



## BARACK OBAMA AND JOE BIDEN: CREATING EQUAL OPPORTUNITY AND JUSTICE FOR ALL

*"The teenagers and college students who left their homes to march in the streets of Birmingham and Montgomery; the mothers who walked instead of taking the bus after a long day of doing somebody else's laundry and cleaning somebody else's kitchen – they didn't brave fire hoses and Billy clubs so that their grandchildren and their great-grandchildren would still wonder at the beginning of the 21<sup>st</sup> century whether their vote would be counted; whether their civil rights would be protected by their government; whether justice would be equal and opportunity would be theirs. And I am certain that nine children did not walk through the doors of a school in Little Rock so that our children would have to see nooses hanging at a school in Louisiana. We have more work to do."*

[Barack Obama, Speech at Howard University, 9/28/07]

### STRENGTHENING OUR CIVIL RIGHTS AND CRIMINAL JUSTICE LAWS

Fifty years ago, nine brave African American schoolchildren sought to realize the promise of *Brown v. Board of Education* by walking past an angry mob and into the doors of Central High School in Little Rock, Arkansas. The event marked a great moment in America's long march toward equality and freedom. The federal government put itself firmly on the side of justice and equal opportunity for all. And this was only the beginning. That same month, the Civil Rights Act of 1957 was signed into law, and the Department of Justice Civil Rights Division was created shortly thereafter. In the years that followed, another Civil Rights Act and a Voting Rights Act were passed. These laws, and the institutional practices they created, helped transform our nation into one that is more just, more equal and more free.

While we have made significant progress over the last five decades, there is no question that we have more work to do. Fifty years after the events in Little Rock, we have the recent events in Jena, Louisiana – with nooses hanging on a tree in a schoolyard and the overcharging of African American teens for a schoolyard fight. Fifty years after the integration of Central High School, we still have public schools that are segregated by race and opportunity, and too many African American and Latino young men going to prison instead of college. And fifty years after the creation of a Civil Rights Division, our nation's leading antidiscrimination agencies have become more politicized than ever before, have seen their budgets slashed and have shifted their enforcement priorities away from traditional civil rights cases.

Barack Obama and Joe Biden will restore and build upon our nation's commitment to equal justice and opportunity for all. Specifically, he will (1) restore professionalism to the Civil Rights Division and reinvigorate federal civil rights enforcement and (2) reform our criminal justice system so that it is free of racially discriminatory laws and so that it works for all, regardless of race, wealth or other circumstances.

#### **1. A FEDERAL GOVERNMENT THAT VIGOROUSLY PROTECTS CIVIL RIGHTS**

Fifty years ago, the Civil Rights Act of 1957 was signed into law – the nation's first civil rights law since Reconstruction. Among its most significant provisions was creating an Assistant Attorney General of Civil Rights to preside over a newly-created Civil Rights Division within the Department of Justice (DOJ).

Historically, the Civil Rights Division has been the primary protector of the nation's anti-discrimination laws and has helped transform our nation by leading the fight against racial, ethnic, religious, and gender discrimination. Along with agencies such as the Equal Employment Opportunity Commission (EEOC), the Department of Labor's Office of Federal Contract Compliance Programs and the Civil Rights Divisions that have been created within other federal agencies (such as the Department of Education), DOJ's civil rights arm has helped transform our nation. These agencies have led the fight against racial, ethnic, religious, and gender discrimination – whether it's on the job, at the polls, in our criminal justice system, or in our educational institutions.

Under the Bush administration, these important offices have experienced a shift in their priorities, and enforcement of various types of traditional civil rights cases has gone down.

- By the end of 2006, the Civil Rights Division filed only about six Title VII employment cases per year, and very few of them involved racial discrimination. This drop in cases does not coincide with a drop in complaints: the EEOC referred over 3,000 charges of individual discrimination alone to the Division.
- The number of housing cases filed by the Housing and Civil Enforcement Section has fallen from 53 in 2001 to 31 in 2006. Cases involving discrimination have fallen by 60%. In 2003, DOJ announced that it would no longer file disparate impact cases involving housing discrimination – a sharp break from DOJ's longstanding and bipartisan policy to aggressively litigate these cases.
- The voting section filed no discrimination cases on behalf of African American voters between 2001 and 2006. The Bush Administration has only filed three cases under Section 2 overall, and has cut staffing for voting rights cases.

Part of the decline in traditional enforcement priorities is traceable to a shift in DOJ hiring. In 2002, the Bush Administration put political appointees in charge of hiring new attorneys in the Civil Rights Division – departing from the longstanding practice of giving the job to career professionals. Since then, less than half of new hires in the Division's important Appellate, Employment and Voting Sections have had any prior civil rights experience – and less than a quarter have had any prior experience *enforcing* the nation's civil rights laws. The others, according to a *Boston Globe* analysis, “gained their experience either by defending employers against discrimination lawsuits or by fighting against race-conscious policies.” Barack Obama and Joe Biden will reverse these trends and reinvigorate the enforcement activities of these agencies.

## **A. STRENGTHEN CIVIL RIGHTS ENFORCEMENT**

**Restore Professionalism to the Civil Rights Division:** Barack Obama and Joe Biden will reverse the politicization that has occurred in the Bush Administration's DOJ. They will put an end to the ideological litmus tests used to fill non-political positions within the Division and ensure that the nation's civil rights lawyers are just that – *civil rights* lawyers. Obama will issue an Executive Order asking all new hires at the agencies to sign a form affirming that no political appointee offered them the job solely on the basis of political affiliation or contribution. It will also require that all employees engaged in and making hiring decisions also certify that they will not take political affiliation into account as they make hiring decisions for career positions. The Obama Executive Order will create an additional and effective enforcement mechanism of the Hatch Act's prohibitions by giving any non-political civil servant who believes a Hatch Act violation has occurred the right to submit a written complaint with the Inspector General. Within 60 days of receipt of the complaint, the Inspector General will be required to investigate and issue a written report detailing the scope of the investigation and findings indicating whether the complaint has merit. When the agency head's decision is challenged, the report shall be made to the president. A finding by the Inspector General that activity was improperly based upon political considerations shall be a basis for discipline, up to and including termination. Finally, Obama will direct the Attorney General to include career attorneys on the committees that hire new attorneys at DOJ – including the committees charged with hiring summer interns and new attorneys in the Honors Program.

**Refocus the Criminal Section's Enforcement Priorities:** The historic mission of the Criminal Section of the Civil Rights Division has been to prosecute hate crimes and official misconduct – crimes that disproportionately affect racial minorities. The Section is also responsible for prosecuting sexual assault by public officials; illegal arrests by police officers; violence and intimidation directed at reproductive health care providers; and acts of violence and intimidation against religious houses of worship. Under the Bush administration, however, the Section's enforcement priorities have shifted to human trafficking cases, while cases traditionally falling under the Section's jurisdiction have not enjoyed a similar boost in enforcement actions and publicity. Moreover, the House Judiciary Committee, under Congressman John Conyer's lead, has been investigating allegations that the Criminal Section has failed to hire a single African American attorney since 2003 to replace those who have left – leaving this important Section with only 2 African American lawyers out of fifty. Barack Obama and Joe Biden believe that, while it is important to go after human traffickers, it is also critically important to investigate and, if necessary, bring enforcement actions in cases involving hate crimes or civil rights abuses by local officials. As president, Obama will ensure that the Section vigorously pursues such cases. And he will also require the Assistant Attorney General for Civil Rights to provide him with a report for its plan to diversify the Division's workforce in his first 100 days, particularly in the Criminal Section.

**Ensure that the Voting Section Protects the Right to Vote:** Barack Obama has been a life-long defender of voting rights. After law school, he registered 150,000 new voters in Chicago. As a civil rights lawyer, he defended minority voters who challenged redistricting plans that diluted their vote. As a constitutional law lecturer, he taught classes on voting rights. And in the U.S. Senate, he has led the fight to reauthorize the Voting Rights Act, to oppose discriminatory photo-ID laws and to improve our election machinery. His Deceptive Practices and Voter Intimidation Prevention Act, which has passed the House of Representatives and the Senate Judiciary Committee, will enable investigations into deceptive and fraudulent practices. It establishes significant, harsh penalties for those who have engaged in fraud, and it provides voters who have been misinformed with accurate and full information so they can vote. As president, Obama will sign this bill into law and charge the Voting Rights Section with vigorously enforcing that law and the provisions of the Voting Rights Act.

## **B. REMOVE DISCRIMINATORY BARRIERS TO EMPLOYMENT OPPORTUNITIES**

The EEOC is the nation's preeminent agency for enforcing Title VII of the Civil Rights Act of 1964, the law that forbids workplace discrimination based on race, color, religion, sex, or national origin. The U.S. Department of Labor's Office of Federal Contract Compliance Programs is charged with ensuring that federal contractors are also free of discrimination. Each of these agencies is charged with investigating and remedying a broad range of discrimination violations under several different laws. Careful investigation of these claims requires adequate field staff with the appropriate training, ability to travel and IT resources, skilled legal advisors, and access to data relating to the employment practices of those employers within their jurisdiction. Unfortunately, each agency has experienced a reduction in staff and resources over the course of the Bush Administration. The impact of these cuts is felt by all victims of discrimination, but it has a particular impact upon women because the investigation of compensation data – particularly relevant to claims of sex discrimination – is an unusually complex and data intensive process.

As a U.S. Senator, Obama has been a leader on this issue, introducing and cosponsoring legislation to ensure pay equity, and most recently leading the opposition to EEOC nominee David Palmer because of his track-record on civil rights. As president, Barack Obama will restore funding to these vital agencies, reduce their charge backlog and strengthen laws already on the books that help workers fight pay discrimination.

**Strengthen EEOC Enforcement:** While the number of charges filed with the EEOC has remained steady, the number of charges resolved by the EEOC has declined throughout the Bush years. More than 100,000 charges were resolved in FY 1997 and FY 1998. In FY 2006, fewer than 75,000 were resolved. The Commission has lacked the resources and staff to carry out an initiative designed to attack systemic discrimination – an initiative recommended by a task force headed by the agency's own Vice-Chair. Additionally, the Commission has

addressed its reduced staffing by closing field offices and substituting a National Call Center, which is contracted out to non-government employees. Barack Obama and Joe Biden will fully fund and increase staffing for the EEOC to reduce these charge backlogs and to prosecute efforts to remedy systemic discrimination. To ensure that the federal government holds itself to a high anti-discrimination standard, they will appoint a Chair of the EEOC and nominate commissioners who are committed to enforcing anti-discrimination laws.

**Strengthen the Labor Department’s Office of Federal Contract Compliance:** During the Bush Administration, the number of compliance evaluations conducted by the Labor Department’s Office of Federal Contract Compliance Programs (OFCCP) has fallen by almost 16%. Although there are more than 100,000 government contractors for which it is responsible – many with multiple facilities – OFCCP reviewed fewer than 4,000 facilities in FY 2006. Moreover, the nature of these evaluations has been altered in recent years to curtail the use of on-site inspections. Through the use of the rulemaking process this past year, OFCCP eliminated the use of the “Equal Opportunity Survey,” an instrument designed to provide snapshot data, including data on compensation, on those contractors it did not review and to enable the agency to focus its reviews and assist its process of selecting facilities for a closer audit. Although OFCCP had requested data from more than 150,000 contractor facilities in the three years that it was used, it lacked the staff and resources to analyze the responses it received and use them to target compliance evaluations. Thus, the information was never collated or utilized. Barack Obama will restore funding for the OFCCP and will direct his Secretary of Labor and Solicitor of Labor to allocate these resources to a reconstituted Civil Rights Division tasked with aggressive enforcement of matters referred by OFCCP. Obama will also direct that the Secretary of Labor or her delegates ensure that OFCCP, through a reinstated Equal Opportunity Survey or other similar document, has available to it the data it needs to monitor the conduct of contractors who are benefiting from the expenditure of taxpayer dollars.

**Fight Pay Discrimination:** For every \$1.00 earned by a man, the average woman receives only 77 cents. The disparity is even starker for racial minorities: The average African American woman with a four-year college degree is paid only 67 cents for every dollar paid to the average white man who has reached the same educational level, and the average Latina receives 57 cents. This pay discrimination accounts for why far too many minorities and women reach retirement with less financial security than their white male peers. Barack Obama has sponsored legislation to overturn the Supreme Court’s decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, which would curtail the ability of racial minorities and women to challenge their employers’ discriminatory pay decisions under Title VII. Obama is also a cosponsor of Senator Tom Harkin’s (D-IA) Fair Pay Act. Barack Obama and Joe Biden will support legislation to promote paycheck equity – the right of women to receive equal compensation to that provided comparably qualified men. Along with Senator Edward Kennedy (D-MA), Senator Obama introduced the Equal Remedies Act of 2007 to do away with the caps on compensatory and punitive damages under Title VII that presently impede the ability of victims of racial and gender discrimination to fully recover for the wrongs they have suffered, and he will sign that legislation into law as president. Moreover, Barack Obama and Joe Biden will be vigilant in responding to other Court decisions that unfairly limit the rights of racial minorities, women and others both by supporting litigation where necessary to overturn such decisions and by selecting a Solicitor General capable of and committed to vigorously enforcing the nation’s anti-discrimination laws.

## **2. A CRIMINAL JUSTICE SYSTEM THAT IS FREE OF RACIAL DISPARITIES AND WORKS FOR ALL**

In recent weeks, the travesty in Jena has shown us how much work there is left to do in this country, particularly in our criminal justice system. Whether it’s the fact that six young boys were charged and threatened with a punishment that far outweighs their crime or the fact that a public defender didn’t call a single witness at trial, this case is another indicator that our criminal justice system is in need of reform.

As a state senator, Barack Obama led the fight in Illinois to repair a broken death penalty system and to pass a racial profiling bill. In the U.S. Senate, Obama has continued to fight against racial profiling and high recidivism rates, while also working to fund proven prevention programs that give young people options before they find themselves involved in crime.

Barack Obama and Joe Biden believe that it's not enough to be "tough on crime" – we have to be tough and smart. Laws with racially discriminatory impact that have little success in rehabilitating offenders and reducing recidivism rates are not "smart." And refusing to address the hard work of preventing crime, supporting police and prosecutors and supporting ex-offenders once they are released is not "tough." Barack Obama and Joe Biden will address the flaws in our system that have left 74 percent of African Americans believing that the system is biased against them – a particularly disturbing statistic in light of the fact that African Americans make up approximately 50 percent of the nation's homicide victims.

**Eliminate Crack/Cocaine Disparity:** The Anti-Drug Abuse Act of 1986 imposes a five-year mandatory minimum penalty for a first-time trafficking offense involving 5 or more grams of crack cocaine, the weight of less than two sugar packets and yielding between 10 and 50 doses. To get the same 5 year mandatory minimum for powder cocaine, an offender would need to traffic 500 grams of powder, yielding between 2,500 and 5,000 doses. Against the recommendation of the U.S. Sentencing Commission, these mandatory minimums were signed into law again in 1995. Barack Obama and Joe Biden believe the disparity between crack and powder-based cocaine is wrong, cannot be justified and should be eliminated. The sentencing disparity has disproportionately filled our prison with young black and Latino drug users – men and women who he will work to rehabilitate so they can become productive and responsible community members. More than 80 percent of crack cocaine defendants in 2006 were African American, and African Americans now serve as much time in prison for drug offenses (58.7 months) as whites do for violent offenses (61.7 months). Republican Senators, like Jeff Sessions from Alabama, have argued that as a matter of law and public policy, the heavy mandatory sentences for crack as compared to cocaine make no sense. Barack Obama and Joe Biden will work in a bipartisan way to eliminate these disparities. They will also repeal the mandatory minimum sentence for first-time offenders convicted of simple possession of crack, as crack is the only drug that a non-violent first-time offender can receive a mandatory minimum sentence for possessing.

**Reform Mandatory Minimums:** There are at least 171 mandatory minimum provisions in federal criminal statutes. According to the United States Sentencing Commission, in FY 2006, 33,636 counts of conviction carried a mandatory minimum term of imprisonment, affecting 20,737 offenders. Most of these counts of conviction – 82.9 percent – were for drug offenses. Black and Hispanic offenders make up the overwhelming majority of individuals convicted under a mandatory minimum sentence. A RAND study found that mandatory minimum sentences are less effective than discretionary sentencing and drug treatment in reducing drug-related crime, and every leading expert body in criminal justice has opposed the use of mandatory minimum sentences, including the Sentencing Commission, the Judicial Conference, the American Bar Association, and leading criminal justice scholars. Chief Justice Rehnquist observed that "one of the best arguments against any more mandatory minimums, and perhaps against some of those that we already have, is that they frustrate the careful calibration of sentences." Justice Kennedy stated that he "can accept neither the necessity nor the wisdom of federal mandatory minimum sentences." Justice Breyer, one of the architects of the Sentencing Guidelines, noted that "[m]andatory minimum statutes are fundamentally inconsistent with Congress' simultaneous effort to create a fair, honest, and rational sentencing system through the use of Sentencing Guidelines." Politicians of both parties have also come out against mandatory minimums. Barack Obama and Joe Biden will immediately review these sentences to see where we can be smarter on crime and reduce the ineffective warehousing of non-violent drug offenders.

**Drug Courts:** There are now drug courts in operation or being planned in all fifty states, the District of Columbia, the Northern Mariana Islands, Puerto Rico, Guam, two Federal Districts, and 121 tribal programs. Existing drug courts have proven successful in dealing with non-violent offenders. These courts offer a mix of treatment and sanctions, in lieu of traditional incarceration. Offenders who participate in these courts and

complete their treatment can have charges against them dropped or can plead guilty without receiving prison time. The success of these programs has been dramatic: One New York study found that drug court graduates had a rearrest rate that was on average 29 percent lower than comparable offenders who had not participated in the drug court program. These programs are also far cheaper than incarceration. Currently, the Department of Justice makes grants available to state and local governments to establish drug courts. Barack Obama and Joe Biden will replicate these efforts within the federal criminal justice system by signing a law that would authorize federal magistrates to preside over drug courts and federal probation officers to oversee the offenders' compliance with drug treatment programs. They will ensure that our federal courts and probation offices have adequate resources to deal with this new program.

**Ensure Adequate Counsel:** Events in the Jena case have shed light on another problem in our country: too many defendants have poor counsel. Barack Obama and Joe Biden will work to improve the quality of our nation's public defenders by creating loan-forgiveness programs for law students who enter this field.

**End Racial Profiling:** This year, the Department of Justice released a survey that found that blacks and Hispanics are more than twice as likely as whites to be searched, arrested, threatened, or subdued with force when stopped by police. Of those who had force used against them, 83 percent felt that the force was excessive. As a state senator, Barack Obama introduced and passed a law requiring the Illinois Department of Transportation to record the race, age and gender of all drivers stopped for traffic violations so that bias could be detected and addressed. As a U.S. Senator, Obama cosponsored federal legislation to ban racial profiling and require federal, state and local law enforcement agencies to take steps to eliminate the practice. As president, Obama will continue his decades-long fight against racial profiling and sign legislation that will ban the practice of racial profiling by federal law enforcement agencies and provide federal funding to state and local police departments if they adopt policies to prohibit the practice.

**Reform the Death Penalty:** As a member of the Illinois state senate, Barack Obama led efforts to reform a broken death penalty system that sent 13 innocent people to death row because it was filled with error, questionable police tactics, racial bias, and shoddy legal work. Obama drafted and passed a law requiring videotaping of interrogations and confessions in capital cases to ensure that prosecutions are fair. As president, Obama will encourage the states to adopt similar reforms.

**Reduce Crime Recidivism by Providing Ex-Offender Supports:** America's urban communities are facing an incarceration and post-incarceration crisis. Up to two-thirds of the 650,000 prisoners released every year are rearrested within three years. Nearly 2 million children have a parent in a correctional facility. Barack Obama recognizes that it is simply unacceptable to keep ignoring this crisis in American families and communities. In the U.S. Senate, Obama has worked to provide job training, substance abuse and mental health counseling, and employment opportunities to ex-offenders. In addition to signing these important programs into law, Barack Obama and Joe Biden will create a prison-to-work incentive program, modeled on the Welfare-to-Work Partnership, to create ties with employers, third-party agencies that provide training and support services to ex-offenders, and to improve ex-offender employment and job retention rates. Barack Obama and Joe Biden will also reduce bureaucratic barriers at state correctional systems that prevent former inmates from finding and maintaining employment.

**Expand Hate Crimes Statutes:** Barack Obama cosponsored legislation that would expand federal jurisdiction to reach violent hate crimes perpetrated because of race, color, religion, national origin, sexual orientation, gender identity, or physical disability. As a state senator, Obama passed tough legislation that made conspiracy to commit hate crimes against the law. As president, he will ensure that the Criminal Section of the Civil Rights Division makes hate crime a priority.