I hope this summary of the Delegation's activity is useful to you, and let me again thank you for making this trip possible. The Seventeenth Annual Session of the OSCE Parliamentary Assembly will be held early next July in Astana, Kazakhstan, and I hope we can count on your support once again in ensuring that U.S. interests abroad are advanced through active participation in the OSCE PA.

Sincerely,

ALCEE L. HASTINGS,
Chairman.

BRINGING DIVERSITY TO THE FOREFRONT OF CURRENT ISSUES

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 31, 2007

Mr. RANGEL. Madam Speaker, I stand today to call attention to the issues of diversity this country is facing at the moment. I would also like to enter into the RECORD an opinion editorial by Lee Bollinger, president of Columbia University, from this week's edition of the New York Amsterdam News, entitled, "What's next for diversity?"

Diversity has been, and continues to be, an issue faced by America's institutions of higher education. Brown v. Board of Education was a monumental step forward in achieving diversity for the students in these institutions, but Supreme Court decisions like Grutter v. Bollinger, have caused many to wonder if we have forgotten what those involved in Brown v. Board of Education sought to do. Instead of seeing the Supreme Court continuously striving to achieve diversity, Americans see the decisions of the Supreme Court slowly chipping away at the precedents set forth in Brown v. Board of Education. The question, "What's next for diversity?" is one at the forefront of current issues and it calls all those who support diversity to support all that promotes it and denounce all that contradicts it.

I believe that programs meant to achieve diversity like affirmative action are necessary, and those who oppose such programs should be questioned for their motives. I hope that the questions brought forth by worried Americans will be answered in a timely fashion. Diversity has not been achieved, therefore I do not agree with those who believe diversity aimed programs should be phased out. I support affirmative action, as well as other programs aimed at achieving diversity, and call for the support of all others who feel the same.

WHAT'S NEXT FOR DIVERSITY?

(By Lee C. Bollinger)

For those of us who worked over so many years to reach the Supreme Court and affirm the constitutionality of affirmative action in higher education, which occurred in 2003 in Grutter v. Bollinger, this is the moment we have been dreading. The recent 5–4 decision limiting voluntary desegregation programs in our nation's public schools represents an inversion of the historic Brown v. Board of Education decision's clarion call for racial equality in education. And it is all too easy to understand how societal efforts to achieve racial integration, including through affirmative action in higher education, are now in serious jeopardy.

To be sure, Justice Kennedy in his concurring opinion stopped the majority short of slamming the door on race-based diversity in our schools; and even the Chief Justice tried to explain why the use of race in law school admissions is different. Specifically, the Court said it was tolerable to consider race as one of several factors in Grutter because individual applicants were evaluated in a "holistic" way and because "the expansive freedoms of speech and thought associated with the university environment"—and fostered by diversity—"occupy a special niche in our constitutional tradition."

Yet anyone reading between the lines of the majority opinion could feel the Chief Justice straining to explain Grutter's constitutionality before making the point he really wanted to make: Grutter is a weak precedent with "expressly articulated key limitations" and that "the lower courts" have "largely disregarded" this "in extending Grutter" beyond "the unique context of higher education."

It is important that we read the narrowness of this interpretation of Grutter alongside the sweeping rhetoric that Chief Justice Roberts really wants this holding to signify: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." This is the language anti-affirmative action advocates and a host of others will seize on. In this way, the methodical process Thurgood Marshall and others followed to achieve the Brown revolution will be used by the Roberts Court to undo it.

The difference is that the Brown decision brought the law down to earth, where it could finally see that separate school facilities were, as a matter of fact and experience, "inherently unequal." The Seattle and Louisville decision removes the law to its formalistic and disconnected position of a century ago, where, as empty rhetoric, it imagines an America that never was—and because of it, may never be.

In doing so, it obscures the larger debate about race in this country. Stripped bare, however, these school decisions are not about precedent, they are about broad philosophical differences about the role of public institutions in dealing with issues of race in America. Undergirding them is the feeling that Justice Scalia has made explicit, that society is tired of mending centuries of slavery and Jim Crow segregation, and that it is now up to those who have been discriminated against to "make it" on their own, as other groups have. For them, to consider race even for the noble end of integration does more harm than good by inflaming racial tensions.

These arguments make many Americans uncomfortable, and so they avoid them. I say let them be put on the table and debated, not hidden beneath phony "interpretations" of Brown. How should we respond to the fact that cities are more segregated today than they were a half century ago, or that the unemployment rates among African Americans in our inner cities is a multiple of the national number?

The problem for the Chief Justice is that wishing Brown stood only for the simpler proposition of "stopping discrimination" does not make it so. From the very beginning, Brown impelled us to take affirmative steps to achieve racial justice. And it is absurd to think the Court that decided Brown would have struck down these local school districts' efforts to carry out this mission. Yet this is precisely the result the Roberts Court wants us to take at face value. It is up to us to confront them on this and insist, that if they are going to take this new turn in our basic law, they must state their real reasons for it. Otherwise the Court will continue pretending that its rulings are consistent with the Brown line of cases—and thus devoted to "conservative" principles—until there is nothing left of Brown. If that is not the epitome of "judicial activism," what is?

I often wonder what the unanimous Brown Court would think of a country fifty-three years later that has proven itself too impatient to achieve racial justice after centuries of being too slow to recognize it. Perhaps, knowing painfully the legacy of invidious discrimination they were seeking to overturn, they actually would not be surprised by this most recent turn of events. After all, every half century or so, the nation seems to back away from solving the problems of racial injustice, only to recommit itself to the cause when the pot is about to boil over. From the beginning of the Constitution to Dred Scott; from the Civil War and emancipation to Plessy; from Brown to today—we always seem to be better at articulating our ideals than delivering on them.

But it doesn't have to be this way. One of the things I learned in leading the litigation in the affirmative action cases was that dealing with issues of race is not something that people in the mainstream of American life want to talk about, but with the proper leadership, they will.

For example, while we were eventually praised for enlisting the support of forty of the Fortune 500 largest US corporations and from leaders in the military, it was exceedingly difficult to get those advocates to sign on to the cause of affirmative action in higher education. Like many of our political leaders, they were convinced that a majority of Americans would oppose them, and pointed to Prop 209 in California for proof. It was only after the Late President Gerald Ford agreed to stand with us that things began to change. "I don't want future college students to suffer the cultural and social impoverishment that afflicted my generation," he wrote in the New York Times. That is what inspired General Motors to sign on—only then were we "in business."

I fear this latest Court decision represents the first act and scene of a national tragedy of withdrawal from Brown and Grutter's promise of a more inclusive America—a perilous shift in the direction of constitutional law from the last half century. But the scenes that follow are still ours to write—if only we have the courage and will to take up the pen. As President Ford said, "If history has taught us anything . . . it is the notion of America as a work in progress."

PERSONAL EXPLANATION

HON. JIM McDERMOTT

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 31, 2007

Mr. McDERMOTT. Madam Speaker, I was unable to be in Washington, DC, yesterday because my flight from Seattle was cancelled. As a result I missed several recorded votes. Were I able, I would have voted in support of H.R. 2750, H. Res. 580, and H. Res. 579.