



# **Department of Justice**

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**STATEMENT OF  
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CIVIL RIGHTS DIVISION**

**BEFORE THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**ENTITLED  
“CIVIL RIGHTS DIVISION OVERSIGHT HEARING”**

**PRESENTED  
SEPTEMBER 13, 2011**

**Statement of  
Thomas E. Perez  
Assistant Attorney General  
Department of Justice**

**Before the  
Committee on the Judiciary  
United States Senate**

**Concerning  
Oversight of the Civil Rights Division of the Department of Justice  
September 13, 2011**

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

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

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

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

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

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

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

For example:

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

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

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

## **Criminal Enforcement and Law Enforcement Misconduct**

### ***Hate Crimes***

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

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

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

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

### ***Human Trafficking***

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

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

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

### ***Law Enforcement Misconduct***

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

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

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

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

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

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

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

## **Disability Rights**

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

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

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

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

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

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

### **Fair Lending**

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

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

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

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

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

### **Fair Housing**

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

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

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



## **Civil Rights of Servicemembers**

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

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

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

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

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

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

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

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

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

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

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

### **Equal Educational Opportunity**

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

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

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

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

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

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

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

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

### **Religious Freedom**

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

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

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

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

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

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

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

### **Equal Employment Opportunity**

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

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

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

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

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

### **Voting Rights**

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

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

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

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

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

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

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

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

### **Access to Reproductive Health Centers**

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

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

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

### **Access to the Courts**

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

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

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

## **Partnerships**

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

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

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

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

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

## **Conclusion**



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

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

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

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