

NOMINATION OF STEVEN J. LAW

HEARING
OF THE
COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS
UNITED STATES SENATE
ONE HUNDRED EIGHTH CONGRESS
FIRST SESSION
ON
STEVEN J. LAW, OF THE DISTRICT OF COLUMBIA, TO BE DEPUTY
SECRETARY OF LABOR

NOVEMBER 21, 2003

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NOMINATION OF STEVEN J. LAW

FRIDAY, NOVEMBER 21, 2003

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m., in room SD-430, Dirksen Senate Office Building, Senator Sessions, presiding.

Present: Senators Sessions, Kennedy, and Clinton.

OPENING STATEMENT OF SENATOR SESSIONS

Senator SESSIONS. We will come to order.

Today's hearing focuses on the nomination of Steven J. Law to serve as Deputy Secretary of Labor. The Deputy Secretary is the second highest position in the Department of Labor. The Department is the Government agency principally tasked with improving working conditions for tens of millions of American workers, protecting retirees' pension plans and health care benefits, and helping employers find workers and comply with the law. In carrying out this mission, the Department of Labor administers a variety of Federal labor laws, including the Fair Labor Standards Act, the Davis-Bacon Act, the Labor-Management Reporting and Disclosure Act, the Occupational Safety and Health Act, the Federal Mine Safety and Health Act, and the Employee Retirement Income Security Act, among others.

Mr. Law has served as Chief of Staff of the Labor Department since February 2001. In this role, he has led Secretary Chao's staff and has overseen budget and policy development, congressional and public affairs, and strategic planning for this important Federal agency.

I am very proud of Secretary Chao. I think she is one of the finest members of the Cabinet, a person of integrity and commitment to public service that few can exceed in Government, in my experience.

Mr. Law has participated in crafting major administration initiatives such as post 9/11 economic recovery, retirement security, and regulatory reform. Steven Law in many respects is the perfect choice for Deputy Secretary. He is knowledgeable about the issues, knows the key players, and has had managerial responsibility. And having worked here in the Senate, he understands the prerogatives of Congress and the headaches sometimes Congress can present.

More importantly, he is respected by people he had worked with on both sides of the aisle. He is fair and open-minded. He has good relationships with the major stakeholders in the issues relating to

labor. He is a man of good judgment who is respected by his colleagues.

He understands the need for balance at the Department of Labor. He knows that regulation cannot come at the expense of jobs and economic growth and that workers depend on the Department of Labor for the enforcement of worker protections.

I hope that we will be able to confirm him expeditiously. I also hope that this hearing will focus on this nominee and his excellent credentials, and hopefully we will not have a debate on the Bush administration's regulatory policies, but I know we will have some comments about those.

I do not believe that Mr. Law's qualifications for the position of the Deputy Secretary of Labor are in dispute. He is clearly qualified, and I hope that we in the Senate will confirm him before we recess this year.

I will just note that looking at his bio was particularly impressive to me. Senator Kennedy, I did not realize his honors graduate degree at the University of California was in arts and music. So I don't know what that means, but it is unusual in the Deputy Secretary of Labor's position perhaps. He is also an honors graduate at Columbia School of Law and was an editor of the Columbia Journal of Law and Arts.

Senator Kennedy?

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Thank you. Thank you very much, Mr. Chairman. Let me thank you for chairing the hearing, and our overall Chairman, Senator Gregg, for setting these hearings up. We are in the final hours of this part of the session, and there are many important responsibilities that members have and important considerations on the floor. And I am grateful for the fact that we have a chance to talk to the number two person at the Labor Department because one of the great challenges we are facing in the country is the state of our economy and how it impacts and affects workers. And the Labor Department is the friend, or should be the friend, of workers, and we want to try and understand better at least what the Department's views are on some of these important matters, because the overarching issues of unemployment and jobs and joblessness still are matters of great interest and concern.

I join in the Chairman's recognition of Mr. Law's outstanding background, both academically at college and also in law school. There have been a number of individuals who are strong friends of the Department and who speak for workers that have urged our favorable consideration of the nominee. I will include at the appropriate place those communications that we have. So I thank you.

I will include my full opening statement in the record. It points out that we are facing increasing numbers of American workers without health insurance. We now have the Department of Agriculture pointing out we have 13 million children who are going hungry every day or are on the verge of hunger. Nine million Americans are unemployed; 80,000 of them are going to be losing their unemployment benefits at the end of December. And 7 million workers still wait year in and year out for a minimum wage increase. And now at the end of this year, if we fail to act, purchas-

ing power of the minimum wage will be the lowest perhaps it has ever been. It's been 7 years since we have raised it, a fact that is obvious for the millions of people who rely on it primarily women, many of whom have children. It is a civil rights issue because of the fact that so many of the people that earn minimum wage are men and women of color, and it is a fairness issue. And we have worked hard and long to try to get the Department to look into this.

As I mentioned, we should look at unemployment benefits, the decline of the minimum wage, the rising number of working families in poverty, and also the proposal by the Department for taking away the overtime protections for 8 million Americans, and recognize that great numbers of those Americans who would be benefiting from the overtime would be fire fighters, police, and nurses, who are really on the front lines of dealing with the homeland security issues. It raises, obviously, very serious concern, and I am sure you know, Mr. Law, that Congress has gone on record on the overtime issue and even as we are here, we understand it is a matter of consideration even in the omnibus bill, but the Congress has gone on record here with the 54-45 in opposition to the regulations, the instruction in the House, 221-203, Republicans, Democrats, both House and Senate, saying we ought to give this up for the time being. And at the same time we have the statement of the administration that they would even go so far as to veto the appropriations bill that carries the funding for the NIH, with all of the needs that they have and the responsibilities, the funding for our education programs, the funding for our neighborhood health centers. The list goes on.

And yet it has been the administration's position that if this provision is included that the President has indicated that he would veto it. And we know that a President takes into consideration his senior advisers. When they put out that the President would veto this, on the basis of advice from his senior advisers, he is talking about you and the Secretary, because it is the Department of Labor that makes that recommendation.

That is enormously troublesome, certainly to me, and I think to many, particularly those on this committee, who have worked long and hard on these programs in education and health and others and see that they are being threatened.

These are going to be two issues, obviously, overtime and unemployment insurance. I will mention this now. We have not heard a single word from the Department on the unemployment insurance. We have tried to extend it. We have modified it. We are going to face the 80,000 people that are going to be losing it at the end of December. I know that some in the administration say, well, the economy is coming back. Most economists believe that unemployment is going to remain high through the first quarter of next year. That is the bipartisan testimony of the Joint Economic Committee.

Even if we have the rate of return of jobs that we had last month, it would take 19 months to get back to pre-recession job levels, and these people are going to be long gone, 80,000 a month long gone, not being able to keep a hold of their unemployment compensation. And we wonder why.

At the same time, it seems that the administration is tireless in pursuit of its LM-2 regulations, which are going to put in place very, very restrictive provisions in terms of reporting. And it seems to me what is sauce for the goose is sauce for the gander. And whatever we are going to do in terms of labor ought to be done in terms of business as well.

The fact that the software needed to comply with these regulations doesn't yet exist, as well as the burdensome aspects of these provisions lead one to believe that the principal focus of the Department has been more in terms of sort of hassling and harassing workers and workers' leaders than trying to be helpful and responsive to some of their needs.

So those are the basic issues. I know we are going to vote at 10:35, and I know my good friend, Senator Clinton, who is here, is going to want to ask you questions. So I don't want to unduly take your time, but let's come back.

Given the fact that the House and the Senate both voted to include it, can you tell us now what the Department's position will be if the conference report includes a provision that would prevent the Department from implementing the new rules and regs? What would be the position of the Department on overtime if the rest of the labor appropriations bill was satisfactory?

Senator SESSIONS. Before we begin I have a statement from Senator Enzi.

[The prepared statement of Senator Enzi follows:]

PREPARED STATEMENT OF SENATOR ENZI

Thank you Mr. Chairman. Today we will be reviewing the qualifications of the President's nominee for Deputy Secretary of Labor. This position is of great interest and importance to me personally because of my service as Chairman of the Subcommittee on Employment, Safety, and Training. I am pleased to announce my support for the appointment of Steven Law to be Deputy Secretary of Labor.

The Department of Labor plays a critical role in the lives of the American workforce as well as the operations of our business community. The Deputy Secretary of Labor, the second-highest position in the Department, plays a critical role in ensuring that the Department is functioning effectively and accomplishing its mission.

Steven Law possesses the background that makes him well-suited to face the rigors of the position. He has served as Chief of Staff for the Secretary of Labor since February 2001. As Chief of Staff, he has coordinated the Secretary's senior management team and has overseen strategic planning for the Department. Prior to joining the Department of Labor, Mr. Law was Executive Director of the National Republican Senatorial Committee and Chief of Staff for Senator Mitch McConnell.

Mr. Law's knowledge of the inner workings of the Department and Congress will serve him very well as Deputy Secretary of Labor. He knows the issues, he knows the players, and he knows the process. He understands the important role the Department of Labor plays in protecting the workers of this Nation as well the impact of regulation of economic growth and job creation.

Mr. Law also possesses outstanding academic credentials. He received his Juris Doctor degree from Columbia University School of Law and graduated *cum laude* from the University of California, Davis. He is a member of the Bars of the United States Supreme Court, New York, and the District of Columbia.

Steven Law has demonstrated the ability to build relationships with key stakeholders and on both sides of the aisle. His professional and academic qualifications—as well as his fair and open-minded approach to issues—make him a strong choice for the position of Deputy Secretary of Labor.

One of our most important duties on this committee is to provide our advice and consent to the President's nominees for those positions that fall under our jurisdiction. The President has chosen an individual with excellent qualifications and sent him to us for our review and consideration. His choice of Steven Law as Deputy Secretary of Labor is a good one, and I strongly support his nomination. I look forward to his speedy confirmation by the full Senate.

**STATEMENT OF STEVEN J. LAW, NOMINEE TO BE DEPUTY
SECRETARY, U.S. DEPARTMENT OF LABOR**

Mr. LAW. Senator Kennedy, it would be the hope of the Department that Congress would not attach a restrictive amendment that would prevent the Department from proceeding with its rulemaking on the Fair Labor Standards Act white-collar exemptions. The goal of the rule that we put forth was to expand overtime eligibility for, we estimate, upwards of 1.3 million low-wage workers and make overtime rights much clearer for another 10.7 million American workers. We have received nearly 80,000 comments, very many of them constructive and very good, and by I do not just mean comments that were supportive of the proposal but comments that pointed out weaknesses, unintended consequences. And we have been reviewing those. We continue to. We think that the best outcome of this would be for us to proceed to incorporate the comments that we have received, to rely upon them, to produce a rule that achieves the goal that we set out to pursue, which is not to move boundary lines but to make them clearer so that employees and employers and our own enforcement people will be able to better enforce the law and guarantee overtime rights.

And our concern is that adding the proposed language would only make the system worse and create additional complexity. We believe the best course of action would simply be to allow us to proceed and complete the rulemaking.

Senator KENNEDY. Well, one of these bulletins that has been out indicates that the Department of Labor refuses to even sit down to try and work this out—quotes I will just read. This is in Congress Daily, page 5 out of 20. “The White House rejected any compromise, however, and has not come back to the negotiating table. ‘Labor Secretary Chao won’t even meet us,’ a GOP appropriation aide said.”

Is that currently the position of the Department?

Mr. LAW. I am not aware of what that is referring to, Senator.

Senator KENNEDY. These are the negotiations now that are taking place that Senator Specter is a part of for the Labor, HHS.

Mr. LAW. I am not aware of that report.

Senator KENNEDY. But even in spite of the fact of the actions that have been taken in the House and the Senate, would it be your recommendation then that the President would be advised to veto that bill if it blocks your ability to change the overtime regulation?

Mr. LAW. Senator, my understanding is that the senior advisers have recommended a veto and that veto recommendation remains in force. Again, it is the opinion of the Department that the best course of action for us would be to allow us to proceed with the rulemaking, to put forth a rule that takes into account the many comments we have received from both sides, and then after that process, obviously would allow for Congress to render further judgment on whether we struck the appropriate balance in responding to those comments and putting forth a rule that protects workers better.

Senator KENNEDY. With regard to the LM-2'—have you thought about whether this could be applicable as well to the business community? Because I am sure they have given a good deal of thought to it.

Let me come back to the issue on the unemployment insurance. Is there anything you want to say about the Department's position on unemployment insurance, on extending unemployment insurance?

Mr. LAW. The Department is carefully monitoring the situation and puts out a lot of information on what is going on in the employment situation. As we all know, we have experienced really remarkable economic growth in the last month or so, and in the last 3 months we have created 286,000 new jobs, and unemployment is clearly falling, as are initial unemployment claims, to a considerably low level last month, to 355,000.

At the same time, we are not feeling like we are out of the woods, in particular with respect to the issue that this would address, which is long-term unemployed. The long-term unemployed number continues to be high, although it, too, dropped last month and shows signs of starting to come down.

So our best approach to this right now as a Department is to provide the information that BLS and the Employment Training Administration provides to make the proper assessment.

Senator KENNEDY. Well, you are right, because you collect the data about the unemployment. You run the programs with the State. And so the question is: What is the public position on the extension of the program when we are facing 80,000 people that are going to lose their unemployment every week after December and we are into the last hours of this congressional session?

Mr. LAW. I know the administration is willing to work with Congress toward an appropriate resolution of the unemployment insurance extension issue.

Senator KENNEDY. What is your general sense about providing help and assistance to the long-term unemployed?

Mr. LAW. One of the proposals that the administration has put forth, which we recommended in our previous budget and are continuing advocate, is personal reemployment accounts, which would both provide an innovative approach to giving direct income support to people who are long-term unemployed, while also creating

economic incentives to encourage people to find work and also to find the training that will lead them to specific employment opportunities.

Senator KENNEDY. Well, I do not have the figures right here. But the amounts that were being considered were—I would use the word “modest” given the numbers of people that are going to be losing their unemployment compensation at the end of this month. It is completely inadequate to try and deal with the magnitude of the problem and the fact we have not heard from the Department on this is troublesome.

Let me go into the LM-2 issue and just ask you where we are on this. My understanding is that we have had a number of our colleagues, bipartisan, both from this committee and from the House of Representatives, including 22 Republican members who have signed a letter to OMB emphasizing that requiring compliance with the rule, which software does not exist yet, will provide a very heavy and undue burden.

If that is the case, why aren’t we just trying to work out reasonable kinds of accommodations like they worked out for the SEC and other agencies in the past? Why do they insist on going ahead when we know that the software is not there?

Mr. LAW. Senator, the Office of Labor Management Standards has been engaged in extensive compliance assistance efforts all across the country. In fact, even today OLMS is sitting down with roughly 200 union accountants from across the country to work together with them to explain how the new rule would work and how compliance would work.

I am also told that as of today we will have reached out to over 80 percent of all LM-2 filers to discuss what compliance would entail. I would not say that everybody greets the proposal with warm anticipation, but, on the other hand, there is a general view that we have encountered that the regulated community can respond and can step up to the plate with what the new rule would require.

Senator KENNEDY. Well, as I understand, the recent rule requires that unions file papers—it could be hundreds of pages long—itemized lists of all payments above \$5,000, agrees that unions—I guess the Department acknowledged the rule is burdensome, that unions will have to spend 710 hours and over \$116 million the first year in complying with the rule.

Are you familiar with those figures?

Mr. LAW. Yes.

Senator KENNEDY. \$116 million in complying with this, and they do not have the software. They have to reconfigure their current software, there will be additional costs as well, as I understand it.

Well, I thank you, Mr. Law. My understanding is that meetings are taking place in November and December, and that between now and January unions have to review the rule, meet with their accounting staff, to learn what the rule requires, train the office personnel to keep the records under the rule, hire a software engineer to begin redesigning their current accounting program, and adopt and test the redesigned accounting systems.

Have you gotten word back from OMB about how this complies with the paperwork initiative?

Mr. LAW. As I understand it, the final rule went through OMB through OIRA, and those issues, Paperwork Reduction Act compliance, were reviewed and the rule was approved for being in compliance with the Paperwork Reduction Act.

In addition to that, I would just say with regard to the software, which has been the source of some concern, the software that the Department of Labor would provide free of charge to labor unions who would need to file the revised LM-2 forms is for the purpose of taking data at the end of a union's fiscal year and organizing it for submission in the report that is actually given to the Department of Labor. And because of that, the software does not actually need to be used until, at the earliest, January of 2005 for a report that would have to be filed, again, at the earliest, in March of 2005.

The Department has also put out well in advance the technical specifications of what that software would need, and we also are planning to get the software out to unions early next year, early enough for unions to see how it works and to make sure that it works well.

So there really is a much longer lead time than has been suggested because the function of the particular software that the Department of Labor is to provide is not actually needed until the reports have to start to be compiled for the Department of Labor's purposes, which is not until 2005.

Senator KENNEDY. Well, we are going to have a chance to come back and revisit this. My time is up. I thank the Chair, and I thank you very much.

Mr. LAW. Thank you, Senator.

Senator SESSIONS. Thank you.

Mr. Law, I failed to offer you the opportunity to introduce your family or to make any brief comments you have. Anything you want to say before I recognize Senator Clinton?

Mr. LAW. If the Senator from New York would beg me a brief indulgence, I would like to just briefly do that. I do want to thank the entire committee for convening this hearing on short notice and at an unbelievably busy time of year. I remember as a staffer these particular months of October and November and, occasionally December being among the worst, and I appreciate the time that you are devoting to it.

I will submit my comments for the record as if read, but I do want to at least take the opportunity to introduce my wife of over 12 years, Elizabeth Law, who is with me. Thank you. She is a great source of comfort and wisdom and encouragement in a high-pressure environment. And I would be introducing my two children, Charlotte, who is 9, and John James, who is 6, but they decided that school would be more fun than joining me here today. [Laughter.] Which shows that we have got some work on reordering their priorities, but, nevertheless, that is where they are.

That is all I will say for opening remarks for the moment.

Senator Session. All right. Very good.

Senator Clinton?

Senator CLINTON. Thank you, Mr. Chairman, and thank you for holding this hearing, and thank you, Mr. Law, for being here with us. And I appreciate your willingness to assume responsibilities that are quite significant. I think the second in command at the

Department of Labor is a very important position. The Department, as you know, commands a \$56 billion budget and almost 20,000 employees, so that is quite an undertaking.

I just want to follow up briefly on Senator Kennedy's point concerning overtime, and I think, Mr. Law, you must be aware of the debate and the discrepancy over the impact that the proposed rules would have. I assume you have been intimately involved in following this and keeping up with it. Is that right?

Mr. LAW. Fair to say, yes.

Senator CLINTON. And because of the high stakes of this rule, the fact that reputable analysts outside the Labor Department are concerned that it could deny overtime eligibility to 8 million Americans—and that would include 450,000 New Yorkers I have a particular concern. And that is that the kind of people who would be denied overtime are fire fighters, police officers, nurses, and others, so I find it difficult to understand why the Department and the administration will not go along with Senator Specter's proposal for what would be a compromise and it would break the logjam in the negotiations over the omnibus, as I understand it. And basically Senator Specter, as reported in the newspapers this morning and among our colleagues, has asked Secretary Chao to accept a proposal that would postpone the effective date of the new rules by 3 months, while a blue-ribbon commission that presumably would have people on it that would be above politics, above partisanship, unrelated, frankly, to either the administration or organized labor, but, you know, maybe labor economists and other experts to actually review these rules and then Congress could vote to uphold or overturn the regulations.

Now, that strikes me as a very common-sense approach, and it represents the bipartisan concern that exists in the Senate and the House over the implementation of these overtime rule changes.

Could you explain why this is not an appropriate resolution? Because, I know that I and many other Democrats, as well as Republicans like Senator Specter, are deeply concerned. We would like our concerns assuaged one way or the other, and this would provide us the means for doing that.

Mr. LAW. Absolutely. The reason why we are not in agreement with the proposal that has been put forth is because we think that a blue-ribbon commission has already been convened, and that consists of the nearly 80,000 stakeholders who have already commented on our proposal.

The commission proposal advanced by Senator Specter outlines 12 different subject areas that that commission could take a look at, and, in fact, all 12 of those areas are addressed in the notice of proposed rulemaking, and they have all been subject to comment by those who have responded to the proposal. And we think that the best possible approach is, rather than have a commission that would debate broad policy and theoretical analyses, the blue-ribbon commission that has been convened essentially, by analogy, through the Administrative Procedures Act process has allowed huge numbers of stakeholders from all sides of the spectrum to offer comment on very specific proposals.

And we are aware of the concerns of the unintended consequences of the proposal and the differing views on how many em-

ployees might be impacted. And our goal is to take all those comments into consideration, to very seriously treat them and rely upon them in coming forth with a final rule that would do what we have said we really wanted to do, which is to guarantee overtime rights for more workers and clarify the rules so that more workers will know what their rights are, and hopefully many millions of workers will have overtime who did not in the past.

And once that final rule is put forth, Congress can exercise its judgment again as to whether or not we struck that balance that we set out to do and can either sustain our proposal or not. But we believe this issue has been studied extensively. I am told that even the Dunlop Commission looked at this issue many years back. It has been on the Department's regulatory agenda since 1979, and we have great faith in the process that we are in now to yield a result of comments and discussion of a tangible proposal, with whatever strengths and weaknesses it may have currently, that we can then formulate a final proposal for Congress to take a look at.

Senator CLINTON. Mr. Law, I have not been around here as long as my colleagues, but my understanding is that the Congress has in the past assessed the impact and the need to modernize or amend the Fair Labor Standards Act, certainly overtime provisions. This comes really out of the normal course of events for the Labor Department to take this on itself.

And it does strike me as unfortunate because it raises quite a bit of mistrust and concern on both sides of the aisle. And I know what the stated position as you have articulated it is, but it seems to me that it would be not in any way undermining the efforts to modernize overtime and do it in a way that takes into account legitimate concerns to try to respond to the well-thought-out objections of people like Senator Specter.

Now, with respect to unemployment insurance, I am concerned because yesterday Congressman DeLay was quoted as saying that there would be no extension of unemployment insurance. Now, there are varying approaches. There is a more comprehensive approach and a more limited approach that are represented in legislation already filed in both the House and the Senate. I know that there are, I believe, three different Republican proposals for the extension of unemployment insurance in the House. There is one sponsored by Senator Smith in the Senate. And it is concerning that we would, on the threshold of going out before Thanksgiving, have such an adamant declaration by the Republican Whip. And, obviously, the only way that that can be overcome is by the administration supporting, again, a bipartisan proposal to provide for the extension of unemployment benefits before the holidays.

We went through this last year. We did not act in time. We acted as soon as we got back, which was at least trying to resolve some of the hardships posed to people. But it seemed a little bit mean-spirited not to have done it before we enter into the holiday season, and once again, we are facing the same deadline.

Now, I am hopeful and cautiously optimistic—not convinced—that the economy is picking up, but, nevertheless, I think even with the signs of some possible growth, the fair way to characterize the situation is that we are going to be confronted with very long-term unemployment and very slow job creation, and that unemployment

insurance benefits will continue to play a necessary role in sustaining people. And the truth is that the unemployment rate is actually higher than it was when we passed the temporary extended unemployment insurance program back in March of 2002. Then we had 8.2 million Americans out of work. Today we have 8.8 million. Back then we had 130.5 million jobs in the economy. Today we have 130.1 million. Back then we had 1.32 million long-term unemployed Americans who had been out of work 6 months or more. Today there are more than 2 million.

And, furthermore, the extended benefits program in the early 1990s did not end until the economy had created nearly 3 million jobs compared to pre-recession levels. The current program is scheduled to end while the economy is still suffering a jobs deficit of 2.4 million fewer jobs.

So I am having a hard time understanding why we cannot all work together and do what previous administrations did as a matter of course. I know under the first President Bush, unemployment insurance benefits were extended 3 times, and it seems to me, again, that we ought to be looking to try to provide this safety net for the long-term unemployed until the economy either does or does not begin to kick in with the number of jobs that is needed.

There is a second problem that I would like your opinion about, and that is, there are differences within States, and I have a very clear example of that. You know, in my State of New York, the statewide rate is 6.2 percent, about the national average. The unemployment rate in New York City is 8.2 percent—2 percentage points higher. It has never recovered from the horrible attacks of September the 11th. In fact, if New York City were a State, which it very well could be with 8 million people, it would have the highest unemployment rate in the country by far. Oregon at 7.6 percent would be a distant second. And it is not just the rate of unemployment. The city also has the fourth highest raw number of individuals who are out of work. Yet unemployed workers in New York are only able to access 39 weeks of unemployment insurance benefits, while those who are unemployed in Oregon have access to more than 70 weeks. And I certainly do not begrudge workers in Oregon those benefits. I am glad the system works for those individuals. But because New York City is embedded in a State that has an overall lower unemployment rate, workers in New York City, who have already borne a tremendous burden because of the attacks and their aftermath, are left out and cannot access the same benefits.

So would you consider looking at an unemployment insurance benefit that takes into account significant regional differences, such as the one I have just described?

Mr. LAW. The situation you describe is disconcerting. I don't know to what extent States have flexibility on their own to create additional benefits within localities. And I don't know what currently would be available within the national system by which we extend unemployment benefits. But we can certainly take a look at the problem.

It raises another issue, which is the lack of flexibility that States have in moving funds around through the workforce investment system, and that is another thing that we would like to see

progress made on. In fact, I certainly commend this committee for moving ahead WIA reauthorization legislation that helps give States added flexibility so that when you have those disparities that you have in your State, that there can be a response through various mechanisms to get aid to the workers who need it most in those localities. But we will certainly take a look at what you are proposing and see what we can do on that. If I am confirmed, I will take a good look at it and see what is possible.

Senator CLINTON. Well, I would appreciate that because many individuals in New York have already exhausted all of their benefits because we have never been able to access these extended benefits or qualify for extra benefits as a high-unemployment State. So we have a lot of so-called exhaustees who have been out of work for more than a year that cannot pick up and move. They have family responsibilities. They have other kinds of ties to New York. And, you know, we now know that we are going to start exhausting State benefits at a rate of about 88,000 a week unless we pass an extension.

So I am hoping that we will not go through what we went through last year. I am hoping that with the administration's help—and I would appreciate your taking this back to Secretary Chao and to the White House. I am hoping that we can try to do something before we leave here. And despite Congressman DeLay's adamant objection, there is strong bipartisan support for at least a simple extension to get people through the holidays, to get us into the new year. Hopefully, you know, we will see enough improvement that we will not have to revisit this again. But in the absence of that improvement, we are putting a lot of people at risk that I do not think anybody wants to see happen.

Thank you, Mr. Chairman.

Mr. LAW. Thank you, Senator.

Senator SESSIONS. Thank you very much.

Mr. Law, just briefly, the labor reporting regulations that have been discussed are really designed to effectuate an existing requirement that labor unions report certain expenditures and business records, is it not?

Mr. LAW. That is right.

Senator SESSIONS. I have seen some of the records that have been submitted, and they are just really totally nonresponsive to the Department of Labor. And the reason this is true, is it not, is that members are often required to be a part of the union, their money is held basically in trust for them and we have had a history of abuse. As a former Federal prosecutor, I have had the burden of prosecuting several unions and leadership for misusing the union members' money, sometimes significant amounts were misused. And that can happen in any business, but the design of the system was for them to report so that the union members would have a better understanding of where their money is going. Isn't that it?

Mr. LAW. That is true. The vast majority of union officials and staff are honorable, hard-working, honest, and dedicated to their members, certainly every one of them whom I know, and I know a lot of them and count a lot of them as friends. There are a few instances——

Senator SESSIONS. Well, you have gotten support from a number of them, which I know you are proud to see, for this particular appointment to Deputy Secretary, and I know you are proud of that.

Mr. LAW. Well, thank you. But there are some instances of financial fraud and embezzlement that the Department has been concerned about from an enforcement point of view, and the purpose of the rule is simply to try to deter and detect that kind of fraud from occurring and, in addition to that, to give more quality information to union members so that they can exercise their democratic rights as envisioned by the Labor-Management Reporting and Disclosure Act.

Senator SESSIONS. Because they have to vote, and they have a right to know how their leadership is managing their money. So it might be an issue in the campaign as to who is going to be the next leader of a union.

With regard to these overtime rules, I think I am probably the only member of the Senate that has filed overtime lawsuits on behalf of workers. I have never represented a business in an overtime case. But a friend of mine was a bulldozer operator, and he thought maybe he was entitled to overtime. We sat down and looked at the law, and I concluded he was and filed a lawsuit, and we won it.

I will say it was confusing. I will say that if the rule had been clearer, the boss would probably have paid him overtime to begin with.

Mr. LAW. Right.

Senator SESSIONS. But it was a quasi-contractual relationship, and it was his bulldozer. He was not working on someone else's equipment. And so it was a confusing matter.

I represented another secretary, a clerk, and eventually prevailed on that one. That one was a little clearer. But I would just note that that lady worked for a union, and she was not paid proper overtime. And I filed a lawsuit, and we got her her overtime.

These regulations have not been changed since 1954. Secretary Chao has put forth a regulation that clarifies these rules. I think they also need to be clarified because of the nature of work has changed today. Many traditional jobs have changed, and quite substantially.

But isn't it true that under the current regulations today, the law today that you are looking at changing, a person earning \$14,000 a year who works behind a counter at a fast-food restaurant and has been called a manager, that person is not entitled to overtime? And under your regulations, if they were not paid at least \$22,100 a year, no matter what their job title was, they get overtime?

Mr. LAW. That is true. One of the great injustices of the fact that there has not been action to update these rules is the very situation that you cite, where someone could be very low paid, they could have a little name tag that says "Manager" on them, and it is not too hard for an employer to game the system and call that person somebody exempt from overtime.

And then the other situations that you described are precisely the same. I think the Department has the view that it is just simply not a good situation when a worker has to avail themselves of legal help, although we are always in favor of legal help, but to

have to avail themselves of a private attorney, spend money on that to find out what their overtime rights really are. We ought to make the rules clear enough that employers know what is expected of them, particularly small businesses who are not going to be inclined to hire a large labor and employment law firm, but, more importantly, the workers know what their rights are so they can defend themselves.

And we have also found in our Department that our own investigators find the current rules so outdated and complicated, they are very, very difficult to carry out and effectively enforce.

Senator SESSIONS. Well, you know, I keep hearing colleagues say, in the press and on the floor of the Senate, that they talk about policemen and firemen and all being hurt by these rules. But isn't it true that the president of the National Fraternal Order of Police, Chuck Canterbury, who represents police employees and union members, said this, "Thanks to the leadership of Secretary Chao, we have no doubt that overtime pay will continue to be available to those officers currently receiving it, and if the new rules are approved, even more of our Nation's police officers, fire fighters, and EMTs will be eligible for overtime. This development was possible because this is an administration that listens to the concerns of the FOP and because of their commitment to our Nation's first responders."

So it is just not true that police and fire fighters are opposed to this and they are going to be losing overtime, is it?

Mr. LAW. That is true. There have been a number of concerns expressed about the rule, all of which we treat seriously, and many of them are highly valid. But there are also a lot of very serious misapprehensions and mis-information about the rules.

Senator SESSIONS. Well, in that regard, what you have done is you have gone through a process in which you have proposed rules, and you have got 80,000-plus comments on them. Now it is your job to listen to those comments and alter the rule if there are any problems with it before presenting a final rule. Is that right?

Mr. LAW. That is true.

Senator SESSIONS. And so now you are in the process of evaluating the comments, and you have never proposed a final rule as of this date. Is that right?

Mr. LAW. Not yet, no.

Senator SESSIONS. Well, I think those are matters that are important for us to know. I just know that Secretary Chao is determined to make the lives of working men and women better. I was with her when we had a coal-mining accident in Alabama at 10 o'clock at night, and she had a 5 o'clock plane the next morning, and she stayed down there and met every family member that was there at that union hall. And I know you share those same concerns for improving the lives and safety of labor union members.

But having a union do a better job of reporting, as they are already required to do, their income and expenditures so that union members can evaluate their leadership is not a bad idea and is not anti-union. I believe a reform, the first since 1954, of overtime rules is overdue. I believe you could make it more clear. I believe fewer people could be taken advantage of if we clarified those rules, and I think, as I understand it, the numbers are as much as 10

million workers will have their positions clarified without question that they are entitled to overtime today and that really are not so clear under present law.

And I just would say this: We have had some good news on the employment front. Last week, we had a 12-percent drop in first-time claims for unemployment compensation. That is real number that I think is indisputably significant. Wouldn't you agree?

Mr. LAW. Very encouraging, yes.

Senator SESSIONS. And we have also seen a surge of 300,000 new jobs in the last 3 months, which is also good, a great growth rate. If we can keep this economy humming, I think we will see a lot of our problems go away and be reduced.

And I will tell you, things like this energy bill, this energy bill is going to create employment. And it is being blocked on the floor today for reasons I do not fully understand. And so I tell you, that could create a million new jobs in the United States of America, reduce the amount of our wealth sent overseas to foreign countries for energy sources that could be produced here, creating jobs here, creating taxpayers here, creating families with health care and insurance benefits.

So I thank you for your leadership, for undertaking this task, and I think you can tell from the comments that have been made today and from what I am hearing around the Senate, you are well respected from your time in the Senate. You have developed a reputation of integrity and good judgment and fair play, just the kind of person Secretary Chao would want at her right hand to help run the Department of Labor. I believe that you will do a great job, and we hope that we can move forward expeditiously.

Is there anything else you would like to say?

Mr. LAW. Senator, thank you for those very kind remarks. If I am confirmed, I will work with both sides of the committee to make sure that what we are doing is receiving all the input of all of you and do my best to serve the President and the Secretary and American workers.

Senator SESSIONS. Well, you are the best of the best, and you have a reputation of that already, so I think now that is going to be true.

If there is nothing else, I will keep the record open for 7 days. If there is nothing else, we will adjourn this meeting today. Thank you.

Mr. LAW. Thank you, Senator.

[The prepared statement of Mr. Law may be found in additional material.]

[Additional material follows.]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF STEVEN J. LAW

Mr. Chairman, Senator Kennedy, and Members of the Committee, I want to thank you for convening this hearing at a time that is so busy for all of you.

In deference to your time, I will keep my statement very brief. I am joined this morning by my wife of over 12 years, Elizabeth Law, who is a tremendous source of strength, wisdom and perspective in this high-pressure environment. I have two children, Charlotte—who is 9—and John James, 6, and they both decided that school would be more fun than joining me today.

It is a privilege and an honor to be considered for the position of Deputy Secretary of Labor, and I am very grateful to the President for nominating me. I also appreciate the gracious support of the Secretary of Labor, Elaine Chao, for the chance to take on a new challenge and new responsibilities.

There are several reasons why I hope to have the opportunity to serve in this new role, but the most important one is that the Department of Labor has more of a direct impact on the daily lives of all Americans than any other Cabinet Agency.

The issues this Department handles are the ones people talk about around the kitchen table: Job security. Career goals. Am I making enough money? Do I have enough saved for retirement? How will I get health care coverage for my family? Do I feel safe at work?

These everyday concerns are the Department of Labor's stock in trade. And if I am confirmed, I look forward to helping the Secretary of Labor fulfill her responsibility to protect and prepare America's workforce.

The second reason I hope to have this opportunity is that I think the Department of Labor has a tremendous group of career professionals—at every level and all throughout the country. They are dedicated to what they do, they have a wealth of practical experience, they believe in the mission of the Agency, and they are open to new ways of doing our job better. I can't think of a better group of people to work closely with, for as long as I would be allowed the privilege of serving in this capacity.

I am certain that many of you have questions and concerns, and I will try to respond to them as best as I can. Thank you again for the opportunity to be here this morning.

[Whereupon, at 10:56 a.m., the committee was adjourned.]