

STATEMENT OF

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UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION,

CIVIL RIGHTS AND CIVIL LIBERTIES

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

“THE CIVIL RIGHTS DIVISION AT THE DEPARTMENT

OF JUSTICE”

DECEMBER 3, 2009

The Civil Rights Division was created by the Civil Rights Act of 1957, and its initial mandate was limited to protecting the rights of racial minorities. Through Congressional mandate, the Division has become the primary government entity responsible for enforcing many federal laws prohibiting discrimination on the basis of race, sex, disability, religion, national origin, and other protected categories. The Civil Rights Division's role has broadened considerably over the years, as Congress has entrusted it with the enforcement of groundbreaking legislation such as the Civil Rights Act of 1964, the Voting Rights Act of 1965, Title IX of the Education Amendments of 1972, and the Americans with Disabilities Act of 1990. The modern Division employs approximately 700 employees and is responsible for the enforcement of dozens of federal statutes and executive orders covering topics such as voting rights, employment, housing discrimination, human trafficking and law enforcement misconduct.

Under both Republican and Democratic administrations, the Civil Rights Division has been focused on making the lofty promise of our nation's civil rights laws a reality for all Americans. The previous Administration was no exception. The Administration's record reflects aggressive and principled enforcement of an ever-increasing number of laws entrusted to the Division's care. In many areas, in fact, these years were the most prolific in the Division's history.

The primary duty of the Division, as with all components of the Department of Justice, is to enforce the laws as they are written. Such principled, nonpartisan law enforcement consistently characterized the Civil Rights Division during my tenure. As with other Divisions of the Department of Justice, the priorities and resources of the Civil Rights Division may shift over time to reflect the broader policies of the elected

President, the Attorney General and this changing world. As with most executive branch institutions, the Civil Rights Division is led by leaders selected by each Administration, whose job is, in part, to ensure that the Division's actions comport with broader Department of Justice and Administration policy. The Civil Rights Division's enforcement record in the prior Administration reflects not only a commitment to traditional civil rights concerns such as racial and religious discrimination and the freedoms guaranteed by the Thirteenth Amendment, but also a commitment to taking on new responsibilities, such as the protection of the rights of military servicemembers.

I. Fighting Race and National Origin Discrimination

The bread and butter of the Division's work—in both Republican and Democratic Administrations—has been the enforcement of federal civil rights statutes that prohibit discrimination on the basis of race, color, and national origin. That continued commitment is reflected in the accomplishments of the Division's men and women in areas such as hate crimes, civil rights era murders, housing, fair lending, public accommodations, employment, education and voting.

The success of the Division's Criminal Section also demonstrates the Administration's commitment to the vigorous prosecution of those who attack others because of the victims' race, color, national origin, or religious beliefs. In recent years, the Division brought a number of difficult and high profile hate crime cases.

For example, in 2008, the Division secured convictions in *United States v. Eye and Sandstrom*. The defendants in that case hunted down and killed an African-

American man, whom they did not know, because of his race. The defendants both received life sentences.

In the 2006 prosecution of *United States v. Saldana*, four members of a violent Latino street gang were convicted of participating in a conspiracy aimed at threatening, assaulting, and even murdering African Americans in a neighborhood claimed by the defendants' gang. All four defendants received life sentences. These are merely two examples of the Criminal Section's tireless efforts to identify and prosecute those who perpetuate hate through criminal means. Between 2001 and 2008, the Division charged 200 defendants in 135 cases of bias-motivated crimes.

The previous Administration devoted significant resources to identify and aggressively investigate unresolved civil rights era murders. President Bush supported the passage of the Emmett Till bill and I testified before this very Committee in support of that legislation. In June 2007, the Division secured the conviction of James Seale on two counts of kidnapping and one count of conspiracy for his role in the 1964 abduction and murder of two African-American teenagers, Charles Moore and Henry Dee, in Franklin County, Mississippi. He received triple life sentences in prison.

In 2003, the Division successfully prosecuted Ernest Avants, who murdered an African-American man in 1966 in the Homochitto National Forest in Mississippi. Without the Administration's commitment to resolving these heinous crimes, justice would not have been done for the victims, their families, and their communities. In both cases, the trial team won the Attorney General's highest award for their stellar performance.

Another area of prosecutions that shockingly and tragically still exists today is cross burnings. From Fiscal Year 2001 to 2007, the Division charged 62 defendants in 41 cross burning cases across the country. For example in *United States v. Shroyer and Milbourn*, two individuals burned a cross in Muncie, Indiana at the home of a white woman and her three bi-racial children. In June 2008, one defendant was sentenced to serve 10 years and 30 days in prison. The other defendant was sentenced to 15 months.

The Housing and Civil Enforcement Section's enforcement of the Fair Housing Act and the Equal Credit Opportunity Act also saw some important accomplishments on behalf of victims of color. For example, over 80% of the fair lending cases filed in the previous Administration alleged race or national origin discrimination. These filings resulted in the recovery of over \$25 million in monetary relief for aggrieved persons.

Moreover, in 2006, the Attorney General launched Operation Home Sweet Home. This was a concentrated initiative to expose and eliminate housing discrimination in America. As a result, the Division set new all-time high records in undercover housing testing in fiscal years 2007 and 2008. As an example of the Division's efforts in this area, it secured the second largest damage award ever obtained by the Division in a Fair Housing Act case against a former landlord in the Dayton, Ohio, area for discriminating against African Americans and families with children. The court ordered the defendant to pay a total of \$535,000 in compensatory and punitive damages to 26 victims. Operation Home Sweet Home also resulted in the first testing case ever brought on behalf of Asian Americans, which resulted in \$158,000 in monetary relief.

The Division also vigorously enforced Title II of the Civil Rights Act of 1964, which prohibits discrimination in places of public accommodation, such as restaurants,

movie theaters, and hotels. For example, in 2007, the Division successfully resolved a Title II lawsuit against the owner of a Milwaukee nightclub that discriminated against African-American patrons by denying them admission for false reasons, claiming, for example, that the nightclub was too full or that it was being reserved for a private party. The consent decree required the nightclub to implement comprehensive changes to its policies and practices in order to prevent such discrimination.

Similarly, in 2004, the Division obtained a consent order in a Title II lawsuit against Cracker Barrel Old Country Stores, which alleged that this family restaurant chain allowed white servers to refuse to wait on African-American customers, segregated customer seating by race, seated white customers before African-American customers who arrived earlier, provided inferior service to African-American customers after they were seated, and treated African-Americans who complained about the quality of Cracker Barrel's food or service less favorably than white customers who lodged similar complaints. The Justice Department's investigation revealed evidence of such conduct in approximately 50 different Cracker Barrel restaurants in seven states: Alabama, Georgia, Louisiana, Mississippi, North Carolina, Tennessee, and Virginia. The consent decree required the restaurant chain to adopt and implement effective nondiscrimination policies and procedures; implement new and enhanced training programs to ensure compliance with Title II and the consent order; develop and implement an improved system for investigating, tracking, and resolving discrimination complaints; retain an outside contractor to test the compliance of Cracker Barrel restaurants with Title II and the order; and publicize the company's nondiscrimination policies.

In the employment context, the Division sued public employers who discriminated in hiring on the basis of race, color, or national origin under Title VII of the Civil Rights Act of 1964. One example is *United States v. City of Chesapeake, Virginia*, in which the Division alleged that the City's use of the mathematics component of the National Police Officer Selection Test ("POST") as a pass/fail screening device in the selection process for the position of entry-level police officer had a disparate impact on African American and Hispanic candidates, as prohibited by Title VII. The Division's extensive investigation began in 2004, led to the filing of a complaint in 2006, and culminated in a consent decree entered in 2007. The decree required the City to alter the tests it uses to screen applicants to the police department and established a settlement fund for the benefit of applicants who had been harmed by the City's discriminatory hiring practices. The Division's Employment Litigation Section filed more Title VII lawsuits in 2008 than in any other year in its history.

In the Bush Administration, the Division's work to eliminate unlawful discrimination against racial minorities also extended to protecting the rights of language minorities. The Division continued vigorously to enforce the Equal Educational Opportunities Act of 1974 to ensure, among other things, that school districts provide appropriate instruction and services to English Language Learners. For example, in 2007, the Division entered into a settlement agreement with a public school district in Maine to ensure that the district provides appropriate instruction and services to its large population of Somali refugees.

The Division also worked to ensure access to federally assisted and federally conducted programs for individuals who are limited English proficient (LEP), under

Executive Order 13166. In addition to coordinating major federal interagency LEP Conferences attended each year by about 400 people from federal, state and local governments as well as community and advocacy groups, the Division conducted investigations and worked with state and local authorities across the country to ensure access for LEP individuals.

II. Protecting the Right to Vote

The Voting Rights Act of 1965 was enacted to remedy a century of pervasive racial discrimination in voting, which resulted in the disenfranchisement of minorities in certain areas of the country. The Civil Rights Division enforces the Voting Rights Act of 1965, which prohibits discriminatory voting practices.

Notably, the Bush Administration supported reauthorization of the Voting Rights Act in 2006, a statute that often is referred to as one of the most important pieces of civil rights legislation passed in this country. During the signing ceremony at the White House, President Bush made clear that the Administration would “vigorously enforce the provisions of this law,” and “defend it in court.” The Justice Department made good on that promise. The Division’s Voting and Appellate Sections worked with the Solicitor General’s Office to mount successful defenses to a Constitutional challenge to Section 5 of the reauthorized Voting Rights Act, which requires certain state and local jurisdictions to pre-clear any changes to their voting procedures with the Department of Justice or the United States District Court for the District of Columbia. Both a lower three-judge panel and the Supreme Court of the United States upheld the provision last term.

Under Section 5 of the Act, the Division's Voting Section is charged with reviewing changes proposed by covered jurisdictions to ensure that those changes do not have a discriminatory purpose or a retrogressive effect. The prior Administration was the busiest in the history of the Division's enforcement of Section 5. In 2008 alone, the Voting Section objected to preclearance applications filed by jurisdictions in Texas, Alabama, and South Dakota, and filed two Section 5 enforcement lawsuits against jurisdictions in Texas and Alabama that had not complied with preclearance requirements.

Section 2 of the Voting Rights Act prohibits state and local officials from adopting or maintaining voting laws or procedures that discriminate on the basis of race, color, or membership in a language minority group. The Division's prosecution of Section 2 lawsuits is a highly complex, time-consuming and resource-intensive endeavor. Extensive background research by the Voting Section is required prior to initiating a lawsuit alleging that state or local voting procedures have impermissibly discriminatory effects. Nevertheless, the Division filed fifteen cases enforcing Section 2 in the last Administration. For example, in 2008, the Department filed a complaint against the Euclid City School District Board of Education in Ohio alleging violations of Section 2. The complaint alleged that the at-large system of electing members of the school board diluted the voting strength of African American citizens due to racially polarized voting. As a result of the Division's lawsuit, the first African-American City Council member was elected from a majority-black voting district in Euclid.

In addition to Section 2, the Civil Rights Division also used other provisions to ensure that persons of color were not being subjected to voting discrimination. For

example, in the Bush Administration, the Division brought more cases under the language minority provisions of the Voting Rights Act than in all previous Administrations combined. It brought the first case on behalf of Korean, Filipino and Vietnamese voters. The cases on behalf of language minority voters have made a remarkable difference in the accessibility of the election process to those voters. As a result of those lawsuits, Boston now employs five times more bilingual poll workers than before, and San Diego added over 1,000 bilingual poll workers. Hispanic voter registration in San Diego increased by over 20 percent between the settlement with that city in July 2004 and the November 2004 general election. There was a similar increase among Filipino voters in San Diego, and Vietnamese voter registration rose 37 percent. The Division's lawsuits also spurred voluntary compliance. For example, after the San Diego lawsuit, Los Angeles County added over 2,200 bilingual poll workers, an increase of over 62 percent.

Another example of the Division's aggressive enforcement of the voting laws is its enforcement of Section 208 of the Voting Rights Act, which protects the right of voters who have disabilities or who cannot read or write English to choose a person to assist them in voting. In the previous Administration, the Division filed over three times as many cases under Section 208 as had been filed in the previous 24-year history of the law, including the first case ever brought under the Voting Rights Act to protect the rights of Haitian Americans.

The Division's vigorous enforcement of the National Voter Registration Act of 1993 (NVRA), and the Help America Vote Act of 2002 (HAVA) also frequently overlapped with its ongoing efforts to end racial discrimination in voting. In a lawsuit

against Cibola County, New Mexico, which initially involved claims under Sections 2 and 203, the Division brought additional claims under the NVRA after the County failed to process voter registration applications of Native American voters, removed Native American voters from the rolls without the notice required by the NVRA, and failed to provide provisional ballots to Native American voters in violation of HAVA. In a case in Philadelphia, the Division supplemented its Section 203 and 208 claims with additional counts under Sections 2 and 4(e) of the Act to protect Hispanic voters, a count under the NVRA pursuant to which the City agreed to remove the names of over 10,000 dead persons from the rolls, and a count under HAVA to assure that accessible machines are available to voters with disabilities. Cases like these demonstrated the Division's efforts to further its enforcement efforts by enhancing the Division's ongoing commitment to remedy traditional civil rights violations -- such as racially discriminatory voting practices -- that have always been at the heart of the Division's work.

The Division's work on the 2008 federal election further demonstrated the commitment of the Division to ensuring fair and equal access to the ballot box. The Division trained and coordinated more than 800 federal observers and Department personnel to 59 jurisdictions in 23 states to monitor polling places during the November 4th, 2008 general election. Earlier in the election year, the Division sent a total of 415 federal observers and 167 Department personnel to monitor 55 primary elections in 50 jurisdictions in 18 states.

Given the concerns in the weeks leading up to the election and the historic turnout on November 4th, 2008, it is heartening that the Division observed relatively few incidents that warranted its attention. Unfortunately, some of the incidents it saw were

serious. On November 20, 2008, a federal grand jury in Memphis, Tennessee returned an indictment against two men who engaged in an alleged plot to threaten then-presidential candidate Obama and an alleged killing spree of African-Americans. On January 7, 2009, the Division filed a voter intimidation lawsuit against the New Black Panther Party and three of its members for allegedly issuing racial threats while brandishing a weapon outside a polling place in Philadelphia, Pennsylvania. The same day, the Division announced that three New Yorkers were charged with allegedly conspiring to assault African-Americans in retaliation for President-Elect Obama's election victory. The indictment in the New York case describes multiple alleged victims, including an African-American teenager who was allegedly beaten with a metal pipe and collapsible police baton. Unfortunately, these incidents show that while we have made tremendous progress in our country, the work of the Division continues.

III. Ensuring the Integrity of Law Enforcement

From 2001 to 2008, the Criminal Section of the Civil Rights Division continued to vigorously enforce federal criminal civil rights statutes, setting prosecution records in several areas. In over one thousand cases brought during that time, the Criminal Section's overall conviction rate was above 90%, and the 98% conviction rate achieved in 2006 was the highest since they started keeping statistics twenty years ago.

The largest portion of the Criminal Section's docket was the prosecution of color of law crimes committed by law enforcement officers who violated the constitutional bounds of their authority. Although the vast majority of law enforcement officers around the country serve and protect the public within the bounds of the law, those who violated

the law were pursued aggressively by the Division. In the prior Administration, the Criminal Section brought 327 cases alleging official misconduct as compared to the 253 cases brought during the eight years immediately preceding the Bush Administration. Similarly, from 2001 through 2007, the Division obtained convictions of 53% more law enforcement officials for color of law violations than in the preceding seven years. In the 2005 prosecution of *United States v. Walker and Ramsey*, for example, the Criminal Section successfully prosecuted two men for the politically-motivated assassination of the county sheriff-elect at the direction of the incumbent sheriff. In previous state court trials, the sheriff had been convicted of murder and sentenced to life in prison, but the other defendants had been acquitted of murder charges. The Department stepped in and obtained federal convictions of two of the defendants, including a former deputy sheriff.

The Special Litigation Section of the Civil Rights Division also vigorously enforced laws that prohibit a pattern or practice of unconstitutional policing under the Violent Crime Control and Law Enforcement Act of 1994. From 2001 to 2008, the Section worked to improve the integrity of law enforcement by more than tripling the number of settlements negotiated with police departments as compared to the Clinton Administration. The Division provided technical assistance to police departments seeking advice on how to protect civil rights, issuing 20 technical assistance letters from 2001 to January 20, 2009, compared to 3 issued during the preceding eight-year period.

In addition, the Employment Litigation Section ensures that public entities, including police departments, do not unlawfully discriminate against employees or job applicants. For example, the Division secured a consent decree under which the Delaware State Police agreed to provide \$1,425,000 to qualified African Americans who

applied for entry-level state trooper positions between 1992 and 1998 but were denied employment as a result of the State's unlawful use of a discriminatory written examination.

IV. Protecting the Rights of Women

As the first Presidentially-nominated woman to lead the Civil Rights Division, I am particularly proud of the work it did on behalf of female victims. For example, the Bush Administration took on the new responsibility of enforcing the Trafficking Victims Protection Act, which was signed into law in January 2001. Human trafficking is a horrific crime that involves the use of force, fraud or coercion to compel labor or services. Victims of human trafficking in the United States are typically poor, primarily women and children of color, who are exploited in the commercial sex industry or forced into manual or domestic labor. Many do not speak English well and have only recently entered the United States. The Attorney General's initiative on human trafficking made the prosecution of these crimes a top priority for the Division, and the emphasis resulted in a remarkable increase in enforcement. As a result of this work, from fiscal years 2001 through 2008, the Civil Rights Division and U.S. Attorneys' Offices increased the number of human trafficking cases filed by over 600% compared to the number of cases brought in the preceding eight years. The Division secured 99 human trafficking convictions in 2006 and 104 in 2007. The previous high for convictions in a single year was 33.

In 2007, the Division created the Human Trafficking Prosecution Unit (HTPU) within the Criminal Section to consolidate the expertise of some of the nation's top

trafficking prosecutors. HTPU prosecutors worked closely with United States Attorneys and local law enforcement agencies to streamline trafficking investigations, ensure consistent application of trafficking statutes, and identify multijurisdictional trafficking networks. Under the Division's leadership, the federal government successfully prosecuted human trafficking crimes in agricultural fields, factory sweatshops, suburban mansions, brothels, escort services, bars, and strip clubs. For example, in 2008, eight defendants were convicted for their roles in a scheme to smuggle young Central American women into the United States. The defendants threatened violence against the women and their families to compel them into service at restaurants, bars, and cantinas. The two lead defendants each were sentenced to 180 months in prison, and all the defendants were ordered to pay a total of \$1.7 million in restitution. In another case, in 2006, six defendants pleaded guilty to operating a human trafficking ring that smuggled young Mexican women and girls into the United States and forced them into prostitution through threats, violence, and psychological manipulation. Two defendants each were sentenced to 50 years in prison, and a third was sentenced to 25 years. In addition to prosecuting the perpetrators of these horrible crimes, the Division also helped victims by working with other agencies to facilitate the process of normalizing their immigration status, obtaining work visas or applicable benefits. Under the Trafficking Victims Protection Act of 2000, the Division assisted 1166 trafficking victims from 75 countries.

Another area of enforcement that saw remarkable growth in the prior Administration was in the number of sexual harassment cases filed under the Fair Housing Act, including the number of complex and comprehensive "pattern or practice" cases. In the Bush Administration, the number of sexual harassment cases in this area

increased by 36 percent. With regard to pattern or practice cases in this area, the Division filed 17 in the last Administration as compared to six in the Clinton Administration. In 2004, the Division obtained its largest jury verdict ever in a case alleging sexual harassment violations under the Fair Housing Act--\$1.1 million in *United States v. Veal*. In 2008, it also set a new record high for the largest monetary settlement in such a case of \$1 million. And the Division, in *United States v. First National Bank of Pontotoc*, brought its first lawsuit under the Equal Credit Opportunity Act alleging sexual harassment of female borrowers and loan applicants by a former vice president of a bank in Mississippi. That case was settled favorably in 2007 for \$350,000 in monetary relief.

The Employment Litigation Section set new records in the prior Administration as well. In Fiscal Year 2008, it filed more lawsuits than in any other year of its history. The Division brought numerous lawsuits protecting women from pregnancy discrimination, sexual harassment, hostile work environments and other Title VII violations in Florida, North Carolina, South Carolina, New Mexico, New York, Louisiana, Michigan, Missouri, Pennsylvania, Texas, Puerto Rico and elsewhere.

Also in 2008, the Coordination and Review Section organized a federal interagency symposium on Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally assisted education programs and activities. The same year, the Special Litigation Section of the Civil Rights Division entered into a comprehensive agreement to ensure adequate mental health care at the Taycheedah Correctional Institution, Wisconsin's only prison for women.

V. Safeguarding the First Freedom

Perhaps one of the most fundamental and traditional civil rights we have is the first one set forth in the Bill of Rights: the free exercise of religion. Under previous Administrations, the Division had not emphasized these protections, and enforcement actions aimed at religious discrimination were rare. Following the attacks of 9/11 and the resulting increase in discriminatory actions against Muslims, the Bush Administration created the position of Special Counsel for Religious Discrimination. The Special Counsel is tasked with coordinating the Division's enforcement of the various laws within its jurisdiction that protect religious freedom and to oversee education and outreach in this area. From the time this position was created until January 2009, the Division won virtually every religious discrimination case in which it was involved and sharply increased the protection of religious liberties throughout the country.

Title IV of the Civil Rights Act of 1964 prohibits religious discrimination in public schools as well as public colleges and universities. In the prior Administration, the Division reviewed nearly 100 cases and opened over 33 investigations involving various types of religious discrimination in education. The largest category of such cases involved patterns of harassment based on religion. As an example, the Division reached a settlement in 2003 in a case involving a Muslim girl who had been barred from wearing a head scarf to school when other students had been allowed to wear head coverings for various reasons. The Division also placed a priority on facilitating the reporting, identification and investigation of bias-based assaults, threats, vandalism, arson and other crimes against Muslims, Sikhs, Arabs and South Asians, who have experienced an increase in such offenses since the 9/11 attacks. Under the Attorney General's Initiative

to Combat Post-9/11 Discriminatory Backlash, the Division brought charges against 46 defendants in these cases, resulting in 41 convictions in the last Administration. With the help of the Justice Department in many cases, state and local authorities have brought more than 160 such bias crime prosecutions since 9/11.

Another category of education-related religion cases involved students who were barred from engaging in religious expression where comparable secular expression is permitted. In 2006, the Division filed an amicus brief in federal court in New Jersey on behalf of a student who was barred from singing a Christian song at a school talent show. The court adopted the Division's reasoning and ruled, in favor of the student, that the singing was the student's constitutionally protected expression and not religious speech by the government. In another such case, the Division reached a settlement with a school district in Texas that had forbidden Muslim high school students from praying during lunch in a common area where other students gathered for secular purposes.

In the employment context, in which religious discrimination is prohibited by Title VII of the Civil Rights Act of 1964, the Division has responsibility for bringing suits against public employers, who are required to make reasonable accommodations for employees' religious observances and practices unless doing so would cause the employer undue hardship. Researching and proving a "pattern or practice" of religious discrimination by public employers is a laborious process. Notably, the Employment Litigation Section filed four such pattern-or-practice cases alleging religious discrimination, including a case where the Division secured an agreement with the Los Angeles Metro Transit Authority under which the city is required to accommodate bus drivers whose faith required them to refrain from working on the Sabbath.

Religious discrimination is also prohibited by the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA). In the previous Administration, the Division's Housing and Civil Enforcement Section opened 18 FHA and ECOA investigations and filed five lawsuits involving religious discrimination. These lawsuits involved a variety of circumstances, including the denial of housing based on religion, harassment based on religion, and the unlawful collection of religious information on credit applications.

In addition, the Division opened seven investigations involving religious discrimination in public accommodations, which is prohibited by Title II of the Civil Rights Act of 1964. For example, the Division settled a case with a restaurant that told a Sikh man he had to remove his turban to enter the restaurant. In response to the Division's investigations, similar cases were resolved by other establishments without the need for a lawsuit.

Moreover, the Civil Rights Division under the Bush Administration was entrusted with the enforcement of newly enacted legislation designed to protect religious freedom in the Religious Land Use and Institutionalized Persons Act (RLUIPA). Among other things, the RLUIPA prohibits zoning and land-marking laws that substantially burden the religious exercise of churches and other religious assemblies or that treat religious institutions on less than equal terms with nonreligious institutions. Congress unanimously enacted the RLUIPA in 2000 after finding that minority religions are frequently disproportionately disadvantaged in local zoning processes and that even well-established denominations often face discrimination and exclusionary zoning practices. In the Bush Administration, the Division reviewed over 200 RLUIPA matters and opened 48 full investigations. The Division's work in this area protected the free exercise and

assembly rights of Christian, Jewish, Muslim, Sikh, Hindu, Buddhist, and Native American religious assemblies. Seventeen of these investigations were resolved favorably without the filing of a lawsuit. Six have resulted in RLUIPA lawsuits, at least three of which were resolved in the Division's favor prior to January 2009. One RLUIPA lawsuit that resulted in a favorable settlement involved the denial of a building permit to an Orthodox Jewish synagogue in a residential neighborhood where such permits were routinely granted to other houses of worship and nonreligious assemblies. In addition, in the last Administration, the Division's Appellate Section filed eight amicus curiae briefs in federal courts of appeals in cases raising similar issues under RLUIPA.

VI. Protecting the Rights of Military Servicemembers

Particularly during this time of war, the Division embraced its responsibility to support our men and women in uniform by enforcing federal laws that protect their civil rights. In the prior Administration, the Division's Employment Litigation Section, Voting Section, Housing and Civil Enforcement Section, and Special Litigation Section brought several significant cases on behalf of servicemembers and veterans under a variety of statutes, some of which have only recently come under the Division's purview.

For example, in 2004, the Attorney General transferred enforcement responsibility for the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to the Civil Rights Division from the Civil Division, and from 2004 to January 20, 2009, it vigorously enforced the statute. USERRA seeks to ensure that returning servicemembers will not be penalized in their civilian jobs for their uniformed service to our nation. In fiscal year 2008, the Division filed a record number of USERRA

suits and obtained a record number of settlements. In an example of a typical case, the Division filed suit on behalf of Mary Williams, a National Guard reservist who was not properly reemployed and promoted by her employer, Gibson County, Tennessee, upon her return from two years of active duty in Iraq. On May 21, 2008, attorneys in the Division's Employment Litigation Section secured a consent decree under which Ms. Williams was reemployed, promoted to the position to which she was entitled under USERRA, and paid \$17,000 to compensate for lost wages and other damages she suffered as a result of the county's unlawful actions.

Also among the Division's USERRA successes was the first class action USERRA lawsuit, which was filed against American Airlines, the nation's largest commercial air carrier. In August 2008, the federal district court in Dallas, Texas, approved a settlement agreement under which American Airlines agreed to pay restitution to 382 affected pilots for the vacation and sick leave benefits they lost while serving military duty. The settlement also requires American Airlines to modify its policies to ensure that, in the future, all pilots who are called to serve in the military will continue to accrue appropriate benefits.

Another area of emphasis for the Division was the protection of the right of servicemembers stationed or deployed abroad to vote pursuant to the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA). In fiscal years 2001-2008, the Voting Section took legal action or obtained relief without the need for litigation in Texas, Oklahoma, Pennsylvania, Georgia, North Carolina, Connecticut, Tennessee, Vermont, Alabama and Virginia to ensure that states are meeting their obligation under UOCAVA to send out timely absentee ballots to military and overseas voters.

The Division's Housing and Civil Enforcement Section enforces the Servicemembers Civil Relief Act of 2003 (SCRA), which provides financial protections for military personnel when they enter active duty. The prior Administration viewed the safeguarding of servicemembers' SCRA benefits as a very serious matter – again, especially during a time of war – and the Division was proud to be of service to the nation's men and women in uniform. Enforcement authority for SCRA was transferred to the Civil Rights Division from the Civil Division in 2006. In the years following that transfer until January 20, 2009, the Civil Rights Division assisted numerous servicemembers and military legal assistance attorneys in understanding and enforcing their rights under the SCRA. For example, in 2008, the Division sued a company that towed and sold a soldier's car while he was deployed in Iraq, in violation of the SCRA. The complaint also alleged that the defendants may have injured other servicemembers by enforcing storage liens on their vehicles without court orders.

The Division also addressed a number of related SCRA matters. It investigated the imposition of loan prepayment penalties against servicemembers, the charging of servicemembers more than a 6% interest rate, and the enforcement of storage liens against servicemembers, all of which are unlawful under the SCRA. In one such case, it reached an agreement with Homecomings Financial, LLC under which Homecomings agreed to waive prepayment penalties assessed against servicemembers who sold their homes after being transferred to different bases. The agreement covers previously assessed penalties and changes the company's policy prospectively to eliminate such penalties in the future.

With the Division's help, in 2008, the U.S. Attorney's Office in the Western District of Michigan conducted the first criminal SCRA prosecution against a landlord who evicted an Army soldier's pregnant wife and children from a rented trailer, removed the family's belongings, and changed the locks. A federal magistrate sentenced the defendant to six months imprisonment and ordered \$15,300 in restitution.

Finally, the Division's Special Litigation Section pursued numerous significant matters involving the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA) to protect the rights of veterans in public institutions. For example, after investigating allegations of deficient care in the Tennessee State Veterans' Home facilities in Humboldt and Murfreesboro, the Division issued a findings letter on February 8, 2008, recommending remedial action. When I left the Division in January 2009, the Special Litigation Section was working with the state to address these concerns.

VII. Protecting the Rights of Persons With Disabilities

Following the January 2001 signing of the President's New Freedom Initiative, which affirmed the Administration's commitment to tearing down the barriers to equality that individuals with disabilities still face, the Civil Rights Division obtained favorable outcomes for persons with disabilities in over 2,600 Americans with Disabilities Act (ADA) actions, including formal settlement agreements, informal resolution of complaints, successful mediations, consent decrees, and court decisions. Many individuals with disabilities are able to enjoy life much more fully as a result of the Division's enforcement activities.

The Division's ADA work involved cases all across the country and in a variety of settings, including hospitals, public transportation, restaurants, movie theaters, college campuses, and retail stores. Examples of high-profile successes include a precedent-setting settlement agreement with The International Spy Museum in Washington, D.C. to improve access to its exhibits, theaters, restaurant, and museum shop for visitors with vision, hearing and mobility disabilities. The agreement establishes a new level of access for cultural and informal educational settings. In another case, the Division reached a consent decree resolving a lawsuit against the University of Michigan to ensure accessible seating in its football stadium, the largest collegiate stadium in the country. The stadium, which was undergoing a \$226 million expansion, will have over 300 pairs of wheelchair and companion seats by 2010. In addition, the Division worked to eliminate disability discrimination in the housing context. From 2001-2008, 46 percent of the Division's Fair Housing Act cases (129 of 279) have alleged discrimination based on disability.

Throughout the previous Administration, the Division's Education Opportunities Section worked diligently to protect the rights of children with disabilities. For example, on November 4, 2008, the United States intervened in *Lopez & United States v. Metropolitan Government of Nashville and Davidson County*, a lawsuit alleging sexual abuse of a student with disabilities on a special needs bus in the Nashville Public School System. The United States' complaint asserts that the district violated Title IX of the Education Amendments of 1972, as the district was deliberately indifferent to known instances of severe, pervasive and objectively offensive sexual harassment of students

with disabilities transported on district school buses, effectively barring the students' equal access to educational opportunities or benefits.

The Division's Special Litigation Section's CRIPA enforcement helps ensure that institutionalized individuals with disabilities receive adequate habilitation, appropriate medical and mental health treatment, and service in the most integrated setting appropriate to their needs. For example, in June 2008, the Division executed a comprehensive settlement agreement with the City of San Francisco to address outstanding deficiencies at Laguna Honda Hospital and Rehabilitation Center, which is the largest publicly-operated, single-site nursing home in the United States. The settlement agreement requires the city to develop and implement appropriate community services and supports for residents, and improve safety, health care, psychiatric care, and other important services and supports at the nursing home.

In addition to its enforcement efforts, the Division created Project Civic Access (PCA), a wide-ranging initiative to ensure that towns and cities across America comply with the ADA. The goal of Project Civic Access was to ensure that persons with disabilities have an equal opportunity to participate in civic life. By the end of the last Administration, the Division had reached 161 agreements with 147 communities in all 50 states, the District of Columbia, and Puerto Rico to make public programs and facilities accessible. Each of these communities agreed to take specific steps, depending on local circumstances, to make core government functions more accessible to individuals with disabilities. The agreements have improved access to many aspects of civic life, including courthouses, libraries, parks, sidewalks, and other facilities, and address a wide range of accessibility issues, such as employment, voting, law enforcement activities,

domestic violence shelters, and emergency preparedness and response. Quite literally, they have opened civic life up to individuals with disabilities throughout the country.

The Division expanded its PCA focus to include emergency preparedness for individuals with disabilities. Activities related to recovery from the hurricanes in the Gulf region in 2005 included reviewing draft specifications and sample floor plans for accessible travel trailers and mobile homes. The Division also provided guidance to FEMA on constructing accessible ramps, trained FEMA's equal rights staff on best practices in addressing the emergency-related needs of individuals with disabilities, and began working with local governments to ensure that their emergency management plans appropriately address the needs of individuals with disabilities. Moreover, under Executive Order 13347, Individuals with Disabilities in Emergency Preparedness, the Division collaborated with the Department of Homeland Security's Office for Civil Rights and Civil Liberties in its emergency management activities. The dedication of the men and women on this project is just one example of the prior Administration's commitment to helping individuals with disabilities.

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As a former career attorney who worked for over a decade in all three branches of the federal government before being selected for a leadership position at the Civil Rights Division, I can appreciate the hard work, dedication and professionalism of the career staff. These hardworking individuals are committed to vigorously enforcing this country's civil rights laws. As the Division transitions to its new leadership, I am confident that they will find a healthy and productive institution that, if kept on the course

I saw during my tenure, will continue to carry on the proud tradition of the Civil Rights Division.