

March 15, 2017

The Honorable Lamar Alexander
Chairman
Senate Committee on Health, Education,
Labor & Pensions
428 Senate Dirksen Office Building
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member
Senate Committee on Health, Education,
Labor & Pensions
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Senators Alexander and Murray:

The National Women's Law Center (the Center), an organization that has advocated on behalf of women and girls for forty-five years, writes to express its concern regarding the nomination of R. Alexander Acosta as Secretary of Labor. The Secretary of Labor is the nation's most senior official tasked with ensuring the well-being and rights of working people and advancing their employment opportunities, and is therefore of great importance to women and their families. The Secretary of Labor directs the Department of Labor's interpretation and enforcement of a number of laws vital to women's economic security and right to be free from workplace discrimination, such as the Fair Labor Standards Act, the Occupational Safety and Health Act, the Family and Medical Leave Act, the Affordable Care Act, and executive orders prohibiting employment discrimination by federal contractors and setting labor standards for federal contractors' employees, including protection of the right to earn paid sick days. These policies are essential to closing the gender wage gap: they remove barriers to women's employment opportunity, including sex discrimination; raise women's wages; allow women to meet caregiving responsibilities without sacrificing their employment; and ensure women's health and safety so they can continue to support their families.

Mr. Acosta's record, particularly during his tenure as Assistant Attorney General for Civil Rights at the Department of Justice from 2003-2005, raises serious questions about his commitment to implementing and enforcing labor, employment and civil rights protections of critical importance to working people, and particularly to women, free from improper political influence. We urge the Committee to use the opportunity presented by Mr. Acosta's confirmation hearing to conduct a rigorous examination of Mr. Acosta's record and thoroughly vet this nominee.

Mr. Acosta oversaw the Department of Justice's Civil Rights Division at a time when it engaged in highly politicized and ideological hiring and case assignments. An investigation and 2008 report by the Department of Justice's Office of the Inspector General and Office of Professional Responsibility found that while Acosta served as Assistant Attorney General for Civil Rights, a senior official directly under his supervision, Bradley Schlozman, violated the Civil Service Reform Act by considering and, indeed, prioritizing political and ideological affiliations in hiring and transferring attorneys and assigning cases in the Civil Rights Division. Acosta had delegated hiring authority to Schlozman, who sought to punish attorneys with affiliations with progressive organizations or connections to the Democratic party and elevate attorneys with conservative views or Republican party credentials. The report concluded that Acosta and others in the Division "had sufficient information about

Schlozman's conduct to have raised red flags warranting closer supervision of him," and that they instead took no action and failed to sufficiently supervise Schlozman.¹

As the agency responsible for enforcing many of the laws that ensure safe and fair employment practices, the Department of Labor has a heightened responsibility to ensure its own labor and employment practices are unimpeachable. We urge the Committee to question Mr. Acosta about this issue at his hearing, and obtain his commitment to ensuring that these politicized screenings, hirings, transfers, and workplace practices are not repeated at the Department of Labor, and that employees at the Department of Labor comply with all labor and employment laws, including the Civil Service Reform Act. Furthermore, Mr. Acosta should be asked to provide details about the specific oversight processes he would implement to ensure that Labor Department officials are complying with all relevant labor and employment laws.

Mr. Acosta's tenure at the Civil Rights Division was also marked by a troubling stepping back of federal civil rights enforcement efforts. For example, significantly fewer employment discrimination cases, and fewer employment discrimination pattern and practice cases, were brought during the George W. Bush Administration than in prior Administrations.² Given this record, the Committee must call upon Mr. Acosta to affirm that as Secretary of Labor, he will not scale back or undermine Department of Labor enforcement efforts and that he will ensure that decision making about case selection and litigation strategy to enforce labor and employment protections is free from improper political influence. This is of particular importance to the Office of Federal Contract Compliance Programs (OFCCP) and the Wage and Hour Division's efforts to protect vulnerable workers, including women, immigrants, people of color, LGBT individuals, and workers in low-wage jobs.

OFCCP implements and enforces an array of executive actions governing federal contractor workplaces, including protections for employees of federal contractors who discuss their pay, and the non-discrimination requirements in Executive Order 11246 and its recently updated sex discrimination regulations, which provide crucial protections against pay discrimination, sexual harassment, discrimination on the basis of gender identity, and pregnancy discrimination. OFCCP also oversees the collection of pay data from federal contractors to root out pay discrimination. Mr. Acosta must commit to ensuring OFCCP's robust implementation and enforcement of such anti-discrimination protections and initiatives. The Committee should also obtain a pledge from Mr. Acosta to increase the number of enforcement actions brought by the Department of Labor challenging employment discrimination, especially systemic discrimination that affects large numbers of workers, particularly women and people of color.

The Wage and Hour Division enforces a variety of laws critical to women's economic security and health, including wage and hour protections in the Fair Labor Standards Act, and leave provisions in the Family and Medical Leave Act and the current Department of Labor rule ensuring that employees of federal contractors can earn paid sick days. The overrepresentation of women in low-wage jobs, including minimum wage and sub-minimum wage positions, as well as the fact that women -- and in particular women of color -- continue to bear the burden of caregiving, are important drivers of the gender wage gap. Because women, and in particular women of color and immigrant women, are overrepresented in low-wage jobs, they have a particular stake in raising the minimum wage and in robust overtime

protections; are especially vulnerable to wage theft and retaliation; and are less likely to have access to important supports like paid family and medical leave and paid sick leave. It is essential that the Wage and Hour Division receives the resources it needs to protect low-wage workers, and that it uses those resources to enforce workers' rights affirmatively, rather than relying on complaint-driven enforcement as in the George W. Bush Administration, which left workers vulnerable to exploitation.³ The Committee must call upon Mr. Acosta to affirm that he will commit the Division to this affirmative enforcement and defend the Division against any attempts to undermine its ability to conduct vigorous implementation and enforcement activities.

Additionally, we urge you to probe Mr. Acosta's understanding of the importance of various labor and employment policies for reducing barriers to women's workplace opportunity and promoting their economic security. For instance, the Committee should explore whether Mr. Acosta appreciates the implications of increasing the federal minimum wage, ensuring tipped workers are entitled to the same cash minimum wage as other workers, and expanding eligibility for overtime pay for closing the gender wage gap. Likewise, the Committee should determine whether Mr. Acosta recognizes the critical role that access to paid family, medical and sick leave programs play in helping women maintain employment while ensuring their own health and fulfilling caregiving responsibilities. We urge you to thoroughly explore Mr. Acosta's views on these matters during his confirmation hearing.

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In conclusion, the Center urges the Committee to review thoroughly these troubling aspects of Mr. Acosta's record during his hearing, to identify how he will ensure that personnel and enforcement decisions at the Department of Labor will be free from the political interference that characterized his leadership at the Civil Rights Division, to seek to ensure that he commits to vigorous enforcement of the labor and employment protections that the Department of Labor oversees, with a focus on the needs of the most vulnerable workers, and to establish his understanding of labor and employment policies critical to the economic security of women and families.

Sincerely,



Marcia D. Greenberger
Co-President

¹ U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL AND OFFICE OF PROFESSIONAL RESPONSIBILITY, AN INVESTIGATION OF ALLEGATIONS OF POLITICIZED HIRING AND OTHER IMPROPER PERSONNEL ACTIONS IN THE CIVIL RIGHTS DIVISION 50, 52 (July 2, 2008), <https://oig.justice.gov/special/s0901/final.pdf>.

² U.S. GOV'T ACCOUNTABILITY OFFICE, 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 (Oct. 2009), <http://www.gao.gov/new.items/d1075.pdf>; NAT'L WOMEN'S LAW CTR., SLIP-SLIDING AWAY: THE EROSION OF HARD-WON GAINS FOR WOMEN UNDER THE BUSH ADMINISTRATION AND AN AGENDA FOR MOVING FORWARD 13-14 (Apr. 2004), <http://www.nwlc.org/sites/default/files/pdfs/AdminRecordOnWomen2004.pdf>.

³ U.S. GOV'T ACCOUNTABILITY OFFICE, WAGE AND HOUR DIVISION'S COMPLAINT INTAKE AND INVESTIGATIVE PROCESSES LEAVE LOW WAGE WORKERS VULNERABLE TO WAGE THEFT (Mar. 25, 2009), <http://www.gao.gov/assets/130/122107.pdf>.