



# Department of Justice

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**STATEMENT OF  
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CIVIL RIGHTS DIVISION**

**BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES**

**OVERSIGHT HEARING ON THE U.S. DEPARTMENT OF JUSTICE  
CIVIL RIGHTS DIVISION**

**PRESENTED  
JULY 26, 2012**

**Statement of Assistant Attorney General Thomas E. Perez**  
**Civil Rights Division**  
**United States Department of Justice**  
**Before the Subcommittee on the Constitution**  
**House Committee on the Judiciary**  
**July 26, 2012**

Chairman Franks, Ranking Member Nadler, and members of the Subcommittee, thank you for the opportunity to discuss the critical work of the Civil Rights Division of the Department of Justice. The Division's fundamental mission is to uphold the civil and constitutional rights of all Americans. In the year since I last appeared before this Subcommittee, we have continued to fulfill the promise of equal justice under law for all by vigorously and fairly employing the laws we are charged with enforcing. I am pleased to come before you today to discuss the accomplishments of the Division and its dedicated, hard-working corps of career lawyers and other professionals. It is especially fitting that I am appearing before you today – July 26 – the 22<sup>nd</sup> anniversary of the enactment of the Americans with Disabilities Act of 1990, the ADA. Not only is the Department of Justice fully engaged in enforcing this landmark law – efforts that I will discuss in my testimony – but, in addition, the Department's implementation and enforcement of the ADA and the ADA Amendments Act exemplify a proud, bipartisan tradition of fair and vigorous enforcement of the Nation's civil rights laws.

When I first appeared before this Subcommittee nearly three years ago, I emphasized the centrality of that tradition in my own career. I first came to the Civil Rights Division as a summer clerk under Attorney General Edwin Meese, and served as a career attorney during both Republican and Democratic administrations. I learned then what is now my solemn duty to uphold; no matter the President or the party, the mandate of the Civil Rights Division is clear: to enforce all – and I underscore all – of the civil rights laws under our jurisdiction fairly, independently, and in a nonpartisan fashion.

Our work is grounded in three basic principles:

- We expand opportunity in a number of ways through the enforcement of civil rights laws – the opportunity to learn; the opportunity to earn; the opportunity to live where one chooses, access the American dream, and move up the economic ladder of success.
- We preserve the fundamental infrastructure of democracy by protecting the right to vote and by ensuring that communities have effective and accountable policing; and
- We protect Americans so they can live without fear of exploitation, discrimination or violence.

I am very proud of the Division's work. We have stepped up enforcement in a wide range of critical areas. We do not measure our progress simply by the quantity of cases, although I am very proud that we have indeed set enforcement records in a number of areas. In addition, we have been involved in a host of cases that have enabled us to assist thousands of people for whom access to opportunity was elusive, and to effect systemic reform in a number of vital areas.

To take just a few examples:

- Last fiscal year, the Division obtained the convictions of 39 defendants on hate-crimes charges, the largest annual number in more than a decade. And in each of the last three fiscal years, the Division has brought more human-trafficking cases than in any prior year, with a total of 137 cases filed.
- In Fiscal Year 2011, the Voting Section handled 27 new cases, matching the 1994 level as the most new cases in a single fiscal year in 35 years. As of last week, the Voting Section has already exceeded that number for Fiscal Year 2012, handling 36 new cases.
- Last month, the Department obtained its largest-ever disability-based housing discrimination settlement: a \$10.5 million settlement to resolve allegations that a construction company based in Irving, Texas discriminated on the basis of disability in the design and construction of multifamily housing complexes throughout the United States.
- In May, the Department announced the largest recovery ever in a sexual harassment suit brought by the Department under the Fair Housing Act: three Manhattan landlords will pay \$2 million to their sexual harassment victims.
- In the past eight months, the Division has settled the three largest fair-lending cases in its history that addressed conduct during the housing boom. In December 2011, the Department announced its largest fair-lending settlement ever: a \$335 million settlement with Countrywide Financial Corporation (now owned by Bank of America) to resolve allegations of a widespread pattern or practice of discrimination against qualified minority borrowers. Earlier this month, the Department reached a settlement with Wells Fargo in which Wells Fargo agreed to pay at least \$175 million to resolve claims that it discriminated against qualified African Americans and Latinos in its mortgage lending. And in May, the Department reached a \$21 million settlement with SunTrust Mortgage to resolve allegations that it engaged in a pattern or practice of discrimination that increased loan prices for qualified African-American and Hispanic borrowers.

- In March 2012, the Division announced a major settlement to protect children from school bullying in the Anoka-Hennepin School District, Minnesota. The settlement provides compensation for the student plaintiffs and establishes a comprehensive plan for sustainable reforms that will ensure that students in the district are free from sex-based harassment.
- Under the current Administration, 43 cases have been filed under the Uniformed Services Employment and Reemployment Rights Act (USERRA), already exceeding the 32 USERRA cases filed in the entire four years during the previous Administration when the Division had USERRA jurisdiction.
- In addition to aggressively enforcing existing statutes – the Servicemembers Civil Relief Act (SCRA), and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) – that protect the civil rights of the men and women in uniform who serve our nation with great honor and dignity, the Division has developed legislative proposals that the Administration has submitted to Congress to strengthen these statutes so as to better protect the rights of our servicemembers.
- In the past year, we've resolved several investigations to ensure that limited English proficient individuals seeking state court services have meaningful access to language assistance services. In response to our investigations, both Rhode Island and Colorado have agreed to take important steps toward providing free and competent interpreter services in all criminal and civil proceedings and court operations.
- In January 2012, the Division reached agreement with the Commonwealth of Virginia to transform Virginia's system for serving people with intellectual and developmental disabilities from one that relies heavily on large, expensive institutions to one that is focused on safe, individualized, and cost-effective community-based services that promote integration and independence and enable individuals to live, work, and participate fully in community life. This is the latest of several systemic agreements implementing the Americans with Disabilities Act's integration mandate as articulated by the Supreme Court in *Olmstead v. L.C.* The agreement will provide relief for more than 5,000 Virginians with developmental disabilities and will have an impact on thousands more individuals who receive developmental disability services. The agreement will provide services through Virginia's home and community-based service Medicaid waiver to approximately 4,200 individuals who are on waitlists for community services and individuals transitioning from institutional settings over a ten-year period.

These accomplishments underscore our commitment to the fair, vigorous, and evenhanded enforcement of all of the laws under our jurisdiction. The talented, dedicated career attorneys, professionals, and support staff who work in the Division are committed to these principles, and they have done extraordinary work. My testimony represents only a fraction of this work, and the numbers themselves, while important, tell only a part of the story. The full

range of the Division's activities – which are conducted through a variety of means, including litigation, technical assistance, mediation and negotiation, monitoring, and outreach to stakeholders – are critical to protecting the civil rights of all individuals.

## **CRIMINAL ENFORCEMENT AND LAW ENFORCEMENT MISCONDUCT**

### *Hate Crimes*

Hate crimes enforcement is among the earliest of our responsibilities in the Civil Rights Division, and it remains one of the Administration's and the Department's top civil rights priorities. Regrettably, hate crimes remain all too prevalent in communities across the country today, but the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 has strengthened the Department's ability to prosecute hate crimes at the federal level.

As of the end of June, the Division has brought 11 cases involving 38 defendants under the Shepard-Byrd Act. Of those 38 defendants, 16 have been convicted and the other 22 are awaiting trial. But Shepard-Byrd is not the only hate crimes law under the Division's jurisdiction. In total, in Fiscal Year 2011 the Division obtained convictions of 39 defendants on hate-crimes related charges, the largest annual number in more than a decade. In the past three fiscal years (FY 2009-2011), the Division has prosecuted 15 percent more criminal civil rights cases than in the previous three fiscal years.

To give examples of the persistence of hate-fueled violence, in March of this year, I traveled to Jackson, Mississippi, to participate in the announcement of guilty pleas by three men convicted under Shepard-Byrd Act in connection with a brutal racially motivated murder of James Craig Anderson, an African-American man. In this tragic case, the defendants were driving around the streets of Jackson looking for unsuspecting African-Americans to assault. They observed Mr. Anderson in a hotel parking lot and proceeded to attack him, knocking him to the ground with a punch and continuing to assault him after he fell. One defendant yelled "White Power!" and then deliberately ran over Anderson with his truck, causing fatal injuries. This was not the defendants' first assault; they admitted that, on numerous occasions, they had used beer bottles, sling shots, and motor vehicles to injure African-Americans, targeting those they believed to be drunk or homeless and least likely to report an assault. Through close collaboration among the Department, the FBI, and local law enforcement, we put an end to the defendants' spree of racial violence, and brought Mr. Anderson's assailants to justice.

In April 2012, the Department indicted two men for kidnapping and assaulting a gay man because of his sexual orientation. This indictment marked the first charges for a violation of the sexual orientation provision of the Shepard-Byrd Act. The indictment alleges that on April 4, 2011, the two defendants enlisted two women to trick Kevin Pennington to get into their car, then kidnapped and assaulted Pennington because of his sexual orientation. If convicted, the defendants face a maximum penalty of life in prison for each charge.

## *Human Trafficking*

Human trafficking – which is an affront to human dignity and goes against everything our country stands for – is a hidden crime that victimizes the most vulnerable among us. Like drug trafficking or gun trafficking, human trafficking also frequently involves complex international cartels. The Division continues to vigorously prosecute trafficking cases, and the Division brought more trafficking cases in each of the three fiscal years from FY 2009 through FY 2011 than in any prior year, with a total of 137 cases filed.

Just two weeks ago, a trafficker in Philadelphia whom we prosecuted was sentenced to prison for holding men and women in forced labor on commercial cleaning crews, using violence and threats to hold the victims under the control of this organized criminal network. Earlier this year, in Chicago, we obtained the conviction of a trafficker who preyed on young Eastern European women, using tattoos to brand them as his property, and then forcing them into service in massage parlors, extorting them with threats, and compelling some of them into prostitution.

We have also, in recent months, secured convictions of Mexican sex traffickers who preyed on young, undocumented women and girls on both sides of the U.S.-Mexico border, luring them with false promises, and then compelling them into sex slavery through beatings and threats. Through strong partnerships with the Department of Homeland Security and our Mexican law enforcement colleagues, we have been able to dismantle trafficking rings at their roots, using both U.S. and Mexico law.

The strength of our anti-trafficking efforts lies in the strength of our partnerships both within and outside of the federal government. For example, across the country, United States Attorneys are leading task forces that bring together federal, state, and local law enforcement partners and NGOs to increase our capacity to identify and assist victims and bring their traffickers to justice.

## *Law Enforcement Misconduct*

We have great respect for the dedicated work of law enforcement officials who perform heroic service in the difficult job of protecting their communities. However, when officers abuse their power, they must be held accountable. Last August, the Division 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 had previously pled guilty to charges related to the incident. To address systemic problems in the New Orleans Police Department, the Division conducted an extensive review of the department and is now working with city officials, the police department, and the community to develop a comprehensive blueprint for sustainable reforms.

Our work in New Orleans was just one of several efforts the Division has launched throughout the country to address systemic misconduct in police departments. We have 18 pattern or practice investigations underway nationwide, and are doing more work in this area

than at any time in the Division's history. Recently, we completed reviews of the Puerto Rico Police Department, the Seattle Police Department, and the East Haven (CT) Police Department. Our police pattern or practice work is guided by a commitment to protecting constitutional rights, promoting public safety, and increasing public confidence in law enforcement, and we will continue to pursue these aims.

We are now working with the jurisdictions to determine a path forward that ensures constitutional policing. A Division investigation is often not an easy thing for a police department to undergo, but across the nation the benefits have been real. In places such as New Orleans and Seattle our investigations have been catalysts for reform. Where we have identified a pattern of police misconduct, we have typically sought to negotiate agreements pre-suit with the departments involved. Less finger pointing and more problem-solving, fixing the problem and not fixing the blame has been our approach.

Law enforcement misconduct is a priority for this Division and our results show that we are continuing to make great progress. We have already exceeded the number of criminal "color-of-law" cases from the number we brought in FY 2011. We are also working on a record number of civil pattern or practice cases, presently 19. Seeing the benefit of our thorough and independent work, police departments and local government officials have been increasingly reaching out to us asking for us to determine whether their departments are engaged in constitutional policing.

## **VOTING RIGHTS**

The Division is continuing to work vigilantly to enforce an array of critical voting rights laws. The Division's voting enforcement program seeks to ensure access to democratic participation for all legally qualified voters, and ensures equal opportunity to participate in the democratic process free from discrimination. We are pursuing those goals of ensuring access and guaranteeing non-discrimination through a comprehensive effort to enforce, among other statutes:

- Section 5 of the Voting Rights Act, and its pre-clearance provision, one of the most critical tools to combat discrimination in voting;
- The National Voter Registration Act (NVRA), which was passed by Congress to increase the number of eligible citizens who register to vote and to ensure accurate and current registration lists;
- The language minority protections of the Voting Rights Act, to ensure that language barriers do not exclude citizens from the electoral process;
- UOCAVA and the MOVE Act, protecting the right to vote for members of the armed services, their families, and overseas citizens; and

- Section 2 of the Voting Rights Act, and its protections against vote denial and vote dilution.

Our comprehensive approach towards these and other critical voting rights protections involves not simply litigation, but all the tools at our disposal, including guidance, public education, and outreach with a diverse array of stakeholders. Across multiple measures, the Division has amassed a prodigious record of fair and vigorous voting rights enforcement.

As of mid-July, the Division's Voting Section had already handled more new cases than in any fiscal year during at least the last 35 years, handling 36 cases including affirmative and defensive cases and amicus participation. This exceeds the high-water mark reached in Fiscal Year 2011, when the Division handled 27 new cases and matched the 1994 level. The Section opened 172 new investigations in Fiscal Year 2011, exceeding the number of investigations opened in any fiscal year during at least the last two dozen years.

In Fiscal Year 2011, the Division received 4,604 submissions for review under Section 5, including 660 redistricting plans. Overall, we anticipate that more than 2,700 plans will be submitted between the release of the 2010 Census data and the end of FY 2012. The Division has objected under Section 5 in 14 separate instances over the last ten months, including objections to the Texas and South Carolina voter ID laws, the Texas statewide redistricting plans, and other city- and county-level redistricting plans and election practices.

Section 5 of the Voting Rights Act has been subject to more constitutional challenges over the last two years than ever before – nine lawsuits in total, with four lawsuits now pending, including those filed by Florida and Texas. The Department recently achieved a significant victory when the D.C. Circuit Court upheld the statute. These cases are continuing and we will continue to defend the statute vigorously in each case.

In addition, the Division continues to review requests from covered jurisdictions for “bailout” from the requirements of Section 5. Under the statute, covered jurisdictions that believe their record of nondiscrimination in voting entitles them to be removed as a covered entity can petition for “bailout.” There have been 36 bailout cases filed with the D.C. court since the current bailout provision became effective in 1984; of those 36 cases, 18 – fully half of the total– have been filed in the past three years. These 18 cases include the first-ever bailouts from jurisdictions in Alabama, California, Georgia, and Texas; the first bailout from a jurisdiction in North Carolina since 1967; and the largest-ever bailout, in terms of population, in Prince William County, Virginia.

In short, we have seen, through our recent objections, that Section 5 remains relevant and necessary. At the same time, our bailout activity demonstrates that Section 5 is not overinclusive, and that the Division fully supports the use of bailouts to enable jurisdictions to terminate their pre-clearance obligations when appropriate.



The Division is actively working to investigate and enforce all provisions of the NVRA. States covered by the NVRA must follow its requirements to make voter registration available to applicants at all driver license offices, at all public assistance offices and disability offices, and through the mail.

States must also follow the requirements of Section 8 of the NVRA to ensure that eligible voters who submit a timely application are timely added to the voter registration list, to conduct a general program of list maintenance that removes voters who are ineligible, and to ensure that voters not be removed from the list for moves without following all of the protections in the NVRA, including the notice and timing requirements.

Congress has tasked DOJ with the critical responsibility of ensuring that these mandates are met, and we will continue to devote significant resources to promoting access to voter registration and the accuracy of the rolls through comprehensive enforcement of the NVRA.

For example, since March 2011, the Division has filed two lawsuits under Section 7 of the NVRA, which requires that voter registration opportunities be made available at state offices providing public assistance or disability services. These are the first NVRA Section 7 lawsuits filed by the Department in seven years. One suit, against Rhode Island, was settled with a consent decree that requires the state to offer registration opportunities to all applicants for public assistance and disability services, and also to implement a range of training, auditing, monitoring, and reporting requirements. The impact of these changes has been dramatic. In the two-year reporting period before the lawsuits, 457 voter registration forms were submitted by the four affected Rhode Island social service agencies. In the four months after the settlement, 4,171 forms were received; nearly ten times as many new voters in one-sixth the time. The second lawsuit, against Louisiana, is in active litigation.

The Department also recently filed a lawsuit against the State of Florida to enforce Section 8 of the NVRA and, in particular, to ensure that the state's list maintenance activities are conducted in compliance with the requirement that all such measures be uniform, non-discriminatory, and appropriately timed.

And our comprehensive NVRA effort is not limited to litigation. In the past year, the Division has filed five amicus briefs in district courts and federal courts of appeals on critical NVRA issues that arise under Sections 6, 7, and 8 of the law. And we published NVRA guidance on our website two years ago to advise state and local officials, as well as the public, how all requirements of the NVRA are to be implemented.

Finally, the Division continues its active election monitoring program and continually evaluates the need to monitor elections conducted across the country, throughout the year. In Fiscal Year 2011, the Division sent more than 800 federal observers and Department personnel to monitor 55 elections in 20 states.

The Division's authority and responsibility to enforce the federal voting rights laws – which were enacted with overwhelming bipartisan support – is a sacred trust. The Division will continue to review all of the matters that come within our authority – from state and local redistricting plans, to absentee ballot procedures for servicemembers and overseas citizens, to state laws governing voter identification and registration – to make sure that all eligible citizens are being protected and are included in our democratic processes.

## **DISABILITY RIGHTS**

Over the last three years, the Division has launched an aggressive effort to address the unjustified segregation of people with physical, mental, intellectual, and developmental disabilities by enforcing the Supreme Court's ruling in the 1999 case *Olmstead v. L.C.*, which held that such segregation can be a form of discrimination under the ADA. Often called the *Brown v. Board of Education* of the disability rights movement, this decision has changed the lives of many who would otherwise be unable to live in the community. While many states have made significant progress in the thirteen years since *Olmstead*, too many individuals with disabilities still sit on waiting lists for home and community-based services or remain unnecessarily in segregated settings.

The Division has joined or initiated litigation to ensure community-based services in more than 40 matters in 25 states over the past three years, and we have filed over 30 statements of interest or amicus briefs in litigation raising *Olmstead* issues in more than 20 states addressing a wide range of issues, including the unnecessary institutionalization of individuals in state-operated and private institutions and cuts to community services that place people at risk of institutionalization.

We have reached landmark settlement agreements with the states of Virginia, Delaware, and Georgia that will allow thousands of individuals with disabilities to receive services in community settings, and will serve as models for comprehensive agreements with other states going forward. The Georgia agreement was signed by the state, the HHS Office for Civil Rights and the Division after the state had failed to comply with a voluntary resolution agreement with HHS OCR. The Virginia agreement, announced in January, expands and improves a range of community-based services for more than 5,000 people with developmental disabilities in, or at risk of entering, institutions. The agreement will shift Virginia's developmental disabilities system from one that relies heavily on large, expensive, state-run institutions to one that is focused on safe, individualized, and cost-effective community-based services that promote integration, independence, and full participation by people with disabilities in community life.

We have also significantly expanded our collaborations with other federal agencies, including the Departments of Health and Human Services, Housing and Urban Development, and Labor, because community integration can only be successful if people have access to necessary community services, employment opportunities and housing.

## **EQUAL EDUCATIONAL OPPORTUNITY**

The Division continues to work aggressively to combat racial segregation in schools and ensure that school districts are delivering equal access to a high-quality education in safe schools for all students.

Last month, the Division reached a settlement with the Fort Payne City School District in Alabama and private plaintiffs in a longstanding school desegregation case, which was initially filed in 1963. If approved, the proposed consent order would declare the 3,100-student school district partially unitary in the areas of extracurricular activities, school facilities and transportation, and would dismiss the case in those areas. If approved, the U.S. will monitor and enforce the district's compliance with the order.

In March, the Division announced a major settlement to protect children from school harassment and bullying in the Anoka Hennepin School District, the largest in Minnesota. The Division, along with the U.S. Department of Education, had undertaken a lengthy investigation of repeated instances of sex-based harassment of students who did not conform to gender stereotypes. The consent decree, which was approved by a federal court, provides a comprehensive blueprint for sustainable reform of the policies and practices of the district that will ensure that students in the district are free from sex-based harassment.

The Department of Justice has been instrumental in advancing educational equality by enforcing and strengthening the protections of Title IX of the Education Amendments of 1972, striving to ensure that all members of the school community are protected from discrimination based on sex. To commemorate this work and celebrate the 40th anniversary of Title IX, the Division published a report last month providing examples of the Department's enforcement of Title IX and other federal laws that prohibit discrimination on the basis of sex. Over the past forty years, the enforcement of these laws has greatly expanded educational opportunities for women, and has protected both women and men from discrimination on the basis of sex in the educational context.

Under Title IX, the Department has worked to support access to justice for individual victims and hold schools liable for discrimination, prevent retaliation against those who exercise their rights, eliminate discriminatory school policies that deny women admission, ensure equal opportunities for men and women in sports, and hold schools liable for addressing and preventing sex-based harassment. In addition to our enforcement work, the Department drafted new Title IX regulations; created a Title IX legal manual to assist public understanding of the law and its procedural requirements; and worked with other federal agencies to create a Title IX Science, Technology, Education, and Math in Higher Education Initiative.

In conjunction with the Office for Civil Rights at the Department of Education, the Division issued two policy documents to provide guidance to school districts and to institutions of higher education about the compelling interests of attaining diversity and reducing racial

isolation in their student bodies, as well as on permissible means to consider the race of students in an effort to meet these goals. The Division has also been actively working to address the school-to-prison pipeline, investigating numerous complaints of disparate discipline in schools and co-hosting, with the Department of Education, a first-of-its-kind convening of researchers, advocates and policy makers to address best practices for keeping students in school.

## **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 current Administration, the Division has opened 148 employment discrimination investigations, including 41 “pattern-or-practice” investigations. Even though Fiscal Year 2012 is not yet over, the 124 consent decrees we have so far entered into in the four fiscal years from FY 2009 through FY 2012 is more than double the number entered into in the previous four fiscal years

To cite just one example, last month the Division announced a consent decree with the town of Davie, Florida to resolve allegations that Davie engaged in a pattern or practice of intentional discrimination against pregnant firefighters employed by its fire department. If approved by the court, Davie would adopt policies to protect its employees from sex discrimination, including pregnancy discrimination, and train its fire department personnel to ensure that they properly handle future complaints of discrimination.

Last August, the Division announced a settlement with the State of New Jersey to resolve allegations that the state’s written examinations for promotion to police sergeant have the effect of discriminating against African-American and Hispanic candidates. Under the terms of the settlement, New Jersey will develop new selection procedures for police sergeant positions, and pay \$1 million into a settlement fund to provide back pay for those who were harmed by the discriminatory test.

Finally, the Division continues to work with the New York Fire Department after a court found that the City’s use of two written examinations had a discriminatory effect on African-Americans and Latinos. The court has ordered priority hiring relief for 293 rejected applicants and mandated the implementation of new, lawful hiring practices.

In addition, the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) enforces the anti-discrimination provision of the Immigration and Nationality Act (INA), which prohibits citizenship status discrimination, unfair documentary practices during the employment eligibility verification, Form I-9, process, and retaliation or intimidation. In FY 2011 and FY 2012, OSC has filed 8 complaints, more than in the previous 8 fiscal years combined. In FY 2011 and FY 2012, OSC has collected more than \$1 million in civil penalties through settlements, nearly triple the amount collected over the previous 8 years combined. OSC has also strengthened its relationship with DHS-USCIS’s Verification Division under a Memorandum of Agreement signed in April 2010, which provided for the cross-referral of cases

related to E-Verify. In FY 2012, OSC has received approximately 50 referrals from USCIS of potential discrimination. Since entering into the MOA, OSC has referred about 100 cases to USCIS of potential misuse or abuse of E-Verify. OSC continues to work on an ongoing, collaborative basis with USCIS on policy and guidance issues, seeking to minimize E-Verify's adverse effect on work-authorized individuals.

OSC maintains a strong commitment to its statutory duty to educate the public about the anti-discrimination provision, focusing on its hotline program and its direct outreach. OSC has directly handled nearly 3,500 hotline calls in FY 2012 so far. OSC has also continued its innovative intervention program – informal mediation effectuated by OSC attorneys and other professionals that seeks to prevent discrimination from occurring by providing employers and employees with information via the hotline. This occurs without necessity of a filed charge or formal investigation. In FY 2011 and FY 2012, OSC has conducted 208 and 174 interventions, respectively. In addition, despite the suspension of OSC's grant program in FY 2012, OSC's staff of only 17 attorneys and investigators has conducted 223 and 229 outreach events in FY 2011 and FY 2012, respectively (including 20 cost-effective webinars in 2012), at less than 10 percent of the annual cost of the grant program.

## **FAIR LENDING AND FAIR HOUSING**

### *Fair Lending*

The housing crisis has touched a great many communities across the country. Communities of color, in particular African-Americans and Latinos, have been hit particularly hard by lending practices under which they have been judged by the color of their skin rather than their creditworthiness. For too many years, accountability was lacking and enforcement was spotty at best. That is why, in the wake of the housing and foreclosure crisis, the federal government has responded forcefully.

Since the Attorney General established the Fair Lending Unit with the Civil Rights Division in early 2010, it has filed a complaint in or resolved 19 matters. By way of contrast, from 1993 to 2008, the Department filed or resolved 37 lending matters, an average of just over 2 cases per year.

The three largest fair lending settlements in the Division's history have been reached in the past eight months. In December 2011, the Department reached a \$335 million settlement with Countrywide, the largest residential fair lending discrimination settlement in U.S. history. Our complaint against Countrywide alleged that its systemic discrimination over a four-year period violated the Equal Credit Opportunity Act and the Fair Housing Act, and impacted more than 200,000 African-American and Latino families by steering those borrowers into subprime loans or charging them higher fees and costs.

Earlier this month, the Division reached the second largest settlement in history when Wells Fargo agreed to pay at least \$175 million in a case involving allegations of discrimination against African American and Latino borrowers. The settlement provides \$125 million in compensation for wholesale borrowers who were steered into subprime mortgages or who paid higher fees and rates than white borrowers because of their race or national origin. It also provides \$50 million to borrowers for down payment assistance in communities that were hit hard by the bank's discriminatory practices. Further, Wells Fargo has agreed to conduct an internal review of its retail mortgage lending and will compensate African-American and Hispanic retail borrowers who were placed into subprime loans when similarly qualified white retail borrowers received prime loans. Wells Fargo agreed to compensate those improperly placed borrowers in addition to the \$125 million compensation.

In May 2012, a \$21 million settlement was reached with SunTrust Bank in another large lending discrimination case. The complaint alleged that SunTrust engaged in a pattern or practice of discrimination that increased loan prices for many of the qualified African-American and Hispanic borrowers who obtained loans between 2005 and 2009 through SunTrust Mortgage's regional retail offices and national network of mortgage brokers. If approved by a federal court, the proceeds of the settlement will be used to compensate the victims of SunTrust's discrimination, who were located in 34 states and the District of Columbia when the discrimination occurred.

Our settlements seek to expand opportunities for minority communities and individuals to access credit in areas where a lender had previously denied such services. However, our settlements never require a lender to make a loan to unqualified borrowers. The Department's settlement agreements repeatedly refer to the extension of credit to "qualified applicants" only. Further, the Department makes clear that no provision in any redlining settlement agreement, including any special loan program or loan subsidy fund commitment, requires the bank to make any unsafe or unsound loan.

### *Fair Housing*

In June, the Division obtained a landmark \$10.5 million settlement – its largest-ever disability-based housing discrimination settlement fund – to resolve allegations that JPI Construction L.P. and six other JPI entities based in Irving, Texas discriminated on the basis of disability in the design and construction of multifamily housing complexes throughout the U.S. Under the court-approved settlement, JPI is required to pay a \$250,000 penalty – the largest civil penalty the Department has obtained in any Fair Housing Act case.

In May, the Department announced an historic settlement for victims of sexual harassment by three Manhattan landlords. Per the court entered consent decree, the landlords will pay more than \$2 million to the victims of sexual harassment and will pay \$55,000 in a civil penalty. The \$2,058,000 agreement represents the largest recovery ever in a sexual harassment suit brought by the Department under the Fair Housing Act.

## **CIVIL RIGHTS OF SERVICEMEMBERS**

The Division enforces several statutes enacted specifically to protect the rights of our servicemembers and their families, and our work on behalf of servicemembers spans multiple sections of the Division. When servicemembers place their lives on the line to serve their country, they should be able to focus fully on their military duties, without having to worry that their right to vote will be denied, that their homes will be wrongfully foreclosed without their knowledge, or that their civilian jobs back home will be lost.

### *Voting Rights for Servicemembers*

The Division is committed to ensuring that all servicemembers, and other citizens living overseas, are not denied the right to have their voices heard on Election Day. The Division has aggressively enforced the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended by the Military and Overseas Voter Empowerment (MOVE) Act of 2009. So far this year, the Department has sued four states (Alabama, California, Wisconsin, and Georgia) for noncompliance with the MOVE Act during their primary and runoff elections.

Apart from these four new lawsuits, we have recently sought further relief in several of the lawsuits we filed in 2010. For example, we won a significant victory this year in our 2010 lawsuit against New York. In January, the district court agreed with our request to advance New York's federal primary election date, starting with the 2012 election, to a date sufficiently early to provide enough time for absentee ballots to be prepared and mailed in compliance with the MOVE Act. We have also entered into supplemental consent decrees this year in the 2010 lawsuits we filed against Illinois and Guam to remedy widespread UOCAVA violations in that state and territory.

In addition, in January 2012, the Division filed a statement of interest before the federal three-judge court in the Western District of Texas that was considering the interim redistricting maps and election schedule that should be ordered for Texas's 2012 elections. Our statement urged the court to reject proposals to the election calendar that would impede MOVE Act compliance, and instead to ensure that any election schedule allows for ballots to be transmitted 45 days before elections for federal office. The court ultimately adopted an election schedule consistent with this request.

This work builds on our accomplishments in the 2010 cycle, during which the Division ensured that thousands of military and overseas voters had a reasonable opportunity to cast their ballots. The Division 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 either ensured that the military and overseas voters would have at least 45 days to return their ballots or provided expedited mailing or other procedures to allow sufficient opportunity for ballots to be returned by the jurisdiction's ballot receipt deadline. We will continue enforcing these critical protections during the upcoming 2012 general election cycle.

### *Mortgage Rights for Servicemembers*

The Division has worked to ensure that our Nation's servicemembers can serve their country without having to worry that their home will wrongfully be foreclosed. The Division enforces the Servicemembers Civil Relief Act (SCRA), which prohibits mortgage lenders from foreclosing on an active duty servicemember without a court order if the mortgage was taken out prior to the servicemember's entering active duty, and requires the lender to follow special procedures. When I last appeared before this Subcommittee, the Division had recently announced two multi-million dollar settlements with mortgage lenders resolving allegations of violations of the SCRA. One of these settlements, requiring that Bank of America/Countrywide pay at least \$20 million to servicemembers, was the largest SCRA settlement ever reached. Under these settlements, the banks agreed not to pursue any remaining amounts owed under the mortgages; to take steps to remedy negative credit reporting; and to implement enhanced measures including monitoring, training, and checking loans against the Defense Manpower Data Center's SCRA database during the foreclosure process.

This past February, the Nation's five largest mortgage loan servicers (Bank of America; JPMorgan Chase & Co.; Wells Fargo & Company; Citigroup, Inc.; and Ally Financial, Inc.) agreed to similar terms and additional compensation as part of the broader \$25 billion consent judgment reached with Federal and state attorneys general. These servicers will conduct full reviews of whether servicemembers have been illegally foreclosed on since 2006, and each identified victim will be compensated a minimum of \$116,785, plus any lost equity with interest. All five servicers have agreed to put in place better policies, procedures, and employee training to ensure full compliance with the SCRA.

### *Employment Rights for Servicemembers*

The Division has also been vigilant in protecting the employment rights of our men and women in uniform under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which ensures that servicemembers returning from active duty are not penalized by their civilian employers. Our servicemembers make great sacrifices for our country, and they should not have to sacrifice their civilian employment. To date in the current Administration, 43 cases have been filed under USERRA, already exceeding the 32 USERRA cases filed in the entire four years that the previous Administration had USERRA jurisdiction.

In May, the Division announced a settlement with Home Depot U.S.A. over allegations that the company violated USERRA when it terminated the employment of an Army National Guard soldier in Flagstaff, Arizona because of his military service obligations. If approved by a federal court, Home Depot will provide the soldier with \$45,000 in monetary relief and make changes to its Military Leaves of Absence policy.

In April, the Division announced a settlement with Pittsfield, Massachusetts to resolve allegations that the city violated USERRA by failing to promote a navy reservist and Pittsfield firefighter, and by retaliating against him after he invoked his rights. The settlement requires the



city to provide the reservist with over \$22,000 in back pay, pension contributions, and interest.

Finally, in March, the Division successfully defeated the first Eleventh Amendment challenge to USERRA in an appeal before the Eleventh Circuit. The case marked the first time the Division took a USERRA case to trial. We secured back pay and injunctive relief against the Alabama Department of Mental Health for its failure to promptly reemploy a servicemember upon his return from active duty service in Iraq.

### *Servicemembers Legislative Proposals*

Through our enforcement work, the Division has identified ways that the SCRA, USERRA, and UOCAVA could be strengthened to better protect the rights of our servicemembers. This past September, the Division developed legislative proposals to strengthen these statutes, and the Administration formally submitted them to Congress. Proposed changes include an explicit private right of action to enforce UOCAVA, increasing civil penalties under the SCRA, and granting the Attorney General independent authority to investigate and file suit to challenge employment policies or practices that establish a pattern or practice of violating USERRA. In June 2012, Senator Sherrod Brown, along with nine original cosponsors, introduced legislation drawn from our legislative package. The Department would welcome the introduction of a companion bill in the House as well.

### **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.

Unfortunately, we continue to see violence and threats of violence directed at individuals or congregations because of their religion. For example, last winter the last of three defendants was sentenced to prison for federal civil rights violations 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 hours the day after the election of President Obama, the defendants 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. The three defendants were sentenced for terms of imprisonment ranging from 54 months to 14 years, and ordered to pay restitution to the church for the damage they caused.

Last fall, Steven Scott Cantrell of Crane, Texas was sentenced to 450 months in prison for hate crime charges stemming from a series of racially-motivated arsons in December 2010. Cantrell admitted that he set fire to Faith in Christ Church, a predominantly African-American church, in an effort to kill a disabled African-American man whom he believed lived at a shelter within the church. In addition to the church, Cantrell admitted that he set fire to the house of another man in the community because he believed that man to be Jewish. Cantrell was also ordered to pay more than half-a-million dollars in restitution to the victims.

In 2010, 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. In September 2011, we reached a consent decree 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. Less than a month later, we obtained a consent decree in a similar suit against the County of Henrico, Virginia. During that same year, 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. Also in 2010, we obtained a consent decree resolving claims that the town of Walnut, California had improperly denied a Buddhist congregation the ability to construct a temple on its property, and successfully argued as amicus in the Ninth Circuit Court of Appeals that a Baptist church in Yuma, Arizona was improperly excluded from operating in a commercial zone.

We also continue to work to ensure that individuals are not forced to choose between their jobs and the requirements of their faith. In May 2012, we reached a settlement in a Title VII lawsuit against the New York City Transit Authority over its refusal to permit Muslim and Sikh bus drivers, subway drivers, and other transit workers to wear religious head coverings with their uniforms. Under the settlement, New York will adopt a religious accommodation policy that will protect the religious rights of transit workers of all faiths.

Additionally, we remain vigilant in cases of religious discrimination against institutionalized persons. Last year, the Division intervened in a lawsuit filed by a Sikh prisoner in California who was permitted to maintain an unshorn beard while in a medium-security facility as required by his religious tradition. After the prisoner was transferred to a minimum-security facility, the state required him to shave his beard or suffer disciplinary sanctions. After we intervened, the State agreed to modify its beard-length policy to permit the prisoner to comply with his religious convictions. We also intervened in a suit against a jail in Berkeley County, South Carolina, in which the jail restricted access to religious books and materials to prisoners of all faiths. After several months of litigation, the county agreed to change its policies to permit access to these books and materials.

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, and the Division sponsored a conference focused on addressing the post-9/11 backlash throughout the decade after the 9/11 attacks in October 2011. 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.

## **LANGUAGE ACCESS IN STATE COURTS**

Ensuring that limited English proficient individuals (LEP individuals) can access state court proceedings is of critical importance, not only to protect the fundamental rights of the parties, but also to allow courts and juries to make decisions based on the most accurate record. A number of the statutes we enforce – including Title VI of the Civil Rights Act of 1964, and the Safe Streets Act of 1968 – require full and free language assistance services in all court proceedings and for many court offices, programs, and services. This requirement includes the provision of interpreters for court proceedings and operations, as well as the translation of vital written documents. Failing to provide language services can undermine the provision of justice by causing reversals, delays, denial of due process, extended incarceration, lack of compliance with court orders, fund termination or suspension, and time spent responding to complaints.

The Federal Coordination and Compliance Section of the Civil Rights Division has created a comprehensive Courts Language Access Initiative to ensure that all who need to access state court services and proceedings are able to do so without regard to their national origin or language ability. In addition to providing technical assistance to specific state courts and state-court associations, we have several open investigations of complaints regarding discriminatory practices in state court systems. In March 2012, we sent a Letter of Findings to the North Carolina Administrative Office of the Courts, concluding after an exhaustive investigation that North Carolina had failed to provide meaningful access to LEP individuals in the state court system. The investigation identified such harms as longer incarcerations; conflicts of interest involving prosecutors interpreting for defendants; and indigent litigants proceeding with domestic violence, child custody, eviction, and other important proceedings without any language assistance or ability to understand those proceedings.

We have also in the past year reached an agreement with Colorado to improve its language access practices, and have worked closely with Rhode Island as that state has moved to improve its language access procedures in response to our investigation. Both states are on their way to becoming national models in the provision of free and competent interpreter services in all criminal and civil proceedings and court operations.

## **AMICUS PARTICIPATION AND STATEMENTS OF INTEREST**

Amicus participation continues to be a critical part of the Division's efforts to defend and promote civil rights protections. In the last three years of this Administration, the Division's Appellate Section has achieved record levels of amicus filings in significant civil rights cases, and already has submitted 21 amicus briefs in this fiscal year

The Division filed successful briefs in *Ojo v. Farmers Group*, which held that the Fair Housing Act prohibits racial discrimination in both the denial and pricing of homeowner's

insurance. The Division also filed an amicus brief in *Fisher v. University of Texas*, in which the Fifth Circuit agreed with our argument that the University has a compelling interest in achieving a diverse student enrollment and that its limited use of race in freshman admissions is narrowly tailored to further that interest. The U.S. Supreme Court has granted certiorari in that case.

An amicus brief in support of plaintiffs-appellees in *Oster v. Wagner* argued that institutionalization is not a prerequisite for asserting an integration claim under Section 504 of the Rehabilitation Act of 1973 and Title II of the ADA. The Division also filed amicus briefs in the court of appeals in two other important ADA cases, *Armstrong v. Schwarzenegger* and *Chapman v. Pier I Imports*. And we have filed amicus briefs in significant cases brought under the RLUIPA (*Centro Familiar Cristiano Buenas Nuevas v. City of Yuma* and *Islamic Center of North Fulton, Inc. v. City of Alpharetta*) and the SCRA (*Gordon v. Pete's Auto Service*).

The Division has also substantially increased its filings of amicus briefs and statements of interest at the trial-court level, to provide courts and litigants our views on important legal issues. For example, the Division has filed eleven statements of interest or amicus briefs regarding disability rights issues in FY 2012, as well as eight briefs regarding voting rights issues and one on housing discrimination. These are just a few examples of the numbers of trial-court amicus briefs and statements of interest filed during the Administration, but they represent the Division's commitment to using all of the tools available to ensure the Nation's civil rights laws are enforced to the fullest extent possible.

## **COLLABORATION WITH FEDERAL AND STATE PARTNERS**

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 three years to establish and strengthen partnerships to improve enforcement.

In the lending context, the Division's ability to bring a record number of enforcement actions is a direct result of close collaboration with federal and state partners. Almost all of the Division's lending discrimination cases in 2011 involved work with other government agencies and other offices within the Department, including the U.S. Attorneys' Offices and state attorneys general. For example, the *Countrywide* case was done in close coordination with the Illinois Attorney General's office.

In addition, the interagency 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. The Division's collaborative work was bolstered in July 2011 by the addition of the Consumer Financial Protection Bureau (CFPB). The CFPB is a critical partner, which has supervisory and enforcement authority under ECOA over all banking institutions with assets of more than \$10 billion, as well as certain non-bank lenders.

In the criminal civil rights context, the Division's vigorous hate crimes enforcement record would not be possible without our close partnerships with the U.S. Attorneys' Offices, with the FBI, and with local law enforcement. The Division has helped plan and has participated in dozens of training conferences throughout the country, bringing together federal, state, and local law enforcement along with community stakeholders in order to educate them about the Shepard-Byrd Act and its implementation.

In the human trafficking context, two years ago 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, are working to combat identified human trafficking threats.

Meanwhile, in the employment context, the Division has engaged in unprecedented levels of collaboration with our partner federal agencies in order to more effectively combat pay discrimination and other forms of employment discrimination. This includes the establishment of 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 have true equal opportunity only 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 our strengthened partnerships with U.S. Attorney's Offices around the country. In both the criminal and civil contexts, our partnerships with U.S. Attorneys' Offices have reached unprecedented levels of cooperation and engagement. Many U.S. Attorneys' Offices now have established dedicated civil rights units, and we are closely coordinating with and supporting their efforts. The renewed commitment of U.S. Attorneys' Offices to robust civil rights enforcement has enabled us to step up our civil rights enforcement efforts throughout the nation.

## **CONCLUSION**

Under the leadership of Attorney General Holder, we have made substantial progress in the restoration and transformation of civil rights enforcement. I am very proud of the hard work of the dedicated career professionals in the Division. We have also expanded our partnerships with sister agencies, and our state and local partners in a number of key areas. Despite these many accomplishments, civil rights remains the nation's unfinished business. The Civil Rights Division takes 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 federal laws. Thank you for the opportunity to testify before you today about the work of the Division. I look forward to answering your questions.