

June 25, 2025

Senator Bill Cassidy
Chairman, Senate HELP Committee
455 Dirksen Senate Office Building
Washington, DC 20510

Senator Bernie Sanders
Ranking Member, Senate HELP Committee
332 Dirksen Senate Office Building
Washington, DC 20510

**Re: Nomination of Jonathan Berry to be Solicitor for the United States
Department of Labor**

Dear Chair Cassidy and Ranking Member Sanders:

On behalf of the National Women's Law Center Action Fund, Lawyers' Committee for Civil Rights Under Law, The Leadership Conference on Civil and Human Rights, NAACP Legal Defense and Educational Fund, and National Partnership for Women & Families, we write in strong opposition to the confirmation of Jonathan Berry to be Solicitor for the United States Department of Labor (DOL). The undersigned groups are committed to civil rights, workers' rights, and gender justice and are deeply concerned about Berry's extremist views on labor policy, which are demonstrated in Project 2025's labor chapter, of which he is the author.¹ Implementing his recommendations for the DOL would harm workers throughout the United States by undermining key civil rights and worker protections, resulting in less accountability for discrimination at work, greater economic uncertainty, increased workplace hazards, and limited job opportunities for women, workers of color, LGBTQI+ workers, workers with disabilities, and many other workers throughout the country.

As the lead attorney at the key agency charged with protecting our nation's working people, the Solicitor of Labor must have a demonstrated commitment to promoting the well-being and rights of working people. The Department of Labor enforces a number of laws vital to workers' economic security and safety at work, such as the Fair Labor Standards Act (FLSA), including the PUMP for Nursing Mothers Act; the Occupational Safety and Health (OSH) Act; and the Family Medical Leave Act (FMLA). Strong enforcement of these laws is essential to protecting workers and ensuring they are fully able to assert their rights. The FLSA, for example, provides minimum wage and overtime protections—protections that are particularly relevant for women because women, especially women of color, are overrepresented among workers paid at or below the federal minimum wage,² are more likely to benefit from the Biden overtime rule due to their

¹ Heritage Foundation, *Mandate for Leadership: The Conservative Promise* ("Project 2025") (2023).

² DOL, BLS Reports, Characteristics of Minimum Wage Workers, 2023," May 2024, [Characteristics of minimum wage workers, 2023: BLS Reports: U.S. Bureau of Labor Statistics](#).

disproportionate representation in lower-paying jobs,³ and represent more than two-thirds of tipped workers.⁴

It can be very challenging for workers to assert even these core protections given the very real fear of retaliation, particularly for workers living paycheck to paycheck. That's why a Solicitor of Labor who will stand up for workers is so important. But Jonathan Berry will not be that Solicitor of Labor. Instead, Berry's extremist views would undercut legal protections by rolling back decades of labor and civil rights and replacing them with policies rooted in racist and sexist beliefs that center corporate profit over worker well-being. Because women,⁵ and especially women of color,⁶ are overrepresented in the lowest-paid jobs, they are particularly likely to suffer if Berry seeks to fulfill the vision he set out in Project 2025.

Attacks on Civil Rights Protections

Berry's deep antipathy towards worker protections and his Project 2025 policy proposals have already wreaked havoc on civil rights at DOL. In one of President Trump's first actions,⁷ he implemented Berry's recommendation to rescind a decades-old Executive Order ("EO 11246")⁸ that protected workers hired by federal contractors—approximately 20 percent of our workforce—from discrimination on the basis of race, color, sex, sexual orientation, gender identity, religion, and national origin.⁹

EO 11246 stood for the basic principle that a business receiving taxpayer money should not be permitted to use those funds to discriminate. By also requiring federal contractors to take proactive steps to ensure equal opportunity, EO 11246 was integral to combatting discrimination, including by helping to root out the pay discrimination that contributes to pernicious race and gender wage gaps. Compliance with EO 11246 did not involve preferences or quotas.¹⁰ Rather,

³ See National Women's Law Center ("NWLC"), "NWLC comments in support of Notice of Proposed Rulemaking: Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees," p. 4 (RIN 1235-AA39), Nov. 7, 2023, [NWLC Comments on Biden's Proposed Overtime Rule - National Women's Law Center](#).

⁴ See Sarah Javaid, National Women's Law Center, "One Fair Wage: Women Fare Better In States With Equal Treatment For Tipped Workers," 2024, <https://nwlc.org/wp-content/uploads/2024/06/Tipped-Workers-FS-2024.6.12v1.pdf>.

⁵ See National Women's Law Center, "Hard Work Is Not Enough," p.7, July 2023, [f.NWLC Reports HardWorkNotEnough LowPaid 2023.pdf](#).

⁶ See National Employment Law Project, "Occupational Segregation of Black Women Workers in the U.S.," Apr. 2024, [Occupational Segregation of Black Women Workers in the U.S. - National Employment Law Project](#).

⁷ Exec. Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633, Jan. 21, 2025.

⁸ Exec. Order No. 11246, Equal Employment Opportunity, 30 Fed. Reg. 12319, Sept. 28, 1965, as amended.

⁹ Project 2025 at 584. See National Women's Law Center, "Trump Executive Order Attacks Workplace Equal Opportunity," ("NWLC EO OFCCP Fact Sheet") [NWLC-Fact-Sheet-EO-OFCCP-1.31.25.pdf](#)

¹⁰ See Open Letter from Former U.S. Department of Labor Officials to the Federal Contractor Community, Apr. 15, 2025, <https://bit.ly/ContractorOpenLtrApr152025>.

EO 11246 promoted merit by requiring contractors to conduct self-assessments, including analyzing data on hiring and pay to prevent discrimination.

Berry attacked EO 11246 for adopting what he called “novel anti-discrimination theories,”¹¹ but it is Berry who is out-of-step with the law. The protections provided by EO 11246—including prohibitions against discrimination based on sexual orientation and gender identity—are consistent with federal anti-discrimination laws and Supreme Court precedent. Berry’s views, however, undermine our Constitutional commitment to equal protection under the law.

Further illustrating Berry’s hostility to civil rights is his Project 2025 proposal to dismantle the Office of Federal Contract Compliance Programs (OFCCP),¹² the agency at the DOL that, for the last 60 years, has ensured federal contractors and subcontractors comply with equal employment opportunity requirements, including statutory protections for veterans and people with disabilities. It is therefore no surprise that plans are already underway to eliminate OFCCP—including the proposal in the President’s FY26 budget for DOL to zero out OFCCP funding; plans to close multiple OFCCP offices,¹³ and efforts to eliminate 90 percent of the OFCCP’s staff.¹⁴

Over the past ten years (2014-2024), OFCCP recovered over \$260 million for over a quarter of a million workers.¹⁵ Without OFCCP enforcement and oversight, workers across the U.S. will be more vulnerable to hiring and pay discrimination, which is often hidden from workers, making it difficult for EEOC to identify through its charge-driven authorities or for employees to challenge through private litigation.

Berry also critiques the disparate impact doctrine, which the Supreme Court established more than 50 years ago,¹⁶ and is key to enabling workers to challenge discriminatory harm caused by a facially neutral employment practice. In Project 2025, Berry advocates for an Executive end run around the Supreme Court, arguing that DOL’s OFCCP should be banned from relying on the disparate impact method of proving discrimination.¹⁷

Disparate impact is more than just a legal standard—it is codified in Title VII of the Civil Rights Act of 1964 and firmly established in civil rights jurisprudence. Workplace policies that appear

¹¹ Project 2025 at 584.

¹² Project 2025 at 583-84.

¹³ Rebecca Klar, Bloomberg Daily Labor Report, “DOL Contractor Watchdog Plans to Cut Staff by 90%, Memo Says,” Feb. 27, 2025, [DOL Contractor Watchdog Plans to Cut Staff by 90%, Memo Says \(1\)](#).

¹⁴ Federal News Network, “Office of Federal Contract Compliance programs lays off 90% of workforce,” May 13, 2025, [Office of Federal Contract Compliance programs lays off 90% of workforce](#)

¹⁵ NWLC EO OFCCP Fact Sheet, [NWLC-Fact-Sheet-EO-OFCCP-1.31.25.pdf](#); DOL, OFCCP, “OFCCP by the Numbers Data and Results” webpage (document on file with the NWLC).

¹⁶ See *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971) (holding Title VII requires “removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate.”); *Texas Dep’t of Housing & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519 (2015) (Fair Housing Act); *Smith v. City of Jackson*, 544 U.S. 228 (2005) (Age Discrimination in Employment Act).

¹⁷ Project 2025 at 583.

fair on their face can still be unlawful if they have discriminatory effects on certain classes of employees. For instance, OFCCP has used disparate impact liability to bring cases against employers who utilize pre-employment physical tests that have no business necessity but present an unfair disadvantage to female applicants.¹⁸ Berry fails to acknowledge the importance of disparate impact in identifying and protecting workers from workplace discrimination. The defunding of OFCCP, rescission of EO 11246, and attempt to eliminate 90 percent of the OFCCP workforce is a dark prediction of what civil rights enforcement will look like if Berry is confirmed as Solicitor of Labor.

Berry further attacks the government's collection of the very data needed to prevent and prove discrimination, arguing that demographic data collection is "an original sin" that leads to racial quotas and discrimination.¹⁹ Yet, collecting demographic data is both fully lawful—and required under Title VII—and essential to assessing a pattern or practice of unlawful employment practices. In Project 2025, Berry calls for eliminating EEO-1 data collection on race and ethnicity.²⁰ Already, the Trump administration has indicated they will no longer collect data on nonbinary employees, allowing only binary options of male or female.²¹ Berry's views that characterize constitutional commitments and legislative policy as illegal distort the law and undermine the constitutional design.²²

Imposing Rigid and Reductive Gender Roles

Berry's antipathy to civil rights further includes Project 2025 proposals that would eviscerate protections for LGBTQI+ workers, effectively enabling workplace discrimination based on sexual orientation and gender identity. For example, Berry has called for the rescission of regulations that interpret sex discrimination as "prohibiting discrimination on the basis of sexual orientation, gender identity, transgender status, sex characteristics, etc."²³—despite the Supreme Court's holding in *Bostock v. Clayton County* that Title VII prohibits discrimination based on sexual orientation and gender identity.²⁴

¹⁸ DOL, OFCCP news release, "Federal food service contractor settles charges of gender-based hiring discrimination for entry-level Michigan, Kentucky, Wisconsin warehouse jobs," May 11, 2016, [Federal food service contractor settles charges of gender-based hiring discrimination for entry-level Michigan, Kentucky, Wisconsin warehouse jobs](#) | U.S. Department of Labor.

¹⁹ See Jonathan Berry, *Curbing Racial Classifications*, 22 Geo. J.L. & Pub. Pol'y 385 (2024); see also Project 2025 at 583.

²⁰ Project 2025 at 583.

²¹ January 20, 2025, Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"; [2024 EEO-1 Component 1 Data Collection Instruction Booklet](#) (The EEO-1 Component 1 data collection provides only binary options (i.e., male or female), p. 14.

²² See Jonathan Berry, *Curbing Racial Classifications*, 22 Geo. J.L. & Pub. Pol'y 385 (2024).

²³ Project 2025 at 584.

²⁴ See *Bostock v. Clayton Cty. Bd. of Comm'rs*, 590 U.S. 644 (2020).

Berry also critiques the Women’s Bureau, which is especially troubling given the Trump DOL’s attacks on the Women’s Bureau and its work, including its proposed elimination in the President’s FY26 budget. Berry’s Project 2025 labor chapter criticizes the Women’s Bureau’s research, referring to its “politicized research” and the need for “honest study,” and calling for research on “the true causes of earnings gaps between men and women.” Berry may not believe that race and sex discrimination, occupational segregation, lack of caregiving support, or concentration into low-paying jobs are “true” causes of the pay gap, but that understanding flatly contradicts decades-worth of research on the factors that contribute to the wage gap.²⁵ Already, the Trump DOL has terminated key programs and protections that help combat the gender wage gap and occupational segregation, such as EO 11246 and the WANTO grant program. The WANTO program, which was terminated for all grant recipients except for one,²⁶ helps women access nontraditional jobs, such as apprenticeships in the skilled trades, that offer a path to stable jobs with benefits.

Berry’s attacks on women workers in Project 2025 extend to their reproductive rights. In his labor chapter, Berry goes so far as to include a section titled “Pro-Life Measures,” essentially inviting employers and the government to impose their political views on reproductive rights onto workers—a practice that inevitably comes with dangerous consequences.²⁷ For example, Berry proposes requiring the EEOC to focus its investigations on “claims of failure to accommodate disability, religion, and pregnancy (but not abortion)”²⁸—to the exclusion of other key problems, including pay discrimination and harassment. In addition to harming women by shifting enforcement away from key problems in the workplace, this direction clearly shows that Berry fails to recognize the full scope of pregnancy care, including abortion and miscarriage, and that denying workers the accommodations they need to receive this care puts their health and jobs at risk. In fact, Berry’s Project 2025 recommendations even propose changes that would affirmatively allow employers to discriminate against workers who need abortion-related accommodations and allow discriminatory benefits schemes that privilege pregnancy, childbirth, maternity, and adoption.²⁹

²⁵ See, e.g., Francine D. Blau and Lawrence M. Kahn, Journal of Economic Literature “The Gender Wage Gap: Extent, Trends, and Explanations,” 2017, The Gender Wage Gap: Extent, Trends, and Explanations; Ashir Coillberg, National Women’s Law Center, “A Window Into the Wage Gap: What’s Behind It and How to Close It,” Feb. 2025, 2025-Window-Into-the-Wage-Gap-Factsheet.pdf.

²⁶ DOL did not cancel a WANTO grant protected by a preliminary injunction issued by a federal court. See *Chicago Women in Trades v. Trump et al.*, No. 25 C 2005, Mem. Op. & Order at 41 (Apr. 14, 2025, N.D. Ill.) (prohibiting the DOL from canceling plaintiff’s WANTO grant on the basis that it would likely violate the Constitutional guarantee of separation of powers).

²⁷ Project 2025 at 594.

²⁸ Project 2025 at 587.

²⁹ Project 2025 at 585.

Dismantling Worker Protections

Berry's Project 2025 policy proposals would further harm working women by prioritizing corporate profit over people. Many of Berry's changes are misleadingly labeled as benefitting families, such as "Refocusing Labor Regulation on the Good of the Family" and "Making Family-Sustaining Work Accessible," but these proposals are unapologetic attacks on core economic protections for working people that will make families less economically secure. For example, Berry would undermine basic wage protections through a proposed waiver for states of overtime pay and minimum wage requirements under the FLSA.³⁰ As managing partner at Boyden Gray PLLC, he in fact sought to revoke these protections for millions of home care workers—most of whom are women, disproportionately women of color, who are paid extremely low wages³¹—by representing home care agencies in challenges to the 2013 DOL rule that affirmed home care workers are protected by the FLSA.³²

Berry also proposes gutting overtime in multiple other ways, including by allowing employers to manipulate hours to escape overtime obligations and to offer paid time off (at the employer's discretion) instead of guaranteed overtime pay.³³ Berry would further limit worker protections by weakening standards for determining who is an employer and employee, making it easier for employers to evade responsibility as joint employers and to misclassify workers as independent contractors, stripping workers of wage and hour and anti-discrimination protections.³⁴ An additional focus of Berry's Project 2025 labor policy proposals is to diminish worker power by targeting unions with numerous proposals to make forming and joining a union more difficult. Unions benefit workers and their families by improving wages and workplace benefits and helping ensure that workers can assert their workplace rights.³⁵ This is especially important for women, who experience greater economic security in unions, including higher and more equal wages.³⁶ Finally, Berry would ensure maximum loyalty to these devastating labor policies by replacing non-partisan substantive experts with political appointees.

³⁰ Project 2025 at 605.

³¹ See, e.g., Veronica Faison and Sarah Javaid, National Women's Law Center, "Medicaid-Cuts-Threaten-the-Direct-Care-Workforce," Apr. 2025, <https://nwlc.org/wp-content/uploads/2025/04/Medicaid-Cuts-Threaten-the-Direct-Care-Workforce.pdf>.

³² See Josh Eidelson, The Detroit News, "Trump's Labor Department Reviews Rule That Gave Health Aides More Pay," June 10, 2025, <https://www.detroitnews.com/story/business/2025/06/10/trumps-labor-department-reviews-rule-that-gave-health-aides-more-pay/84134203007/>.

³³ Project 2025 at 587, 592. Note that Project 2025 refers to the Working Families Flexibility Act, which allows the employer to deny a request to actually use that accrued time off. See National Women's Law Center, "'Working Families Flexibility Act' = Less Time, Less Pay for Families," Apr. 2017, <https://nwlc.org/working-families-flexibility-act-less-time-less-pay-for-families/>.

³⁴ Project 2025 at 590-91.

³⁵ See, e.g., Economic Policy Institute, "Unions Help Reduce Disparities and Strengthen Our Democracy," Apr. 23, 2021, [Unions help reduce disparities and strengthen our democracy | Economic Policy Institute](https://www.epi.org/unions-help-reduce-disparities-and-strengthen-our-democracy/).

³⁶ See Sandra Markowitz, National Women's Law Center, "Unions Are Good for Women," May 2025, [Unions Are Good For Women - National Women's Law Center](https://nwlc.org/unions-are-good-for-women/).

Conclusion

Our nation's workers deserve a Solicitor of Labor that is committed to protecting the rights of working people. Instead, as demonstrated through his recommendations in Project 2025, Berry would undermine protections that are critical to the economic security of women and their families, workers of color, LGBTQ+ individuals, and workers with disabilities. Accordingly, the undersigned groups strongly oppose the confirmation of Mr. Berry as Solicitor of Labor and urge the Committee to reject his nomination.

Sincerely,

National Women's Law Center Action Fund
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
NAACP Legal Defense and Educational Fund
National Partnership for Women & Families