

**Responses to Questions of Chairman Patrick Leahy
For Grace Chung Becker
Nominee for Assistant Attorney General of the Civil Rights Division
Submitted March 25, 2008**

1. Your Senate questionnaire lists only one case where you served as lead trial counsel and that was a public corruption case that did not involve the enforcement of a civil rights statute. You also supervised the prosecution of, or worked closely with career attorneys in, only four cases where a traditional civil rights statute was involved. In light of your limited experience in traditional civil rights litigation, what prepares you to lead the Civil Rights Division, our Nation's foremost civil rights law enforcement agency?

Answer: My significant experience in litigation, management, and coordination, as well as in civil rights, has prepared me to lead the Civil Rights Division. For over two years, first as Deputy Assistant Attorney General and then as Acting Assistant Attorney General for the Civil Rights Division, I have become very familiar with the remarkable work this Division does on behalf of victims of discrimination. As a manager, I have worked closely with attorneys as they investigated matters, litigated cases, and negotiated settlement agreements in the United States' enforcement of civil rights laws involving, among other things, law enforcement misconduct; hate crimes; human trafficking; educational opportunities; the civil rights of institutionalized persons in prisons, jails, nursing homes, mental hospitals, and facilities for the developmentally disabled; housing and employment discrimination; fair lending; voting rights; and disability rights. The Senate questionnaire responses describe only eight illustrative civil rights matters (pp. 10-13, 19-20) and were not intended to reflect every civil rights case on which I have worked. I have been supervising hundreds of civil rights matters involving numerous statutes during my tenure at the Division. My strong working knowledge of the Civil Rights Division's role and responsibilities in federal law enforcement, as well as its day-to-day operations, has prepared me to handle litigation questions that may be presented to an Assistant Attorney General.

My litigation background has prepared me to bring a broader perspective to ongoing civil rights litigation that complements the subject matter expertise of many litigators within the Division. I have served as a career prosecutor in the United States Department of Justice in the Criminal Division and the United States Attorney's Office for the Eastern District of Virginia and as a litigator at the law firm of Williams and Connolly, LLP. I have personally handled dockets of hundreds of cases, coordinated significant international narcotics investigations, litigated bench and jury trials, and handled federal appeals in the First, Fourth, Ninth, and District of Columbia Circuits. In addition, I served as Special Advisor to the Assistant Secretary of the Army, who supervised the Army Inspector General's review of allegations that American servicemembers killed hundreds of South Korean civilians underneath a railroad bridge in No Gun Ri, South Korea, during the Korean War. I was awarded the Army's Outstanding Civilian Service Medal for my service. This experience in historical investigations has served to enhance my judgment as I supervise the Criminal Section and work with the FBI on the FBI's Cold Case Initiative, which re-opened approximately 100 matters from the civil rights era.

My background in management has also helped to prepare me to lead the Division. I graduated *magna cum laude* from the Wharton School with a concentration in management. In addition to my academic training, I also have managerial experience supervising hundreds of employees as Deputy Assistant Attorney General and Acting Assistant Attorney General. Thus, I am prepared for the management and administrative challenges that may arise in the Division.

My experience working in all three branches of the federal government has helped to prepare me to lead the Division in the significant coordination efforts that are required to comprehensively enforce the federal civil rights laws. My federal experience includes two clerkships under Judge James Buckley of the United States Court of Appeals for the D.C. Circuit and Judge Thomas Penfield Jackson of the United States District Court for the District of Columbia. In addition to the experiences already mentioned, I served as Associate Deputy General Counsel in the United States Department of Defense, Counsel to the United States Senate Judiciary Committee, and Associate General Counsel at the United States Sentencing Commission. This broad base of federal government experience has provided me with a familiarity and appreciation of the distinct, yet complementary, roles of various offices and has strengthened working relationships with other federal agencies in a manner that seeks to respect the equities of multiple components while serving our greater common interest of representing the United States of America.

2. In the 2004 primary elections, a former District Attorney in Waller County, Texas published a series of letters in a local newspaper threatening students that state residence requirements barred them from participating in elections at the polling site where they attend college, a nearby historically black university. In 2006 anti-immigrant activists aggressively intimidated Latino voters in Tucson, Arizona and a cross burned in Grand Coteau, Louisiana on the eve of a racially heated and hotly contested mayoral election. Given these recent troubling events, what do you believe is the proper role of the Civil Rights Division with respect to preventing and responding to voter suppression tactics like the recent ones experienced in Texas, Arizona, and Louisiana?

Answer: I share your concerns about voter suppression. I believe that the Civil Rights Division has an important role to play in preventing illegal voter suppression and intimidation by vigorously enforcing the federal statutes within its jurisdiction, as well as continuing its robust election monitoring program.

A major component of the Department's work to protect voting rights is the Voting Section's election monitoring program, which is among the most effective means of ensuring that federal voting rights are protected and respected on Election Day. In many cases, the presence of Department of Justice personnel alone may be enough to deter or prevent discrimination at the polls. For the 2008 elections, the Department will implement a comprehensive Election Day program to help ensure ballot access. As in previous years, the Department will coordinate the deployment of hundreds of federal government employees in counties, cities, and towns across the country to ensure access to the polls as required by our nation's civil rights laws.

Such extensive efforts require substantial planning and resources. Our decisions to deploy observers and monitors are made carefully and purposefully so that our resources are used where they are most needed. The Department takes a proactive approach to identifying locations where

problems may occur. To that end, Department officials will continue to meet with representatives of a number of civil rights organizations prior to the 2008 general election, including organizations that advocate on behalf of racial and language minorities as well as groups that focus on disability rights. Department officials also will meet with representatives of State and local election officials before the 2008 general election to provide a forum for discussion of State and local officials' concerns.

As in prior years, in 2008, the Department will continue to monitor States' compliance with the requirements of the Voting Rights Act and other voting statutes within our jurisdiction, instituting enforcement actions as necessary. In that regard, we will closely monitor compliance with our numerous court orders, consent decrees, and other agreements, many of which will be in effect through the 2008 election cycle.

The Department's efforts to ensure voter access in accordance with federal law will include training a responsible official, the District Election Official (DEO), in every U.S. Attorney's Office across the country on ballot access laws to stand ready to protect the voting rights of all Americans.

On Election Day in November, Department personnel here in Washington will also be ready with numerous phone lines to handle calls from citizens with election complaints, as well as an internet-based mechanism for reporting problems. We will have personnel at the call center who are fluent in Spanish, and the Division's language interpretation service will provide translators in other languages.

Finally, I will ensure that the Division will continue its outreach to organizations and groups that advocate on behalf of minority voters. The Division will also continue its outreach to State and local election officials to advise them of the requirements of federal law and urge their voluntary compliance.

3. Almost two years ago, when the Senate reauthorized the expiring provisions of the Voting Rights Act by a unanimous vote of 98-0, the House and Senate Judiciary Committees heard an abundance of evidence that discrimination in voting remains a continuing problem that has not yet been eliminated. Despite this troubling record, the Civil Rights Division did not authorize a single case alleging discrimination in voting on behalf of African-American voters between 2001 and 2006. Under the Bush Administration, the Voting Section filed only 2 cases alleging minority vote dilution in violation of Section 2 of the Act, filed only a handful of Section 2 cases on behalf of Hispanic Americans, and has not brought a single case on behalf of Native American voters for the entire administration.

- A. Are you concerned that investigating and prosecuting cases alleging discrimination against minority voters has not been a high priority for this Administration?

Answer: I am fully committed to vigorous enforcement of the Voting Rights Act on behalf of all Americans. The Administration strongly supported reauthorization of the Voting Rights Act, and the Department is currently vigorously defending the Act's constitutionality in court.

- B.** If confirmed, will you commit to bringing cases on behalf of all minority communities, including African Americans, Latinos, and Native Americans, in order to enforce Section 2 of the Voting Rights Act?

Answer: If confirmed, I am fully committed to vigorous enforcement of the Voting Rights Act on behalf of all Americans.

In the time that I have been overseeing the Voting Section, I have approved the filing of two cases under Section 2 of the Voting Rights Act, one on behalf of African-American voters and the other on behalf of Hispanic voters. In March 2008, the Voting Section filed and resolved a lawsuit under Section 2 against the Georgetown County, South Carolina, Board of Education on the grounds that the at-large method of electing school board members unlawfully diluted the voting strength of African-American voters in Georgetown County. No African-American candidate has won a school board election during the last three election cycles. The current school board is all white, although African Americans comprise approximately 38% of the population of Georgetown County. The consent decree creates seven single-member districts and two at-large seats on the nine-member school board, and in three of the new single-member districts, African Americans will constitute a majority of the citizen age-eligible population. This settlement ensures that African-American voters in Georgetown County will have the opportunity to elect school board members of their choice.

In a separate matter, the Department filed a complaint and a consent decree against the Osceola County, Florida, School Board on April 16, 2008, alleging that the existing district boundaries for electing members of the school board violate Section 2 by discriminating against Hispanic voters. The consent decree provides for new district lines in which Hispanics are a majority of the registered voters in one district. This is the third lawsuit regarding Osceola County, Florida, brought by the Voting Section during this Administration. The first alleged the County violated Sections 2 and 208 by discriminating against Hispanic voters through hostile treatment at the polls, failing to provide adequate language assistance, and not permitting Hispanic voters to bring assistants of their choice into the polling places. The second lawsuit alleged the County's method of electing its Board of Commissioners violated Section 2 by diluting the voting strength of Hispanic voters.

Additionally, on February 21, 2008, the United States filed a brief as *amicus curiae* in *Riley v. Kennedy*, which is pending in the Supreme Court of the United States on direct appeal from the U.S. District Court for the Middle District of Alabama. The Civil Rights Division previously had interposed an objection on behalf of African Americans pursuant to Section 5 of the Voting Rights Act regarding a change in the method of filling vacancies on the Mobile County Commission from special election to gubernatorial appointment. The district court confirmed that this voting change was subject to preclearance by the Department of Justice. On appeal, the United States continues to maintain that this change cannot be implemented unless it is precleared.

Also during my time overseeing the Voting Section, the Section has interposed an objection under Section 5 of the Voting Rights Act on behalf of Native Americans. On February 11, 2008,

we objected to a proposed plan submitted by Charles Mix County, South Dakota, where 28.3% of the residents are Native American, on the ground that the proposed change had a discriminatory purpose. Specifically, the Voting Section's preclearance review of this submission revealed that the voting changes were proposed to intentionally dilute the voting strength of Native-American voters. Moreover, the Section's review found a history of voting discrimination against Native Americans in Charles Mix County and evidence of conduct and comments by local elected officials that showed a racially discriminatory intent, all of which formed the basis for interposing an objection in this case.

C. Please identify the number of Section 2 investigations now pending in the Voting Section.

Answer: There are currently twelve active Section 2 investigations pending in the Voting Section.

4. As Acting Assistant Attorney General for the Civil Rights Division, you signed the Administration's amicus brief in *Crawford v. Marion County Election Board*, where you urged the Supreme Court to uphold one of the most burdensome voting laws in the country. You made the troubling argument that Indiana's restrictive law, that requires a photo ID as a condition to vote, is a reasonable measure to prevent election fraud and would not disenfranchise minority communities. Yet, if upheld by the United States Supreme Court, the Indiana law could prevent significant numbers of eligible voters, who lack a government-issued photo ID, from participating in the upcoming general election. The impact would be particularly stark if similar laws were adopted elsewhere throughout the country. It would also disproportionately impact the political participation of voters from minority communities, and other vulnerable populations, who are far less likely than other citizens to possess a qualifying photo ID.

A. At your confirmation hearing, Senator Schumer asked you why the acting head of the Civil Rights Division, a Division with a mission to protect minority participation in voting, would sign a brief seeking to uphold a photo ID law that would disenfranchise minority communities. Although you responded "I can tell you what the Civil Rights' interest was," you did not provide any additional explanation. Now that you have had time to further reflect on your answer, what civil rights interest, beyond the issues identified concerning the Help America Vote Act, justifies you defending Indiana's restrictive law which will infringe on the fundamental right to vote?

Answer: I appreciate the opportunity to supplement the oral response I provided at the hearing. The U.S. Supreme Court recently rejected a facial constitutional challenge to the Indiana photo identification law. *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25, 2008 WL 1848103 (U.S. Apr. 28, 2008). The lead opinion, written by Justice Stevens, determined that Indiana's interests in furthering election modernization, preventing voter fraud, and safeguarding voter confidence justified the burdens imposed on the right to vote. As stated in that opinion: "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." *Id.* at *8. The concurring opinion stated: "The Indiana photo-

identification law is a generally applicable, nondiscriminatory voting regulation[.]” *Id.* at *13 (Scalia, J., concurring). “The universally applicable requirements of Indiana’s voter-identification law are eminently reasonable. The burden of acquiring, possessing, and showing a free photo identification is simply not severe, because it does not even represent a significant increase over the usual burdens of voting. And the State’s interests are sufficient to sustain that minimal burden.” *Id.* at *15 (internal citations and quotation marks omitted).

At the hearing, I indicated that this case could affect the Department’s ability to enforce the Help America Vote Act, which requires voters to provide proof of identification (including, but not limited to, photo identification) before registering or casting their first ballot. *Crawford* concerns a facial challenge to a state law that requires those who vote in person in federal elections to present a government-issued photo identification and, more generally, the appropriate constitutional standard for reviewing such a law. Congress has enacted numerous requirements, including registration and identification requirements, designed to “increase the number of eligible citizens who register to vote” while simultaneously “protect[ing] the integrity of the electoral process.” 42 U.S.C. 1973gg(b)(1), (3). In 2002, Congress enacted the Help America Vote Act of 2002 (HAVA), Pub. L. No. 107-252, 116 Stat. 1666 (42 U.S.C. 15301 *et seq.*), to establish and modernize various minimum election administration standards for federal elections. Among other things, HAVA requires voters to provide proof of identification before registering or casting their first ballot, see 42 U.S.C. 15483(a)(5)(A), (b)(2)(A), (3)(A). The Attorney General is responsible for enforcing those provisions, 42 U.S.C. 1973gg-9, 15511, and *amicus* briefs filed by certain Senators and Members of Congress specifically put the proper interpretation of HAVA and its effect on state laws before the Supreme Court. The Attorney General also has authority to prosecute voter fraud in federal elections. See, e.g., 42 U.S.C. 1973i(c), (e), 1973gg-10. Voter fraud itself dilutes the right to vote. See *Purcell v. Gonzalez*, 127 S. Ct. 5, 7 (2006). Legitimate efforts to detect or deter voter fraud therefore promote the right to vote and protect the integrity of the process. As stated in Justice Stevens’ lead opinion in *Crawford*, the “electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters.” 2008 WL 1848103, at *9 (quoting Commission on Federal Election Reform, Report, Building Confidence in U.S. Elections § 2.5 (Sept. 2005), App. 136-137). The lead opinion discussed HAVA as well as another federal statute that the Civil Rights Division enforces, the National Voter Registration Act of 1993 (NVRA). It found that “[b]oth [HAVA and the NVRA] contain provisions consistent with a State’s choice to use government-issued photo identification as a relevant source of information concerning a citizen’s eligibility to vote.” *Id.* at *7.

The Department’s *amicus* brief discusses the context in which Indiana enacted its voter identification law. As more fully set forth in that *amicus* brief:

Indiana determined that it faced a serious problem of actual and potential election fraud. In 2004, the Indiana Supreme Court invalidated the 2003 East Chicago mayoral primary based on evidence of rampant absentee-ballot fraud, which included the use of vacant lot or former addresses and casting of ballots by nonresidents. *Pabey v. Pastrick*, 816 N.E.2d 1138, 1145, 1153. The Indiana Supreme Court found that the widespread fraud had rendered the election results “inherently deceptive and unreliable.” *Id.* at 1151.

At the same time, the State discovered that its voter registration rolls were highly inflated, thus creating a risk of further voter fraud. A report conducted for the State indicated that at least 35,000 deceased individuals were on the rolls State-wide, and that, in 2004, the list of registered voters was inflated by some 41%, including well over 200,000 duplicate voter registrations. On April 7, 2005, the United States Department of Justice informed the Indiana Secretary of State that numerous counties had registration totals that exceeded their voting age populations and noted the State's obligations under federal law to maintain accurate voter registration lists. J.A. 312-313.

Shortly thereafter, Indiana responded to those and other concerns by enacting a number of election reforms. In particular, Indiana enacted Senate Enrolled Act No. 483 (Voter ID Law), Pub. L. No. 109-2005, which, in order to deter voter fraud, requires those who vote in-person to present photo identification, issued either by the United States or the State of Indiana. See Ind. Code 3-11-8-25.1(c) and 3-5-2-40.5; Pet. App. 106. On the same day, the legislature also placed new restrictions on absentee voting and how absentee ballots are handled, prohibiting the practice of pre-printing the absentee ballot application with certain information, such as the address (if different from the applicant's), party affiliation, or reason for voting absentee. Ind. Pub. L. No. 103-2005 § 4; Ind. Code 3-11-4-2(c), (d).

Brief for the United States as Amicus Curiae Supporting Respondents at 3-4, *Crawford v. Marion County Election Bd.*, No. 07-21 & *Indiana Democratic Party v. Rokita*, No. 07-25 (U.S. Dec. 10, 2007).

In addition, the facial nature of the challenge in *Crawford* is itself significant. As the lower courts stressed, the plaintiffs in *Crawford* failed to "introduce[] evidence of a single, individual Indiana resident who will be unable to vote as a result of [the Voter ID law,] or who will have his or her right to vote unduly burdened by its requirements." *Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 783 (S.D. Ind. 2006). Likewise, as stated in the Department's brief, "[f]or the 99% of voters in Indiana who already have a photo ID, the law requires no more than that the voter present the ID at the polls. For the less than 1% of Indiana voters who do not yet have an ID, the State offers them such an ID free of charge. And for those who are most likely to find it difficult to obtain even a free ID, state law provides alternative methods of voting that do not require presenting identification." Brief for the United States as Amicus Curiae Supporting Respondents at 9, *Crawford v. Marion County Election Bd.*, No. 07-21 & *Indiana Democratic Party v. Rokita*, No. 07-25 (U.S. Dec. 10, 2007). If the mere possibility that some unspecified voter may not possess the requisite form of identification were enough to invalidate a statute on its face, then it would obviously be more difficult to defend HAVA. It may be that certain Indiana voters could establish that they are nevertheless in fact burdened by the Indiana law. As the Department made clear in its brief, any such individuals could bring an as-applied challenge to the law in such circumstances. *Id.* at 11. Nothing in the Department's position in *Crawford* would preclude the law from being declared unconstitutional on an as-applied basis in a concrete setting where the requisite elements of the constitutional claim are met.

Let me emphasize that this decision was made after careful consideration after hearing from all interested components within the Department, in accordance with the Department's longstanding

practice for determining whether to file an *amicus* brief in a case. Given our country's history, it is important for the Civil Rights Division to carefully scrutinize voter identification laws when they implicate the federal statutes we enforce. Independent of *Crawford*, the Civil Rights Division will investigate, and take any appropriate enforcement action, if evidence suggests that a voter identification law is being applied in a discriminatory or otherwise illegal manner.

- B. At your hearing, you were asked why you signed the *amicus* brief in *Crawford*, rather than Alice Fisher, who is head of the Criminal Division which has primary responsibility for prosecuting voter fraud. You responded that you could not comment because "voter fraud issues are primarily handled by the Criminal Division." The Administration's *amicus* brief in *Crawford*, however, is based on a public record that Indiana's restrictive photo ID law is needed to "prevent[] actual or threatened voter fraud." Given that the *amicus* brief of the Administration focuses on defending laws premised on the myth of significant in-person voter fraud, please explain why you, and not the head of the Criminal Division, signed the Government's *amicus* brief arguing in favor of Indiana's voter ID law?

Answer: As I explained in Question 4.A., I signed the brief to defend the constitutionality of the Help America Vote Act (HAVA), for which the Civil Rights Division has enforcement authority. Among other things, HAVA requires voters to provide proof of identification before registering or casting their first ballot. See 42 U.S.C. 1973gg-9, 15511. The Department has a strong interest in enforcing federal election laws enacted by Congress, including the provisions of HAVA, to preserve and protect the voting rights of Americans. Certain Senators and Members of Congress also filed *amicus* briefs based upon their interest in HAVA, specifically putting the proper interpretation of HAVA and its effect on state laws before the Supreme Court.

The U.S. Supreme Court recently rejected a facial constitutional challenge to the Indiana photo identification law. *Crawford v. Marion County Election Bd.*, Nos. 07-21 and 07-25, 2008 WL 1848103 (U.S. Apr. 28, 2008). The lead opinion discussed HAVA as well as another federal statute that the Civil Rights Division enforces, the National Voter Registration Act of 1993 (NVRA). It found that "[b]oth [HAVA and the NVRA] contain provisions consistent with a State's choice to use government-issued photo identification as a relevant source of information concerning a citizen's eligibility to vote." *Id.* at *7.

5. The Justice Department recently undertook a Section 5 preclearance review of a Louisiana program that purports to remove voters identified as dual-registrants – persons registered in more than one state – from Louisiana's registration rolls. Under this program, state officials compare the State's registration rolls with a select number of other states and cities, then target for removal individuals bearing the same first name, last name, and date of birth as voters in other states. I understand that the Justice Department issued a "No Determination" letter regarding this voting change, thus the change has not been pre-cleared or otherwise authorized by the Justice Department.

- A. Pursuant to this voting change, Louisiana had already canceled the registration of over 12,000 voters by September 2007. Are you concerned that the Department's

failure to object to a Louisiana law that effectively cancels the registration of voters from the voting rolls has allowed an unprecleared voting change to be implemented that disenfranchises a significant number of voters?

- B. Does DOJ intend to file a Section 5 enforcement action to bar Louisiana from implementing the unprecleared change and to reverse any efforts that Louisiana has taken, to date, to cancel the registration of voters pursuant to this change?
- C. Under Section 5, covered jurisdictions bear the burden of proof for showing that their changes are not retrogressive or discriminatory. Where a jurisdiction, like Louisiana in this instance, fails to provide sufficient proof necessary for DOJ to adequately assess whether or not the state has met its burden, it would appear that a Section 5 objection is appropriate. Why did the Department opt to issue a "No Determination" letter in this instance as opposed to interposing an objection?

Answer (A – C): Following Louisiana's initial submission relating to the voter registration maintenance program identified by the question, the Department sent a timely request for more information to Louisiana on November 14, 2007, pursuant to 28 C.F.R. 51.37(a). On December 18, 2007, the Department received a response to this request accompanied by additional information. The Department determined, however, that the information that was provided was incomplete and, on January 30, 2008, wrote to the jurisdiction in a follow-up letter pursuant to 28 C.F.R. 51.37(d), indicating that this was so. That letter expressly noted that, under 28 C.F.R. 51.37(c), a new 60-day period did not and would not commence until a complete response was received. The Department has not issued a "No Determination" letter concerning this matter. The Department's Section 5 review of this matter is ongoing.

- D. Between 2001 and 2008, how many "No Determination" letters have been issued by the Civil Rights Division and what steps have been taken to ensure that jurisdictions do not prematurely implement these unprecleared voting changes?

Answer: It is my understanding that 2,700 "No Determination" letters have been issued from 2001-2008.

"No Determination" letters are issued pursuant to 28 C.F.R. 51.35. The "No Determination" category is used primarily when a covered jurisdiction has provided an inappropriate submission as defined by 28 C.F.R. 51.35, which reads as follows: "The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the submission of changes that do not affect voting (see, e.g., § 51.13), the submission of standards, practices, or procedures that have not been changed (see, e.g., §§ 51.4, 51.14), the submission of changes that affect voting but are not subject to the requirement of section 5 (see, e.g., § 51.18), premature submissions (see §§ 51.22, 51.61(b)), submissions by jurisdictions not subject to the preclearance requirement (see §§ 51.4, 51.5), and deficient submissions (see § 51.26(d))."

Under 28 CFR 51.10, it is unlawful for a jurisdiction to enforce a change affecting voting without obtaining preclearance under Section 5. The Voting Section reminds jurisdictions of their continuing obligations to avoid implementation of any voting changes unless preclearance has been obtained under Section 5. The Voting Section also takes appropriate enforcement action, if necessary, to ensure that jurisdictions do not prematurely implement unprecleared voting changes. See, e.g., *United States v. North Harris Montgomery Cmty. Coll. Dist.*, No. H 06-2488 (S.D. Tex. 2006).

6. During our committee's oversight of the Civil Rights Division, we received testimony about the mass exodus of staff analysts from the Division's office that reviews "pre-clearance" submissions under Section 5 of the Voting Rights Act. Following last June's oversight hearing, then-Assistant Attorney General Wan Kim's answers to our written questions informed us that the Voting Section has only 12 Section 5 analysts currently reviewing preclearance decisions.
 - A. With an important election approaching, and an increase likely in redistricting cases after the 2010 census, are you concerned that the decreasing number of Section 5 analysts will undermine the Division's ability to perform its critical Section 5 work?
 - B. As Acting Assistant Attorney General of the Civil Rights Division, what steps are you currently taking to address the critical need for more Section 5 analysts?

Answer (A – B): I am committed to ensuring that the Voting Section has the tools and resources it needs to fully and fairly enforce the law. With regard to the Section 5 unit in the Department's Voting Section, all attorneys, including managers, participate in the review of voting changes under Section 5 as the need arises. It is my understanding that, in terms of civil rights analysts, in January 2001, the Section had 14 civil rights analysts, compared to 13 on April 15, 2008. There are also two contract personnel currently engaged in the analysis of Section 5 submissions. Additionally, the Department plans to increase staffing in preparation for the increased number of submissions after the 2010 Census. Finally, the Department has made a major technological advance in Section 5 with our new e-Submission program. Now, state and local officials can make Section 5 submissions online. This will make it easier for jurisdictions to comply, encourage complete submissions, ease our processing of submissions, and allow the Voting Section staff more time to study the changes and identify those that may be discriminatory.

7. Alex Acosta, a previous President Bush appointee to the position to which you have now been nominated, said in a speech in 2005 that the heavy lifting of the civil rights era is over and that the government's job now is to preserve the civil society that people like Martin Luther King Jr. established. It has also been reported that at a July 10, 2007 speech at an Asian Pacific American Bar Association event, you claimed that civil rights issues have progressed from racial discrimination to human trafficking. Given this Committee's bipartisan finding, during the reauthorization of the Voting Rights Act, that race discrimination remains a continuing problem in voting, what assurances can you give us that the Department's traditional mission of combating race discrimination in voting will remain a focus of the Division's top priorities under your leadership?

Answer: As I stated in my July 10, 2007 speech, "discrimination still persists. And that is what we are committed to fighting on a daily basis in the Civil Rights Division on behalf of all Americans." The July 10, 2007, speech, which has been submitted to the Committee, described a variety of civil rights matters handled by the Division over its 50-year history.

8. You recently defended the United States' record on civil rights enforcement and race discrimination before the United Nations Committee on the Elimination of Racial Discrimination (UN CERD). You testified that this Administration is "committed to continuing its hard work to combat racial discrimination." Yet, according to the 18 independent experts on the U.N. panel, the United States needs to intensify its efforts to combat racial profiling of minorities. These human rights experts also cited other concerns, including the necessity of proving racial intent in racial discrimination cases, existing racial segregation that exists in American schools, and the gross overrepresentation of racial minorities in our prison system as areas requiring improvement. If confirmed, would you commit to incorporating the Concluding Observations and Recommendations of UN CERD into the work of the Civil Rights Division? For example, would you adopt the suggestion that the Division increase the use of "pattern and practice" investigations to combat race discrimination?

Answer: The Committee's concluding observations and recommendations came at the end of a long and productive dialogue between the United States government and the Committee. Last year, the Department of Justice, along with other agencies, submitted a several-hundred page report to the Committee detailing our work to combat racial discrimination. The efforts to produce the report involved hundreds of individuals – including dozens in the Department, especially the Civil Rights Division – working over the course of months. Prior to the hearing, we produced another report of more than a hundred pages responding to the follow-up questions from the Committee. In addition, I was part of a large U.S. delegation, which also included other high-ranking officials of the State Department, the Department of Homeland Security, the Department of the Interior, and the Equal Employment Opportunity Commission, who participated in six hours of hearings over the course of two days.

Indeed, the Committee expressed appreciation, both at the hearing and in its concluding observations and recommendations, for the efforts we made. The Committee also noted with satisfaction the work carried out by the various executive departments and agencies of the United States that have responsibilities in the field of the elimination of racial discrimination, including the Civil Rights Division.

I appreciate the non-binding observations of the Committee and will thoroughly and carefully consider the recommendations that relate to the work of the Civil Rights Division. If confirmed, I will continue to work toward implementing the Civil Rights Division's obligations under this and all other United States treaties. With regard to pattern or practice cases, I have supervised the use of such cases while serving at the Civil Rights Division. Based upon my experience, I have found that these cases can be an effective remedial measure to combating race discrimination. If confirmed, I will ensure that the Division brings pattern or practice cases where appropriate.

9. Last year, the House and Senate Judiciary Committees investigated the politicization of the Department and found evidence of politically motivated hiring and firing of career staff. The Department's Inspector General and Office of Professional Responsibility are now investigating. At your confirmation hearing, however, you testified that, since your elevation as acting Assistant Attorney General, you have taken actions to make "it clear to [your] managers in the Civil Rights Division that [you] will not tolerate politicized hiring."

A. Besides issue directives to your managers, what steps have you taken as Acting Assistant Attorney General to determine whether partisan affiliation played a role in personnel practices in the Division?

Answer: As you indicated, there is an ongoing investigation into allegations regarding the Civil Rights Division's hiring practices. I have great respect for the integrity of that investigation and have cooperated fully. If the final report of the investigation includes recommendations, I will ensure to the full extent of my authority that any appropriate actions are taken. I am not aware of incidents that would require additional action outside of the matters that presently are under investigation by OPR/OIG.

B. Have you taken any other remedial action, including filing complaints with the Inspector General's office or the Office of Professional Responsibility, to correct and prevent these troublesome practices from occurring in the future? If not, why not?

Answer: I am not aware of any conduct that potentially would require additional remedial action outside of the matters that presently are under investigation by OPR/OIG. On March 31, 2008, I initiated a review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary.

C. At your confirmation hearing, Senator Kennedy asked whether you ever heard anyone in the Division suggest that political affiliation should be a factor in personnel matters. In response, you said that you could not comment on matters currently under investigation. However, the question was not about matters *reported* to investigatory authorities, but rather to comment on what you *personally observed*. Given that you worked in the Division during a time when many of these hiring practices were in effect, have you ever heard or witnessed partisan affiliation being used as a factor in the hiring of career staff at the Division?

Answer: I am generally familiar with the allegation about hiring prior to my tenure at the Division; however, I do not have first-hand knowledge of instances where partisan affiliation was used as a factor in the hiring of career staff since I have been working in the Division.

10. In 2002, the Justice Department changed its hiring process to give political appointees the final say in hiring career attorneys and summer interns. At your hearing, you testified that the Division continues to have a "collaborative process" where political appointees and

career attorneys decide on career hires and that you were “not planning to make any changes.”

- A. Please detail the exact role that political appointees have in interviewing, considering, or hiring career attorneys and summer interns.

Answer: Throughout my tenure, candidates for career attorney positions have been hired through a collaborative process. They are interviewed by career attorneys (including, but not limited to, career Section Chiefs) and the Deputy Assistant Attorney General responsible for supervising the relevant section on behalf of the Office of the Assistant Attorney General. A Deputy Assistant Attorney General can be either a career or a non-career Senior Executive Service attorney. On March 31, 2008, I initiated a review of the Division’s hiring policies that were in place prior to my tenure to determine whether any revisions are necessary.

Soon after I became Acting Assistant Attorney General, I issued a memorandum (a copy of which was posted on the Civil Rights Division’s intranet and is attached to these responses) in which I adopted and pledged to enforce the Guidance on Personnel Matters previously issued in 2007 by then-Assistant Attorney General Wan J. Kim. This memorandum was a reminder that “there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employment organization, or personal favoritism.”

In addition, Attorney General Mukasey has instituted a new practice which requires that all new political appointees (Presidential Appointees with Senate Confirmation, Senior Executive Service Noncareer Appointees, and General Schedule C Appointees) receive detailed briefings on prohibited personnel practices and merit system principles. These briefings are conducted during the standard personnel orientation process. To ensure that current political appointees at all levels received this information, the Attorney General issued a memorandum mandating that all appointees review the materials and confirm their understanding of prohibited personnel practices and merit systems principles.

The Attorney General’s Honors Program is another process through which the Civil Rights Division hires career attorneys each year. The Honors Program is Department-wide, and it is administered and promoted by the Office of Attorney Recruitment and Management (OARM). It is my understanding that in 2007, the applications of Honors Program attorneys who stated an interest in the Civil Rights Division were reviewed only by career attorneys, and the selected applicants were interviewed by career employees of the Division. A committee of career employees determined which candidates received offers of employment.

Paid summer interns are hired through the Attorney General’s Summer Law Intern Program (SLIP), which is also administered by OARM. The process for hiring SLIP candidates is administered in much the same way as the Honors Program. It is my understanding that in 2007, career attorneys in the Civil Rights Division reviewed, interviewed, and selected SLIP interns.

Since I have been at the Division, unpaid student interns have been interviewed only by career attorneys in the sections. In the past, resumes of recommended student interns were sent to the

Office of the Assistant Attorney General. I have notified the Section Chiefs that they no longer need to forward these resumes. On March 31, 2008, I initiated a review to determine whether a written policy would be helpful in clarifying the process of hiring unpaid student interns.

- B.** Are you concerned that public confidence in the Department will be undermined if political appointees continue to play a central role in hiring and firing career attorneys and summer interns?

Answer: Everyone in the Civil Rights Division is bound by the same laws with respect to the hiring and firing of career attorneys. I have made clear to all attorneys in the Division that political affiliation is not an appropriate consideration in personnel decisions.

- C.** If confirmed, will you commit to changing the hiring process to eliminate political appointees from having any role in the interviewing, consideration, or hiring of career attorneys and summer interns?

Answer: Please see the above response to Question 10.A. regarding the Division's hiring practices. On March 31, 2008, I initiated a review of the Division's hiring policies that were in place prior to my tenure to determine whether any revisions are necessary.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

December 12, 2007

MEMORANDUM TO ALL ATTORNEYS

FROM: Grace Chung Becker
Acting Assistant Attorney General

SUBJECT: Guidance on Personnel Matters

I adopt and will enforce the principles announced by former Assistant Attorney General Wan J. Kim in the *Guidance on Personnel Matters* memorandum he issued on June 29, 2007. I too am fully committed to ensuring that all personnel decisions within the Civil Rights Division are consistent with principles of fairness as well as all applicable laws, rules and regulations. In particular, I wish to remind you that the Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. Consistent with applicable law, Department policies and my own practice, there will be no discrimination based on color, race, religion, national origin, political affiliation, marital status, disability, age, sex, sexual orientation, status as a parent, membership or non-membership in an employee organization, or personal favoritism. See generally <http://10.173.2.12/jmd/employeeerights.php>.

Notably, each of you should be aware of the requirements of 5 U.S.C. § 2302, which sets forth the following "prohibited personnel practices" applicable to personnel actions, including but not limited to appointments, promotions, reassignments, details, pay, awards, and adverse actions:

A federal employee authorized to take, direct others to take, recommend or approve any personnel action *shall not*:

- (1) discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
- (2) solicit or consider oral or written employment recommendations unless such recommendations are based on personal knowledge or records of job-related abilities or characteristics;

- (3) coerce the political activity of any person or take any action against any employee or applicant as a reprisal for his/her refusal to engage in such political activity;
- (4) deceive or willfully obstruct anyone's right to compete for employment;
- (5) influence anyone to withdraw from competition for any position for the purpose of improving or injuring the employment prospects of any other person;
- (6) give an unauthorized preference or advantage to any employee or applicant for employment for the purpose of improving or injuring the employment prospects of any particular employee or applicant;
- (7) engage in nepotism (*i.e.*, hire, promote, or advocate the hiring or promotion of relatives) within the agency in which the federal employee serves as a public official;
- (8) engage in reprisal for whistle blowing by taking, failing to take, or threatening to take or fail to take a personnel action with respect to any employee or applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety (if such disclosure is not barred by law and such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs – if so restricted by law or Executive Order, the disclosure is only protected if made to the Special Counsel, the Inspector General, or comparable agency official);
- (9) take, fail to take, or threaten to take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;
- (10) discriminate for or against any employee or applicant based on personal conduct (other than criminal convictions) which does not adversely affect the on-the-job performance of the employee, applicant, or others;
- (11) knowingly take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement; and

(12) take or fail to take any other personnel action, if taking or failing to take action violates any law, rule or regulation implementing or directly concerning merit system principles contained in 5 U.S.C. § 2301.

5 U.S.C. § 2302; see also <http://www.usdoj.gov/jmd/ps/chpt4-1.html>;
<http://www.usdoj.gov/oarm/attvacancies.html>; <http://www.osc.gov/ppp.htm#q1>.

For more information, please contact the Division's Human Resources Office (202-514-4153) or the Ombudsman. I am also personally available to address any concerns that you may have.