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CIVIL RIGHTS DIVISION OVERSIGHT

HEARING

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UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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CIVIL RIGHTS DIVISION OVERSIGHT

TUESDAY, SEPTEMBER 13, 2011

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

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

Present: Senators Coons, Durbin, Klobuchar, Franken, and Grassley.

OPENING STATEMENT OF HON. CHRISTOPHER A. COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator COONS. Good morning. It is my honor to call to order this hearing of the Senate Committee on the Judiciary. I would like to thank Chairman Leahy for the opportunity to chair today's oversight hearing. We will hear today from Hon. Thomas Perez, Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

It has been almost a year and a half since this Committee last conducted oversight of the Civil Rights Division, and among all the important work done by the Department of Justice, the work of this Division is uniquely, in my view, important. The Civil Rights Division is charged with enforcing our laws, providing the rights of all citizens, regardless of race, creed, religion, sex, or national origin, in order that they might more fully participate in our National civic life. It underpins our entire way of life as a Nation because where civil rights are not protected, equality, liberty, and the very pursuit of happiness are denied.

As we all know, the Preamble of the United States Constitution, our National charter, states that the first two purposes of our Government are to form a more perfect union and to ensure justice, and I think there is no better shorthand for the core mission of the Civil Rights Division of the Department of Justice.

The Civil Rights Division is responsible for ensuring voting rights for every American. It protects equal access to housing, lending, and employment, regardless of sex, race, religion, or national origin. It safeguards members of our armed services from any discrimination based on the hardships that accompany active duty and deployment. It provides that disabled Americans are not precluded from participation in civic life, from the marketplace or the workplace. And today, since the passage of the Matthew Shepard Hate Crime Prevention Act of 2009, the Civil Rights Division also protects the rights of gay, lesbian, and transgendered Americans to

participate as full citizens in our country without fear of violence born of bigotry.

And so it should. Equality for all is supposed to mean equality for all.

In my view, the struggle for civil rights for all Americans is a critical part of our National story. The 13th, 14th, and 15th Amendments established formal equality for all Americans by 1870, but as we know, real-world equality sadly lagged far behind. It was not until the Civil Rights Act of 1964 and the Voting Rights Act of 1965 that Congress finally truly took up its charge to turn the promise of those Reconstruction constitutional amendments into real progress for African-Americans and, frankly, for Americans of many different backgrounds. And I will remind all today that it was truly through bipartisan efforts by both Republicans and Democrats that those two signature civil rights acts were passed and that both parties have a long and proud tradition of being actively concerned about and engaged in the enforcement of civil rights for our citizens.

Since that time, we have made great progress even as we have expanded the mission of the civil rights laws beyond State action and into the broader economic sphere. Over the past few weeks, however, people in my home State of Delaware received a sad reminder that the battle against the sort of overt racism that marred this country in its past, a battle that many Americans hope and believe we have permanently won, still rages on at times. Over the Labor Day weekend, in my home town of Newark, Delaware, two teens placed a cross which read, "Burn in hell," among other truly offensive racial epithets, on the lawn of an African-American family, the Parsons. Although police in New Castle County were quickly able to arrest two young suspects, the homeowner, with whom I spoke at length, was understandably not comforted by their arrest. He said, "I do not want this to continue to happen, especially in this neighborhood, in this State, or anywhere else. I want hate to go away."

Like that homeowner, Wayne Parson, I was caught off guard, deeply concerned and offended that this would happen in my home community. Incidents like these are not supposed to happen in our Nation today, but I was reminded that the vast majority, the overwhelming majority of our country has moved well beyond these senseless, careless, and criminal acts and attitudes, in large part due to the vigilant work of those who have come before us to testify about the great work of the Civil Rights Division.

So, without objection, if I might, I would like to enter into the record articles from the Wilmington News Journal from September 5th and September 7th describing these incidents in Newark. Thank you.

[The articles appears as a submission for the record.]

Senator COONS. Although the perpetrators have been caught, we cannot let that be the end of this particular tragic incident, especially in the area of hate crimes. I believe we need community leaders to stand up and say that these abhorrent acts do not represent us and they will not be tolerated and that is, in some critical, essential reason, why we are here today. Congress has an important role to play in oversight of all executive branch activities. But when

it comes to civil rights, it is critical that both branches are on the same page, that we are working together hand in hand to fight our way toward that more perfect union. So we will work on eradicating discrimination from our laws, and we need you, Mr. Perez, and all those who serve with you—the professionals and the attorneys, the support personnel, and everybody, the dedicated professionals in the Civil Rights Division—to work on stopping it in our communities.

I look forward to hearing from Mr. Perez regarding the work he has done at the Civil Rights Division since being confirmed to that office almost 2 years ago. Mr. Perez inherited a Division that had undergone some significant upheaval, and I hope to hear Mr. Perez has moved toward hiring procedures strictly on the basis of merit. I hope to hear about the work of the Division in fighting some of the more insidious forms of institutional discrimination through disparate impact cases brought under Title VII of the Civil Rights Act. And I look forward to hearing what the Division has done to extend the promise of equality to all Americans regardless of race or sex, but also regardless of sexual orientation or gender identity.

Finally, I want to hear about and spend some time examining what the Division is doing to make certain that our servicemen and -women, the people who risk their lives to defend our Nation and way of life, have the ability to vote without burden and are not discriminated against in housing, lending, employment, or elsewhere.

I will now yield to the distinguished Ranking Member, Senator Grassley, for his statement.

Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I really appreciate oversight hearings because I do not believe Congress does enough oversight. The Civil Rights Division is well deserving of oversight. I think the Division has been pushing the envelope very far, and many of its decisions are questionable. The Division has brought numerous actions for alleged discrimination in lending. It has brought red-lining actions and anti-red-lining actions. It has used disparate impact analysis in questionable places and against economic reality. As a result, it appears to be pushing banks to engage in some of the conduct that led to the mortgage bubble and the subsequent financial crisis. And there is nothing wrong—in fact, we expect the Division to push hard where there is outright discrimination. But when a bank cannot make a judgment between a sound loan and a loan that is risky, it seems to me we are pushing ourselves to where we were in the 1990s and 2000s that brought us to the financial collapse. And when will Government learn from past bad policies?

In addition, the Division has taken extreme positions in religious employment cases, seeking to make school districts accommodate teachers' very disruptive and unreasonable demands for time off. It has brought action against school districts based on reading the term "sex" to mean "sexual orientation." It has threatened universities with disability discrimination charges if they allow students to use Kindle if only sighted students could use that product. It has refused in the New Black Panther Party case to prosecute African-

Americans who allegedly engaged in voter intimidation. Sworn testimony exists that the Division believes that such laws apply only when African-Americans are victims and that it has no interest in enforcing the provisions of the motor-voter law to ensure that voting registration lists regularly remove ineligible voters.

Despite OPR's report, the Department has refused to turn over many relevant documents on this subject to the House based only on bogus generalized confidentiality theory, and it is odd to me because transparency brings accountability, and why does the Division not want to be transparent and accountable?

The Assistant Attorney General has stated that the Division has eliminated politics in hiring. However, based on organizational affiliations listed on new hires' resumes—and this was published not only in blogs but in the New York Times—it has hired 96 liberals and 0 conservatives. The Division responded recently to a letter of mine on this subject by claiming that its decisions are made without regard to politics and based solely upon civil rights experience. It would be more accurate to state that, to the Division, civil rights experience is limited to experience with liberal advocacy groups. And I have asked for the Inspector General to investigate that.

It is not surprising that the Division has been subject to two oversight hearings in recent months. The House Judiciary Committee had an oversight hearing in June. But what is more interesting about these oversight hearings is that Republicans did not request today's hearing, and it follows a Subcommittee hearing last week on State laws that have been passed to reduce voter fraud. These laws were also discussed by Democrats at the House oversight hearing. Viewing these State laws in context may be useful to understanding today's hearing.

Two years ago, we had the *Northwest Austin Municipal Utility District* v. *Holder*. The Supreme Court decided a case under Section 5 of the Voting Rights Act. Under Section 5 some States and subdivisions must obtain preclearance from the Department of Justice before any changes in voting, no matter how innocuous, can go into effect. In the *Northwest Austin* case, the Court, in keeping with judicial restraint, decided the case on statutory grounds rather than on reaching the alternative argument that Section 5 was unconstitutional.

Nevertheless, Chief Justice Roberts' opinion for eight Justices contained six remarkable paragraphs. He stated that a number of Justices, including sitting Justices, have expressed serious misgivings concerning the constitutionality of Section 5. He said that past successes of statute is insufficient to justify its continuing constitutionality. He wrote that the statute differentiates between States in violation of their equal sovereignty and that the data underlying the disparate treatment of the States is more than 35 years old. And the ninth Justice, Justice Thomas, was prepared right then and there to say that Section 5 was unconstitutional.

We hear much in our Supreme Court confirmation hearings about the law being backward-looking about precedent and stare decisis. But the law was not these things to Justice Holmes. He said that the law was nothing more than a prediction of what courts will do. By that measure, after *Northwest Austin* it is an interesting question what the law is regarding the constitutionality

of Section 5. Until the Supreme Court has another Section 5 case, we will not know for sure. And when I have voted for the Civil Rights Act's extensions at least three times since I have been in the Congress, obviously I felt that Section 5 was constitutional.

At the same time that the Obama Civil Rights Division is bringing a number of questionable civil rights cases, it has filed exactly zero redistricting cases. It has backed away from a number of Section 5 cases when States have objected to possible enforcement action. It has filed numerous procedural motions on pending cases in which the constitutionality of Section 5 is at issue, which, of course, have the effect of slowing down litigation. Although I understand that all Senate Democrats signed a letter to the Attorney General demanding that the Department conduct a national investigation into State voter identification laws, this has not occurred. And, of course, that is all very interesting.

Of course, so long as there is no court ruling, the 2012 redistricting and preclearance will occur under current law. Mr. Perez says that the Department is "vigorously defending the constitutionality of Section 5 in the courts." More accurately, the Department, like St. Augustine, is vigorously defending Section 5 but not yet.

I thank you for the hearing.

Senator COONS. Thank you, Senator Grassley.

Mr. Perez, before we proceed, it is the custom of this Committee that witnesses be administered the oath. Please stand, if you would, raise your right hand, and repeat after me: I do solemnly swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PEREZ. I do.

Senator COONS. Thank you. Let the record show the witness has taken the oath. Please be seated.

It is my honor now to introduce Mr. Thomas Perez, the Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. Mr. Perez is a lifelong veteran of public service. Prior to his nomination, he served as the Secretary of Maryland's Department of Labor, Licensing, and Regulation, where he was a principal architect of a sweeping reform package to address that State's foreclosure crisis. Prior to that, in 2002 Mr. Perez was the first Latino elected to the Montgomery County Council, where he served until 2006. Earlier in his career, Mr. Perez spent 12 years in Federal public service, the majority of it as a career attorney in the Civil Rights Division. Mr. Perez received his B.A. from Brown University in 1983, a master's of public policy from the Kennedy School at Harvard in 1987, and he holds a J.D. from Harvard Law School as well.

Mr. Perez, please proceed, if you would, with your statement.

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

Mr. PEREZ. Thank you, Mr. Chairman, and thank you, Ranking Member Grassley. It is an honor to be back in front of this Committee. Good morning, Senator Franken, and thank you for coming

here today, and thanks to all of you for your interest in these issues. It is always an honor to be back in the place where I had the privilege of serving as a staffer to Senator Kennedy a number of years back.

When I last had the opportunity to appear before you, just 6 months after being sworn in, I spoke about our commitment to restoring and transforming the Civil Rights Division. I promised to revitalize the Division to boost morale, return to merit-based hiring, and to ensure aggressive, even-handed, and independent enforcement of all of the laws within our jurisdiction.

Almost 2 years into my tenure, we have committed considerable energy to these efforts, and I am happy to report we have had great success thanks to the dedicated career professionals in the Civil Rights Division. We filed a record number of criminal civil rights cases in fiscal year 2009, and then we topped that record a year later. These cases include the largest human-trafficking case in Department history, charging eight defendants in a scheme to force 600 Thai workers to labor on farms across the country. These cases also include the most high profile police misconduct case since the Rodney King incident. When we secured the convictions of five New Orleans police officers for their role in the shooting on the Danziger Bridge in the wake of Hurricane Katrina and the subsequent cover-up. Five additional officers pled guilty in connection to that case.

We have 17 open pattern or practice investigations of law enforcement agencies, more than at any time in our Division's history, including our extensive and comprehensive reviews of the New Orleans Police Department, and last week the report we issued in Puerto Rico. We are working with New Orleans, Puerto Rico, and others to develop blueprints for sustainable reform that will achieve three goals: reduce crime, ensure respect for the Constitution, and restore public confidence in the police.

On the housing front, we reached the largest-ever settlement to resolve claims of rental discrimination in a case involving discrimination against African-American and Latino renters. We obtained the largest ever amount of monetary relief in a Justice Department fair lending settlement to resolve claims that two subsidiaries of AIG discriminated against African-American borrowers. Our new Fair Lending Unit this year has filed more lawsuits under the Equal Credit Opportunity Act than in any year in at least a decade, and every settlement we reach in this case specifically provides a bank is not required to issue an unsafe or unsound loan. That is a provision in every decree that we enter into.

In the last full fiscal year, the Division obtained consent decrees or favorable judgments in 42 fair housing cases, including 26 with pattern or practice claims, the most such settlements in 14 years.

Our disability rights practice has been taken to new heights. We ramped up enforcement of the Supreme Court's landmark *Olmstead* decision, which stands for the proposition that the unnecessary institutionalization of people with disabilities is a form of discrimination. We have joined or initiated litigation or issued findings letters to assure community-based services for persons with disabilities in more than 35 matters in 20 States. We reached a landmark settlement in Georgia and in Delaware, where in Dela-

ware we are reforming, with the wonderful partnership of the State, the community mental health system. Comparatively, during the previous administration, one amicus brief was filed in an *Olmstead* case.

We reached the largest-ever settlement under Title III of the ADA, which applies to places of public accommodation. Under this agreement Wells Fargo will ensure equal access to services for people with disabilities, including hearing impairments, including vision impairments.

We have an active docket of cases on behalf of servicemembers. We reached the largest-ever settlement under the Servicemember Civil Relief Act, ensuring that Bank of America and Countrywide will pay $20 million to resolve allegations that they illegally foreclosed upon servicemembers without court orders. In the first 2½ years of the administration, we have filed more cases under the Uniform Services Employment and Re-employment Act, USERA, than was filed in the entire 4 years of the preceding administration.

In 2010, we completed an extensive program of enforcement of the MOVE Act to ensure access to the ballot for servicemembers and overseas citizens, obtaining agreements in 14 States or territories, the most enforcement actions under a single statute ever taken by the Voting Section leading up to a Federal election.

We have doubled the rate of amicus briefs filed in Federal courts of appeals. We have opened up 20 civil investigations under the Freedom of Access to Clinic Entrances Act and filed 8 civil complaints under the Act compared to 1 civil FACE case in the 8 years of the preceding administration.

We have received nearly 4,000 submissions for review under Section 5 of the Voting Rights Act, including more than 500 redistricting plans.

We filed the first two lawsuits in 7 years under Section 7 of the NVRA to ensure that citizens have an ample opportunity to register to vote, as required by Federal law. The Voting Section is involved in 27 new cases this fiscal year, including affirmative and defensive cases as well as amicus participation, the most in any fiscal year in the last decade. This includes nine bailout cases filed by jurisdictions seeking to be removed from Section 5 coverage, the most bailout actions ever in a single year.

I am exceedingly proud of these considerable accomplishments, and I could go on for another half an hour, which I will not. And I am exceedingly grateful to the dedicated career staff in the Division. But more important than the numbers are the people who have suffered from violations of civil rights laws and who have found some measure of justice in our work. I met with the victim in the recent hate crimes case in New Mexico, a 22-year-old man of Navajo descent, a person with a severe developmental disability. He was taken away by three defendants, three idiots. They lured him to their home. They literally took a hanger. They ignited the hanger on their oven, and they put a swastika on his arm. Every single day he wakes up he will remember what happened to him.

Take the six women in Detroit who were subjected to severe and pervasive sexual harassment by a maintenance worker in their apartment, including in one woman's case being required to have

sex with him in exchange for keys to the apartment. We took that case to trial because the property owner knew about it and did nothing, and a jury awarded monetary damages to the victims.

Finally, take the nearly 180 members of the armed forces and their families who lost their homes because mortgage servicers, in violation of Federal law, foreclosed upon their home without first obtaining a court order. When people are serving our Nation abroad, we need to have their back at home, and that is precisely what they are doing.

These victims and so many others, whether it is our bullying work, our work in Muslim outreach, these are the reasons why my colleagues and I get out of bed each morning. It is a remarkable honor to serve in this job every day and work with the dedicated career attorneys and professionals and support staff in the Division to protect and defend the rights guaranteed by some of our Nation's most cherished laws. We take very seriously our responsibility to carry the torch of the great civil rights pioneers who fought for those laws, and we honor their legacy by enforcing these laws aggressively and even-handedly.

I welcome the opportunity to tell you more about our work, and I look forward to answering any and all questions that you have here today.

Thank you very much, Mr. Chairman, for this opportunity to speak.

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

Senator COONS. Thank you very much, Mr. Perez. We are now going to begin 5-minute rounds of questions, beginning with myself.

I would like to talk first, if I could, about your actions to protect the rights of service people, which you referenced at the end of your statement. I was struck by how active and engaged the Civil Rights Division has been around the 180 servicemembers who were inappropriately foreclosed upon. I would also be interested in hearing what actions you have taken to enforce the so-called MOVE Act, or the Military and Overseas Voter Empowerment Act of 2009, which acts to ensure that those deployed have access to ballots at least 45 days before a primary or general election. Twelve States, as I understand, have failed to fully comply, and I would be interested in how the Civil Rights Division is protecting the rights of servicemen and -women under the MOVE Act. And then, second, as someone who was long active with the National Guard and Reserve in my community, it is the most sort of pressing concern many of them as to whether or not when they return they will be able to rely on the promise of employment that USERA, also under your Division in terms of enforcement jurisdiction, promises them. What sort of enforcement activities have you taken? In your opening statement, you suggested a very high tempo of enforcement activity, so I would like to start with some discussion of both of those, if I might.

Mr. PEREZ. Thank you for that question. We have a very active program of enforcement of a wide range of civil rights laws on behalf of servicemembers. In the USERA context, as I said, we dramatically stepped up the pace of our enforcement. We do that in concert with the Department of Labor, and the Department of

Labor has been a very important partner. But we have already exceeded the number of cases brought from the preceding administration, so we brought more cases in 2½ years than were done in the preceding 4 years. U.S. Attorneys are also very important partners in these cases.

I am also going out to military bases to have outreach conversations. I will be in Fort Knox in a couple weeks talking about USERA, talking about the SCRA, because one of the things I have learned in this is that we need to prepare servicemembers before they deploy. Many of our cases involve national guardsmen and -women who are called up to active duty service, and we are really working harder to make sure there is that checklist of cases.

The SCRA is a developing area of the law. We have been working hard to make sure that there is maximum opportunity for victims of these consumer protection violations to have access to courts, and we have been very successful in that regard.

And, finally, in the MOVE Act, we had an unprecedented year of work in 2010. We reached either consent decrees or MOUs or other agreements with 14 different jurisdictions. And in the aftermath of that, we are continuing to work with them. A number of States have moved up their primary dates to address the fact that if you have a September primary date you may run into compliance problems. Other States we have actually extended consent decrees. And, in addition, we have done a lot of work thinking about the lessons of 2010, and we have actually a very exciting package of reforms. I look forward to working with a bipartisan group of Senators—Senator Cornyn and Senator Schumer and yourself and others were very involved in this. I would like to eliminate, for instance—there is a waiver provision in the MOVE Act. We believe that that provision should be eliminated. Senator Cornyn had suggested a private right of action. We agree with him. We think that that should be added.

So we have a number of ideas about how to enhance the capacity, and I think they are ideas that will engender bipartisan support.

Senator COONS. Thank you, Mr. Perez. In addition to the MOVE Act, last Congress also passed the Matthew Shepard hate crimes law which made two crucial updates to the hate crimes definition: first, expanding violent acts covered by the Act by removing a requirement that it be connected to the victim's exercise of a federally protected right; and, second, expanded motivation for hate crimes to include crimes against gay, lesbian, and transgendered persons.

Can you help me understand how the passage of that Act has changed the Division's enforcement of hate crimes both in terms of prosecution and, as you mentioned, your vigorous and effective, I think, outreach to law enforcement and then to the broader LGBT community?

Mr. PEREZ. It has transformed our ability to combat hate crimes in remarkable ways. It has removed unnecessary jurisdictional barriers in our racial violence and religious violence cases. I came to the Division in 1989 as a career prosecutor doing hate crimes cases, had a number of cases that were clearly hate crimes, but we were not able to prosecute them under Federal law because of the unnec-

essary barrier that was eliminated in the Matthew Shepard/James Byrd, Jr. Act.

In addition, there is nothing worse—I saw a lot of what I call "equal opportunity bigots." They hated African-Americans. They hated Jews. They hated people who were gay. They hated people who were Muslim. They hated, in short, people who were different from them in any way, shape, or form. And it was frustrating beyond all get-out to not have the ability to prosecute gay-bashing incidents, for instance.

And then one of the really remarkably helpful ways that this has transformed our program is that it has facilitated additional cooperation with State and local authorities. We have trained over 4,000 local law enforcement officers. I have participated personally in many of them. Our message is this: This is not a law simply for the Feds. This is everybody's law.

When the Matthew Shepard incident occurred, we had no jurisdiction, and, therefore, the Federal Government was unable to assist the jurisdiction in the investigation and prosecution of that case. It almost bankrupted the jurisdiction, Senator, and as a result, with this law we have renewed collaboration and cooperation. We are working together with the authorities in Newark on the hate crime case that you mentioned. I would predict that that case will be prosecuted locally, and that is in the best interest of the case. That always is the question presented. I do not measure the success of the Matthew Shepard Act by the number of Federal cases that we bring. I measure the Matthew Shepard Act by the quality of justice, writ large, whether it is Federal, State, local, whether it is preventive.

We had a case in Arkansas. Two weeks after our training, we get a call from a trooper who identified a case that was a hate crimes case, and it ended up being the first case that went to trial. He called us up and said, "You know, I had this situation. I just went to this training. I think it is a hate crime." We ended up with a remarkable collaboration, and the jury ended up, after a 59-minute deliberation, convicting those defendants in the first jury trial under this statute. So it has been transformational.

Senator COONS. Thank you. Thank you for your testimony and thank you for your great work.

Senator Grassley.

Senator GRASSLEY. Mr. Perez——

Mr. PEREZ. Good morning, Senator.

Senator GRASSLEY. Thank you. The Civil Rights Division would not preclear under Section 5 the request of the city of Kinston, North Carolina, that it could not change from partisan to nonpartisan elections. The request was approved by a referendum of city voters, including in most of the African-American precincts. The Division argued that the loss of Democratic partisan affiliation on the ballot would eliminate a cue that fostered cross-racial voting. It noted that cross-racial voting was more common in closed primaries than in partisan general elections as a basis for its decision, which, of course, has nothing to do with nonpartisan voting. Overall, the Division's ruling seems to have more to do with protecting Democrats than protecting the voting rights of African-Americans.

What is your view of whether or not nonpartisan elections conflict with Section 5? And would you preclear future requests for nonpartisan elections?

Mr. PEREZ. The analysis, Senator, under Section 5 is twofold: the covered jurisdiction—and there are 16 jurisdictions, 16 States covered either in whole or in part. They bear the burden of showing that a proposed change—that there is an absence of discriminatory purpose and an absence of retrogressive effect or discriminatory effect. That burden is on the covered jurisdiction to demonstrate that.

In the Kinston case that you mentioned, there was not a purpose objection raised, but the conclusion reached was that the proposed change had a retrogressive effect. And as a result, an objection was lodged. That matter is now in litigation so I cannot comment further, and it is actively in litigation right now.

I can say as it relates to your question about nonpartisan elections, every submission will be fact specific, and we will look at it under the analysis that I outlined. Was the change motivated by discriminatory purpose or does it have a retrogressive impact? That will be the legal analysis that will govern every submission that we receive, and whether that is nonpartisan elections, whether it is partisan elections, that is the analysis.

Senator GRASSLEY. On another point, two whistleblowers testified under oath that the Civil Rights Division supervisors scaled back prosecution of members of, officers of, and the New Black Panther Party itself because the supervisors were not interested in enforcing the Voting Rights Act in a race-neutral way. Instead, the Division would seek equality only for members of ethnic and racial minorities.

The whistleblowers also testified—and, remember, under oath—that the Civil Rights Division supervisors indicated that they would not bring any cases under Section 8 of the motor-voter law which requires States to keep voting lists current by removing the names of the dead and those who have moved.

Chairman Smith of the House Judiciary Committee received assurances that the Department would provide him with all relevant documents in this matter, but the Department has held back many documents based upon general "confidentiality" objections. And, of course, as I said in my statement, I do not think that is legitimate because I think the Department ought to be transparent. With transparency you get accountability.

Would you commit to providing all documents on this matter to Chairman Smith in short order and to drop all objections based upon supposed confidentiality?

Mr. PEREZ. Senator, we have provided hundreds if not thousands of documents to both the U.S. Civil Rights Commission, to Chairman Smith, and to others. I will also note in connection with the New Black Panther Party case that there was an extensive investigation by the Office of Professional Responsibility. They found no evidence—they did not find scant evidence or insufficient evidence. They found no evidence that decisionmakers were influenced by race, politics, or any other improper factor. They found that the decision to file the case and the decision to dismiss certain claims were based on a good-faith assessment of the facts and the law. It

was a very extensive investigation, and the report was provided to, I believe, both committees of—I know it was provided to the House Committee, and I believe it exists here.

You mentioned Section 8 of the Voting Rights Act. I said before and I reiterate our commitment to the enforcement, the even-handed enforcement of all the laws. We actually have, I believe it is, nine current investigations under Section 8. The two people who lead those investigations, the career attorneys, are the same career attorneys that have been leading those types of investigations for a number of years. And I deliberately wanted that to be the case so that there would be continuity in our enforcement. And my instruction to them is the same instruction I give to every attorney in the Division: Follow the facts where the facts lead you. If the facts support prosecution, whether it is our civil jurisdiction or our criminal jurisdiction, let us go for it. If the facts do not support it, then we close the matter. And that is the commitment you have from me, Senator.

Senator GRASSLEY. Well, I have to remind you, though, that everything you addressed would be accurate, but it is the documents that have not been produced that I was asking my question about, the documents that have not been produced. In other words——

Mr. PEREZ. Senator, I know that I—I personally testified before the Civil Rights Commission. We offered up—the Department months ago offered to have the deputy that oversees the Voting Section be interviewed by the House Members. We have provided quite literally hundreds of documents.

Senator GRASSLEY. You are saying then to me—and I will stop with this. But you are saying to me that you produced every document that the House has asked for?

Mr. PEREZ. I do not know that that is accurate, sir, but I do know that we have been incredibly responsive, in my opinion, to the requests of the House.

Senator COONS. Thank you, Senator Grassley.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Mr. Perez, my understanding is that LGBT persons are protected under the Hate Crimes Act, as you talked about in your answers to Chairman Coons' questions, and to the same extent as other groups like minorities and women. So this means that we need to protect LGBT Americans in the same way we protect other vulnerable groups.

Following that principle, doesn't it follow that we should protect LGBT students from bullying to the same extent that we protect other groups?

Mr. PEREZ. We have a number of cases, Senator, involving bullying—actually, bullying of all types, bullying of African-American students, bullying—we had a case in the Twin Cities area involving the bullying of Somali students who were told, "Go home, you terrorists." This is their home. They were born here. And the school district failed to take appropriate action. The bullying of Asian students in South Philadelphia High School, and the bullying of kids who are LGBT is probably the largest growth area in our docket. We reached a settlement that we did with the Office for Civil Rights at the Department of Education arising out of a case in

California, the tragic suicide of a boy named Seth Walsh. We did a case in Mohawk County, New York, under our Title IX authority. We have an investigation, obviously, in your neck of the woods in a matter, and this is about safety. Whether it is kids who are gay, whether it is kids who are Muslim, whether it is kids who speak English with an accent, whether it is kids with disabilities, as we had in Tennessee where we had a case involving the bullying of kids with disabilities, this is an emerging growth area, I regret to say. That is why the President had a day-long summit on bullying. That is why we have taken such an aggressive role.

And I very much appreciate your leadership in this area. I very much support the goals behind your efforts in introducing the Student Non-Discrimination Act. The kids are dying. Kids are being brutally assaulted. Kids are scared.

I was in Tennessee meeting with Muslim leaders, and they were telling me that their children do not want to go to school in the morning because they are getting beaten up for no good reason. And that is why we have such an active program of engagement.

Senator FRANKEN. Well, I am glad to hear you say all that because, in Minnesota, in Anoka and Hennepin County, the largest school district in Minnesota, it was sued by the National Center for Lesbian Rights on behalf of a 15-year-old student who was a victim of harassment. The student, who I will call "E.R.," suffered physical assault and pervasive bullying based solely on her sexual orientation and appearance. And I understand that the Department of Justice and the Department of Education are also investigating the district following claims of pervasive harassment.

Bullying has gained national attention recently following a rash of student suicides linked to harassment at school. You mentioned the California case. Sadly, harassment of students for gender and sexual identity is frequent and disturbing, and while the Matthew Shepard Hate Crimes Act provides some protection against sexual orientation-based violence, it is clearly not doing enough for LGBT students. So thank you for mentioning my Student Non-Discrimination Act, and I then assume that you do agree that we need an explicit ban against discrimination in public schools based on sexual orientation.

Mr. PEREZ. Again, our work that I have just described in the LGBT context, we proceed under a sex discrimination theory. It is well settled in the courts that gender nonconformity is one form of sex discrimination under Federal law, and so we are proceeding under that context. And that is in part because sexual orientation is not part of Title IX.

Senator FRANKEN. Right.

Mr. PEREZ. It is not part of Title IV. My first hearing here, where I had the honor of having a conversation with you, was when we testified about ENDA. It is not part of Title VII yet.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.

Senator COONS. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much. Thank you for your good work.

Mr. PEREZ. Thank you.

Senator KLOBUCHAR. I first just want to get your perspective over time as someone that has worked in this area for a long time, just where you see since early days when you were involved in civil rights issues, what is the changing level of discrimination. You were just talking with Senator Franken about what has been going on in our State with teenagers who have been bullied because they are gay or what you have heard about the Somali community also in our State. So what do you see as the national trends here with discrimination? I am certain that some of the methods may have changed with the Internet and those kinds of things, but what do you see is the status? Has there been improvement or not?

Mr. PEREZ. I think we have made a lot of progress as a Nation in understanding and coming together that our diversity is indeed our greatest strength. But one of the questions I was asked, Senator, when I first came on the job is, "What are your first impressions?" And one of my first impressions, quite honestly, was that the more things change, the more they stay the same. I prosecuted hate crimes for the better part of a decade. I continue to see all too many situations where the names have changed, the locations have changed, but the fact patterns remain all too frequent and consistent.

So we have these what I call "timeless civil rights challenges" in the education context, school district cases where a school district in Monroe, Louisiana, had a high school—one was entirely segregated; the other was 57–43, 57 percent African-American, 43 percent white. In the integrated school, they had 85 gifted and talented offerings. In the segregated school they had five. Timeless civil rights challenges.

But then we have these emerging challenges. The head wind of intolerance that we see in our hate crimes work focused in the Muslim community, in the Arab, Sikh, and South Asian community. We have a growing docket of cases there.

Our docket of zoning cases under the bipartisan Religious Liberty and Land Use of Institutionalized Persons Act which was passed—it was a Senator Hatch and Senator Kennedy initiative of about 10 years ago. The vast majority of our cases involving Muslims have been within the last 16 months. We have had 16 cases in the zoning context in the last 16 months that we have opened.

So we have these timeless challenges, but then we have the emerging challenges in the bullying context. We have the emerging challenges in this head wind of intolerance that often manifests itself in senseless acts of violence because of who someone worships or who someone sleeps with. And, frankly, business is booming, I regret to say.

Senator KLOBUCHAR. Okay. With the limited—you know, we are all having issues with resources, and we want to make sure you are allowed to continue to do your work there. Where do you prioritize the work that you do?

Mr. PEREZ. Well, we have been focused on trying to increase enforcement across the board. We have paid particular focus in the area of our criminal enforcement, especially our hate crimes enforcement, our work in terms of our new Fair Lending Unit, our work in the area of disability rights. And, again, these emerging

areas in the bullying context and in our Muslim engagement have been significant.

One way we are doing more with less is that we have taken partnership to new levels. Our U.S. Attorneys are remarkably important partners. The U.S. Attorney in Minnesota, Todd Jones, has been a phenomenal partner in both our civil and criminal enforcement docket. We are working with the Department of Labor better than ever, Mr. Chairman, on our USERA work. The Department of Housing and Urban Development, we are working very hard with them.

The bullying case we did in South Philadelphia we did with the local human rights agency in addition to the U.S. Attorney's Office.

So necessity is the parent of ingenuity, and I think ingenuity abounds in our work.

Senator KLOBUCHAR. Very good. Your testimony mentions that the Department has issued the first major revision of its rules for accessibility under the ADA. Minnesota was one of the first States that did a lot of work for people with disabilities in terms of some of the accessibility issues, and so we are always—this is near and dear to our heart in our State. So could you talk about these rules, why they were needed and what the intended benefit——

Mr. PEREZ. Sure. Well, a year ago, late July, we celebrated the 20th anniversary of the Americans with Disabilities Act, and we had a remarkable ceremony with Attorney General Thornburgh, Attorney General Holder, and others. And in connection with that, we issued the most sweeping set of regulations since the initial passage of the ADA. We needed to bring the ADA up to reflect the realities of the 21st century, and so we have really, I think, moved the ball forward in a host of ways, and we are not done. The conversations now are about things like the Internet. If you do not have access to an accessible Internet, how do you get a job. The unemployment rate for people with disabilities in most States is north of 50 percent. So trying to remove those barriers, the Internet is your best friend. Closed-captioning in movie theaters, there are all sorts of ways in which we are trying to ensure that the Americans with Disabilities Act is part of the fabric of our communities.

Senator KLOBUCHAR. Thank you very much. I appreciate your work.

Mr. PEREZ. Thank you.

Senator KLOBUCHAR. Thank you.

Senator COONS. Thanks, Senator Klobuchar.

I will begin a second round of questions. Whether the laws you are seeking to enforce are 2 years old, 20 years old, or more than 40, you have a very broad challenge, and as you said, I think eloquently, in pressing back against the head wind of intolerance. I just wanted to probe some about the range of tools you have got available to you.

Drew Days, who preceded you in this role, was my own professor in law school, and I first heard about disparate impact cases and Title VII from him and from his own rich history of litigating. What is the Division doing at this point to use the tools of disparate impact analysis, long one of the most powerful tools the Division had against vestigial racism? And what are you doing to ensure full enforcement of the law against employment discrimina-

tion, particularly in a world post-*Dukes* v. *Wal-Mart*, where there are real challenges to plaintiff class action suits nationally? What role do you see for the Division in lending and employment and in access to opportunity?

Mr. PEREZ. We play a very important role, and you mentioned both the employment front and the fair lending front, and we have opportunities and active cases in both.

In the employment front, one of our largest cases in the Division right now pertains to the Fire Department of New York. The men and women of the New York City Fire Department have done heroic work, and we just honored that great work over the weekend. The challenge that the department has confronted not just for a few years but literally for a few decades was the challenge of discrimination. Lawsuits have been pending against the New York City Fire Department for so long that the initial judge who handled them was a Truman appointee. There are less African-Americans and Latinos in terms of percentages on the New York Fire Department now than there were 30 years ago.

In fact, the problem is so acute—and you contrast that with the New York Police Department, which has managed to hire the most qualified people and to reflect the diversity of the community.

If you look at the Chicago Police Department, if you look at the Chicago Fire Department, if you look at Los Angeles, if you look at Houston, other places have managed to ensure that they are hiring the most qualified and have a pool of folks who reflect the diversity of the communities that they serve.

The New York Fire Department is not, and the situation is so significant that the judge in that case granted summary judgment for the Government, not only on a disparate impact theory which we put forward, but also on a theory of intentional discrimination, ruling that the problems have been so bad for so long that it is evidence of intentional discrimination. And so we are working on that case. We would love to resolve that case, but it has been proving rather elusive. And so we will continue to do cases of that nature.

In the fair lending context, as you know, disparate impact work is a linchpin of our fair lending work, and I will note there are some who argue that disparate impact theory is not viable. What is interesting about this is that every circuit that has ruled on the viability of disparate impact theory in the fair lending context, and every circuit but one, I believe, has ruled that disparate impact theory is viable. So there is no split in the circuit. It is a longstanding tool in the arsenal of the Civil Rights Division, and we are using just that. And the work we do, you look at our case in St. Louis involving a bank that had literally drawn a red line—there was a horseshoe around the African-American communities. They basically gerrymandered their service area so they did not have to serve African-Americans. The same thing in Michigan with Citizens Bank.

One of the things we do in those cases, Senator, is we conduct what is called "peer review," because there are critics who contend that you are forcing banks to lend to unqualified people. That could not be further from the truth, and I am happy to share with you our consent decrees that explicitly say that you do not have to make any unsafe or unsound loans. And what is interesting is

when you look at the peer review, other banks were doing great in those areas. They had significant market penetration in African-American communities, and these banks did not.

So what we are trying to do is get the mainstream, the good lenders, to lend to—to be in place in every community because when they do not, when they allow the color of a community as opposed to the content of the creditworthiness of the borrower to govern, then that opens the door for those unscrupulous lenders.

So I agree wholeheartedly with those who contend that we should not force banks to lend to unqualified people. I completely and wholeheartedly agree with that statement. And our decrees and our use of disparate impact theory absolutely embodies that very important principle.

Senator COONS. Thank you, Mr. Perez.

Senator Grassley.

Senator GRASSLEY. I have got to think here whether or not in your conversation with the Chairman if you answered my second question. I would like to start out, though, with another issue on immigration. You said last year, "Under our system of Government, there is one quarterback and only one quarterback when it comes to issues of immigration, and that is the Federal Government."

You made that statement in a context of the Justice Department filing against Arizona and arguing that its new law that affected immigration enforcement was preempted by State law.

So based upon this argument that you use that the Federal Government—that immigration is a Federal responsibility and preempts any State law, when can we expect the Department of Justice to bring suit on preemption grounds against localities that have passed ordinances declaring themselves sanctuary cities for those who have entered the United States in violation of our Federal immigration laws?

Mr. PEREZ. Well, Senator, as I said in that particular context of Arizona, the Federal Government is the quarterback on immigration issues, and they are the quarterback because immigration enforcement decisions have law enforcement consequences, they have humanitarian consequences, and they have foreign policy consequences. The district court agreed, the Ninth Circuit Court of Appeals agreed, and now the matter is before—I believe there is a cert petition that has been filed in connection with that case. In Utah, a court has put the Utah law on hold, and I think the laws in Georgia and Indiana have been put on hold, and the matter in Alabama is pending a decision by the court. And so those cases will move themselves along the court, and I expect that court process will move.

Every situation is very fact dependent, and if you have a specific matter that you would like us to look into, I would ask you to bring it to our attention, and we will look at it and determine whether there is a——

Senator GRASSLEY. You know about sanctuary cities. They are pretty prevalent. In that local ordinance, isn't that a——

Mr. PEREZ. I have not reviewed any of the local ordinances from any of the so-called sanctuary cities, so I would not be in a position to comment and compare them with Federal law. I certainly was

closely involved in the review of the other matters in Arizona, which is why I can speak with a more informed judgment.

Senator GRASSLEY. I guess I am astounded that you do not have a view on that, but I will move on anyway. But I can understand why maybe you do not have a view on it, but I do not think it relates to your not having studied the local ordinances.

The Civil Rights Division brought many lending discrimination cases against banks on disparate impact, and so I am going to refer to that Wall Street article. But first I am going to refer to the fact that the Wall Street Journal commented that this policy encourages lenders to lend to borrowers regardless of their ability to pay. And as you know, the issuance of mortgages to unqualified borrowers is one of the pillars of our current economic crisis.

So you responded and stated that you focus on lending institutions that failed to lend to qualified borrowers, and you also state that, "A vacuum ready to be filled by predatory lenders could be created."

Are you aware of qualified residential mortgage rules proposed by the Federal Reserve in part to implement Dodd-Frank that requires lenders to retain some percentage of the loans that they bundle and sell as securities? If you are aware of that, what data are you using to determine that qualified borrowers are not able to obtain loans and that those denials are based on race?

Mr. PEREZ. Well, one thing I would like to do, Senator, if I may for the record, I have the copies of our consent decrees in the Midwest and the Citizens Bank cases. I would like to submit them for the record, if I could, because, again, they go to the heart of Senator Grassley's question about whether we are forcing banks to lend to unqualified borrowers.

For instance, no provision of this order requires Midwest to make any unsafe or unsound loan. Midwest will offer qualified residents, qualified applicants. Throughout all of our consent decrees, this is about making sure that opportunity exists for people who are qualified. We saw the racial gerrymandering in the form of red-lining where a Community Reinvestment Act—and I will note that I believe both of these cases were referrals from our regulators, so we got these from the Fed, I believe. And they looked at it, and the banks themselves—these two cases are a case study in the need for banks to have internal compliance because the remarkable lack of attention to opportunity—and, again, when I talk about opportunity, the reason I know opportunity exists is because we conduct peer review. So that we look at the peers of Midwest, we look at the peers of Citizens, and what we see is they are not drawing that horseshoe around the African-American communities. They are, in fact, making money, and they are making good money, by not judging people by the color of their skin but, rather, by the content of their creditworthiness. And that is the essence of what we do in this work. We work very closely with the regulators. We have gotten more referrals from regulators in the last year on fair lending cases than we have ever gotten before. I am proud of that. Again, when I talked about partnership, Mr. Chairman and Senator Grassley, that is one example of working together.

I believe that there is a false premise that is often put out there, which is we can either promote a sound business climate for lend-

ers or we have consumer protections. We have seen in the abuses of the last few years that that is categorically inaccurate. Just as we can have secure communities and respect for the Constitution in the law enforcement context, we can have common-sense consumer protections and preserve a sound business climate for lenders. That is what we are doing in this work, and I am very proud of that work as a result. And we spend a lot of time working, Senator Grassley, with lenders to educate them. And I have spoken with lending groups, and I have put up the slides of the horseshoe. A picture tells a thousand words, and you see—and you asked the question: How is it that you could so obviously avoid African-American communities when your peers are doing well in those communities? That is what these cases are about—access to opportunity.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator COONS. Without objection, the materials will be included in the record.

Mr. PEREZ. Thank you.

[The information appears as a submission for the record.]

Senator COONS. Senator Durbin.

Senator DURBIN. Thank you very much, Chairman Coons.

Mr. Perez, thank you for contacting me last week from Puerto Rico and your prompt response to the concerns that had been expressed about abuse by law enforcement authorities on that island. I hope we can continue to work together to make sure that if there are problems, they are investigated thoroughly and acted upon to change the policy. Thank you for that.

Mr. PEREZ. Thank you.

Senator DURBIN. Last week I held a hearing in the Subcommittee on the Constitution, Civil Rights, and Human Rights about the new State laws that have been passed in seven or eight jurisdictions. They have raised concerns—I sensed the concerns personally, but they have raised concerns because they establish new requirements to vote: voter identification cards, photo IDs in some States, new standards for voter registration in other States, and reducing the period of early voting in many States.

It troubles me because when it comes to early voting, in the last election 30 percent of Americans felt that was the best way to exercise their right to vote. And as we reduce access to early voting, it creates a hardship on those and many others.

Some of the reduction of early voting also raises political questions in my mind. It appears that there has been a concerted effort by some groups to reduce early voting on the Sunday before the election. In Illinois, that is a day when many African-American churches finish their services and people go to vote. The same thing is true in the Hispanic community. And I do not think it is a coincidence that they are arguing that we should close down voting on Sunday. I think there are political motives behind that.

The new voter registration law in the State of California is so onerous that the League of Women Voters has publicly announced that it is pulling out of voter registration in that State—in Florida, I am sorry. In Florida that has happened. And if I recall the testimony we received, if you should ask a person to register to vote in Florida under the new law and do not submit the paperwork within 48 hours, you can be fined $1,000. Naturally, the volunteers of the

League of Women Voters are not interested in facing that penalty and have backed away from their traditional historic role of nonpartisan voter registration.

The requirements on voter IDs are equally troubling to me. In many States there are thousands, in some cases hundreds of thousands, of eligible voters who do not qualify under the current new law to vote in the next election. They do not have the appropriate voter ID.

For example, I was in Tennessee yesterday, in Nashville, and in that State I believe the number is 126,000 current driver's license holders in that State do not have a driver's license with a photo on it. So if they present that driver's license to vote, they cannot under the new Tennessee law.

There are over 200,000 people in the State of Wisconsin under their new law who would run into problems in voting. And for those who say, "Well, they have got time to get a new voter ID card or a new identification card," it turns out there is only one DMV facility in the State of Wisconsin that is open on weekends—one—with over 200,000 people who are going to need some new form of ID.

Mr. Chairman, I ask consent to at this point enter into the record a memorandum from one of the DMV offices in Wisconsin where—it is an internal memorandum given to the employees to address this issue about people now showing up looking for these new identification cards so they can vote. And they made a point under their law to say it is a free ID card; otherwise, they might face the charge of a poll tax. If you have to buy an ID to vote, it could violate some of our basic principles and law.

[The memorandum appears as a submission for the record.]

Senator DURBIN. But in this memo, internal memo, from the Wisconsin DMV, there is a statement here, which is highlighted, which says to the employees: "While you should certainly help customers who come in asking for a free ID to check the appropriate box, you should refrain from offering the free version to customers who do not ask for it."

It is an indication to me that the spirit of this is not to make it easier for people but to make it more difficult for them to vote. I cannot think of a worse development in a democracy than making it more difficult for people to vote.

At the end of the hearing, reporters and others came up to me and said, "What is next?" And I said, "What is next is the Civil Rights Division of the Department of Justice."

Could you explain to me what your responsibility is now at the Department of Justice with the new State laws that I have just outlined?

Mr. PEREZ. Sure, absolutely. We are obviously closely monitoring developments regarding the new laws, and we have two sets of statutes that are relevant to this analysis: Section 5 of the Voting Rights Act applies to all or parts of 16 States, and any of those covered States—Illinois not being one of them—is required whenever they make a change to either submit that change for preclearance to the Civil Rights Division, or they can file a lawsuit in a three-judge panel in the District of Columbia. In either situation we are involved in the Justice Department.

You mentioned Florida. I cannot comment, obviously, on the specifics. They initially submitted their plan for preclearance by the Department. We asked a number of questions. They withdrew the submission and then they filed in the DDC, which is their right. And so now we will be addressing those issues in the District of Columbia. And, similarly, there are other States with voter ID laws that are in the Section 5-covered States.

The analysis under Section 5 is twofold. The covered jurisdiction has the burden—not the Government, not anyone in the private sector. The covered jurisdiction has the burden of demonstrating two things in connection with their changes: the absence of discriminatory purpose and the absence of retrogressive effect. So in those 16 jurisdictions, including but not limited to four counties in Florida, that framework applies.

You mentioned Wisconsin and other jurisdictions that are not covered. We have obviously authority under Section 2 of the Voting Rights Act to file lawsuits, and the "we" in that sentence is not limited to the Department of Justice. Any private plaintiff can file suit under Section 2. And, in fact, any private plaintiff can file a constitutional challenge. The Indiana case that went to the Supreme Court a few years back was a constitutional challenge to the voter ID framework in the State of Indiana.

So those are the three legal tools. Section 2 applies to any State in the United States, so we have been actively monitoring all the laws that have been passed. We will not receive submissions, obviously, from Wisconsin and other non-covered entities, but that does not mean we do not have the authority to review and take appropriate action.

So that is the framework of analysis. A number of these matters have been submitted, and I obviously cannot comment further because they are actively under review by the Department.

Senator DURBIN. I would like to ask you—and the question came up in the hearing—why this is happening. And I asked if there was evidence of increased voter fraud and the impersonation of voters, which is what the photo ID is all about. One of the witnesses who was trying to defend these laws said, well, they are really not worth prosecuting, these voter fraud cases, and very difficult to prosecute, the witnesses are not around, it happened in the polling place, things come and go and so forth. And it struck me as unusual that we are setting out to change the voting rights of millions of Americans over something that even a supporter has said has not warranted prosecution.

Can you tell me whether there has been an increased incidence of voter fraud over the last several years, particularly the impersonation of voters, that might give rise to this growing political concern?

Mr. PEREZ. Well, the why question, Senator, is in essence in our analysis one of the $64,000 questions that we have to answer because if you are analyzing a submission to determine whether there was discriminatory purpose, that is really the why question. And so in the work that we are doing now in connection with a number of submissions, that is a question. Whether it is a voter ID submission or whether you are changing the location of a precinct or whether you are doing any voter change subject to Section 5,

that why question very much animates the work that we do in connection with this.

In the Supreme Court case, the Indiana case, there was evidence in that matter, if I recall correctly, of fraud in a 2003 mayoral election. I think it was in Gary. And the Court said—and there was no other evidence of that. But the Court noted that that was enough in that particular matter to justify what was put in place.

We will follow the facts where the facts lead us. We will obviously be guided by the Supreme Court's decision in the Indiana case, and we will undoubtedly be looking at the why question because the why question very much animates a lot of our work, really whether it is Section 5 or Section 2, because if there is a discriminatory purpose that underlies an action in any State, regardless of whether you are one of the 16, then that is obviously a fact of relevance.

Senator DURBIN. One of the interesting elements in the Indiana case, as I understand it, was that the case challenging the Indiana voter ID law was filed before there was actually an election in which people were asked to use the ID. And many have said that the Supreme Court's decision was premature, and even within the decision itself, there were statements by the Justices that if something comes up here that might be evidentiary and change basic elements of this case, we trust that it will be brought in a later case.

So is that one of the elements as well to determine the hardship that is created on voters with some of these new voting rights laws?

Mr. PEREZ. Well, I think the Court in that case discussed the balance that needs to occur and in that particular set of facts concluded that the balance tipped in favor of the law being constitutional. And so every case that we do is very, very fact dependent, and we will continue to follow the facts where the facts take us.

Senator DURBIN. Let me ask, if I might, Mr. Chairman, one last question. Most of us were involved in 9/11 memorial activities at home and here in Washington, and almost without fail people noted that we have been blessed as a Nation not to have had a terrible terrorist event like 9/11 happen in the last 10 years. Credit needs to be given to a lot of people, to Presidents Bush and Obama, as well as law enforcement and our military intelligence community and so many others, and I want to preface my remarks by acknowledging that fact and thanking all of them for the wonderful job they have done keeping America safe. But in a free and open society like our own, that vigilance against terrorism can often come up against constitutional values and rights.

Saturday night I visited with a friend of mine who is a businessman in Chicago. He is successful, very successful. He has a business. He is a chemist, Ph.D. in chemistry. He has a business making cosmetic products, and he has done very well for himself. A beautiful home, kids, daughter pursuing a Ph.D. in polymer chemistry, and his two sons were there, both of them going for advanced degrees in education. A really wonderful family that I am proud to call friends. He is Pakistani and Muslim. He cannot get on an airplane anywhere in America without being stopped, what he calls the four S's which they stamp on your ticket, which means they are

going to call you in for special investigation and a special interrogation and a special examination. He has contacted our office, and we have gone to great lengths, at one point having him sit down with the FBI in the room where he said, "I will answer any question you have. I will provide any document you want. I do not know why you continue to do this to me." And he travels a lot.

He is not alone. Some of his friends who were there said, "We have gone through the same and similar harassment because of our names, because of our appearance, we think because of our ethnicity and religion."

I would like to ask you, Mr. Perez, what is being done to make sure that we give law enforcement the resources and leeway they need to keep us safe but at the same time to acknowledge that we can go too far and we have to be sensitive to the civil rights and constitutional rights of minorities among us, Muslim Americans and others, who believe at this point that law enforcement can go too far?

Mr. PEREZ. Well, Senator, I, like you, categorically reject the false choice between safeguarding our borders and our communities or protecting the Constitution. We can, must, and should always strive to do both, and that is what we do in our work.

We have a robust program of engagement that I am actively and personally involved in with leaders in the Muslim, Sikh, Arab, and South Asian communities, and those conversations are very productive. And sometimes they are tough conversations, and let me give you one brief example.

In the aftermath of the attempted bombing of the airplane that was landing in Detroit in Christmas Day a couple years ago, DHS put in place some new protocols governing people from certain countries. In our next meeting we heard a lot from the community, and what we heard was that they were responding with a meat axe instead of responding surgically. And a couple months later, and in direct response to that communication that was underway, DHS changed its practice and became more surgical.

We continue to have those dialogs. That does not mean we do not have tough situations. And so, in addition, we are constantly receiving specific requests, and if you have constituents that have specific concerns—I work very closely with the Office of Civil Rights and Civil Liberties at DHS. We have a very good partnership, and I know they would want to hear from people.

We also have, frankly, an active program in our police work. We are involved—in terms of State and local law enforcement agencies, we have a number of cases involving allegations of racial profiling. So when we see that at a local level, we are taking action. When we see it among our Federal counterparts, you know, we are striving to make sure that we meet the twin ideals of security and respect for the Constitution. And we welcome your input and the input of any constituents on how they think we can do better. I look forward to hearing from them.

Senator DURBIN. So under the Bush administration, the Justice Department issued guidance on racial profiling that included some loopholes. The guidance states: "In making law enforcement decisions, Federal law enforcement may not use race or ethnicity to any degree." But the prohibition does not apply and this is not in

quotes. This is a conclusion. The prohibition does not apply to profiling based on religion, and it does not apply to law enforcement activities relating to national security or border security. In other words, the Department of Justice guidance prohibits profiling an African-American, for example, in a drug case, but it does not prohibit profiling a Hispanic American in an immigration case or a Muslim American in a terrorism case.

The Bush administration guidance correctly concludes, I believe, "Racial profiling in law enforcement is not merely wrong but ineffective." I agree. But I wonder if that principle does not apply as well when it comes to religious profiling and national security and border security investigations.

In May of 2009 when your confirmation was pending, I asked you if you would review this racial profiling guidance and get back to me. I wonder if you have had a chance to do that.

Mr. PEREZ. We have participated in the working group that the Attorney General has assembled on this issue. I also mentioned we have a number of cases involving racial profiling. Our docket has expanded, and the cases include Maricopa County, Arizona; Alamance County, North Carolina; and others. Our findings in New Orleans included findings relating to racial profiling. I think racial profiling—we remain strongly committed, as you mentioned, to unbiased law enforcement. I am a big fan of community policing. The linchpin of community policing is building relationships of trust. When you profile, you undermine that trust. That is a fact, and that is why we continue to work, the Civil Rights Division, with a host of components throughout the Department. The FBI, the ATF, everybody is working together to try to address and produce revised guidance that will thread the needle that you have described here today.

So we are continuing to work on that, and we expend a lot of time and effort in that.

Senator DURBIN. Specifically, is religious profiling condoned? Allowed?

Mr. PEREZ. You identified an issue in the 2003 guidance that is precisely the topic of the internal discussions, and at the same time, again, in our enforcement work, we have a robust docket of cases involving discrimination, whether it is the employment context, whether it is the hate crimes context, whether it is the education context. We have done a number of cases where people are judging people, whether it is by their sexual orientation or gender identity, their religion, their gender, their race, et cetera. We have a regrettably active docket of cases in those areas.

Senator DURBIN. Thank you, Mr. Perez.

Thank you, Mr. Chairman, for your indulgence.

Senator COONS. Thank you, Senator.

If I might, I have a few closing questions or comments I would like to offer.

Mr. PEREZ. Sure, love to.

Senator COONS. I lost everyone else from this hearing.

Mr. PEREZ. Was it something I said, Senator?

[Laughter.]

Senator COONS. No, not all.

Mr. PEREZ. OK, good.

Senator COONS. I am interested in—and we can in future hearings or future conversations—I think you have led some tremendous work in the Fair Housing Enforcement Act, and human trafficking is an area that I think is also worthy of further discussion, but I wanted to focus on just two things, if I could.

One, the Matthew Shepard Act, you referred previously to your own work in enforcement of hate crimes and how the amendments were essential to allowing you to effectively as a Division take action against a broad range of violence based on bigotry. There are other Federal civil rights provisions that do not list or include either gender identity or sexual orientation as the basis for a civil rights violation, and I know you have been relying on case law for a definition of sex discrimination or Title IX or Title IV, I think, that include gender nonconformity. Can you describe other areas of Federal law that prohibit discrimination on the basis of, say, religion or race, as you were just talking about in terms of profiling, but that does not prohibit discrimination on the basis of orientation or identity and where you might urge that we consider some amendments or future action?

Mr. PEREZ. Well, the first hearing I had after confirmation in this committee, Senator, was on the Employment Non-Discrimination Act. I was working for Senator Kennedy in the mid-1990s. The hate crimes bill was introduced in 1996. It took 13 years. And it was actually introduced a few years before that and is still pending action. So I certainly learned from Senator Kennedy that civil rights is about persistence, and I think that would be very helpful.

You correctly identify that in our bullying work we apply longstanding principles of statutory construction relating to gender nonconformity as a form of sexual discrimination. It would obviously be much simpler—or you could expand the universe of cases involving people who have been victimized if you were to expand those definitions. So that is obviously another area, and Senator Franken has obviously been playing a vigilant leadership role in that area.

So those are to me two examples that kind of jump off the page.

Senator COONS. Well, it is my hope that we will take them up and move them forward, and I am grateful for Senator Franken's line of questioning about bullying, an area that has long been an unfortunate part of our national culture and experience and is now getting broad and needed attention.

Last, in your opening statement you referenced efforts to restore morale and to ensure that the Department—the Division, excuse me, has taken steps to ensure hiring based on merit, and in some cases there have been challenges or criticisms raised about your handling of hiring and promotions within the Division. I just wanted to give you an opportunity to speak to that. There were, of course, some very troubling investigations by the Office of Professional Responsibility and the inspector general previously that found inappropriate politicized hiring practices. I just wanted to give you an opportunity to address whether you are confident that you have restored the Division to hiring based on merit and expertise or experience in civil rights or whether in your view there was still some room to go.

Mr. PEREZ. I am quite confident that we have restored merit-based hiring. I had the privilege, Senator, of serving on the hiring committee in 1991, 1992, and 1993. I was hired by the Elder Bush Attorney General Thornburgh, and so I served on the hiring committee under Democratic and Republican administrations for the honors program. That is the entry-level program.

Our instructions from John Dunne and Deval Patrick were identical: Hire the most qualified people. Merit was an article of faith in hiring career people, whether it was entry-level or experienced attorneys. And it was an article of faith for decades in the Division. And, regrettably, that article of faith was breached in horrific ways in the prior administration, and those are all documented in the OIG report. I talked to section chiefs who were told on a Thursday, "You are going to have three new lawyers reporting to your office Monday." They had no involvement in their hiring. They got their resumé on a Friday but had no involvement whatsoever. And that broke my heart because you should be judged by your merit, by your relevant experience, by your commitment to the even-handed enforcement of civil rights laws. And that is what we did.

When I was confirmed on October 6th and started on October 8th, one of the first things we did was a written memo restoring the career-driven hiring processes. And one of the things we put in place was a provision that said that if the Assistant Attorney General is to overrule any recommendation for a hire, he or she must do so in writing. And I put that in place so that there would be transparency in the process and to really hold myself and future AAGs accountable. I have not overruled any such recommendation.

I am so proud of the dedicated men and women, some of whom have come in the last 2 years, some of whom have been around for many years. The restoration and transformation, all of the cases I have described, we would not be there without those committed career professionals. The people that we serve every day and the people that I work with, they are the folks that get me out of bed in the morning every day because they are a fantastic group. Many of them could go out and quadruple their salaries tomorrow if they want because they are so, so talented. But this is not any old job. This is carrying forth the legacy of John Lewis and others. And one of my proudest moments has been to restore that career-driven hiring process that has produced the remarkable cadre of people and has enabled us to take the Division to higher and higher levels.

Senator COONS. Thank you, Mr. Perez, for that response and for those actions. You know, some have suggested after a review of who has been hired that, in fact, it is still politicized, and I reject that. The idea that folks can be identified as being Democrat or Republican, conservative or liberal, based on their identity or their membership in certain civil rights advocacy groups strikes me as ignoring, as I said in my opening statement, the best tradition of bipartisanship in caring about and advocating for civil rights. And the idea that based on someone's identity, orientation, or participation in a group that advocates for the powerless or fights for civil rights that you can predict how they will work as career attorneys is offensive.

Mr. PEREZ. I agree with you. We have hired people who have clerked for judges that have been nominated by every President

since Jimmy Carter. We have hired people from small firms, large firms, plaintiffs' firms, defense firms. The person who heads our Employment Section, you have a keen interest in that. We just hired her recently. She was a defense lawyer. She defended employment cases. She was in the military before that. I have no idea who she voted for for President, and I do not care. I want her. She is the best qualified person, and she is phenomenal, and that is what it is about. And I think the New York Times headline kind of summed it up best, May 31st of this year: "In shift, Justice Department is hiring lawyers with civil rights backgrounds." I plead guilty to that. I think relevant experience is indeed very, very helpful.

My brother, the surgeon, hires surgeons in his surgical practice, and I think it is important to hire people who have that relevant experience, and that is really a linchpin of our success.

Senator COONS. Well, thank you, Mr. Perez, for your testimony here, for your evident passion and persistence and engagement in the hard work of pressing back against the head winds of intolerance, and making real the promise of our Constitution. And my thanks to everyone in the Civil Rights Division for their difficult work in these demanding times. And as well, I would like to thank my colleagues for their participation in questioning today.

The record will remain open for a week for members who wish to add any additional materials to the committee account of these proceedings, and this hearing of the Senate Committee on the Judiciary stands adjourned.

Mr. PEREZ. Thank you.

[Whereupon, at 11:31 a.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Questions for Mr. Thomas Perez
Assistant Attorney General, Department of Justice
Committee on the Judiciary
United States Senate
"Civil Rights Division Oversight Hearing"
September 13, 2011

Senator Grassley

1. Politicized Hiring

The New York Times recently wrote that none of the Obama Administration's hires in the Civil Rights Division had ties to conservative organizations, while more than 60% had liberal credentials, such as the ACLU or the NAACP Legal Defense and Educational Fund.

There was much criticism of the Bush Administration's supposed political hiring in the Civil Rights Division. But the New York Times noted that only 25% of those lawyers had conservative credentials.

I wrote the Department on this subject, and was told that none of the hirings were based on ideology, but were instead based on civil rights experience. Further, when given the opportunity by Senator Coons to comment on this at the hearing, you commented that you did not believe belonging to an ideologically-oriented organization had a bearing on their political affiliation. However, this was directly addressed in the 2008 OIG report referenced in our letter: "Nonetheless, identifying candidates as 'liberal' or 'conservative' by the activities or organizations with which they are affiliated can be used as a proxy for political affiliation and thus can violate CSRA"s prohibition."[1]

Questions:

(1)(a) How do you account for the fact that not a single one of the new lawyers hired in the Civil Rights Division has any conservative background?

Response:

As described in the Department of Justice's September 8, 2009 letter to you, the Department has taken significant steps to ensure that hiring of career employees is based on each individual's qualifications for the job, divorced from political considerations. The Civil Rights Division has instituted new policies that are founded on the fundamental principle that merit, not political affiliation or ideology, must guide hiring decisions for career positions. These steps were necessary to address the

[1] U.S. Department of Justice, Office of the Inspector General/Office of Professional Responsibility, "An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division" (Jul. 2, 2008), at 6.

well-documented politicization of career hiring in the Division during the last Administration, which improperly used political or ideological affiliations in assessing applicants for career positions in violation of both Departmental policy and federal law.

The Division's merit-based hiring policy expressly precludes consideration of ideology or political affiliation in hiring. As would any responsible employer, the Division places a high value on an individual's relevant experience in the field, as well as a demonstrated commitment to full and fair enforcement of civil rights laws when making hiring decisions. To that end, the Division has hired people from a variety of legal backgrounds – from large and small law firms; lawyers with experience working at civil rights organizations as well as the Judge Advocate General (JAG) Corps; individuals who have worked as prosecutors and others who have worked as criminal defense lawyers; and lawyers who have clerked or externed for judges appointed by every president since President Carter.

Because the Division does not inquire about the ideological or political affiliation of these applicants, but inquires instead into whether they are the best qualified applicants for the position, we are not in a position to answer your question about our employees' political or ideological affiliations. Not only do the Division's policies prohibit consideration of an individual's organizational affiliations in hiring, but the Division also does not know the organizational affiliations of candidates beyond what is disclosed by the candidates themselves, for example, on their resumes, because the Division's current policy expressly prohibits conducting <u>any</u> Internet searches on applicants' backgrounds.

For additional information on the Division's hiring process, please see the attached letter to Chairman Smith, dated December 5, 2011.

(1)(b) How do you account for the fact that every new hire with an ideological background is liberal?

Response:

The Department respectfully disagrees with the premise of your question. Please see the answer to Question (1)(a), above, and the attached letter to Chairman Smith.

(1)(c) Given that the Civil Rights Division would never accept as an answer from an entity it is investigating that neutral application of a neutral decision making standard meant that the total exclusion of a protected group was not discrimination, how do you reconcile your claim that the hiring is based only on experience, given that you believe so strongly in the disparate impact theory?

Response:

We respectfully disagree with the premise of your question. Hiring individuals based on their qualifications and experience does not amount to disparate impact discrimination. Furthermore, the Department rejects the notion that civil rights experience necessarily correlates with a "liberal" ideology, as attorneys from across the ideological spectrum have historically worked for, and supported the work of, a variety of civil rights organizations.

(1)(d) How do you square your answer about ideologically-based hirings with the OIG's position on this matter, outlined above?

Response:

The OIG/OPR Report documents the improper and unlawful practices employed by political appointees during the previous Administration, which involved documented efforts to screen candidates for career positions based on organizational affiliation and assumptions about particular organizations' ideological orientation. The OIG/OPR Report recommended a number of changes to the Division's hiring process to prevent improper and unlawful hiring practices from continuing in the future. The Division implemented those recommendations and has worked to restore a hiring process led by career employees that focuses on experience and on hiring the best qualified applicants for attorney positions in the Division, without considering ideology or political affiliation.

(1)(e) What steps are you taking so that the Justice Department will attract an ideologically diverse applicant pool for the Civil Rights Division and what steps are you taking to make sure that those who hire attorneys in the Civil Rights Division follow the law and do not take ideology or politics into account when hiring?

Response:

The Civil Rights Division has taken a number of steps during my tenure as Assistant Attorney General to ensure a broad-based, qualified applicant pool. The Division now requires that all attorney vacancies be publicly advertised on the websites of the Office of Personnel Management (www.usajobs.gov), the Department of Justice (www.justice.gov), and the Division (www.justice.gov/crt). The Division also now affirmatively apprises all Division employees of job vacancies and invites all employees to notify organizations of these openings. In addition, the Division's public website invites interested organizations to receive vacancy announcements; it states:

> Announcements are also distributed by the Office of Attorney Recruitment and Management and/or by the Division's Human Resources Office to a broad and diverse array of organizations, including but not limited to bar associations, law schools and professional organizations. Sections may also distribute announcements to additional organizations who may know of qualified candidates for a particular vacancy announcement. To expand its recruitment efforts, the Civil Rights Division is developing an outreach list of organizations to receive Civil Rights Division-specific attorney job announcements. If you are, or know of, an organization that might be interested in receiving these announcements, please e-mail CRT.SpecProgVacancies@usdoj.gov.
> http://www.justice.gov/crt/employment/.

I, and other Department officials, have visited and addressed law schools and legal organizations across the country to recruit for the Division and to ensure a large pool of well-qualified applicants. In addition, the job announcements that were developed and sent out pursuant to the Division's new hiring policies were, at my direction, widely disseminated without regard to the ideology or political affiliation of the recipients of the announcements.

2. Darryl Foster

After the last hearing when you appeared before the Committee in March, I submitted Questions for the Record to you regarding an employee of the division named Darryl Foster. Since I have not yet received responses to those questions almost 6 months later, I would like re-inquire about this matter.

Foster is the former head of the Housing Testing Program in the Housing and Civil Enforcement Section. Because the Housing Testing Program sends team of investigators all over the country into places restaurants and hotels, there are large amounts of travel money involved. Foster was accused of waste and mismanagement. Questions were raised about whether travel authorizations had been properly signed by the Department Chief. Whistleblowers alleged that Foster would travel with his unit on Friday when they had no work in an area until Monday, subsidizing their weekend travel. Foster was also accused of engaging in an inappropriate relationship with the president of an organization that Foster was responsible for approving contracts with.

A complaint was filed with the Office of the Inspector General (OIG). The OIG discovered that not only was Foster engaging in the alleged relationship, he was extending his work travel to foster the relationship and to meet a personal friend for recreational purposes. As a result of their investigation, Foster was demoted from the position of Housing Testing Program chief and reassigned to the Voting Section in May 2008. He also received a 7-day suspension of duration. However, he retained his grade as a GS-14. I recently requested a copy of the investigation into his actions from the Inspector General.

I have recently learned that Foster kept his Department credit card when he left the Housing and Civil Enforcement Section and has continued to use it for personal charges, such as appliances for his home. Although Foster makes payments on the card from his own pocket, this is, in effect, an interest-free loan from the government.

Whistleblowers say these two episodes were also not the first time Foster has been found guilty of wasteful and fraudulent practices at the Department. Foster was also found to be receiving Metro benefits while still using another employee's parking pass.

To make matters worse, I understand Foster has applied for early retirement under the DOJ offer open to many Department employees from October 1-October 31, which brings with it a $25,000 bonus for those employees which take this option.

Questions:

(2)(a) What were the specific findings of the OIG report?

Response: As a general matter, the Privacy Act and the Department of Justice's longstanding policies and practices regarding the confidentiality of Department personnel decisions limit our ability to comment publicly on the merits of specific allegations of misconduct about individual Department employees. Accordingly, it would not be appropriate to respond further.

(2)(b) How large was the budget that Foster was responsible for overseeing as head of the Housing Testing Program?

Response: For fiscal years 2007-2009, the contractor budgets for the Housing Testing Program were as follows:

Fiscal Year 2007: $235,593

Fiscal Year 2008: $206,733

Fiscal Year 2009: $86,751

(2)(c) What has been done to improve procedures in the Housing Testing Program to ensure this kind of abuse doesn't happen again?

Response: See the response provided to subpart (2)(a), above.

(2)(f) Do employees normally keep their official charge card when they are demoted for waste of official resources? Why did that occur in this instance?

Response: See the response to subpart (2)(a), above.

(2)(d) What kind of message does it send when employees guilty of misconduct are only transferred between sections instead of being fired?

Response: See the response provided to subpart (2)(a), above.

(2)(e) Why did Foster remain a GS-14?

Response: See the response provided to subpart (2)(a), above.

3. Maura Lee

The media has reported that Maura Lee, then an employee in the Voting Section of the Civil Rights Division, was caught breaking into other employees' e-mail accounts and disseminating personal information. I understand that at one point, the DOJ Office of Professional Responsibility authorized the searching of Ms. Lee's emails by her superiors, and that search turned up evidence that Ms. Lee had attempted to leak information to the Washington Post on a variety of issues. Ms. Lee was subsequently transferred to the Justice Department Inspector General's office, who claim they were unaware of the allegations against her and that neither they nor the Office of Professional Responsibility had received allegations against Ms. Lee.

Questions:

(3)(a) Would a situation like this normally be reported to the Office of Professional Responsibility, or to the Inspector General?

Response:

Department of Justice regulations describe the circumstances in which a referral should be made to the Office of the Inspector General (OIG) or the Office of Professional Responsibility (OPR). The regulations require that evidence and non-frivolous allegations of criminal wrongdoing or serious administrative misconduct by Department employees shall be reported to the OIG unless the alleged wrongdoing relates to the exercise of the employees' authority to investigate, litigate, or provide legal advice, in which case the matter should be referred to OPR. 28 C.F.R. § 0.29c. Thus, whether any particular allegation of wrongdoing warrants referral to either OIG or OPR depends on the facts and circumstances regarding the allegation.

(3)(b) Why were neither the Office of the Professional Responsibility or the Inspector General notified of the allegations against Ms. Lee?

Response:

The Department does not generally comment on allegations of misconduct by individual Department employees. We have previously confirmed, however, that none of the allegations described above were referred to OPR or OIG, that OPR did not authorize the search of Ms. Lee's emails, and that OIG selected Ms. Lee for employment consistent with established merit systems principles. She has served in that office since September 2006.

Senator Cornyn

1. As you know, the Justice Department is suing or threatening to sue several states because their welfare and social services offices are not providing adequate voter registration assistance as required by the National Voter Registration Act, also known as the "Motor Voter" law. But, in the opinion of many experts, the worst offender of the National Voter Registration Act is the U.S. Department of Defense, which is required by law to offer voter registration services at all armed forces recruiting offices. Data collected by the U.S. Election Assistance Commission's latest report shows that armed forces recruiting offices in many states are simply not complying with the law. We know the law works when properly implemented, as demonstrated by the high numbers of recruitment office registrations in my home state of Texas. But most other states' recruiting offices have poor records of compliance.

   - **Mr. Perez—What actions has your agency and the Department of Justice taken to bring the Department of Defense into compliance with the National Voter Registration Act?**

   Response: Section 7(c) of the NVRA provides that Armed Forces recruitment offices are designated NVRA offices required to provide voter registration opportunities. These offices are unique in that they are the only federal offices designated by the NVRA. The implementation of these programs falls under the Department of Defense's responsibilities. The Department of Justice supports the Department of Defense's efforts to achieve a successful NVRA program at these offices and provides assistance as appropriate.

2. Along the same lines, Mr. Perez, what is the Department of Justice and your agency doing to bring the Department of Defense into compliance with the MOVE Act's requirement that military bases create voting assistance offices? These offices were supposed to be created before the 2010 election, but that doesn't appear to be happening.

   - **What is DOJ doing about it and can you assure this Committee that you will do everything possible to bring DOD into compliance before the 2012 election?**

   Response: The MOVE Act requires the Department of Defense to establish offices on military installations to provide service members and their families with information on the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and voter registration at various stages of their processing through the military installation. Those offices have been designated by the Secretary of Defense as NVRA voter registration offices. As with the Armed Forces recruitment offices, the implementation of these registration and voting assistance programs falls under the Department of Defense's responsibilities. The

Department of Justice supports the Department of Defense's efforts to achieve a successful program and provides assistance as appropriate.

3. Mr. Perez, you cite the state of New York as an example of the Civil Rights Division's success when it comes to enforcing the requirements of the MOVE Act. But New York, in the opinion of many experts, was the most egregious violator of the MOVE Act in the 2010 elections. And while it is true that the Department of Justice ultimately filed suit against New York and settled with the state, I believe that the lawsuit was brought too late and the settlement lacked adequate short- and long-term solutions to bring New York into compliance.

In the short-term, there is no excuse for not requiring New York to send all blank ballots via some express delivery service. Evidence shows that it can take 30 or more days for a ballot to be delivered to a war zone, yet DOJ permitted New York to send its ballots via standard first-class mail, even though they were being sent 22 or 23 days before the election. In the end, more than 1,600 (30 percent) military and overseas ballots in New York were rejected in 2010 by that state's election officials. That is shocking and pathetic.

But what is more shocking is that DOJ still hasn't forced New York to comply with the MOVE Act's 45-day requirement. On the contrary, New York recently filed another request for a waiver from the 45-day requirement for the 2012 elections. It appears that New York has no intention of complying with the 45-day requirement.

- **What is your agency and the Department of Justice doing to force New York into compliance with the requirements of the MOVE Act?**

Response: Following New York's failure to send ballots by the deadline prescribed by DOD's waiver decision in 2010, the Department brought suit against the State to remedy the violation, and obtained a consent decree requiring immediate but temporary remedies to provide UOCAVA voters additional time to receive and return their ballots in time to be counted in the 2010 federal general election. *United States* v. *State of New York*, No. 1:10-CV-1214 (GLS/RFT) (N.D.N.Y. 2010). The consent decree also mandated that the State take the necessary actions to ensure compliance with UOCAVA in future elections.

Despite the need for New York to make structural changes to ensure UOCAVA violations would not recur in the future, the State failed to adopt an earlier primary election date or take any other action to resolve the problem for 2012 and beyond. Accordingly, in June 2011, the Department advised the federal court that additional remedial proceedings might be necessary, and the Department then filed a motion for supplemental and permanent relief in the case. Specifically, the Department sought a court order requiring New York to move its non-presidential federal primary election to a date no later than 80 days before the federal general election to enable the State to comply with UOCAVA's 45-day advance ballot

transmission deadline. The Department also sought an order requiring New York to re-survey counties and then count in its election results all timely-requested but late-transmitted UOCAVA ballots that were rejected solely because they were returned to election officials after November 24, 2010, the State's final ballot receipt deadline pursuant to the 2010 consent decree. On January 28, 2012, the district court agreed with our request to advance New York's federal primary election date, starting with the 2012 election, to a date sufficiently early to provide enough time for absentee ballots to be prepared and mailed in compliance with the MOVE Act. (In 2012, that date has been set as June 26, 2012.) The district court also ordered the further relief that the Department sought, including that the state re-survey its counties and count any additional ballots determined to qualify under the terms of the United States' motion.

This question also references New York's request for a hardship waiver from the MOVE Act's 45-day ballot transmission deadline. With regard to the approval of waiver requests, the statute assigns that responsibility to the Secretary of Defense, in consultation with the Attorney General. 42 U.S.C. § 1973ff-1(g)(2). On November 16, 2011, the Department of Defense denied New York's request for a hardship waiver for both the 2012 primary and general elections for federal office. *See* http://www.fvap.gov/reference/laws/waivers_2012/nywaiver.html.

The New York lawsuit was one of numerous enforcement actions the Department initiated to enforce the MOVE Act in the 2010 federal election cycle. As part of its 2010 enforcement program, the Department obtained court orders, court-approved consent decrees or out-of-court letter or memorandum agreements in eleven states, two territories, and the District of Columbia. In September 2011, the Department sent a package of legislative proposals to Congress seeking to strengthen UOCAVA and the tools for enforcing its protections nationwide. The Department has also filed two lawsuits to date in 2012, against Alabama and Wisconsin, to protect the voting rights of servicemembers and overseas citizens.

Senator Sessions

1. On September 6, 2011, you submitted a letter to the *Wall Street Journal* in response to an op-ed criticizing the Civil Rights Division's "politicized" enforcement of fair lending laws. You stated that the *Wall Street Journal* writer refused to acknowledge "the failure of some lending institutions to offer credit to qualified borrowers who were disqualified for loans not because of their creditworthiness, but solely based on race..."
In response to your letter, some economists have argued that if there were indeed qualified minority applicants seeking access to mortgages or loans without a financial institution willing to do business with them, then such a void would be filled by other lending institutions. In fact, in your testimony you mentioned that those institutions that are lending to these qualified minority applicants when other banks will not are making a lot of money. This seems to be the free market working the way that it should.

   a. What data supports your premise that banks denied lending to customers based on race rather than creditworthiness?

   Response: Numerous studies have found that in recent years minority communities were disproportionately served by higher cost subprime lenders and that redlining, as evidenced by the Department's recent enforcement actions, continues to occur. As I emphasized in the next sentence of my letter: "when good lenders fail to serve entire communities, it creates a vacuum ready to be filled by predatory players." Competition is one of the pillars of our free market system. The free market breaks down when good lenders do not provide their lending services on an equal basis in minority communities, and abusive lenders are able to exploit with impunity the absence of competition from lenders offering lower cost competitive products and services.

   b. Why should the Civil Rights Division force some banks to lend to qualified minority applicants when these individuals are seemingly being served by other banks?

   Response: The Civil Rights Division does not force banks to lend to minority applicants. The Division enforces the Fair Housing Act and the Equal Credit Opportunity Act, which prohibits discrimination in the provision of credit. The fact that some banks do not discriminate does not absolve other banks of their duty to obey the law.

2. In an August 29, 2011 letter to the Attorney General from the Independent Community Bankers of America (ICBA), the ICBA stated that the Justice Department has accused some banks of racial discrimination for not expanding their Community Reinvestment Act (CRA) assessment areas to include communities where ethnic minorities represent the majority of the population. The letter further states that the Justice Department has threatened to bring suits against banks for not lending outside of their assessment areas, even though the CRA does not legally obligate them to do so. What is the Civil Rights Division's interpretation of what the CRA requires of lenders with regard to areas outside of their assessment areas?

Response: The Civil Rights Division of the Justice Department brings fair lending lawsuits alleging racial discrimination under the Fair Housing Act and the Equal Credit Opportunity Act. The Department does not bring lawsuits to enforce the Community Reinvestment Act (CRA). When a bank fails to include communities where ethnic minorities represent the majority of the population in its CRA assessment area, the geographic area within which examiners will evaluate a bank's CRA performance, the Department evaluates that decision as part of the evidence of possible discrimination. The Department's approach, which evaluates a lender's activity in a geographic area that differs from a CRA assessment area that excludes adjacent majority-minority areas, is based on and consistent with most of the Department's redlining cases since the ground-breaking 1994 case of *United States v. Chevy Chase Bank* (D.D.C. 1994) (available at http://www.justice.gov/crt/about/hce/documents/chevychasecomp.php). In the *Chevy Chase Bank* case, the evidence of discrimination cited in the complaint included a CRA assessment area that historically excluded majority-minority areas, and statistical analyses assessing the lender's services to majority-minority tracts in an area beyond the banks' CRA assessment area. Similar redlining cases were filed in the last administration, including *United States v. Mid-America Bank* (N.D. Ill. 2002), *United States v. Old Kent Bank* (E.D. Mich. 2004), *United States v. First American Bank* (N.D. Ill. 2004) and *United States v. Centier Bank* (N.D. Ind. 2006) (all complaints available at http://www.justice.gov/crt/about/hce/caselist.php#lending).

The two redlining cases the Department filed in 2011, *United States v. Citizens Republic Bancorp and Citizens Bank* (E.D. Mich. 2011) and *United States v. Midwest BankCentre* (E.D. Mo. 2011), include similar allegations. Both of these cases were based on referrals by the banks' regulator, the Federal Reserve Board, to the Department for alleged redlining violations, as well as findings made by the Department in its pattern or practice investigations. In each case, after examinations by the Federal Reserve Board that included criticisms of the banks' respective CRA assessment areas, the banks modified their assessment areas. Citizens Bank's prior assessment area split the City of Detroit and Wayne County, which encompasses Detroit, and the bank modified it to include all of the city and county. Midwest BankCentre's prior assessment area split the City of St. Louis and St. Louis County, and the bank modified it to include all of the city and county. The prior assessment areas in both cases formed a virtual horseshoe around African-American neighborhoods.

3. It appears that the Justice Department is not targeting specific banks with a history of discriminatory practices, but rather, the Department and, specifically, the Civil Rights Division, are initiating cases against banks without regard to the bank's record of lending to minorities in its approved assessment area. Is the Civil Rights Division taking into account an institution's past lending history as to minorities and to what degree is this history used in a determination of whether to prosecute?

Response: In determining whether or not a lender has engaged in discrimination under the FHA and ECOA, the Department's analysis includes, but is not limited to, an

evaluation of the bank's pattern of providing – or failing to provide – lending services in majority-minority census tracts.

4. You strongly criticized the Civil Rights Division under President Bush for allegedly failing to bring a sufficient number of Section 2 Voting Rights cases and selective enforcement of voting laws. How many Section 2 cases has the Voting Section initiated since President Obama was inaugurated?

Response: On March 31, 2009, the Civil Rights Division filed suit against Lake Park, Florida challenging the at-large method of election under Section 2 of the Voting Rights Act. On October 26, 2009, the court entered a consent judgment and decree resolving that case. In addition, the Division continued the litigation of its Section 2 case against the City of Euclid Ohio School District (filed in December 2008), in which we recently received a final decision. The Division brought to a successful conclusion its previously filed Section 2 case against the Village of Port Chester, NY. The Division also filed amicus briefs in the district court and court of appeals on Section 2 issues in a private case arising out of the City of Irving, Texas. The Division also filed several amicus briefs on Section 2 issues in the statewide redistricting litigation pending in the district court in Texas. Since the beginning of the Administration, the Division has initiated dozens of new Section 2 investigations, and this work remains a critical part of the Division's docket.

5. A recent report by the U.S. Assistance Committee showed that several states have more registered voters than citizens recorded in the most recent census and that other states, like Colorado, have noncitizens registered to vote. How many Section 8 cases has the Voting Section brought under the Motor Voter Act?

Response: The Civil Rights Division has brought seven cases since 2002 that included a claim under Section 8 of the NVRA. The Division carefully reviews each iteration of the Election Assistance Commission (EAC) reports on NVRA voter registration activities around the country. The Division has sent letters to a number of states requesting information concerning compliance with Section 8 of the NVRA and has a number of open Section 8 investigations. The Division has issued its first ever guidance on the requirements of the NVRA, including the requirements of Section 8. On October 18, 2011, the Division filed an amicus brief on issues under Section 8 of the NVRA in *Project Vote v. Long*, No. 11-1809 (4th Cir.).

6. It is my understanding that the Voting Section was alerted in October 2010 about non-citizens registered to vote as well as duplicate voter registrations in Harris County, Texas. What actions did the Voting Section take as a result of this report? Did the Voting Section initiate an investigation? If not, please explain why.

Response: The Civil Rights Division received and considered a wide variety of complaints leading up to the 2010 general election in Harris County, Texas. Among the

complaints received by the Division were allegations of criminal violations of federal law relating to duplicate voter registrations and voter registration by non-citizens. The Civil Rights Division referred these matters to the Public Integrity Section of the Criminal Division, since these allegations fall within the Public Integrity Section's jurisdiction.

7. As you know, the Voting Rights Act requires jurisdictions with a threshold number of "limited-English proficient" voters to provide bilingual ballots at the polls. The Civil Rights Division works in collaboration with the Census Bureau to determine which jurisdictions will be required to provide these ballots. While the Voting Rights Act defines "limited-English proficiency" as "unable to speak or understand English adequately enough to participate in the electoral process," the Census Bureau appears to be counting as "limited-English proficient" voters those who declare on their census forms that they speak English "well." According to a 1997 Government Accountability Office Report, the mandate of printing bilingual ballots accounted for half of the election costs in those affected local governments; yet, other reports have shown that in some jurisdictions where bilingual materials were required for elections, the majority went unutilized. In light of the challenging budgetary conditions that states and municipalities are facing, will the Civil Rights Division consider excluding those who speak English "well" from its new calculations of covered jurisdictions in order to guard against an increase in the requisite costly printing of bilingual materials where there is no genuine need?

   Response: As part of Voting Rights Act Reauthorization and Amendments Act of 2006, Congress reauthorized the minority language provisions of the Voting Rights Act. The Act vests the Attorney General with responsibility for enforcement of its requirements. However, the Attorney General does not make coverage determinations under the minority language requirements of Section 203 of the Act. The Act provides that new determinations of coverage under Section 203 are to be made by the Director of the Census based on the 2010 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 5, 2011

The Honorable Lamar S. Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in response to your letter to the Attorney General dated September 8, 2011, regarding hiring practices of the Department's Civil Rights Division (the "Division"). In a separate letter, also dated today, we describe our production of documents responsive to your request on this subject.

We are pleased to report that the Division has taken unprecedented steps over the last three years to ensure that hiring of career employees is based on each individual's qualifications for the job, divorced from improper political considerations, plain and simple. The Division has instituted new policies founded on the fundamental principle that merit, not political affiliation or ideology, must guide hiring decisions for career positions. We believe that the issuance and implementation of these policies has addressed the well-documented politicization of career hiring that took place in the Division during the last Administration, and we are proud of the caliber of the Division's new employees.

In July 2008, the Department's Office of the Inspector General (OIG) and Office of Professional Responsibility (OPR) found that, during the previous Administration, the Division improperly used political or ideological affiliations in assessing applicants for career attorney positions in violation of both Departmental policy and federal law.[1] The July 2008 Report focused particular attention on the fact that between 2003 and 2006, Bradley Schlozman, who was a Deputy (DAAG), and later a Principal Deputy (PDAAG) and Acting Assistant Attorney General within the Division, considered political and ideological affiliations when hiring and taking other personnel actions relating to career attorneys, in violation of Department policy and federal law.[2] The report made recommendations on how the Division should reform its hiring process to ensure that such illegal and improper practices could not again occur.

[1] U.S. Department of Justice, Office of the Inspector General/Office of Professional Responsibility, "An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division" (July 2, 2008) ("July 2008 Report").

[2] *Id* at 64.

In 2009, the Division not only implemented the OIG/OPR recommendations, but also took substantial additional steps to eliminate the likelihood that improper considerations could again play a role in the hiring process for career attorney positions. Until the improper conduct described above occurred, merit had been the touchstone of the hiring process for career professionals in the Civil Rights Division for decades – through both Republican and Democratic Administrations. Merit is once again the guiding principle of the Division's hiring process and selection criteria. Determinations of merit, of course, include consideration of experience in the relevant field. For this reason, many of the Division's hires have civil rights experience, which is directly relevant to the work they would be expected to do in the Civil Rights Division.

To fully respond to your letter, which is primarily based on blog postings written by former employees of the Division,[3] and to clarify that the concerns expressed in your letter are entirely unfounded, we respond below to each of the above points in some detail. First, we describe the improper hiring practices that took place during the last Administration and prompted corrective action in this Administration. We then describe the policies put into place in this Administration, with respect to both to the hiring process and the criteria that are treated as permissible considerations in hiring career attorneys. Last, we address the unsubstantiated suggestion that consideration of job-related experience is serving as a proxy for hiring on the basis of political affiliation or ideology.

The discussion below responds to the questions 5-9 in your letter. Questions 1-4 request documents and other materials and are addressed in the accompanying letter addressing our response to your document request; all of the internal documents and memorandum referenced below are being provided to your office in response to your request for information.

I. Hiring Practices Between 2002-2008

The July 2008 OIG/OPR report found that beginning in 2002,[4] the political appointees in the Office of the Assistant Attorney General for Civil Rights ("OAAG" or "front office") revised the written policies governing the hiring process for experienced attorneys: the process was centralized, and primary responsibility for decision-making was shifted from the Section Chiefs – who are career employees – to the political appointees in the OAAG. Under those new written policies, the DAAGs or their front office designees reviewed the applications, determined which applicants should be interviewed, and then forwarded all of the applications to the Section Chiefs. The Section Chief then interviewed the applicants identified by the DAAGs, and, in some cases, was permitted to identify and interview other applicants for further consideration. The Section Chief then made a hiring recommendation to the DAAG; the DAAG in turn forwarded the Section Chief's and the DAAG's own recommendations to the AAG for approval. See Mem. from D. Greene to Section Chiefs re: New Attorney Hiring Process, Feb. 25, 2002,

[3] One of these former employees, who left the Division in January 2006, worked in the Office of the Assistant Attorney General while the illegal hiring practices documented in the July 2008 Report took place. This individual declined to cooperate with the OPR/OIG investigation.

[4] Prior to 2002, most non-manager experienced attorneys were interviewed and hired at the Section Chief level, subject to approval by the OAAG.

which was issued at the direction of former AAG R. Boyd. In 2003, that process was modified further and Section Chiefs were permitted to review applications in the Human Resources office only; they were not provided copies of the application materials. See Mem. from former AAG R. Alexander Acosta to Section Chiefs re: Attorney Hiring Process, Dec. 1, 2003.

In addition to documenting the shift of control over the hiring process from career managers to political appointees, the July 2008 Report included a number of specific findings of improper consideration of political and ideological affiliations in hiring decisions. Specifically, the July 2008 Report found that Mr. Schlozman actively sought and hired candidates with conservative political or ideological affiliations who rarely had any civil rights background, rarely expressed any interest in civil rights enforcement, and had little or no relevant work experience. In some cases, newly hired attorneys would appear on a Section roster having been hired without any involvement by the Section Chief in the hiring process. In numerous e-mails, Mr. Schlozman expressly referenced the political or ideological affiliations of applicants.[5] See July 2008 Report at 14-35.

The Report also included findings that, although the extent to which the Section Chiefs were involved in the hiring process varied among the Division's sections, the Section Chiefs of many sections were effectively excluded from the decision-making process for hiring career attorneys for their sections. Mr. Schlozman often conducted interviews himself; Section Chiefs were given little notice of interviews and discouraged from asking questions during interviews; Section Chiefs were denied access to information about the full pool of applicants; and the assessments and recommendations of Section Chiefs were ignored, as were their objections to the hiring of several attorneys on the grounds that the attorneys were unqualified or had been fired from other jobs. See July 2008 Report at 14-35.

We are concerned that your letter appears to minimize the gravity of the behavior documented in the July 2008 Report and elsewhere. The improper consideration of political or ideological affiliation in hiring and other personnel decisions in the Civil Rights Division during this time period was not, as your letter states, limited to the misconduct of a "single specific hiring manager," namely Mr. Schlozman. Although the July 2008 Report's findings focused on his misconduct, the Report further concluded that several other political appointees, including two AAGs and two Principal DAAGs, had knowledge or some indication of Mr. Schlozman's improper consideration of political and ideological affiliations and failed to take action to ensure that hiring decisions were consistent with federal law and Department policy. See July 2008 Report at 45-52. Moreover, we do not believe the Report supports the conclusion set out in your letter that, except for Mr. Schlozman's hires, there was a "republican-to-democrat hiring split

[5] Specifically, the July 2008 Report included findings, based on direct evidence, that Mr. Schlozman favored applicants with conservative political or ideological affiliations, whom he referred to as "real Americans," "right-thinking Americans" or members of "the team," and disfavored applicants with civil rights or human rights experience whom he considered to be "liberal." It was documented that Mr. Schlozman wrote: "this has lib written all over it," "conservative?" and "Unfortunately I have an interview at 1 with some lefty who we'll never hire but I'm extending a courtesy interview as a favor." In an e-mail to an attorney hired by Mr. Schlozman who commented that his "office is even next to a Federalist Society member," Mr. Schlozman responded, "Just between you and me, we hired another member of 'the team' yesterday. And still another ideological comrade will be starting in one month. So we are making progress." See July 2008 OIG Report at 14-35.

that was closer to 50-50." Of the 13 hires (out of 112) during the period in question that were not attributed to Mr. Schlozman, four were identified as conservative, three as liberal, and six as unknown. In addition, improper hiring practices were not limited to the Civil Rights Division during this time period. See OIG/OPR Report, An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General, July 28, 2008; OIG/OPR Report, An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program, June 24, 2008.

In the wake of substantial media attention to the politicization of the hiring process, in June 2007, then-Assistant Attorney General for Civil Rights Wan Kim issued a memorandum stating that personnel decisions within the Division were required to comport with applicable law and that "there will be no discrimination based on . . . political affiliation." See Mem. from AAG W. Kim to Division Employees re: Guidance on Personnel Matters, June 29, 2007. Acting AAG Grace Chung Becker issued a similar memorandum in August 2008.

II. Hiring Practices Beginning in 2009

Based on the investigation summarized in the July 2008 Report, OIG and OPR recommended that the Division take a number of steps to "help ensure that such conduct does not occur in the future," including providing regular training on merit system principles and prohibited personnel practices to supervisors and personnel with a role in hiring career employees; issuing periodic statements to all employees about what constitutes prohibited personnel practices; reaffirming that the Department, as an employer, is committed to compliance with all laws, regulations and policies; and providing information about how employees can report violations. See July 2008 Report at 64-65.

Beginning in 2009, the Civil Rights Division not only implemented the recommendations set forth in the July 2008 Report, but also took additional concrete actions, as set forth below, to insulate the hiring process from improper political considerations and to ensure that career staff, whatever the political or ideological perspectives of the governing Administration, are selected based on qualifications and without regard to political affiliation.

To help guide the formulation of these policies, in 2009, the Division convened a Working Group comprised of the career Section Chief or a career Deputy Chief from each of the Division's sections, the Director of the Division's Professional Development Office, the Division's Human Resources Officer and the Division's employment counsel. The Working Group was tasked with, among other things, reviewing the policies and practices for hiring experienced attorneys for career positions in the Division and recommending changes in those policies and practices, particularly in light of the findings and recommendations in the July 2008 Report. In September 2009, the Working Group submitted to the Acting AAG recommendations for written policies and processes governing the hiring of experienced attorneys and attorney promotions, which reflected the input of the Working Group and all Division Section Chiefs.

These recommendations were based in large part on the general recommendations of the July 2008 Report and the specific recommendations of this working group of career Division

managers. Shortly after his confirmation and before the Division began a hiring cycle to fill more than 100 positions, Assistant Attorney General Thomas E. Perez acted on those recommendations and issued a series of written policies designed to restore credibility, transparency and fairness to the process used for hiring career attorneys.[6] Each of these reforms is rooted in the recommendations made in the July 2008 Report.

These new written policies were posted publicly on the Division's website,[7] and provide specific guidance to supervisors and employees involved in the hiring process about merit system principles and prohibited personnel practices. Integral to the new process, the Division each year issues a written policy statement to all employees reiterating the AAG's commitment to ensuring that all personnel decisions are consistent with applicable law and Department policies, including an express statement that consideration of political affiliation, and using ideological affiliation as a proxy for determining political affiliation, are strictly prohibited.[8]

The fundamental principle animating these new policies is that merit, not political affiliation or ideology, must guide hiring decisions for career positions. These written policies and guidance memoranda include the following core safeguards for hiring experienced, non-managerial, attorneys:[9]

- Shifting primary decision-making for hiring these attorneys back to the career Section Chiefs who supervise the day-to-day work of the sections, including creating a process whereby:

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[6] See Mem. from AAG T. Perez to All CRT Employees re: Civil Rights Division Experienced Attorney Hiring Process, Dec. 3, 2009; Mem. from AAG T. Perez to CRT Managers, Supervisors and Staff Involved in the Hiring Process for Filling Career Positions re: Merit System Principles and Prohibited Personnel Practices, Dec. 10, 2009; Mem. from AAG T. Perez to All OAAG Attorneys, All Section Managers, All Experienced Attorney Hiring Committee Members and Human Resources re: Guidance for Civil Rights Division Managers Regarding Hiring for Career Experienced Attorneys, Jan. 20, 2010.

[7] http://www.justice.gov/crt/employment/ (last visited Oct. 31, 2011).

[8] See, e.g., Mem. from Acting AAG L. King to All Division Employees re: Guidance on Personnel Matters, April 28, 2009; Mem. from AAG T. Perez to All Division Employees re: Interim Guidance on Equal Employment Opportunity, Merit System Principles and Prohibited Personnel Practices, July 13, 2010.

[9] Because your letter focuses on the Division's non-manager experienced attorney hiring process, we have not gone into detail about the conclusions of the July 2008 Report that relate to the Honors Program or SLIP hiring process. However, because you have requested documents related to the hiring process for the Honors Program, in addition to producing those documents, we note that the Department and OARM, which oversees the Honors Program and SLIP hiring processes, made significant changes to those processes beginning in 2007, following complaints of politicization under the last Administration and based on the recommendations of the OIG and OPR in a June 2008 report. In addition to adhering to the OARM guidance, the Civil Rights Division issued further guidance for the specific procedures and time frames to be followed by the career Division employees serving on the Honors Program/SLIP Hiring Committee – including specific prohibition against consideration of political or ideological affiliations in making hiring decisions and requirements that members of the Division's Honors Program Hiring Committee attend mandatory training on, *inter alia*, merit system principles. Mem. from AAG T. Perez, 2010 Civil Rights Division Honors Program / Summer Law Intern Program Hiring Process, Aug. 17, 2010. AAG Perez's memorandum, as well as the materials from those training programs, are included with the documents provided to you with this response.

- applications are reviewed and applicants selected for interview by Section-level Hiring Committees comprised of career attorneys and chaired by career Section Chiefs;

- hiring recommendations are made to OAAG by career Section Chiefs with input from the Committee;

- hiring recommendations must be made in writing and include a summary of how the recommended applicant's or applicant's education, work experience and references satisfy the qualifications for the position set forth in the vacancy announcement;

- decisions by the Assistant Attorney General or his/her designee to reject the Section Chief's recommended applicant(s) must be made in writing.

- Requiring that all attorney vacancies be publicly advertised via section-specific vacancy announcements (i.e., generic, non-section specific "trial attorney" announcements will no longer be used); that all vacancies be posted on the Division's and the Department's websites, as well as on the Office of Personnel Management's website (www.usajobs.gov);[10] and that vacancy announcements identify the specific qualifications/criteria for selection (e.g., substantive knowledge and expertise in the laws, rules and regulations applicable to the work of the section).

- Affirmatively apprising every employee in the Division of job vacancies and inviting all employees to notify organizations of these openings.[11]

- Requiring that only applicants who apply through the normal application process in response to a particular vacancy announcement may be considered (i.e., unsolicited applications or applications sent directly to political appointees, career managers or anyone else may not be considered).

- Identifying categories of skills and experience that should be included in vacancy announcements and considered in making hiring decisions, including but not limited to: academic achievement; interest in the enforcement of civil rights laws; substantive

[10] Due to budgetary constraints and the Department's hiring freeze, some recent Division job openings have only been available to internal Division applicants. For this reason, some job announcements have been posted only on the Division's internal website.

[11] In addition, the Division's public website states: "Announcements are also distributed by the Office of Attorney Recruitment and Management and/or by the Division's Human Resources Office to a broad and diverse array of organizations, including but not limited to bar associations, law schools and professional organizations. Sections may also distribute announcements to additional organizations who may know of qualified candidates for a particular vacancy announcement. To expand our recruitment efforts, the Civil Rights Division is developing an outreach list of organizations to circulate Civil Rights Division-specific attorney job announcements. If you are, or know of, an organization that might be interested in receiving these announcements, please e-mail
" http://www.justice.gov/crt/employment/ (last visited Oct. 31, 2011).

knowledge and expertise in the laws, rules and regulations applicable to the work of the section; experience conducting investigations and developing cases for litigation; written and oral communication skills; oral advocacy skills; and negotiation skills.

- Identifying the criteria that may not be considered in making hiring decisions, including the following express prohibition against consideration of political affiliation:

  The Civil Rights Division is an equal opportunity / reasonable accommodation employer. All hiring is based on merit; consistent with applicable federal law and Department of Justice policies, discrimination based on race, color, national origin, gender, age, political affiliation (including using ideological affiliation as a proxy for determining political affiliation), disability, marital status, sexual orientation, gender identity, status as a parent, membership or non-membership in an employee organization, or personal favoritism is strictly prohibited.[12]

- Providing information regarding the complaint procedures for reporting suspected violations of the non-discrimination policy or prohibited personnel practices (including potentially improper interview questions). That information includes the contact information for the Department's Equal Employment Opportunity Office and the Office of Special Counsel.

In addition, a key component of the revamped hiring process was the creation of a mandatory training program for all Division employees involved in the hiring process, including political appointees and career attorney managers. This program was created by the Division's Professional Development Office, with input from the Department's Office of Attorney Recruitment and Management (OARM) and the Division's Employment Counsel. To our knowledge, this is the first time that the Division has held mandatory training that specifically addresses issues related to the career attorney hiring process. The Division conducted seven sessions of that program between June 2009 and April 2010, and these trainings continue to be held periodically.

As reflected in the training materials that we are providing in response to your letter, the program specifically addresses merit system principles and prohibited personnel practices, including the prohibition against consideration of political or ideological affiliation in hiring. The training also includes specific discussion of the findings of the OIG/OPR reports – including reports documenting improper hiring practices elsewhere in the Department – and examples of the illegal hiring practices identified in those reports to make clear the types of information that may not be considered during the hiring process. Equal employment opportunity and merit system principles are also addressed in several other training programs the Division provides to its employees, including a Supervisor Training program and in the Equal Employment Opportunity segment of the Division's annual Professionalism Training program, which employees are required to attend.

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[12] The January 20, 2010 guidance memorandum and the April 28, 2009 and July 13, 2010 Division policy statements specifically list all of the prohibited personnel practices.

You asked what guidance has been given to employees involved in the hiring process with respect to hiring selection criteria (question 7). Those policies are described above. You also asked whether internet searches were performed on applicants to the Division (question 5). Because of the misuse of information culled from internet searches by political appointees in the prior Administration to determine the political or ideological affiliations of applicants, the Division has erred on the side of caution in addressing the use of internet searches in its guidance memorandum and in its mandatory hiring training.[13] The policy instructs employees involved in the hiring process that they "may not conduct internet searches of applicants at any point during the hiring process."[14] Moreover, the prohibition against internet searches of applicants – and the reasons for that prohibition – are specifically discussed during the mandatory trainings for all employees involved in the hiring process. Employees are instructed that, pending further guidance from the Department, they may not conduct internet searches of applicants, including pulling articles applicants have written.[15] Thus, while your letter states that internet searches of the Division's hires would reveal their political or ideological affiliations, this policy precludes such searches and serves as an added precaution against the possibility that internet searches of applicants' backgrounds will be misused to reveal their political or ideological affiliations.

Your letter, and the blog posts referenced in it, also suggest that all of the Civil Rights Division's hires since 2009 are "liberal," and that this means the Division screens applicants for ideology. Specifically, the blog posts posit that working at certain organizations, belonging to certain groups, participating in certain activities in law school, or even having a certain sexual orientation necessarily reflects a particular political or ideological affiliation. We dispute the allegation that this information serves – or was treated – as a valid proxy for assessing political affiliation. As would any responsible employer, the Division places a high value on an applicant's relevant experience in the field, as well as demonstrated commitment to full and fair enforcement of civil rights laws, when making hiring decisions. The examples of prior employment cited in these blog posts – noting, for example, that numerous new hires for the Division had previously worked for civil rights organizations – reflect nothing more than that. It is no more surprising or inappropriate for the Civil Rights Division to select applicants with civil

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[13] This policy was created primarily in response to the OIG and OPR report finding the White House Liaison and Senior Counsel to the Attorney General during the prior Administration improperly considered political and ideological information garnered from searches of the political contribution and voter registration records of candidates for career positions, as well as internet searches of candidates for career positions using the following internet search string:

> [First name of a candidate]! and pre/2 [last name of a candidate] w/7 bush or gore or republican! or democrat! or charg! or accus! or criticiz! or blam! or defend! or iran contra or clinton or spotted owl or florida recount or sex! or controvers! or racis! or fraud! or investigat! or bankrupt! or layoff! or downsiz! or PNTR or NAFTA or outsourc! or indict! or enron or kerry or iraq or wmd! or arrest! or intox! or fired or sex! or racis! or intox! or slur! or arrest! or fired or controvers! or abortion! or gay! or homosexual! or gun! or firearm!

See OIG/OPR Report, An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General, July 28, 2008, 99-103, 121.

[14] See Mem. from AAG T. Perez to All OAAG Attorneys, All Section Managers, All Experienced Attorney Hiring Committee Members and Human Resources re: Guidance for Civil Rights Division Managers Regarding Hiring for Career Experienced Attorneys, Jan. 20, 2010.

[15] See, e.g., Training Materials from Jan. 21, 2010 Hiring Training, which included a slide that reads: "Can you conduct internet searches about applicants? No, not at this time. Further guidance will follow."

rights experience than it is, for example, for the Antitrust Division to hire attorneys with antitrust experience. Nor does this reflect a form of "disparate impact" discrimination, in response to question 9 in your letter. We also disagree with the premise that working for civil rights organizations necessarily correlates with a "liberal" ideology, as attorneys from across the ideological spectrum have historically worked for and supported the work of a variety of civil rights organizations. The party of Lincoln has a long history of support for civil rights; it would be incorrect to suggest that a person must be affiliated with only one political party to have worked in a civil rights organization.

Your letter asks whether there is a policy or guidance that suggests that experience representing defendants in civil rights cases should not be considered on par with experience having represented plaintiffs (question 8). The Division does not have a policy or a practice – official or unofficial suggesting that one type of civil rights experience is less valuable than another kind. Indeed, such a policy would be counterproductive because the Division's jurisdiction covers a wide range of federal civil rights statutes; its enforcement efforts are strengthened by the fact that its attorneys have a range of legal skills and experiences. The resumes of the Division's attorney hires since 2009, which we are providing to you today, reflect a diverse array of legal experiences.

Experience, sound judgment, and a demonstrated commitment to full and fair enforcement of civil rights laws, not ideology, are key attributes that the Division looks for in its candidates. The Division has hired people from a variety of legal backgrounds because these critical skills can be found in many different settings. For instance, the Division has hired individuals from large and small law firms alike; lawyers with experience in civil rights organizations, as well as the Judge Advocate General (JAG) Corps; people with prosecution experience and criminal defense experience; lawyers with civil litigation backgrounds on both the plaintiff and defense sides; and people who have clerked or externed for judges appointed by every president since President Carter.[16] The Division does not inquire into the ideological or political affiliation of these applicants, but inquires instead into whether they are the best qualified applicants for the position.

Moreover, as detailed in this letter and in our document production, the Division has issued a number of written policies to all employees involved in the hiring process setting forth the selection criteria that may or may not be considered in making hiring recommendations or selections. Those policies include job-related skills and experience, such as substantive knowledge and expertise in the laws, rules and regulations applicable to the work of the section; experience conducting investigations and developing cases for litigation; written and oral communication skills; oral advocacy skills; and negotiation skills. Those policies draw no distinction between skills and experience gained representing plaintiffs or defendants, and employees involved in the hiring process were not instructed – officially or unofficially – to make such a distinction.

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[16] As part of our production to you today, we are providing all of the resumes that were produced pursuant to the Freedom of Information Act request that formed the basis of the blog postings your letter cites. Although this information can be found in these resumes, much of it was not mentioned in the blog postings cited in your letter.

Your letter also suggests that the Division's recruiting for career positions has been one-sided, citing an on-line report that Mr. Perez spoke to the American Constitution Society for Law and Policy and containing a partial quote of what he said. A review of a recording of the event shows that Mr. Perez's statement in full was: "We've restored the nonpartisan merit based transparent hiring process for all attorneys. Go to our website and you will see the hiring policy and I am going to be calling each and every one of you to recruit you because we've got 102 new positions in our budget and so we're going to be moving forward. That is something to clap about."[17] As he did at this event, Mr. Perez has spoken at law schools and legal organizations all across the country to recruit for the Division and to ensure large pool of well-qualified applicants. In addition, the job announcements that were developed and sent out pursuant to the Division's new hiring policies were, at Mr. Perez's direction, widely disseminated without regard to the ideology or political affiliation of the recipients of the announcements.

Of course, the most effective way to judge the quality and qualifications of the Division's hires under its current leadership is by the quality of the Division's work. On October 21, we sent you a letter summarizing the impressive work of the Division over the last two and a half years. During this period, the Division's new hires, working alongside its longstanding and dedicated career staff, have made significant strides in restoring the Division's capacity to fulfill its critical mission.

Finally, you ask about the Division's efforts to close a budget gap. The Division was privileged to receive substantial new funding in Fiscal Year 2010, which it used to hire the career professionals whose hiring is the subject of your letter. The amounts appropriated during that period, however, were not annualized to cover the full costs of the authorized hiring; increased costs for items such as rent and equipment have further strained the Division's resources. In response, the Division, along with the rest of the Department, has taken prudent steps to reduce its expenditures, including by offering a buyout to long-term employees. The Division will continue to take steps to ensure responsible stewardship of its resources.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

[17] See http://www.c-spanarchives.org/program/290782-1 (last visited October 29, 2011).

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U.S. SENATOR CHRIS COONS of DELAWARE

FOR IMMEDIATE RELEASE: September 13, 2011
CONTACT: Ian Koski at 202-224-4216 or Ian_Koski@coons.senate.gov

Opening Statement from Senator Coons

Chairing the Senate Judiciary Committee hearing on oversight of the U.S. Department of Justice Civil Rights Division on September 13, 2011

- As Prepared for Delivery -

Good morning. It is my honor to call to order this hearing of the Senate Committee on the Judiciary. Today, we will hear from the Honorable Thomas E. Perez, Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

It has been almost a year and a half since this Committee last conducted oversight of the Civil Rights Division. Among all of the important work done by the Department of Justice, the work of the Civil Rights Division is uniquely important. The Civil Rights Division is charged with enforcing our laws providing the rights of all citizens, regardless of race, creed, religion, sex or national origin, to participate in civic life. It underpins our entire way of life because, where civil rights are not protected, equality, liberty and the pursuit of happiness are denied.

The preamble to the United States Constitution, our national charter, states that the first two purposes of our national government are "to form a more perfect union" and to "ensure justice." There is no better shorthand for the mission of the Civil Rights Division.

The Civil Rights Division is responsible for ensuring voting rights for every American. It protects equal access to housing, lending and employment, regardless of sex, race, religion, or national origin. It safeguards members of our armed services from discrimination based upon the hardships that accompany active duty. It provides that disabled Americans are not precluded from participation in civic life, from the marketplace, or from the workplace.

Today, since the passage of the Mathew Shepard Hate Crime Prevention Act of 2009, the Civil Rights Division also protects the rights of gay, lesbian and transgendered Americans to participate as full citizens in our country without fear of violence borne of bigotry.

So it should. Equality for all is supposed to mean equality for all.

The struggle for civil rights for all Americans is a part of our national story. The thirteenth, fourteenth and fifteenth Amendments established formal equality for all Americans by 1870. Real-world equality, sadly, lagged behind. It wasn't until the Civil Rights Act of 1964 and the Voting Rights Act of 1965 that Congress took up its charge to turn the promise of those reconstruction amendments into real progress for African Americans and, frankly for Americans of many different backgrounds. Since that time, we

have made great progress, even as we have expanded the mission of the civil rights laws beyond state action and into the economic sphere.

Over the past 10 days, however, people in my state received a sad reminder that the battle against the sort of overt racism that marred this country so greatly in our past – a battle that many Americans hope and believe that we have won – still rages on. Over the Labor Day weekend in Newark, Delaware, two teens placed a cross, which read, "burn in hell" among other racial epithets, on the lawn of an African American family. Although police in New Castle County quickly arrested two young suspects, the homeowner was, understandably, not comforted. He said, "I don't want this to continue to happen, especially in this neighborhood, in this state or anywhere else. I want hate to go away."

Like the homeowner, I was caught off guard. Incidents like these are not supposed to happen in our country today. But I was reminded that the vast majority of our country has moved beyond these acts and attitudes only due to the vigilant work of those who have come before us.

Without objection, I would enter into the record articles from the Delaware News Journal from September 5 and September 7, describing the incident in Newark.

Although the perpetrators appear to have been caught, we cannot let that be the end of it. Especially in the area of hate crimes, we need leaders and members of the community to stand up and say that these abhorrent acts do not represent us and they will not be tolerated. That is why we are here today.

Congress has an important role to play in oversight of all Executive Branch activities, of course, but when it comes to civil rights, it is critical that both branches are on the same page — that we are working together, hand in hand, to fight for that perfect union.

We'll work on eradicating discrimination from our laws. We need you, Mr. Perez, to work on stopping it in our communities.

I look forward to hearing from Mr. Perez regarding the work that he has done at the Civil Rights Division since being confirmed to that office almost two years ago. Mr. Perez inherited a division that had undergone significant upheaval. I hope to hear that Mr. Perez has reinstituted hiring procedures at the Division strictly on the basis of merit. I hope to hear about the work of the Division in fighting more insidious forms of institutional discrimination through disparate impact cases brought under Title VII of the Civil Rights Act. I look forward to hearing what the Division has done to extend the promise of equality to all Americans, regardless of race or sex, but also regardless of sexual orientation or gender identity.

Finally, I would like to spend some time examining what the Division is doing to make sure that our service men and women, the people who risk their lives to defend our way of life, have the ability to vote without burden and are not discriminated against in housing, lending, employment or elsewhere.

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Teens charged with planting cross

1:12 AM, Sep. 7, 2011

New Castle County police on Tuesday charged two teens with hate crimes for allegedly planting a cross with racial slurs in a black family's yard.

Involved were a 16-year-old from nearby Delaplane Avenue in Delaplane Manor and a 15-year-old from Oakfield Drive in the community of Scottfield near Newark, police said.

News of the arrests was of little comfort to Wayne Parson, 56, and his family, who dealt with an onslaught of attention Tuesday.

The phone rang nonstop as word spread about the cross he found in his Newark-area yard Monday.

Friends and family, the governor and even strangers called to offer support.

Parson said he felt little comfort -- either from the well-meaning words or from the arrests.

"I don't want this to continue to happen, especially in this neighborhood, in this state or anywhere else," said Parson. "I want hate to go away."

Police arrested the 16-year-old who lives nearby first and charged him with a felony hate crime and harassment.

The arrest came after detectives searched the teen's home and found PVC pipe and tape similar to that used to build the cross, as well as other evidence, police said.

The cross had racial slurs written on it and, at the bottom, said "Burn in hell."

Secured bond was set at $4,000 for the 16-year-old, and the teen was transported to a juvenile detention center near Townsend, said Cpl. John Weglarz of the county police.

The 15-year-old was arrested later in the day after a lengthy interview with detectives, police said. He was charged with conspiracy, harassment and a felony hate crime. He was arraigned and committed to a juvenile facility after failing to post $4,500 cash bail, Weglarz said.

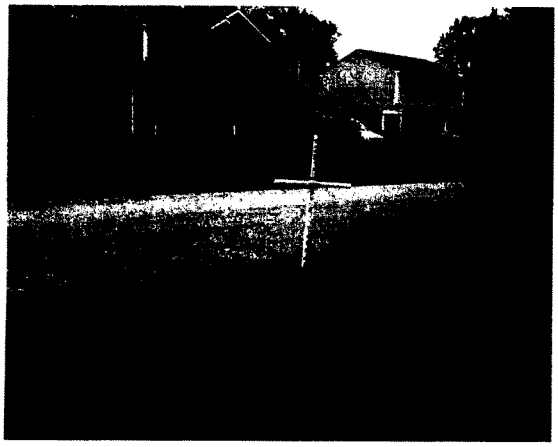
Parson, who has lived in the neighborhood for 22 years and raised two children there, said he hopes the incident isn't "swept

under the rug" and motivates others to speak out against bigotry, as he plans to.

"They have changed the way I live," said Parson, who purchased surveillance cameras for his family's security.

"This young man attempted to kill our spirit," he said after the first arrest was announced Tuesday. "Nevertheless, we shall go on."

Delaware couple finds cross with racial slurs in their front yard



Written by
WADE MALCOLM
The News Journal

FILED UNDER

Local

A couple near Newark encountered a disturbing sight in their front yard this morning: a white cross with racial slurs.

The symbol made of PVC pipe had a racial slur scrawled on it several times, along with the words, "Burn in hell."

The words were written large enough for Wayne Parson to see them as soon as he stepped onto his front porch. He shouted for

Bicyclist struck by car in Wilmington
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(Symptomfind.com)

[?]

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "Civil Rights Division Oversight"
September 13, 2011

Today, we welcome back to the Committee Assistant Attorney General Tom Perez, as we continue our oversight of the Department of Justice. It is fitting that, in the wake of the 10th anniversary of the September 11 terror attacks, we hold this oversight hearing of the Civil Rights Division. Following the terrorist attacks, Americans were overcome with a flood of emotions – among them shock, rage, fear, and pain. Unfortunately, in some instances, that fear turned into violence against even more innocent Americans.

That backlash, is in part why I gave much credit to President Bush, when on September 20, 2001, in a joint session of Congress, he said the following:

> "I also want to speak tonight directly to Muslims throughout the world. We respect your faith. It's practiced freely by many millions of Americans and by millions more in countries that America counts as friends. Its teachings are good and peaceful, and those who commit evil in the name of Allah blaspheme the name of Allah."

Tragically, the number of hate crimes directed against Arab Americans, Muslims, and Sikhs escalated dramatically, and the Justice Department continues to see a steady stream of such violence post September 11. While Muslims represent less than one percent of the U.S. population, about a quarter of the Department's religion-related workplace discrimination cases involve Muslims, as well as more than 14 percent of the overall number of Federal religious discrimination cases.

Ten years later, we reemphasize the values and principles with which our Nation was founded upon and with which our democratic republic shines as a beacon of hope and freedom to the rest of the world. The Civil Rights Division has played a pivotal role toward that end.

The Division, with a long record of independence and a tradition of vigorous civil rights enforcement, is back on track in no small part due to the leadership and commitment of Attorney General Holder and Assistant Attorney General Tom Perez. I know that the restoration of the Civil Rights Division has been a tall order, but after several years of stark politicization under the Bush administration, the Division is, again, enforcing our civil rights law in a fair and evenhanded way. Returning the hiring responsibility to careers lawyers rather than political appointees, as was the case during the Bush administration, was key. Now, only the most qualified lawyers with the appropriate experience and commitment to the color blind enforcement of our Nation's laws, are doing the job of protecting all Americans against hate crimes, predatory lending, and voter suppression. This includes perhaps a dozen attorneys who left during the recent dark period but have now returned.

Two years ago, I was proud to offer the *Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act* as an amendment to the defense authorization bill. It took more than a decade of

fighting to strengthen our Federal laws against hate crimes, but just this year, the Civil Rights Division secured several convictions under that law. It is already having an effect.

The Division has also been vigilant in protecting American homeowners against discriminatory predatory lending. In the last year, the Division has settled litigation with lenders in Michigan, Texas and Missouri who have admitted to discriminatory lending practices targeting African-American borrowers. In January 2011, the Division reached a $2 million dollar settlement with PrimeLending, resolving allegations that between 2006 and 2009, PrimeLending charged African-Americans higher interest rates for home loans. In June, the Division settled two separate cases with Citizens Bank and Citizens Republic Bancorp in Michigan and Midwest BankCentre in Missouri, resolving allegations that lenders failed to provide home mortgage lending services in neighborhoods that were majority African-American.

The Civil Rights Division has also continued to protect our men and women in uniform. Earlier this year, the Division fought lenders who foreclosed upon active duty service members without first obtaining court orders. In addition, the Civil Rights Division has filed lawsuits to compel states to send absentee ballots to the brave warriors who fight for the very right they are being disenfranchised from exercising. The Civil Rights Division has been a strong enforcer of the *Military and Overseas Voter Empowerment Act* (MOVE Act), compelling states to comply with absentee voting deadlines for over two million overseas civilians and military personnel.

Last week the Chairman of the Subcommittee on the Constitution, Civil Rights and Human Rights called an important hearing about state laws which are making it more difficult for Americans to vote. According to the National Conference of State Legislatures, since 2001, nearly 1,000 voter ID bills have been introduced in 46 states. This year, 35 states advanced legislation requiring citizens to obtain and display unexpired government-issued photo identification. Only three states -- including my home state of Vermont -- do not have a voter ID law and did not consider voter ID legislation this year. This Committee previously received expert testimony that such voter ID laws will disenfranchise African-Americans, Hispanics, military veterans, college students, the poor, and senior citizens. As we approach the next national election, it is my expectation that the Civil Rights Division will be vigilant in protecting against barriers to the ballot box so that Americans can fully participate in their democracy.

And just last month, a jury convicted five officers from the New Orleans Police Department on 25 counts in connection with the shooting on the Danziger Bridge in the days after Hurricane Katrina that left a teenager and a disabled man dead and four others injured and an extensive coverup. All Americans deserve the equal protection of the law.

These matters remind us of the importance of the Civil Rights Division. Attorney General Holder has called the Civil Rights Division the "crown jewel" of the Justice Department. I share that sentiment, because it is the Division charged with the enormous responsibility of protecting all Americans from all forms of discrimination. We must remain committed to protecting all communities from discrimination in the pursuit of a more perfect union. I welcome Assistant Attorney General Perez here today. We look forward to his testimony.

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Department of Justice

STATEMENT OF
THOMAS E. PEREZ
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ENTITLED

"CIVIL RIGHTS DIVISION OVERSIGHT HEARING"

PRESENTED

SEPTEMBER 13, 2011

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
September 13, 2011

Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to testify before you today about the work of the Civil Rights Division

Our mission in the Civil Rights Division is grounded in three basic principles:

- We expand opportunity and access for all people to be able to achieve the American Dream – from the opportunity to learn and the opportunity to earn, to the opportunity to live where one chooses and move up the economic ladder.
- We ensure that the fundamental infrastructure of democracy is in place – by protecting the right to vote, and by ensuring that communities have effective and accountable policing.
- We protect the most vulnerable among us so that they can live in their communities free from fear of exploitation, discrimination and violence.

Since the beginning of their tenure, President Obama and Attorney General Holder have consistently and repeatedly made clear their commitment to robust civil rights enforcement that is vigorous, fair, and evenhanded. They have demonstrated their support for our work by providing the Division with resources to rebuild in order to better fulfill our critical mission – resources that have, over the last two and a half years, allowed us to add a number of talented career professionals to our ranks and make great progress toward our goal of restoring and transforming the Civil Rights Division.

When I last testified before you, I discussed my commitment to restoring the integrity to the Division's hiring process. To that end, we developed new hiring policies that reinstate the central role of career staff in decision making; we are transparent about these policies and have made them available on our website. We have restored the time honored traditions of the Division, removing politics from the hiring process, which has helped to improve morale Division-wide.

With these new processes in place, and with the additional resources we received in the

fiscal year 2010 budget, we hired a number of talented new attorneys and staff, and ramped up enforcement of the nation's civil rights laws. As a result, we have made significant strides in fulfilling our mission to protect the civil rights of all individuals.

For example:

- In Fiscal Year 2009, we filed more criminal civil rights cases than ever before, and then exceeded that record in Fiscal Year 2010, filing 125 criminal cases.
- We have trained thousands of federal and local law enforcement officials and community stakeholders around the country on the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009. We have indicted four cases under the Act, and have secured the first seven convictions under the Act.
- We prosecuted and, last month, won convictions in a landmark case against five New Orleans police officers involved in shootings of civilians and an extensive cover-up that occurred in the wake of Hurricane Katrina. Five additional officers pled guilty to charges related to the incident.
- Recognizing systemic problems in the New Orleans Police Department, we conducted one of the most extensive reviews ever of a law enforcement agency, and we are now working with city officials, the police department and the community to develop a comprehensive blueprint for sustainable reform of the police department. Just last week, we announced the completion of a similarly extensive review of the Puerto Rico Police Department and we are looking forward to working with the Commonwealth on a path forward.
- We reached the largest ever settlement under the Fair Housing Act to resolve claims of rental discrimination, as well as obtained the largest amount of monetary relief ever in a Justice Department Fair Lending settlement. We have also greatly ramped up fair lending enforcement, filing in the current fiscal year more lawsuits under the Equal Credit Opportunity Act than in any year in at least a decade.
- We have signed comprehensive settlement agreements with Georgia and Delaware to enforce the Supreme Court's *Olmstead* decision, ensuring that thousands of individuals with disabilities will receive services in their communities, rather than being segregated in institutions.
- We issued the most extensive overhaul of Americans with Disabilities Act regulations since the passage of the Act in 1990.
- We have stepped up enforcement of voting rights, taking an unprecedented number of actions to protect the voting rights of military and overseas voters in the 2010 election cycle, and filing the first two lawsuits under Section 7 of the National Voter Registration Act in seven years.
- We have greatly expanded efforts to protect members of the military and their families in voting, employment and the consumer context. These efforts include a recent $20 million settlement with Bank of America/Countrywide to resolve allegations that the bank illegally foreclosed on members of the military without court orders.

All of our efforts and accomplishments are a direct result of our steadfast commitment to

the fair, vigorous and evenhanded enforcement of all of the laws within our jurisdiction. The talented, dedicated career attorneys, professionals and support staff who work in the Division are committed to this principle, and they have been indispensible in our transformation and restoration over the last two years. Their efforts are critical to our ability to continue to protect the civil rights of all individuals.

Criminal Enforcement and Law Enforcement Misconduct

Hate Crimes

The Division continues its critical work to prosecute hate crimes, and we have worked hard to implement the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009. The Division has helped to plan and participated in dozens of training conferences throughout the country, working with local U.S. Attorney's Offices, the FBI, and the Department's Community Relations Service to bring together federal, state and local law enforcement along with community stakeholders, educating them about the law and its implementation.

So far, four cases have been filed under the law, and seven defendants have been convicted. In May, the first defendants were convicted under the Act for charges related to a violent attack on five Hispanic men in which one of them sustained life-threatening injuries. Overall, in the current fiscal year the Division has charged and convicted more defendants on hate crimes charges than the previous year.

The Division also prevailed in a hate crime prosecution of two young men for fatally assaulting a Latino man because of his ethnicity, in Shenandoah, Pennsylvania. In February, the two were sentenced to nine years in prison for the fatal beating of Luis Ramirez. In addition, the former Shenandoah Police Chief and a Police Lieutenant were convicted of falsifying information related to the investigation of the fatal beating.

We also continue to prosecute violent acts of hate directed at individuals who are, or are perceived to be, Muslim or Arab. In February, in the 50th prosecution involving Post-9/11 backlash violence, the Division secured a guilty plea in a case involving arson at the playground of an Arlington, Texas, mosque. We also successfully prosecuted three men for spray painting swastikas and "white power" on a mosque in Columbia, Tennessee, and then starting a fire that completely destroyed the mosque. Cases like these remind us that the Post-9/11 backlash continues, and that we must remain vigilant to protect all individuals from such acts of hate.

Human Trafficking

Human trafficking – the equivalent of modern day slavery – is a scourge frequently

involving complex international cartels. The Civil Rights Division has taken efforts to combat human trafficking to the highest levels ever, prosecuting a record number of trafficking cases in FY 2009, and then topping that record in FY 2010. These efforts have included cases of unprecedented scope and impact through which we obtained significant sentences of imprisonment. The Division filed 52 sex and labor trafficking cases in FY 2010, charging 99 defendants.

Among those cases is the largest human trafficking case in Department history, alleging that the defendants forced more than 600 Thai workers to labor on farms across the country. The charges arise from the defendants' alleged scheme to coerce the labor and services of Thai nationals to work on farms across the country under the U.S. federal non-immigrant agricultural worker program. This past June, three of the eight defendants pled guilty.

Law Enforcement Misconduct

We have great respect for the dedicated work of law enforcement officials who perform heroic services in protecting their communities. However, when officers abuse their power, they must be held accountable. The Criminal and Special Litigation Sections of the Division continue to manage a steady docket of cases involving police brutality and misconduct. This work has included a number of cases in New Orleans that occurred both before and after Hurricane Katrina.

For example, last month, five New Orleans Police Department (NOPD) officers were convicted in connection with the police-involved shooting on the Danziger Bridge in the aftermath of Hurricane Katrina that resulted in the death of two civilians and the wounding of four others. Five additional officers pled guilty to related charges.

Late last year, a federal jury convicted three current and former NOPD officers in relation to the shooting death of Henry Glover, the subsequent burning of Glover's remains and a related cover up.

Following the spate of criminal cases involving NOPD officers, the Division launched a civil pattern or practice investigation of the New Orleans Police Department. The investigation came at the request of New Orleans Mayor Mitch Landrieu, and was one of the most extensive in the Division's history. In March, the Department issued an extensive report documenting a wide range of systemic and serious challenges. Our findings included a pattern or practice of unconstitutional conduct or violations of federal law in numerous areas of NOPD activities, including unconstitutional stops, searches and arrests; use of excessive force; discriminatory policing; and others. The Division is now working closely with the City to develop a comprehensive blueprint for sustainable reform, which will be embodied in a consent decree.

The NOPD investigation was just one of several that the Division has launched throughout the country. For example, we recently began a comprehensive investigation of the Newark, New Jersey, Police Department to examine allegations of excessive force;

unconstitutional stops, searches, arrests and seizures; discriminatory policing; and whether officers retaliate against people who observe or record police activity and conditions of confinement, or both. In June, we announced an investigation of the Portland, Oregon, Police Bureau to examine allegations of excessive force, particularly in relation to individuals with mental illness. And as mentioned previously, last week we announced the findings of a comprehensive investigation of the Puerto Rico Police Department.

In each of these cases, we conduct thorough investigations to determine whether there are violations. Where violations are found, we work with cities, police departments and community stakeholders to ensure that communities have effective, accountable policing that reduces crime, upholds the law and the Constitution, and earns the respect of the public.

Disability Rights

Among the Division's top priorities is protecting the rights of individuals with disabilities. Last year marked the 20th anniversary of the Americans with Disabilities Act, a groundbreaking law that has not only dramatically increased access to all aspects of civic, economic and social life for individuals with disabilities, but has forever changed the way our society thinks about people with disabilities. The Justice Department marked the milestone by publishing its comprehensive final regulations revising Titles II and III of the ADA, as well as the ADA Standards for Accessible Design. The Standards include new provisions that expand access to recreation facilities, judicial facilities, and a variety of other areas. The revised rules were the Department's first major revision of its guidance on accessibility in 20 years.

Meanwhile, the Division has launched an aggressive effort to enforce the Supreme Court decision in *Olmstead v. L.C.*, a historic 1999 ruling recognizing that the unjustified segregation of people with disabilities in institutional settings is a form of discrimination under the ADA. In the last two years, the Division has joined or initiated litigation, or issued findings letters to ensure community-based services in more than 35 matters in 20 states. These include cases on behalf of persons with disabilities who had been flourishing in the community and who could be forced into more expensive nursing homes or other institutions by cuts to community services, as well as individuals who could and want to be served in the community yet remain unnecessarily segregated in institutional settings.

In July, the Division reached a comprehensive settlement agreement with the state of Delaware that will provide relief for more than 3,000 individuals with mental illness in Delaware. The agreement will ensure that individuals can receive treatment and services in the community, rather than facing unnecessary institutionalization. As with a comprehensive agreement reached last year with Georgia to provide relief for thousands of individuals with developmental disabilities and mental illness, the agreement with Delaware will serve as a model for comprehensive agreements going forward. In the last six months, the Division has issued findings letters against three other states concluding that they are violating the ADA and

Olmstead, and is attempting to negotiate resolutions of these matters. The Division has also formally opened *Olmstead* investigations in five other states.

In addition, the Civil Rights Division has been actively litigating cases and negotiating settlements that increase public access for people with disabilities in a wide variety of contexts. For example, in 2010, the Division obtained a consent decree on behalf of a family whose two-year-old child, who is HIV-positive, was barred from the pool and other facilities at a family-themed RV resort in Alabama while the father commuted to nearby Mobile, Alabama, for ongoing cancer treatment. The Division has reached nationwide settlements with Norwegian Cruise Lines, H & R Block, Hilton World Wide Inc., Regal Entertainment Group, QuikTrip, Blockbuster and AMC Entertainment Inc., making thousands of facilities accessible to people with vision, hearing and mobility disabilities.

We also recognize the important and continuously growing role technology plays in our day-to-day lives, and we have worked to ensure technology does not unintentionally create new barriers for individuals with disabilities. To this end, we settled cases with five universities to ensure that electronic book readers that do not have text-to-speech capability will not be used in classroom settings because they are inaccessible to students who are blind or have low vision. We were also a signatory to a settlement with the Law School Admissions Council to ensure that its common application website is accessible to law school applicants who use screen reader technology because they are blind or have low vision.

Fair Lending

The nationwide foreclosure crisis has touched virtually every community in our country, but has disproportionately devastated communities of color. In the wake of the housing and foreclosure crisis, fair lending enforcement has been a top priority for the Division. We established a dedicated Fair Lending Unit in the Housing and Civil Enforcement Section, and have worked to strengthen partnerships with the banking regulatory agencies, the Federal Trade Commission and HUD. In 2010, the Division received 49 referrals from partner agencies, more than it had received in a single year in at least 20 years.

So far in the current fiscal year, the Fair Lending Unit has filed five lawsuits under the Equal Credit Opportunity Act – more than in any year in at least a decade. The Unit has seven authorized lawsuits and more than 20 open investigations, including the previously disclosed investigation of Bank of America/Countrywide, one of the nation's largest lenders during the mortgage boom.

In addition to the authorized lawsuits mentioned above, the Fair Lending Unit has reached settlements in four pattern or practice fair lending cases this fiscal year. For example, this spring, the Division reached a settlement with Citizens Bank and Citizens Republic Bancorp to resolve classic redlining allegations that the lenders have served the credit needs of the residents of predominantly white neighborhoods in the Detroit metropolitan area to a

significantly greater extent than they have served the credit needs of majority African-American neighborhoods. The bank agreed to open a loan production office in an African-American neighborhood in Detroit and invest approximately $3.6 million in Wayne County, Michigan.

We also recently filed a suit against the nation's largest mortgage insurance company, Mortgage Guaranty Insurance Corp. (MGIC), alleging that the company violated the Fair Housing Act by discriminating against women on paid maternity leave. The complaint alleges that MGIC required women on paid maternity leave to return to work before the company would insure their mortgages. Because most mortgage lenders require applicants seeking to borrow more than 80 percent of their home's value to obtain mortgage insurance, MGIC's denials to women on maternity leave could cost those women the opportunity to obtain a home loan.

Fair Housing

In addition to its fair lending work, our Housing and Civil Enforcement Section continues to pursue a robust docket in the area of fair housing enforcement. Since January 20, 2009, the Section has filed 78 Fair Housing Act lawsuits. During Fiscal Year 2010 alone, while handling its demanding litigation docket, the Division obtained consent decrees or favorable judgments in 42 fair housing cases, 26 of which settled pattern or practice claims. This was the first time in 14 years that the Division has settled that many fair housing pattern or practice cases in a single fiscal year.

Last year, the Division achieved a $2.13 million settlement of claims of pervasive racial discrimination and harassment at an apartment building in Kansas City, Kansas, in a case involving a property manager who placed racially hostile symbols and items on the premises, such as hangman's nooses, and openly made racially derogatory and hostile remarks about African-American residents.

We also continue to see a troubling stream of cases alleging that a landlord or a landlord's agent has engaged in a pattern or practice of sexually harassing female tenants, filing seven such cases in the current administration, including three in the current fiscal year. The similarities in the underlying fact patterns of these cases are striking. The victims are typically low-income women with few housing options who are subjected to repeated sexual advances, and, in some cases, sexual assault, by predatory landlords, property managers, and maintenance workers. For example, last summer, a jury in Detroit returned a $115,000 verdict in a case involving a maintenance man who subjected six women to severe and pervasive sexual harassment, ranging from unwelcome sexual comments and sexual advances, to requiring sexual favors in exchange for their tenancy. One woman testified that the maintenance man refused to give her keys to her apartment until she agreed to have sex with him. In addition, evidence showed that the owner of the properties knew that the maintenance man was harassing tenants but did nothing to stop it. The jury awarded damages to the six female tenants. On March 3, 2011, the court granted the United States' motion for civil penalties and injunctive relief.

Civil Rights of Servicemembers

The Division enforces several statutes that specifically protect the rights of our men and women in uniform and their families. We have worked aggressively to enforce these important laws on behalf of those who so honorably serve their nation.

In October 2010, President Obama signed the Veterans' Benefits Act of 2010, which amended the Servicemembers Civil Relief Act (SCRA) to provide explicitly that the Attorney General can bring a case against anyone who violates the Act where the violation constitutes a pattern or practice or raises an issue of significant public importance. Among other protections, the SCRA prohibits lenders from foreclosing on active duty servicemembers without a court order if the mortgage was taken out prior to the servicemember entering active duty, and requires the lender to follow special procedures.

In May, the Division announced two multi-million dollar settlements under SCRA to resolve allegations that the servicers unlawfully foreclosed on servicemembers and their families. Under the first, BAC Home Loans Servicing, formerly known as Countrywide Home Loans Servicing and a subsidiary of Bank of America, will pay $20 million to resolve a lawsuit alleging the servicer foreclosed on approximately 160 servicemembers without court orders. This is the largest SCRA settlement ever reached by the Department. Under the other agreement, Saxon Mortgage Services, Inc. agreed to pay $2.35 million in damages to servicemembers to settle similar allegations, providing relief for 18 servicemembers.

In order to better protect our men and women in uniform, the Department has proposed legislation that would provide additional relief under the SCRA and improve the Department's access to documents in SCRA investigations.

We have also worked to protect the employment rights of our men and women in uniform so that they do not have to sacrifice their civilian employment in order to serve their country. The Division has aggressively enforced the Uniformed Services Employment and Reemployment Rights Act (USERRA), which protects service members' reemployment rights when returning from a period of service in the uniformed services. The law ensures that service members returning from active duty are not penalized by their civilian employers due to their military service.

To date in the current administration, 33 cases have been filed under USERRA to protect the employment rights of servicemembers. This is compared to 32 cases filed under USERRA in the entire four years that the previous administration had USERRA jurisdiction. For example, the Division secured back pay and injunctive relief against the Alabama Department of Mental Health for failure to promptly reemploy an employee upon his return from active duty service in Iraq.

Finally, the Division is committed to ensuring that servicemembers and overseas citizens are not denied the right to have their voices heard on Election Day. In the 2010 federal election

cycle, the Civil Rights Division aggressively enforced the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended by the Military and Overseas Voter Empowerment (MOVE) Act of 2009, to ensure that Americans serving in our armed forces and citizens living overseas received their absentee ballots in time to ensure that they had the opportunity to vote and to have their votes counted.

We obtained court orders, court-approved consent decrees, or out-of-court letter or memorandum agreements in 14 jurisdictions (11 states, two territories, and the District of Columbia). Each of these resolutions was designed to ensure that military and overseas voters would have at least a 45-day period to receive, mark, and return their ballots, or ensure they would be provided expedited mailing or other procedures to provide sufficient opportunity for ballots to be returned by the jurisdiction's ballot receipt deadline. Our actions in the 2010 election cycle ensured that thousands of military and overseas voters had the opportunity to cast their ballots, and through our outreach and compliance efforts, we ensured that many others were not disenfranchised.

As we prepare for the 2012 cycle, the Division will continue to monitor compliance in all the states and territories, paying particular attention to those states that will have to take action to address problem areas identified in 2010. Some states may need to make big changes requiring legislative action; for example, moving the state's primary date earlier. Other states may require smaller, but equally important, changes to ensure full compliance. Our goal for the 2012 cycle will be full compliance nationwide.

In addition, based on the experience enforcing the MOVE Act provisions for the first time in 2010, the Administration has proposed detailed legislation to further strengthen the law. For example, we have proposed eliminating the waiver provision in the Act so that there is a uniform, nationwide standard that ensures that all military and overseas voters are afforded at least 45 days before a federal election to cast their absentee vote. Our proposal also would add a private right of action and the potential for civil penalties for violations of the act by a state, thereby providing states with additional incentives to comply.

Equal Educational Opportunity

The Division continues its critical work to ensure that school districts are delivering on the promise of *Brown v. Board of Education* so that all students have equal access to a quality education.

For example, last year, the Division reached a settlement with a school district in Louisiana that had two high schools, one that was virtually entirely segregated and one that was integrated. The high school that was nearly 100 percent African American was offering no Advanced Placement classes and only five gifted and honors classes, while the other, attended by

nearly all of the district's white students, offered more than 70 Advanced Placement, gifted and honors classes. Such differences deny students of color equal access to educational opportunities to which they have a right, and we will continue to aggressively enforce the law to ensure all students have access to a quality education.

Meanwhile, as we continue to read disturbing accounts of the ramifications of pervasive harassment of students, the Civil Rights Division has worked to promote prompt and effective responses to harassment when it occurs – every child has the right to attend school free from discrimination and without the fear or threat of violence.

Late last year, for example, the Division entered into a comprehensive settlement agreement with the Philadelphia School District to resolve allegations that Asian-American students were subjected to severe and pervasive harassment by African-American students because of their national origin, including one incident in which more than 30 students were attacked and 13 were sent to hospital emergency rooms.

In July, the Division and the Department of Education reached a settlement agreement with the Tehachapi Unified School District in California to resolve an investigation into the harassment of Seth Walsh, a middle school student who last year committed suicide at the age of 13. The investigation found that Walsh had been the target of severe and persistent harassment because of his failure to conform to gender stereotypes.

In April, the Division and the Department of Education settled a case against a school district in Minnesota for failing to take steps to combat peer harassment against Somali-American students. In late 2009, complaints were filed with the Division and the Department of Education after a fight broke out involving nearly a dozen high school students. We found that the district meted out disproportionately harsh discipline for the Somali-American students involved in the incident and that the district's policies, procedures and trainings were not adequately addressing harassment against Somali-American students.

In addition, the Division continues to work to protect the rights of English Language Learners (ELL) to receive the services they need to ensure their full participation in school. For example, last year the Division and the Department of Education entered into an agreement with the Boston Public Schools that will result in the delivery of services to more than 4,000 underserved eligible students and to thousands of additional students identified as possible ELL students but who were never appropriately tested.

Religious Freedom

Our nation has long cherished religious freedom as one of our most basic and fundamental civil rights, and the Division continues to enforce the rights of individuals and congregations to practice the faith of their choosing in a variety of contexts.

We continue to see violence and threats of violence directed at individuals or congregations because of their religion. For example, this summer a defendant was convicted of federal civil rights charges under the Church Arson Prevention Act in connection with the burning of the Macedonia Church of God in Christ in Springfield, Massachusetts, in the early morning of November 5, 2008. The conviction followed guilty pleas from two co-defendants in the case. In the hours after the election of President Obama, the men doused the predominantly African-American church with gasoline and set a fire that completely destroyed the building. The church was under construction at the time and was 75 percent complete.

Last year we marked a decade of enforcement of the Religious Land Use and Institutionalized Persons Act (RLUIPA), and we continue to pursue cases involving religious discrimination in land use. Last October, for example, the Division filed a friend-of-the-court brief in a Tennessee state court proceeding in which neighbors of a proposed mosque challenged the county's granting of a building permit. The neighbors argued that Islam was not a religion subject to protection under federal law and the Constitution, and that the county was wrong to treat the mosque in the same manner that it would treat a church. Our brief argued that RLUIPA required such equal treatment, and the court agreed in a decision on November 17, 2010.

Last summer, the Department obtained a consent decree permitting the continued operation of a "Shabbos house" next to a hospital in a New York village. The facility provides food and lodging to Sabbath-observant Jews to enable them to visit sick relatives at the hospital on the Sabbath.

Just last month, we reached a settlement with the city of Lilburn, Georgia, to resolve allegations that the city violated RLUIPA when it twice denied an Islamic Center's application for rezoning in order to build a mosque, despite regularly allowing similar rezoning requests for non-Muslim religious groups. The city has agreed to allow construction of the mosque.

We also continue to work to ensure that individuals are not forced to choose between their jobs and the requirements of their faith. In 2010, for example, we settled a case involving a Muslim correctional worker in Essex County, New Jersey, who had been fired for refusing to remove her headscarf.

Meanwhile, a decade after the attacks of 9/11, we continue to see a backlash against individuals who have faced discrimination based on their actual or perceived religion or national origin. We have stepped up our outreach to the Muslim community, ensuring not only that we learn about potential civil rights violations that merit further investigation, but also that we build relationships with the community to enhance trust and understanding. I have met with local Muslim, Arab, Sikh and South Asian leaders in communities across the country. We will continue our efforts to reach out to Muslim communities, and all faith communities, to ensure they know their rights under federal law and understand how to contact us when violations occur.

Equal Employment Opportunity

The Division continues its work to enforce Title VII of the Civil Rights Act of 1964 to ensure that all individuals have equal access to employment opportunities. Since the beginning of the Obama Administration, the Division has initiated 37 new pattern or practice investigations of state or local employers.

In March, the Division reached a consent decree with the Herford County, North Carolina, Public Health Authority to resolve allegations of pregnancy discrimination. The complaint alleged the Health Authority rescinded an offer of employment and refused to hire a woman for a Health Educator Specialist position because of her pregnancy.

Last month, the Division reached a settlement with the state of New Jersey to resolve allegations that the state's written examinations for promotion to police sergeant have an unlawful disparate impact on African-American and Hispanic candidates. The settlement requires the state to develop new selection procedures for police sergeant positions, and requires the state to pay $1 million into a settlement fund to provide back pay for those harmed by the discriminatory test.

When I testified before you previously, I mentioned that the Division obtained a significant victory for applicants to become New York City firefighters when a court found that the City's use of two written examinations resulted in an unlawful disparate impact on African-Americans and Latinos. Earlier this year, the court ruled that the practices constituted discrimination not only under a disparate impact theory, but that the practices also constituted intentional discrimination. We continue to work to ensure that the city develops hiring policies that give all applicants a fair shot.

We have also stepped up enforcement of the non-discrimination provision of the Immigration and Nationality Act. Just last month, the Division settled a case involving charges of discrimination against non-citizens and foreign-born U.S. citizens by Farmland Foods, a subsidiary of Smithfield Foods, Inc. The company agreed to pay $290,400 to settle claims that it engaged in a pattern or practice of discrimination against work-authorized immigrants and naturalized U.S. citizens by imposing greater documentary requirements on them than on native-born U.S. citizens. This is the largest amount in civil penalties ever paid to resolve such allegations.

Voting Rights

Protecting the voting rights of all Americans continues to be a cornerstone of civil rights enforcement, and the Division continues its work to enforce the nation's critical voting rights laws. The Division continues to review voting changes submitted under Section 5 of the Voting Rights Act to ensure that these changes do not discriminate against voters based on race, color, or membership in a language minority group, and is vigorously defending the constitutionality of Section 5 in the courts. We are deeply immersed in the review of redistricting plans submitted

for review in the current round of redistricting. In the six months since the 2010 Census data were released, the Voting Section has received for review approximately 500 redistricting plans, slightly less than 20 percent of the more than 2,700 plans that we anticipate will be submitted by the end of the 2012 fiscal year. To assist those jurisdictions required to comply with Section 5, the Division has updated its Section 5 procedures for the first time since 1987, and issued revised guidance regarding the manner in which the Department will analyze redistricting plans. These new guidelines reflect practical and technological updates, Congressional changes to the Voting Rights Act, and new judicial decisions.

In this fiscal year, six states have filed declaratory judgment actions seeking judicial preclearance of redistricting plans or other voting changes. In addition, the Division is conducting reviews of requests from covered jurisdictions for bailout from the coverage requirements of Section 5 of the Voting Rights Act. Nine bailout actions have been filed by covered jurisdictions to date in the current fiscal year, and the Department has advised all of those jurisdictions that it will consent to bailout. Overall, since January 2009, the District Court for the District of Columbia has granted bailout by nine jurisdictions, all with the Department's consent, including the first ever bailouts from Texas, Georgia, and California, and the first bailout from North Carolina since the 1960s.

So far in Fiscal Year 2011, the Voting Section has opened 170 investigations – more than in any fiscal year in the last decade – and has 27 new cases, including both affirmative and defensive cases and amicus participation – which equals the highest number of cases in any fiscal year in the last decade.

We have continued our initiative to ensure compliance with all provisions of the National Voter Registration (Motor Voter) Act (NVRA). In March, the Division reached an agreement with Rhode Island to require the state to offer voter registration opportunities at state offices providing public assistance and disability services. The agreement was filed in conjunction with a lawsuit under Section 7 of the NVRA – the first lawsuit the Division has filed to enforce Section 7 of the NVRA in seven years. In April, the first full month after the agreement was filed, agencies covered by the agreement registered 1,038 voters. By contrast, for all of 2005 and 2006, the state reported receiving only 940 voter registration applications from public assistance agencies. On July 12, we filed a lawsuit against Louisiana under Section 7 of the NVRA for failing to offer voter registration opportunities at public assistance agencies and offices serving persons with disabilities.

In addition to the affirmative work, the Voting Section currently has the busiest defensive litigation docket in the past decade, including three constitutional challenges to Section 5 of the Voting Rights Act. The Division will continue vigorously defending the Act's constitutionality.

Meanwhile, we continue to work to ensure that voters with limited English proficiency receive the language assistance they need to cast an informed vote. Last fall, the Division obtained a consent decree to protect the rights of Spanish-speaking Puerto Rican voters in Cuyahoga County, Ohio, which, according to the 2000 Census, was the county that had the

largest population of Puerto Rican residents that lacked access to a bilingual ballot. On June 30, 2011, we filed a consent decree to resolve a lawsuit brought to ensure access to the electoral process for Spanish- and Chinese-speaking voters in Alameda County, California. The matter is pending with the court.

Access to Reproductive Health Centers

In the area of protecting the right to provide and access reproductive health services, we've revived enforcement of the Freedom of Access to Clinic Entrances (FACE) Act. Since 2009, the Division has opened 20 civil FACE investigations and filed eight civil FACE complaints, which have already resulted in three consent decrees. Comparatively, in 2007, one civil FACE case was filed, and in the preceding eight years, the Department did not file any civil FACE cases.

The Division also enforces the FACE Act's criminal provisions, which prohibit violent or threatening conduct aimed at providers of reproductive health services. Earlier this summer, we charged a Wisconsin man with a violation of FACE after he allegedly discharged a bullet through the door of his hotel room into the room across the hall while he was cleaning his gun. Police responded and he was arrested for reckless endangerment. Evidence uncovered indicates that the defendant traveled to Madison with his gun in an attempt to kill doctors to stop them from performing abortions.

Last summer, a defendant pleaded guilty to violating the FACE Act, admitting that on June 23, 2009 – approximately three weeks after the murder of Dr. George Tiller, a Kansas physician who provided reproductive health services – he anonymously contacted the Boulder Abortion Clinic and stated that two of his associates were driving to Boulder to kill members of a clinic employee's family in order to make that employee suffer.

Access to the Courts

The Division leads a multi-component effort to ensure access to the courts for individuals who are limited English proficient. Whether it be in child custody, foreclosure, domestic violence, eviction, or other civil or criminal matters, court systems receiving federal financial assistance must provide meaningful access for limited English proficient individuals under Title VI of the Civil Rights Act of 1964 and implementing regulations. The Division's Federal Coordination and Compliance Section has pursued such access through enforcement, technical assistance, outreach, resource identification and policy efforts, all in partnership with the Department's Office of Justice Programs, the Office on Violence Against Women, the Access to Justice Initiative, and several U.S. Attorney's Offices.

In June of this year, we reached an agreement with the Colorado Judiciary that serves as an example for all other courts. Colorado agreed to issue a state rule that provides for free

interpreters in all civil and criminal matters and in court operations. The agreement also provides for state and local level planning that will create efficiencies allocating interpreter and translation resources, and expands an existing oversight committee to provide for feedback from the bar.

Partnerships

We know that much of our work can be done more efficiently and effectively when we work collaboratively with our partners across the federal government. For this reason, we have worked over the last two years to establish and strengthen partnerships to improve enforcement. For example, as mentioned above, strengthened relationships with regulatory agencies in 2010 led to more fair lending referrals to the Division than in at least the last 20 years. The President's Financial Fraud Enforcement Task Force has been instrumental in fostering these enhanced collaborative efforts. The Task Force, chaired by the Attorney General, brings together an unprecedented number of federal agencies and state and local partners to share information and resources and ensure aggressive, coordinated enforcement.

In the human trafficking context, last year the Department of Justice joined the Departments of Homeland Security and Labor to launch a nationwide Human Trafficking Enhanced Enforcement Initiative designed to streamline federal criminal investigations and prosecutions of human trafficking offenses. As part of the initiative, specialized Anti-Trafficking Coordination Teams have been convened in select pilot districts around the country. The teams, comprising federal prosecutors and federal agents from multiple federal enforcement agencies, will implement a strategic action plan to combat identified human trafficking threats.

Meanwhile, in the employment context, the Division has engaged in unprecedented levels of collaboration with our partner agencies in order to more effectively combat pay discrimination and other forms of employment discrimination. The Division established a pilot program to work with EEOC field offices earlier in investigations to ensure the most efficient and effective application of each agency's resources.

In the disability rights context, we recognize that individuals with disabilities can only have true equal opportunity if they have equal access in all aspects of life, such as housing, employment and health care. We have been working closely with the Department of Health and Human Services and other partners to establish pathways to opportunity in a host of contexts for individuals with disabilities.

And finally, nearly all of our work benefits from strengthened partnerships with U.S Attorney's Offices around the country. In both the criminal and civil contexts, our partnerships with U.S. Attorney's Offices have enabled us to step up our civil rights enforcement efforts.

Conclusion

While the considerable accomplishments described above provide a sampling of the Division's work over that past two years, it not an exhaustive account, and there is much more good work being done by the dedicated men and women who work in the Civil Rights Division. The breadth and scope of our work illustrates the continued need for a healthy, sustainable Civil Rights Division. In the year ahead, we will continue our work to expand opportunity for all Americans, to safeguard the fundamental infrastructure of democracy, and to protect the most vulnerable among us.

In 2011, civil rights remains the nation's unfinished business. The Civil Rights Division is responsible for enforcing some of America's most cherished laws. We take our obligation to protect the rights of all individuals very seriously, and we will continue to use all of the tools in our arsenal aggressively, independently, and evenhandedly so that all individuals can enjoy the rights guaranteed by our Constitution and our federal civil rights laws.

Earlier this year, the Justice Department celebrated the 50th anniversary of Robert F. Kennedy's swearing in as Attorney General. At that event, Attorney General Holder called on us to "commit ourselves to carrying on – and carrying out – [Kennedy's] mission to make gentle the life of this world, and to make good on the promise of our nation." That mission describes what we in the Civil Rights Division seek to do in our work each and every day, and will continue to do in the months and years ahead.

Thank you for the opportunity to testify before you today about the work of the Division. I look forward to answering any questions.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 20, 2011

The Honorable Joseph R. Biden, Jr.
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Members of the armed forces make tremendous sacrifices in order to protect our Nation, and safeguarding the civil rights of these servicemembers and their families is therefore one of the highest priorities of the Department of Justice. We are pleased to transmit to Congress the enclosed legislative proposals, which would significantly strengthen the protections afforded to servicemembers and their families under existing civil rights laws.

This legislative package contains three titles. Title I would strengthen protection of housing and lending rights under the Servicemembers Civil Relief Act (SCRA), the Fair Housing Act, and the Equal Credit Opportunity Act. Title II proposes changes to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to better ensure that servicemembers and overseas citizens have the opportunity to vote and to have their votes counted. Title III would strengthen enforcement of the Uniformed Services Employment and Reemployment Rights Act (USERRA) as well as Title VII of the Civil Rights Act of 1964. These proposals are summarized below.

Title I. The SCRA suspends certain civil legal obligations of active duty servicemembers so that they can focus full attention on their military responsibilities without adverse consequences for themselves and their families. The relief authorized under the SCRA includes civil protections and the temporary suspension of judicial and administrative proceedings in areas such as mortgage interest rate payments and foreclosure, rental agreements, credit card and auto loans, and other civil proceedings. As explained in more detail in the attached section-by-section analysis, we propose to strengthen enforcement of the SCRA by, among other things, doubling the civil penalties currently available and authorizing the Attorney General to issue civil investigative demands to obtain documents in SCRA investigations. We also urge Congress to make parallel changes to the Fair Housing Amendments Act and the Equal Credit Opportunity Act.

Title II. These proposals would strengthen enforcement of the voting rights of military personnel and American citizens living overseas. The Military and Overseas Voter Empowerment Act of 2009 (MOVE Act) amended UOCAVA to establish new voter registration and absentee ballot procedures that States must follow in all federal elections. As a result of the

Department's enforcement actions during the 2010 elections, thousands of military and overseas voters were afforded an opportunity to cast their ballots despite the failure of some election officials to send out ballots on time. In the months since the last election, the Department has assessed the causes of these delays and developed proposals designed to remedy these problems.

In particular, we recommend the addition of pre-election reporting requirements on the status of ballot transmission to provide the Department with comprehensive and timely information regarding whether enforcement actions may be needed. We also propose to eliminate the hardship waiver provision (authorizing waiver of the 45-day ballot transmission deadline upon a showing of undue hardship) in favor of a uniform, nationwide standard that equally protects all military and overseas voters. To further strengthen the Act's protections and provide additional incentives for States to comply, we also propose an express mail requirement, and the establishment of civil penalties and a private right of action for an individual voter aggrieved by a violation of the Act. In recognition of the efficacy of such private rights of action in enforcing laws that protect civil rights, this proposal also would make explicit the right of private individuals to enforce Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Title III. Title III would strengthen the protection of employment rights for military servicemembers and civilians alike. USERRA entitles servicemembers to return to their civilian employment upon completion of their military service with the seniority, status, and rate of pay that they would have obtained had they remained continuously employed by their civilian employer. These proposals would authorize the Department of Justice not only to challenge individual instances of USERRA violations, but also, consistent with the Department's authority under Title VII of the Civil Rights Act of 1964, to investigate and bring suit to stop a pattern or practice of USERRA violations. We also propose to improve USERRA enforcement by allowing the United States to serve as a named plaintiff in all suits filed by the Department, rather than in only those suits filed against State employers. Finally, to enhance the Department's enforcement of employment rights under both USERRA and Title VII of the Civil Rights Act of 1964, these proposals would provide for civil investigative demand authority to obtain documents equivalent to that provided in Title I of this legislative package in both USERRA and Title VII investigations.

The Department of Justice is committed to vigorous enforcement of the housing, lending, employment, and voting rights established by federal civil rights laws. We believe that the enclosed proposals would strengthen our ability to enforce these laws on behalf of servicemembers and civilians.

Thank you for the opportunity to present these proposals. The Office of Management and Budget has advised us that there is no objection to submission of this proposal from the perspective of the Administration's program.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

IDENTICAL LETTER SENT TO THE HONORABLE JOHN A. BOEHNER, SPEAKER OF THE HOUSE OF REPRESENTATIVES

A bill to strengthen enforcement and clarify certain provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. 501 *et seq.*; the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff *et seq.*; and the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301 *et seq.*; and to reconcile, restore, clarify, and conform similar provisions in other, related civil rights statutes.

TITLE I - SCRA AMENDMENTS

TITLE II - UOCAVA AMENDMENTS

TITLE III – USERRA AMENDMENTS

TITLE I - SCRA AMENDMENTS

SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.

Subsection (b)(1) of section 201 of the SCRA (50 U.S.C. App. 521) is amended as follows:

"(b) Affidavit requirement

"(1) Plaintiff to file affidavit

"In any action or proceeding covered by this section, the plaintiff, before seeking a default judgment, shall file with the court an affidavit—

"(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

"(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

"Prior to filing the affidavit, the plaintiff shall conduct a diligent and reasonable investigation to determine whether or not the defendant is in military service, including but not limited to a search of available Department of Defense records and any other information available to the plaintiff. The affidavit shall set forth all steps taken to determine the defendant's military status."

SEC. 102. RESIDENCY OF MILITARY FAMILY MEMBERS

Section 705 of the SCRA (50 U.S.C. App. 595) is amended as follows:

"§ 595. Guarantee of residency for military personnel and family members of military personnel

"(a) In general

"For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence,—

"(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

"(2) be deemed to have acquired a residence or domicile in any other State; or

"(3) be deemed to have become a resident in or a resident of any other State.

"(b) Family Members

"For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a family member of a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of absence, whether or not accompanying the servicemember,—

"(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

"(2) be deemed to have acquired a residence or domicile in any other State; or

"(3) be deemed to have become a resident in or a resident of any other State."

SEC. 103. INCREASE IN CIVIL PENALTIES.

Subsection (b)(3) of section 801 of the SCRA (50 U.S.C. App. 597) is amended as follows:

"(3) may, to vindicate the public interest, assess a civil penalty—

"(A) in an amount not exceeding $110,000 for a first violation; and

"(B) in an amount not exceeding $220,000 for any subsequent violation."

SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.

Section 801 of the SCRA (50 U.S.C. App. 597) is amended by adding the following language at the end of that section:

"(d) Issuance and Service of Civil Investigative Demands

"Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this Act, the Attorney General, or a designee, may, before commencing a civil action under subsection (a), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

"(1) the production of such documentary material for inspection and copying;

"(2) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

"(3) the production of any combination of such documentary material or answers.

"The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this Section, except that references to false claims law investigators or investigations shall be read as references to SCRA investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to 'false claims law' shall not apply; and provisions relating to qui tam relators shall not apply."

"(e) Application

"This section applies to any violation of this Act occurring on, before, or after October 13, 2010."

SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.

Section 802 of the SCRA (50 U.S.C. App. 597a) is amended by adding the following language at the end of that section:

"(c) Application

"This section applies to any violation of this Act occurring on, before, or after October 13, 2010."

SEC. 106. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—INCREASE IN CIVIL PENALTIES.

Subsection (d)(1)(C) of section 814 of the Fair Housing Amendments Act (42 U.S.C. 3614) is amended as follows:

"(C) may, to vindicate the public interest, assess a civil penalty against the respondent—

"(i) in an amount not exceeding $110,000 for a first violation; and

"(ii) in an amount not exceeding $220,000 for any subsequent violation."

SEC. 107. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—CIVIL INVESTIGATIVE DEMANDS.

Subsection (c) of section 814 of the Fair Housing Amendments Act (42 U.S.C. 3614) is amended as follows:

"(c) Enforcement of subpoenas and civil investigative demands

"(1) The Attorney General, on behalf of the Secretary, or other party at whose request a subpoena is issued, under this subchapter, may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

"(2) Issuance and Service of Civil Investigative Demands

"Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this Act, the Attorney General, or a designee, may, before commencing a civil action under subsection (a) or (b), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

"(A) the production of such documentary material for inspection and copying;

"(B) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

"(C) the production of any combination of such documentary material or answers.

"The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this Section, except that references to false claims law investigators or investigations shall be read as references to fair housing investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to 'false claims law' shall not apply; and provisions relating to qui tam realtors shall not apply."

SEC. 108. RELATED CHANGES TO THE EQUAL CREDIT OPPORTUNITY ACT—CIVIL INVESTIGATIVE DEMANDS.

Subsection (h) of section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e(h)) is amended to read as follows:

"(h) Authority for Attorney General to bring civil action; jurisdiction

"(1) When a matter is referred to the Attorney General pursuant to subsection (g) of this section, or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this subchapter, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief.

"(2) Issuance and Service of Civil Investigative Demands

"Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this Act, the Attorney General, or a designee, may, before commencing a civil action under subsection (h)(1), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

> "(A) the production of such documentary material for inspection and copying;
>
> "(B) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or
>
> "(C) the production of any combination of such documentary material or answers.

"The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this Section, except that references to false claims law investigators or investigations shall be read as references to fair lending investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to 'false claims law' shall not apply; and provisions relating to qui tam relators shall not apply."

TITLE II - UOCAVA AMENDMENTS

SEC. 201. PRE-ELECTION REPORTING REQUIREMENTS.

(a) Section 102 of UOCAVA (42 U.S.C. 1973ff-1) is amended by inserting after subsection (b) the following new subsections:

"(c) Report on absentee ballot availability – Not later than 55 days before any Federal election each State shall submit a report to the Attorney General and the Presidential Designee, and make that report publicly available that same day, certifying that absentee ballots are or will be available for transmission by 45 days before the election. The report shall be in a form prescribed by the Attorney General and shall require the State to certify specific information about ballot availability from each unit of local government which will administer the election.

"(d) Report on absentee ballots transmitted – Not later than 43 days before any Federal election each State shall submit a report to the Attorney General and the Presidential Designee, and make that report publicly available that same day, certifying whether all absentee ballots have been transmitted by 45 days before the election to all qualified absent uniformed services and overseas voters whose requests were received at least 45 days before the election. The report shall be in a form prescribed by the Attorney General and shall require the State to certify specific information about ballot transmission, including the total numbers of ballot requests received and ballots transmitted, from each unit of local government which will administer the election."

(b) Current subsections (c) through (i) are renumbered accordingly.

SEC. 202. EXPRESS DELIVERY REQUIREMENT.

(a) Section 102 of UOCAVA (42 U.S.C. 1973ff-1) is amended by inserting after subsection (a)(8)(A) the following new subsection:

"(B) If the State fails to transmit any absentee ballot by the 45th day before the election as required by subparagraph (A), it shall transmit such ballot by express delivery to any absent uniformed services voter or overseas voter who did not request electronic ballot transmission pursuant to Section 102(f)(1). In addition, if the State fails to transmit any absentee ballot by the 40th day before the election, it shall enable the ballot to be returned by express delivery from any absent uniformed services voter or overseas voter pursuant to Section 102(f)(1). The State may satisfy the requirement in the preceding sentence as to absent uniformed services voters in regularly scheduled general elections by notifying absent uniformed services voters of the procedures established in § 1973ff-2A for collection and delivery of marked absentee ballots. A State's compliance with this subparagraph does not bar the Attorney General from seeking additional remedies necessary to effectuate the purposes of this Act."

(b) Current subparagraph (B) is redesignated as subparagraph (C).

SEC. 203. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

(a) Section 105 (42 U.S.C. § 1973ff-4) of UOCAVA is amended as follows:

"(a) In general –The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this title. In any such action, the only necessary party defendant is the State. It shall not be a defense to such action that local election officials are not also named as defendants.

"(b) Civil penalty – In a civil action brought under subsection (a), if the court finds that the State violated any provision of this title, it may, to vindicate the public interest, assess a civil penalty against the State –

"(1) in an amount not exceeding $110,000, for a first violation.

"(2) in an amount not exceeding $220,000, for any subsequent violation.

"(c) Report to Congress – Not later than December 31 of each year, the Attorney General shall submit to Congress an annual report on any civil action brought under subsection (a) during the preceding year.

"(d) Private right of action – A person who is aggrieved by a State's violation of this Act, may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this Act. In any such action, the only necessary party defendant is the State. It shall not be a defense to such action that local election officials are not also named as defendants.

"(e) Attorney's fees – In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney's fees, including litigation expenses, and costs."

(b) Section 576 of the Military and Overseas Voter Empowerment Act of 2009, 42 U.S.C. § 1973ff-1 note, is repealed.

SEC. 204. REPEAL OF WAIVER PROVISION.

Subsection (g) of section 102 of UOCAVA (42 U.S.C. § 1973ff-1(g)) is repealed.

SEC. 205. SATURDAY MAILING DATE RULE.

Subsection (a)(8)(A) of section 102 of UOCAVA (42 U.S.C. § 1973ff-1(a)(8)) is amended as follows:

"(A) in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election or if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, for requests received by that business day; and"

SEC. 206. BALLOT REQUESTS BY OVERSEAS CIVILIAN VOTERS.

Section 104 of UOCAVA (42 U.S.C. § 1973ff-3) is amended to cover early ballot requests by overseas voters, as follows:

"(a) Prohibition of refusal of applications on grounds of early submission – A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 101) submitted by an absent uniformed services voter or overseas voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services or overseas voters. Also, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 101) submitted by an absent uniformed services voter or overseas voter during the preceding year shall be accepted or processed, with respect to any election for federal office, if held in the first 120 days of the following year.

"(b) The Presidential designee shall revise the official postcard form (prescribed under section 1973ff of this title) to enable a voter using the form to--

"(1) request an absentee ballot for each election for Federal office held in a State during a year and the first 120 days of the following year; or

"(2) request an absentee ballot for only the next scheduled election for Federal office held in a State."

SEC. 207. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

Subsection (6) of section 107 of UOCAVA (42 U.S.C. § 1973ff-6(6)) is amended to include the Commonwealth of the Northern Mariana Islands, as follows:

"(6) 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands;"

SEC. 208. RELATED CHANGES TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964—CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION, AND AVAILABLE RELIEF.

(a) Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended—

(1) by striking "No" and inserting "(a) No"; and

(2) by adding at the end of that section the following new subsection:

"(b) Discrimination based on disparate impact is established under this title only if—

"(1) a person aggrieved by discrimination on the basis of race, color, or national origin demonstrates that a program or activity receiving Federal financial assistance (referred to in this title as 'covered entity') has a policy or practice that causes a disparate impact on the basis of race, color, or national origin and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the covered entity; or

"(2) the aggrieved person demonstrates that a less discriminatory alternative policy or practice exists, and the covered entity refuses to adopt such alternative policy or practice.

"In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion."

(b) Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) is amended—

(1) by striking "Each" and inserting "(a) Each"; and

(2) by adding at the end of that section the following new subsection:

"(b) Any person aggrieved by the failure of a covered entity to comply with this title may bring a civil action in any Federal or State court of competent jurisdiction to enforce such person's rights and may recover equitable relief, reasonable attorney's fees, and costs. The aggrieved person may also recover legal relief (including compensatory and, from non-governmental entities, punitive damages) in the case of intentional discrimination."

SEC. 209. RELATED CHANGES TO TITLE IX OF THE EDUCATION AMENDMENTS OF 1972—CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION, AND AVAILABLE RELIEF.

(a) Section 901 of the Education Amendments of 1972 (20 U.S.C. 1681) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c) Subject to the conditions described in paragraphs (1) through (9) of subsection (a), discrimination based on disparate impact is established under this title only if—

"(1) a person aggrieved by discrimination on the basis of sex demonstrates that an entity subject to this title has a policy or practice that causes a disparate impact on the basis of sex and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the program or activity alleged to have been operated in a discriminatory manner; or

"(2) the aggrieved person demonstrates that a less discriminatory alternative policy or practice exists, and the covered entity refuses to adopt such alternative policy or practice.

"In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion."

(b) Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682) is amended—

(1) by striking "Each" and inserting "(a) Each"; and

(2) by adding at the end of that section the following new subsection:

"(b) Any person aggrieved by the failure of a covered entity to comply with this title may bring a civil action in any Federal or State court of competent jurisdiction to enforce such person's rights and may recover equitable relief, reasonable attorney's fees, and costs. The aggrieved person may also recover legal relief (including compensatory and, from non-governmental entities, punitive damages) in the case of intentional discrimination."

TITLE III - USERRA AMENDMENTS

SEC. 301. ENFORCEMENT OF RIGHTS WITH RESPECT TO A STATE OR PRIVATE EMPLOYER.

(a) Subsection (a) of section 4323 of title 38 (USERRA) is amended as follows:

"(a) Action for relief

"(1) A person who receives from the Secretary a notification pursuant to section 4322(e) of this title of an unsuccessful effort to resolve a complaint relating to a State (as an employer) or private employer may request that the Secretary refer the complaint to the Attorney General. Not later than 60 days after the Secretary receives such a request with respect to a complaint, the Secretary shall refer the complaint to the Attorney General. If the Attorney General is reasonably satisfied that the person on whose behalf the complaint is referred is entitled to the rights or benefits sought, the Attorney General may commence an action for relief under this chapter. The person on whose behalf the complaint is referred may, upon timely application, intervene in such action, and may obtain such appropriate relief as provided in subsections (d) and (e) of this section.

"(2) Whenever the Attorney General has reasonable cause to believe that a State (as an employer) or a private employer is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this chapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may commence a civil action under this chapter.

"(3) A person may commence an action for relief with respect to a complaint against a State (as an employer) or a private employer if the person—

"(A) has chosen not to apply to the Secretary for assistance under section 4322(a) of this title;

"(B) has chosen not to request that the Secretary refer the complaint to the Attorney General under paragraph (1); or

"(C) has been notified by the Department of Justice that the Attorney General does not intend to bring a civil action."

(b) Subsection (f) of section 4323 of title 38 (USERRA) is amended as follows:

"(f) Standing.—An action under this chapter may be initiated only by the United States or by a person claiming rights or benefits under this chapter under subsection (a)."

(c) Subsection (h)(2) of section 4323 of title 38 (USERRA) is amended as follows:

"(2) In any action or proceeding to enforce a provision of this chapter by a person under subsection (a)(1) or subsection (a)(3) who obtained private counsel for such action or proceeding, the court may award any such person who prevails in such action or proceeding reasonable attorney fees, expert witness fees, and other litigation expenses."

SEC. 302. CIVIL INVESTIGATIVE DEMANDS.

Subsection (j) of section 4323 of title 38 (USERRA) is amended as follows:

"(j) Issuance and Service of Civil Investigative Demands

"Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this chapter, the Attorney General, or a designee, may, before commencing a civil action under subsection (a), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

"(1) the production of such documentary material for inspection and copying;

"(2) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

"(3) the production of any combination of such documentary material or answers.

"The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this section, except that references to false claims law investigators or investigations shall be read as references to USERRA investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to 'false claims law' shall not apply; and provisions relating to qui tam relators shall not apply."

SEC. 303. RELATED CHANGES TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964—CIVIL INVESTIGATIVE DEMANDS.

(a) Subsections (b) through (e) of section 707 of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-6) shall be redesignated as subsections (c) through (f).

(b) Section 707 of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-6) is amended by inserting the following new subsection at the end of subsection (a):

"(b) Issuance and Service of Civil Investigative Demands

"Whenever the Attorney General, or a designee, has reason to believe that any person may be in possession, custody, or control of any documentary material relevant to an investigation under this subchapter, the Attorney General, or a designee, may, before commencing a civil action under subsection (a), issue in writing and cause to be served upon such person, a civil investigative demand requiring—

"(1) the production of such documentary material for inspection and copying;

"(2) that the custodian of such documentary material answer in writing written questions with respect to such documentary material; or

"(3) the production of any combination of such documentary material or answers.

"The statutory provisions governing the authority to issue, use, and enforce civil investigative demands under the False Claims Act and codified in Section 3733, Title 31 of the United States Code, shall govern the authority to issue, use, and enforce civil investigative demands under this section, except that references to false claims law investigators or investigations shall be read as references to employment discrimination investigators or investigations; references to interrogatories shall be read as references to written questions, and answers to such need not be under oath; the statutory definitions relating to 'false claims law' shall not apply; and provisions relating to qui tam relators shall not apply."

TITLE I – SCRA AMENDMENTS

SEC. 101. CLARIFICATION OF AFFIDAVIT REQUIREMENT.

This section clarifies that the plaintiff in a default judgment action has an affirmative obligation to determine the defendant's military status and that the plaintiff must take steps accordingly, including but not limited to reviewing available Department of Defense records.

SEC. 102. RESIDENCY OF MILITARY FAMILY MEMBERS.

This section clarifies that a family member of a servicemember does not have to accompany that servicemember who is absent from a State in compliance with military or naval orders in order for the family member to retain a residence or domicile in that State. Often if a servicemember is called to Iraq or Afghanistan or deploys on ship for 6-12 months a family member will return to a parent's home during that time for the support network, particularly when there are small children, rather than remaining in a place with no family support. This clarification will allow the military family member the same residency rights as a servicemember even if the family member is unable to accompany the member to the duty station and due to the change in duty station needs to also move to a different place during that deployment.

SEC. 103. INCREASE IN CIVIL PENALTIES.

This section doubles the amount of civil penalties currently authorized.

SEC. 104. ENFORCEMENT BY THE ATTORNEY GENERAL.

This section grants authority to the Attorney General to issue civil investigative demands in investigations under the SCRA. The authority is similar to that provided under the False Claims Act, 31 U.S.C. 3733, except that it does not include the authority to compel oral testimony or sworn answers to interrogatories. This section also clarifies that the Attorney General's authority to enforce the Act applies to violations of the Act that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such authority explicit.

SEC. 105. APPLICATION OF PRIVATE RIGHT OF ACTION.

This section clarifies that a private right of action may be filed by any person aggrieved by a violation of the SCRA that occurred before enactment of the Veterans' Benefits Act of 2010, Public Law 11-275 (Oct. 13, 2010), which made such right explicit.

SEC. 106. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—INCREASE IN CIVIL PENALTIES.

This section increases the amount of civil penalties currently authorized so that they are congruent with the amount of civil penalties authorized for violations of the SCRA, as amended by this bill.

SEC. 107. RELATED CHANGES TO THE FAIR HOUSING AMENDMENTS ACT—CIVIL INVESTIGATIVE DEMANDS.

This section grants authority to the Attorney General to issue civil investigative demands in fair housing investigations and makes that authority congruent with the Attorney General's authority to issue such demands in SCRA investigations, as amended by this bill.

SEC. 108. RELATED CHANGES TO THE EQUAL CREDIT OPPORTUNITY ACT—CIVIL INVESTIGATIVE DEMANDS.

This section grants authority to the Attorney General to issue civil investigative demands in fair lending investigations and makes that authority congruent with the Attorney General's authority to issue such demands in SCRA investigations, as amended by this bill.

TITLE II - UOCAVA AMENDMENTS

SEC. 201. PRE-ELECTION REPORTING REQUIREMENTS.

This section amends Section 102 of UOCAVA to require that States submit two pre-election reports to the Departments of Justice and Defense on the status of ballot transmission to military and overseas voters. It requires that States submit the first report 55 days before the election and identify any jurisdictions that may not be able to send ballots by the 45th day before the election. It requires that States submit the second report 43 days before the election and certify whether each of its jurisdictions transmitted its ballots by the 45th day. These two pre-election reports would provide the Department with information necessary to assess, at the most critical and timely stages, whether enforcement actions are needed, and alleviate the need to rely on voluntary reporting by the States.

SEC. 202. EXPRESS DELIVERY REQUIREMENT.

This section amends Section 102 of UOCAVA to require States that have failed to mail absentee ballots by the 45-day deadline to voters who request ballots by the 45th day to send them by express delivery, and to require States that have failed to mail absentee ballots by the 40th day to enable such voters to return their ballots by express delivery. These requirements would increase the likelihood that ballots arrive in time for the voters to receive, mark, and return the ballots by Election Day, and would create a strong financial incentive for strict State compliance with the 45-day rule.

SEC. 203. CLARIFICATION OF STATE RESPONSIBILITY, CIVIL PENALTIES, AND PRIVATE RIGHT OF ACTION.

This section amends Section 105 of UOCAVA to clarify that States bear the ultimate responsibility for ensuring timely transmission of absentee ballots; to provide for civil penalties for violations of the Act in appropriate circumstances; and to provide for an express private right of action. The clarifying language in this amendment would preclude State officials from successfully arguing, contrary to Congress's intent and the Act's legislative history, that they lack sufficient authority to be held responsible for localities' failures to timely send overseas ballots. This section also repeals 42 U.S.C. § 1973ff-1 note, which addresses the delegation of administrative control of absentee voting, to avoid confusion regarding State responsibility for compliance with the Act. The inclusion of civil penalties and an express private right of action strengthens the Act's protections by providing additional incentives for State compliance.

SEC. 204. REPEAL OF WAIVER PROVISION.

This section repeals UOCAVA's hardship waiver provision, 42 U.S.C. § 1973ff-1(g), which currently waives the 45-day deadline for States that cannot comply with the deadline due to an undue hardship created by (1) the date of the State's primary election; (2) a delay in generating ballots due to a legal contest; or (3) a prohibition in the State's Constitution. The Department's experience with the waiver provision during the 2010 Federal general election

cycle shows that its marginal benefits are outweighed by its downsides, including the significant enforcement and administrative resources expended on its implementation. All 11 States that applied for a waiver did so based on the date of their primary elections, and a majority of them were denied a waiver, which required them to take additional, immediate steps to come into compliance at a time when the Federal general election date was fast approaching. Repealing the waiver provision would strengthen the protections of the Act by ensuring that the 45-day deadline is the standard that all States should meet, even if it requires changing the date of their primary elections. A uniform, nationwide standard ensures that all military and overseas voters are afforded its benefits equally.

SEC. 205. SATURDAY MAILING DATE RULE.

This section amends Section 102 of UOCAVA to require that absentee ballots be sent on the business day preceding the 45th day before the election when the 45th day is a weekend or holiday. Because elections for Federal office are almost always held on a Tuesday, the 45th day almost always will fall on a Saturday. This amendment is therefore necessary to clarify that when the 45th day falls on a weekend or holiday, the deadline is moved up to the next preceding business day as opposed to the following business day.

SEC. 206. BALLOT REQUESTS BY OVERSEAS CIVILIAN VOTERS.

This section amends Section 104 of UOCAVA to add overseas civilian voters to a provision that currently requires States to accept or process absentee ballot requests from military voters received in the same calendar year as the Federal election, and provides that voter registration applications or absentee ballot requests submitted by all absent uniformed services voters and overseas voters in a calendar year shall be accepted and processed for each election for Federal office held in a State during the first 120 days of the following year. The inclusion of overseas civilian voters in this provision is consistent with other provisions of the Act. It also provides that all absent uniformed services voters and overseas voters have the option of applying for ballots for all federal elections held during the period prescribed by this section and requires the Presidential designee to revise the Federal postcard application to provide for that option.

SEC. 207. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

This section amends UOCAVA to make its requirements applicable to the Commonwealth of the Northern Mariana Islands, which, as of 2008, has a nonvoting Delegate to the House of Representatives.

SEC. 208. RELATED CHANGES TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964—CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION, AND AVAILABLE RELIEF.

This section responds to the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), by clarifying that discrimination that has a disparate impact on protected classes

is prohibited under Section 601 of Title VI. In addition, it makes explicit the right of individuals to enforce Title VI and clarifies that an aggrieved person may recover equitable relief, reasonable attorney's fees, and costs. It also makes clear that compensatory and punitive damages are available for claims of intentional discrimination, but not for disparate impact claims, and that punitive damages may only be recovered from non-governmental entities.

SEC. 209. RELATED CHANGES TO TITLE IX OF THE EDUCATION AMENDMENTS OF 1972—CLARIFICATION OF PROHIBITED DISCRIMINATION, PRIVATE RIGHT OF ACTION, AND AVAILABLE RELIEF.

This section responds to the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001), by clarifying that discrimination that has a disparate impact on the basis of sex is prohibited under Section 901 of Title IX. In addition, it makes explicit the right of individuals to enforce Title IX and clarifies that an aggrieved person may recover equitable relief, reasonable attorney's fees, and costs. It also makes clear that compensatory and punitive damages are available for claims of intentional discrimination, but not for disparate impact claims, and that punitive damages may only be recovered from non-governmental entities.

TITLE III - USERRA AMENDMENTS

SEC. 301. ENFORCEMENT OF RIGHTS WITH RESPECT TO A STATE OR PRIVATE EMPLOYER.

This section strengthens enforcement of USERRA rights by allowing the United States to serve as a plaintiff in all suits filed by the Attorney General, as opposed to only suits filed against State employers. The amendment preserves the right of the aggrieved persons to intervene in such suits, or to bring their own suits where the Attorney General has declined to file suit. This section also strengthens enforcement by granting independent authority to the Attorney General to investigate and file suit to challenge a pattern or practice in violation of USERRA. The pattern-or-practice language is modeled after Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-6(a).

SEC. 302. CIVIL INVESTIGATIVE DEMANDS.

This section grants authority to the Attorney General to issue civil investigative demands in its USERRA investigations. The authority is similar to that provided under the False Claims Act, 31 U.S.C. 3733, except that it does not include the authority to compel oral testimony or sworn answers to interrogatories.

SEC. 303. RELATED CHANGES TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964—CIVIL INVESTIGATIVE DEMANDS.

This section grants parallel authority to the Attorney General to issue civil investigative demands in pattern-or-practice investigations under Title VII of the Civil Rights Act of 1964.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI - EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
v.	)	
	)	
MIDWEST BANKCENTRE,	)	
	)	
Defendant.	)	
	)	

AGREED ORDER

I. INTRODUCTION

This Order is submitted jointly by the parties for the approval of and entry by the Court simultaneously with the filing of the United States' Complaint in this action. This Order resolves the claims of the United States that Midwest BankCentre ("Midwest" or "Bank") has engaged in a pattern or practice of conduct in violation of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691-1691f, by discriminating on the basis of race and color in the provision of residential real estate-related credit in the Missouri portion of the St. Louis MSA.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. Accordingly, the execution of this Order is not, and is not to be considered as, an admission or finding of any violation of the FHA or the ECOA by Midwest. Rather, the

II. BACKGROUND

Midwest is a wholly-owned subsidiary of Midwest BankCentre, Inc., a financial holding company headquartered in St. Louis County, Missouri. Its principal office is in St. Louis County, Missouri. Midwest operates primarily as a commercial bank. The Bank also offers the traditional services of a financial depository and lending institution, including the receipt of monetary deposits and the financing of residential housing. As of December 31, 2010, Midwest had assets totaling just under $1.1 billion. Midwest is subject to the regulatory authority of the Federal Reserve System.

On August 14, 2009, the Department of Justice informed the Bank that it had initiated an investigation into potential lending discrimination by Midwest, including whether Midwest had discriminated on the basis of race in providing lending services to predominantly African-American communities in the St. Louis Metropolitan Statistical Area ("MSA").

In 2009, the Federal Reserve System initiated a consumer compliance examination of Midwest. The examination included an evaluation of lending data from 2006 to 2008 related to Midwest's applications and originations in the City of St. Louis and St. Louis, St. Charles, and Jefferson Counties.[2] Based on the information gathered in its examination, the Federal Reserve concluded that there was reason to believe that Midwest engaged in a pattern or practice of conduct in violation of the FHA and ECOA. On October 14, 2010, the Board of Governors of

[2] The Missouri portion of the St. Louis MSA consists of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis and Warren counties, as well as the City of St. Louis. The Board's investigation focused on Midwest's lending activities in the counties closest to the City of St. Louis, including Jefferson, St. Charles and St. Louis Counties, as well as the City of St. Louis itself.

conducted a financial education training class for residents of the College Hill neighborhood and collaborated with a newspaper serving largely minority populations in organizing three financial education workshops conducted at a local African-American owned business serving the African-American community. Midwest has also engaged an independent third party to assist the Bank in the development of internal programs around the subject of "unconscious bias."

Beginning in 2010, Bank managers have also been active participants in efforts to address the large number of unbanked and underbanked persons in St. Louis, which efforts were organized by the Federal Deposit Insurance Corporation and are currently led by community businesses and organizations. In one program designed to meet the needs of the community, Midwest has developed a small dollar (up to $5,000) home improvement loan product with less stringent underwriting criteria at a low fixed rate to assist homeowners in low- and moderate-income neighborhoods repair and maintain their homes.

In terms of financial support to local community organizations, Midwest solicited and received $200,000 through a federal home loan bank grant program focused on affordable housing, to partner with a St. Louis area community group to provide home repairs for homeowners in the predominantly African-American community of Pine Lawn, Missouri.[3] The Bank has also approved and opened a $250,000 line of credit to support a micro-lending program, which enabled that program to fund loans to minority-owned businesses and/or businesses located in majority-black census tracts that it could not have otherwise funded.

[3] Pine Lawn is located in the Missouri portion of the St. Louis MSA.

4. This Order requires Midwest to take these actions to remedy its alleged fair lending violations. Midwest retains the discretion to take any additional actions intended to achieve the goals of this Order.

B. CRA Assessment Area

5. In 2010, Midwest revised its CRA assessment area to include all of St. Louis, St. Charles and Jefferson Counties and the City of St. Louis. Midwest agrees to continue to include the entirety of St. Louis, St. Charles and Jefferson Counties and the City of St. Louis in its CRA assessment area during the term of this Order. During the term of this Order, Midwest shall provide written notice to the United States thirty (30) days prior to implementing any proposed changes to its current CRA assessment area. Nothing in this Order precludes Midwest from expanding its CRA assessment area in the future in a manner consistent with the provisions of the CRA and its implementing regulations.

C. Branch Expansion

6. Midwest shall evaluate future opportunities for expansion, whether by acquisition or opening new offices, in a manner consistent with achieving the remedial goals of this Order.

7. Midwest shall open or acquire at least one (1) additional full-service branch office located in a majority-black census tract in the City of St. Louis or the adjacent northern portion of St. Louis County. This new branch will provide the complete range of services typically offered at Midwest's full-service branches located in majority-white census tracts and shall provide a residential mortgage-lender who is fully trained in all relevant aspects of home mortgage and home equity lending. That residential mortgage lender shall work on-site as well as spend a portion of his or her time in the field, attending community events, making telephone

the United States of its plans to do so when it so notifies the Board, and/or any other banking regulatory agency.

D. Director of Community Development and Director of Compliance

11. The Bank asserts that it has recently increased its internal focus on fair lending and diversity. Specifically, in 2010, Midwest established a management-level Fair and Responsible Lending Committee to develop and implement a comprehensive CRA, fair lending and community development strategy. A Board of Directors' Fair and Responsible Lending Committee also has been established to make certain that there is appropriate focus on Midwest's fair and responsible lending responsibilities. Midwest shall maintain these committees for the duration of this Order.

12. For the duration of this Order, Midwest shall continue to employ a full-time Director of Community Development, whose primary responsibilities will include overseeing the continued development of the Bank's lending in majority-black census tracts. The Director of Community Development is a member of the management-level Fair and Responsible Lending Committee and will report directly to the board-level Fair and Responsible Lending Committee regarding the following responsibilities: monitoring the activities of loan officers regarding the solicitation and origination of loans in majority-black census tracts, including the special loan programs identified in this Order; coordinating Midwest's involvement in community lending initiatives and outreach programs; serving as a resource to lending staff to encourage and develop more lending within majority-black census tracts; promoting financial education; providing financial counseling; and building relationships with community groups.

13. For the duration of this Order, Midwest shall continue to employ a full-time Director of Compliance, whose responsibilities will include overseeing compliance with the

F. Marketing, Advertising and Outreach

15. Midwest shall continue to expand its marketing, advertising, and outreach programs to improve their performance in meeting the credit needs of the residents in majority-black census tracts in the Missouri portion of the St. Louis MSA within the Bank's assessment area.

16. Midwest shall spend a minimum of $50,000 per year ($250,000 over the term of the Order) on one or more of the targeted advertising and marketing campaigns described in paragraphs 17 (a)-(d) below and outreach activities described in paragraph 17(f) below.[5]

17. The marketing, advertising and outreach program shall be specifically targeted to generate a significant additional numbers of applications for all types of credit products from qualified residents in majority-black census tracts in the Missouri portion of the St. Louis MSA within the Bank's assessment area. This program shall include advertising or marketing in one or more of the mediums described in (a) through (d):

(a) Print media specifically directed to African-American readers.[6] Midwest retains the discretion to determine the size, content, and frequency of such advertising subject to the standards set forth above;

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[5] The funds expended by Midwest under paragraphs 15 through 17 may cover the costs associated with hiring third parties to develop the advertisements and marketing materials in addition to costs of placing or distributing targeted advertisements or marketing materials, but salaries or other compensation for participating Bank personnel shall not be counted towards the amount spent on these advertising, marketing and community outreach programs.

[6] Midwest need not include every credit product it offers in each advertisement, but must include in this targeted advertising over the course of a year their principal prime loan products and all special credit products or programs available under the terms of this Order.

G. Credit Needs Assessment

18. Throughout the term of this Order, Midwest will continue its efforts to assess the residential real estate-related credit needs of the Missouri portion of the St. Louis MSA's majority-black census tracts within the Bank's assessment area. This assessment shall include, but not be limited to: (a) analysis of the most recent available demographic and socioeconomic data about those census tracts; (b) evaluation of the residential credit needs of and corresponding lending opportunities in these majority-black census tracts, including, but not limited to, the need for and feasibility of alternative mortgage and other credit products aimed at borrowers at or near area median income whose credit may have been damaged by the subprime lending practices in those areas during the last decade; (c) consideration of how Midwest's residential lending operations can serve the remedial goals of this Order; and (d) thorough review of the availability of relevant federal, state, and local governmental programs and evaluation of how participation in each of them would assist in achieving the remedial goals of this Order. Midwest may retain outside parties to provide expert analysis and assistance in performing this assessment.

19. Recently, Midwest has met with representatives of a number of community organizations and has participated on the steering committee for the St. Louis Regional Unbanked Task Force. In accomplishing this assessment, representatives of Midwest shall continue to meet with representatives of these and other St. Louis metropolitan area community organizations significantly involved in promoting fair lending, home ownership, or residential development in majority-black census tracts, including the Metropolitan St. Louis Equal Housing Opportunity Council ("EHOC"). Midwest may also meet with representatives of any other appropriate entity in conducting this needs assessment. Midwest will take into account its assessment under paragraphs 18 and 20, as well as the most recently available information about

23. Through this special financing program for home purchase, refinancing or home improvement loans, Midwest will offer qualified residents in majority-black census tracts in the Missouri portion of the St. Louis MSA loan products at interest rates and/or on terms that are more advantageous to the applicant than it would normally provide.

24. Under this special financing program, Midwest may provide one or more of the following forms of financial assistance to any qualified applicant:

(a) originating or brokering a loan for a home purchase, refinancing, or home improvement at an interest rate a minimum of 1/2 of a percentage point (50 basis points) below the otherwise prevailing rate, provided that if the prevailing rate ("APR") for any such loan exceeds 8% at any time during the term of this Order, the interest rate subsidy shall be a minimum of 1%, and if the prevailing APR exceeds 9% at any time during the term of this Order, the subsidy shall be a minimum of 1.5%;

(b) originating a home purchase loan at Midwest's prevailing prime interest rate for a conventional fixed-interest rate mortgage to a borrower who would ordinarily not qualify for such rates for reasons including, for example, the lack of required credit quality, income, or down payment;

(c) providing a direct grant of a minimum of 2% of the loan amount, up to a maximum of 3%, for the purpose of down payment assistance;

(d) providing closing cost assistance[8] in the form of a direct grant of a minimum of $500.00 and a maximum of $1,000.00;

[8] Closing cost assistance may include the waiver of standard application and processing fees

needs of majority-black census tract residents in the Missouri portion of the St. Louis MSA within the Bank's assessment area.

26. Midwest shall have discretion to provide the loan subsidy among its residential loan products.

27. The special financing program will be marketed in a manner that includes all of the majority-black census tracts in the Missouri portion of the St. Louis MSA within the Bank's assessment area so that all eligible residents of these areas have an opportunity to participate.

28. No provision of this Order, including this special financing program commitment, requires Midwest to make any unsafe or unsound loan. During the term of this Order, Midwest shall assess the effectiveness of this special financing program in achieving its remedial goal and shall recommend to the United States any changes it reasonably believes are necessary and appropriate to increase the program's effectiveness.

B. Consumer Financial Education and Credit Repair

29. The parties acknowledge that financially-educated consumers are essential to the remedial goal of sustained increases in Midwest's residential lending in majority-black census tracts within the Bank's assessment area in the Missouri portion of the St. Louis MSA. The parties also acknowledge that assisting residents of these census tracts in maintaining and improving their consumer credit ratings is essential to the remedial goals of this Order. The consumer education and credit repair program shall help identify and develop qualified loan applicants from majority-black census tracts in the Missouri portion of the St. Louis MSA within the Bank's assessment area. Midwest shall spend a minimum of $60,000 per year ($300,000

credit history does not present an unacceptably high risk to the Bank or indicate a history of fraudulent transactions:[10]

(a) No annual fees or fees for non-use;

(b) No minimum balance;

(c) Online access;

(d) Debit Cards;

(e) No fees for one box of checks annually;

(f) An optional, affordable overdraft protection provision, which includes reduced fees, for overdraft and related fees totaling $100 for qualified customers;

(g) No fees for the user of ATMs belonging to the Bank or the Bank's affiliates; and

(h) A fee waiver for the additional 200 ATMs in the St. Louis MSA in the MoneyPass system.

(i) A special purpose checking account may be closed by the Bank if the account is overdrawn for 60 consecutive days.

(j) Any fees that are waived or assessed in an amount lower than the Bank's standard checking account fees for qualified accountholders of special

[10] Once Midwest opens the new branch described in paragraph III.C, these accounts will be available to all qualified customers who open accounts at that branch.

whatever nature arising out of the allegations presented in the Complaint giving rise to this Order.

V. EVALUATING AND MONITORING COMPLIANCE

32. For the duration of this Order, Midwest shall retain all records relating to its obligations hereunder, including its residential lending activities, as well as its marketing, outreach, branching, special programs, and other compliance activities as set forth herein. Electronic mail messages, calendars, contacts, tasks and other electronic data stored in the Bank's electronic mailbox system shall only be retained for Bank employees in the following positions: Chairman, President, Chief Credit Officer, Director of Compliance, Director of Community Lending, Director of Marketing, community development mortgage lender, and Branch Leader and new account representative at the branch established pursuant to paragraph 7. The United States shall have the right to review and copy such records upon request.

33. Midwest shall provide to counsel for the United States the data it submits to the Federal Financial Institutions Examination Council ("FFIEC") pursuant to the Home Mortgage Disclosure Act and the CRA. The data will be provided in the same format in which it is presented to the FFIEC within thirty (30) days of its submission to the FFIEC each year for the duration of this Order, including the record layout.

34. In addition to the submission of any other plans or reports specified in this Order, Midwest shall make an annual report to the United States on its progress in fulfilling the goals of this Order. Each such report shall provide a complete account of Midwest's actions to comply with each requirement of this Order during the previous year, an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular

36. Any time limits for performance fixed by this Order may be extended by mutual written agreement of the parties. Other modifications to this Order may be made only upon approval of the Court, by motion by either party. The parties recognize that there may be changes in relevant and material factual circumstances during the term of this Order that may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to this Order resulting therefrom.

37. In the event that any disputes arise about the interpretation of or compliance with the terms of this Order, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The United States agrees that if it reasonably believes that Midwest has violated any provision of this Order, it will provide the Bank written notice thereof and give it sixty (60) business days to reach a resolution with the United States regarding a corrective action plan to resolve the alleged violation before presenting the matter to this Court. In the event of either a failure by Midwest to perform in a timely manner any act required by this Order or an act by Midwest in violation of any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity, including attorneys' fees and costs.

38. Midwest's compliance with the terms of this Order shall fully and finally resolve all claims of the United States relating to Midwest's alleged violation of the fair lending laws by means of discriminating on the basis of race or color, as alleged in the Complaint in this action, including all claims for equitable relief and monetary damages and penalties. Each party to this Consent Order shall bear its own costs and attorney's fees associated with this litigation.

The undersigned hereby apply for and consent to the entry of this Order:

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Execution Version

SETTLEMENT AGREEMENT

I. INTRODUCTION

This Settlement Agreement ("Agreement") is entered into jointly by the parties to resolve the claims of the United States in the matter styled United States of America v. Citizens Republic Bancorp, Inc., et al., No. 2:11-cv-11976-LPZ-LJM (E.D. Mich.) (the "Lawsuit") that Citizens Republic Bancorp, Inc., as the successor to Republic Bank and parent company to Citizens Bank, and Citizens Bank (collectively, "Citizens Bank" or "the bank"), have engaged in a pattern or practice of conduct in violation of the Fair Housing Act (FHA), 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f. Citizens Bank denies these claims.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. Accordingly, the execution of this Agreement is not, and is not to be considered as, an admission or finding of any violation of the FHA or ECOA by Citizens Bank. Rather, the parties have entered into this Agreement to resolve voluntarily the claims asserted by the United States in order to avoid the risks and burdens of litigation. The parties agree that full implementation of the terms of this Agreement will provide a resolution of the allegations of the United States in a manner consistent with Citizens Bank's legitimate business interests.

Pursuant to this Agreement, Citizens Bank has entered into a partnership with the City of Detroit to provide grants to homeowners to enhance the stability and revitalization of neighborhoods to be identified by the City and the bank, as described in paragraph 7. Further, Citizens Bank has agreed to take the actions described herein to ensure that its lending products

3. Citizens Bank will make available and market residential loan products in majority-black census tracts in Wayne County on no less favorable a basis than in majority-white census tracts in Wayne County.

B. CRA Assessment Area

4. In 2010, Citizens Bank revised its assessment area pursuant to the CRA and Regulation BB, its implementing regulation, 12 C.F.R. § 228, to include all of Wayne County and the City of Detroit. Citizens Bank will continue to include the entirety of Wayne County and the City of Detroit in its CRA assessment area during the term of this Agreement. Nothing in this Agreement precludes Citizens Bank from changing its CRA assessment area outside of Wayne County in the future in a manner consistent with the provisions of the CRA and its implementing regulations.

C. Fair Lending Training

5. Citizens Bank will continue to provide, or document the provision of, periodic training on at least an annual basis during the term of this Agreement to all "employees with significant involvement in residential lending," including independent contractors hired by the bank with substantive responsibilities in developing or generating residential mortgage loans or loan products, to ensure that its activities are conducted in a nondiscriminatory manner.[2] This training will encompass the fair lending obligations under the FHA, ECOA, obligations under the CRA, and responsibilities under this Agreement. Citizens Bank will provide a description of

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[2] For the purposes of this paragraph, the term "employees with significant involvement in residential lending," is defined to include only those employees who: (1) are required to be registered as mortgage loan originators pursuant to the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act), 12 C.F.R. Part 208, Regulation H, Subpart I; and (2) are directly involved in the marketing of residential mortgage loans on behalf of the bank.

described in paragraphs 6-12. Citizens Bank retains the discretion to determine the content and frequency of such radio spots subject to the standards set forth above and to place such advertising on additional minority-oriented stations.

(c) Promotional Materials. Citizens Bank will utilize other marketing methods as it deems appropriate to achieve its objectives in Wayne County. The bank already has used billboard advertising in Wayne County to market its residential mortgage loan products, and may continue to use this marketing approach. The bank also may develop point-of-distribution materials, such as posters and brochures, targeted toward the majority-black census tracts in Wayne County to advertise products and services, including any special loan products or services made available pursuant to this Agreement. Citizens Bank will place or display these promotional materials in its branch offices, LPO, and additional, appropriate distribution locations in the majority-black census tracts, in addition to any other places that the bank believes to be appropriate.

(d) Direct Mailings. Citizens Bank retains the option to utilize direct mailing targeted to residents in the majority-black census tracts in Wayne County, but will ensure that a residential lending marketing program in the majority-black census tracts is not limited solely to existing customers of the bank. This does not preclude Citizens Bank from conducting other marketing not focused on residential lending, by direct mail or otherwise, that is limited to current customers.

(e) Citizens Bank will continue its practice of using an equal housing opportunity logotype, slogan, or an audible statement "Equal Opportunity Lender" in advertising and marketing.

provide the benefits of the program to qualified applicants. Nothing herein shall be construed to require Citizens Bank to take any action other than what is expressly provided for in this Agreement.

III. GOVERNANCE

29. Citizens Bank's Legal and Compliance Department will have overall responsibility for the implementation of the terms of this Agreement, including but not limited to facilitating the bank's partnership with the City of Detroit as defined in paragraphs 6-12; coordinating the bank's involvement in community lending initiatives and outreach programs as described throughout the Agreement; serving as a resource to lending staff to encourage and develop more lending within the majority-black census tracts; and overseeing the development of Citizens Bank's lending in the majority-black census tracts in Wayne County. Quarterly updates on the progress of the initiatives will be provided to both the Corporate Compliance Committee, which is comprised of members of executive management, including the Director of Mortgage Banking, and led by the Corporate Compliance Manager, as well as the Board of Directors' Risk Committee, which meets six (6) times per year. The actions of the Risk Committee are reported by its chair and reviewed by the full Board of Directors on a regularly scheduled basis.

IV. EVALUATING AND MONITORING COMPLIANCE

30. For the duration of this Agreement, Citizens Bank will retain all records relating to its obligations hereunder, including its residential lending activities, as well as its advertising, outreach, branching, LPO, special programs, and other compliance activities as set forth herein. The United States will have the right to review and copy such records upon request.

31. Citizens Bank will provide to counsel for the United States the data it submits to the Federal Reserve Board for use by the Federal Financial Institutions Examination Council

terminate three (3) months after the submission of Citizens Bank's fifth report to the United States. If the funds allocated for the special financing program are not fully expended three (3) months after the submission of the bank's fifth report to the United States, the remaining funds will be donated by the bank to a non-profit housing organization in the City of Detroit, or to such other organization that is involved with community reinvestment in the City of Detroit. This may include programs operated by the City of Detroit. The bank will inform the United States of the organization to receive any remaining funds when, and if, the circumstances arise, and allow a thirty (30) day period for the United States to raise any concerns it may have before the funds are transferred.

34. This Agreement may be modified by mutual written agreement of the parties. The parties recognize that there may be changes in relevant and material factual circumstances during the term of this Agreement that may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to this Agreement resulting therefrom.

35. Nothing in this Agreement will excuse the bank's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Citizens Bank that imposes additional obligations on the bank.

36. This Agreement fully and finally resolves all claims of the United States relating to the alleged violation of the fair lending laws by means of discriminating on the basis of race or color, as alleged in the Complaint in this action, including all claims for equitable relief and monetary damages and penalties. Each party to this Agreement will bear its own costs and attorney's fees associated with this litigation.

any discovery in a manner that will allow a trial of the claims alleging a failure to fulfill any obligation under this Agreement commencing (a) 120 days after service of the summons and complaint, or (b) the Court's earliest availability, whichever is later.

Execution Version

For Citizens Republic Bancorp, Inc. and
Citizens Bank:

Date: June 23, 2011

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GREGORY N. BLASE (P66079)
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State Street Financial Center
One Lincoln Street
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Wayne County, Michigan

Majority-Black Tracts as Defined by 2000 Census

Census Tract	Percent Black	Total Tract Pop
5001.00	61.9%	4,328
5002.00	70.2%	3,368
5003.00	81.1%	4,606
5004.00	91.7%	4,517
5005.00	94.4%	3,907
5006.00	89.7%	6,123
5007.00	73.3%	4,770
5008.00	59.3%	2,570
5009.00	86.1%	4,674
5010.00	91.8%	4,093
5011.00	93.7%	5,191
5012.00	98.3%	3,205
5013.00	94.0%	5,707
5014.00	78.9%	4,489
5018.00	63.2%	5,311
5019.00	88.9%	4,064
5020.00	92.2%	3,443
5031.00	80.2%	3,380
5032.00	81.3%	5,103
5033.00	82.5%	5,818
5034.00	69.1%	2,791
5035.00	88.3%	6,435

5070.00	97.3%	3,310
5071.00	97.7%	3,472
5072.00	98.6%	2,017
5073.00	94.1%	4,109
5074.00	94.5%	4,169
5075.00	93.2%	3,165
5076.00	79.9%	2,871
5077.00	89.3%	1,521
5078.00	85.0%	1,565
5079.00	60.0%	4,903
5080.00	57.3%	2,557
5102.00	84.8%	2,903
5103.00	72.4%	1,669
5104.00	93.9%	2,348
5108.00	85.9%	1,813
5109.00	97.4%	1,965
5112.00	98.3%	2,056
5115.00	96.1%	2,040
5116.00	97.2%	3,176
5117.00	100.0%	802
5121.00	94.6%	5,182
5122.00	94.9%	1,578
5123.00	93.9%	2,067
5124.00	88.9%	2,579
5126.00	93.7%	3,028
5129.00	89.5%	2,998

5167.00	95.2%	2,752
5168.00	95.4%	1,797
5169.00	91.8%	2,179
5170.00	68.0%	2,289
5171.00	80.7%	1,308
5172.00	76.1%	2,915
5174.00	72.6%	504
5175.00	83.6%	2,604
5176.00	93.2%	1,727
5177.00	100.0%	27
5178.00	95.6%	1,897
5180.00	65.6%	1,890
5181.00	96.2%	265
5185.00	77.3%	2,100
5186.00	92.8%	1,490
5188.00	98.9%	1,861
5203.00	59.8%	2,188
5204.00	58.9%	1,771
5205.00	94.1%	1,791
5206.00	72.1%	2,331
5207.00	74.5%	1,747
5208.00	61.6%	1,104
5213.00	83.2%	949
5215.00	72.1%	1,971
5218.00	100.0%	194
5219.00	76.1%	3,153

5316.00	98.5%	2,720
5317.00	96.1%	2,717
5318.00	98.7%	3,550
5319.00	96.9%	2,152
5322.00	96.7%	2,189
5323.00	80.9%	1,459
5324.00	92.0%	2,514
5325.00	92.4%	2,889
5326.00	80.3%	3,423
5327.00	94.9%	1,835
5330.00	95.1%	2,552
5331.00	95.2%	2,529
5332.00	96.8%	3,047
5333.00	93.6%	3,037
5334.00	97.2%	4,631
5335.00	96.9%	2,004
5336.00	97.3%	4,062
5337.00	99.7%	1,888
5341.00	94.9%	2,939
5342.00	97.6%	5,995
5343.00	97.5%	2,544
5344.00	94.6%	3,179
5345.00	94.5%	1,767
5346.00	97.3%	2,985
5347.00	94.4%	3,815
5350.00	92.4%	3,822

5384.00	86.5%	3,952
5385.00	95.7%	6,086
5386.00	97.9%	5,630
5387.00	96.8%	4,012
5388.00	92.6%	1,678
5389.00	97.4%	3,663
5390.00	98.2%	3,481
5391.00	97.4%	2,151
5392.00	94.0%	5,235
5393.00	96.4%	4,117
5394.00	95.0%	3,979
5395.00	94.9%	3,138
5396.00	96.9%	3,549
5397.00	94.4%	2,180
5401.00	94.9%	4,212
5402.00	95.7%	4,996
5403.00	98.2%	4,521
5404.00	92.5%	3,414
5405.00	94.2%	3,994
5406.00	93.9%	4,194
5407.00	92.3%	4,459
5408.00	97.0%	2,734
5409.00	94.9%	4,066
5411.00	93.3%	5,477
5412.00	85.7%	3,354
5413.00	50.8%	2,791

5451.00	87.8%	2,623
5452.00	97.0%	5,071
5453.00	95.1%	3,430
5454.00	83.0%	722
5455.00	55.6%	4,589
5460.00	86.5%	5,178
5461.00	69.5%	5,072
5463.00	70.7%	1,945
5464.00	88.5%	1,734
5466.00	89.3%	2,837
5467.00	91.5%	4,097
5468.00	94.8%	4,636
5469.00	94.7%	1,404
5527.00	65.8%	743
5530.00	88.4%	1,697
5531.00	92.8%	2,708
5532.00	96.1%	1,749
5533.00	96.8%	2,022
5534.00	96.2%	1,932
5536.00	91.5%	3,446
5538.00	93.5%	3,192
5554.00	50.7%	3,040
5704.00	55.8%	5,942
5705.00	65.9%	4,227
5706.00	97.3%	2,656
5708.00	91.6%	3,879

5509.00	92.5%	2,743
5511.00	97.3%	5,211
5512.00	94.4%	4,075
5513.00	90.4%	3,910
5514.00	75.4%	4,193
5515.00	90.5%	2,336
5516.00	87.7%	3,815
5517.00	93.7%	3,754
5518.00	95.2%	4,040
5520.00	72.6%	2,731
5521.00	59.4%	4,877
5522.00	75.4%	3,742
5523.00	70.0%	3,661
5526.00	54.1%	4,535
5541.00	89.3%	4,475
5542.00	92.9%	3,476
5543.00	94.1%	5,617
5544.00	92.5%	3,717
5545.00	88.6%	3,171
5546.00	94.8%	4,016
5548.00	72.4%	3,815
5549.00	84.7%	3,400
5551.00	93.0%	4,757
5553.00	84.3%	3,492
5555.00	83.7%	3,072
5556.00	96.2%	2,793

5588.00	97.0%	2,929
5589.00	94.0%	1,982
5590.00	95.6%	2,833
5591.00	94.4%	2,866
5592.00	94.0%	2,084
5601.00	96.1%	3,107
5603.00	82.3%	4,030
5604.00	95.0%	6,323
5607.00	92.6%	4,418
5616.00	94.8%	4,059
5617.00	74.7%	2,924
5619.00	89.2%	5,978
5623.00	92.5%	1,958
5624.00	94.6%	5,582
5625.00	94.9%	2,289
5626.00	93.6%	3,343
5627.00	96.5%	3,538
5628.00	94.0%	3,642
5629.00	93.9%	3,507
5632.00	74.6%	3,686
5633.00	81.1%	3,048
5634.00	89.5%	5,284
5635.00	85.2%	6,642
5636.00	83.2%	2,226
5637.00	79.7%	1,727
5638.00	89.2%	3,117

5670.00	56.0%	3,557
5671.00	88.8%	4,032
5672.00	88.6%	6,893
5673.00	89.8%	4,779
5674.00	94.3%	3,016
5678.00	89.9%	5,143
5679.00	92.7%	3,102
5680.00	89.7%	2,334
5682.00	93.1%	4,159
5683.00	91.0%	4,319
5684.00	93.9%	3,906
5685.00	88.1%	5,546
5687.00	79.0%	3,729
5691.00	95.8%	2,659
5692.00	97.1%	3,037
5693.00	94.0%	4,050
5694.00	94.5%	3,183
5695.00	96.8%	3,113
5696.00	96.2%	3,897
5697.00	95.0%	4,684
5698.00	93.3%	2,680
5699.00	90.7%	2,744
5702.00	59.7%	3,078
5715.00	82.1%	4,184
5716.00	87.9%	1,651
5717.00	81.2%	2,297

5747.00	94.7%	4,388
5748.00	96.4%	4,327
5749.00	88.2%	1,893
5750.00	93.0%	4,626
5751.00	93.9%	2,819
5752.00	89.8%	4,511
5753.00	95.7%	3,788
5754.00	91.4%	3,416
5755.00	91.9%	4,110
5756.00	90.6%	1,676
5760.00	81.1%	1,900
5761.00	90.4%	6,305
5762.00	96.1%	2,737
5763.00	91.9%	2,460
5764.00	95.0%	3,967
5765.00	93.7%	4,055
5767.00	90.6%	3,576
5770.00	75.9%	4,242
5771.00	84.7%	3,158
5772.00	85.6%	3,614
5773.00	89.7%	3,400
5774.00	90.2%	3,743
5775.00	92.3%	3,536
5776.00	94.6%	4,024
5777.00	93.9%	2,406
5778.00	92.7%	5,042

5830.00	91.8%	2,864
5831.00	93.7%	4,471
5833.00	94.0%	2,796
5834.00	94.1%	5,348
5835.00	94.9%	2,997
5836.00	91.5%	2,850
5837.00	93.9%	3,595
5838.00	90.2%	4,658
5839.00	79.4%	3,960
5840.00	76.4%	4,568
5841.00	94.0%	2,034
5842.00	79.5%	3,550
5843.00	83.0%	1,898
5844.00	87.7%	3,101
5845.00	85.2%	2,252
5846.00	71.3%	2,055
5847.00	88.8%	2,925
5855.00	87.8%	2,515
5857.00	65.3%	1,987
5858.00	55.0%	3,999
5859.00	67.9%	3,329
5862.00	66.6%	6,609
5863.00	94.5%	2,132
5870.00	86.2%	4,002
5879.00	74.3%	3,838
5880.00	75.5%	5,323

5961.00	95.3%	3,944
5962.00	90.4%	4,393
5963.00	97.7%	2,557
5970.00	96.0%	4,264
5980.00	92.5%	3,442
5990.00	91.4%	3,839
5991.00	94.0%	4,649

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 11-11979
	)	Hon. Lawrence P. Zatkoff
v.	)	Magistrate Judge Laurie J. Michelson
	)	
CITIZENS REPUBLIC BANCORP, INC.	)	
AND CITIZENS BANK,	)	
	)	
Defendants.	)	
	)	

STIPULATED NOTICE OF DISMISSAL

The parties, through their undersigned attorneys, having settled this action pursuant to the attached Settlement Agreement, hereby agree to dismiss this case with prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii). The parties further stipulate that each party shall bear its own costs and attorneys' fees.

Respectfully submitted,

For the United States:

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Gregory N. Blase

s/Judith E. Levy
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Detroit, Michigan 48226
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From: Krieser, Steven - DOT
Sent: Friday, July 01, 2011 9:21 AM
To: DOT DL DMV BFS All Staff
Subject: Reminders Regarding Free ID's for Voting

Good Morning Everyone,

In response to questions that I have received in the past few days, here are some reminders with regard to the free ID's for voting, *which we start issuing today*:

1. **Use the New Forms:** You'll find the new form here. N:\BFS Tech Updates\Attachments\mv3001 (2).pdf

    a. Sups / Team Leaders - For now, print some from this link for your stations. Professionally-printed copies should arrive at your stations next week.

    b. Some sups / regional managers may elect to use the remaining old forms expressly with 16-year-olds seeking original licensure, as they would be ineligible for the free ID's anyway. Supervisors will provide guidance to staff if they intend to do this.

2. **Self Certification:** Customers should use the new MV3001 to self-certify their eligibility for the free ID for voting. **Please do not make additional efforts to verify U.S. citizenship, voting eligibility, or status as a felon.** You should issue the free ID product if the customer:

    c. Meets the usual eligibility and documentation requirements for obtaining a Wisconsin ID product,

    d. Is 17 years of age or older,

    e. Is asking for a product that is available for free issuance (ID only - original issuance, renewal, or reinstatement.)

    f. Has checked the certification box on the MV3001.

While you should certainly help customers who come in asking for a free ID to check the appropriate box, you should refrain from offering the free version to customers who do not ask for it.

3. **The "free" Wisconsin ID issued under the Voter ID law is the usual Wisconsin ID product we've been issuing** – not a unique or special product.

4. **All 17-Year-Olds Eligible:** Any 17-year-old who otherwise meets the eligibility and documentation requirements for a Wisconsin ID product, and checks the Free ID box on the MV3001, shall be issued a free ID.

5. **Offer No Advice on Election Dates or Voting Eligibility:** You may answer questions about our products. Questions on what kind of ID is needed for voting, polling locations, election dates, qualifications of electors, voter registration, etc., should be directed to the Government Accountability Board at 1-866-VOTE-WIS or at **http://gab.wi.gov/elections-voting/voters/registration-voting.**

Please see the Voter ID / $15 Class D Skills Test Fee fact sheet for more information.

Steve Krieser
Chief, Program Operations Section - Central Office
Bureau of Field Services
Wisconsin Division of Motor Vehicles
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