



**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 15, 2010

The Honorable Frank Wolf  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Wolf:

This responds to your letter to the Attorney General dated September 23, 2010, which discussed the testimony of Christopher Coates before the U.S. Commission on Civil Rights ("Commission") about the enforcement of federal voting laws.

We can assure you that the Department will not take any action that would be inconsistent with applicable whistleblower protections. At the same time, we would like to explain the reasons for the Department's decision not to authorize Mr. Coates to testify before the Commission.

The Department has a well-established, longstanding policy against disclosures of internal recommendations and deliberations, particularly those related to prosecutorial decisions. It is critical that Department attorneys, particularly career line attorneys, be free to fulfill their responsibilities without fear that they will be subjected to individual examination by either Congress or federal agencies. The disclosure of internal recommendations and deliberations would have a chilling effect on the open exchange of ideas, advice and analyses that is essential to our decisionmaking process. Based on this policy, the Department declined to authorize Mr. Coates to testify before the Commission in connection with the Commission's review of the Department's actions in *United States v. New Black Panther Party for Self Defense*, Civil Action No. 2:09-cv-0065. We also determined that the Department could provide factual information sought by the Commission through means other than Mr. Coates's testimony, such as the production of documents and interrogatory responses, and the testimony of Assistant Attorney General for Civil Rights Thomas Perez. (See April 16, 2010 letter of Joseph H. Hunt to Commission General Counsel David Blackwood, enclosed.)

When the Commission later renewed its request for Mr. Coates to testify, by letter dated July 28, 2010, in order to address "non-deliberative statements" and Department "policy and/or culture" relating to enforcement of the civil rights laws, the Department concluded that in light of Assistant Attorney General Perez's articulation of Department enforcement policies, including in sworn testimony to the Commission, Mr. Coates – who has been on detail to the U.S. Attorney's

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Office for the District of South Carolina since mid-January 2010 – was not the appropriate witness to testify regarding current Division policies. (See August 11, 2010 letter of Thomas E. Perez to Chairman Gerald A. Reynolds, enclosed.)

Mr. Coates was notified in writing in April, and again just prior to his appearance before the Commission, that, for the above reasons, he was not authorized to testify before the Commission or otherwise to provide Department information to the Commission in connection with its current inquiry. As you may know, by regulation, no employee is permitted to testify without Department approval.<sup>1</sup>

Please be assured that the Department of Justice is firmly committed to the fair, vigorous and evenhanded enforcement of all of the civil rights laws within its authority, including federal laws protecting the right to vote. As the Attorney General and other officials of the Department have reiterated, the Department makes enforcement decisions based on the merits, not the race, gender or ethnicity of any party involved. We are committed to comprehensive and vigorous enforcement of the federal laws that prohibit voter intimidation. We continue to work with voters, communities, and local law enforcement to ensure that Americans can vote free from intimidation, coercion or threats.

The Department is very proud of its recent civil rights accomplishments. With respect to voting rights, for example, the Department is actively working to ensure the successful enforcement of the Military and Overseas Voter Empowerment Act of 2009 so that members of the Armed Forces and citizens living abroad receive their ballots in time to vote in the upcoming federal election. The Department also has begun a comprehensive, nationwide review of compliance with the voter registration requirements of the National Voter Registration Act. In addition, the Department has reviewed numerous submissions of proposed changes in election practices or procedures for compliance with Section 5 of the Voting Rights Act and monitored 33 elections in 31 political subdivisions in 14 States.

In other areas of civil rights enforcement, the Department has filed record numbers of criminal civil rights cases, including labor trafficking and police abuse cases. At the same time, we have substantially increased our efforts to enforce the fair lending laws in the wake of the foreclosure crisis. The Department is vigorously enforcing the rights of people with disabilities and has adopted new regulations implementing the Americans with Disabilities Act to help ensure that persons with disabilities can be full participants in their communities. We also have actively enforced the laws protecting religious liberties and are taking strong steps to protect servicemembers' rights, working to ensure equal educational opportunities, and continuing to enforce the laws against discrimination in the workplace.

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<sup>1</sup> “[N]o employee or former employee of the Department of Justice shall, in response to a demand, produce any material contained in the files of the Department, or disclose any information relating to or based upon material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that person’s official duties or because of that person’s official status without prior approval of the [Department].” 28 C.F.R. § 16.22(a).

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We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Weich".

Ronald Weich  
Assistant Attorney General

Enclosures



U.S. Department of Justice

Civil Division

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Washington, D.C. 20530

April 16, 2010

**VIA EMAIL AND FIRST-CLASS, U.S. MAIL**

Mr. David P. Blackwood  
General Counsel  
United States Commission On Civil Rights  
624 Ninth Street, N.W.  
Washington, DC 20425

Re: United States Commission on Civil Rights'  
Planned Statutory Enforcement Report

Dear Mr. Blackwood:

This letter responds to the March 30, 2010 request of the United States Commission on Civil Rights for the Department of Justice to identify a witness to testify at a hearing related to the Commission's planned statutory enforcement report for Fiscal Year 2010. This also responds to your earlier requests for testimony from two career Department employees, Christopher Coates, a Civil Rights Division attorney currently on detail to the United States Attorney's Office for the District of South Carolina, and J. Christian Adams, a trial attorney in the Voting Section of the Civil Rights Division.<sup>1</sup>

As Department staff explained in your telephone conversations yesterday, we have been working to identify a Department witness for the Commission's hearing and are prepared to make available Assistant Attorney General for Civil Rights Thomas E. Perez. The Commission's March 30, 2010 letter requested testimony from Department employees regarding "the internal deliberations of the Department relating to the *New Black Panther Party* litigation," but our understanding from your conversations yesterday with Department staff is that the Commission's core focus is the decision to dismiss certain claims from that case. While Mr. Perez would testify on that decision and the factors that informed it, he is not at liberty to discuss internal deliberations. Based on the conversation with you yesterday, we understand that

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<sup>1</sup>The Commission's initial request sought information regarding specific subjects. Your March 30, 2010 letter modified that request to seek testimony regarding the "internal deliberations of the Department relating to the *New Black Panther Party* litigation." This letter responds to all of these requests for testimony from Department witnesses.

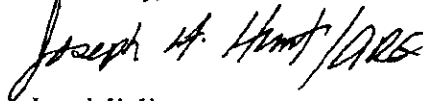
the Commission is amenable to having the Assistant Attorney General appear on a separate panel from other witnesses, as is customary for testimony from Assistant Attorneys General, and to work with us to accommodate his schedule on May 14.

The Department carefully considered the request for testimony from Messrs. Coates and Adams pursuant to 28 C.F.R. §§16.21-16.29 and in accordance with the Department's effort to cooperate with the Commission, but will not authorize these employees to testify before the Commission. As we explained, the Department has a longstanding institutional need to protect against disclosures of internal recommendations and deliberations of Department employees, particularly those related to prosecutorial decisions. Such disclosures would have a chilling effect on the open exchange of ideas, advice, and analyses that is essential to the decisionmaking process. It is critical that Department attorneys, particularly career line attorneys, be free to express their opinions and fulfill their responsibilities without fear that they will be subjected to individual examination by either Congress or federal agencies. In addition, we note that to the extent the Commission seeks factual information, that information is being provided through the extensive documents provided to the Commission, the interrogatory responses and supplementary interrogatory responses, and the testimony that will be offered by Mr. Perez. Neither Mr. Coates nor Mr. Adams made the decisions that the Commission wishes to examine. The Assistant Attorney General brings to bear the information of the Civil Rights Division as a whole, and therefore is in a better position to provide the information the Commission seeks.

We are confident that the testimony of the Assistant Attorney General and our responses to the Commission's requests for documents and information should satisfy the Commission's inquiry consistent with our institutional interests.

As discussed during your telephone conversations with Department staff yesterday, Assistant Attorney General Perez is available to testify May 14, 2010, pursuant to the mutually acceptable timing and format arrangements discussed. We appreciate the Commission's patience while the Department has undertaken consideration of the Commission's requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph H. Hunt / JAH". The signature is written in a cursive, somewhat stylized script.

Joseph H. Hunt  
Director  
Federal Programs Branch  
Civil Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 11 2010

The Honorable Gerald A. Reynolds  
United States Commission on Civil Rights  
624 Ninth Street, N.W.  
Washington, D.C. 20425

Dear Chairman Reynolds:

I write in response to your letters dated July 14, July 28, and August 6, 2010, in which you raise concerns about, and request information regarding, the Civil Rights Division's policy regarding enforcement of our nation's civil rights laws. There should be no misunderstanding: the Civil Rights Division is firmly committed to the evenhanded application of the law, without regard to the race of the victims or perpetrators of unlawful behavior. Any suggestion to the contrary is simply untrue.

In testimony before the Commission, I explained in detail the circumstances surrounding the Division's successful effort in *United States v. New Black Panther Party for Self-Defense* to obtain an injunction against an individual who brought a nightstick to a Philadelphia polling place in November 2008. A copy of my written statement to the Commission is enclosed. See Statement of Thomas E. Perez before the U.S. Commission on Civil Rights (May 14, 2010). As I testified, the decision to proceed with all of the Division's original claims against the only defendant in that case who brought a weapon to a polling place and to dismiss the claims against the three other defendants reflects the kind of good faith, case-based assessment of the strengths and weaknesses of claims that the Civil Rights Division makes every day.

Our mission is to enforce all of the civil rights laws under our jurisdiction and to do so in a fair, thorough and independent manner. Since January 2009, we have successfully completed three times as many employment cases on behalf of servicemembers who were unlawfully terminated from their jobs because they were called to active duty as were brought in the preceding three years combined. We have put renewed focus on the prosecution of hate crimes, expanded enforcement of laws that protect persons with disabilities, and obtained a landmark lending discrimination settlement against insurance giant AIG. We are reinvigorating the Division's work in a wide range of areas. In so doing, we have followed the evidence where it leads and based enforcement decisions on the merits.

Our commitment to evenhanded enforcement of our civil rights laws extends to every part of the Division, and our work in the voting area is no exception. This commitment is evidenced by our ongoing work in Mississippi. There, the Division recently filed a Motion to

prevent actions by defendants Ike Brown and the Noxubee County (Mississippi) Democratic Executive Committee on the ground that the actions were motivated in part by racial animus against white voters. See United States' Memorandum Of Law In Support Of Its Motion For Additional Relief Against Defendants Ike Brown And The Noxubee County Democratic Executive Committee, *United States v. Brown et al.*, Civil Action No. 4:05-cv-33 (TSL/LRA) (S.D.Miss.) (copy enclosed). We have also undertaken to address claims that in 2005 armed agents from the Mississippi Attorney General's Office went to the homes of African Americans, many of whom were elderly, and demanded to know for whom they voted in a recent election. When we became aware of those allegations, we advised the Mississippi Attorney General's office of our concern that such intimidation not occur in the future and placed them on notice we will actively investigate any recurrence of such actions. We believe our actions in Mississippi clearly illustrate our commitment to even handed law enforcement.

Since becoming the Assistant Attorney General in October 2009, a cornerstone of my message to the entire Division, to career personnel and political appointees alike has been that we must recommit the Division to enforcing all the laws on the books that we are empowered to enforce, and that we must not pick and choose among them. This was a central part of the message in my address to the Division on October 14, 2009, which took place shortly after I arrived, in which I said that, "we must and will restore public confidence in the Division, and we can do so by enforcing the laws, all the laws, fairly and aggressively . . ." I delivered a similar message at my installation ceremony, which included representatives from the Department and the civil rights community. Within days of my arrival, I visited every section in the Division, including the Voting Section, and emphasized the importance of a fair and independent approach to our work that involves enforcing all the laws on the books. Moreover, in testimony before both the House and Senate, in public speeches, and in meetings that I have held with more than 20 U.S. Attorney's offices and many local and national civil rights groups, I have reiterated the same message with regard to enforcing all of the laws in an fair, independent, evenhanded manner. In light of this clear message, I am certain that every Division employee should understand the mandate of equal enforcement of the law from the first day of my tenure as Assistant Attorney General.

In addition, your letter raised concerns about the Civil Rights Division's enforcement of the National Voter Registration Act of 1993 (NVRA). Our commitment to full and fair enforcement of all civil rights laws of course includes the provisions of the NVRA. Indeed, the Division currently has active matters involving a variety of allegations that implicate many different provisions of the NVRA, including investigations under Section 8 of the statute. In addition, for the first time, we have prepared and disseminated plain English guidance on how jurisdictions can comply with all provisions of the NVRA. I am confident that managers in the front office, the Voting Section and, indeed, throughout the Division, share my commitment to fair, independent, and evenhanded enforcement and will continue to communicate this message. There is no policy of selective enforcement, and our actions bear this out.

We have carefully considered your renewed request for Mr. Coates to testify before the Commission. In your letter of July 28, 2010, you state that the scope of the testimony would be limited to "non-deliberative statements or actions relating to whether there is a policy and/or culture within the Department of discriminatory enforcement of civil rights laws and whether

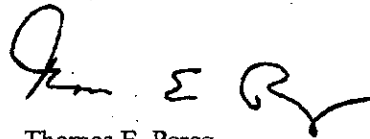
Honorable Gerald A. Reynolds

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there is a policy not to enforce Section 8 of the [NVRA.]” In light of my clear articulation of our enforcement policy to the Division’s employees and my having now confirmed that policy to the Commission both in sworn testimony and in this letter, we do not believe that a Civil Rights Division attorney who has been on detail to the United States Attorney’s Office for the District of South Carolina since mid-January 2010 is the appropriate witness to testify regarding current Division policies. We are hopeful that the information and assurances contained in this letter will address the Commission’s concerns about the Division’s enforcement policies.

Please do not hesitate to contact me if I can be of further assistance regarding this, or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom E. Perez". The signature is fluid and cursive, with the first name "Tom" being the most prominent.

Thomas E. Perez  
Assistant Attorney General

Enclosures