Testimony of

Theodore M. Shaw

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Hearing on the Nomination of Michael B. Mukasey to be Attorney General of the United States
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NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

My name is Theodore M. Shaw. I am the Director-Counsel and President of the NAACP Legal Defense & Educational Fund, Inc. Founded under the direction of Thurgood Marshall, the Legal Defense Fund is the nation's oldest civil rights law firm. We have served as legal counsel for African Americans in most of the country's major racial discrimination cases.

I am pleased to testify on the important issues facing the Senate as it considers the nomination of Judge Mukasey for Attorney General. My testimony will not address Judge Mukasey's personal qualifications for the position, but rather the pervasive problems within the Justice Department affecting civil rights that, unless immediately remedied, will further derail proper government enforcement of civil rights laws and cast a long shadow on Judge Mukasey's tenure if he is confirmed. Judge Mukasey should be required-as a condition to Senate confirmation-to commit to restoring the integrity of the Civil Rights Division and to taking tangible steps to ensure that the Division's vast enforcement powers are utilized in a manner that vindicates the rights of all persons falling within the protection of our civil rights laws.

There are, however, certain aspects of Judge Mukasey's record on civil rights and civil liberties issues that warrant comment. Judge Mukasey has published a number of troubling civil rights rulings involving discrimination in jury selection and employment discrimination, some of which were reversed by the Second Circuit. l We also note Judge Mukasey's long record of granting very broad deference to the federal government on civil liberties issues. We hope that, if confirmed to be the nation's chief law enforcement officer, Judge Mukasey would aggressively prosecute civil rights cases to the full extent of the law, and further ensure that criminal prosecutions are conducted with all available legal protections. We hope that the Senate will fully explore these aspects of his record before moving forward on the nomination.

The Department of Justice has long stood as a beacon for equality and justice. It represents our nation's collective commitment to fair enforcement of the rule oflaw, and to ensuring equal opportunity in every facet of society. The Attorney General must be committed to protecting the civil and human rights of all Americans, and to acting independently of political or partisan pressure.

Within the Justice Department, the Civil Rights Division has always provided the best hope for racial and ethnic minorities in their elusive quest for equal justice. Just last month, the Division celebrated its 50th Anniversary, having been created in the wake of the Supreme Court's landmark decision in Brown v. Board ofEducation, and as part of the first civil rights law since Reconstruction. Its courageous and aggressive enforcement of the new civil rights statutes passed in the 1950's and 1960's opened countless doors for African Americans and other racial minorities. While national civil rights organizations such as the Legal Defense Fund certainly bring many civil rights cases, it is the Civil Rights Division that is the premier enforcer of our nation's civil rights laws, second to none in terms of the capacity, staff and resources it can devote to civil rights cases.

As the Senate considers whether to confirm Judge Mukasey, it is important to review the Civil Rights Division's recent downward turn in civil rights enforcement as measured against the original promise of the Civil Rights Division and the important role it has played in our history for the past fifty years. Sadly, while racial divisions continue to haunt our country, the Civil Rights Division has sharply deviated from its original mission in a host of areas. It is imperative that the Senate use this opportunity to demand dramatic changes under the new leadership of the Justice Department, which Judge Mukasey's nomination now offers.

My testimony today is informed both by my experience as a civil rights litigator with the NAACP Legal Defense Fund and as a former employee ofthe Justice Department. I began the practice of law as a line attorney in the Civil Rights Division. I joined the Division through the Honors Program in the fall of 1979, and was assigned to the General Litigation Section, which had responsibility for school desegregation, housing and credit discrimination cases.2

When I enrolled in law school, I had two dream jobs. One was to work as an attorney for the Civil Rights Division of the Department of Justice. The other was to work for the NAACP Legal Defense Fund. Neither job was easy to obtain. The Civil Rights Division was a storied position from which to do civil rights work. Its reputation had been firmly established during the halcyon days of the Civil Rights Movement, when Assistant Attorney General John Doar was a constant presence who identified himself as a Justice Department lawyer before a mob that was threatening violence to civil rights demonstrators seeking to vindicate the right to vote. At least since the days when Attorney General Robert F. Kennedy wrestled with the Justice Department's role in vindicating the rights of black Americans, the Civil Rights Division had built a staff of career attorneys who were dedicated to civil rights enforcement. To be clear, these attorneys fully understood that their role was to represent the United States, and not any individual or any group of individuals. But in representing our federal government, the Justice Department at long last had the authority and the inclination to vindicate the rights of individuals who were discriminated against because of their race, color, or membership in a subordinated group. The history and condition of black Americans were the impetus for the Civil Rights Division's creation and much of its work, but its mission extended to all Americans. Career attorneys were the backbone of the Civil Rights Division.

To be sure, each Administration has the prerogative to make political appointees to the Justice Department and by extension, to its Civil Rights Division. Career attorneys understood that policies and practices might shift as administrations came and went, but there was also a limit on the politicization of the Justice Department. The core mission of the Civil Rights Division was inviolate, and career attorneys' work on cases filed by the Department was insulated from crass political influence. Under multiple administrations, Republicans and Democrats, the Civil Rights Division had pursued enforcement of our nation's anti-discrimination laws and its career attorneys had continued their course.

My training and experience as a young lawyer in the Civil Rights Division were the best anyone could hope for. I had superb mentors. I appeared in court often, and was given weighty responsibilities. It was a corps of lawyers who were among the best in the nation. We stood up in court to represent the United States of America in support of the civil rights of those who had long been deprived ofthe equal protection of the law.

Today, I believe that the Justice Department's Civil Rights Division is a very different place. Severe institutional problems have come to light, affecting both the performance and morale of the Division, with devastating consequences on the enforcement of civil rights laws. These issues appropriately have been, and continue to be, the subject of oversight hearings before this Committee and before the House Judiciary Committee. It pains me to note that the most controversial area within the Department of Justice is now the Civil Rights Division. The nominee for Attorney General must commit to redressing these problems in an exhaustive and effective manner before the Senate can place its imprimatur on his nomination.

The first issue concerns the lifeblood of the Civil Rights Division-its lawyers. While the Division still retains some of the career attorneys whose expertise over the years has served Republican and Democratic administrations alike, in recent years too many of those career attorneys have left or been driven out by political appointees with ideological agendas that are directly at odds with the traditional mission of the Civil Rights Division, namely, the protection and vindication of the rights of members of racial minority groups, especially black and brown people. Like many others in the civil rights community, we have recoiled at recent disclosures about the personnel practices within the Division, including the hiring of attorneys based on ideological or partisan reasons; the politicization of the Honors Program; and top officials' making personnel changes in order to "make room for some good Americans.,,3 The work of the

Division is drastically undermined when the hiring, transferring, and firing of its lawyers is said to be motivated primarily by politics, instead of experience in civil rights litigation. The people of the United Stateswhom the Division represents-need to be assured that their interests in seeking justice will always be paramount. Similarly, it is important for the Division to ensure that it retains career lawyers and analysts with expertise and institutional knowledge throughout the various enforcement areas.

The second and related concern involves decisions by these increasingly emboldened political appointees that promote politics over substance, again at the expense of civil rights enforcement. In order to maintain its historic stature, it is critical that the work of the Civil Rights Division not be subjected to the vagaries of politics. While every administration has the right to establish its priorities, we, like many others, are deeply concerned that the current Division is unduly influenced by political considerations. We believe that this trend is not good for the Division, the Justice Department, civil rights enforcement generally, or indeed the country. As the nation's top enforcer of civil rights laws, the Attorney General must inspire confidence that the actions of the Civil Rights Division are based on the law and the facts.

The recent disclosures about political appointees overriding well-founded recommendations of career attorneys in the Voting Section, concerning Section 5 enforcement matters in Georgia and Texas, have undermined the credibility and reputation of a Division that has long been held in high esteem.

Career attorneys strongly objected to preclearing a Georgia voting statute requiring voters to produce photo identification at the polls, after conducting a thorough examination of the law and determining that the identification requirement would likely worsen the position of African-American voters.4 The very next day, political appointees at the Division overrode the recommendation, disregarded the evidence and analysis underlying that recommendation, and precleared the retrogressive voting change.5 Although a number of federal and state courts enjoined earlier iterations of the Georgia law,6 most recently, a federal court upheld the Georgia voter identification requirement after the legislature made a number of changes that purport to address voter access concerns.7 Although serious questions remain regarding the law's impact, the upcoming November 6, 2007 general election will provide the first opportunity to gauge the impact that the state's restrictive identification requirements will have on voters throughout the State of Georgia.8 It is worth noting that the Supreme Court will soon examine issues concerning voter identification requirements when it reviews an Indiana voter identification requirement in Crawford v. Marion County Democratic Party.9 It is important that the Department not adopt any blanket rule endorsing voter identification requirements, wherever they emerge. Rather, the Department must undertake a rigorous and searching examination of these laws to determine what impact these restrictions may have on minority voter access while scrutinizing the justifications proffered by officials who endorse these measures.

In another closely watched case, six career lawyers (including the head of the Voting Rights section) and two analysts reviewed a controversial redistricting plan in Texas, and concluded that the state had "not met its burden in showing that the proposed congressional redistricting plan does not have a discriminatory effect."lo The team of career lawyers and analysts therefore unanimously recommended that the Division interpose an objection under Section 5. Despite this recommendation, the Division precleared the plan. The Supreme Court subsequently held that the Texas redistricting plan violated Section 2 of the Voting Rights Act by diminishing the opportunity of Latino voters to participate effectively in the political process, and further held that the plan "bears the mark of intentional discrimination."ll The holding of the Court effectively shows that the plan worsened the position of Texas' minority voters and that its passage raised serious questions of purposeful discrimination. Either of these rationales should have been enough to ensure that the plan was denied preclearance under Section 5 review.

These examples illustrate the problems with the Division's recent civil rights enforcement. First, the role of the career staff is being diminished in favor of political appointees; and second, that shift is leading to outcomes that provide less vigorous civil rights protection for our nation. Indeed, it appears that the extremely low number of objections interposed to voting changes over recent years is attributable, at least in part, to the disregard of careful and thorough work performed by attorneys and analysts, many of whom have significant experience with the preclearance provisions of Section 5.

There are good reasons for respecting the role of the career attorneys. Because the Section 5 process calls for a fact-intensive examination of a particular voting change (with more complicated voting changes taking up to 60 days

to complete), the analysis performed by Section attorneys and analysts should be given tremendous deference, as it has been in the past.

Other actions by the Justice Department in civil rights cases are equally alarming. On behalf of the federal government, the Department has taken positions which have not only abandoned its traditional role, but which have turned it in the opposite direction. Nowhere has this been more apparent than in the recent Supreme Court consideration of the voluntary school integration cases out of Louisville, Kentucky (Meredith v. Jefferson County Public Schools) and Seattle, Washington (Parents Involved in Community Schools v. Seattle School Districts). Since the Brown v. Board ofEducation cases, in which Justice argued in support of those challenging school segregation laws, the federal government has played a central role in school desegregation cases. Either the Justice Department or the NAACP Legal Defense Fund or both, has been involved in nearly all school desegregation cases litigated since Brown. The Justice Department arfued in opposition to voluntary school desegregation in the Seattle and Louisville cases,l as it did against the University of Michigan's efforts to pursue diversity in student enrollment. 13 One can argue the merits of color-blindness versus race-conscious attempts to achieve diversity or integration, but this fact remains: for the first time in fifty-three years, the Justice Department has argued a case in the Supreme Court against public school desegregation. Fortunately, the Supreme Court in these cases did not adopt the arguments advanced by the Department, and permitted our educational institutions to continue to rely on certain race-conscious methods to pursue diversity and/or avoid racial isolation in schools. 14

There are other troubling examples of the Department's changes in legal positions, to the detriment of victims of discrimination. In Burlington Northern and Santa Fe Railway Co. v. White, decided during the 2005-06 Supreme Court Term, the Department sided with the employer in an employment discrimination case and urged an exceedingly narrow interpretation of Title VII's anti-retaliation provision. \5 The Department's position contradicted longstanding policy of the Equal Employment Opportunity Commission (EEOC). Eight Justices of the Supreme Court ultimately rejected the Department's position as inconsistent with both Title VII's plain language and its underlying pUfPoseto provide broad protection to employees who participate in Title VII enforcement. 1

During the 2006-07 Supreme Court Term, the Department joined an employer again in the case Ledbetter v. Goodyear, arguing against EEOC policy involving the statute of limitations for discrimination in pay. The Department filed an amicus brief rejecting the EEOC's position which supported a female employee who had received lower pay over a long period of time on the basis of her sex in violation of Title VII. Asserting that the EEOC's reading that her claim was timely filed "lacks persuasive force and is not entitled to deference,,,17 the Department instead argued that the plaintiff had lost her right to challenge pay discrimination because she had not done so within 180 days of the paysetting decision, even if she continued to receive unequal pay for years thereafter. The Court agreed with the Department in a 5-4 decision,18 with Justice Ginsburg noting in her dissent that this interpretation constitutes a "cramped interpretation of Title VII, incompatible with the statute's broad remedial purpose.,,19 Though members of Congress have already introduced legislation to reverse this interpretation, the Department's willing abandonment of the EEOC's well-established position remains deeply troubling.

The fourth area of concern involves the docket of the Civil Rights Division. Enforcement of our nation's civil rights laws by the Division must be rigorous, and it must be constant. Enforcement by the Division should also be as even as possible, in order to represent all persons falling within the ambit of its protection. Regretfully, over the past six and one-half years, the Division has neglected its commitment to fair and aggressive enforcement ofour nation's civil rights laws.

For example, during this period, the Civil Rights Division has filed only a handful of cases addressing employment discrimination against African Americans.2o Remarkably, it was not until 2006 -just last year -that the Division brought a case alleging that employment practices had a discriminatory impact on African Americans.21

Unfortunately, this coincides with a dramatic decrease in enforcement of Title VII generally. Despite its special obligation to enforce Title VII, the Employment Litigation Section's level of activity has declined markedly. Since January 20,2001, the Section has filed only 46 Title VII complaints, or approximately seven per year.22 By contrast, the Section initiated an average of eleven Title VII cases per year during the Clinton administration -a disparity over two presidential terms of 32 cases.23 This disparity is more striking given that more attorneys have been assigned to the Employment Litigation Section during the current administration (35 to 36 on average) than during the previous administration (30 to 31 on average).24

Even more worrisome than the reduction in the Division's overall litigation efforts on behalf of victims of employment discrimination is the Division's retreat from its longstanding commitment to eliminate racial discrimination against African Americans. The entire Civil Rights Division has decreased the number of cases brought on behalf of African Americans and Latinos during the past six and one-half years of the Bush administration, and the Employment Litigation Section is no exception to that trend?5 Of the Title VII claims that the Section has brought on behalf of individuals pursuant to Section 706 of the statute, only five included allegations of race discrimination against African-American victims, while three challenged "reverse discrimination" against whites?6 The Section's remaining resources have been devoted to largely non-racial discrimination-for example, nearly half of the employment cases filed in the last two years have addressed discrimination against uniformed service members?7

While all citizens are entitled to Title VII's protections against job discrimination, the statute was enacted during the civil rights movement in direct response to the historic injustice experienced by African Americans and other racial minorities. Traditionally, the Division has recognized that employment discrimination burdens African Americans and other minorities more so than other groups, and has focused its resources accordingly.

We find these developments to be extremely troubling. The Division's priorities do not reflect the unfortunate reality that race discrimination still pervades many of our social structures. While individual claims have a place on the Division's docket, it is imperative that the Division continue its longstanding tradition of bringing pattern and practice cases that otherwise will likely not be prosecuted by the private bar or civil rights organizations with limited resources. Litigation of systemic discrimination claims is costly, complicated and protracted, but this is precisely the type of case in which the federal government should bring to bear its extraordinary resources. The reluctance on the part of the Division to bring systemic cases makes our job that much harder. Not only does the burden fall upon organizations and private attorneys to fill the void, but it signals to employers that they face reduced scrutiny of their practices and even gives fuel to the argument by some that certain forms of race discrimination may no longer exist.

We share similar concerns about the docket in the Voting Section. The Civil Rights Division was initially established as part of the 1957 voting rights statute, and the Division's first lawyers prosecuted voting rights violations against African Americans. Throughout its history, securing the right to vote for African Americans and having that vote count have been important priorities for the Division. While the Division under the Bush Administration has brought a record number of cases involving language provisions of the Voting Rights Act, it has approved only one case alleging voting discrimination against African Americans under Section 2 of the Voting Rights Act, just last year.28

As an organization with a substantial voting rights docket, we know only too well that violations against African Americans continue to exist. The recent reauthorization of the Voting Rights Act made clear that racial minorities continue to be denied full participation in the political process. The Civil Rights Division must remain true to its original charter, and be a leader in prosecuting these cases to the fullest extent of the law. Any move by the Division to focus instead on criminal fraud by voters is misguided, not in keeping with the separation of responsibilities between the Civil Rights Division and other divisions within the Justice Department, and risks alienating and intimidating the very communities the Division is charged with protecting. And, while the Division continues to monitor elections, it is important for the Division to maintain strong community ties in these jurisdictions so that its monitoring efforts can be maximized.

As we approach the 2008 general election cycle, it is important that the Division use its resources to investigate complaints arising out of the jurisdictions covered under the Voting Rights Act. In our view, the legacy of past and present voting discrimination illustrates the continuing need for the federal observer provisions of the Voting Rights Act. So long as voting discrimination persists, there remains the potential for harassment and intimidation to emerge during the course of an election. The Justice Department's federal observer program provides an effective oversight mechanism to protect minority voters' access to the ballot box. We think it is important that the Justice Department take seriously and investigate thoroughly complaints concerning racial tension and harassment that may precede this election cycle, with a particular focus on those jurisdictions certified for federal observer coverage under the Act. In addition, it is important for the Justice Department to focus on schemes used to discourage minority voter participation during elections including, but not limited to, aggressive challenges mounted by groups and/or individuals inside polling places, uneven application of voting rules, and the misapplication of new restrictive voting measures such as the presentation of mandatory voter identification. Finally, the Justice Department should ensure that federal observers carry out their responsibilities in a fair, neutral and impartial manner.

We also add a cautionary note concerning the enforcement pnonties of the Criminal Section of the Civil Rights Division. While the Section has a much-publicized new focus on prosecuting human trafficking cases, we hope that this does not come at the expense of resources allocated to cases fulfilling the core mission of the Section. Specifically, we urge the Civil Rights Division not to abandon its traditional emphasis on law enforcement misconduct and racial bias crimes. As the events in Jena, Louisiana have just vividly demonstrated, racial equality in the criminal justice system remains elusive. The Division, as well as the entire Justice Department, must use its full resources to address these problems aggressively. We must all remain vigilant in order to bring about a fair and just legal system.

The new Attorney General must ensure that the Civil Rights Division maintains its continuity and steadfastness of mission. Priorities can be discharged without abdicating core responsibilities. Civil rights enforcement is not, and cannot be, a zero-sum game in our complex and increasingly diverse society. Protecting African Americans is not inconsistent with protecting Latinos, protecting disabled persons is not inconsistent with protecting women, and protecting citizens who are being discriminated against because of their religious beliefs need not be in tension with doing the same for those whose national origin has subjected them to discrimination. Priorities obviously can and will change from administration to administration but the role of the Division as a protector of marginalized citizens and minorities is its core charge. Taking account of new priorities, and of new or intensified discrimination faced by various groups is appropriate but need not be achieved through the wholesale abandonment of longstanding priorities.

Because discrimination in the nation has proven to be hard to overcome and virtually impossible to eradicate completely in many circumstances in education, voting, housing, employment, and criminal justice, among others, having a department of the federal government that is focused on discharging this mission is critical to effective civil rights enforcement, and also has tremendous symbolic and practical significance. As I have mentioned previously, the Civil Rights Division is second to none in terms of the time and resources it can devote to systemic litigation to address race discrimination. Very often a case brought by the Division reverberates and can have industry-wide impact in terms of deterrence and reform. The broad-based injunctive relief that the Division can pursue simply cannot be matched through the efforts of individual or private lawsuits alone.

In conclusion, we urge the Senate to use this opportunity presented by the nomination of Judge Mukasey to explore fully the critical problems within the Civil Rights Division that we and others have identified, and to use the confirmation process to bring about dramatic changes in the direction and leadership of the Justice Department. Nothing less than the future of justice and equality in our country is at stake.

Thank you for the opportunity to testify. I would be happy to answer any questions.

1 Jordan v. Lefevre, 206 F.3d 196 (2d Cir. 2000) (granting habeas relief because Judge Mukasey did not properly determine whether purposeful discrimination injury selection was established, and writing that "[t]he trial judge in this case made no effort to comply with the letter, much less the spirit, of [Batson v. Kentucky]"); Sorlucco v. N. Y. City Police Dep't, 971 F.2d 864 (2d Cir. 1992) (reversing Judge Mukasey's decision to overturn jury verdict for female police officer on gender discrimination claims that she was transferred and then terminated after complaining ofrape by another officer); Rosen v. Thornburgh, 928 F.2d 528 (2d Cir. 1991) (reversing Judge Mukasey's dismissal of case claiming religious discrimination); Lopez v. Metropolitan Life Ins. Co., 930 F.2d 157 (2d Cir. 1991) (Judge Mukasey sitting by designation and ruling that plaintiff claiming race and national origin discrimination in employment did not make prima facie case).
2 The General Litigation Section was created during the Carter Administration in recognition of the link between school and housing discrimination, as well as the link between housing and credit discrimination. In 1980, the Justice Department filed suit against the city of Yonkers, New York, alleging both school and housing discrimination. The suit was reviewed by the Reagan appointees to the Justice Department to determine whether it was "improperly filed." After the basis of that review was reported publicly in the press, the case was allowed to continue. However, the Civil Rights Division was reorganized and the General Litigation Section was disbanded. 1was one ofthe attorneys who investigated housing and school segregation in Yonkers and who worked on the original complaint and initial discovery.
3 Political Hiring injustice Division Probed, WASH. POST, June 21, 2007.
4 Criticism o/Voting Law Was Overruled, WASH. POST, Nov. 17,2005.
5 The Legal Defense Fund signaled its concerns regarding the law in a Comment Letter submitted to the Justice Department. See Comment Letter from Theodore M. Shaw to John Tanner, Chief, Voting Section, Aug. 3,2005.

6 Although the specific legal rationales have varied, five court rulings in total-three by federal courts and two by state courts-subsequently enjoined two iterations of the Georgia law on constitutional, among other grounds. Common Cause/Georgia v. Billups, Civ. A. No. 4:05-CY-0201-HLM (N.D. Ga. Sept. 15,2006); Common Cause/Georgia v. Billups, 439 F. Supp. 2d 1294 (N.D. Ga. 2006); Common Cause/Georgia v. Billups, 406 F. Supp. 2d 1326 (N.D. Ga. 2005) (comparing the law to a poll tax from the Jim Crow era); see also Lake v. Perdue, 2006-CY-119207 (Ga. Super. Ct., Sept. 19, 2006); Lake v. Perdue, 2006-CY-119207 (Ga. Super. Ct., July 7, 2006).
7 Common Cause/Georgia v. Billups, _ F. Supp. 2d _,2007 WL 2601438 (N.D. Ga. Sept. 6,2007).
8 The new voter identification requirement was also in place for a recent September 18,2007 special election.
9 Crawford v. Marion County Election Ed., 484 F. 3d 436 (7th Cir. 2007), cert. granted Crawford v. Marion County Election Ed., _ S.Ct. _, 2007 WL 1999941 (U.S. Sep. 25, 2007) (No. 07-21) and Indiana Democratic Party v. Rokita, _ S.Ct. _ 2007 WL 1999963 (U.S. Sep. 25, 2007) (No. 07-25). Indiana officials claim that the identification requirement is aimed at combating fraud. However, state officials have also admitted they are unaware of any incidents of persons attempting to vote with false identification.
10 Justice StajJSaw Texas Districting as Illegal, WASH. POST, Dec. 2, 2005. J
11 League ofUnited Latin Am. Citizens v. Perry, 126 S. Ct. 2594, 2622 (2006).
12 Brieffor the United States As Amicus Curiae Supporting Petitioner, Meredith v. Jefferson Co. Bd. of Educ., No. 05-915.
13 Brief for the United States As Amicus Curiae Supporting Petitioner, Grutter v. Bollinger, No. 02-241.
14 Meredith v. Jefferson Co. Bd. ofEduc., 127 S. Ct. 2738 (2007).
15 Brief for the United States As Amicus Curiae Supporting Respondent, Burlington Northern & Santa Fe Railway Co. v. White, No. 05-259.
16 126 S. Ct. 2405 (2006).
17 Brief for the United States As Amicus Curiae Supporting Respondent, Ledbetter v. Goodyear Tire & Rubber Co., No. 05-1074.
18 127 S. Ct. 2162 (2007).
19 Id. at 2188 (Ginsburg, J., dissenting).
20 See Complaints Filed, U.S. Department of Justice, Civil Rights Division, Employment Litigation Section, at http://www.usdoj.gov/crt/emp/papers.htm1.
21 Id.
22 See Complaints Filed, U.S. Department ofJustice, Civil Rights Division, Employment Litigation Section, at http://www.usdoj.gov/crt/emp/papers.htm1.
23 See Civil Rights Division Oversight: Hearing Before the S. Comm. on the Judiciary, 11 Oth Congo (June 21, 2007) (testimony of Helen Norton, Professor, University of Maryland School of Law).
24 See id.
25 See Oversight ofthe Civil Rights Division: Hearing Before the S. Comm. on the Judiciary, 109th Congo (Nov. 16,2006) (testimony of Theodore M. Shaw, Director-Counsel and President, NAACP Legal Defense & Educational Fund, Inc.).
26 See Complaints Filed, U.S. Department of Justice, Civil Rights Division, Employment Litigation Section, at http://www.usdoj.gov/crtlemp/papers.html.
27 See id.
28 Litigation Brought by the Voting Section, U.S. Department of Justice, Civil Rights Division, Voting Section Home Page, available at http://www.usdoj.gov/crt/voting/litigation/caselist.html.