



March 10, 2017

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Committee on Health, Education, Labor and Pensions
U.S. Senate
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member

Committee on Health, Education, Labor and Pensions
U.S. Senate
Washington, D.C. 20510

Re: Hearing on the Nomination of Alex Acosta for U.S. Secretary of Labor

Dear Chair Alexander and Ranking Member Murray:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 210 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States and the 68 undersigned organizations, we are writing to urge that you conduct a thorough review of the prior record of Alex Acosta as you consider his nomination for U.S. Secretary of Labor.

As organizations that are committed to advancing the civil and human rights of all workers in America, we believe it is essential for this Committee to scrutinize Mr. Acosta's tenure as the Assistant Attorney General for Civil Rights at the Department of Justice. During that period from 2003-2005, there is no question that hiring was politicized and that Department rules were broken. This is well-documented in the 2008 report of the Office of the Inspector General and the Office of Professional Responsibility of the Department of Justice.ⁱ Their report finds clear evidence of violations of federal civil service law and department policy prohibiting discrimination in federal employment based on political and ideological affiliations by a top Civil Rights Division official, Bradley Schlozman.

The report also includes the following with regard to the specific actions and inactions by Mr. Acosta: "We believe that AAGs Acosta {and others} had indications of potential problems in Schlozman's actions and judgment, and that each had sufficient information about Schlozman's conduct to have raised red flags warranting closer supervision of him."ⁱⁱ

In conclusion, the report notes that "Acosta and Kim did not sufficiently supervise Schlozman. In light of indications they had about Schlozman's conduct and judgment, they failed to ensure that Schlozman's hiring and personnel decisions were based on proper considerations."ⁱⁱⁱ

Concerns about the politicization of the work of the Civil Rights Division is further exemplified by *Spencer v. Blackwell*, a case relating to voter suppression of African-American voters in Ohio just before the 2004 election.^{iv} Although the Justice Department was not a party in the case, and despite the fact that there was substantial evidence that the proposed “voter caging” scheme to challenge voters disproportionately affected African-American voters, Acosta took the unusual step of writing a letter to the court taking the position that the practice was not prohibited by the Voting Rights Act.^v Fortunately, the Justice Department position was rejected, but Mr. Acosta should be asked to explain his rationale for taking this unusual step in a controversial case just before an election – contrary to general Department policy.

Mr. Acosta, if confirmed, will preside over a very large department with 17,000 employees.^{vi} The American public, and Department of Labor workers, must be reassured that the civil service will not be politicized under Mr. Acosta’s watch and that the laws the Department is mandated to implement and enforce will be carried out effectively. Due diligence requires that this Committee probe the nominee about what steps he will commit to take to ensure that this type of politicization of the hiring process does not happen at the Department of Labor. For example:

- How will he ensure that there is no political interference with the Office of Federal Contract Compliance (OFCCP) career staff in their work to vigorously enforce Executive Order 11246 and its non-discrimination requirements for federal contractors and subcontractors?
- How will he ensure that there is no political interference with the Wage and Hour Division career staff in their work to vigorously enforce the law against wage theft and other violations of the Fair Labor Standards Act?
- How will he ensure that the Bureau of Labor Statistics and its professional staff continue to report the employment and related numbers free of any political interference?

At a minimum, we expect the nominee for Secretary of Labor to answer these questions. It is also important to probe his views on labor issues of great importance to American workers, particularly to low wage African-American, Asian, and Hispanic workers, women, and workers with disabilities who are struggling to make ends meet and to sustain their families.

Fundamental to the Labor Department’s mission is protecting the welfare, health, and safety of workers and insuring compliance with labor standards and ensuring that those most vulnerable, particularly migrant workers, are treated fairly. We urge that you seek Mr. Acosta’s views on the record on these and the other critical economic issues listed below:

- Raising the minimum wage to \$15 per hour;
- Litigation position on the overtime rules that were supposed to take effect on December 1, 2016, but were enjoined by a federal court in Texas in November and which the Department of Labor appealed to the Fifth Circuit Court of Appeals but recently received an extension of time to reconsider its position;
- Implementing and enforcing the requirement of earned paid sick days for employees of federal contractors;
- Continuing to support state and national efforts to develop paid family leave programs and promote pay equity; and
- Implementing the fiduciary rule, which requires those who give retirement savings advice to avoid conflicts of interest, utilizing the standard of the best financial interests of the client.

In sum, we urge the HELP Committee to explore these issues vigorously in its confirmation hearing on the nomination of Alex Acosta to be Secretary of Labor and to secure specific commitments on the record about how, if confirmed, he will ensure that neither the hiring practices nor the policy and enforcement work of the Department of Labor will be politicized. The Leadership Conference and the undersigned organizations will be monitoring his actions and, if confirmed, hold him accountable for these commitments. And we urge the Committee to do the same. If you have any questions, please contact June Zeitlin, Director of Human Rights Policy at The Leadership Conference, at zeitlin@civilrights.org or at 202-263-2852.

Sincerely,

The Leadership Conference on Civil and Human Rights
9to5, National Association of Working Women
AFL-CIO
American Association for Access, Equity and Diversity
American Association of University Women (AAUW)
American Civil Liberties Union
American Federation of Government Employees
The American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers
Americans for Democratic Action (ADA)
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Bend the Arc Jewish Action
Center for Law and Social Policy (CLASP)
Communications Workers of America
CREDO
Daily Kos
Demos
Domestic Worker Legacy Fund
Economic Policy Institute Policy Center
Equal Justice Center (Texas)
Equal Justice Society
Equal Pay Today!
Equal Rights Advocates
Family Equality Council
Family Values @ Work
Farmworker Justice
Fight for \$15
Food & Water Watch
GLSEN
Interfaith Worker Justice
Jobs With Justice
Labor Project for Working Families in partnership with Family Values @ Work
Lambda Legal
Lawyers' Committee for Civil Rights Under Law
Legal Aid at Work
Main Street Alliance
MALDEF (Mexican American Legal Defense and Educational Fund)

Massachusetts Law Reform Institute
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Asian Pacific American Women's Forum
National Association of Human Rights Workers
National Bar Association
National Black Justice Coalition
National Center for Transgender Equality
National Council of Churches
National Council of Jewish Women
National Domestic Workers Alliance
National Education Association
National Employment Law Project
National Employment Lawyers Association
National Hispanic Media Coalition
National LGBTQ Task Force Action Fund
National Partnership for Women & Families
National Women's Law Center
Oxfam America
Policy Matters Ohio
PolicyLink
Pride at Work
Public Citizen
Santa Clara County Wage Theft Coalition
Sargent Shriver National Center on Poverty Law
SEIU
UltraViolet
United Steelworkers
The Voter Participation Center
Women's Voices Women Vote Action Fund
Workplace Fairness
YWCA USA

ⁱ “An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division.” *U.S. Department of Justice*. January 13, 2009.

<https://oig.justice.gov/special/s0901/final.pdf>

ⁱⁱ *Ibid.* Pg. 50

ⁱⁱⁱ *Ibid.* Pg. 52

^{iv} *Spencer v. Blackwell*, Case No. 04CV738. Filed October 27, 2004.

<http://moritzlaw.osu.edu/electionlaw/litigation/spencer.php>

^v Acosta, R. Alexander. “RE: *Spencer v. Blackwell*, Case No. 04CV738.” *U.S. Department of Justice, Civil Rights Division*. October 29, 2004.

<https://www.brennancenter.org/sites/default/files/analysis/10-29-04%20Ohio%20Challenge%20Letter%20-%20Acosta.pdf>

^{vi} “United States Department of Labor [DOL].” *Leadership Directories*.

<https://lo.bvdep.com/OrgDocument.asp?OrgId=-1&LDIBookId=19&LDIOrgId=153606&LDISecId=180&FromRecent=0&Save=1&Position=-1#O153606>