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.