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Thank you to the Chair and to the Commissioners for the invitation to appear today to discuss the topic “Are Rights a Reality: Evaluating Federal Civil Rights Enforcement.” I had the privilege to work in the Civil Rights Division at the Department of Justice years ago, and I am happy to add my thoughts to those of the other distinguished panelists with an interest in the topic.

Our fellow Americans and popular media outlets have failed to be precise when discussing the topic of federal civil rights enforcement. The term “civil rights” is often used as short-hand for the broader topic of race-relations, progressive social politics, or immigrant rights. And while there is some intersection with these issues, it is important to remember that federal civil rights enforcement is a law enforcement function, not a partisan catchphrase.

Federal civil rights enforcement is no different from less controversial areas of federal law such as tax law, environmental law, or federal contracting. It is governed largely by statute and constitutional law – that is, by specific texts. It is not a blank slate upon which federal civil rights attorneys are free to pursue their own political preferences or particularized vision of justice.

To be sure, those who have the joy of representing the United States in enforcing civil rights laws take pride in the moral underpinnings of many civil rights statutes, and the unique struggle that led to their passage. If one takes a long view, it truly does appear, in the words of Martin Luther King, that “the arc of history bends towards justice,” and those dedicated federal attorneys who spend their careers in the trenches enforcing civil rights laws can rightfully take

credit for doing their part to transform the often aspirational and philosophical words of legislators, presidents, and community leaders into reality.

Former Senator Tom Harkin and former Majority Leader Bob Dole may have been the primary architects of the Americans with Disabilities Act of 1990, but the Disability Rights section of the Civil Rights Division, and the Offices of Civil Rights of various federal agencies are the unheralded masons and laborers turning that blueprint into a physical structure. The ADA is nothing but words to a wheelchair-bound citizen until the curb cuts and ramps are along the path she travels every day, but someone needs to make that happen. And while seemingly routine ADA enforcement may not be as popular as some of the other politically-charged media headlines one may find by Googling “civil rights,” it is this *civil rights* work – often anonymous and sometimes even tedious – that creates a new reality that helps to integrate differently-abled citizens into society, as the drafters of the statute envisioned.

Thus before turning to more controversial topics that fall under the civil rights umbrella – with cake-bakers, transgendered bathrooms, and the like – I feel it is important to recognize that some of the most important and effective civil rights work has nothing to do with our political differences, but rather our rule of law that tries to make our intellectual agreements, statutory promises, and constitutional convictions a reality.

Consider the Fair Housing Act. This law prohibits sexual harassment by landlords, property managers, or others with authority over residents. But recent effective publicity and enforcement by the Civil Rights Division has driven huge increases in enforcement, with complaints increasing by almost 500 percent. This kind of success gains little notoriety because the proposition that residents should not be sexually harassed by their landlords has widespread agreement. But the lack of vehement disagreement over that principle and thus the lack of

publicity for that success, is a probably a good thing, and does not diminish the importance of the work. Similarly, civil rights successes in human trafficking, servicepersons and veterans rights, and disability rights go unheralded not because enforcement doesn't happen, but because no one disagrees that enforcement *should* happen – again, a good thing.

Finally, consider the prosecution of white nationalists in Charlottesville, or an anti-Semite in Pittsburgh, or abusive police officers in Springfield. Our national consensus that such cases should be brought means there is little reason to discuss them beyond the press release announcing the indictments. But that does not mean these cases are not important reflections of where we are as a society.

We currently have a Republican President and a conservative Attorney General, a situation with which I am familiar with, having served under President George W. Bush and Attorney General John Ashcroft. Thus, there is controversy and disagreement. As I have alluded to previously, conservatives, including conservative civil rights lawyers, tend to feel bound by statutory and constitutional text. As such, advocacy groups and others that want, in the absence of statutory authority, to advance issues such as transgender rights, are disappointed. I am sure there are members of this panel who are disappointed with the current federal civil rights enforcers.

Such disagreements highlight the distinction between civil rights enforcement and civil rights policy. Federal civil rights enforcers do not write with a free hand. I recall, back in the early 2000s, I was responding to congressional inquiries about whether the civil rights division would respond to the cases of violence against gay students in public schools under a strained interpretation of Title IX. I responded that the Division would happily bring such cases if Congress would give us the authority to do so, but in the absence of such authority I could not.

In contrast, today, under a conservative Attorney General and Republican President, the DOJ prosecutes hate crimes based on sexual orientation. Why? The passage of a 2009 hate crimes law explicitly covering such crimes. It is fair for advocates who want to see federal civil rights protections broadened to challenge and oppose an administration or political party that does not share their views. It is unfair to criticize federal civil rights enforcers for only enforcing the statutes on the books and not engaging in mental gymnastics to find causes of action or expansions of protections that do not exist.

Of course, even enforcing rights that do exist, such as the First Amendment right to religious freedom, is not without controversy. This administration has been a strong advocate for religious freedom, enforcing both statutory and constitutional provisions vigorously to protect citizens of all faiths – from Christians to Muslims, to Jews. In my view these cases represent civil rights work at its best – the use of statutory and constitutional authority for protection of minority views from government interference. To be sure, there are some close cases and room for disagreement, as some cases present a conflict of rights, but in an increasingly secular society, people of true religious faith are in many ways countercultural, and the wisdom of our founders in allowing the expression of all faiths while establishing no faith is ever more apparent, and necessary. I commend the administration for its efforts in this area.

In politics, there is always an incentive to convince one's supporters that the sky is falling, and will fall faster if one's political opponents gain power. Fear more effective than optimism as a political strategy. Opponents of this current administration and the Attorney General seek to stoke the fear that rights will be "rolled back" or that we are on the verge of regressing to the social atmosphere of the 1950's. But we are not. The bulk of civil rights enforcement is uncontroversial and continues unabated. The priorities of this administration are

constitutional and sound, and its adherence to statutory and constitutional text is both proper and admirable. Thank you, and I look forward to answering any questions you might have on the more detailed question presented in the notice of hearing.