

Responses of Theodore M. Shaw
Director-Counsel and President, NAACP Legal Defense & Education Fund, Inc.
To Written Questions from Senator Edward M. Kennedy
Oversight of the Civil Rights Division, U.S. Department of Justice

1. *What do the court rulings on the Georgia Photo ID laws and the Supreme Court's recent decision on Texas redistricting indicate about the Justice Department's oversight of Section 5 of the Voting Rights Act?*

The recent preclearances of the Georgia Photo ID law and the Texas state redistricting plan at issue in the Supreme Court's recent ruling of *LULAC v. Perry*, 126 S. Ct. 2594 (2006), raise important questions about the status of the Justice Department's Section 5 enforcement authority. The Justice Department is charged with the responsibility of reviewing these and all proposed voting changes arising in the covered jurisdictions to determine whether the change will result in retrogression of minority voting strength or was otherwise adopted with a prohibited discriminatory purpose. Indeed, the Justice Department's Section 5 preclearance determinations are not reviewable and thus, no court has ever overturned an administrative preclearance determination. See *Morris v. Gressette*, 432 U.S. 491 (1977) (holding that the administrative decision not to object to a submitted change is not subject to a judicial review). Accordingly, challenges to a particular precleared voting change will, inevitably, be based on other statutory or constitutional grounds.

Despite the unique analytical standards surrounding the Section 5 process, voting cases brought under different provisions of the Act or on other constitutional grounds shed light on whether a particular voting change might impair the ability of minority voters' seeking to participate in the political process. Various aspects of the Court's ruling in *LULAC v. Perry* raise findings that, in our view, would be significant in any Section 5 retrogression analysis of the Texas redistricting plan. For example, the *LULAC* Court recognized that significant levels of racially polarized voting in one of the plan's contested district were "particularly severe," noting that the "Anglo citizen voting-age majority will often, if not always, prevent Latinos from electing the candidate of their choice in the district." *Id.* at 2615. Levels of racially polarized voting are significant factors that are considered in both the Section 2 and Section 5 contexts. In the Section 5 context, racially polarized voting may suggest that reconfiguring district boundaries or reducing a district's minority population percentage might eliminate minority electoral opportunity. Although the functional analysis used to determine the occurrence of a Section 2 or other violation differs from that used to make a preclearance determination under Section 5, these cases may be instructive about the effect of a particular change.

2. *The suit against Euclid, Ohio is the only case brought by the Bush Justice Department alleging race discrimination in voting against African-Americans. It took almost six years for the Administration to file that suit. However, the Administration has filed the Division's first-ever lawsuit alleging discrimination against white voters. That suit was filed in Noxubee County, Mississippi.*

Some might assume that the Justice Department isn't filing cases to protect minority voters because discrimination against these voters isn't a problem. In your view, is voting discrimination against minorities still a serious problem? Do you believe that minorities as well as whites face voting discrimination in Mississippi?

In our view, the Justice Department has historically retained primary enforcement responsibility under the Voting Rights Act of 1965. This delegation of authority stems from the unique nature of federal voting rights litigation, which is both complex and costly. Although advocacy groups have played and will continue to play an important role in this area, the Justice Department is best positioned to identify discrimination where it may occur, carry out investigations to determine whether the claims are meritorious and ultimately, bring its resources to bear through litigation aimed at vindicating the rights of those whom the statute was designed to protect.

Despite this unique delegation of enforcement responsibility, the NAACP Legal Defense and Educational Fund has committed tremendous resources to addressing the problems that minority voters continue to face in states such as Louisiana, Mississippi, Alabama and the covered jurisdictions generally. As the recent reauthorization of the Voting Rights Act illustrates, voting discrimination against our nation's racial minorities remains an ongoing problem. These problems are so significant that the Senate voted, by a margin of 98-0, to extend the protections provided by Section 5 of the Voting Rights Act for an additional 25 years.

3. *The nation is best served when both the Justice Department and civil rights groups work actively to enforce our civil rights laws. Civil rights organizations have a unique perspective, expertise, and ties to local communities. But they lack the Justice Department's resources, its large number of attorneys, and its access to data collected by federal agencies.*

What is the effect, from your perspective, of having a Justice Department that doesn't enforce the law, or enforces it selectively for political reasons. Do civil rights organizations have the resources to fill the gap if the Department fails to enforce the law vigorously?

As the NAACP Legal Defense & Educational Fund is well aware, the nation's work in eradicating racial discrimination remains unfinished business. Sadly, there are many forms of discrimination still permeating our social structures and keeping the African-American and other minority communities from full participation in our society. The Civil Rights Division of the Justice Department has an important and unique role to play in enforcing our nation's civil rights laws. When the Division refuses to enforce these laws, or enforces the laws in a political manner, we all suffer. Not only is discrimination allowed to thrive, but the lack of enforcement by the federal government sends the unfortunate message that compliance with civil rights laws may not be important. Civil rights organizations and private lawyers cannot possibly compensate for the lack of enforcement of civil rights laws by the federal government. As I noted in my oral testimony, civil rights organizations simply do not have the resources and staff to litigate many lawsuits at any given time, especially systemic discrimination cases which are costly and protracted.

The LDF fields a steady stream of requests for assistance and its resources allow it to respond affirmatively to only a small number of these requests. When the Justice Department defaults on its obligations, the demands on LDF and other public interest law firms increase exponentially. The result is justice delayed or denied.

4. *Last month, the NAACP Legal Defense and Educational Fund filed a brief in the Supreme Court defending voluntary integration in public schools. That issue is so important for the nation that I joined with several of my Senate colleagues in filing an amicus brief in that case. I was surprised that the Justice Department filed a brief opposing voluntary desegregation programs. It seems incredible that 50 years after Brown v. Board of Education, and 50 years after federal troops were needed to carry out the desegregation of Little Rock High School, we now see the federal government opposing voluntary desegregation.*

Can you put into context for us the significance of that case and the Department's position?

On December 4, 2006, the Supreme Court heard two cases regarding whether public school districts in Seattle and Louisville can voluntarily use race-conscious measures to avoid racial isolation and achieve racial diversity in their elementary and secondary schools. (*Parents Involved in Community Schools v. Seattle School District*, 05-908 and *Meredith v. Jefferson County Board of Education*, 05-915). The white petitioners in these cases seek to prohibit school districts from using race-conscious student assignment policies. If school districts were no longer to have the tools necessary to prevent widespread resegregation of their schools, America's half-century long effort, since *Brown v. Board of Education*, to integrate public schools would effectively come to an end.

The Solicitor General filed a brief in support of the petitioners, urging the Court to prohibit school districts from using any race-conscious measures to promote integration in schools, and further asserting that there is indeed no "compelling interest" in the integration of schools. As I mentioned in my oral testimony, the Justice Department's position in these cases and other recent education cases runs counter to the decades-long efforts by every branch of the federal government to encourage and support voluntary race-conscious school integration. It is also a reversal of the Justice Department's own position and involvement in hundreds of desegregation cases, where it has demanded that school districts take affirmative race-conscious steps to integrate their schools.

5. *The Boston Globe has reported a steep decline in the percentage of attorneys hired by the Division who have a background in civil rights.*

How important is it for the Division, or any organization that litigates civil rights cases, to look for civil rights experience in hiring attorneys?

As in any specialty within the practice of law, it is preferable to recruit and hire lawyers with experience in civil rights litigation in order to maximize the prospects for success in litigation. It is often the case that defendants in civil rights cases are represented by lawyers with

expertise in the area of civil rights, even to the point of having experience with the particular type of civil rights claim involved, such as voting rights, employment discrimination or school desegregation. Accordingly, it is desirable for attorneys prosecuting civil rights claims to have at least some experience in the practice of civil rights law. Just as importantly, the Justice Department should ensure that it hires lawyers who are committed to strong enforcement of civil rights laws.

Recent law school graduates are hired through the Justice Department's Honors Program. These lawyers are not yet experienced. However, the record is now well established that this Administration has made its most important hiring criterion for the Honors Program an ideological leaning which is philosophically inconsistent with meaningful enforcement of civil rights laws on behalf of African Americans, Latinos, and other for whom they were originally enacted. The damage that has been done to the Department's reputation, credibility, and capacity to litigate civil rights cases is significant and unless deliberately addressed will be long lasting.

Responses of Theodore M. Shaw
Director-Counsel and President, NAACP Legal Defense & Education Fund, Inc.
To Written Questions from Senator Patrick Leahy
Oversight of the Civil Rights Division, U.S. Department of Justice

1. *At the oversight hearing, Bob Driscoll testified that cases of the current Civil Rights Division have been “largely upheld by the Supreme Court, and so you would think if an administration was sailing beyond the markers of any established area of civil rights a court would tell it so at some point.” What is your response to this statement? In the employment context, does Mr. Driscoll’s statement hold up in the wake of the Supreme Court’s recent decisions Burlington Northern and Santa Fe Railway Co. v. White and Ledbetter v. Goodyear?*

As a general matter, the degree of success of the Civil Rights Division should not be measured according to its record of appeals to the United States Supreme Court. Strong enforcement of our nation’s civil rights laws should be motivated and measured by the desire to eliminate discriminatory practices wherever they are found and to provide proper redress to victims of discrimination, within the confines of the law. Historically, the views of the Division and indeed the entire Department of Justice have greatly contributed to advances in the judicial interpretation of our nation’s civil rights laws. In recent years, however, the Division has been reticent to aggressively enforce the civil rights laws, and has even taken legal positions at odds with litigants seeking strong enforcement.

In *Burlington Northern*, the Supreme Court squarely rejected the position of the Division in an employment discrimination case. In that case, the Division joined an amicus brief which sided with the employer and urged an exceedingly narrow interpretation of the retaliation provision under Title VII—that only retaliatory actions relating to employment or occurring at the workplace were forbidden. The Division’s position also contracted longstanding policy of the Equal Employment Opportunity Commission. The Court rejected the Division’s position, noting specifically that it could not find “significant support” for the position in the EEOC’s own interpretations.

In the same Supreme Court term, the Civil Rights Division aligned with an employer defendant a second time in arguing against a longstanding EEOC policy and against the interest of a victim of employment discrimination. In *Ledbetter v. Goodyear Tire & Rubber Co.*, the Division contended that an employee cannot recover in a pay discrimination claim if the pay disparity, while still manifested in each paycheck, arose from a decision outside of the statutory limitations period. This position was contrary to the EEOC’s position in the court below and to longstanding EEOC policy permitting recovery under Title VII as long as the disparate pay is received within the limitations period. The position of the Division reflected the recent trend of contravening well-established EEOC policy and siding against the person seeking to enforce anti-discrimination laws.

2. *I have read disturbing accounts of voter intimidation and suppression during the 2006 mid-term elections. The Arizona Republic reported that at a polling site in the 49th precinct in Tucson, Arizona, an area with a heavy percentage of Latino voters, three vigilantes armed with a clipboard, a video camera and a visible firearm stopped only Latino voters as they entered and exited the polls. Republican leaders in Maryland have admitted that part of their election day*

strategy including bussing in hundreds of poor African Americans from Philadelphia to hand out misleading flyers in African-American communities in Maryland. These flyers falsely suggested that prominent African-American Democrats supported Republican Senate candidate Michael Steele and Republican Gubernatorial candidate Bob Ehrlich. I understand that the FBI is now investigating allegations in Virginia that in the days leading up to last week's election, many voters in heavily Democratic precincts received calls directing them to the wrong polling sites, giving incorrect information about their eligibility to vote or encouraging them not to vote on election day. In light of these incidents, do you believe the Civil Rights Division is doing enough to protect voting rights for African-American and Latino citizens?

There are steps that the Justice Department might take in order to enhance its ability to investigate and prosecute serious acts of voter intimidation that impede voter access to the polls. Most recently, the NAACP Legal Defense & Educational Fund urged the U.S. Department of Justice to open and conduct a thorough investigation into a recent November 3, 2006, cross-burning incident in Grand Coteau, Louisiana. In my view, this incident was a clear and unmistakable expression of racial animus and hatred. Because this particularly virulent act of intimidation was staged on public property on the eve of a racially heated election, many African-American voters could have been discouraged from freely participating in the political process. African-American residents whom we spoke with believe that the cross-burning may have been a tool to intimidate minority voters from freely exercising their right to vote during the November 7, 2006 general election. We are hopeful that incidents such as this one will be expeditiously investigated and prosecuted where appropriate.

In addition to the misleading flyers distributed in Maryland, we also learned that Maryland Republicans instructed their poll watchers that their "most important duty on Election Day was to challenge people and to instruct election judges they could face jail time if a challenge is ignored." Collectively, these efforts may discourage voters, particularly minority voters, from freely participating in the electoral process.

More can be done to make clear which sections of the Justice Department hold primary enforcement responsibility for the investigation and prosecution of these kinds of matters. Indeed, there are a number of federal statutes which may reach acts of voter intimidation such as the misleading flyers distributed during the November 7 general election in Maryland and the November 3 cross-burning incident in Grand Coteau. In some instances, it may be appropriate to open both criminal and civil investigations into these matters which may require some level of coordination between different offices of the Department. For instance, the Grand Coteau cross-burning incident may yield sufficient evidence of a prosecutable violation of federal criminal civil rights statutes including 18 U.S.C. § 241 (conspiracy against rights) and 18 U.S.C. § 245 (federally protected activity). However, the facts may also reveal a violation of Section 11(b) of the Voting Rights Act which prohibits individuals from intimidating, threatening, or coercing any person for voting or attempting to vote. Similarly, Section 1971 (b) of the Civil Rights Act of 1957, applicable during federal elections, prohibits efforts to intimidate, threaten or coerce persons for the purpose of interfering with their right to vote. Determining whether these matters should be pursued in the criminal or civil context are important questions that make clear the need for coordination between the Voting and Criminal Sections of the Civil Rights Division and the Public Integrity Section of the Criminal Division.

The ongoing nature of voter intimidation makes clear the need to continue to ferret out those barriers that continue to stand in the way of African-American, Latino and other minority voters seeking to participate in the electoral process.

From discussions with high ranking Justice Department officials of this Administration, LDF has become convinced that the Justice Department's priority on election day is to deliver the message to minority voters that election fraud will be prosecuted, rather than that threats, intimidation, and other actions aimed at suppressing minority vote will be prosecuted. Protections against voter fraud already exist and should be enforced. But when the Justice Department's primary election day activities consist of voter fraud warnings directed at minority voters rather than election protection activities, the Department has strayed far from the purpose of the Voting Rights Act it is charged to enforce.

3. *On August 26, 2005, the Justice Department approved—over the objections of career lawyers—Georgia's restrictive photo identification voting measure that will require all voters to show a driver's license or one of five forms of government-issued photo identification at the polls. In another closely watched case, in 2003, the Justice Department overrode a unanimous recommendation of the career staff, which had concluded in a detailed, 73-page memorandum that the Tom Delay-sponsored redistricting plan was retrogressive because it diluted the power of minority voters to elect their candidate of choice. In approving Georgia's voter identification law and the Tom Delay-sponsored Texas redistricting plan, what message does the Justice Department send about the current Civil Rights Division's commitment to protect minority voters?*

See Response to Question 4.

4. *Since the Justice Department's approval of the Georgia redistricting plan, five courts in total—three federal courts and two state courts—have subsequently enjoined two iterations of the Georgia photo identification law on grounds that such a law is unconstitutional. Similarly, in the Texas redistricting case, the U.S. Supreme Court partially struck down that plan, under Section 2 of the Voting Rights Act, on the basis that the plan diminished the opportunity of Latino voters to participate effectively in the political process and "bears the mark of intentional discrimination." Do you believe that federal court decisions in the Georgia photo identification law case and the Texas redistricting case shed light on the Justice Department's oversight under Section 5 of the Voting Rights Act? Please explain your answer in detail.*

The Justice Department's Section 5 review of proposed voting changes looks to see whether a change will result in retrogression of minority voting strength or was otherwise adopted with a prohibited discriminatory purpose. Indeed, the Justice Department's Section 5 preclearance determinations are not reviewable and thus, no court has ever overturned an administrative preclearance determination. See *Morris v. Gressette*, 432 U.S. 491 (1977) (holding that the administrative decision not to object to a submitted change cannot be challenged in court). For this reason, challenges to a particular voting change that has been precleared will inevitably be one based on other statutory or constitutional grounds.

Despite the unique analytical standards surrounding the Section 5 process, voting cases brought under different provisions of the Voting Rights Act or on other constitutional grounds can shed light on whether a particular voting change might impair the ability of minority voters to participate in the political process. Although the functional analysis used to determine whether a Section 2 or other violation has occurred differs from that used to make a preclearance determination under Section 5, these cases may be instructive about the effect of a particular change.

Various aspects of the Court's ruling in *LULAC v. Perry*, 126 S.Ct. 2594 (2006), raise findings that would be significant in any Section 5 retrogression analysis of the Texas redistricting plan. For example, the *LULAC* Court recognized that significant levels of racially polarized voting continue to hamper minority electoral opportunities. In particular, the Court found that polarization levels within challenged District 23 were "particularly severe" and noted that the "Anglo citizen voting-age majority will often, if not always, prevent Latinos from electing the candidate of their choice in the district." *LULAC v. Perry*, 126 S.Ct. at 2615. Levels of racially polarized voting are significant factors that are considered in both the Section 2 and Section 5 context. In the Section 5 context, racially polarized voting may suggest that a reduction in the minority population percentage of a particular district would eliminate minority electoral opportunity.

The *LULAC* Court also recognized that the State of Texas eliminated minority electoral opportunity in the face of growing numbers of politically cohesive Latino voters. Although the Court's analysis of the Section 2 challenge considered the issue of vote dilution alone, the Court noted that the Texas redistricting plan "bears the mark of intentional discrimination that could give rise to an equal protection violation." 548 U.S. at 34. This finding is relevant in the Section 5 context to the extent that it may yield evidence that a particular change was adopted with a retrogressive or otherwise impermissible purpose.

5. *This term, the U.S. Supreme Court will hear two cases—Parents Involved in Community Schools v. Seattle School District, and Meredith v. Jefferson County Board of Education—concerning voluntary programs to integrate public schools. The desegregation plans in both cities aim for school populations that reflect that racial and ethnic makeup of their communities. The Justice Department has submitted a "friend of the court" brief supporting the challengers of the voluntary integration plan. The Justice Department, which in 1954 filed a brief supporting desegregation of public schools in the landmark decision of Brown v. Board of Education, now argues that Louisville and Seattle plans violate the equal protection clause of the Fourteenth Amendment because the plans took race into account in assigning students to schools. What do you believe the Justice Department's historical shift from being a friend of integration to now being an opponent of integration says about the current Justice Department's commitment to desegregating our public schools and fulfilling the promise of Brown?*

Unfortunately, the Department's decision to support the challenge to the voluntary integration plans speaks volumes about the level of its commitment to fulfilling the promise of *Brown*. The Department's position is nothing short of a stunning turnaround from a longstanding commitment to promoting desegregation at the K-12 level. The white petitioners in these cases seek to prohibit school districts from using race-conscious student assignment

policies. If school districts were no longer to have the tools necessary to prevent widespread resegregation of their schools, America's half-century long effort, since *Brown v. Board of Education*, to integrate public schools would effectively come to an end. The Solicitor General filed a brief in support of the petitioners, urging the Court to prohibit school districts from using any race-conscious measures to promote integration in schools, and further asserting that there is indeed no "compelling interest" in the integration of schools. As I mentioned in my oral testimony, the Justice Department's position in these cases and other recent education cases runs counter to the decades-long efforts by every branch of the federal government to encourage and support voluntary race-conscious school integration. It is also a reversal of the Justice Department's own position and involvement in hundreds of desegregation cases, where it has demanded that school districts take affirmative race-conscious steps to integrate their schools.

6. *Earlier this year, we reauthorized the expiring sections of the Voting Rights Act after establishing in nearly 20 hearings in the House and Senate the continued need for those protections. The organization you head, the NAACP Legal Defense Fund, has been a principle defender of the Voting Rights Act and has worked with the Civil Rights Division to enforce its mandates. The Voting Rights Act remains not only one of the landmark achievements of the civil rights era, but a vital protection of the right to vote for all Americans. Yet, the Bush Civil Rights Division has filed only three lawsuits under Section 2 of the VRA, the key section that provides a cause of action for discrimination against minority voters, and all of those cases were filed in 2005 and none of them involves discrimination against Blacks. Are you concerned that the Civil Rights Division's decision to bring so few voting rights cases creates an impression that racial discrimination against African-American voters—particularly in the South—is not longer an issue? Please discuss.*

The Voting Rights Act was enacted to help protect the constitutional rights of all Americans to vote free from racial discrimination. Indeed, civil rights organizations, advocates and citizens have all hoped that we would quickly resolve and eliminate the issues and problems that impede access to the ballot box. Despite these aspirations, stark evidence remains that voting discrimination persists and that much of this discrimination inhibits the ability of African-American voters seeking to participate in the political process. As the recent record developed during the Voting Rights Act reauthorization efforts makes clear, we have not yet eliminated the entrenched discrimination in voting that gave rise to the Act.

The NAACP Legal Defense & Educational Fund remains concerned that the Division has abandoned its historic commitment to aggressively vindicate and protect the rights of all minority voters. Indeed, the Justice Department has always played a lead role in bringing affirmative litigation to help enforce Section 2 and other key provisions of the Act. In large part, this reality is attributable to the exceedingly high costs associated with bringing litigation that is dependent on experts and other technical witnesses. In more recent years, organizations such as the NAACP Legal Defense & Educational Fund have shouldered a significantly higher burden and greater responsibility for investigating matters that implicate the rights of African-American voters.

The reauthorization of the Voting Rights Act resulted in amendments to Section 14 of the Act that will allow prevailing parties to recover reasonable litigation expenses in addition to attorney's fees. The Legal Defense Fund remains hopeful that this amendment will provide

some marginal assistance to the efforts of organizations and individuals seeking to enforce the provisions of the Act. However, given the complex nature of these cases and the limited resources of non-governmental civil rights organizations, it remains critical that DOJ maintain a commitment to pursuing those cases that might otherwise go untried due to lack of funds.

7. *The decline in the Civil Rights Division's enforcement of traditional civil rights laws protecting against employment, disability, housing and voting rights discrimination has been widely reported. From your vantage point as head of the NAACP Legal Defense Fund, has the decline in enforcement had an impact on the law's ability to protect the poor, the disenfranchised, and victims of discrimination?*

Yes, the decline in enforcement by the Civil Rights Division has had a substantial impact on our country's ability to protect against discrimination, as Congress intended through passage of the various federal civil rights laws. In prior administrations, there have always been significant numbers of cases devoted to eradicating race discrimination, including individual and systemic cases, whatever the other priorities of the Division may have been. Now, unfortunately, there are far too few cases addressing race discrimination against African Americans and other minorities across subject areas. This lack of enforcement means that victims of race discrimination are not able to pursue rights and remedies available to them under our nation's civil rights laws. As we approach the fiftieth anniversary of the Civil Rights Division, which was established primarily to advance racial justice in this country, it is particularly troubling that the Division has overseen such a precipitous decline in race cases. In our view, there is no more important role and function for the Civil Rights Division than to fulfill our nation's commitment toward achieving equal opportunity for all.

8. *Recent cases show a troubling trend of the Civil Rights Division shifting course from positions advocated by the Justice Department in different administrations.*

In 1992, during the Administration of George H.W. Bush, the Justice Department filed suit against the New York City Board of Education alleging that custodian jobs were awarded within an "old boys" network in violation of Title VII. The suit was settled in 2000 by means of a court approved consent decree but litigation over the consent decree continued. In April of 2003, the Justice Department abruptly abandoned the claims of the female and minority custodians and refused to defend the settlement against a challenge from white male custodians to the seniority rights of female and minority custodians.

In another case, the Civil Rights Division spent four years in litigation to overturn discriminatory hiring criteria used by the Southeastern Pennsylvania Transportation Authority. But in late 2001, on the very day an appellate brief in the case was due, the Department abruptly dropped the civil rights suit altogether.

In a case challenging the Buffalo Police Department, an organization with a long history of employment discrimination, the Civil Rights Division assisted minority plaintiffs who alleged that they were systematically excluded from becoming police officers by means of a discriminatory employment test. As recently as June 2001—in the early months of the Bush administration—the Justice Department opposed such tests. But one year later the Department

adopted a completely different position and insisted that the same career lawyer who had worked for years opposing the tests take the opposition position in court.

Are you worried about the recent trends of the Civil Rights Division shifting course from positions advocated by the Justice Department in previous administrations? Why or why not? What do these shifting of positions suggest about the current Civil Rights Division commitment to equal opportunity in the workplace. Please explain in detail.

Yes, the NAACP Legal Defense Fund is very concerned about changes by the Civil Rights Division in legal positions in ongoing cases, as manifested in the cases described above and elsewhere. As I mentioned in my oral testimony, some variation in policy and priorities usually takes place between administrations. But it is an entirely different matter when the Division suddenly takes completely contrary positions in litigation in which it has been involved for years, and even more importantly, when those positions are adverse to the interests of the discrimination victims it purports to represent. These changes risk the credibility of the Division before federal courts and certainly harm the Division's reputation as the country's chief enforcer of civil rights laws. Just as importantly, they result in legal injury to persons victimized by the discrimination at issue who are relying upon the Division for aggressive enforcement of civil rights laws. Finally, these changes create a crisis of confidence in the work and mission of the Division itself.