



May 6, 2022

The Honorable Patty Murray  
Chair  
Committee on Health, Education, Labor &  
Pensions  
United States Senate  
428 Senate Dirksen Office Building  
Washington, DC 20510

The Honorable Richard Burr  
Ranking Member  
Committee on Health, Education, Labor &  
Pensions  
United States Senate  
428 Senate Dirksen Office Building  
Washington, DC 20510

**Re: Nomination of Kalpana Kotagal to the U.S. Equal Employment Opportunity Commission**

Dear Chair Murray and Ranking Member Burr:

The undersigned 53 civil rights, workers' rights, and gender equality organizations write to express our strong support for the nomination of Kalpana Kotagal to serve as a Commissioner on the U.S. Equal Employment Opportunity Commission (EEOC). Ms. Kotagal is an exceptionally qualified civil rights lawyer who has dedicated the bulk of her career to helping everyday working people enforce their rights under federal employment and anti-discrimination laws. Her deep knowledge of the law and her experience addressing systemic discrimination make her an outstanding choice to help lead the EEOC in its work to prevent and remedy unlawful employment discrimination and promote equal opportunity for all in workplaces that are respectful and inclusive.

The EEOC enforces employment anti-discrimination laws in the private workforce and federal sector, including Title VII of the Civil Rights Act of 1964 (which includes the Pregnancy Discrimination Act), the Equal Pay Act, the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act. The EEOC not only pursues charges of discrimination, litigating when appropriate, but it also plays a key role in helping to prevent discrimination through outreach, education, data collection, and technical assistance programs. Laws interpreted and enforced by the EEOC are critical to workplace fairness and opportunity for women, people of color, LGBTQ individuals, and people with disabilities.

For over 15 years, Ms. Kotagal has practiced law at Cohen Milstein Sellers & Toll PLLC, where she is now a partner in the Civil Rights and Employment Group and specializes in representing groups of workers in complex class action litigation focused on systemic discrimination. Ms. Kotagal's extensive experience will complement and strengthen the EEOC, which has long focused its enforcement efforts on individual and systemic cases that address significant legal issues with substantial impact.

Among the cases where Ms. Kotagal has played a leading role are:

- *Jock v. Sterling Jewelers Inc.*: In this arbitration class action, Ms. Kotagal represents thousands of current and former women sales employees who allege that they experienced discrimination in pay and promotion in violation of the Equal Pay Act and Title VII's prohibition on sex discrimination. Originally filed in 2008, the class contains more than 69,000 employees and has

uncovered allegations of widespread sexual harassment and abuse at the company.<sup>1</sup> The case is currently scheduled to proceed to trial before an arbitrator later this year.<sup>2</sup>

- *Allen v. AT&T Mobility*: Ms. Kotagal partnered with the ACLU Women’s Rights Project to represent current and former AT&T Mobility retail representatives who allege that they were penalized for their pregnancy-related absences under their employer’s attendance policy in violation of the Pregnancy Discrimination Act.<sup>3</sup> The case is ongoing.
- *Complainant v. Donohue, United States Postal Service*: Ms. Kotagal successfully settled this case brought under the Rehabilitation Act of 1973 before an EEOC administrative judge alleging that USPS had subjected a class of disabled veterans to improper pre-employment medical inquiries. Under the settlement agreement, class members received more than \$9 million and USPS agreed to make changes to its hiring practices to prevent future violations.<sup>4</sup>

Ms. Kotagal has also represented clients in other employment class actions, including a lawsuit alleging unpaid wages to people living in an adult rehabilitation center, in violation of the Fair Labor Standards Act;<sup>5</sup> failure to pay overtime wages to employees of a poultry plant;<sup>6</sup> and conspiracy to artificially suppress nurses’ wages in violation of federal antitrust laws.<sup>7</sup> Beyond employment issues, Ms. Kotagal’s work has encompassed access to housing and healthcare, and demonstrates her broad commitment to ensuring that all people are treated with dignity, free from pernicious discrimination.

Throughout her career, Ms. Kotagal has consistently focused on protecting the most vulnerable workers from abusive practices, including sexual harassment and abuse. Ms. Kotagal was a part of the legal team to settle a shareholder derivative suit against certain officers and directors of Wynn Resorts, Ltd. resulting from allegations that they had failed to hold the CEO accountable for a pattern of sexual misconduct and harassment of employees.<sup>8</sup> The settlement agreement contained several policy changes aimed at increasing board diversity and establishing a workplace free from abuse.<sup>9</sup> In her advocacy, Ms. Kotagal has also demonstrated deep understanding of the connection between sexual harassment and assault and

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<sup>1</sup> Drew Harwell, “Hundreds Allege Sex Harassment, Discrimination at Kay and Jared Jewelry Company,” *Washington Post*, Feb. 27, 2017, [https://www.washingtonpost.com/business/economy/hundreds-allege-sex-harassment-discrimination-at-kay-and-jared-jewelry-company/2017/02/27/8dcc9574-f6b7-11e6-bf01-d47f8cf9b643\\_story.html](https://www.washingtonpost.com/business/economy/hundreds-allege-sex-harassment-discrimination-at-kay-and-jared-jewelry-company/2017/02/27/8dcc9574-f6b7-11e6-bf01-d47f8cf9b643_story.html).

<sup>2</sup> Cohen Milstein Sellers & Toll PLLC, Sterling Jewelers, <https://www.cohenmilstein.com/case-study/sterling-jewelers> (last visited Apr. 27, 2022).

<sup>3</sup> Cohen Milstein Sellers & Toll PLLC, Cynthia Allen, et al. v. AT&T Mobility Services LLC, <https://www.cohenmilstein.com/case-study/katia-hills-et-al-v-att-mobility-services-llc> (last visited Apr. 27, 2022).

<sup>4</sup> See 2014 WL 2206508 (May 16, 2014) (describing the monetary terms of the settlement agreement); *USPS Settles Class Action Discrimination Lawsuit Filed for Disabled Veterans*, *Postal-Reporter* (June 12, 2011), <https://www.postal-reporter.com/blog/usps-settles-class-action-discrimination-lawsuit-filed-for-disabled-veterans/>.

<sup>5</sup> Cohen Milstein Sellers & Toll PLLC, Press Release, The Salvation Army Accused of Illegally Underpaying Vulnerable Thrift Store Workers (Mar. 9, 2022), <https://www.cohenmilstein.com/update/salvation-army-accused-illegally-underpaying-vulnerable-thrift-store-workers> (last visited Apr. 27, 2022).

<sup>6</sup> Cohen Milstein Sellers & Toll PLLC, Pilgrim’s Pride Corporation, <https://www.cohenmilstein.com/case-study/pilgrims-pride-corporation> (last visited Apr. 27, 2022).

<sup>7</sup> Cohen Milstein Sellers & Toll PLLC, Nurses Wages, <https://www.cohenmilstein.com/case-study/nurse-wages> (last visited Apr. 27, 2022).

<sup>8</sup> Cohen Milstein Sellers & Toll PLLC, Wynn Resorts, Ltd. Derivative Litigation, <https://www.cohenmilstein.com/case-study/wynn-resorts-ltd-derivative-litigation> (last visited Apr. 27, 2022).

<sup>9</sup> *Id.*

other forms of discrimination in the workplace and has continuously highlighted the importance of accountability, transparency, and survivor-centered resources.<sup>10</sup>

Ms. Kotagal is also an innovative and creative thinker who has demonstrated experience developing relationships and working with diverse stakeholders to promote affirmative strategies to advance equality. These qualities are critical to the work of leading the commission and ensuring the development of robust enforcement strategies. For example, Ms. Kotagal has spearheaded efforts to proactively advance opportunities for working people from underrepresented and marginalized communities. Together with Pearl Street Films and the University of Southern California Annenberg Inclusion Initiative, Ms. Kotagal developed the Inclusion Rider,<sup>11</sup> a contractual clause that creates flexible benchmarks for hiring diverse candidates for Hollywood projects.<sup>12</sup> In 2021, building off of the success of the Inclusion Rider, Ms. Kotagal joined with racial justice groups and industry leaders to release an Inclusion Rider template and a set of policy guidelines and resources for companies looking to implement an Inclusion Rider as part of their hiring practices. The Inclusion Rider has since been used in several Hollywood studios and production companies,<sup>13</sup> as well as in the music<sup>14</sup> and fashion<sup>15</sup> industries.

The child of immigrants from India, Ms. Kotagal grew up in Cincinnati, Ohio. She earned her undergraduate degree from Stanford University and her J.D., *cum laude*, from the University of Pennsylvania Law School before serving as a law clerk for Judge Betty Binns Fletcher of the U.S. Court of Appeals for the Ninth Circuit. Ms. Kotagal has received numerous awards for her work as a civil rights and employment lawyer and is a leading national voice on diversity, equity, and inclusion.<sup>16</sup>

Ms. Kotagal's deep legal expertise and experience identifying and challenging systemic discrimination, coupled with her unwavering commitment to ensuring justice for the most vulnerable working people, make her exceptionally qualified to serve as an EEOC Commissioner. We offer our strong support of Kalpana Kotagal to be a Commissioner of the EEOC and urge you to expeditiously approve her nomination. For any questions, please contact Gaylynn Burroughs, director of workplace equality at the

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<sup>10</sup> See, e.g., Kalpana Kotagal, "How I Helped Create Hollywood's Inclusion Rider," TEDx, Feb. 2022, [https://www.ted.com/talks/kalpana\\_kotagal\\_want\\_to\\_build\\_a\\_successful\\_organization\\_here\\_s\\_why\\_diversity\\_is\\_key](https://www.ted.com/talks/kalpana_kotagal_want_to_build_a_successful_organization_here_s_why_diversity_is_key). (discussing the connection between sexual harassment and assault and other forms of workplace discrimination, in particular for the most isolated and vulnerable workers, and highlighting the need for accountability); Kalpana Kotagal and Stacy Cammarano, Cohen Milstein Sellers & Toll PLLC, Written Submission to the U.S. Commission on Civil Rights Public Briefing on Federal Me Too: Examining Sexual Harassment in Government Workplaces, available at <https://www.usccr.gov/meetings/2019/05-09-federal-metoo-examining-sexual-harassment-government-workplaces> (outlining recommendations to address sexual harassment in government and private workplaces)

<sup>11</sup> Cohen Milstein Sellers & Toll PLLC, Inclusion Rider, <https://www.cohenmilstein.com/case-study/inclusion-rider> (last visited Apr. 27, 2022).

<sup>12</sup> Maura Judkis and Stephanie Merry, "What Is an Inclusion Rider? Michael B. Jordan Is Taking on Frances McDormand's Oscars Proposal," *Washington Post*, Mar. 8, 2018, <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/03/05/what-is-an-inclusion-rider-explaining-frances-mcdormands-call-to-action-at-the-oscars/>.

<sup>13</sup> See Kristen Chuba, "Endeavor Content, #ChangeHollywood Launch New Inclusion Rider," *Hollywood Reporter*, Apr. 28, 2021, <https://www.hollywoodreporter.com/business/business-news/amc-studios-new-inclusion-rider-endeavor-content-change-hollywood-4174246/>.

<sup>14</sup> Jem Aswad, "Recording Academy Unveils Grammy Awards Inclusion Rider," *Variety*, Oct. 19, 2021, <https://variety.com/2021/music/news/recording-academy-grammy-inclusion-rider-1235092198/>.

<sup>15</sup> Jessica Testa, "Fashion Is Getting an Inclusion Rider," *New York Times*, Feb. 10, 2022, <https://www.nytimes.com/2022/02/10/style/diversity-fashion.html>.

<sup>16</sup> The White House, Press Release, President Biden Announces Key Nominees (Apr. 1, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/01/president-biden-announces-key-nominees-9/>

National Women's Law Center ([gburroughs@nwlc.org](mailto:gburroughs@nwlc.org)) or Josh Boxerman, policy analyst, at The Leadership Conference on Civil and Human Rights ([boxerman@civilrights.org](mailto:boxerman@civilrights.org)).

Sincerely,

National Women's Law Center  
The Leadership Conference on Civil and Human Rights  
A Better Balance  
Alianza Nacional de Campesinas, Inc.  
Alliance for Justice  
American Association of University Women  
Americans United for Separation of Church and State  
Asian Pacific American Labor Alliance, AFL-CIO  
Bazon Center for Mental Health Law  
Center for American Progress  
Clearinghouse on Women's Issues  
Cntr for Advancement of Public Policy  
Coalition on Human Needs  
Economic Policy Institute  
Equal Pay Today  
Equal Rights Advocates  
Equality Federation  
Feminist Majority Foundation  
Futures Without Violence  
Gender Equality Law Center  
Human Rights Campaign  
Institute for Women's Policy Research  
Ipas Partners for Reproductive Justice  
KWH Law Center for Social Justice and Change  
Lawyers' Committee for Civil Rights Under Law  
Methodist Federation for Social Action  
Mississippi Black Women's Roundtable  
Movement Advancement Project  
National Asian Pacific American Women's Forum (NAPAWF)  
National Center for Law and Economic Justice  
National Center for Transgender Equality  
National Employment Law Project  
National Employment Lawyers Association  
National Immigration Law Center  
National Partnership for Women & Families  
National Urban League  
One Fair Wage  
PCUN  
Pride at Work  
Public Citizen

Public Justice  
ROC United  
Rural Coalition  
Service Employees International Union  
Sikh American Legal Defense and Education Fund (SALDEF)  
Sikh Coalition  
The Trevor Project  
The Women's Economic Institute, Inc  
Transgender Legal Defense and Education Fund  
Women Employed  
Women's Law Project  
Workplace Justice Project at Loyola Law Clinic  
Worksafe