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NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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Before the Commission on Security and Cooperation in Europe

Hearing on

“Racism in the 21st Century”

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Good morning. My name is John Payton, President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). Founded under the direction of the late Thurgood Marshall in 1940, the Legal Defense Fund is the nation’s finest civil and human rights law firm. In our sixty-plus year existence, we have represented African Americans in most of the country’s major racial discrimination cases. In many respects, LDF is legal counsel to all Americans on issues of race.

We are pleased to present this testimony to the Commission on Security and Cooperation in Europe regarding “Racism in the 21st Century”. We thank Chairman Rep. Alcee L. Hastings, Co-chair Sen. Benjamin L. Cardin, other Commission members and staff for inviting us to participate in these proceedings. This convening is particularly timely, as the nation and the world’s attention have been focused as of late on the contemporary forms of racial discrimination and the very issue of race itself. This year LDF contributed to a national shadow report which followed the U.S. government’s submission pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). And more recently, we played a key role in coordinating the visit of the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. In each of these opportunities to engage an international audience, LDF and our colleagues brought a perspective informed by both historical knowledge and a keen understanding of racism in its various contemporary manifestations – from invidious racial epithets and intentional discrimination, to structural racism and policies that yield disparate racial impacts.

When we were founded, African Americans and other minorities were oppressed through a comprehensive system of laws and customs enforced by courts and by violence. We have made remarkable progress since then. The legal apparatus of racial segregation is largely dismantled and in its place is a completely different set of laws – for example, the 1964 Civil Rights Act, the 1965 Voting Rights Act, the 1968 Fair Housing Act, as well as court rulings which expand the concept of equality.

But that progress has not been steady and profound challenges related to race remain. We are aware that some would like to declare that serious issues of race are behind us, and they point to visible examples of African Americans and other minorities occupying positions of power. They point to African-American members of Congress, members of the Cabinet, CEOs of multinational corporations, entertainers, members of the media and so forth. And they especially point to presumptive Democratic Presidential Nominee Senator Barack Obama as evidence that race no longer remains salient in our society. We all know better. Racial justice in America has proved elusive. Indeed, racial inequality still unfairly affects the lives of millions of Americans.

While invidious discrimination is still present, other forms of discrimination - sometimes a result of unconscious racism – have become institutionalized and systemic. It is part of the very fabric of how this nation’s most important systems, agencies and institutions function. The manner in which this discrimination operates serves to mask its very existence and skews people’s sense of moral clarity; yet, its impact is no less pointed.

LDF's mission is to see that African Americans – and all Americans – become full, equal and thriving participants in our democracy. In order to accomplish this goal, we must address racism as we see it, and as we experience it. That means challenging systems, policies and practices that subjugate people because of their race, whether intentionally or unintentionally. In this regard, LDF's impact on the country has been profound. Yet great challenges remain. In addition to NGOs such as LDF, we also need the cooperation, support and leadership of individuals in government, civil society and the private sector. We all have a collective responsibility to address the manifestations of racism and its sources.

The following examples are illustrative of recent trends in racial justice in the United States, and how LDF and allied organizations have sought to address the problems. As they demonstrate, the challenges to achieving racial justice in the United States are numerous. However, in each of the areas noted below, we are engaged in ongoing efforts to change the status quo.

The Aftermath of Hurricanes Katrina and Rita

Perhaps the best contemporary example demonstrating the complexity of racial injustice is found in New Orleans, Louisiana and the Gulf Coast region – the area devastated by Hurricanes Katrina and Rita in 2005. Even before the natural disasters struck, people of color generally, and African Americans in particular, suffered from the cumulative effects of generations of racism and poverty. Segregated in decaying areas of the city and often relegated to sub-standard housing, failing schools, limited employment opportunities and dangerous neighborhoods, many African Americans struggled to survive. As a result, when Hurricanes Katrina and Rita struck, many had no place to go and no means to get there, even though they had very little in New Orleans. Thus, it should have come as no surprise that the impact of the storms and their aftermath had a severely disproportionate racial impact.

The scenes that the world witnessed on television, and that some witnessed in person, showed the scores of people left behind during and after Hurricane Katrina. Almost all of them were African Americans and poor people. The unconscionable neglect was horrifying, yet sadly reminiscent of how African Americans have fared in this country for generations. In the immediate aftermath of Hurricane Katrina, many African-American residents were rounded up by police officers and charged with looting, and some were prevented at gunpoint from escaping the confines of a city in chaos. Others were shot, and some killed. Basic necessities such as food and water were not made available for days.

After the storms, people already living in crisis were uprooted, and many have since struggled to return. The dispersal of so many people has, in effect, created what we call the “Katrina Diaspora,” a people connected by culture, shared experiences and challenges that have everything to do with race. And this Diaspora, comprised mostly of people of color and the poor, have not been formally recognized by the United States as Internally Displaced Persons under international standards. They have received precious little assistance from official sources despite an outpouring of sympathy and support from some private citizens and the international community. And even as this private support begins to wane, the stakes become higher in terms of the plight of the displaced and the impact on culture, community and opportunity.

Over the past three years, LDF has devoted a significant amount of resources to address the needs of the Katrina Diaspora. We have seen first-hand the impact that the storms and the failed government response have had on poor African-American communities. And we have also seen how the same forces have destabilized the region's black middle class, which represents the fruit of the Civil Rights Movement. While we have seen distinct racial disparities that reflect both intentional discrimination and structural racism in a number of areas, two areas in particular merit special attention – Voting Rights and Education. These two areas are important because they are the realms in which African Americans have experienced some of the most determined forms of racial discrimination, with increasingly creative efforts designed to frustrate their opportunity and access.

Shortly after the storms, the State of Louisiana sought to conduct elections in a business-as-usual fashion, despite the fact that more than half of New Orleans' pre-Katrina residents were still displaced, most of them African-American. Under state law, thousands of displaced people were not eligible to vote via an absentee ballot. Instead, they would have been forced to find the means to make their way back to New Orleans. Of course, many of these people were living in temporary shelters and packed into hotel rooms with extended family all across the country. So, for most, traveling to New Orleans would have meant financing transportation for entire families, including young children and elderly relatives – all to cast a ballot. In our view, this was the equivalent of a modern-day poll tax, a facially benign imposition that would have disproportionately impacted people of color with little means. To address this situation, LDF joined local lawyers in the *Wallace v. Blanco* case to ensure that displaced African-American voters could have meaningful participation in the election.¹ This case led to the first domestic satellite voting system and an unprecedented court-ordered election monitoring program.

From October 2006 to early February 2007, hundreds of students returning to New Orleans after being displaced were literally turned away at the schoolhouse door. Instead of being enrolled in classes immediately as the law requires, they were placed on a waiting list – sometimes for days, weeks or longer. This policy affected mostly African-American students – those whose families were most likely to struggle to resettle in New Orleans and needed more time to make their way back home. Many of the families returning to New Orleans, including LDF clients, lived in temporary shelters, FEMA trailers or packed into overcrowded apartments or houses with relatives. When education officials failed to respond to a demand for immediate enrollment of all returning students, LDF filed a federal civil rights lawsuit to vindicate the rights of those students who were denied educational services and to protect those who would return in the future. This effort resulted in a favorable settlement and adoption of an official policy reform requiring schools to enroll returning students within a specified period of time.

Similar examples of racial injustice abound in other aspects of the post-storm recovery, and parallel LDF's other practice areas. This story is in many ways a microcosm of

¹ No. 2:07-CV-1503, 2007 U.S. Dist. LEXIS 43376 (E.D. La. June 13, 2007).

the experiences of people of color throughout the nation's history. Thus, any serious racial justice agenda must have the aftermath of these storms as a critical component of its efforts.

Educational Opportunity

Education is recognized by societies across the globe as fundamental to an individual's development and as the foundation of a well functioning society. The same values are nominally shared by Americans. As the U.S. Supreme Court acknowledged in LDF's best-known case, *Brown v. Board of Education*, education is "the very foundation of good citizenship."² A quality education is essential to economic opportunity in the United States. In today's global economy, there are fewer and fewer jobs for Americans without a high school diploma and those that remain leave people mired in poverty or dangerously close.

Nevertheless, despite some progress, *Brown's* promise has rung hollow for too many people of color in the United States who are far more likely to receive an inferior education than they are a good one. This is particularly true for African-American and Hispanic students, who most often find themselves trapped in racially isolated and failing schools.

For example, recent data from the U.S. Census Bureau indicates that African Americans aged twenty-five or older are more likely to be without a high school diploma than they are to have a college degree. Whites in the same age group are far more likely to have graduated from college than they are to be without a high school diploma.³ This stark racial disparity tells only part of a more disturbing story. A recent study found that the high school graduation rates for black and Hispanic students are a dismal 53.4% and 57.8% respectively, compared to those for whites and Asians, which are still a modest 76.2% and 80.2% respectively.⁴ Poor schools within highly populated metropolitan areas are a main contributor to these low graduation rates. An overwhelming majority of the black population lives within these metropolitan areas and, therefore, is subject to these failing schools. For example, the cities of Detroit, Michigan; Baltimore, Maryland; and Atlanta, Georgia have high school graduation rates of 24.9%, 34.6%, and 46.0%, respectively⁵, and black populations of 81.6%, 64.3%, and 61.4%, respectively.⁶

As a gateway to broader opportunity, equitable access to education is a major racial justice issue. The lack of quality public education for students of color should be of paramount importance to anyone who cares about racial justice and equality. Young people are set on certain tracks early in life – tracks of quality education and opportunity, or tracks with poor access to quality education that can lock them into cycles of poverty and often lead

² 347 U.S. 483 (1954).

³ U.S. CENSUS BUREAU, *Educational Attainment of the Population 18 Years and Over, by Age, Sex, Race, and Hispanic Origin*, in CURRENT POPULATION SURVEY 2007, available at <http://www.census.gov/population/www/socdemo/education/cps2007.html>.

⁴ Christopher B. Swanson, *Cities in Crisis: A Special Analytic Report on High School Graduation 1* (2008).

⁵ *Id.* at 9.

⁶ U.S. CENSUS BUREAU, *Profile of General Demographic Characteristics*, in U.S. CENSUS 2000, available at <http://censtats.census.gov/pub/Profiles.shtml>.

many young people into involvement with the juvenile and criminal justice systems. The inter-generational effects of this cycle have devastated entire families, neighborhoods and communities.

At LDF, our nation's public education system has become the focal point in the current struggle for racial integration and equal opportunity. Yet, while once legally segregated schools emerge from the era of court-ordered desegregation, the Supreme Court has erected significant obstacles for those school districts voluntarily seeking to ensure racial integration in their classrooms. The Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*⁷ held that the Seattle and Louisville school districts' race-conscious integration policies violated the Equal Protection Clause of the Constitution. In the wake of the decision, school districts across the nation are struggling to devise integration plans that will pass constitutional muster.

At the same time, the current trend toward resegregation in our cities and schools has presented an imperative that we make sure those schools offer high quality education to their students. Many inner city schools attended by minority students offer fewer academic opportunities, possess fewer institutional resources, employ less committed and less effective teachers, experience higher dropout rates, and provide lower quality job opportunities and career prospects.⁸ This is simply intolerable. Over fifty years after *Brown* and its declaration of education being the key to democracy, we can clearly see that these schools are failing African-American students. Through strategic litigation, advocacy and technical expertise, LDF is leading the fight to ensure that school districts advance the goal of providing the highest quality education to all students.

Criminal and Juvenile Justice

The United States incarcerates a greater number and percentage of people than any country in the world. According to a recent report by the Pew Center for the States, over 2.3 million people are in prisons or jails, which means that more than one in 100 American adults is behind bars.⁹ The next closest countries were China, with 1.5 million people behind bars, and Russia with 890,000 people incarcerated.¹⁰ In a nation seemingly obsessed with criminalizing behavior, the impact is even more severe in communities of color. Racial disparities exist at every level in the criminal justice system, from arrests for the most minor of offenses to executions for the most severe ones. Consequently, American prisons are disproportionately populated with African Americans and Latinos. While 1 out of every 106 white men aged 18 or older is behind bars, for Latino males in that age group the figure is 1 in

⁷ 127 S. Ct. 2738 (2007).

⁸ See Brief of 553 Social Scientists as *Amici Curiae* in Support of Respondents at 3, *Parents Involved v. Seattle Sch. Dist.*, 127 S. Ct. 2738 (2007) (Nos. 05-908, 05-915) (“While there are examples of academically successful schools with high concentrations of nonwhite students, more often than not, segregated minority schools offer profoundly unequal educational opportunities. This inequality is manifested in many ways, including fewer qualified, experienced teachers, greater instability caused by rapid turnover of faculty, fewer educational resources, and limited exposure to peers who can positively influence academic learning.”).

⁹ The Pew Center on the States, *One in 100: Behind Bars in America* 5 (2008). The precise figure is 1 in 99.1.

¹⁰ *Id.*

36; and for African-American males it is a striking 1 in 15.¹¹ Further, according to the Prison Policy Initiative, in 2001 the United States incarcerated Black males at a higher rate than the apartheid regime in South Africa did in 1993.¹² A visit to virtually any juvenile or criminal court, detention center or prison in this country will demonstrate this distinct racial impact.

Sentencing disparities along racial lines have been a particularly egregious problem, especially when it comes to this country's so-called "War on Drugs". While some racial disparities are the result of prejudice and discrimination by actors within the system, others are actually built into the statutory scheme. For example, the 1986 Anti-Drug Abuse Act introduced a sentencing formula that equates one gram of crack-cocaine to 100 grams of powder cocaine. Statistics show that more whites use crack-cocaine than African Americans, yet the incarceration and conviction rates of African Americans far outweigh those of whites. Given the harsh sanctions for even simple possession of crack, many African Americans convicted of these crimes are sentenced to much longer terms than white counterparts convicted of crimes involving powder cocaine. In this way, the 100:1 ratio and mandatory minimum sentences for simple possession of crack cocaine have become a notorious form of racial discrimination in the criminal justice system. LDF has urged Congress to enact legislation addressing the 100:1 disparity, a necessary counterpart to U.S. Sentencing Commission's recent decision to lower recommended sentences for crack cocaine offenses.

Other problems – such as racial discrimination in jury selection, law enforcement targeting of black neighborhoods for drug interdiction operations and poor quality defense for the indigent – also have a disproportionate impact on African Americans. For example, with respect to indigent defense, a report from the American Bar Association's Section on Criminal Justice noted that "people of color require appointed lawyers disproportionately more often than White people. Therefore, when the quality of representation provided by appointed lawyers is diminished and underfunded, the consequences will be disproportionately felt by people of color."¹³

The collateral effects of these incarceration levels play out in numerous ways, whether it is the difficulty of finding jobs upon leaving prison, the dilution of voting strength of particular communities because of felon disfranchisement laws or the moral and practical impact on communities with so many of its residents in or on their way to jail.

Young people are not immune from the reach of the criminal justice system. Increasingly, children are being tried as adults in criminal court, with disastrous consequences. LDF recently released a report detailing the phenomenon of state courts sentencing people to life without parole (LWOP) for crimes committed when they were children. The report documents that African Americans are drastically overrepresented among the juvenile LWOP population: nearly 60% of those sentenced to life without parole as juveniles nationwide are African-American. In Mississippi, whose overall population is

¹¹ *Id.* at 6.

¹² Prison Policy Initiative, *Crime and Incarceration Around the World*, http://www.prisonpolicy.org/prisonindex/us_southafrica.html. (last visited July 11, 2008).

¹³ For a recitation of the ABA resolution, see Terence F. MacCarthy, *Unanimous Resolution*, 23 *Champion* 20, 25 (Apr. 1999) (citations omitted).

36% African-American, a full three-fourths (76%) of the young people sentenced to LWOP are African-American.

Although we know that children are capable of changing their lives for the better, many juvenile justice systems focus on punishment rather than rehabilitation, thereby destroying children's opportunities before they have a real chance. This same retributive mentality has seeped into the public school system. In addition to the obstacles to quality education described above, many youth of color also face policies designed to exclude them from school altogether. Racially disproportionate use of exclusionary practices, such as suspensions, expulsions and even arrests at schools for non-violent conduct, have pushed many young people of color further down what we refer to as the "School to Prison Pipeline," in which young people of color are institutionalized rather than educated.

Persistent inequalities in access to quality education play a significant role in feeding this pipeline, with students of color suffering poor outcomes in terms of high school graduation and dropout rates, as well as limited exposure to advanced courses and alternative education. According to the available data and anecdotal accounts, black students are often subjected to these exclusionary practices at a disproportionate rate. For example, in 2000, African Americans represented only 17% of public school enrollment nationwide, but accounted for 34% of suspensions.¹⁴ And a recent analysis of U.S. Department of Education data by the Chicago Tribune found that black students nationwide are suspended and expelled at nearly three times the rate of white students.¹⁵ Moreover, studies show that African-American students are far more likely than their white peers to be suspended, expelled, or arrested for the same kind of conduct at school.¹⁶ While starting in schools, these trends are mirrored in the juvenile justice system. In 2003, African-American youth made up only 16% of the nation's overall juvenile population, yet they accounted for 45% of juvenile arrests.¹⁷ These trends simply lay the foundation for the even more disturbing statistics in the criminal justice system mentioned above.

Political Participation

A central component of LDF's work is ensuring that all Americans, regardless of race, maintain the right to participate equally and fully in our democracy. The right to vote without unnecessary and unjustifiable restrictions is both a core feature of our democratic structure and a principle that has long shaped our litigation and advocacy efforts in the fight against barriers to full participation.

If we wish to be regarded as the world's leading democracy, the role of government must be to encourage greater political participation. The United States, however, has one of

¹⁴ ADVANCEMENT PROJECT, EDUCATION ON LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 18 (2005) (citing U.S. Department of Education, 2000 Office of Civil Rights Elementary and Secondary School Survey (2000)).

¹⁵ Howard Witt, School Discipline Tougher on African Americans, CHI. TRIB., Sept. 25, 2007

¹⁶ Russell J. Skiba, Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary PRACTICE 11-12 (2000), available at <http://www.indiana.edu/~safeschl/ztze.pdf>.

¹⁷ Howard N. Snyder, *Juvenile Arrests 2003*, OJJDP JUV. JUST. BULL., Aug. 2005, at 5.

the lowest participation rates in the election of government officials.¹⁸ According to U.S. Census Bureau estimates, only 64% of voting age citizens cast ballots in the 2004 presidential election, down from 68% during the 1992 election.¹⁹ During that same period, 72% of all voting-age citizens were registered to vote, down from 75% in 1992.²⁰ This decline is particularly troubling given recent laws passed by Congress, such as the National Voter Registration Act (known as the “Motor Voter” law), which aim to make registration opportunities more widely available.

The current presidential election cycle, however, has energized more citizens to become active in electoral politics than in any recent time. In the last year, there has been a dramatic surge in new registration among African-American voters in a number of states including Alabama, Louisiana, Tennessee and North Carolina, among others.²¹ As some commentators have aptly observed, “Democracy has been the real winner of the process.”²²

However, the success story that has emerged during this election cycle will prove to be a hollow victory if those newly registered voters are ultimately unable to cast their ballots on Election Day due to the onerous burdens imposed by discriminatory voting tactics. Indeed, in recent years, we have seen a series of efforts that have the effect of placing undue burdens on citizens’ attempts to vote. Increasing the burdens on the exercise of the right to vote clearly has the effect of depressing participation rates among minority voters in this most central aspect of our democratic process.

Two years ago, Congress reauthorized the Voting Rights Act for another twenty-five years, basing its authority on an extensive record of recent racial discrimination in many forms of voting. Congress found that “vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process.”²³ Too often, however, courts are not prepared to address the very barriers that the Voting Rights Act was designed to prevent.

Last term, in *Crawford v. Marion County Election Board*,²⁴ the Supreme Court upheld the State of Indiana’s mandatory requirement that people display government-issued identification when they go to cast a ballot – widely described as the strictest voter

¹⁸ See, e.g., G. Bingham Powell, Jr., *American Voter Turnout in Comparative Perspective*, 80 AM. POL. SCI. REV. 17 (1986) (providing comparative discussion of the low level of voter turnout in the United States); see World Policy Institute, *Voter Turnout Comparisons*, <http://www.worldpolicy.org/projects/globalrights/prindex.html> (last visited July 12, 2008).

¹⁹ U.S. CENSUS BUREAU, *VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2004* (March 2006), available at <http://www.census.gov/prod/2006pubs/p20-556.pdf>.

²⁰ *Id.*

²¹ Mike Baker, *More Than 3.4 Million New Voters*, AP Survey Finds, ASSOC. PRESS, May 6, 2008.

²² See Alan Wolfe, *The Race’s Real Winner*, WASH. POST, May 11, 2008, at B1.

²³ Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, § 2(b)(2), 120 Stat. 577 (2006). Shortly thereafter, the newly renewed Voting Rights Act came under constitutional attack; LDF is involved in defending its Section 5 preclearance provision. *Northwest Austin Mun. Util. Dist. No. One v. Mukasey*, No. 1:06-CV-01384, 2008 U.S. Dist. LEXIS 42682 (D.D.C. May 30, 2008).

²⁴ 128 S. Ct. 1610 (2008), decided with the companion case *Indiana Democratic Party, et al. v. Todd Rokita, et al.*

identification law in the nation. Despite the State's failure to produce any evidence of voter impersonation at any time in Indiana's history – the claimed basis for the law – and its awareness of the disfranchising effects of this restrictive requirement on minority, elderly and poor voters,²⁵ the Court found that the record was insufficient to strike down the law as facially unconstitutional.²⁶ Given existing patterns of racial isolation and concentrated poverty, mandatory voter identification laws have a particularly stark impact on persons living in poor and vulnerable communities in our country. These measures are unwarranted erosions of our democracy that, just as their predecessors, will not withstand the test of time. Like the infamous poll taxes and grandfather clauses before them, they are predicated on falsehoods and can be permitted to exist only if we are willing to embrace a limited notion of democracy intended to introduce a structural caste into our notion of “We the People.”

It is hard to imagine that laws such as Indiana's will not impact elections given the number of voters who arrived at polling sites without the statutorily required form of identification and given the number of voters who were likely deterred from voting because of the onerous burdens established by the law. The most recent presidential primary election in Indiana was a close contest, with a mere 14,192 (1.1%) of the 1,278,314 votes cast separating the two candidates.²⁷ A team of LDF attorneys, in partnership with other civil rights groups, conducted an election monitoring program during the primary, and made some worrisome observations. One of our objectives was to determine the extent to which African Americans in Gary and surrounding communities in Lake County encountered difficulty casting ballots as a result of Indiana's voter identification law. LDF attorneys learned that voters were turned away after arriving at polling sites without qualifying identification. While we were able to help some voters obtain identification from the local Bureau of Motor Vehicles so that they could cast a ballot prior to the closing of the polls, the actual number of voters who appeared at their polling places but were turned away for failing to present statutorily required identification remains unknown. Indiana does not require its poll workers to track how many voters appear at the polls without qualifying identification, a practice which would certainly provide the most accurate measure of the law's impact. Moreover, we may never know how many people were apprised of the law, realized they did not possess valid government-issued identification, and decided to stay home on Election Day as a result.

The presumed availability of provisional ballots as a fail-safe option was critical to the Supreme Court's determination that Indiana's law does not impose excessive burdens on voters.²⁸ However, that presumption was incorrect. LDF attorneys in the field were informed by poll workers that they did not always inform voters who did not possess qualifying identification of their right to cast a provisional ballot. Instead, some of these voters were simply turned away from the polls. Even if poll workers did uniformly offer provisional

²⁵ See Brief of the NAACP Legal Defense and Educational Fund, Inc. as Amicus Curiae in Support of Petitioners at 4-10, *Crawford v. Marion County Elec. Bd.*, 128 S. Ct. 1610 (2008) (Nos. 07-21, 07-25).

²⁶ The Court did but leave open the possibility of future challenges that more concretely demonstrate how such laws burden the rights of voters.

²⁷ Indiana Secretary of State, Indiana Primary Election, May 6, 2008, Voter Turnout by County and Statewide, http://www.in.gov/apps/sos/primary/sos_primary08?page=office&countyID=-1&partyID=-1&officeID=36&districtID=-1&districtshortviewID=-1&candidate= (last visited July 13, 2008).

²⁸ IND. CODE ANN. § 3-11-8-25.2 (LexisNexis 2008).

ballots to voters who lacked valid government-issued identification, the extra step required for the ballots to count – a trip to the county seat within 10 days of the election – is excessively burdensome for poor voters. For example, if a voter without photo identification casts a provisional ballot in Gary, a trip to Crown Point (the county seat) requires traveling over thirty miles round trip.

By removing barriers to the ballot box, we increase the likelihood that newly registered voters will choose to remain engaged and be active participants in our civic life. However, states – without any credible justification – are moving in the opposite direction by considering restrictive laws, such as voter identification requirements, which unnecessarily restrict access and impose barriers and hurdles for citizens now entering the political process. Democracy thrives when it is practiced, not prevented. The challenge we now face is determining how to structure the political process in a way that is more inclusive and provides affirmative opportunities for broad and meaningful participation. To do so effectively, we must remain mindful of those who are marginalized in our society – the poor, the elderly and our nation’s racial and ethnic minorities. Voting is a core constitutional right²⁹ and not a privilege to be conferred as a prize after one navigates senseless hurdles. The Congress and the courts must act accordingly.

Economic Justice

From opportunity for advancement in the workplace to the freedom of choice to live in any community, African Americans have long endured various forms of racial discrimination. The result has been the stunting of black economic opportunity, with the impact felt across generations. Racism in employment can be found in hiring and wages as well as in treatment at the workplace. The 2005 Current Population Survey shows that African-American men earn 75 cents, and Hispanic men earned 63 cents to every dollar earned by white men.³⁰ Even at high levels of educational achievement this disparity persists. Census data shows that black men with high school diplomas earn roughly 24% less than equally educated white men, black men with bachelor’s degrees earn roughly 25% less than their white counterparts, and black men with master’s degrees earn 27% less.³¹ Furthermore, this wage gap increases with the age of an employee, even after controlling for organizational tenure, education, and skill.³² The situation is even worse for black and Hispanic women. Black women earn just 63 cents to every dollar earned by white men while Hispanic women earn a mere 52 cents to the

²⁹ See, e.g., *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (stating that “the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights”); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (hailing voting as “a fundamental political right, because preservative of all rights”).

³⁰ U.S. Census Bureau, Annual Social and Economic Supplement (2005).

³¹ Curtis Lawrence, *Race Pay Gap Persists at All Grad Levels*, CHI. SUN-TIMES, Jan. 4, 2004, at 3.

³² Phyllis Barnum, Robert C. Liden & Nancy Ditomaso, *Double Jeopardy for Women and Minorities: Pay Differences With Age*, 38 ACAD. MGMT. J. 863 (1995).

dollar.³³ In 2004, the total income for the median black family was just 62% of the income for the median white family.³⁴

In addition, racial harassment continues to exist in the workplace. In 2007, the number of racial harassment cases reached an all-time high of 6,977. The harassment faced by black employees includes racist graffiti, physical threats, subjection to Nazi symbols, and the display of hangman's nooses. Many workers who report this harassment find little managerial response to the misconduct or, even worse, are faced with supervisors that condone and take part in the harassment.³⁵

Recent academic literature has contributed to the abundant evidence of continued racism in employment. In 2004, economists Marianne Bertrand and Sendhil Mullainathan published the results of a study in which they randomly assigned African-American-sounding names (e.g., Lakisha and Jamal) or White-sounding names (e.g., Emily and Greg) to fictitious resumes which they then mailed to job-openings in Chicago and Boston.³⁶ Although the content of the resumes were identical, the resumes that contained White-sounding names received 50% more call-backs than those with African-American-sounding names. This result was consistent across occupation, industry, and employer size. Another study released this year by Jeffrey Grogger at the University of Chicago presents findings that those people identified to have black-sounding speech patterns earned 10% less than comparably skilled, experienced, and educated whites.³⁷ As shocking as these studies are, they reflect the racism that persists in American society.

Another area of longstanding concern to LDF is equal housing. As our nation marks the 40th Anniversary of the Fair Housing Act this year, we must acknowledge that many jurisdictions within our country are as racially segregated today as they were when the Act was passed in the wake of Dr. Martin Luther King, Jr.'s assassination in 1968. Although the Fair Housing Act of 1968 has been law for 40 years, racial discrimination and neighborhood segregation persist in American communities.

A study by Douglass S. Massey and Garvey Lundy of the University of Pennsylvania provides some insight into the persistence of racism in the housing market.³⁸ The authors conducted a study where black and white students inquired about apartments by phone. The study found that those students who "sounded black" were less likely to get through and speak to a rental agent, less likely to be informed of a unit's availability, more likely to pay an

³³ NATIONAL WOMEN'S LAW CENTER, PAY EQUITY FACT SHEET (May 2008), *available at* http://www.nwlc.org/fairpay/PayEquityFactSheet_050508.pdf.

³⁴ Jared Bernstein, *Economic Snapshot: Weaker Job Market Re-Opens Racial Income Gap*, ECONOMIC POLICY INSTITUTE, July 5, 2006, http://www.epi.org/content.cfm/webfeatures_snapshots_20060705.

³⁵ Eve Tahmincioglu, *Racial Harassment Still Infecting the Workplace*, MSN CAREERS, Jan. 13, 2008, <http://www.msnbc.msn.com/id/22575581/>.

³⁶ Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991 (2004).

³⁷ Jeffrey Grogger, *Speech Patterns and Racial Wage Inequality* (Harris School Working Paper Series 08.13, 2008), *available at* http://harrisschool.uchicago.edu/About/publications/working-papers/pdf/wp_08_13.pdf.

³⁸ Douglass S. Massey & Garvey Lundy, *Use of Black English and Racial Discrimination in Urban Housing Markets New Methods and Findings*, 36 URB. AFF. REV. 452 (2001).

application fee, and more likely to be told that credit-worthiness may be a problem in qualifying for a lease. Thus, although these callers were identical in all ways except for their perceived race, the black-sounding students had a more difficult time finding housing than the white-sounding students.

Recently, the ongoing mortgage foreclosure crisis, largely fueled by the drastic increase in the issuance of sub-prime loans, has revealed another area of housing infected by racism. Sub-prime loans, such as Adjustable Rate Mortgages (ARMs), exploding ARMs, and no-document loans were among those that caused the most damage to the housing market. These high-cost mortgage products were often issued by lenders who did not account for the borrower's long-term ability to pay the loan. Many of these lenders could make a commission by merely issuing such loans and leaving the borrower to bear the risks and consequences that the loans entailed. ACORN (a leading organization in fair housing) reports that in 2006, African-American home purchasers were 2.7 times more likely to be issued a sub-prime loan than white borrowers and Latino home purchasers were 2.3 times more likely to receive such loans than white borrowers.³⁹ A similar disparity existed in the mortgage refinancing market, where African Americans were 1.8 times more likely to be issued a sub-prime loan than whites and Latinos were 1.4 times more likely. The disparity was even greater among upper-income home purchasers. Upper-income African Americans were 3.3 times more likely to be issued a sub-prime loan than white borrowers and upper-income Latinos were 3 times more likely. Many of these borrowers qualified for lower-cost fixed-rate mortgages but were never offered that option. Thus, when housing prices declined and these sub-prime borrowers were unable to refinance their high-cost mortgages at lower rates, the minority community was disproportionately harmed and many African-American and Latino homeowners were forced into foreclosure.

Furthermore, violations of the Fair Housing Act, and the right to the equal provision of public services that make housing viable, continue to be widespread. Last week, a federal court awarded \$10.8 million to black residents who were denied public water for fifty years because of discrimination by government officials. White residents who lived nearby were served by water lines, but blacks were not. In another example, with LDF's support, an African-American family in rural Tennessee is suing government officials and several private companies for polluting the family's groundwater with cancer-causing chemicals. The family claims that government officials intentionally discriminated against them. The officials knew as early as 1988 that the family's well water was contaminated with cancer-causing toxins that had leaked from an adjacent landfill into the water supply, at levels approaching thirty times the standard set by the U.S. Environmental Protection Agency. However, rather than take steps to warn and protect the family, government officials did just the opposite - they informed the family that the water was safe for consumption. Meanwhile, officials notified white families in the area that they should *not* drink the groundwater and even ensured that those families were connected to the municipal water supply. Several members of the black family have contracted various form of cancer since then, and one has died.

³⁹ ACORN, *Foreclosure Exposure: A Study of Racial and Income Disparities in Home Mortgage Lending in 172 American Cities 1-3* (2007), available at <http://www.acorn.org/fileadmin/HMDA/2007/HMDAreport2007.pdf>.

This problem is not isolated. Minority neighborhoods are frequently host sites for dangerous facilities such as landfills, electrical power stations, incinerators, and waste treatment plants. According to a recently released study, “Toxic Wastes and Race at Twenty, 1987-2007,” people of color are more concentrated near hazardous waste facilities than twenty years ago. Among the study’s findings, 40 of 44 states with hazardous waste facilities have disproportionately high percentages of minorities living in host communities.⁴⁰ Today, African Americans and other minorities represent 56% of those living in neighborhoods within two miles of commercial hazardous waste facilities. Not surprisingly, the study concluded that “race continues to be a significant independent predictor of commercial hazardous waste facility locations when socio-economic and other non-racial factors are taken into account.”

LDF is currently involved in a case seeking a precedent-setting remedy for Fair Housing Act violations by the Department of Housing and Urban Development in unlawfully concentrating African-American public housing residents in the most impoverished, segregated areas of Baltimore City.⁴¹ The remedy proposed by LDF is designed to promote housing for public housing residents in the entire metropolitan region and ensure access to communities of opportunity.

Given LDF’s institutional knowledge about school integration, we also recognize the deep structural role that residential segregation plays in perpetuating inequality in our nation’s schools.⁴² The relationship between housing and education is clear. According to the Caucus for Structural Equality, “[t]he racial makeup of residential neighborhoods is the most important determinant of the racial composition of the schools within them As residential neighborhoods in the United States are substantially segregated by race, so too are schools to the extent that they employ localized attendance policies.”⁴³ LDF has recognized that, “[b]ecause school districts generally rely on proximity when assigning students to schools,

⁴⁰ United Church of Christ & Witness Ministries, *Toxic Wastes and Race at Twenty 1987-2007* (2007), available at <http://www.ucc.org/justice/pdfs/toxic20.pdf>.

⁴¹ *Thompson v. HUD*, 348 F. Supp. 2d 398 (D. Md. 2005).

⁴² There is a two-way link. Residential segregation often leads to educational segregation (“In communities where we find racially segregated housing patterns, however, assigning students based solely on geographic proximity to schools can result in significant racial isolation.”). NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., *STILL LOOKING TO THE FUTURE: VOLUNTARY K-12 SCHOOL INTEGRATION* 21 (2008). Efforts to promote educational integration can lead to residential integration (“A comprehensive school integration plan can actually counter residential segregation. In fact, after decades of court-ordered school integration, residential segregation actually declined across the South in the 1990s.”). *Id.* at 47. Since the Supreme Court has forcefully pushed back against school district voluntary integration plans, renewed attention on housing strategies may be an effective strategy.

⁴³ Brief of the Caucus for Structural Equity as Amicus Curiae Supporting Respondents at 17, *Parents Involved v. Seattle Sch. Dist.*, 127 S. Ct. 2738 (2007) (Nos. 05-908, 05-915) (emphasis added). The brief also notes that, “[s]egregated housing patterns fuel segregated classrooms and disparate educational outcomes. In turn, low quality public schools reinforce segregated housing patterns due to the strong correlation between housing prices and public school quality In short, school segregation is both an important outcome and a crucial source of residential segregation.” *Id.* at 26.

‘[a]bsent some substantial decline in racial residential segregation, race-neutral assignment policies are unlikely to produce significant racial school desegregation.’”⁴⁴

Just yesterday, LDF and three other national civil rights organizations launched a National Commission on Fair Housing and Equal Opportunity. Using the occasion of the Fair Housing Act’s Anniversary, the Commission will address the vestiges of our nation’s segregated housing policies and the acts of private industry which perpetuate the residential segregation we all experience today. The Commission is chaired by former Secretaries of the Department of Housing and Urban Development Henry Cisneros and Jack Kemp. The Commission will conduct hearings around the country to collect testimony, research, data and information on fair housing enforcement and the persistence of residential segregation forty years after the passage of the Fair Housing Act. The hearings will culminate in a report (to be released at the end of the year) outlining recommendations on how we can move forward together to meet the goals of the Fair Housing Act.

Affirmative residential housing policies can provide an additional tool in our nation’s efforts to promote integrated schools in the wake of the Supreme Court’s recent decisions on voluntary integration. Combating residential segregation has the potential to break apart concentrated areas of poverty and reform the makeup of minority schools. A wide range of housing strategies are available, including inclusionary zoning to require the availability of affordable housing in large housing developments; incentives for Low Income Housing Tax Credit developments in areas with income diversity, population growth, and job opportunity; and opportunity mapping⁴⁵ to identify high-opportunity areas⁴⁶ and connect racial minorities with those geographic regions.

Federal Enforcement of Civil Rights Laws

LDF has been enforcing constitutional and civil rights laws for more than six decades. We know perhaps better than anyone that the federal government must be a crucial partner in our nation’s collective battle against racism and discrimination. Last year, we commemorated the 50th Anniversary of the U.S. Department of Justice Civil Rights Division. Created in the wake of the Supreme Court’s landmark decision in *Brown v. Board of Education*, the Division has played a crucial role in making the promise of equal protection under law meaningful. At its inception, the Division was dedicated exclusively to ridding society of the racial segregation and racial discrimination that permeated virtually every societal structure. Sadly,

⁴⁴ NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., FACT SHEET – IMPACT OF RACE-NEUTRAL ALTERNATIVES 1 (internal citations omitted), *available at* <http://www.opportunityagenda.org/atf/cf/%7B2ACB2581-1559-47D6-8973-70CD23C286CB%7D/Race-Neutral%20Alternatives%20Fact%20Sheet.pdf>.

⁴⁵ This concept is defined in KIRWAN INSTITUTE, COMMUNITIES OF OPPORTUNITY: A FRAMEWORK FOR A MORE EQUITABLE AND SUSTAINABLE FUTURE FOR ALL (2007), *available at* http://www.sustainablepittsburgh.org/REDS/2006/Comm_of_Opportunity_Jan_2007.pdf. The framework is spatial; recognizes that inequality has a geographic footprint; utilizes GIS data to analyze the distribution of opportunities;

⁴⁶ High opportunity areas include the availability of sustainable employment, high-performing schools, a safe environment, access to high-quality health care, adequate transportation, quality child care, and safe neighborhoods

while racial and other forms of discrimination continue to affect our country, today the Division has sharply deviated from its original mission, and the impact can be seen across many areas.

As LDF has noted in testimony before Congress, the Civil Rights Division has been embroiled in controversy in recent years, with devastating effects on federal civil rights enforcement. Congressional oversight hearings and news reports have recounted the severe problems plaguing the Division, including the politicization of litigation decisions; improper hiring practices; the firings and transfers of valued career lawyers and section chiefs; a decrease in the racial diversity of Division staff; the shifting of enforcement priorities; and a substantial decline in cases filed on behalf of racial minorities which have comprised the core of the Division's docket for most of its existence.⁴⁷ Just last month, the Justice Department's Office of Inspector General and Office of Professional Responsibility issued a report finding that political appointees within the Department violated internal policy and the Civil Service Reform Act by using ideological litmus tests for hiring attorneys into the prestigious Honors Program as well as summer interns.⁴⁸ The problems of the Civil Rights Division are so severe that it is the subject of a separate investigation by the same entities into both substantive legal decisions made by the Division as well as its personnel practices.⁴⁹

In civil rights cases, the Justice Department has taken positions which have not only abandoned its traditional role, but which have turned it in the opposite direction. Nowhere has this been more apparent than in the Supreme Court's consideration of the voluntary school integration cases out of Louisville, Kentucky and Seattle, Washington. Since *Brown v. Board of Education*, in which the Justice Department argued in support of those challenging school segregation laws, the federal government has played a central role in school desegregation cases. Either the Department, LDF, or both, has been involved in a majority of the school desegregation cases litigated since *Brown*. However, in *Meredith v. Jefferson County Board of Education* and *Parents Involved in Community Schools v. Seattle School District No. 1*, the Department took the position that any voluntary, race-conscious action taken by school districts to promote integration in public schools violates the Equal Protection

⁴⁷ Civil Rights Division Oversight Hearing Before the S. Comm. on the Judiciary, 110th Cong. (2007); Oversight of the Civil Rights Division: Hearing Before the S. Comm. on the Judiciary, 109th Cong. (2006); Oversight Hearing on the Voting Section of the Civil Rights Division, Hearing Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, H. Comm. on the Judiciary, 110th Cong. (2007); Oversight Hearing on the Employment Section of the Civil Rights Division, Hearing Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, H. Comm. on the Judiciary, 110th Cong. (2007); Changing Tides: Exploring the Current State of Civil Rights Within the Department of Justice, Hearing Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, H. Comm. on the Judiciary, 110th Cong. (2007); Carol D. Leonnig, Political Hiring in Justice Division Probed, WASH. POST, June 21, 2007, at A1; Charlie Savage, Civil Rights Hiring Shifted in Bush Era, BOSTON GLOBE, July 23, 2006, at A1.

⁴⁸ U.S. Department of Justice, Office of Inspector General & Office of Professional Responsibility, An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program (2008), available at <http://www.usdoj.gov/oig/special/s0806/final.pdf>; see also Carrie Johnson, *Ideology-Based hiring at Justice Broke Laws, Investigation Finds*, Wash. Post, June 25, 2008, at A11.

⁴⁹ Leonnig, *supra* note 47, at A1; Jason McLure, *DOJ Probe Turns to Civil Rights Division*, LEGAL TIMES, June 4, 2007.

Clause.⁵⁰ This position constituted a reversal of historic proportions by the Department, which throughout its fifty-year existence has forcefully advocated for equal educational opportunity. Ultimately, five members of the Supreme Court disagreed with the position advocated by the Division and recognized that limited race-conscious measures can be used in pursuit of the compelling interests in promoting diversity and avoiding racial isolation in schools.⁵¹ The Division's position in these cases continued a disturbing trend of taking adverse positions in educational opportunity cases in the Supreme Court. In the seminal affirmative action case, *Grutter v. Bollinger*, the Division argued in 2003 that the race-based admissions policy was unconstitutional,⁵² a position with which the Supreme Court ultimately did not agree.⁵³

We have witnessed a significant deterioration in traditional civil rights enforcement by the Division. The past seven years have seen a persistent downturn in “pattern and practice” cases, which represent the most efficient and effective manner to redress widespread discrimination. At the same time, while discrimination that adversely impacts a particular protected class is actionable under the law, the Division under the Bush Administration has filed very few such cases,⁵⁴ and has prohibited them altogether in the Housing Section.⁵⁵

We remain very concerned with the fact that the Division has filed only a few cases on behalf of African Americans and other racial minorities under various civil rights statutes, including voting rights⁵⁶ and fair employment laws.⁵⁷ It is troubling that, while these cases are in decline, the Division has increased its filings of claims alleging discrimination against white persons. For example, two of the last three race cases filed by the Employment Section have alleged discrimination against white employees.⁵⁸ In the area of voting rights, we are also concerned that the Division continues to blur the line between its traditional role of observing and monitoring election day activities and the criminal enforcement responsibilities historically undertaken by the Criminal Division, which can cause an intimidating effect on

⁵⁰ Brief for the United States As Amicus Curiae Supporting Petitioner, *Meredith v. Jefferson Co. Bd. of Educ.*, No. 05-915.

⁵¹ *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 127 S. Ct. 2738, 2792 (2007) (Kennedy, J., concurring in part and concurring in the judgment); *id.* at 2811 (Breyer, J., dissenting).

⁵² Brief for the United States As Amicus Curiae Supporting Petitioner, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241).

⁵³ *Grutter v. Bollinger*, 539 U.S. 306 (2003).

⁵⁴ Complaints Filed, U.S. Department of Justice, Civil Rights Division, Employment Litigation Section, available at <http://www.usdoj.gov/crt/emp/papers.html>.

⁵⁵ Changing Tides: Exploring the Current State of Civil Rights Within the Department of Justice, Hearing Before the Subcommittee on the Constitution, Civil Rights and Civil Liberties, H. Comm. on the Judiciary, 110th Cong. 145 (2007) (testimony of Wade Henderson, President and CEO, Leadership Conference on Civil Rights).

⁵⁶ In seven years under the Bush Administration, the Division has approved and filed only one case alleging voting discrimination against African Americans under Section 2 of the Voting Rights Act. Litigation Brought by the Voting Section, U.S. Department of Justice, Civil Rights Division, Voting Section Home Page, available at <http://www.usdoj.gov/crt/voting/litigation/caselist.html>.

⁵⁷ It was not until 2006 that the Division under the Bush Administration filed its first case alleging that employment practices had a discriminatory impact on African Americans. Complaints Filed, U.S. Department of Justice, Civil Rights Division, Employment Litigation Section, available at <http://www.usdoj.gov/crt/emp/papers.html>.

⁵⁸ *Id.*

minority voters. Essentially, the Division's enforcement priorities ignore the historical and continuing subjugation of minority citizens.

Moving forward, it is critical that the Civil Rights Division adhere to its original mission. Priorities can be augmented without abdicating core responsibilities. Civil rights enforcement is not and cannot be a zero sum game in our complex and increasingly diverse society. Protecting African Americans is not inconsistent with protecting Latinos; protecting disabled persons is not inconsistent with protecting women; and protecting citizens who are being discriminated against because of their religious beliefs need not be in tension with doing the same for those whose national origin has subjected them to discrimination. Priorities can and will change from administration to administration, but the Division's role as a protector of marginalized citizens and minorities is its core charge. Taking account of new priorities and of new or intensified discrimination faced by various groups is appropriate, but need not be achieved through the wholesale abandonment of longstanding priorities aimed at addressing inequities and injustice.

The Civil Rights Division is second to none in terms of the time, resources and capacity it has to bring systemic litigation. While the private bar and the civil rights NGOs such as LDF can have a profound effect on civil rights law, defining its cutting edge, there is no substitute for the Civil Rights Division's role. Very often cases brought by the Division have industry-wide impact in terms of deterrence and reform. The broad-based injunctive relief that the Division can pursue cannot be matched through the efforts of private lawsuits alone because the pecuniary interests of plaintiffs often lead to much more narrow relief and no institutional reform.

We also recognize that civil society and the private sector play an important, dual role. As the example of the post-Hurricane Katrina relief effort demonstrated, it is simply not enough for NGOs and civil society to engage in thoughtful acts of charity and service. We need all stakeholders to be advocates for racial justice. That means individuals and institutions declaring themselves to be anti-racist and also demanding the same of others. In addition to their direct work on these issues, they can also support this cause indirectly by demanding accountability from all levels of government.

Conclusion

Discrimination in our nation has proven difficult to overcome, and it persists in the arenas of education, voting, housing and employment, and criminal justice, among others. As U.N. Special Rapporteur Dr. Doudou Diene recently recognized in preliminary observations after his recent fact-finding mission to the United States, racism is on the rise both around the globe and here in this country. Dr. Diene noted “[t]he map of social and economic marginalization is tightly coinciding with the ethnic map. The communities most marginalized socially, economically and politically are the historically discriminated minorities.” Often unconscious, this racism and discrimination continue to infect nearly every facet of public and private life. The matter is one that impacts the security of our nation and the global community.

Increasingly, discrimination persists due to strained interpretations of policies and laws that were once designed to provide opportunity to the historical victims of invidious discrimination. In far too many circumstances, the executive and judicial and legislative branches of government have either failed to aggressively pursue racial justice, and in some cases have acted in ways turn back the clock. In addition to the failings of the executive branch detailed above, the U.S. Congress is too often mired in partisan politics to effectively advance a racial justice agenda. And, as alluded to earlier, many decisions of the U.S. Supreme Court and lower courts have proved damaging. In one of the most striking examples, the Supreme Court held in *Alexander v. Sandoval*⁵⁹ that private individuals must allege and prove intentional discrimination and cannot use racially disparate impacts to prove their case under Title VI of the Civil Rights Act of 1964.

The United States, its agencies and political subdivisions must vigorously enforce existing civil rights laws. And we must ensure that these same entities expand their understanding of how contemporary racism operates. Along with the U.S. Constitution and federal statutes, international treaty instruments, such as the CERD (which the U.S. has ratified with three reservations, understandings and declarations qualifying the extent to which it would adhere), constitute the supreme law of the land. As you know, the CERD prohibits racial discrimination in a broad sense, including any policy that has the purpose *or* effect of impairing human rights and fundamental freedoms on the basis of race.

Having a department of the federal government that is focused and motivated to discharge its anti-discrimination mission is critical to enforcement of the civil rights laws, and also has tremendous practical and symbolic significance. And strict compliance with the CERD, strengthening civil rights laws, and overruling or adopting legislative fixes to damaging Supreme Court decisions are all necessary strategies to move this country closer to racial justice. These measures would not only increase the country's safeguards against the effects of racism; but they would also enhance the country's accountability in the international community.

LDF strongly supports the work of this Commission and we appreciate the opportunity to work in partnership to address these important issues. We urge you to continue your leadership on these issues and continue reaching out to NGOs like the Legal Defense Fund.

⁵⁹ 532 U.S. 275 (2001).