

GAO

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U.S. DEPARTMENT OF  
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Opportunities Exist to  
Strengthen the Civil Rights  
Division's Ability to Manage  
and Report on Its  
Enforcement Efforts

Statement of Eileen R. Larence, Director  
Homeland Security and Justice



GAO

Accountability \* Integrity \* Reliability

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Highlights of [GAO-10-256T](#), a testimony before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, House of Representatives

## Why GAO Did This Study

The Civil Rights Division (Division) of the Department of Justice (DOJ) is the primary federal entity charged with enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin (i.e., protected classes). GAO was asked to review the Division's enforcement efforts and its Interactive Case Management System (ICM). This testimony addresses (1) the activities the Division undertook from fiscal years 2001 through 2007 to implement its enforcement responsibilities through its Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation sections, and (2) additional data that could be collected using ICM to assist in reporting on the four sections' enforcement efforts. This statement is based on GAO products issued in September and October 2009.

## What GAO Recommends

GAO previously recommended that the Division, among other things, require sections to record data on protected class and subject in the Division's case management system, and determine how sections should be required to record data in the system on the reasons for closing matters. DOJ concurred. The Division plans to require all Division sections to record data on protected class and subject in its case management system as well as upgrade the system to include a field on reasons for closing matters and require all sections to record data in this field.

View [GAO-10-256T](#) or [key components](#). For more information, contact Eileen R. Larence (202) 512-8777 or [larencee@gao.gov](mailto:larencee@gao.gov).

## U.S. DEPARTMENT OF JUSTICE

### Opportunities Exist to Strengthen the Civil Rights Division's Ability to Manage and Report on Its Enforcement Efforts

## What GAO Found

From fiscal years 2001 through 2007, the Civil Rights Division initiated matters and filed cases to implement its enforcement responsibilities through the four sections. The Employment Litigation Section initiated 3,212 matters and filed 60 cases as plaintiff under federal statutes prohibiting employment discrimination. Most matters (3,087) were referred by other agencies. Of the 11 pattern or practices cases—cases that attempt to show that the defendant systematically engaged in discriminatory activities—9 involved claims of discrimination in hiring and the most common protected class was race (7). The Housing and Civil Enforcement Section initiated 947 matters and participated in 277 cases under federal statutes prohibiting discrimination in housing, credit transactions, and certain places of public accommodation. Most (456 of 517) Fair Housing Act (FHA) matters were initiated under its pattern or practice authority, primarily alleging discrimination on the basis of race or disability and involving land use/zoning/local government or rental issues. Most (250 of 269) cases filed as plaintiff included an FHA claim. The FHA cases primarily involved rental issues (146) and alleged discrimination on the basis of disability (115) or race (70). The Voting Section initiated 442 matters and filed 56 cases to enforce federal statutes that protect the voting rights of racial and language minorities, and disabled and illiterate persons, among others. The Section initiated most matters (367) and filed a majority of cases (39) as plaintiff under the Voting Rights Act, primarily on behalf of language minority groups (246 and 30). The Special Litigation Section initiated 693 matters and filed 31 cases as plaintiff to enforce federal civil rights statutes on institutional conditions (e.g., protecting people in nursing homes), the conduct of law enforcement agencies, access to reproductive health facilities and places of worship, and the exercise of religious freedom of institutionalized persons. The largest number of matters initiated and closed (544 of 693) involved institutional conditions (373), as did the cases filed (27).

Information on the specific protected classes and subjects related to matters and cases and the reasons for closing matters were not systematically maintained in ICM because the Division did not require sections to capture these data. As a result, the availability and accuracy of these data varied among the sections. For example, the Employment Litigation Section did not capture protected class and subject data for more than 80 percent of its matters. In contrast, these data were consistently recorded in ICM for the Housing and Civil Enforcement Section, which requires that protected class and subject data be recorded in ICM. In addition, congressional committees have requested information on reasons the Division did not pursue matters, including instances in which Division managers did not approve a section's recommendation to proceed with a case. However, ICM does not include a discrete field for capturing the reasons that matters are closed and Division officials we interviewed could not identify instances in which Division managers did not approve a section's recommendation to proceed with a case. By requiring sections to record such information, the Division could strengthen its ability to account for its enforcement efforts.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the enforcement efforts of the Civil Rights Division's (Division) Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation<sup>1</sup> sections from fiscal years 2001 through 2007, as well as the case management system the Division uses to track and manage these efforts.<sup>2</sup> Established after the passage of the Civil Rights Act of 1957,<sup>3</sup> the Division of the Department of Justice (DOJ) is the primary federal entity charged with enforcing federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin. The Division's mission has expanded to include the enforcement of laws prohibiting discrimination in employment, housing, voting, public accommodations, education, and the rights of institutionalized persons. To carry out these broad enforcement responsibilities, the Division initiates thousands of matters (e.g., an investigation of a complaint or an allegation of discrimination referred by another federal agency) and hundreds of cases each year. In October 2000, the Division implemented the Interactive Case Management System (ICM) as its official system to track, count, and capture performance measurement information for all matters and cases from their inception to their conclusion and to assist staff in their casework. According to Division documentation, ICM was also designed to serve as a tool for senior management to oversee the Division's work and to assist senior managers in, among other things, reporting accurate matter and case data at all levels of the organization, improving accountability, and responding to congressional inquiries about the work of the Division.

In September 2000, we reported on the reasons that the Division's Employment Litigation, Housing and Civil Enforcement, and Voting sections pursued a selection of cases and closed a selection of matters.<sup>4</sup> We stated that legal merit (i.e., the strength of evidence in a case) was the

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<sup>1</sup>The Special Litigation Section is responsible for the enforcement of federal civil rights statutes in four primary areas: conditions of institutional confinement, conduct of law enforcement agencies, access to reproductive health facilities and places of religious worship, and the exercise of religious freedom of institutionalized persons.

<sup>2</sup>The Division has 11 sections—10 program-related sections and an Administrative Management section.

<sup>3</sup>Pub. L. No. 85-315, 71 Stat. 634.

<sup>4</sup>GAO, *Civil Rights Division: Selection of Cases and Reasons Matters Were Closed*, GAO/GGD-00-192 (Washington, D.C.: Sept. 2000).

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predominant reason in the Sections' decisions to pursue allegations of discrimination as cases. We also reported that the reasons generally given for closing a matter were, among others, insufficient evidence to support allegations and corrective action was taken by the jurisdiction investigated. In addition, in February and September 2000, we reported on how the Division tracked and managed matters and cases using its Case Management System and described the new system—ICM—that the Division was implementing at the time of our review.<sup>5</sup> In March 2006, DOJ began the Litigation Case Management System (LCMS) project, intended to replace litigating components' individual case management systems, including ICM, with a single, integrated case management system for DOJ. However, as of September 2009, DOJ was uncertain if LCMS would be implemented in six of the seven litigating components, including the Division, raising questions as to whether the Division will need to continue to rely on ICM.<sup>6</sup>

My comments are based on our October and September 2009 reports on the enforcement efforts of the four sections within the Division<sup>7</sup> and the case management system the Division uses to track and manage these efforts.<sup>8</sup> My testimony will discuss the following key issues in our reports: (1) the activities that the Division undertook from fiscal years 2001 through 2007 to implement its enforcement responsibilities through each of the four sections and (2) additional data that could be collected using ICM to assist in reporting on the sections' enforcement efforts. Our September 2009 report also includes a discussion on the extent to which

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<sup>5</sup>GAO, *Civil Rights Division: Policies and Procedures for Establishing Litigation Priorities, Tracking and Managing Casework, and Disseminating Litigation Results*, GGD-00-58R (Washington, D.C.: Feb. 2000) and [GAO/GGD-00-192](#).

<sup>6</sup>DOJ's seven litigating components in place at the time LCMS was planned were the Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, and Tax Divisions and the Executive Office for United States Attorneys, which is the administrative office for the 94 U.S. Attorneys Offices.

<sup>7</sup>GAO, *U.S. Department of Justice: Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001 through 2007*, [GAO-10-75](#) (Washington, D.C.: Oct. 23, 2009).

<sup>8</sup>GAO, *DOJ's Civil Rights Division: Opportunities Exist to Improve Its Case Management System and Better Meet Its Reporting Needs*, [GAO-09-938R](#) (Washington, D.C.: Sept. 30, 2009).

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the Division has conducted and documented assessments of ICM's performance since its implementation.<sup>9</sup>

For our reports, we analyzed DOJ documents, such as annual reports, hearing statements, speeches, and budget documents, that described the Division's enforcement efforts (including special initiatives and areas of focus) from fiscal years 2001 through 2007. We also analyzed data from ICM on the matters initiated and cases pursued by each section for the 7-year period. We assessed the accuracy, completeness, and reliability of ICM data by analyzing data on matters initiated and closed and cases pursued by the four sections from fiscal years 2001 through 2007. To supplement our analysis and further assess the reliability of the data, we compared ICM data with information contained in documentation, such as correspondence included in files, for a nongeneralizable sample of closed matters from ICM data for each of the four sections.<sup>10</sup> Because our samples were not representative, we were unable to generalize the results to all closed matters the sections investigated during the period of our review. Nevertheless, our file reviews provided examples of how the ICM matter data compared to the same information in the matter files, how the sections investigated matters, and why the sections closed them. We interviewed senior officials in DOJ's Justice Management Division, which is the management arm of DOJ; the Acting Assistant Attorney General for the Division; and Division information technology officials, who are the Division officials responsible for managing and maintaining ICM. We also interviewed section chiefs, deputy chiefs, and other section staff to obtain information on the four sections' enforcement efforts during the 7-year period and how they used ICM to manage and report on these efforts. We conducted this work in accordance with generally accepted government auditing standards. More detail about our scope and methodology is included in our September 2009 and October 2009 reports.<sup>11</sup>

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<sup>9</sup>GAO-09-938R. We recommended that the Acting Assistant Attorney General of the Division conduct annual assessments of the performance of the Division's case management system and ensure that these assessments are documented and maintained so they can be used to improve the performance of the system. DOJ agreed.

<sup>10</sup>A nongeneralizable sample may be either a nonprobability sample where observations are selected in a manner that is not completely random or a probability sample where random sampling is used, but the sample size is too small to allow the results to be generalized to the broader population.

<sup>11</sup>GAO-10-75 and GAO-09-938R.

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## Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from Fiscal Years 2001 through 2007

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### Employment Litigation Section

From fiscal years 2001 through 2007, the Employment Litigation Section initiated more than 3,200 matters and filed 60 cases as plaintiff under federal statutes prohibiting employment discrimination.<sup>12</sup> About 90 percent of the matters initiated (2,846 of 3,212) and more than half of the cases filed (33 of 60) alleged violations of section 706 of Title VII of the Civil Rights Act, which involves individual claims of employment discrimination.<sup>13</sup> Much of the Section's matters are driven by what the Section receives from other agencies. During the 7-year period, about 96 percent of the matters (3,087 of 3,212) initiated were as a result of referrals from the Equal Employment Opportunity Commission and the Department of Labor. The number of matters initiated under section 706 and the Uniformed Services Employment and Reemployment Rights Act (USERRA) declined in the latter fiscal years, which a Section Chief attributed to a decline in referrals from these two agencies.<sup>14</sup> In addition to addressing discrimination against individuals, the Section also initiated

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<sup>12</sup>GAO-10-75 includes information on the process the Sections follow for handling matters and cases.

<sup>13</sup>Section 706 provides the Attorney General with the authority to file suit based upon an individual charge of discrimination against a state or local government employer that the Equal Employment Opportunity Commission has referred to DOJ. 42 U.S.C. § 2000e-5.

<sup>14</sup>USERRA prohibits discrimination in employment and related practices based on military service as well as protects individuals who have not been timely and properly reemployed following their return from military service. 38 U.S.C. §§ 4301-35. The Attorney General transferred responsibility for USERRA enforcement to the Civil Rights Division in September 2004.

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more than 100 pattern or practice matters at its own discretion.<sup>15</sup> Because the Section did not require staff to maintain information in ICM on the subjects (e.g., harassment and retaliation) of the matters or the protected class (e.g., race and religion) of the individuals who were allegedly discriminated against, we could not determine this information for more than 80 percent of the matters the Section closed from fiscal years 2001 through 2007. According to Section officials, staff are not required to do so because the Section does not view this information as necessary for management purposes. The Section also does not systematically collect information in ICM on the reasons matters were closed; therefore, we were not able to readily determine this information for the approximately 3,300 matters the Section closed over the time period of our review. Division officials stated that when planning for ICM's implementation with Section officials, the Division did not consider requiring sections to provide protected class and subject data or the need to capture in ICM the reasons that matters are closed.<sup>16</sup> However, by conducting interviews with agency officials and reviewing files for a nongeneralizable sample of 49 closed matters, we were able to determine that the reasons the Section closed these matters included, among others, the facts in the file would not justify prosecution, the issue was pursued through private litigation, and the employer provided or offered appropriate relief on its own.

In addition to the matters initiated, the Employment Litigation Section filed 60 cases in court as plaintiff from fiscal years 2001 through 2007, and filed more than half (33 of 60) under section 706 of Title VII. According to a Section Chief and Deputy Section Chief, the primary reason for pursuing a case was that the case had legal merit. Other priorities, such as those of the Assistant Attorney General, may also influence the Section's decision to pursue particular kinds of cases. For example, according to Section officials, following the terrorist attacks of September 11, 2001, the Assistant Attorney General asked the various sections within the Division to make the development of cases involving religious discrimination a priority. During the 7-year period, the majority of the section 706 cases (18

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<sup>15</sup>Section 707 of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-6, provides the Attorney General with authority to bring lawsuits against state and local governments where there is reason to believe that there has been a pattern or practice of employment discrimination. Pattern or practice cases attempt to show that the defendant systematically engaged in discriminatory activities.

<sup>16</sup>Similar to the Employment Litigation Section, because the other three sections did not systematically collect information in ICM on the reasons for closing matters, we could not systematically identify their reasons for closing matters.

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of 33) involved sex discrimination against women, and one-third (11 of 33) involved claims of race discrimination, with six cases filed on behalf of African Americans and five cases filed on behalf of whites.<sup>17</sup> In addition to these 33 cases, the Section filed 11 pattern or practice cases. Most of the 11 pattern or practice cases involved claims of discrimination in hiring (9 of 11) and the most common protected class was race (7 of 11), with four cases filed on behalf of African Americans, two on behalf of whites,<sup>18</sup> and one on behalf of American Indians or Alaska Natives.<sup>19</sup> In July 2009, Section officials told us that given that the Assistant Attorneys General who authorized suits from fiscal years 2001 through 2007 and the Section Chief who made suit recommendations to the Assistant Attorneys General during that period are no longer employed by DOJ, it would be inappropriate for them to speculate as to why the Section focused its efforts in particular areas.

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## Housing and Civil Enforcement Section

From fiscal years 2001 through 2007, the Housing and Civil Enforcement Section initiated 947 matters and participated in 277 cases under federal statutes prohibiting discrimination in housing, credit transactions, and certain places of public accommodation (e.g., hotels). The Section has the discretion to investigate matters and bring cases under all of the statutes it enforces, with the exception of certain cases referred under the Fair Housing Act (FHA)<sup>20</sup> from the Department of Housing and Urban Development (HUD), which the Section is statutorily required to file.<sup>21</sup> The Section, however, has discretion about whether to add a pattern or practice allegation to these HUD-referred election cases, if supported by the evidence. Furthermore, the Section has the authority and discretion to independently file pattern or practice cases and to pursue referrals from

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<sup>17</sup>Individual cases can involve multiple protected classes and subjects.

<sup>18</sup>In July 2005, the Section filed its first case involving an allegation of a pattern or practice of discrimination against white males.

<sup>19</sup>The Section also filed 16 cases under USERRA from fiscal year 2005 through 2007.

<sup>20</sup>The FHA allows individuals who believe they have been injured by a discriminatory housing practice to file complaints with the Department of Housing and Urban Development and DOJ to bring suit where there is reason to believe that a person or entity has engaged in a pattern or practice of discrimination. 42 U.S.C. § 3601 *et seq.*

<sup>21</sup>DOJ is required to file HUD-referred election cases in federal district court. These nondiscretionary referrals are called “election cases” because either the complaining party or the respondent has elected to have the case heard in federal court rather than through a HUD administrative hearing.



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other sources. During the 7-year period, the Section initiated more matters (517 of 947) and participated in more cases (257 of 277) involving discrimination under the FHA than any other statute or type of matter or case. The Section initiated nearly 90 percent of the FHA matters (456 of 517) under its pattern or practice authority; these primarily alleged discrimination on the basis of race or disability and involved land use/zoning/local government or rental issues. According to Section officials, the large number of land use/zoning/local government matters it initiated was due to the Section regularly receiving referrals from HUD and complaints from other entities on these issues. Additionally, Division officials identified that a Section priority during the 7-year period was to ensure that zoning and other regulations concerning land use were not used to hinder the residential choices of individuals with disabilities. During this time, the Section experienced a general decline in HUD election matters, with the Section initiating the fewest number of total matters, 106, in fiscal year 2007. Section officials attributed the decrease, in part, to a decline in HUD referrals because state and local fair housing agencies were handling more complaints of housing discrimination instead of HUD. The Section initiated the second largest number of matters (252 of 947) under the Equal Credit Opportunity Act (ECOA).<sup>22</sup> About 70 percent (177 of 252) of these ECOA matters included allegations of discrimination based on age, marital status, or both.

The majority (250 of 269) of the cases that the Section filed as plaintiff included a claim under the FHA. Similar to the Employment Litigation Section, the Housing Section considers legal merit and whether the plaintiff has the resources to proceed on his or her own should the Section choose not to get involved, among other reasons, when deciding whether to pursue a matter as a case. The number of cases filed by the Section each year generally decreased from fiscal years 2001 through 2007—from 53 to 35—which, similar to matters, Section officials generally attributed to

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<sup>22</sup>15 U.S.C. § 1691 *et seq.* The 252 matters include those initiated either solely under ECOA or in combination with other statutes. During the 7-year period, the Section also had responsibility for enforcing provisions of Title II of the Civil Rights Act, 42 U.S.C. §§ 2000a to a-6. Additionally, in the spring of 2001, the Section received responsibility for enforcing the land use provisions of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*; and, in July 2006, received responsibility for enforcing the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-96. The Section is also responsible for enforcing several statutes that prohibit discrimination in, among other things, programs where the operator of the program receives federal funds.

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fewer HUD referrals.<sup>23</sup> The FHA cases primarily involved rental issues (146). According to Section officials, the number of rental-related issues is reflective of larger national trends in that discrimination in rental housing may be more frequently reported or easier to detect than in home sales. Most of the FHA cases alleged discrimination on the basis of disability (115) or race (70)—66 of which involved racial discrimination against African Americans. The Section filed 9 cases under ECOA, of which 5 were in combination with the FHA. All 9 complaints involved lending issues. Seven of the 9 complaints included at least one allegation of racial discrimination and 4 included at least one allegation of discrimination on the basis of national origin/ethnicity.<sup>24</sup>

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## Voting Section

From fiscal years 2001 through 2007, the Voting Section initiated 442 matters and filed 56 cases to enforce federal statutes that protect the voting rights of racial and language minorities,<sup>25</sup> disabled and illiterate persons, and overseas and military personnel, among others. The Voting Section has the discretion to initiate a matter or pursue a case under its statutes, with the exception of the review of changes in voting practices or procedures, which it is statutorily required to conduct under section 5 of the Voting Rights Act (VRA).<sup>26</sup> According to Section officials, the Section had as its priority the enforcement of all the statutes for which it was responsible throughout the period covered by our review.<sup>27</sup> However,

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<sup>23</sup>Among HUD-referred cases are election cases, which the Section is statutorily required to file.

<sup>24</sup>Four of the 9 complaints included allegations of discrimination both on the basis of race and national origin.

<sup>25</sup>The term “language minorities” or “language minority group” means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. 42 U.S.C. § 1973aa-1a(e).

<sup>26</sup>Under section 5 of the Voting Rights Act, state and local jurisdictions in certain parts of the country may not change their voting practices or procedures, which include moving a polling place or changing district lines in the county, until they obtain federal “preclearance” that the change has neither the purpose nor the effect of discriminating against protected minorities in exercising their voting rights. Preclearance may be obtained either from the United States District Court for the District of Columbia or the Attorney General. 42 U.S.C. § 1973c.

<sup>27</sup>In addition to the VRA, the Section enforced the National Voter Registration Act, 42 U.S.C. §§ 1973gg-1973gg-10; the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff-1973ff-6; and beginning in fiscal year 2002, the Help America Vote Act of 2002, 42 U.S.C. §§ 15301-54. [GAO-10-75](#) includes a discussion of the Section’s enforcement efforts related to these acts.

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Section and Division officials identified shifts in the Section's priorities beginning in 2002. For example, the Assistant Attorney General in place from November 2005 through August 2007 stated that since 2002, the Section had increased its enforcement of the minority language provisions of the VRA and instituted the most vigorous outreach efforts to jurisdictions covered by the minority language provisions of the act. During the 7-year period, the Section initiated nearly 70 percent of VRA matters (246 of 367) on behalf of language minority groups, primarily Spanish speakers (203 of 246). The Section also initiated 162 matters under section 2 of the VRA.<sup>28</sup> The Section initiated about half of these matters on behalf of language minority groups (80), primarily Spanish speakers (71), and about half on behalf of racial minorities (88 of 162), primarily African American voters (71 of 88).<sup>29</sup>

During the 7-year period, the Voting Section filed 56 cases, primarily under the VRA (39).<sup>30</sup> The majority of the cases the Section filed in court under the VRA were on behalf of language minority groups (30 of 39), primarily Spanish speakers (27). The Acting Assistant Attorney General reported in September 2008 that the Division had brought more cases under the VRA's minority language provisions during the past 7 years—a stated priority—than in all other years combined since 1975. While cases involving language minority groups were filed under various VRA provisions, the largest number of cases (24 of 30) involved claims under section 203<sup>31</sup> alleging that the covered jurisdiction had failed to provide voting-related materials or information relating to the electoral process in the language of the applicable minority group. The Section filed 13 cases involving a claim under section 2 of the VRA—5 on behalf of language minority groups and 10 on behalf of racial minority groups (6 on behalf of Hispanics, 3 on behalf of African Americans, and 1 on behalf of whites).<sup>32</sup> In October 2007,

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<sup>28</sup>Section 2 prohibits discriminatory practices or procedures that result in a denial or abridgment of the right to vote on account of race, color, or membership in a language minority group. 42 U.S.C. § 1973.

<sup>29</sup>Seven matters involved both a language minority and a racial minority group and in one matter the specific protected class was not identified.

<sup>30</sup>The Section also filed 10 cases involving the provisions of Help America Vote Act, subsequent to its enactment in 2002; 10 cases involving allegations under provisions of the National Voter Registration Act; and seven cases involving allegations under the Uniformed and Overseas Citizens Absentee Voting Act on behalf of overseas voters.

<sup>31</sup>42 U.S.C. § 1973aa-1a.

<sup>32</sup>Two cases involved both racial and language minority groups.

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the Section Chief who served from 2005 through late 2007 told us that while at-large election systems that discriminated against African Americans remained a priority of the Section, not many of these systems continued to discriminate, and new tensions over immigration had emerged; therefore, the Section had been pursuing cases of voting discrimination against citizens of other minority groups.<sup>33</sup> However, in September 2009, Voting Section officials stated that while many at-large election systems that diluted minority voting strength have been successfully challenged, the Section continued to identify such systems that discriminate against African American, Hispanic, and Native American residents in jurisdictions throughout the country and that taking action against at-large election systems remained a high priority for the Section. The Section also carried out its responsibilities under section 5 of VRA, which requires certain jurisdictions covered under the act to “preclear” changes to voting practices and procedures with DOJ or the United States District Court for the District of Columbia to determine that the change has neither the purpose nor the effect of discriminating against protected minorities in exercising their voting rights. The Section reported that over the 7-year period it made 42 objections to proposed changes,<sup>34</sup> of which almost 70 percent (29 of 42) involved changes to redistricting plans. More than half (17) of the 29 objections were made in fiscal year 2002, following the 2000 census, and two were made from fiscal years 2005 through 2007.<sup>35</sup>

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## Special Litigation Section

From fiscal years 2001 through 2007, the Special Litigation Section initiated 693 matters and filed 31 cases as plaintiff to enforce federal civil rights statutes in four areas—institutional conditions (e.g., protecting persons in nursing homes), conduct of law enforcement agencies (e.g., police misconduct), access to reproductive health facilities and places of worship, and the exercise of religious freedom of institutionalized persons.<sup>36</sup> Because the Section had discretion to pursue an investigation or

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<sup>33</sup>An at-large election system is one in which a public official is selected from the whole of a political unit or election district rather than from a subdivision of the larger unit.

<sup>34</sup>Some objections addressed more than one proposed change.

<sup>35</sup>The Section reported that it made one objection in fiscal year 2001, five in fiscal year 2003, and four in fiscal year 2004. Section officials explained that the number of redistricting plans submitted for review had increased early in the decade (2001 through 2003), following the release of the 2000 Census, as has occurred after each census.

<sup>36</sup>According to Special Litigation Section officials, the Section did not experience significant changes in its statutory responsibilities during the 7-year period.

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case under all of the statutes it enforced, it considered all of its work to be self-initiated. Of the matters initiated and closed (544 of 693), most involved institutional conditions (373) and conduct of law enforcement agencies (129).

Of the 31 cases that the Section filed as plaintiff, 27 alleged a pattern or practice of egregious and flagrant conditions that deprived persons institutionalized in health and social welfare (13), juvenile corrections (7), and adult corrections (7) facilities of their constitutional or federal statutory rights, and 3 cases involved the conduct of law enforcement agencies. According to Section officials, in deciding whether or not to pursue a case, they considered the conditions in a particular facility or misconduct of a particular police department and whether the system (e.g., state correctional or juvenile justice system) or department alleged to have violated the statute had taken corrective action or instead had accepted the behavior in question as its way of doing business. However, they said that even if the system or department were taking corrective action, the Section might pursue a case depending on the severity of the situation (e.g., sexual abuse) or if Section officials believed that the facility or local entity were incapable of addressing the problem. Additionally, according to Section officials, the Section sought to ensure its work reflected geographic diversity. Our analysis of the 31 plaintiff cases showed that the Section had filed cases in 21 states and the District of Columbia. During the 7-year period, the Section did not file any cases involving violations of the exercise of religious freedom of institutionalized persons under the Religious Land Use and Institutionalized Persons Act (RLUIPA).<sup>37</sup> Section officials stated that there was a time when the Section's enforcement of RLUIPA was directed to be a lower priority than its enforcement of other statutes.<sup>38</sup> However, in April 2009, these officials told us that the Section was reviewing a number of preliminary inquires under RLUIPA, but had not yet filed any complaints because it was still investigating these matters.

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<sup>37</sup>42 U.S.C. § 2000cc *et seq.*

<sup>38</sup>These provisions differ from the land use provisions enforced by the Housing and Civil Enforcement Section.

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## By Requiring Sections to Collect Data on Protected Class, Subject, and Reasons for Closing Matters in Its Case Management System, the Division Could Provide Better Accountability to Congress on Its Enforcement Efforts

As previously discussed, information regarding the specific protected classes and subjects related to matters and cases and the reasons for closing matters were not systematically maintained in ICM because the Division did not require Sections to capture these data.<sup>39</sup> As a result, the availability and accuracy of protected class and subject data—information that is key to ensuring that the Division executes its charge to enforce statutes prohibiting discrimination on the basis of protected class—varied among the sections. Additionally, neither we nor the Sections could systematically identify the Sections’ reasons for closing matters, including the number of instances in which the Section recommended to proceed with a case and Division management did not approve the Section’s recommendation.

By collecting additional data on protected class and subject in ICM, the Division could strengthen its ability to account for the four sections’ enforcement efforts. In October 2006, the Principal Deputy Assistant Attorney General issued a memorandum to section chiefs stating that Division leadership relies heavily on ICM data to, among other things, report to Congress and the public about its enforcement efforts, and should be able to independently extract the data from ICM needed for this purpose. However, over the years, congressional committees have consistently requested information for oversight purposes related to data that the Division does not require Sections to collect in ICM, including information on the specific protected classes and subjects related to matters and cases. While ICM includes fields for collecting these data, the Division has not required sections to capture these data. Some section officials said that they did not believe it was necessary to maintain this information in ICM for internal management purposes. As a result, we found that the availability and accuracy of these data varied among the sections. For example, when comparing data obtained from the 60 complaints the Employment Litigation Section filed in court with data maintained in ICM, we identified that the protected class and subject data in ICM were incomplete or inaccurate for 12 and 29 cases, or about 20 and 48 percent, respectively. Additionally, we found that the Section’s protected class and subject data were not captured in ICM for 2,808 and 2,855 matters, or about 83 and 85 percent, respectively. In contrast, according to the Housing and Civil Enforcement Section, it requires that

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<sup>39</sup>Because of the nature of the statutes enforced by the section, the data for protected class are not relevant for most of the work done by the Special Litigation Section. Given the statutory responsibilities of the section, it requires staff to capture data in ICM on the type of facility involved in a matter or case and, where appropriate, protected class information.

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protected class and subject data be recorded in ICM for all matters and cases, and we found that these data were consistently recorded in ICM.

To help respond to information inquiries, all four sections maintain data in ancillary data systems, although some of the data are also recorded in ICM. For example, the Employment Litigation Section maintains broad information on protected class and uses this information in conjunction with data in ICM to report on its enforcement efforts. Section officials reported using ancillary data systems in part because it was easier to generate customized reports than using ICM. We previously reported that agencies with separate, disconnected data systems may be unable to aggregate data consistently across systems, and are more likely to devote time and resources to collecting and reporting information than those with integrated systems.<sup>40</sup> Requiring sections to record these data in ICM would assist the Division in, among other things, responding to inquiries from Congress by ensuring access to readily available information and by reducing reliance on ancillary data systems.

Additionally, congressional committees have requested information regarding reasons the Division did not pursue matters, including instances in which Division managers did not approve a section's recommendation to proceed with a case. However, ICM does not include a discrete field for capturing the reasons that matters are closed and Division officials we interviewed could not identify instances in which Division managers did not approve a section's recommendation to proceed with a case. Moreover, sections do not maintain this information in other section-level information systems. ICM does have a comment field that sections can use to identify the reasons matters are closed, although these data are not required or systematically maintained in ICM and the Division could not easily aggregate these data using the comment field.<sup>41</sup> According to Division officials, when Division and section officials were determining

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<sup>40</sup>GAO, *Telecommunications: FCC Has Made Some Progress in the Management of Its Enforcement Program but Faces Limitations, and Additional Actions Are Needed*, [GAO-08-125](#) (Washington, D.C.: Feb. 15, 2008).

<sup>41</sup>In contrast, another component within DOJ, the Executive Office for United States Attorneys (EOUSA), requires the litigating sections it supervises to capture information on the reasons for declining matters in its case management system, the Legal Information Office Network System. According to EOUSA, it uses the information internally to understand why matters are declined and make management decisions. For example, according to EOUSA officials, if matters are declined because of weak evidence, U.S. Attorney's offices could work with law enforcement to make improvements in practices used to collect evidence.

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which data were to be captured in ICM, they did not consider the need to include a discrete field to capture the reasons that matters were closed. As a result, we had to review Division matter files to determine the reasons that matters were closed, and in some instances this information was not contained in the files. For example, for 7 of the 19 section 706 closed matter files we reviewed for the Employment Litigation Section, the reason the matter was closed was not contained in the file documentation we received, and Section officials attributed this to a filing error. Moreover, Division officials stated that because the Division did not track the reasons for closing matters in ICM, they have had to review files and talk with section attorneys and managers to obtain this information. They said that it was difficult to compile this information because of turnover among key section officials. Capturing information on the reasons matters were closed in the Division's case management system would facilitate the reporting of this information to Congress and enable the Division to conduct a systematic analysis of the reasons that matters were closed. This would also help the Division to determine whether there were issues that may need to be addressed through actions, such as additional guidance from the Division on factors it considers in deciding whether to approve a section's recommendation to pursue a case.

In our September 2009 report, we recommended that to strengthen the Division's ability to manage and report on the four sections' enforcement efforts, the Acting Assistant Attorney General of the Division, among other things, (1) require sections to record data on protected class and subject in the Division's case management system in order to facilitate reporting of this information to Congress, and (2) as the Division considers options to address its case management system needs, determine how sections should be required to record data on the reasons for closing matters in the system in order to be able to systematically assess and take actions to address issues identified. DOJ concurred with our recommendations and, according to Division officials, the Division plans to (1) require sections divisionwide to record data on protected class and subject/issue in its case management system by the end of calendar year 2009 and (2) upgrade the system to include a field on reasons for closing matters and require sections divisionwide to record data in this field.

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Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions that you or other members of the subcommittee may have.



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## Contacts and Acknowledgements

For questions about this statement, please contact Eileen R. Larence at (202) 512-8777 or [larencee@gao.gov](mailto:larencee@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony are Maria Strudwick, Assistant Director, David Alexander; R. Rochelle Burns; Lara Kaskie; Barbara Stolz; and Janet Temko.

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