually gave me an award for the work that we did. And they understood that when you do not have sound consumer protections, then that can undermine the system, writ large.

And so the work that we are doing really builds off that because the data is very clear. The foreclosure crisis has touched virtually every community in this country, but it disproportionately touches communities of color, in particular African-Americans and Latinos. Thirty percent of the foreclosure activity in the State of Maryland was in Prince George's County, a predominantly African-American suburb in the State of Maryland.

And so we have seen that, and we have seen in the AIG case that the brokers understood that they could take advantage of African-American borrowers because—cross burning are the most overt form of discrimination and bigotry. Lending discrimination is some of the most subtle. It is what I call discrimination with a smile. Many people are just happy to be in a home. They do not realize that that 8-percent interest rate they were just quoted was far worse than the terms that they were otherwise eligible. And so oftentimes we see that discrimination with a smile in the work that we do, whether it is the AIG case, whether it is the other work that we are doing.

And so I truly believe that the work that we are doing on the President's Financial Fraud Task Force, the partnerships we have underway—I will be with the Attorney General of Illinois tomorrow. I recently met with the Attorney General of Tennessee to talk about potential joint efforts. Those sorts of partnerships are critical because we have seen, regrettably, that this issue has a very, very strong civil rights dimension and calls for us to use the tools in our arsenal, notably the Fair Housing Act and the Equal Credit Opportunity Act, and that is precisely what we are doing.

Senator CARDIN. You talk about partnership with the States. I want to focus on the implementation of the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act. You noted in your opening comments about cases that have been filed by your Division. That bill was passed for two purposes: one, to make it clear that the Federal Government would be available to deal with those types of activities, but also to enhance the partnership between the Federal Government and the local governments.

Could you just share with us what your Division is doing with the local prosecutors to enhance their capacity to deal with this issue?

Mr. PEREZ. That is a great question. I was in Birmingham, as I said, the week before last with a number of key stakeholders, and we had a very robust 2-hour session with local law enforcement, because I do not measure success of the Matthew Shepard Act by the number of Federal prosecutions that are brought. I measure success by the number of cases that we can bring. I have always asked the question in every case I have done, What is in the best interest of the case? And many of these cases—church arsons, for instance—it was in the best interest of the case, once you solved it, to give it to the local authorities because they could prosecute it perhaps faster. Some hate crimes cases are easier to give to the local authorities.

Laramie, Wyoming, almost went bankrupt in the prosecution of Matthew Shepard because it was a small community. The average DA's office in the United States I believe has something like nine employees. They are small. We are now a resource for local law enforcement, and that is why I am traveling the country to deliver that message and to work with colleagues, Federal law enforcement, local law enforcement, nonprofit partners, to train. Because people ask me, what are your first impressions on the job, Mr. Chairman, and one of my first impressions is the more things change, the more they stay the same.

Today in South Carolina, there is going to be a sentencing in a hate crimes case, father and son team. An African-American goes into a store to use the facilities. They are appalled by the fact that an African-American is going into the store. They assault him. They pull out a chain saw from their car, and they ignite the chain saw and attack him with a chain saw. Yes, a chain saw, I kid you not. Two white people come to the defense of this person. They attack that person as well. And we were able to secure a plea the day after the jury was empaneled.

And so we see this cancer of the soul, which I thought was behind us, continues to rear its ugly head, and, frankly, as you correctly pointed out, Senator, in your opening statement, hate crimes are on the rise. And that is why this bill is a critical tool in our law enforcement arsenal, and we look forward to empowering both Federal and local law enforcement to do the work that needs to be done to combat hate crimes.

Senator CARDIN. Senator Sessions mentioned during his opening statement concerns about intimidation at the polling places, and I agree with him. Any type of intimidation should be dealt with.

A couple years ago, some of my Republican colleagues raised the issue of access to voting by our military, and, quite frankly, I agreed with their concerns, and we took action jointly to make sure that our military gets adequate time in order to be able to participate in local elections.

I mention that specifically because there could be a problem with those States that have late primaries as to how we can comply with those time limits. And we need to figure out how we can make sure that our military are fully empowered, all voters are fully empowered during the 2010 elections.

I want to, of course, remind the Committee about the type of innovative deception that seems to come about every election, how we will see mysterious letters appear in minority communities telling them that the election day will be Wednesday rather than Tuesday or that if you have outstanding parking tickets, you better not show up at the polling place because you will be arrested and things like that; aimed at a segment of voters who are likely to be intimidated by that type of material.

I think we all condemn that, and we have taken steps to try to prevent that at the State level. But to me, this should be a national priority, to make sure that it is clear that we have the capacity of the Federal Government to support our States to make it abundantly obvious that if people participate in these types of activities, they will be held accountable and that it should have no place in American elections.

What are you doing in preparation for the 2010 elections?

Mr. PEREZ. I completely agree with everything you have said, and we are working hard to make sure that we implement the MOVE Act, that we ensure that overseas military voters can vote in the upcoming primary, so that is a front-burner item simply because we have to get—we have primaries, as you have said, coming up.

I share your concern about voter intimidation in any way, shape, or form. I still have a copy of the literature from Prince George's County in 2006 that I suspect you also have in a file somewhere, and that was—

Senator CARDIN. I keep it closer by than in a file.

[Laughter.]

Senator CARDIN. A constant reminder.

Mr. PEREZ. Yes. So I have seen those things, and we will continue to be very vigilant in the prosecution of all forms of voter intimidation.

As you know, we share that responsibility with the Criminal Division, and we coordinate very closely with the Criminal Division. We have jurisdiction over intimidation that has a civil rights dimension, and they have jurisdiction over actually a broader array of statutes relating to intimidation. But we communicate very well together, and we will continue to ensure that that is a top priority.

Senator CARDIN. My request is that if you believe you need stronger tools, please let us know. As you know, when President Obama was in the Senate, he authored a bill that I cosponsored that dealt with this subject, and the Committee approved it. If you believe that you do not have adequate or broad enough powers, please let us know.

Mr. PEREZ. I certainly will.

Senator CARDIN. Senator Sessions.

Mr. PEREZ. Thank you, Mr. Chairman.

Good morning, sir.

Senator SESSIONS. Mr. Perez, I like your enthusiasm, I like your experience, and I like the idea that I think I hear you say, that you worked closely with your prosecutors and are involved in the cases yourself, and that, therefore, you are responsible to answer and make decisions that set good policy for the Department.



You know, I am a strong believer that many people are discriminated against and are unfairly handled with regard to big items like homes and end up paying a lot more interest, and they may not have realized, as you said, just how significant that is, how every month they may be paying another \$50, \$60, \$100 that they do not have, really, that could be avoided.

So I think these are good, and I have spent a lot of time having meetings over my State with housing people to make sure our African-American community particularly took advantage of the housing opportunities the Federal Government had provided, the HOPE bill and other things, and I believe strongly in that. But I was—I guess I could be criticized for being unaware that perhaps they were making loans to some people who could not afford them or that the backgrounds were not being done sufficiently to make good loans. It does not help a poor person to encourage them to make a loan that they cannot reasonably be expected to pay back.

So it is a difficult issue, but I certainly appreciate your work against the redlining and things that were clearly discriminatory, and some of those things still remain discriminatory today.

You have been a critic of politicizing the Department, and I think you should take care to make sure that you do not. It was reported in the media that a political appointee in your Division assembled an entire Voting Section for a brown-bag lunch in November of 2009 and announced that the Obama administration had “no interest” in enforcing Section 8 of the National Voter Registration Act or the motor-voter law. Section 8 vests the Attorney General with power to ensure that States are complying with Section 8 and removing dead and duplicate voters from the rolls. If you have an excessive number of names on the rolls that are of people who are deceased or who have moved away, it is much easier to slip in and have someone vote in that person’s name. It creates a risk.

The political appointee reportedly said Section 8 “has nothing to do with increasing turnout of minority voters,” says “so there is no interest in enforcing that law.” Have you heard that?

Mr. PEREZ. I have not, actually, Senator, and what is interesting about that is we are actually right in the middle of preparing guidance because we cannot simply—I am a firm believer that the way to ensure full enforcement of our laws is through some litigation activity but technical assistance and other guidance. And so we are actually in the middle of preparing guidance on Section 7 of motor-voter, Section 8, Section 5, because we want to make sure that—

Senator SESSIONS. Well, I am talking about Section 8.

Mr. PEREZ. Right, and—

Senator SESSIONS. Section 8—

Mr. PEREZ. Absolutely.

Senator SESSIONS. Did this employee make such a statement and somebody reported it in the media?

Mr. PEREZ. I am unaware of that, Senator. I am unaware of that.

Senator SESSIONS. Would you check and see?

Mr. PEREZ. I certainly will, and I—

Senator SESSIONS. That is against your view, is that correct?

Mr. PEREZ. I will share with you our Section 8 guidance when it is released, and I anticipate it will be released in the near future,

because as I have said many times, our job is to enforce the law, all of the laws, and we will indeed enforce Section 7—

Senator SESSIONS. Well, let me ask you—

Mr. PEREZ [continuing].—And Section 8.

Senator SESSIONS [continuing].—A lot here. I just want to ask a question.

Mr. PEREZ. Sure.

Senator SESSIONS. Do you think that it is inappropriate if this individual—I believe it is supposed to be Julie Fernandez—had said that the Obama administration “had no interest in enforcing Section 8?”

Mr. PEREZ. I am quite confident, Senator, that given the conversations I have had with Julie, because she is preparing the guidance and helping to prepare the guidance, I am quite confident that you are going to see an aggressive statement of what States can do and what States should not do in the voter-purging context of Section 8. So I think our actions will speak for themselves.

Senator SESSIONS. Has your administration brought any lawsuits to ensure that these rolls remove the dead and duplicate voters?

Mr. PEREZ. The guidance that we are trying to bring right now is intended to prevent problems from occurring, because we have heard situations where there have been improper purging of voter rolls so that people who can—

Senator SESSIONS. Oh, so you are concerned about improper purging. I have seen that happen from the Department of Justice quite a lot. Why would you—do you have any proof that these people have actually removed people improperly or with—

Mr. PEREZ. No, sir. The way I have approached this is, whether it is Section 4, Section 5, Section 7, Section 8, we need to have transparent guidance for State authorities to make sure that they know what the rules of engagement are. So we are treating Section 8 enforcement exactly how we are treating every other section, which is to make sure we have transparent guidance, that we get feedback from States when we put the guidance out so that they will understand what the rules of engagement are. And, again, I will be glad to share with you that guidance when it comes in—when it is released.

Senator SESSIONS. If you are finished—

Mr. PEREZ. Yes, sir.

Senator SESSIONS [continuing].—I would like to follow up and just—

Mr. PEREZ. Sure.

Senator SESSIONS [continuing].—Remind you that this Congress as part of the legislation insisted that rolls be cleaned up. I know the Civil—you understand that?

Mr. PEREZ. Yes, sir, and we are committed to the enforcement of that.

Senator SESSIONS. I am aware, having been familiar with the Department of Justice for the last 20 years, that the Department of Justice has had more emphasis on trying to block efforts to remove from the roll dead and duplicate names, it seems to me, than they have in enforcing this section. So my question to you is: Will you take action to ensure that communities who have large numbers of

people on the rolls that should not be there remove those from the rolls?

Mr. PEREZ. We will make sure it is done properly, yes, sir.

Senator SESSIONS. And you will enforce Section 8?

Mr. PEREZ. Yes, sir.

Senator SESSIONS. You have repeatedly given speeches proclaiming the Civil Rights Division is back open for business or that the voting booth is once again being protected. Yet in the 15 months since the Inauguration, the Voting Rights Section, according to information I have, has brought only four cases in that time period and dismissed another—and that is against the Black Panther Party—for voter intimidation, that infamous case. Three of those four cases were initiated during the Bush administration: in Texas, a Spanish language ballot Section 203 enforcement; Lake Park, Florida, vote dilution; Riverside, California, Spanish language ballots enforcement.

Now, I do not think it is fair to say the previous administration shut down civil rights enforcement, and I reject that. I believe that is an overstatement, and I believe it is in danger of politicizing your office, frankly.

Now, what about the Uniformed and Overseas Citizens Absentee Voting Act cases? The Civil Rights Division I guess now will be implementing the new provisions of the recently passed MOVE Act, which was intended to secure voting for over 25 percent of military overseas voters who were unable to cast a ballot in 2008. Certainly, we should take every effort to make sure that those who are serving us abroad have an opportunity to vote and do not lose their vote because they have been deployed.

So, first, does your Voting Section have any attorneys with military experience and are their experiences being used in the implementation of the MOVE Act? And I understand that the Voting Section has only four attorneys that are participating in monitoring this and in compliance with it. And as you noted, I understand you will be hiring a lot of attorneys on redistricting in the future, but do you have enough attorneys in this section to enforce these laws?

Mr. PEREZ. Absolutely. I am very confident in our complement of people working on the MOVE Act, working to enforce that. We have just got a very good verdict—I think it was in Virginia—in an UOCAVA case. We have aggressively enforced that, and we will continue to do so. And I appreciate the leadership of Senator Schumer and others in the passage of the MOVE Act. As you know, that was a bipartisan bill, and we will fully and aggressively enforce it, and I look forward to doing so.

Senator SESSIONS. Well, an election is coming up in November—

Mr. PEREZ. Absolutely.

Senator SESSIONS [continuing].—And we do not want to have another election with 25 percent of our military—

Mr. PEREZ. I agree with you, Senator.

Senator SESSIONS [continuing].—Folks are not able to vote.

On this new Black Panther Party case dismissal, you told the House Judiciary Committee when you testified that the maximum penalty was sought in that case. But the question was: Was it obtained? Could you compare the remedy sought in the original com-

plaint with the remedy actually obtained in the injunction? Isn't it true that the complaint sought a permanent injunction against all four defendants and the ultimate injunction was only for a few years and against just one defendant? What is your—

Mr. PEREZ. Sure.

Senator SESSIONS [continuing].—Analysis of that?

Mr. PEREZ. I would like to start out—you indicated in your opening statement that we had erected a steel barrier, and I simply want to point out for the record, Senator, that we have provided over 4,000 pages of documents to the Civil Rights Commission in response to their requests. In addition, I have offered to come to the Commission, and I will, in fact, be coming over there in a few weeks to testify on that. So with all due respect, Senator, I would not call that a steel barrier.

With respect to your question about—

Senator SESSIONS. What about the people who make the decisions in the case—

Mr. PEREZ. Well, Senator, as—

Senator SESSIONS [continuing].—Who were involved in it and had discussions with other members of the Department and political appointees above them who did not agree with the dismissal of the case in this fashion? Are you going to allow them to testify?

Mr. PEREZ. Actually, the two career people who were in the front office and made the decision, people with over 60 years of experience, actually came to the Hill and briefed Congressman Wolf at his request, and so they did come to the Hill.

As you know in connection with your service as U.S. Attorney, there is a longstanding Department position that was applied in Republican and Democratic administrations that front-line trial attorneys are not brought before committees because we want to make sure that they have the ability to make their decisions and not be looking over their shoulder wondering whether they will be called to testify. So—

Senator SESSIONS. Well, it may be unusual—it may be something I am not fully comfortable with, the powers we give to quasi-independent agencies. But the Civil Rights Commission has the right to issue subpoenas, and they have issued a subpoena to the Department of Justice to have employees testify about this case. To my knowledge, you have either not responded or are not—or have not—or maybe opposed it. What is your view—

Mr. PEREZ. We did respond, Senator, and, in fact, the 2(e) regulations that have been in place I think since the mid-1950s apply in this situation as well. And as part of our response, again, we have offered and submitted over 4,000 pages of documents.

I will note parenthetically that you are getting those as well, and in the application of the 2(e) regulations, we have directed—and the Civil Division handles all these requests of this nature, and they inform people that the front-line trial attorneys are not going to be produced because they are—

Senator SESSIONS. Are you asserting that—you are asserting that you do not have to comply with subpoenas from the U.S. Commission on Civil Rights?

Mr. PEREZ. We are applying the 2(e) regulations in a way—

Senator SESSIONS. What is the 2(e) regulation?

Mr. PEREZ. The 2(e) regulation pertains to a Supreme Court case that involves—when front-line trial attorneys are subpoenaed to talk about case-related decisions that they made, there is a certain process that must be followed, and to the extent that there are questions that a body—whether it is this Committee or a Civil Rights Commission—is seeking to ask about the deliberative process, there is a privilege that has been asserted by Democratic and Republican administrations for decades, and that is the privilege that is being asserted again here. And that is why I have offered to come up, and they have accepted that offer.

Senator SESSIONS. You had certain attorneys come and provide information to the Congress, but not certain attorneys, my understanding is, that were involved in the handling of this case. Am I right about that?

Mr. PEREZ. The Acting Assistant Attorney General for Civil Rights and the Acting Deputy Assistant Attorney General for Civil Rights came up. The front-line trial attorneys did not, as is the case in Republican and Democratic administrations for decades. I know when I served in the Thornburgh Department of Justice, that was the policy then, and it has been pretty consistent in my experience.

Senator SESSIONS. Well, I think that is a good policy, generally, but the question is: What about the United States Commission on Civil Rights? They are set up to ensure that civil rights are enforced, and they have been given subpoena powers, and apparently they would like to talk to the people who actually tried the case. And I understand your testimony to be that the Department of Justice is resisting allowing those people to respond to the U.S. Commission on Civil Rights.

Mr. PEREZ. The authority of the Civil Rights Commission, as I understand it, does not exceed the authority of the U.S. Senate. And so we have spent considerable time attempting to work with the Commission. That is why we have provided the 4,000 pages of documents. That is why I have offered to come up.

I have great respect for the institution of the Civil Rights Commission, and that is one reason why I am more than willing to come up and explain why we reached the decision that we reached. But as you know, Senator, that is why we have political leadership in place, to come up and explain those things, and we are treating the Civil Rights Commission with great respect. We applied the same 2(e) principles to them that we would apply to any request that we would get from this Commission.

Senator SESSIONS. But there still remain concerns about how that case was handled, and I do not think they are going to be resolved unless the people actually involved in it are allowed to testify or to give evidence, and that is just the way it is going to be, I suppose.

When we dealt with the hate crimes legislation, I think the FBI statistics showed actually a slight decline in hate crime cases. Have they gone up in recent months? Or what numbers are you basing—

Mr. PEREZ. Well, if you look at the—hate crimes against Latinos, for instance, have gone up I think 4 years in a row. We now have

seen a significant—we have a threats case that we have indicted in New Jersey.

Senator SESSIONS. Where do you get the numbers—

Mr. PEREZ. The hate crime—the FBI data, and then also the Southern Poverty Law Center has data targeting and tracking hate crimes. And as you know, we all acknowledge that the hate—

Senator SESSIONS. Does the FBI data show that there has been an increase?

Mr. PEREZ. I know in the context of Latino—

Senator SESSIONS. Well, I am asking overall.

Mr. PEREZ. Let me—I will get the precise figures, and I will—

Senator SESSIONS. My understanding of your testimony, Mr. Perez, was that hate crimes are up. I think you should be accurate if they are not up. One category could be up and needs attention, but—

Mr. PEREZ. Here is what I will do, Senator. I will get you all the data sources we have—the FBI, the Southern Poverty Law Center, the Anti-Defamation League, all of the sources that collect that data. I will also get you the data on the hate crimes prosecutions that we have done, and what you will see in the cases that have been brought is that there has been indeed a significant rise in the number of cases.

When I was a deputy chief in the Criminal Section in 1996, we handled somewhere in the vicinity of about 50 cases. A decade later, there were about a dozen cases that were prosecuted. So we—

Senator SESSIONS. Well, I believe—

Mr. PEREZ [continuing].—Will get you those.

Senator SESSIONS [continuing].—Both the police and the Federal Government is doing a more aggressive job of prosecuting and identifying these cases. I would hope and pray that the amount of hate crimes is down and not up. My understanding is that the FBI numbers do not show that. I assume they are the most authoritative, but I could be wrong, and I will look at that. Thank you very much, and I appreciate this.

Mr. Chairman, I do have a very important Armed Services Committee meeting. I will have to slip out.

Senator CARDIN. We certainly understand. That is why we allowed you as much time—

Senator SESSIONS. You allowed me to go over.

Senator CARDIN [continuing].—As you needed.

Senator SESSIONS. I appreciate it.

Mr. PEREZ. Thank you, Senator, for coming, and when I get you the data on Section 8, I will also get you the information on the current Section 8 case that we actually have going on, and I will make sure you know about that.

Senator SESSIONS. Thank you.

Mr. PEREZ. Thank you for your time.

Senator CARDIN. I just would point out that the Southern Poverty Law Center has supplied information to this Committee that shows an increase in hate crime activities. We would also point out that many local jurisdictions do not provide the FBI with information.

I have tried to work with members of the Judiciary Committee to increase the information made available to the FBI so that we have more reliable information on hate crime activities and have met resistance from my Republican colleagues on this Committee to get that information to the FBI.

And let me also point out that in conversations that I have had with local law enforcement officials and with local advocacy groups, there is no question that there has been an alarming increase in hate crime activities in this country, something that I think has been not only well documented but acknowledged as far as the problems being confronted by law enforcement around this country.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. I apologize. I was in the HELP Committee hearing, so I just got here when the Ranking Member was—I assume I have 16 minutes?

[Laughter.]

Senator FRANKEN. No. I am joking. I know he had to leave.

Mr. Perez, last month your Division settled a case called *J.L. v. Mohawk Central School District*. You mentioned the case in your written testimony and probably in your oral testimony. It involved a 14-year-old student from upstate New York. The student, J.L., is gay. Because he was gay, his classmates destroyed his clothes, his phone, his music player. One student knocked J.L. down a flight of stairs. Another brought a knife to school and threatened to kill him. When J.L. and his parents complained to school officials, the school principal just told him that, “Boys will be boys.” You supported J.L.’s lawsuit against his school and helped broker a settlement.

Unfortunately, this case is hardly unique. A similar case came up in my State. The fact is discrimination and harassment are a fact of life for lesbian, gay, bisexual, and transgender students across the country, yet there is no explicit protection in Federal law that bars discrimination and harassment against LGBT students in public schools.

What do you think of this? Do we need an explicit ban against discrimination in public schools based on sexual orientation or gender identity?

Mr. PEREZ. Thank you for your question, Senator. I was in Seattle about 3 weeks ago, and I went to a middle school as part of an anti-bullying campaign, and I told the students the following: Today’s bullies are tomorrow’s civil rights defendants all too frequently, and I know that because I have prosecuted high school students for horrific acts of hate crimes. And so I am a firm believer that we need to start earlier on in our prevention efforts, and I am very proud of the work we did in the Mohawk County case because until we intervened in that case, the case was languishing. And the Federal Government can make a difference.

I have a 13-, an 11-, and a 7-year-old, and when they go to school, I have every right to know and believe that they are going to be safe in school. And we used Title IX theory—it is a theory of gender nonconformity—and we were able to bring the case under Title IX. It is not the first time we have brought a case involving similar circumstances using a Title IX theory. We did another one when I was in my first tour of duty in the Clinton administration

working with the Education Section, and we will continue to monitor those.

I would be happy to work with you on the underlying issue of ensuring that everybody going to school can have the reality of a learning environment that is nurturing, non-discriminatory, and non-threatening.

Senator FRANKEN. Don't we have explicit laws against bullying people on race and on—

Mr. PEREZ. Well, depending on the facts—

Senator FRANKEN [continuing].—Religion and—

Mr. PEREZ. I mean, depending on the facts and circumstances of the case, there may be local or State laws or potentially our Federal civil rights laws. And, again, we have had cases before involving racially motivated violence committed by school-aged kids. Oftentimes, it has been arsons of schools, arsons of churches, pretty significant assaults.

Senator FRANKEN. I am talking about bullying. Right now Title IX covers sex discrimination.

Mr. PEREZ. Correct.

Senator FRANKEN. But while some circuits have interpreted that to include discrimination on the basis of sex stereotypes—

Mr. PEREZ. Correct.

Senator FRANKEN [continuing].—Not one circuit has found that to include discrimination on the basis of sexual orientation.

Mr. PEREZ. That is correct. Our theory was a theory of gender nonconformity, which is a form of sex discrimination. It was not a theory of discrimination based on the fact that somebody is gay.

Senator FRANKEN. OK. Well, I would like to work with you on this and—

Mr. PEREZ. I would be happy to.

Senator FRANKEN [continuing].—Explicit protections for folks on lesbian, gay, bisexual, and transgender for kids who are—it is a very real thing that there is this bullying in school.

Let us turn to a couple other matters. As you know, the U.S. Commission on Civil Rights was founded by President Eisenhower to promote civil rights. That may sound self-evident, but let me list some of the recent actions by the Commission and Commission members. They include: one, testifying against the reauthorization of the Voting Rights Act; two, opposing by a majority the Matthew Shepard Hate Crimes Act; and, three, issuing a report questioning the academic and social benefits of school diversity. That is the U.S. Commission on Civil Rights doing that.

I know you do not have the authority or jurisdiction over the Commission, but as the Nation's chief law enforcement officer for civil rights, can you tell me, you know, what is happening here? I would also love to hear you talk about the Voting Rights Act as reauthorized and the Hate Crimes Act. Are those pieces of legislation central to your mission?

Mr. PEREZ. Absolutely central to our mission, and we have—in the voting context, we are feverishly preparing for redistricting. Senator Sessions mentioned some voting cases, but I look forward to giving him the full panoply of voting cases that we are working on, including a Section 8 case, a Section 2 case in Euclid, Ohio; a victory recently in a New York State NVRA case; another case in



Shannon County, South Dakota, which is Indian country, making sure that people with limited English proficiency in Indian country can access the ballot. So I am very proud of the work we have done, and I look forward to ensuring that Senator Sessions has a full list of the cases that we are actually working on in the Obama administration.

I also have great respect for the Civil Rights Commission. I had the privilege during the transition, Senator, of overseeing the Obama transition of all the agencies that have a robust civil rights presence, large agencies such as Department of Justice, HHS, HUD; smaller agencies, the EEOC and the Civil Rights Commission. And I actually got a history lesson on the history of the Civil Rights Commission and the creation. Civil rights has always been bipartisan in our country. I learned that from Senator Kennedy. And you look at all the major pieces of civil rights legislation, and they have been a function of bipartisan work. I look forward to the 20th anniversary of the ADA this summer, a bill signed by George Herbert Walker Bush.

And so I have profound respect for the tradition and the history of the Civil Rights Commission, and that is why when they asked me to come over recently to talk about the work on the New Black Panther Party case, I said, "Of course I will come over." And I will be over there in a few weeks to discuss our actions there, and I hope that we can reach a point where we can return to our bipartisan roots, because really civil rights is about bipartisan coalition building. That is what I have learned from the movement, and as I study the history of the movement, that is what it is, and that is what I hope it will return to.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.

Senator CARDIN. I would just remind the Senator he went 16 seconds over his allotted time.

Senator FRANKEN. I guess I am not the Ranking Member.

[Laughter.]

Mr. PEREZ. That was my fault, Senator.

Senator CARDIN. Well, let me first say to Mr. Perez that you are being very diplomatic on the Civil Rights Commission, and I understand your position as testifying before us. I think Senator Franken is absolutely correct in the manner in which he has presented that. I understand the tradition of the Civil Rights Commission, but it is an important institution, and it is one that should be in the forefront of advocacy for the civil rights of all Americans. And looking at its recent actions, it calls into question whether it is carrying out its intended responsibility.

Now, that is our responsibility as the Congress to oversee that Commission, and it is an issue of great concern to me and I know this Committee, and I thank Senator Franken for the manner in which he presented his question. I just underscore the point that in the New Black Panther Party case, it was career attorneys that made those judgments, as it should have been. And I applaud you for trying to, again, keep this out of the political arena, and I wish you well in your appearance before the Commission.

Mr. PEREZ. Thank you.

Senator CARDIN. We will be watching that carefully.

I want to go back to Senator Sessions' points on the enforcement of Section 8. Let me just make an observation, if I might. I certainly agree with Senator Sessions. Anyone who should be taken off the rolls—someone who has died should be off the rolls. If someone has moved, they should be taken off. The rolls should be accurate. I certainly agree with that. But I can tell you, after every election I get more complaints about people who were eligible to vote and who were inappropriately taken off of a roll and showed up and had to file either a provisional ballot or the election officials did not know how to handle a provisional ballot, or whatever, or they were harassed to such a point that they just left because of the time problems that they have in voting.

I do check with our local law enforcement to see how many matters—because after every election there are always these accusations that people fraudulently voted. And then we take a look at it, and we do not find it. And there have been a lot of studies done, and the number of people who are fraudulently voting is minuscule compared to those who are eligible to vote, who try to vote, who either cannot vote or their votes do not get counted properly.

Now, I am for Senator Sessions' point. I want all of our laws enforced. Do not get me wrong. But I would hope that we would try to be empowering people to vote who are eligible to vote and spending our resources to do that and not try to spend a lot of effort with a problem that really does not exist or exists in such a minor way that we should be very surgical as to how we go about it. I think I share—there are many who share my view on that, and I did not want Senator Sessions' comments to go without being responded to.

Mr. PEREZ. Senator, when you asked me a fair lending question, I said that, you know, consumer protection and preserving a sound lending climate go hand in hand. There is a tendency to create this unhealthy binary world where you either do one or the other when you should be doing both.

Similarly, we can combat voter fraud and we can ensure access, full access to the ballot. Those are not mutually exclusive propositions, and that is exactly what we are doing. There is a right way and a wrong way to enforce Section 8 of motor-voter, and we are preparing guidance so that States do it the right way. Similarly, we are preparing guidance so that States enforce Section 7 because, frankly, we have received numerous reports about motor vehicle agencies, social service agencies that are not doing their job of providing those materials. And so we need to be vigilant across the board.

Senator CARDIN. Well, thank you. I certainly support that. I want to ask one additional question. Then Senator Franken would like a second round, and we have time for it.

I want to deal with the *Olmstead* case in dealing with people with disabilities. It was an expansion by the Supreme Court of the interpretation of Title II of the ADA, and it appears that we are making, I think, some significant progress on behalf of people with disabilities. Georgia's Department of Human Resources could not segregate two women with mental disabilities in the State psychiatric hospital long after the agency's own treatment professionals had recommended their transfer to community care.

Can you just share with us what the priority in your Department is in regards to the expansion of the rights of people with disabilities?

Mr. PEREZ. We have an active docket of cases, and this is a situation that occurs in almost every State in the United States. And the old paradigm of looking at people who were in institutions was: Is the institution safe? Are the conditions constitutional? That is an important question. But that is the second question that should be asked. The first question that should be asked is: Are there people in this institution who should not be there, who can and want to live in the communities with the appropriate supports?

So in every case we are now doing, we are asking the two questions, and I get some pushback from time to time from States saying it is too expensive. Well, with all due respect, it is too expensive to warehouse people in institutions. The average cost oftentimes is over \$200,000 per person when you could live humanely and far more inexpensively in community-based settings.

So we have a case in New York where we intervened, a major case where we got a very good ruling from the court. We have the Georgia case itself where I personally went down and sat with the Governor. I did that because 10 years after the *Olmstead* case, there was scant evidence of progress, and so we had to file another lawsuit in order to move forward there.

The good news is that we have been negotiating in good faith with the State, and we are also doing similar negotiations elsewhere, and I am confident that we can build a new paradigm so that people with disabilities who want to live in community-based settings can do so, because just as the segregation of people by race in the schools is unconstitutional and immoral, the segregation of people—the unnecessary segregation of people with disabilities in institutions is equally illegal and must be stemmed.

Senator CARDIN. Thank you.

Senator FRANKEN.

Senator FRANKEN. Thank you, Mr. Chairman.

Mr. Perez, part of your job is enforcing the Freedom of Access to Clinic Entrances Act, which prohibits—I am sorry, which protects Americans' access to reproductive service providers. I know that Attorney General Holder asked the U.S. Marshals Service to help safeguard reproductive health providers and facilities around the country after Dr. George Tiller's murder last year.

How are you working with the U.S. Marshals Service to ensure ongoing protection for these providers? And are you and Attorney General Holder still recommending increased protection, or do you believe that the need was temporary?

Mr. PEREZ. I do not believe—we conduct regular threat assessments. We are actively—we have an active docket. The last thing I worked on before I left the Clinton administration was the murder of Dr. Slepian in Buffalo, New York, 3 miles from where I grew up. The first thing I got briefed on when I arrived back 11 years later as AAG for Civil Rights was a briefing on the murder in Kansas. So the more things change, the more they stay the same. And this threat is an ongoing threat, and we take those seriously. We are constantly assessing, reassessing, working not only with our partners at the Marshals Service but with other law enforcement

partners. We were actively monitoring the Kansas prosecution. I cannot comment in any detail, but that investigation remains ongoing.

We will continue to fully exercise our civil authority as well. We had a case last year in New Mexico involving an arson of a clinic that came to a successful prosecution. These cases are among our highest priorities.

Senator FRANKEN. Thank you. I know that the Department of Justice has helped enforce the Help America Vote Act and has worked with polling places to ensure accessibility for individuals with disabilities. But although most polling places now have accessible voting machines, the GAO recently found that half of “accessible voting machines” may pose problems to many with disabilities, such as those who are in wheelchairs.

Mr. PEREZ. Right.

Senator FRANKEN. What actions has the Civil Rights Division taken to address this problem?

Mr. PEREZ. I am familiar with that report, and we are actively working jurisdiction by jurisdiction. Because of the volume of precincts—and I know in my own State of Maryland, we had a number of precincts that had accessibility issues, and so we are feverishly working to make sure not simply that the facilities are physically accessible, but then working issues involving some people with vision impairments. We have read more about that or heard more about that recently. But that is certainly a broad part of our overall agenda of ensuring that everybody who is eligible to vote can do so.

Senator FRANKEN. Thank you. I think that is so important, and thank you, Mr. Chairman. If I had known I had had two rounds, I would not have come down so hard on the Ranking Member, who had an important Armed Services Chairman hearing. And I apologize for that. That was uncalled for.

Mr. PEREZ. Mr. Chairman, if I could, I just wanted—my staff handed me something that I just wanted to make sure was in the record relating to the FBI hate crimes reports. According to the information I received, the most recent FBI hate crimes report documents the highest level of hate crimes since 2001. So the number reported in 2008 was 7,783, which was up from 7,624 in 2007, and so that is the highest level since 2001. And I will be certain to share this information with Senator Sessions, but I just wanted to make sure the record was complete regarding what the data shows.

I can tell you from our own enforcement experience, as I said at the outset, the phone is ringing off the hook, and the cases are more and more brutal, and we have got a lot of father-son teams—one in Indiana, one in South Carolina. They are passing down their hatred to their children, and it really is remarkable. We just sentenced a person for threatening the President last week in Arkansas. We have a case pending involving threats against the heads of the National Council of La Raza, MALDEF, and others. And when this person was pending trial, he threatened the pre-trial services officer in his case, and he has now been detained.

So there are a lot of dangerous people out there who want to divide this country along racial, ethnic, and other lines.

Senator CARDIN. Well, that is unfortunately consistent with the information that I think each of us has observed in our own communities, and it is clearly a circumstance that we need to take aggressive action, and we thank you for the manner in which you are proceeding in this regard.

I do really send an open invitation to all my colleagues on this Committee. If we can get more reliable information to the FBI from local officials on these types of activities, I think it would be useful. And I did author legislation to deal with the homeless to try to get the information so we can act on what is a significant problem, violence against people who are homeless. And I did that not to initiate new policy, but to find out what the facts are so that we can try to develop the right policies to protect all people in our community. And it was not received in a way that we could proceed in this Committee. And if there is an interest by the Republicans to try to have the FBI have more reliable information in this area, I can assure you that I am very happy to work with any of my Republican colleagues so that we can have effective information to work on.

Absent that, we do have the FBI information that shows a rise in hate crime activities. We do have the local information from our local law enforcement, and we also have the Southern Law Poverty Center, which has produced a great deal of information in this regard—all confirming that there has been an alarming increase in hate crime-type activities in this country. We thank you for moving forward aggressively in this area, and I appreciate very much your testimony.

Mr. PEREZ. Thank you for your time, and thank you for your interest.

Senator CARDIN. If there is nothing further, the Committee will stand adjourned. The record will stay open for 7 days.

[Whereupon, at 11:30 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Hearing before the  
Committee on the Judiciary  
United States Senate

On  
The Civil Rights Division of the Department of Justice

April 20, 2010

Questions for the Record  
Submitted to  
Thomas E. Perez  
Assistant Attorney General  
Department of Justice

1. According to press reports, President Obama has asked the Justice Department to review the legality of the new Arizona immigration law, and a Justice Department spokesperson has confirmed the Civil Rights Division is analyzing whether this new law violates federal civil rights laws.
  - A. Please provide the results of your review of the Arizona law, indicating whether you believe the law violates any federal civil rights or constitutional provisions.

**Response:**

The results of the Department's review are set forth in the complaint and the motion for preliminary injunction filed by the United States in *United States of America v. State of Arizona, et al.*, United States District Court, District of Arizona, No. CV 01413, as well as in the brief filed on appeal by the United States in *United States of America v. State of Arizona, et al.*, United States Court of Appeals for the Ninth Circuit, No. 10-16645. The district court filings are available on the Department website at: <http://www.justice.gov/opa/pr/2010/July/10-opa-776.html>. Also, please see the district court's ruling on the government's preliminary injunction motion, at [http://www.azd.uscourts.gov/azd/courtinfo.nsf/983700DFEE44B56B0725776E005D6CCB/\\$file/10-1413-87.pdf?openelement](http://www.azd.uscourts.gov/azd/courtinfo.nsf/983700DFEE44B56B0725776E005D6CCB/$file/10-1413-87.pdf?openelement), and the court of appeals' ruling at [http://www.ca9.uscourts.gov/datastore/general/2011/04/11/10-16645\\_opinion.pdf](http://www.ca9.uscourts.gov/datastore/general/2011/04/11/10-16645_opinion.pdf).

- B. What is your view of the new Arizona law? Attorney General Holder has called the law "unfortunate." Do you agree with that assessment? If so, please provide an explanation.

A-1

**Response:**

We believe the district court ruled correctly when it prevented key provisions of S.B. 1070 from taking effect, and that the court of appeals properly affirmed the district court in this respect. While we understand that Arizonans are concerned about the issue of unlawful immigration, a patchwork of inconsistent State and local policies would seriously disrupt Federal immigration enforcement and would ultimately be counterproductive. States can and do play a role in cooperating with the Federal government in its enforcement of the immigration laws, but they must do so within our constitutional framework. This administration takes its responsibility to secure our borders seriously and has dedicated unprecedented resources to that effort. We will continue to work toward smarter and more effective enforcement of our laws while pressing for a comprehensive approach that provides true security and strengthens accountability and responsibility in our immigration system at the national level. As the case concerning the Arizona law remains pending, it would be inappropriate to comment further.

- 2. The Bush Administration reversed the policy of previous administrations and permitted religious organizations to receive federal funding and, at the same time, utilize the Title VII exemption that allows them to discriminate on the basis of religion in hiring. Religious organizations are entitled to the Title VII hiring exemption when they are using their own funds, but the government should not allow them to discriminate in hiring when using government funds.**

**In July 2008, then-Senator Barack Obama expressed the same belief in a speech, stating: "If you get a federal grant, you can't use that grant money to proselytize to the people you help and you can't discriminate against them - or against the people you hire - on the basis of their religion."**

**However, President Obama's Director of the White House Office of Faith-Based and Neighborhood Partnerships has indicated that the hiring issue has been assigned to the Department of Justice, which engages in a "case-by-case" analysis each time a religious organization receiving federal funding wishes to discriminate in hiring.**

- A. Has the Justice Department been engaged in a case-by-case adjudication of whether government-funded religious organizations can discriminate in hiring? If so, which Department components are involved in the adjudication? What standards are being applied in making these decisions?**

**Response:**

In response to the June 29, 2007 opinion of the Office of Legal Counsel entitled *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, commonly referred to as the "World Vision opinion," DOJ's Office of Justice Programs (OJP) developed a policy that allows for a case-by-case review of applicants seeking a similar exemption. Under the policy, a religious organization that applies for funding and requests an exemption under the Religious Freedom Restoration Act to enable it to prefer coreligionists in employment, notwithstanding a statutory prohibition on religious employment discrimination, is required to submit documentation to either OJP or the Department's Office on Violence Against Women ("OVW") certifying to each of the following statements:

- a) The Applicant will offer all federally-funded services to all qualified beneficiaries without regard for the religious or non-religious beliefs of those individuals, consistent with the requirements of 28 C.F.R. Part 38, Equal Treatment for Faith-Based Organizations;
- b) Any activities of the Applicant that contain inherently religious content will be kept separate in time or location from any services supported by direct federal funding, and, if provided under such conditions, will be offered only on a voluntary basis, consistent with the requirements of 28 C.F.R. Part 38; and,
- c) The Applicant is a religious organization that sincerely believes that providing the services in question is an expression of its religious beliefs; that employing individuals of a particular religion is important to its religious exercise; and that having to abandon its religious hiring practice in order to receive the federal funding would substantially burden its religious exercise.

**B. Please indicate the name of all religious organizations since the beginning of the Obama Administration that have been permitted to receive federal funding and discriminate in hiring. Please indicate the amount of funding received by each organization, and provide an explanation of why the organization was permitted to discriminate.**

**Response:**

Neither OJP nor OVW received requests for exemptions to the prohibition on employment discrimination in FY 2009, the first grant year of the Obama Administration.

For FY 2008, there were seven faith based organizations that submitted certificates of exemption to OJP, and that continued to receive funding in FY 2009. The seven organizations were:



1. Detroit Rescue Mission Ministries	\$ 469,533
2. Long Island Teen Challenge	\$ 44,717
3. Denver Rescue Mission	\$ 268,305
4. Straight Ahead Ministries (Boston)	\$ 89,435
5. World Impact (St. Louis)	\$ 335,381
6. Grace Schools, Inc. (Winona Lake, In.)	\$ 1,073,218
7. Indiana Teen Challenge, Inc.	\$ 89,435
8. World Vision	\$ 134,152

Additionally, in FY 2009, World Impact was awarded a \$200,000 grant and Indiana Teen Challenge, Inc. was awarded \$50,000. World Vision also was awarded \$250,000 in FY 2009 and \$275,000 in FY 2010. We do not have information on grantees receiving funds from sources other than the Department of Justice.

**C. What is your view about whether religious organizations providing government-funded social services should be able to discriminate in government-funded employment positions?**

**Response:**

As a general matter, it is unlawful for any employer to have a policy specifically discriminating against employees of a particular religion, such as Catholics or Jews. The question of whether and under what circumstances religious organizations may prefer coreligionists in employment—including whether they may do so in positions and programs funded by the United States—is more complicated, and is often fact- and context-dependent. In any particular case, various constitutional provisions and statutes might bear on the question. The Department is fully committed to ensuring that the United States complies fully with all relevant constitutional and statutory requirements, including applicable antidiscrimination laws, when providing grants and contracts for criminal justice-related services.

- 3. In September 2009, several dozen civil rights, religious, education, labor, and health organizations wrote to Attorney General Eric Holder, asking him to review and withdraw a Bush-era, June 29, 2007 Office of Legal Counsel memo which determined that the Religious Freedom Restoration Act provides for a blanket override of binding, statutory nondiscrimination provisions for religious organizations that provide government-funded social service programs, such as Head Start and the Workforce Investment Act.**

**The OLC memo asserted that RFRA can be “reasonably construed” to require that a Federal agency exempt a religious organization from an explicit Federal statutory nondiscrimination provision tied to a grant program. The memo has been criticized**

**by many legal scholars as fundamentally unsound and by some civil rights organizations as a weapon to overturn statutory civil rights protections.**

**A. What role is the Civil Rights Division playing in reviewing the June 29, 2007 OLC memo and providing guidance to OLC and other Justice Department components about whether the memo should be sustained, reformed, or overturned?**

**Response:**

As a general matter, the Department of Justice does not disclose pending legal questions OLC has been asked to consider, nor otherwise disclose ongoing OLC matters or analysis—a practice that ensures that Executive branch officers will not be deterred from asking OLC difficult or sensitive questions, and that encourages the candid and comprehensive submission to OLC of agency and component views on such questions. When the Office of Legal Counsel reviews questions concerning the application of civil rights laws, it regularly seeks and obtains the views of the Civil Rights Division, among other components and agencies.

**B. What is your view about whether the June 29, 2007 OLC memo should be sustained, reformed, or overturned?**

**Response:**

The Department is committed to ensuring that it partners with faith-based and other organizations in a manner that is consistent with all our laws. It would not be appropriate to express any views publicly at this time, however, concerning the legal question at issue in the 2007 OLC memorandum in particular. As a general matter, the Department does not express views regarding the correctness of existing OLC opinions except where OLC or the Attorney General modifies or withdraws such opinions, or otherwise refers to them in other formal opinions.

**C. It has been over seven months since the Justice Department received the request from the coalition of civil rights, religious, education, labor, and health organizations. When will the Justice Department respond to their request? If you do not know, what do you believe is a reasonable timetable for responding?**

**Response:**

The Department regrets the delay in responding, and will finalize a response as soon as it is in a position to do so.

4. Under the Bush Administration, the Civil Rights Division filed an amicus brief in a case called Lown v. Salvation Army. In that brief, the United States contended that, even though the Salvation Army received direct government funding, it was not a state actor and therefore could not violate the Establishment and Equal Protection Clauses in discriminating on the basis of religion in government-funded Salvation Army jobs. This was reportedly the first time the Civil Rights Division ever filed a brief in federal court contending that government-funded religious discrimination is lawful and does not implicate Establishment Clause concerns.

A. Has the Civil Rights Division under the Obama Administration continued to take this position in any cases? If so, please provide a brief summary of each case.

**Response:**

The Civil Rights Division has not taken this position in any case during the current Administration.

B. What is your view about whether the Civil Rights Division's position in the Lown v. Salvation Army case was the correct position? Would the Civil Rights Division, under your leadership, take such a position in a future case?

**Response:**

The Civil Rights Division has not had occasion during the current Administration to address the issues raised in the *Lown* case. The portion of that case in which the Civil Rights Division participated during the previous Administration has been dismissed by the court, and the Civil Rights Division has not participated in any similar cases. I cannot speculate on what arguments we would or would not make in future amicus briefs, since decisions regarding whether to file an amicus brief, and what arguments might be made, are very case-specific and depend on the facts presented.

## SUBMISSIONS FOR THE RECORD

**Senator Benjamin L. Cardin (D-MD)**  
**Opening Statement**  
**Department of Justice Civil Rights Division Oversight Hearing**  
**April 20, 2010**

Good Morning. Let me begin by thanking Chairman Leahy for asking me to chair this hearing today it is always great to welcome a fellow Marylander to the Senate Judiciary Committee. For more than 50 years, the Civil Rights Division has been charged with protecting all Americans against discrimination throughout our society. The Division is our nation's moral compass. As my good friend Ted Kennedy said, "civil rights is the unfinished business of the nation" and there is much work to be done. Whether it is discrimination in employment, education, housing, voting, personal liberties or hate crimes; the Civil Rights Division must take action and not stand on the sidelines against those that violate our laws.

The Civil Rights Division has a proud tradition of fighting to enforce antidiscrimination laws in the areas of voting rights, civil rights, housing, elections, employment, and hate crimes. However, during the last administration the Division had an alarming lack of civil rights enforcement and multitude of politicization; so much so that their own Office of Professional Responsibility and the Office of the Inspector General began independent investigations of the political appointees at the Department of Justice.

Year after year more evidence of corruption and lack of enforcement came to the surface. Between 2001 and 2006, the voting section failed to file any cases on behalf of African American voters. During that same time period there was one case – just one case – filed for minority vote dilution. In 2008, in the height of the economic downturn and housing

collapse, the Division played no role in holding lenders accountable for discrimination. Disability lawsuits declined almost 50% under the Bush administration and in 2006, only 10 hate crimes were prosecuted; the lowest number of hate crimes cases brought in more than a decade. There is a lot to be done in the Civil Rights Division to restore its role in protecting civil rights.

When President Obama nominated Tom Perez to be Assistant Attorney General for Civil Rights, I was confident he would restore the Division to its traditional role. I was confident you would restore the morale in the Division because you came from the Division. You served for 10 years beginning as a trial attorney in the Criminal Section. Through the years, you moved up the ladder, first as a trial attorney and eventually as Deputy Assistant Attorney General for the Civil Rights Division. So you knew the importance of setting aside political and ideological affiliations when hiring new attorneys. You knew from firsthand experience the need to ensure protections and legal recourse for those who had been discriminated against. For all these reasons as well as the leadership from Attorney General Holder and President Obama, I was confident that in your hands the Division would return to its roots of providing a voice for the voiceless, and help to our most vulnerable citizens – because that is what civil rights attorneys do.

This administration is taking action and I look forward to hearing about what the Civil Rights Division is doing under your new leadership. Specifically, what types and how many cases have been initiated, filed and brought within the Housing and Civic Enforcement Section,

the Fair Housing Section, the Criminal Section, the Voting Section, the Employment Section and the Disability section has done to enforce of our civil rights laws.

I look forward to the testimony today.

**Statement of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Hearing on "Oversight of the U.S. Department Of Justice, Civil Rights Division"  
April 20, 2010**

Today we welcome Assistant Attorney General Tom Perez as we continue our oversight of the Department of Justice. This hearing comes just one week after this Committee heard testimony from Attorney General Eric Holder. The Attorney General has called the Civil Rights Division the "crown jewel" of the Justice Department. I support that sentiment; the Civil Rights Division is charged with the enormous responsibility of protecting all Americans from all forms of discrimination.

The Justice Department under the Bush administration amassed one of the worst civil rights enforcement records in modern American history. I am heartened to see that in just one year, the restoration of the Civil Rights Division is under way. This was a tall order for a storied division, with a long record of independence and a tradition of vigorous civil rights enforcement.

The progress made in the Civil Rights Division is in no small part due to the leadership and commitment of Assistant Attorney General Tom Perez. I only wish he was confirmed sooner. Notwithstanding the partisanship that held up his confirmation, Mr. Perez has hit the ground running, and has demonstrated his pledge to follow in the footsteps of his mentor and former boss, the late Senator Ted Kennedy.

A few examples caught my attention. In December, a Federal grand jury issued six indictments in connection with the fatal racially-motivated beating of Luis Ramirez. Last year, I fought to have our Federal laws against hate crimes strengthened. This tragic murder reminds us that hate crimes affect more than just the victims of a particular act of violence.

Last month, a Federal judge sentenced a Tennessee man to 183 months for vandalizing an Islamic mosque by painting swastikas and the phrase "White Power," and for subsequently burning down a sacred place of worship. Just last week, an Arkansas man was sentenced to 10 years in Federal prison for conspiring to murder dozens of African-Americans, including then-Senator and presidential candidate Barack Obama, because of their race. Although we would all like to believe that crimes motivated by hate based on race, religion, gender, sexual orientation, gender identity or disability do not still occur in our society, these examples demonstrate that they continue to be an issue for confronted by the Civil Rights Division.

These cases are representative of why our Nation needs a strong Civil Rights Division. More importantly, they are representative of the Division's restoration. We must remain committed to bringing such perpetrators to justice, and to protecting all communities from discrimination in the pursuit of a more perfect union. I welcome Mr. Perez here today. We look forward to receiving his testimony.

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# Department of Justice

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STATEMENT OF

THOMAS E. PEREZ  
ASSISTANT ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE

CONCERNING

OVERSIGHT OF THE CIVIL RIGHTS DIVISION OF  
THE DEPARTMENT OF JUSTICE

PRESENTED

APRIL 20, 2010



**Statement of  
Thomas E. Perez  
Assistant Attorney General  
Department of Justice**

**Before the  
Committee on the Judiciary  
United States Senate**

**Concerning  
Oversight of the Civil Rights Division of the Department of Justice**

**Presented  
April 20, 2010**

Mr. Chairman and Members of the Committee, thank you for allowing me the opportunity to testify before you today about the great progress we are making in the Civil Rights Division, and about our continued vision for restoration and transformation.

This Administration has made clear its commitment to civil rights enforcement. In his State of the Union Address in February, President Obama recognized the importance of sustained efforts to advance civil rights, and he acknowledged the hard work of the Civil Rights Division, saying *"My administration has a Civil Rights Division that is once again prosecuting civil rights violations and employment discrimination."*

In keeping with the President's statement, the Department has made improving civil rights enforcement one of its high priority performance goals. I also am personally committed to the restoration and transformation of the Civil Rights Division, as is the Attorney General, whose support of the Division has been unwavering and complete.

By restoration and transformation, we do not mean to imply that we will return the Division to an earlier era. Rather, we are working to ensure it is prepared to tackle both existing and emerging challenges for civil rights in the 21st Century. That means enforcing all of the laws within our authority.

Perhaps most importantly, this involves assembling a team of committed, talented career attorneys and professional staff to carry out the Division's critical work. Between 2003 and 2007, more than 70 percent of the Division's attorneys left, many taking with them years of experience and expertise. In order to succeed in the restoration and transformation of the Division, we need to replenish our ranks, and we are fortunate that Congress has provided us with the resources to do so in the FY 2010 budget.

To ensure an effective, impartial and transparent process for rebuilding our ranks, one of our first priorities was to revamp our hiring processes to ensure that the very best candidates are selected. Those new policies are available to anyone on the Division's Web site. With new policies in place, we are in the process of working to fill the 102 new positions allocated in the President's FY 2010 budget. These critical new positions will ensure the Division can carry out robust enforcement of our nation's cherished civil rights laws.

At the same time that we work to bring additional, committed lawyers and professionals on board, we have been significantly expanding our enforcement activities, renewing our commitment to enforce all of the laws under the Division's jurisdiction fairly and aggressively.

#### Fair Housing and Fair Lending

As we grapple with the fallout from the nationwide housing crisis and the resulting wave of foreclosures, we must also be sure to address discriminatory practices that contributed to the crisis. Fair housing and fair lending enforcement are a top priority for the Division, and already we have seen progress. As of the end of March, the Division's Housing and Civil Enforcement Section had initiated 215 matters; filed 46 lawsuits, including 25 pattern or practice cases; and entered into 42 consent decrees under the new Administration.

In November, we announced the largest monetary settlement of rental-discrimination claims the Justice Department has ever obtained under the Fair Housing Act. The owners of numerous apartment buildings in Los Angeles agreed to pay \$2.7 million to settle allegations that they discriminated against African Americans and Hispanics, as well as families with children, preferring instead to rent units to Korean tenants.

Meanwhile, as part of the Administration's commitment to combating financial crime, we have increased efforts on the fair lending front, hiring a new Special Counsel for Fair Lending and creating a Fair Lending Unit in the Housing Section. During the first year of this Administration, the Housing Section initiated 38 lending discrimination matters, 29 of which were referrals from bank regulatory agencies. In March, we announced a settlement of more than \$6 million with two subsidiaries of AIG to resolve allegations of discrimination against African American borrowers by brokers with whom the subsidiaries contracted. The settlement marked the first time that the Department of Justice has held a lender accountable for failing to monitor its brokers to ensure that borrowers are not charged higher fees because of their race.

#### Hate Crimes and Criminal Enforcement

Regrettably, hate crimes continue to be a problem in communities across the nation. As a prosecutor for much of my early career, I saw firsthand how hate-fueled violence can damage communities. President Obama and Attorney General Holder have made the prosecution of hate crimes a top priority. Passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, provided critical new tools for these prosecutions, and we are working

to train attorneys and law enforcement officials in its enforcement. Already the Criminal Section has several open investigations under the new statute.

In the meantime, we have seen an increase in the prosecution of hate crimes cases under our existing authority. From the beginning of this Administration through the end of March 2010, the Criminal section filed 19 hate crime cases, charging 37 defendants.

For example, on December 10, 2009, a federal grand jury returned three indictments arising out of a fatal, racially-motivated beating and related police corruption in Shenandoah, Pennsylvania. According to the indictment, on July 12, 2008, several people were walking home from a local festival when they encountered Luis Ramirez, a 25-year-old Mexican immigrant. The defendants then attacked Ramirez in a public street by striking and kicking him while members of the group yelled racial slurs at him. Ramirez died two days later from his injuries. The three indictments include federal hate crime, obstruction of justice, conspiracy, official misconduct and extortion charges, arising from the fatal beating as well as the attempt by one of the local police officers to cover it up. These kinds of incidents and attempts to cover them up have no place in this country in 2010, and we are committed to aggressive enforcement.

In addition to its work on hate crimes, the Criminal Section has continued robust enforcement in its other areas, law enforcement misconduct and human trafficking. In recent months we have had a series of announcements related to the investigation of police officers who were involved in the shooting of unarmed civilians in New Orleans in the days following Hurricane Katrina. The incident on the Danziger Bridge, which occurred on September 4, 2005, involved one shooting on the east side of the bridge that resulted in the death of one civilian and the wounding of four others, and a second shooting on the west side that resulted in the death of Ronald Madison, a 40-year-old man who had severe disabilities. Ronald Madison's brother, Lance, was arrested on eight counts of attempting to kill police officers, but he was later released without indictment. The police maintained that they fired at the civilians in self-defense, after the civilians fired at police, but there was no evidence ever found to support the claim that any of the civilians were armed. To date, three New Orleans Police officers have pleaded guilty to federal charges related to a cover-up of the shooting incident and admitted that the shootings were unjustified.

We also continue aggressive enforcement of human trafficking laws, which are a high priority for the Department. For example, in February, a federal jury convicted an Arlington, Texas, husband and wife of engaging in a nine-year scheme to compel the labor of a Nigerian victim as their domestic servant. The couple lured a widowed Nigerian mother of six to the United States to be their domestic servant by falsely promising a salary and support for her children, who she was struggling to support. The defendants procured fraudulent immigration documents, confiscated the victim's documents, harbored her in their home, compelled her to work long hours with no days off for little or no pay, used a scheme to isolate her and restrict her communications, withheld her documents and pay, and refused her requests to return home or be paid. The defendants also failed to provide support for the victim's six children in Nigeria,

limited and monitored contact with her family in Nigeria, isolated her from normal society in the United States, and refused to allow her to regularly attend church.

In another recent trafficking case, Maryland man was convicted on charges related to a sex trafficking operation involving minors. The defendant, who used drugs to coerce underage girls to have sex with clients, faces up to life in prison and potential fines in excess of \$1 million.

#### Equal Employment Opportunity

After a significant decline in the number of employment discrimination cases brought in the last Administration, our vigorous enforcement on this front has been especially important. In fact, the Division filed 29 employment-related lawsuits in the Administration's first year, the largest number ever filed by the Division in a single year. Of these 29 new lawsuits, 19 were brought under the Uniformed Services Employment and Reemployment Rights Act, and 10 under Title VII. The 19 USERRA lawsuits filed since the beginning of the new Administration exceed the 16 filed during the previous three years combined.

The Division has also been working to reinvigorate its Section 707 pattern or practice enforcement program, establishing a targeting initiative that employs a systematic approach to identify potential cases. As a result, the Division has more than a dozen active pattern or practice investigations. For example, in New Jersey, the Division is challenging examinations for promotion to police sergeant, which we believe have had a disparate impact upon both African Americans and Hispanics. These promotional exams are used by all of the municipalities in the state that are part of the civil service system.

In July 2009, the Division obtained a highly significant victory in *United States v. City of New York*, when the District Court found that New York City's use of two written examinations to hire firefighters resulted in an unlawful disparate impact on African-American and Latino applicants, and granted summary judgment with respect to liability in favor of the United States and the Vulcan Society, Inc., an organization of African-American firefighters. This victory paved the way for the Court's January 2010 order that calls for remedial relief for African-American and Latino victims stemming from the City's use of the two examinations (including priority hiring relief for approximately 293 of such victims), as well as the implementation of new, lawful hiring practices.

Also in the employment context, in addition to work under Title VII and USERRA, the Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices is responsible for enforcing the non-discrimination provision of the Immigration and Nationality Act. The Office carries out its mission through investigations based on charges filed by workers, as well as through telephone interventions, technical assistance, and outreach to both workers and employers. Last month, the Division signed a Memorandum of Understanding with U.S. Citizenship and Immigration Services to share information regarding possible discriminatory use of E-Verify.

Moreover, we are participating in robust interagency efforts to strengthen the government's ability to enforce the anti-discrimination laws. For example, the Division has been a key member of the President's National Equal Pay Enforcement Task Force, which is charged with recommending improvements in the government's enforcement of laws banning pay discrimination. Along with the Equal Employment Opportunity Commission, the Department of Labor's Office of Federal Contract Compliance Programs, the Office of Personnel Management, and the White House, we have made significant progress in identifying new initiatives that the government can take to reach the elusive promise of equal pay for equal work. This is particularly appropriate to note now, as April 20 marks Equal Pay Day, which has been recognized as the date each year on which women's wages finally catch up to the wages earned by their male counterparts the preceding year.

#### Disability Rights

The Division has made considerable progress in the protection of rights for individuals with disabilities. The Disability Rights Section in the first year of the Administration filed 12 lawsuits and reached 39 settlement agreements. This work includes 14 new agreements under Project Civic Access, which allow the Division to work cooperatively with local governments to ensure greater access to civic programs and services for individuals with disabilities.

In January, the Division entered into a consent decree with the owner and operator of an RV resort in Silverhill, Alabama. The Division's complaint alleged that the resort, upon learning that a guest family's two-year-old child has HIV, banned the family from using the common areas, such as the swimming pool and showers. The child's parents had planned a month-long stay at the family-themed RV resort while the father commuted to nearby Mobile, Alabama, for ongoing cancer treatment. After the resort denied them full use of the facilities, the family left early the next morning. Under the terms of the consent decree, the company that owns the resort will establish policies, procedures, and training practices to ensure that patrons and their families are not discriminated against on the basis of disability. The company will also pay a \$10,000 civil penalty to the United States and \$36,000 in damages to the affected family.

Another recent highlight was the announcement of settlement agreements with several institutions of higher education regarding the use of inaccessible electronic book readers, such as the Kindle DX. The universities agreed not to purchase, recommend, or promote use of any dedicated electronic book reader, unless the devices are fully accessible to students who are blind and have low vision. The universities agree that if they use dedicated electronic book readers, they will ensure that students with vision disabilities are able to access and acquire the same materials and information, engage in the same interactions, and enjoy the same services as sighted students with substantially equivalent ease of use.

Meanwhile, the Administration's first year proved to be a landmark for federal enforcement of the Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), a ruling requiring states to eliminate unnecessary segregation of persons with disabilities and provide those individuals with services in the most integrated setting appropriate. The *Olmstead* decision

has often been called the *Brown v. Board of Education* of the disability rights movement, and in the last year the Department filed amicus briefs in five separate cases in Connecticut, Virginia, North Carolina, Illinois, and Florida, and intervened in a case in New York.

#### Civil Rights of Institutionalized Persons

In the critical area of protecting the civil rights of individuals confined in state and locally run institutions, the Division has been actively engaged in investigations, litigation, and compliance activities. In September, 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. Our suit addresses concerns regarding suicide prevention and mental health care, protection from harm, medical care and environmental health and safety.

The Division also recently filed a motion for immediate relief in *United States v. Georgia* to protect individuals confined in the state's psychiatric hospitals from harm. Despite the agreement reached with the state last year, for which we await approval from the court, the hospitals continue to be dangerous and hundreds of individuals who could and should be served in the community remain institutionalized and continue to be exposed to dangerous conditions.

#### Discriminatory Policing

While we recognize that law enforcement officers put their lives on the line to protect public safety every day and take seriously their oaths to uphold the Constitution, we are committed to holding law enforcement accountable when violations occur. Since the beginning of the Administration, the Division has opened four investigations to evaluate 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 department in East Haven, Connecticut, looking into discriminatory police practices, unlawful searches and seizures, and excessive use of force; and an investigation of the police department in 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.

#### Voting Rights

The Civil Rights Division is also reinvigorating its work in protecting voting rights. The Voting Rights Section is working especially hard to ensure that it is prepared to handle the influx of more than 2,700 redistricting plans, as well as many voting-related changes, that will be submitted for review under Section 5 of the Voting Rights Act after release of the 2010 Census results in early 2011. This tremendous increase in workload after the Census is one of the greatest institutional challenges for the Voting Section each decade, and we are working to hire more staff, upgrade technology, and update our procedures in anticipation of this challenge. The

Section also continues its critical work monitoring federal, state, and local elections across the country to ensure that voting takes place free of unlawful intimidation.

Last fall, the Section entered a consent decree on remand from the Supreme Court allowing the Northwest Austin Municipal Utility District Number One to avail itself of the statutory option to bail out from coverage under Section 4 of the Voting Rights Act, thus mooted the district's challenge to the constitutionality of Section 5. Earlier this month, private plaintiffs from the City of Kinston, North Carolina filed a new challenge to the constitutionality of Section 5, and we are prepared to defend the statute vigorously.

We are stepping up enforcement of Section 2 of the Voting Rights Act, which prohibits voting practices and procedures that are discriminatory in purpose or effect. In 2009, the Voting Section obtained consent decrees under Section 2 in its cases against the Town of Lake Park, Florida designed to cure vote dilution for black voters, and the Village of Port Chester, New York designed to cure vote dilution for Hispanic voters, caused by the at-large methods of election in those jurisdictions.

The Voting Section will place continued emphasis on enforcement of the language minority requirements of the Voting Rights Act, which require certain jurisdictions to provide assistance and information in minority languages to affected communities. Earlier this year, we filed a case against Riverside County, California under Section 203 of the Act to ensure adequate information and assistance for Spanish-speaking language minority voters. A settlement agreement was reached and an agreed order is awaiting approval from a three-judge court. Last fall, we reached an amended consent decree with Cibola County, New Mexico enforcing the language minority requirements under Section 203 for Native American voters. We have also participated as amicus in a private case in Volusia County, Florida to ensure the protection of voting rights for Spanish speaking voters of Puerto Rican origin under Section 4(e).

Another priority is vigorous enforcement of the provisions of the National Voter Registration Act (NVRA) requiring that eligible voters be able to register at state social services agencies and offices that serve persons with disabilities. We are undertaking a nationwide review of compliance with the voter registration requirements of the NVRA, which require that drivers license, public assistance, and disability service offices provide registration opportunities. The Section has begun inquiries of seven states, and intends to expand its inquiries elsewhere. Just last month, we won a summary judgment decision against New York for its failure to offer voter registration opportunities under the NVRA at offices serving students with disabilities at the State's public universities and colleges and community colleges.

The Section also won a summary judgment decision against Virginia last fall under the Uniformed and Overseas Citizens Absentee Voting Act for its failure to ensure absentee ballots were timely provided to eligible uniformed service members and overseas citizens. We are working closely with the states and the Department of Defense on implementation of the new amendments to UOCAVA enacted as part of the Military and Overseas Voter Empowerment Act that go into effect at the general election this fall.

Educational Opportunities

Securing equal educational opportunity remains a serious civil rights issue across the nation, and the Division is working to ensure students have access to equal opportunity in schools. In July 2009, the Division helped achieve a victory for female high school athletes, filing an *amicus* brief in support of Florida parents who filed suit under Title IX of the Education Amendments Act of 1972 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.

We continue to ensure that school districts operating under court orders as a result of former *de jure* segregation are living up to the requirements of their court orders and the Equal Protection Clause. Just last week, a federal court in Mississippi ordered further desegregation in such a school district. In Walthall, Mississippi, after the Educational Opportunities Section filed a motion for further relief, the court ordered the school district to eliminate policies that have resulted in significant racial segregation among students. The school district was permitting hundreds of students to attend schools outside of their assigned residential attendance zones, creating essentially a "white" school and several "black" schools. Additionally, at certain schools, the school district was grouping or clustering white students together in particular classrooms, resulting in large numbers of all-black classes at every grade level in those schools. The court's order requires the district to modify its transfer policy to permit students to transfer to a school outside their residential zone only if the student can demonstrate a compelling justification for the transfer. The court further ordered the district to implement protocols to ensure that students will be assigned to classrooms in a manner that will not lead to segregation.

We also recognize that a Civil Rights Division in the 21st Century must address the major civil rights challenges of our day, and high on that list is protecting the civil rights of lesbian, gay, bisexual and transgendered (LGBT) individuals. We will vigorously protect the civil rights of all young people, including LGBT youth, to be free from forms of bullying and harassment that violate Title IX's protection against sex discrimination in education. In January, the Division moved to intervene in a case in Mohawk County, New York, involving the harassment of a gay male student who does not conform to gender stereotypes. The complaint alleged that the school district failed to adequately address the harassment in violation of Title IX's prohibition against discrimination on the basis of sex-stereotyping. This was the first time in nearly a decade that the Division has entered a Title IX case involving sex-stereotyping discrimination. Last month we reached a settlement in the case, requiring the school district to, among other things, retain an expert consultant to review policies related to harassment, and train faculty and staff annually on discrimination and harassment.



### Religious Freedom

We have had many successes in the past fourteen months in protecting the religious freedom of all Americans. Some examples include winning the right for Muslim women and others wearing religious head coverings to access Georgia courthouses; obtaining a ruling from the en banc Seventh Circuit Court of Appeals protecting the right of Jewish condominium residents to be free from discrimination when placing a religiously mandated parchment container, called a mezuzah, on the doorposts of their units; obtaining minor modifications to the uniform policy for bus drivers in Washington, D.C. to enable Muslim and Christian women bus drivers to continue working without violating their faiths; and obtaining long prison sentences for two men who spray-painted swastikas on a Tennessee mosque and burned it to the ground.

### Coordination and Review

The Division's Coordination and Review Section has the critical mission of ensuring that Federal agencies and all programs that receive federal funding comply with civil rights laws, and, to enhance our ability to carry out this mission, the Division has been working to strengthen relationships with sister agencies. The Section has reinvigorated its program of guidance and technical assistance for civil rights agencies and others responsible for grant-related civil rights compliance. Last summer, the Section held a major conference focusing on Title VI of the Civil Rights Act of 1964, bringing together representatives of most federal funding agencies, major community and advocacy groups and funding recipients. The conference was the first of its kind since 1977.

Additionally, as of March 31, 2010, the Coordination and Review Section had 55 active administration investigations of recipients of funds from the Department of Justice, 27 of them involving allegations of failure to provide meaningful access to limited English proficient persons.

### Amicus Participation

Amicus participation has traditionally been a critical part of the Division's efforts to defend and promote civil rights protections. Since the beginning of the new Administration, the Division's Appellate Section has renewed efforts to file amicus briefs in significant civil rights cases. For example, the Department filed successful briefs in *Ojo v. Farmers Group*, which held that the Fair Housing Act prohibits racial discrimination in both the denial and pricing of homeowner's insurance.

The Division also filed an amicus brief in *Fisher v. University of Texas*, arguing that the University has a compelling interest in achieving a diverse student enrollment and that its limited use of race in freshman admissions is narrowly tailored to further that interest. An amicus brief in support of plaintiffs-appellees in *Oster v. Wagner* argued that institutionalization is not a prerequisite for asserting an integration claim under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. The Division also filed amicus briefs

in the court of appeals in two other important Americans with Disabilities Act cases, *Armstrong v. Schwarzenegger* and *Chapman v. Pier 1 Imports*. And we have filed amicus briefs in significant cases brought under the Religious Land Use and Institutionalized Persons Act (*Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*) and the Servicemembers' Civil Relief Act (*Gordon v. Pete's Auto Service*).

These are just a few examples of briefs filed during the Administration, but they represent the Division's commitment to using all of the tools available to ensure the nation's civil rights laws are enforced to the fullest extent possible.

#### Restoration and Transformation

The Division has made remarkable progress in the new Administration, and, going forward, we will continue to work to vigorously enforce our nation's civil rights laws, assisted by the influx of new resources sought by President Obama and funded by Congress. Our vision of restoration and transformation will continue to guide our work in the months and years ahead.

We are working to enhance outreach to communities and stakeholders to ensure the Division's work is informed not only by statistics and complaints, but also by understanding how we can positively impact the lives of those individuals and communities that are affected by our work. Additionally, the Division is working to rebuild, or in some cases build for the first time, relationships with its federal agency partners in order to better protect the civil rights of all individuals. I have reached out to leaders at many federal agencies in order to ensure increased coordination and partnership.

As part of our transformation, we are focusing our efforts on matters with a broader impact, which will allow us to better leverage our existing tools and use our laws to their fullest extent, while taking on more complex investigations and cases that are more resource intensive. This will ultimately result in relief to more people and expand the reach of the Division in its critical protection of the rights of all Americans.

Meanwhile, the Civil Rights Division has a unique role to play in influencing and informing policy decisions relating to civil rights. While we have seen the passage of landmark civil rights laws over the course of the last 50 years, there remains a need for further protections. Within weeks of my confirmation, I was fortunate to be at the helm of the Civil Rights Division as Congress finally passed, and President Obama signed, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, the most significant new piece of civil rights legislation to be enacted in several decades. I had the great privilege of working on this legislation years ago while on Senator Ted Kennedy's staff.

My first testimony before any committee in Congress as Assistant Attorney General was to offer the Administration's support for the Employment Non-Discrimination Act, which will fill a critical gap in our civil rights laws by ensuring that LGBT Americans finally are protected from the discrimination that has denied them the fundamental workplace equality we all deserve.

This legislation exemplifies just how the Division can become involved in discussions about civil rights issues in the 21st Century.

Some of our nation's most critical and treasured laws are those that advance equal justice and secure equal opportunity. It is the mission of the Civil Rights Division to make sure those laws continue to fulfill their purpose – namely, to protect the rights of all individuals so that equal opportunity can be a reality for everyone across the nation.

Thank you again for the opportunity to appear before you today to discuss the great and ongoing work of the Civil Rights Division. I welcome your questions.

