

**NOMINATION OF ALEXANDER ACOSTA OF  
FLORIDA TO BE SECRETARY OF LABOR**

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**HEARING**  
OF THE  
**COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS**  
**UNITED STATES SENATE**  
**ONE HUNDRED FIFTEENTH CONGRESS**

FIRST SESSION

ON

EXAMINING THE NOMINATION OF R. ALEXANDER ACOSTA OF FLORIDA,  
TO BE SECRETARY OF LABOR

—————  
MARCH 22, 2017  
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## NOMINATION OF ALEXANDER ACOSTA TO SERVE AS SECRETARY OF LABOR

WEDNESDAY, MARCH 22, 2017

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

The committee met, pursuant to notice, at 9:05 a.m., in room 430, Dirksen Senate Office Building, Hon. Lamar Alexander, chairman of the committee, presiding.

Present: Senators Alexander, Enzi, Paul, Collins, Cassidy, Young, Hatch, Roberts, Murkowski, Scott, Murray, Casey, Franken, Bennet, Baldwin, Murphy, Warren, Kaine, and Hassan.

### OPENING STATEMENT OF SENATOR ALEXANDER

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order.

This morning we're holding a confirmation hearing on the nomination of Alexander Acosta to serve as U.S. Secretary of Labor.

Senator Murray and I will each have an opening statement, then we'll introduce our witness. We're delighted to have Senator Rubio with us. Senator Cruz is coming. After our witness testimony, Senators will each have two 5-minute rounds of questions.

Just 10 years ago, in 2007, Steve Jobs announced that Apple had reinvented the mobile phone, just 10 years ago. A micro-blogging company named Twitter gained its own separate platform and started to scale globally, and Amazon released something called Kindle—all that in 2007, just 10 years ago.

The same year IBM began to build a computer called Watson that within a few years defeated human contestants in the Jeopardy TV show, and in 2007 the cost of sequencing a genome started falling from \$100 million in 2001 to \$1,000 in 2015. In a new book, *New York Times* columnist Tom Friedman puts his finger on the year 2007, just 10 years ago, as “the technological inflection point.” He uses the term “great acceleration” for all the technological, social, environmental, and market changes simultaneously sweeping across the globe and argues we're living “through one of the great inflection points in history” as a result.

Add to that Ball State University's finding that automation is responsible for the loss of 88 percent of manufacturing jobs; and globalization, add that. Add social, cultural, climate changes and terrorism, you get a big mismatch between the change of pace and ability of the average American worker to keep up and fit into the accelerating forces shaping the workplace.

A few weeks ago a group of Senators sat around in a forum and listened to some very smart scientists talk about their advances in artificial intelligence. After it was all over one Senator asked where are we all going to work? Tom Friedman says that probably the most important governance challenge is the great,

“need to develop the learning systems, the training systems, the management systems, the social safety nets and government regulations that will enable citizens to get the most out of these accelerations and cushion their worst impacts.”

One of the Federal Government’s chief actors in this drama of acceleration should be the Secretary of Labor. In fact, as many have suggested and the House of Representatives has done, the title of the job for which Alexander Acosta has been nominated should be changed to be Secretary of the Workforce, not Secretary of Labor. Labor union membership in the private economy today is down to less than 7 percent. The issue for workers today is not whether they belong to a union; it’s whether they have the skills to adapt to a changing marketplace and find and keep a job; to be accurate, to create and keep a job. My generation found jobs. This generation is more likely to have to create their own jobs.

In his inaugural address, President Trump said he heard forgotten men and women who are struggling to keep up and fit into the changing world. In his farewell address, President Obama said he heard the same voices, too many families in inner cities and in rural counties who have been left behind, he said.

What can we do about it? The most important thing is to work with employers and community colleges and technical institutes and find ways to increase the number of Americans earning post-secondary certificates and 2-year degrees, or more. Georgetown University says that by 2020, 65 percent of the jobs in this country will require some college or more, and at the rate we’re going Georgetown predicts the United States will lack 5 million workers with an adequate post-secondary education by 2020.

Unfortunately, too many of the Federal Government’s actions over the last few years have made it harder for the American workers to keep up, adjust, create and find, and keep a job. To begin with, the Obama administration unleashed a regulatory avalanche that held job creators back. President Obama’s Department of Labor issued 130 percent more final rules than the previous administration’s Labor Department, an average of 85 major rules, rules with more than a \$100 million impact on the economy, compared with President Bush’s 62 a year. Take the overtime rule. In my State its cost would add hundreds of dollars per student in college tuition, and it would force small businesses to reduce the jobs that provide stability families need. Or the joint employer rule and its attack on franchising. Or the fiduciary rule that makes it more expensive for the average worker to obtain investment advice. One after another, a big wet blanket of cost and time-consuming mandates on job creators.

There’s the Equal Employment Opportunity Commission’s EEO1 form, requiring employers to provide to the government 20 times as much information as they do today about how they pay workers. There is the ridiculously complex 108-question FAFSA, which I know the Dean is well aware of, the Federal aid application form

that turns away from college many of the people who ought to be going. The Affordable Care Act, which defined full-time work as only 30 hours, forcing employers to cut their workers' hours or reduce hiring altogether.

Many of these, like the persuader rule, which chills the ability of employers to retain legal advice during union organizing activities, seem designed for the purpose of strengthening the membership and power of labor unions.

We're fortunate today to have a presidential nominee for Labor Secretary who understands how a good-paying job is critical to helping workers realize the American Dream for themselves and for their families.

Senator Rubio and Senator Cruz will introduce him in detail, so I will not, but I do want to recognize that he—after immigrating from Cuba to Miami—Mr. Acosta's parents worked hard to create more opportunities for their son. He's the first person in his family to go to college. He's been on the NLRB and Assistant Attorney General for the Justice Department, a U.S. attorney. He's Dean of Florida International University's Law School. His school's president describes him as conscientious, thoughtful, says he doesn't overreach, and he's already been confirmed three times by the U.S. Senate.

Mr. Acosta, we welcome you today, and I look forward to hearing more on your ideas about how to help American workers adjust to the changing conditions in our workforce.

Senator Murray.

#### OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you very much, Chairman Alexander.

Mr. Acosta, thank you for being here, and thank you to you and your family for your willingness to serve.

The Department of Labor is really at the heart of one of President Trump's core campaign promises, which was to put workers first. DOL prioritizes the best interests of our workforce, enforces laws that protect workers' rights and safety and livelihoods, and seeks to expand economic opportunity to more workers and families across our country. I would hope that any president would share those basic goals, but especially one who has made so many promises about fighting for workers.

I have to say I was very surprised when President Trump selected Andrew Puzder, a fast-food CEO who built his career on squeezing workers, as his first nominee for Secretary of Labor. We heard story after story from people who worked at his restaurants about lost wages and mistreatment, and I was deeply concerned that as Secretary of Labor his history of offensive comments and marketing campaigns would signal it's acceptable to objectify and marginalize women in the workplace. Puzder was uniquely unqualified for this role, and I'm frankly relieved he won't have the opportunity to serve in it.

Just because President Trump's first selection for Secretary of Labor was so deeply unacceptable, that doesn't mean we should lower our standards, because workers and families across the country certainly are not. Instead, they've made very clear they want a Secretary of Labor who will stand up for the core mission of the

Department and fight for their interests, someone who will be an advocate within this administration for workers if President Trump continues down the path of breaking promise after promise to those he said he would help.

With this in mind, Mr. Acosta, I have some serious concerns about your nomination which I want to ask about today and in written followup questions.

First, the Trump administration has already cemented a reputation for flouting ethics rules and attempting to exert political pressure over Federal employees. I expect our next Secretary of Labor to be someone who can withstand inappropriate political pressure and prioritize workers and the mission of the Labor Department over, hypothetically speaking, President Trump's business associates or Steve Bannon's frightening ideology.

Mr. Acosta, I am concerned. A review of your history suggests that when you led the Civil Rights Division at the Department of Justice, you at best ignored an extraordinary politicization of the work of this critical division, and at worst actively facilitated it. A formal investigation by the Inspector General showed that under your tenure, hiring in the Civil Rights Division systematically favored conservative applicants over those who appeared to be more liberal regardless of their professional qualifications.

As Assistant Attorney General, you chose to stay silent on a proposed Texas redistricting plan, instead allowing political appointees to overrule long-time attorneys who believed the plan discriminated against black and Latino voters. The Supreme Court later affirmed the plan did violate the Voting Rights Act.

You inexplicably sent a letter defending a Jim Crow-era Ohio voter challenge law just 4 days before the 2004 presidential election, although the Justice Department had no role in that lawsuit.

By the end of your time at the Civil Rights Division, prosecutions for crimes related to gender and racial discrimination had declined by 40 percent.

Altogether, these actions suggest a pattern of allowing political pressure to influence your decisionmaking on issues that should rise above partisanship. To me, this raises questions about your commitment to defend the civil rights of all workers, which of course is fundamental to the role of Secretary of Labor.

Mr. Acosta, I'm also very interested in hearing more from you about your vision for this Department, and specifically where you stand on a number of key issues that will be heavily engaged in over the coming years. President Trump has spoken out against the updated overtime rule which would help millions of workers get pay they earned. Our Federal minimum wage has fallen far, far behind workers' needs. Women still make less than their male counterparts, an economic drain on our country that is especially pronounced for women of color. I've also heard reports that President Trump's wrongheaded, cruel immigration Executive order is causing undocumented workers not to come forward for back wages and protections they are owed. I feel strongly we need to ensure undocumented workers are safe and receive fair treatment, especially in this time of heightened fear and uncertainty.

These are all challenges I expect the Secretary of Labor to be committed to working on, and I will be very interested in your



thinking and plans on each because, again, the Secretary must be an independent voice for workers who will push back on the President's agenda to hurt working families.

DOL also plays a pivotal role in making certain there are consequences when companies discriminate or threaten employees' safety on the job. It supports job training and the development of new career pathways for unemployed workers, oversees the quality of retirement programs impacting millions of workers nationwide, collects and publishes independent foundational data about our economy and workforce through the Bureau of Labor Statistics, and much more.

In other words, the ability of this Department to operate effectively has enormous impact on workers, on families, and on our economy. I'm concerned about President Trump's proposal to cut more than 20 percent of the DOL budget. It is difficult to see how the Department could maintain, let alone improve its performance were such dramatic cuts to go into effect. Under the President's budget, workers would pay the price for a budget designed to help those at the top, which is unacceptable. I will want to hear how you, as someone who will be responsible for carrying out the critical work of this Department, view the President's proposal.

I'm looking forward to your testimony and your responses on these and many issues, and I hope we receive clear and thorough answers. I firmly believe that workers should have a strong advocate at the Department of Labor, and that is what I will continue to push for.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

We welcome Senator Rubio and Senator Cruz. We'll invite each of you to introduce Mr. Acosta, and then I know both of you have other commitments. You're welcome to stay or welcome to go to your other commitments after that, and we'll move to his statement.

Senator Rubio.

#### STATEMENT OF SENATOR RUBIO

Senator RUBIO. Thank you, Mr. Chairman, and thank you to the Ranking Member for the opportunity to be before the committee today. It is my honor to be able to introduce Mr. Acosta, and I wholeheartedly encourage the committee and the full Senate to support his nomination to be our next Secretary of Labor.

I begin by saying I know Alex well. As a fellow Floridian, as a native of Miami, I've been familiar with his work for many, many years. Later I came to know him personally as well, and as I said when the President nominated him, I think he is an outstanding choice to lead the Department of Labor.

He has a sterling record of public service to our State and country. You'll learn about that today as you'll see not just in the materials but in his testimony as well. He was a member of the National Labor Relations Board, appointed by President George W. Bush from 2002 to 2003. From there he was selected by President Bush to serve as the Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice, where he also

served as the Principal Deputy Assistant Attorney General in that office beginning in August 2013.

The two places I would refer you and the place I've watched him most closely and am most proud of his work, the first is he was the U.S. attorney in one of the most challenging districts in the country, Florida southern district, and I encourage you to look at the numerous cases and the complexity of many of these cases that fall under their jurisdiction, and in particular during his time there.

Most recently, he served as the Dean of Florida International University's College of Law, where he has been instrumental in getting the school off the ground after its recent founding. He's raised its profile, and it's begun to graduate well-prepared young men and women for their careers.

Florida International University is a place that I know well. I actually was an adjunct professor there for over 10 years. More importantly, it has a unique role in our community, where a significant percentage of the students, not just at the law school but at the school in general, are the first in their family to ever attend or graduate from college. It has a higher percentage of such students than virtually any other college or university in America, and under his tutelage and under his leadership FIU's College of Law has opened that door for hundreds of young people who ultimately would have had to do what I did, and that is take on significant student loan debt in order to get their Juris Doctor degree, and he has elevated FIU's ability not just to do that but at a very high level.

With every challenge that he has confronted throughout his distinguished career, Alex has continuously demonstrated his ability to effectively tackle the problems at hand with ease. He is a brilliant, brilliant legal mind, someone with deep knowledge of labor issues and a proven leader and manager. For these reasons and many more, I am confident that Alex Acosta will serve this Nation admirably, and I am proud to introduce him to the committee today, and I urge you to support his nomination.

I thank you, Mr. Chairman. I thank the Ranking Member and all the members of this committee for the opportunity.

The CHAIRMAN. Thank you, Senator Rubio.

Senator Cruz, welcome.

#### STATEMENT OF SENATOR CRUZ

Senator CRUZ. Thank you, Mr. Chairman, Ranking Member, members of this committee. It is a privilege to be before you today and have the opportunity to introduce my friend, Alex Acosta. I've known Alex for 25 years. He and I went to law school together. We've been friends a long time.

There's a lot you could know about Alex from looking at his resume, looking at his bio. You could know that he's smart, that he's academically accomplished, that he's led a life of public service, making a difference in the lives of others.

One of the things, getting to know someone over the course of 2½ decades, is you learn their character, and I can tell you that Alex is a man of character, a man who takes very seriously fidelity

to the law, fidelity to the Constitution, and a man who has a passion for justice.

Alex began his legal career as a law clerk for Justice Samuel Alito on the Third Circuit Court of Appeals. He worked in a variety of locations, and has three times been confirmed by the U.S. Senate. He was confirmed as a board member on the National Labor Relations Board. He was confirmed as the Assistant Attorney General for the Office of Civil Rights. He was confirmed as the U.S. attorney for the southern district of Florida.

All three of those positions are very challenging positions. As each of you know, those are not easy assignments. Those are assignments that, almost by their nature, guarantee that there's going to be conflict, there's going to be difficult and important issues presented to whoever is entrusted with leading those offices.

One of the remarkable things about Alex is that he has been able to lead each of those offices with an impeccable record, a record of distinction, but also a record of inclusion. Alex, in leading those offices, has demonstrated an ability to bring people together even if they have disparate political or ideological backgrounds, to bring them together behind a shared vision and a shared commitment to justice. That is an important characteristic in any position.

It's been an important characteristic in his role as the Dean at Florida International University School of Law, which as Marco described is a school that is expanding opportunity to a great many people who would never have had the opportunity otherwise. That's yet another demonstration of Alex's passion for justice, stepping down as U.S. attorney. He could have cashed out. There would have been plenty of law firms in Florida that would have offered him a seven-figure check, and he could have lived in a nice house and driven a big car and had a very, very comfortable life, but he chose instead to be Dean of the Law School, to make a difference in the lives of students.

To those of us who have known Alex a long time, that is not surprising. That is entirely consistent with the course of his entire life.

I'll also tell you, on a personal level, Alex is a surprisingly good poker player, and not nearly as good a squash player.

One additional observation. Alex is a Cuban American. He understands firsthand how incredible the miracle of freedom is, how incredible this country is, the beacon of freedom that it has served to the world. That is an appreciation that I think is important in any government position, but as Secretary of Labor, the mandate of Secretary of Labor, the kind of Secretary of Labor I expect Alex will be, will be a champion for working men and women, a champion for people who want jobs, who want more jobs, who want higher wages, who want more opportunity, someone who will fight for the working men and women of this country.

I will say I take perhaps particular pleasure in the observation that I suspect this is one of the first times, if not the only time, that this committee has had three Cuban Americans seated before it, and it is a testament of the opportunity that our wonderful nation provides.

I commend to you Alex Acosta, who I think will make an excellent Secretary of Labor.

The CHAIRMAN. Thank you, Senator Cruz and Senator Rubio. Thank you both for coming.

We'll now move to—you're welcome to go to your other hearings at whatever time you choose to.

Mr. Acosta, we welcome you and your family. You're welcome to introduce your family if you'd like. We'd be glad to have your statement, and then we'll begin a round or two of questions.

**STATEMENT OF ALEXANDER ACOSTA, NOMINEE TO SERVE AS SECRETARY OF LABOR, MIAMI, FL**

Mr. ACOSTA. Thank you, Mr. Chairman, Ranking Member Murray, and members of the committee. I thank you for the opportunity to appear before you this morning. I know today is a very busy day in the Senate and there are other ongoing hearings, and so thank you. It is an honor to be here as President Trump's nominee to be Secretary of Labor.

I want to take a minute to thank Senators Marco Rubio and Ted Cruz for their very kind introductions. As both noted, I have known them for many years. I appreciate their support and I deeply admire and respect their dedication to public service.

I am also grateful for their support today because my family was unable to be here. My wife Jan is an amazing woman, a fantastic mother, and I am deeply grateful for her love and her unending and unyielding support. My eldest daughter Delia is in first grade, and there's something called an IOWA test, which is a standardized test that she's undergoing this week. My wife is with Delia and with my 5-year-old Rosalia, who will be in kindergarten next year. Back in Miami, I don't know if they're watching. I know my girls aren't watching. My wife may or may not be. I really want to reach out to them and thank them for everything that they do for me.

I want to thank my parents in particular. My parents are very important to me not simply because of what they've done for me but because my story really begins with them and informs my perspective on what it means to be a Secretary of Labor. They fled Cuban. They came to the United States seeking freedom, and they found it. They met in Miami in high school. They fell in love. They married young. My mother was in her teens when she found out she was pregnant. Neither attended college.

Growing up, they struggled, not as much as other Americans have struggled, but they struggled. My mother started out as a typist at a real estate firm. At times, she commuted 90 minutes each way for her job. My father served in the Army. Later, he tried to start a small business, but he quickly found that his lack of higher education, his lack of ability to deal with forms and rules made it very difficult for him to be a small business owner. He went on to hold various jobs, and he ended his working life as an inventory clerk at a cell phone store.

Our family lived paycheck to paycheck. My grandmother cared for me while we grew up, and that was an incredibly helpful and loving thing to do because both my parents worked full-time. At times my parents went into debt, deep debt, the kind of debt they tell you not to go into because credit card interest rates are high, but they went into that debt and they took on second jobs to make

ends meet, and they did that because they wanted to give me an education.

I am here because of them. My success is very much their success. They were able to give me these opportunities because even though they didn't have a college education, they had something very important, and that's a job. Although at times they lost their job, they were always able to find another job, and that was very important.

Today Americans are facing the same struggles, but for many Americans only worse. My parents had jobs, but not all Americans have jobs. Some Americans have seen their jobs go overseas. Some Americans have seen their jobs filled by foreign workers. I've read and I've seen press reports that not only have they been filled by foreign workers, but to add insult to injury they've been asked to train their foreign replacements. Some Americans have seen that jobs are available, but that these available jobs require skills they do not have.

Helping Americans find good jobs, safe jobs, should not be a partisan issue. In my visits with each of you, with each member of this committee, it was crystal clear that every member of this committee wants Americans to find jobs, good jobs, safe jobs, even if you don't all agree on the how.

I share this goal with you. We may not always agree on the how, but at least let us begin by agreeing on the need. If confirmed, I hope to benefit from an ongoing dialog with each of you as to how we can advance these goals within the context of, as the Chairman mentioned, a global economy that is changing rapidly with each passing year, and within the constraints of limited resources.

I would like to close with a brief discussion of a few items in particular. The first is the skills gap. As I visited with members of this committee, I repeatedly heard that in your States there are jobs, but the skills too often are not there. In one of your States, for example, a community college was teaching welding techniques, and it turns out that the employers are no longer using that welding technique, so why are they teaching an outdated technique? That's not how you teach skills.

We can and we must work to reduce that skills gap. We need to make better efforts to align job training with the skills the market demands and the increasingly changing market will demand of its workers, especially as advancing technology changes the types of jobs that are available in our economy.

The Department of Labor cannot do this alone. It has to work with local governments, with industry, with educational institutions, public-private partnerships that can have substantial positive impact on the American workforce. This is the vision of the Workforce Innovation and Opportunity Act, of apprenticeship programs, of Job Corps, and of many other programs not only at DOL but across government.

If confirmed, I will work with you to maximize every taxpayer dollar that is directed toward job training programs.

Second, good jobs should also be safe jobs. Congress has enacted workplace standard and safety laws. The Department of Labor enforces these, and if confirmed, I will work to enforce the laws under the Department's jurisdiction fully and fairly. As a former pros-

ecutor, my enforcement efforts will always be on the side of the law. If enacted by Congress, it should be enforced fully, it should be enforced fairly, and it should not be enforced in favor or against any particular constituency.

Finally, the Department of Labor was formed a bit more than 100 years ago, and it's an interesting history because originally it was the Department of Commerce and Labor, and then it was split into two. Why was it split? The reason was this, that a voice for Commerce and a voice for workers, or the workforce, as the Chairman mentioned, within the executive branch would promote better decisionmaking.

I think this concept is absolutely correct. Advocates for the American workforce within the administration are important. Whether it is those who are working, those who still seek work, those who are discouraged or underemployed, or those who have retired, if confirmed as the Secretary of Labor, part of my job will be to be one of those advocates.

President Trump has reached out to both business and to labor in his first 100 days. I'm proud to have the support of several dozen business groups and also of several private-sector and key public safety unions who remember with respect my work at DOJ and the NLRB. They know that while we did not always agree, I was always willing to listen and to think and to consider and to seek out principled solutions.

If confirmed, I hope that we, this committee and the executive branch, can work together in the same way to address the need for good jobs and safe jobs, and in particular access to training in the skills that the changing workplace will demand of its workforce.

I thank you for your consideration, and I look forward to answering your questions.

[The prepared statement of Mr. Acosta follows:]

PREPARED STATEMENT OF ALEXANDER ACOSTA

Chairman Alexander, Ranking Member Murray, and members of the committee: Thank you for the opportunity to appear before you this morning. It is an honor to be here as President Trump's nominee for Secretary of Labor. I know today is a very busy day in the Senate, and I am indebted to the committee for taking time to conduct this hearing.

I want to thank Senators Marco Rubio and Ted Cruz for their kind introductions. I have known both of them for many years. I truly appreciate their support and admire their dedication to public service.

I am especially grateful for their support given that my biggest fans—my wife Jan and my two young daughters, Delia and Rosalia—cannot be here. Jan is an amazing woman, a fantastic mother, and I am deeply grateful for her love and support. She is in Miami because Delia, my eldest, has her 1st Grade IOWA tests this week; her sister Rosalia will be in kindergarten next year.

Mr. Chairman, I want, in particular, to thank my father and mother because my story begins with that of my parents, and it frames my perspective on the important responsibilities I would assume if confirmed as Secretary of Labor.

My parents fled from a Cuban dictatorship in search of freedom. They met in Miami, while in high school, fell in love, and married young. My mother had me while she was still in her teens. Neither attended college.

Growing up, I saw my parents struggle. My mother started out as a typist at a real estate firm. At times, she commuted 90 minutes each way to her job. My father served in the Army. Later, he tried to start a small business. But he found the growing gap between his skills and the demands of being a small business owner too difficult. He went on to hold various jobs, ending his working life as an inventory clerk at a cell phone store.

Our family lived paycheck to paycheck. My grandmother cared for me while my parents worked full-time. My parents would often go into debt and, at times, take a second job to make ends meet and to provide me with the best education possible.

I am here today because of them. My success is their success. Their sacrifice and perseverance made my education possible. They were able to give me opportunities they did not have because even though they didn't attend college, they had something very important—they had jobs. And though at times they lost their jobs, they were always able to find another job.

Mr. Chairman, today many Americans are facing the same struggles my parents endured, only worse. My parents had jobs; but not all Americans have jobs.

Some Americans have seen jobs go overseas.

Some Americans have seen jobs filled by foreign workers. Indeed, I've read reports that some Americans have been asked to train their foreign replacements.

And some Americans see that jobs are available, but these available jobs require skills that they do not have.

Helping Americans find good jobs, safe jobs, should not be a partisan issue. In my visits with each of you, it was crystal clear that each Member of this committee wants to help American workers find good, safe jobs—even if you do not all agree on how best to realize this goal.

I share this goal with you. We may not always agree on the how, but at least let us agree on the need. If confirmed, I hope to have the benefit of an ongoing dialog with each of you about how we can advance these goals within the context of a dynamic, global economy that is changing more rapidly with each passing year, and within the constraints of limited resources.

I would like to close with a brief discussion of a few items in particular. The first is the "skills gap." As I visited with Members of this committee, I repeatedly heard that in your States the jobs are there, but the skills too often are not. In one of your States, for example, a community college was teaching welding techniques that employers no longer used. Not surprisingly, the students could not get a job when they graduated.

We can and must work to reduce the skills gap. We need to make better efforts to align job training with the skills the market demands of its workers, especially as advancing technology changes the types of jobs available in our economy. The Department of Labor, along with local governments, industry, and educational institutions, can partner to have substantial positive impact on American workers. This is the vision of the Workforce Innovation and Opportunity Act (WIOA), of apprenticeship programs, of Job Corps and of many other programs at DOL. If confirmed, I will work with you to maximize the impact of *every* taxpayer dollar Congress directs toward job training programs.

Second, good jobs should also be safe jobs. Congress has enacted workplace safety laws. The Department of Labor enforces these, and if confirmed, I will work to enforce the laws under the Department's jurisdiction fully and fairly. As a former prosecutor, I will always be on the side of the law and not any particular constituency.

Finally, the Department of Labor was formed a bit more than 100 years ago, when the Department of Commerce and Labor was split into two. The intent was this: that a voice for Commerce and a voice for Workers within the executive branch would promote better decisionmaking.

I support this concept. An advocate for the American workforce within the Administration is important. Whether it is those who are working, those who still seek work, those who are discouraged or underemployed, or those who have retired, if confirmed as the Secretary of Labor, I will advocate for them. I am proud to have the support both of several dozen business groups and of several private-sector and key public safety unions, who remember with respect my prior government work at DOJ and the NLRB. They know that while we did not always agree on the outcome, I always listened and sought principled solutions.

If confirmed, I hope we—this committee and the executive branch—can work together in the same way to address the need for good jobs, safe jobs and access to training in the skills that the changing workplace demands.

Thank you for your consideration, and I look forward to answering your questions.

The CHAIRMAN. Thank you, Mr. Acosta.

We will now begin a round of 5-minute questions, and if Senators wish there will be a second round of 5-minute questions.

Mr. Acosta, let's start with the skills gap that you spoke about. If we're to think of you, as I think we should, as secretary of the workforce, to help workers in this head-spinning environment that we find ourselves in, adjust to it and fit into it, we always spend

a lot of money on helping people get training. We spend more than \$30 billion in Pell grants. The average Pell grant is about the same as the average community college tuition. We spend a lot of money on student loans. Other countries do other things. Germany has an apprenticeship system. Some people say our technical institutes do a better job than our community colleges.

If you're the secretary of the workforce, and if you see that, according to the Manufacturing Institute, 2 million Americans' manufacturing jobs will go unfilled over the next 10 years due to the skills gap, specifically what are some of the things we should be doing about it?

Mr. ACOSTA. Senator, thank you for the question. First, let me touch on the first part of your comments, which is the spending that we spend on education. It's critical, if confirmed, that the Department of Labor work very closely with the Department of Education, because there is a lot of spending that's taking place in Education, and we want to make sure, to the extent possible and feasible, that individuals have the opportunity to align their education with the skills the workplace will demand.

More specifically to the second part of your question, you mentioned apprenticeships. As dean of a law school, I'm a big fan of learning by doing. We recently started a program which is a full semester internship at a law firm, in addition to the public defender's office or a State attorney's office, and the students have the opportunity to spend a full semester there because they can learn by doing.

If you look at some of the apprenticeship programs where individuals work and they get credit while they are working, or some of the other programs that are available in community colleges that focus on locational opportunities in partnership with individual businesses, those are all options that we should be looking at because they're alternative ways of educating, they're alternative ways of providing skills; and importantly, it is a way for students to acquire skills to be used in jobs without taking on the enormous debt that we're seeing in some secondary programs right now.

The CHAIRMAN. Let me ask you one other question. The overtime rule, fortunately it's not in effect, thanks to a court. In my view, it's one of the worst examples of regulation by the previous administration. It caused millions of Americans to punch time clocks that they didn't want to punch. It raised tuition, according to our universities, by hundreds of dollars per student because of its cost. It cost my local Boy Scout council to have to dismiss counselors. It received widespread condemnation around the country, and even in Congress there was bipartisan opposition.

There was a doubling of the threshold. There was an impact on non-profits. What are you going to do about the overtime rule?

Mr. ACOSTA. Senator, Mr. Chairman, as you mentioned, it's pending in litigation. Let me offer a few observations.

First, the overtime rule hasn't been updated, I believe, since 2004, and I think it's unfortunate that rules that involve dollar values can sometimes go more than a decade, sometimes 15 years without updating, because life does become more expensive over time.



The CHAIRMAN. Let me press you a little bit. Doubling the threshold, applying so heavily the impact of it to non-profits, doesn't that concern you?

Mr. ACOSTA. Mr. Chairman, it does. The point that I was making is that I think it's unfortunate that it goes so long without adjusting, because when they are adjusted, you see impacts such as the doubling of the amount that does create what I'll call a stress on the system, as the Chairman mentioned, particularly in areas, both industry and geographic areas, that are lower wage historically.

One of the challenges that we face in addressing the overtime rule is since 2004 there's been no change, now there is a very large change, and how should that be addressed as a policy matter I think is a very difficult decision but a very serious one, because the economy does feel a substantial impact from such a large change.

The CHAIRMAN. Thank you.

Senator Murray.

Senator MURRAY. Thank you, Mr. Chairman. Let me follow on that.

As the Chairman mentioned, the Department of Labor did finalize the updated overtime rule last year, and that rule helped restore the 40-hour work week, which is the cornerstone of protection for middle-class workers. Before that overtime rule, workers could be asked to put in extra hours—60, 70, 80 hours a week—without earning a single extra dollar for the overtime hours that they spent away from their families. That new overtime rule expanded the number of workers who qualify for overtime pay, increasing economic security actually for millions of families.

After months of Republicans in Congress and big business fighting to block that overtime rule, as you stated, the court is now considering the rule and blocking overtime for workers from taking effect.

Let me ask the question a little bit differently. Do you believe that workers should be paid overtime for the overtime hours that they work?

Mr. ACOSTA. Senator, I do believe that workers who are entitled to overtime pay should receive pay for their overtime.

Senator MURRAY. Will you defend this rule in court?

Mr. ACOSTA. Senator, as I was saying in response to the Chairman's question, the overtime rule hasn't been updated since 2004. We now see an update that is a very large revision, and something that needs to be considered is the impact it has on the economy, on non-profits, on geographic areas that have lower wages.

I'm also very sensitive to the fact that it hasn't been updated since 2004. If confirmed, I will look at this very closely.

Let me also add that a related issue to this is the question of whether the dollar threshold is within the authority of the Secretary. When Congress passed the statute, it provides, in essence, for a duties test. One of the questions that's in litigation is does a dollar threshold supersede the duties test? As a result, is it not in accordance with the law? I mention that because I think the authority of the Secretary to address this is a separate issue from what the correct amount is, and the litigation needs to be considered carefully both with respect to what would be the appropriate

amount if the rule were to be changed or revised, but also what is within the authority of the Secretary to do.

Senator MURRAY. OK. This is an issue I'm going to be following closely. It's an issue of fairness, and I really do believe the Secretary of Labor's job is to make sure that workers are treated fairly.

Let me move on to another issue. You have served as a high-ranking Federal official, one of the few Cabinet nominees of this President who has done so. However, in your time leading the Civil Rights Division at the Department of Justice, staff under your supervision broke Federal law by systematically discriminating against individuals based on their political affiliations. An Inspector General investigation found that staff on your management team sought out conservative candidates and rejected liberal ones. Your staff referred to conservatives as "real Americans" who were "on the team," and according to the IG report your staff called liberal Department lawyers commies and pinkos and told a subordinate that,

"Your division shouldn't be limited to hiring Politburo members who belong to some psychopathic left-wing organization designed to overthrow the government."

Your deputy said he should get an award for effectively breaking the will of liberal staff.

These were your staffers acting under your supervision. Do you take responsibility for the acts of discrimination that occurred under your leadership?

Mr. ACOSTA. Senator, you're referring to the actions of one of the deputies in the division. I believe the Inspector General's report found that the other deputies that oversaw the other divisions or the other sections of the Civil Rights Division did not engage in that conduct. That conduct should not have happened. It happened on my watch. It should not have occurred. That language should not have been used, and I deeply regret it.

Senator MURRAY. OK. It leads me to ask you, will you stand up to the President or others in the Administration if they ask you to use political views on statements and hiring decisions?

Mr. ACOSTA. Senator, political views on the hiring of career attorneys or staff should not be used, and the answer to your question is if I am asked to do that, I will not allow it. I'm very aware of the Inspector General's report, of the impact it had on that section, and I would not allow that to happen.

Senator MURRAY. OK. I appreciate that very much. Thank you.

The CHAIRMAN. Thank you, Senator Murray.

Senator Collins, and then Senator Bennet.

#### STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Acosta, first of all, thank you for sharing your inspiring personal story. It really is a story of opportunity in America, and in many ways that is the mission of the department that you've been nominated to lead, to create more opportunities for American workers.

The Department has a program known as the Trade Adjustment Assistance Program that helps Americans who, through no fault of their own, have lost their jobs as a result of foreign and often unfair competition. In Maine, for example, we've lost more than 38 percent of our manufacturing jobs. That's nearly 31,000 jobs in total over the last 17 years.

The Trade Adjustment Assistance Program has been crucial in helping many Maine workers, who have been hit very hard by mill closures and shuttered factories, get the skills that they need for the jobs in higher demand industries. For example, in fiscal year 2015, 740 Mainers benefited from TAA, and more than 70 percent of those who went through TAA-provided education or re-training found employment within 3 months of completing the program.

The so-called skinny budget that was released last week proposes large cuts in the Department of Labor, but it's unclear what happens to TAA. What is your view on that program?

Mr. ACOSTA. Senator, thank you for the question. I appreciate the way you set up the question because you provided data. If confirmed, something that I think I would need to do, and do very quickly because budget season has already begun, is assess the efficacy of the job training programs. Budgets are to be determined. The skinny budget has been submitted. Congress will have the final say on the ultimate budget, but dollars are going to be more scarce. That is the reality, and so we're going to have to make difficult decisions.

You've provided data that shows how successful that program has been, and I think the principles that need to be used to guide the spending are how successful is the program, does the program address particular needs such as the needs of displaced individuals who have lost their jobs because of, for example, the closing of a mill. In that context, the rate of return on the investment of taxpayer dollars in the skills I think is particularly high, because if you have someone who has been doing a job most of their life and that job no longer exists, and now you provide them the skills to do another job, they're going to hold that job for a long time, and they're going to become part of our economy again, and they're going to be paying taxes. That rate of return on those programs I think is very strong.

Based on your information, I hope that program remains because it sounds like it's incredibly successful, at least in your State. Let me add, there's also room for differences within States where some program might make sense in Maine but it might not make sense in another State, and I think we need to be very sensitive that one-size-does-not-fit-all.

Senator COLLINS. Thank you for that response.

Despite the success of the TAA program, there still is a category of workers in my State who are older workers who are in many ways the forgotten story of this economic recovery. Older workers are having increasing difficulties in finding employment. In Maine, almost half of the private industry workers are over 44 years old, and our paper mills, which have lost more than 1,500 jobs over the past 3 years alone, have a disproportionately high number of older workers. For many of them, working the paper mills has been the only job they have ever known. Their families have worked there

for literally generations, and it's very difficult to tell someone who is 54 years old, who has done this his entire life or her entire life, that they need to retrain for a new job or leave a community that's been their home their entire life.

If confirmed, what ideas do you have for helping older workers in my State and others who have lost jobs due to mill closures and other factors?

Mr. ACOSTA. Senator, very briefly, because I see the clock, I will just say that I think those ideas can't come from Washington. What Washington needs to do is go to them and ask them what ideas do they see in their local area and then work with them and the local governments to address that, because I don't think we here in Washington can understand what they're going through in their small town in Maine.

Senator COLLINS. Thank you.

The CHAIRMAN. Thank you, Senator Collins.

Senator Bennet.

#### STATEMENT OF SENATOR BENNET

Senator BENNET. Thank you, Mr. Chairman. Thank you for holding this hearing.

Mr. Acosta, congratulations to you on your nomination, and thank you for your willingness to serve.

I want to press you a little bit on what Senator Collins was just asking you. Let me come back to that in 1 second.

In Colorado we are trying to establish an apprenticeship program throughout our universities, community colleges, school districts and businesses, and I'd like to invite you if you're confirmed to come out there and meet with the people that are working on that project to see how the Department of Labor might help them or help us do that better.

Mr. ACOSTA. Gladly.

Senator BENNET. Good. Thank you.

Virtually this entire campaign was about bringing back jobs and wages to places in America where people who suffered huge economic dislocation because of, some would argue, trade, some might say automation, but the dislocation has been real. Median family income has fallen in many places, and there's a hopelessness about what the economy is going to bring.

With respect to you, I'm not sure the answer that it's all up to local communities suffices. The President ran for president saying he was going to make that huge difference, he was going to bring those jobs back.

Apart from training, which I stipulated when we talked about it in my office is an enormously important thing that we need to do better and we're wasting billions of dollars not training people for jobs that exist in the 21st century, putting that aside, what's the plan?

Mr. ACOSTA. Senator, thank you for the question, and let me first make the point that one of the reasons that I said it's important to go to the local communities is because when the Senator and I met in private, she gave me information about the educational background and the abilities and the other opportunities in that area, and that is, by definition, going to be different than what's

available in Colorado. I do think it's important to visit Colorado and visit Maine and understand the different areas.

Going to your point, we need to look at several different levels for job creation. The President has made clear that every Cabinet agency should review regulations for unneeded regulatory burden. Small businesses produce—depending on whose numbers you look at—between 7 and 8 new jobs, 7 and 8 out of 10 new jobs. Efforts to encourage small business will foster job creation.

It's important to look at the issue I highlighted about foreign workers taking American jobs, particularly in those circumstances I highlighted, where Americans are being asked to train their foreign replacements. That is not the intent of the H1B. As a matter of fact, there's an attestation that has to be made that you are not affecting the working conditions of an American worker when you do that. One question I would have is how often is that happening and is that something we should be looking at with a greater degree of care?

We also need to work with public-private partnerships. I know that there is a lot of discussion about an infrastructure program, and an infrastructure program will certainly bring back a lot of jobs. For all of these, it's not just the jobs as part of an infrastructure program or jobs that are developed for small business, but as individuals get jobs, they spend money. Then those individuals that spend money go to restaurants, and you have this multiplier effect throughout the economy that I think is incredibly valuable.

Let me finally touch on education. I do think it's important to touch on education because the economy is changing rapidly, and our educational institutions cannot ignore what the workplace is going to be demanding going forward.

Senator BENNET. Mr. Acosta, I also just wanted, for the record, to note that, and I appreciate this, you've been a supporter of immigration reform in the past with Senator Rubio as part of the Gang of Eight here who passed the Senate bill on immigration, and part of what you observed in 2012 was that the current system allowed the abuse of immigrant workers. Do you still feel that way, and do you still support immigration reform?

Mr. ACOSTA. Senator, there is a need to have immigration laws that are transparent and clear, and I do think that we have an issue of abuse with immigrant workers. When workers are not part of the system, the system can abuse them. I also think it's important that we enforce our immigration laws, and I don't see enforcement of immigration laws as separate from immigration reform.

Senator BENNET. Mr. Chairman, I realize I'm 15 seconds over. I apologize.

Along those lines as well, you mentioned the H1B program. We have huge difficulties with the H2A and H2B program being administered in a way that's actually useful to workers and to businesses. I look forward to having a chance to talk with you about that at a later time.

Thank you, Mr. Chairman, for holding this hearing.

The CHAIRMAN. Thank you, Senator Bennet.

I was going to call on Senator Hatch, but he's not here, so I'll call on Senator Scott.

## STATEMENT OF SENATOR SCOTT

Senator SCOTT. Thank you, Mr. Chairman.

Thank you for being here again.

A couple of questions that I've heard so far during this hearing have to do with the overtime rule. Moving from \$23,600 to about \$47,000, according to some studies, would cost about a half-a-million jobs in the economy, so your comments seem to be a mixed bag. According to Tammy McCutchen, who was an hourly and wage person at the Department of Labor under the Bush administration, moving it up from \$23,000 to maybe \$32,000 would make sense based on the previous formula that's been used for decades. What would be your approach?

Mr. ACOSTA. Senator, thank you for the question. If you were to do a cost-of-living adjustment—and, as I mentioned, the world has gotten more expensive and salaries have changed since 2004—if you were to apply a straight inflation adjustment, I believe that the figure if it were to be updated would be somewhere around \$33,000, give or take.

I think the question that I will have to face if I were to become Secretary of Labor is, No. 1, what to do with the litigation; No. 2, if we determine that the rule as it currently stands should not be the rule that eventually takes place within this litigation context, what would be the correct amount. I understand that there's a desire on the part of members of this committee for me to State this is exactly what I would do, but this is an incredibly complicated rule. This is something that gets updated about every 15 years.

For me to sort of on the fly at a hearing State with certainty, I don't think it's the responsible approach. What I would say is, No. 1, I understand the extreme economic impact that a doubling has in certain parts of the economy. I understand that it goes beyond a cost-of-living adjustment. I understand as well that because of the size of the increase, there are serious questions as to whether the Secretary of Labor even has the power to enact this in the first place, which is what a lot of the litigation—not a lot—which is what the basis of the litigation is. Those are issues that I would want to consult with the individuals at Labor and at Justice that are overseeing the litigation before determining.

Senator SCOTT. I certainly hope that you have already invested a lot of time contemplating what you would do as the next Secretary, as opposed to not having invested any time in that conversation, which will be a very important conversation between the overtime rule and the fiduciary rule. These are things that you should be contemplating already.

Let's move to a different topic. Senator Bennet has mentioned it, perhaps Chairman Alexander, and the Ranking Member as well have talked about the importance of apprenticeship programs. South Carolina is perhaps the leading State, at least one of the leading States in the country, on the success of our apprenticeship programs. I'd love to hear how you would encompass or integrate into your objectives going forward an apprenticeship model, taking into consideration the one that Corey Booker and myself have sponsored, over 17,734 apprenticeships and 6,400 participating programs in South Carolina. We have companies throughout the coun-

try in South Carolina, from BMW, Boeing, Continental, General Electric, Blue Cross Blue Shield, Bosch, also industries like health care and finance, that all integrated in South Carolina and involve apprenticeship programs. I'd love to hear your model.

Mr. ACOSTA. Senator, first let me say that South Carolina really is a model of apprenticeship programs. Some of the qualities that make it so successful are the integration or the public-private partnerships where employers are not involved in name but they're really deeply involved in directing. These are the types of apprenticeships we need. This is what the workforce is demanding, and I think that involvement of employers is very, very important.

I know that South Carolina at the State level also provides incentives for employers to engage in apprenticeships and to hire apprentices, and particularly when someone is learning, when someone is quite literally an apprentice, my understanding is that makes the South Carolina program particularly noteworthy and attractive for an employer to hire an apprentice.

Senator SCOTT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Scott.  
Senator Baldwin.

#### STATEMENT OF SENATOR BALDWIN

Senator BALDWIN. Thank you, Mr. Chairman.

Welcome, Mr. Acosta. Congratulations on the nomination.

One of the first responsibilities—and you alluded to it a moment ago in terms of the fact that it's budget season. One of the first responsibilities of the Secretary is going to be identifying where to cut, frankly, because President Trump's budget calls for a \$2.5 billion cut to the Department of Labor, a 21 percent decrease from current enacted levels. This is really significant. President Trump's budget only specifies \$500 million of cuts, mostly to seniors seeking job training, and leaves about \$2 billion unspecified.

I'd like to ask you how are you going to approach this incredible task of making this math work. You could eliminate 15 Job Corps centers for vulnerable youth. You could eliminate the entire Employee Benefit Security Administration, charged with protecting workers' retirement funds from fraud, or get rid of the Women and Apprenticeship Grant Program. How are you going to approach this? Are you going to do 20 percent across the board? Are you going to cut various bureaus? What are you going to do?

Mr. ACOSTA. Senator, thank you for the question. First let me say that as the nominee I haven't had the opportunity to provide input yet into the budget process, and if confirmed it's something I'm going to have to take on very quickly because it's moving.

My personal perspectives—and again, Congress will make ultimate decisions on this, and so Congress may have a different view. My personal perspective is this should not be across the board, and at the same time it shouldn't focus on particular programs because that's a little bit too—because programs aren't quite that—how can I put this?

Let me come at it this way. You mentioned, Senator, the Job Corps centers. There are some Job Corps centers in some States where the Job Corps centers are highly successful, and for those States those Job Corps centers work exceedingly well given the

population, given the geographic diversity of that State. Those Job Corps centers, from my understanding, are working well.

There are some other Job Corps centers that have a history of violence associated with them that concerns me. As a matter of fact, the Department of Labor has looked at some of those Job Corps centers and has identified some of those issues. This requires an analysis on a few levels—

Senator BALDWIN. I want to just cut you off because we have limited time. You're not going to look at across the board, and what I think I hear you saying, to summarize, is that you wouldn't eliminate programs per se, but you would look at success. I think you said that earlier in a response to the Trade Adjustment Assistance question for Senator Collins.

Mr. ACOSTA. That would be fair.

Senator BALDWIN. What troubles me is in areas where we're not seeing success, is pulling it away and not offering those programs the answer, or is it going in and fixing and adjusting and providing those opportunities? If you pull it away, you've left people high and dry in training and many other areas.

Mr. ACOSTA. Senator, I understand your question, and I think we don't disagree. First it's a question of what is success, right? Because if you have a particularly troubled area, a little bit of movement can be success. Second, just because you pull—if there's a Job Corps center in a particular geographic area that isn't working, that doesn't mean you pull away from that geographic area. That just means that maybe in that area the money is better spent on another program than on the Job Corps center.

I don't think it would be right to abandon any one area. That's why it needs to be an analysis based on the program and the geography to ask what does this State need, what does this part of that State need, and really look at it on a local basis.

The CHAIRMAN. Thank you, Senator Baldwin.  
Senator Young.

#### STATEMENT OF SENATOR YOUNG

Senator YOUNG. Welcome, Mr. Acosta. Great to be here with you today.

I'd like to first get your thoughts on how we can better link our unemployed Americans to job opportunities. As Secretary of Labor, this is something you'll have direct oversight over. There are already programs out there to help facilitate these linkages. Less than half the available workforce has the appropriate training to fill available jobs. Some communities are innovative in serving local need.

In my own State, we have Jeffersonville, IN. They partnered with Ford for their next-generation learning program. This partnership engages businesses, educators, community leaders, various other stakeholders to enhance the workforce system throughout the region, which is in southern Indiana. It's going to connect high school graduates to relevant post-secondary education that will directly filter into businesses around that community.

Every member here can no doubt cite localized, specific examples of creative solutions to this linkage issue, which is so important if we're going to have flexible, effective labor markets, which in turn



leads to faster economic growth and higher wage growth. Perhaps you could speak to how you as Secretary of Labor will foster this sort of engagement and maybe serve as a conduit for information related to best practices so that folks back in the States and our localities can scale up what's working.

Mr. ACOSTA. Senator, thank you for the question. It's interesting that even in this hearing, several members are pointing to successes in their particular States. And you're right, those need to be compiled and put into best practices so that they can be duplicated.

The other point that I would identify is not only are these successes based on local partnerships, but they're based on public-private partnerships. It's not the Department of Labor going in on its own. It is businesses working at a local level with educational institutions and with other local entities to align the training opportunities with what the workforce—the employers—are demanding, and that partnership I think is so critical.

Going back to Senator Baldwin's question of wouldn't you be walking away from a particular area if a program isn't working, the point I was trying to make is, no, if there's a program that's not working in a particular State, if there's a program that's not working in Indiana, for example, but there's a program that's working fabulously well, then we should look at that program that's working fabulously well and perhaps double down on that program if that program is going to address the needs that were otherwise addressed by the program that isn't working.

Senator YOUNG. I like to hear common sense from my would-be Secretary of Labor. That strikes me as common sense. That's a good thing. I look forward to working with you to operationalize that concept through programs or policies and so forth.

In my remaining time, perhaps I could pivot to the gig economy. The availability, the preference for so many of our workers to take multiple part-time jobs, to do freelance work, is just the way so much of our economy is moving. It's creating unique challenges for our workers, and we, from a public policy standpoint, are going to have to adapt to these challenges.

One of those challenges is for parents, their daycare responsibilities, if, in fact, they either require a job outside of the home or they wish to work outside of the home. I have four young children. We have some flexibility, my wife and I in our lives, and some family members that help out. We figured out a way to make it work. A single father who is caring for a few children works the night shift of Walmart, I don't know how they do it. I don't know where they find acceptable, available daycare for their children.

I'm not asking you to solve this problem, but could you at least speak to this problem as perhaps the next Secretary of Labor and how you might explore innovative ways to deal with it, partnering with our States and localities to make the gig economy work for more people?

Mr. ACOSTA. Senator, thank you. The gig economy is something that the Department of Labor needs to address, and at several levels the rules at DOL aren't designed—they haven't caught up to the gig economy. They assume a more traditional workplace. It goes beyond the issue that you raised to several issues within the Department of Labor.

It's incredibly important. There are individuals in my office who are single parents, and I see them, and they have to juggle. They have the means to juggle, and it's still incredibly difficult. It's something that we're going to have to talk about and address, but it has to be at the local level.

The CHAIRMAN. Thank you, Senator Young.  
Senator Warren, and then Senator Hatch.

#### STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you, Mr. Chairman.

Mr. Acosta, you are the President's second choice for Secretary of Labor, and I'll be honest, I'm glad it's not his first choice, Andrew Puzder, who is sitting here today. It is hard to imagine a candidate who would be worse than a man who made his fortune by squeezing workers on wages and benefits, a man who repeatedly broke the laws that he would be charged with enforcing, a man who bragged about replacing his workers with robots who would never sue him for race or sex discrimination. That said, the test for Secretary of Labor is not are you better than Andrew Puzder. The test is will you stand up for 150 million American workers, and that starts by making sure that workers are safe on their jobs.

A Department of Labor rule to protect 2.3 million American workers from exposure to lethal, cancer-causing silica went into effect last summer. I just want to know, Mr. Acosta, will you promise not to weaken the silica rule in any way, and not to delay future compliance by even a single day?

Mr. ACOSTA. Senator, as you mentioned, the silica rule went into effect. I should, however, make clear that the President, through an executive action, has directed all Cabinet secretaries to put together a group to review all rules within each Cabinet agency.

Senator WARREN. I'm aware of that.

Mr. ACOSTA. And to examine them.

Senator WARREN. This is a rule that has gone into effect.

Mr. ACOSTA. Yes, Senator.

Senator WARREN. I just want to make sure you're not going to delay this rule any further.

Mr. ACOSTA. Senator, I understand. The point I'm trying to make is that the President has directed each Cabinet officer to review all rules and to make determinations if any rules should be revised. Based on that executive action, I cannot make a commitment without—because the Department of Labor has been ordered to review all rules.

Senator WARREN. I want to understand what that means when you say Department of Labor has been ordered to review all rules. You're about to be named as Secretary of Labor, and your name goes on the bottom line for enforcing the law. Either you're going to stand up for 150 million American workers, including people who are being poisoned by silica, or you're not, and I think that's a fair question for us to ask. Are you going to stand up for the people? Finally we have a rule in place so that people will not be poisoned by silica.

You're saying that's just open and you don't want to give an answer one way or the other on how you look at that?

Mr. ACOSTA. Senator, what I'm saying is that the rule is in effect, but there is an order—the rule, the final rule was promulgated, but there is an order, an executive action, asking all Cabinet officers—

Senator WARREN. You can't give us your own sense of whether or not the silica rule is something that ought to be enforced? You're going to do this review, and you're telling me you can't say whether or not we ought to just take out rules that will cause people to die?

Mr. ACOSTA. Senator, I am not advocating taking out rules. I am making the point—

Senator WARREN. Can I take that, then, that you will enforce that rule?

Mr. ACOSTA. Senator, all Cabinet officers have been asked to review—

Senator WARREN. You've said that, and I've heard it.

Mr. ACOSTA. Fair enough.

Senator WARREN. I'm trying to ask for your opinion, and you're telling me, evidently, that you want to be Secretary of Labor but you have no opinion on whether or not high on your list of priorities would be to protect a rule that keeps people from being poisoned.

Mr. ACOSTA. Senator, high on the list of priorities will be to protect the safety of workers with appropriate rules.

Senator WARREN. You will decide what appropriate rules are, but you don't want to give a hint right now?

Mr. ACOSTA. Senator, there is an entire staff at the Department of Labor—

Senator WARREN. Yes, there is, and they've already looked at this rule, and they already have comments on this rule, and they already received comments from the public about this rule, and they strongly support this rule. I raised this rule with you when we talked about it 2 weeks ago, so this should be no surprise that I'm asking you about this.

Mr. ACOSTA. I gave the same answer, and I look forward to hearing from that staff, if confirmed, their views on this rule.

Senator WARREN. And following their advice?

Mr. ACOSTA. If that advice is appropriate, yes.

Senator WARREN. You will decide if it's appropriate? I think we've got how this dance works.

Let me ask you another question. Another huge responsibility of the Secretary of Labor is to make sure that workers are paid fairly, and last December a new Labor Department rule requiring employers to pay their workers overtime when they work more than 40 hours a week was set to go into effect. It would mean a raise for 4.2 million people. Lots of employers were preparing to comply, but just days before the deadline a Texas judge blocked the rule, siding with giant companies over American workers.

Will you commit to appealing the judge's ruling to protect these workers?

Mr. ACOSTA. Senator, as I previously mentioned, I will commit to examining both the rule and the legal basis of the judge's decision.

Senator WARREN. Let me stop you there. I appreciate that because that's exactly what you said to me 2 weeks ago. You've had time to take a look at it, and it's not a long ruling, to read the rul-

ing and to look at the comments, to look at what went behind this. It's time now for an answer. Are you going to appeal it or not?

Mr. ACOSTA. Senator, again, the Department of Labor has staff that spent a long time working on this rule. It is also in litigation. It would be important to consult with the legal officers at DOL regarding the position that they're taking in litigation—

The CHAIRMAN. We're a minute over, Senator.

Senator WARREN. All right. I'll quit there, but I'll say, Mr. Acosta, the Department advisors have already made clear their position. I just want to know if you're going to follow through on it. They have prepared an appeal. That, evidently, at least by measuring their actions, is their advice. I just want to know that you're going to be part of that.

The CHAIRMAN. We'll have time for a second round of questions.

Senator WARREN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warren.

Senator Hatch.

#### STATEMENT OF SENATOR HATCH

Senator HATCH. Thank you, Mr. Chairman.

Mr. Acosta, welcome. Happy to see you again. We know that you've given this government a lot of effort in the past, and I know that once confirmed you'll do a very good job in this particular position.

The Office of Federal Contract Compliance Programs protects workers and potential employees of Federal contractors from employment discrimination. It is my observation that the OFCCP is using statistical analysis rather than equal consideration and opportunity in evaluating contractor hiring practices and is falling short of addressing real employment discrimination.

In the fiscal year 2016 Labor HHS appropriations bill, the committee pointed out,

“OFCCP appears to prioritize specific quota results rather than equal consideration and opportunity because of its reliance on statistical analysis in evaluating contractor hiring practices.”

How would you go about leading the Office to enforce non-discrimination standards on actual evidence of actual discrimination rather than on statistical generalizations?

Let me add just one more question. How do you propose promoting actual discriminatory treatment instead of presumed discrimination based solely on statistical benchmarks that may not be uniformly equitable?

Mr. ACOSTA. Senator, thank you for your question, and let me say that I remember appearing before your committee in a room very similar to this, and thank you for the courtesies that you extended me at that time as well. I think it was two floors down.

The issue that you raise is the use of disparate impact in employment cases within OFCCP. The disparate impact is a valid and legally acceptable part of liability in employment litigation. Without more, I would hesitate to say that OFCCP shouldn't use acceptable tools that are generally considered valid in employment contexts in enforcing the Executive order that it is charged with enforcing.

Senator HATCH. OK. Utah has several large employers in health care and financial services. I hear all the time from these businesses about the need for skilled workers, and I've heard you talk about your ideas of how can we modernize one such model, apprenticeship. I'm working with Ranking Member Murray on promoting and supporting employers with apprenticeships. In addition to apprenticeship efforts, what role do you see DOL playing in encouraging other employer-led training best practices?

Mr. ACOSTA. Senator, thank you. DOL needs to take a leadership role in compiling best practices and working with employer groups to encourage employers. As you were asking the question, I had a remembrance of a project that we had with the Restaurant Association around disability compliance, and we worked with the Restaurant Association when I was with the Civil Rights Division to encourage restaurants to comply with the ADA. The point that we made to them is that compliance can make business sense.

Working with associations that have access to employers to encourage apprenticeship programs, to encourage job training programs, to learn from them what needs to be done and what can be done I think is important. This can't just be government. It has to be in partnership with employers.

Let me also add that I don't think the Department of Labor can do this alone. The Department of Education is such a key player in this, and in all candor their funding is somewhat deeper than the Department of Labor's funding. It's very important to break down the silos, to not have this department doing this and that department doing that, but to really work together as one executive branch addressing these issues.

Senator HATCH. Thank you.

Mr. Chairman, my time is almost up.

The CHAIRMAN. Thank you, Senator Hatch.

Senator Hassan.

#### STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chairman and Ranking Member Murray.

Good morning, Dean Acosta. Nice to see you here.

I will just add support to the comments you've heard from just about everybody on the committee about the importance of job training. It's critical to the State of New Hampshire, as is our Job Corps center, which is one of the newest, if not the newest, Job Corps centers in the country. I had the opportunity to be at its first graduation just recently, and it was great to see the lives that were changed through that Job Corps center. I hope you will do everything, should you be confirmed, to support both job training and our Job Corps centers.

I wanted to focus a little bit on the importance of OSHA to the men and women who constitute our country's workforce. Strong and targeted enforcement by the Labor Department not only saves lives but also saves valuable resources for employers. A substantial body of empirical evidence demonstrates that OSHA inspections reduce injury rates at inspected workplaces and lowers workers compensation costs to the tune of billions of dollars annually.

The Federal Occupational Safety and Health Administration has about 45 percent fewer inspectors today than it had in 1980, when the workforce was almost half of current levels. In New Hampshire, we have only seven OSHA inspectors to oversee safety and health at 50,000 worksites. With these numbers, it would take OSHA 122 years to inspect every workplace in New Hampshire just once.

President Trump's budget blueprint proposes to cut DOL's budget by 21 percent. Can you commit that if confirmed as Secretary of Labor, you will advocate for and seek funding that will maintain OSHA's enforcement budget at no less than current levels?

Mr. ACOSTA. Senator, I can certainly commit that I—let me come at it this way. I would be very concerned in a situation like you mentioned, where there are only seven inspectors, because going from seven to six has a substantial impact.

Senator HASSAN. Right.

Mr. ACOSTA. Can I commit to no less than current levels? That's a very precise statement. Something is going to have to give somewhere in the budget. My background is a law enforcement background. Worker safety is incredibly important. I mentioned it in my opening statement for a reason, and I would have a lot of concern if the number of inspectors in any one area fell to the point where they could not do their job.

Senator HASSAN. Thank you. I want to move on to the area of making sure that we are including more people who experience disabilities in this country in the workforce. Section 14(c) of the Fair Labor Standards Act authorizes employers to pay sub-minimum wages to workers who experience disabilities. Oftentimes, this type of employment occurs in a secluded environment, some might say a segregated environment, known as a sheltered workplace.

In 2015, with the support of the New Hampshire business community, New Hampshire was the first State to eliminate the payment of sub-minimum wage, and there have been efforts in Congress as well to end this practice.

First of all, do you support this practice of paying people who experience disability sub-minimum wage?

Mr. ACOSTA. Senator, I certainly support the authority of any State to eliminate that. With respect to at the Federal level, this is a very difficult issue because you don't want to disrespect individuals in any way by—the very phrase “sub-minimum wage” is a disrespectful phrase. Yet, you want to provide incentives or systems to ensure that individuals that might not otherwise have a job have access to a job and are trained into a job. That's a very difficult balance that I'm happy to have a further discussion about.

Senator HASSAN. I hope we can, because I think it isn't the phrase “sub-minimum wage” that is disrespectful; it is disrespectful and, frankly, discriminatory to pay people who are qualified to do a job sub-minimum wage on the basis of the fact that they experience a disability. It's going to be really important that we continue this conversation. If you go back and look at the work of the National Governors Association, for instance, around this, it was employers who came to us and said this is a population that's doing the job, why are we paying them, why are we allowed to pay them

sub-minimum wage? I would look forward to working with you on that.

I do have additional questions, but I understand we'll have a second round. Thank you, Mr. Chairman.

The CHAIRMAN. That's correct. Thank you, Senator Hassan.  
Senator Roberts.

#### STATEMENT OF SENATOR ROBERTS

Senator ROBERTS. Thank you, Mr. Chairman.

Mr. Acosta, thank you for coming by on your courtesy visit. Thank you for being here today. You were certainly well introduced. I think you should be confirmed.

I'm going to take a little bit different tack here than some of my colleagues. I'm not going to ask you about President Trump or whether or not you will follow his Executive orders. Despite what some may think to be contrary to current law, I'm not going to ask about the budget, I'm not going to ask you about the campaign, and I'm certainly not going to ask you whether you are for death by silica.

I've got a different view. Many folks here, not only on this committee, with a lot of exceptions, but in Washington look at this through a telescope, and we have an entire regulatory agenda, and it is intended for job safety, it's intended for non-discrimination. I can just go down the entire alphabet soup of agencies we have here—clean water, clean air, et cetera, et cetera.

When it gets down to 105 counties in Kansas, people wonder what in the heck is going on. Here come regulations that they've never seen before, and I know this because I go to town hall meeting after town hall meeting after town hall meeting. I don't get the questions saying so-and-so is running a business where my safety—if I go in there, or if I'm a customer—is endangered, or his workforce is endangered.

They hold up the piece of paper, maybe two and three, and say, "what is this regulation?" I don't understand it. They do not have, normally, a CPA or an attorney or somebody to figure out exactly why they have received that.

I used to work for my predecessor in the House. I'm one of these people who are below the swamp; they can't drain me out.

[Laughter.]

My job was to go out and figure out what this new animal was, called OSHA. We had the first OSHA person go out, way out west. They went out to Sharon Springs. Sharon Springs is not the end of the world, but you can see it from there. We have Mt. Sunflower. It's 4,000 feet high. The trick is not to climb it. The trick is to find it so you can see it out there on the high prairie.

The OSHA person was supposed to go out to Goodland, KS but just missed it. I don't know how you could do that, but he fell short, but could stay all night, and looked high and low for somebody, somebody, anybody that he could walk in and say, "hey, you're not performing your job right." He went into a manufacturer on canvas webbing that goes on the top of grain trucks, and they had a stamping machine in there that put a hole in the canvas webbing, obviously to tie the rope to put it over the grain truck.

They fined him—him, one person. I think the fine was \$1,000. He came to the courthouse, and he was giving my predecessor a hard time, and he says I've got just the guy who will take care of it. Roberts, you go over there and take care of that. I go over and I look at this stamping machine, and the fine was because it endangered a person's leg, the way it was constructed, and it was constructed so that a wounded veteran from Korea who had lost a leg could pull the stamping machine. Obviously, that was not explained to the OSHA inspector.

Mr. Molstead, who ran that company 40-some years ago, never paid the fine. Multiply that by thousands in the entire business community. I don't need to go down all of the regulatory agenda and the job losses and the red tape and the paperwork. What I want to know is can we get a cost/benefit yardstick that makes sense where you have the regulatory cost and obviously the regulatory benefit?

You're on the benefit side. The small business community is on the other side. I want to know what is your overall philosophy on regulation on behalf of an awful lot of people in Kansas who feel that they are being ruled and not governed. I can tell you if they're in business in a small community on the town square and they're not performing their job right and they're discriminating against people and they're just pretty much bad news and it's a bad workplace, they're out of business. That's just the way it works.

Can you give me your overall philosophy on regulation?

Mr. ACOSTA. Senator, briefly, because I noticed the clock, I'd make two points. No. 1, the President, through execution action, has ordered—and it is important that we eliminate regulations that are not serving a useful purpose, because they are impeding small business. Small business is what creates jobs in this country, 7 out of 10 jobs by best estimates. If we're going to create jobs, we need to free up small business. That would be my big-picture view on regulation.

The CHAIRMAN. Thank you, Senator Roberts.  
Senator Murphy.

#### STATEMENT OF SENATOR MURPHY

Senator MURPHY. Thank you very much, Mr. Chairman.

Mr. Acosta, thank you for your willingness to serve. Good to see you again.

Just a followup on Senator Warren's line of questioning, a point of clarification. During this pending review in which you've been charged to look at all regulations, determine which ones are appropriate according to your standards and the President's standards, you still have an obligation to enforce existing regulations.

The silica rule, for instance, will be enforced by your department pending this review?

Mr. ACOSTA. Senator, we would enforce all rules that are in effect pending that review, yes.

Senator MURPHY. Including the silica rule.

Mr. ACOSTA. I believe—I'm hesitating only because of one item that I remember, to the extent it is in effect. I know it was promulgated. Assuming there is no stay, then yes.



Senator MURPHY. OK. Second, to followup on Senator Baldwin's questioning regarding funding, I get a little worried when I hear you talk about accepting a lower level of funding for job training. The President's budget has winners and losers. There's a lot more money for defense. There's money for a wall, and that comes at the expense of other programs. We would hope that you would be an advocate for the programs that the Department of Labor funds.

In Connecticut, for example, the plus-up in defense dollars doesn't do us the maximum amount of good without the Department of Labor dollars. We can build additional submarines at Electric Boat, but if we don't have the workforce pipeline necessary to staff the supply chain, those jobs will go overseas. At the Eastern Connecticut Manufacturing Pipeline, it's not about mismatched resources. It's simply about not having enough resources. We have a 92 percent placement rate in manufacturing jobs from the pipeline program. Three thousand people are trying to sign up, and they can only take a couple of hundred a year. The consequence of not fulfilling that need is that the jobs will just go to other countries because we can't hire the folks here.

Let me ask you Senator Baldwin's question in a little different way. Do you support the 20 percent cut that's been proposed to your department?

Mr. ACOSTA. Senator, thank you for rephrasing, because I never said that I accepted when I was speaking, or I don't recall saying I accepted when I was speaking with Senator Baldwin. I wrote myself a note when the budget, the skinny budget came out, and it was a quote from the OMB director. He said, to paraphrase, "we've got \$20 trillion in debt." It's not enough that a program sounds good. A program has to be shown to be good. I wrote myself that note because, if confirmed as Secretary of Labor, one of the things that I want to do—and I forget which of your colleagues had great data, but I want to go through these programs and compile the data, because for a lot of these programs I believe the rate of return on investment of taxpayer dollars is quite significant and would pay for itself very readily in money saved and taxes paid by the fact that individuals have jobs.

I readily embrace that as part of the job, and if confirmed, I'm certainly going to speak up and present all that information and advocate.

Senator MURPHY. You'll find an abundance of programs that are underfunded that will allow you to make that case.

Last, I appreciate the number of times in which you've made references to the intersection between the Department of Education and the Department of Labor. The fact of the matter is, as Senator Alexander pointed out, most of the workforce training in this country is funded by the Department of Education.

You and I had the chance to talk in my office about the migration of public dollars away from not-for-profit education to for-profit education and really the stunning lack of results we're getting from for-profit job training programs. One-third of for-profit graduates are today making less than a minimum wage over the course of a year. Twelve percent of students are attending for-profit schools, but 36 percent of students who have loan defaults today come from those for-profit schools.

I know you've thought about this in the context of your work in graduate education in Florida. Shouldn't there be a role for the Federal Government to ask more of all centers of job training, not just the ones you fund but of colleges as well, and demand results, results that we're not getting today from a lot of these for-profit operations?

Mr. ACOSTA. Senator, I have thought of it in the context of law. In law schools, the accrediting agencies are looking more for results. It's less about the input and more about the output. What is the bar passage rate? What is the job rate? What you are seeing is that some of the for-profit law schools are facing challenges and have faced challenges with the Department of Education because they haven't—because the results are not necessarily on par.

To the extent that these are—well, I don't want to go beyond—to the extent that these are Department of Labor programs, I certainly would want to see the results and the metrics to make sure that it is being done appropriately.

Senator MURPHY. Thank you, Mr. Chairman.

The CHAIRMAN. Thanks, Senator Murphy.

Senator Enzi.

#### STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman.

Thank you, Mr. Acosta, for being willing to go through this process and serve. You have a tremendous amount of background. I have a number of areas that I'm interested in. The Senator from New Hampshire, of course, mentioned Job Corps, and she was the next-to-the-last State to finally have one Job Corps center. We were the last State to have one Job Corps center, and ours is in the middle of a reservation inhabited by two warring tribes, with high unemployment. They're working together to get kids into this Job Corps, and it's making a huge difference. They're doing energy industry training, and that's heavy equipment and mechanics and welding and other things that are tied to the economy, so their job placement is tremendous. I'm hoping that you'll take a look at that.

Another pet thing that she happened to mention was the OSHA inspectors. Something that we keep overlooking is the VPP program where we allow big companies to hire an inspector, a trained inspector to come in and look at their business, and if there's anything the matter, they have to fix it immediately. If they do that, they continue to be a VPP company. There isn't any provision for the small companies, though. I've suggested that the small companies ought to be able to hire an expert for their particular type of business.

One of the high places for injuries is in the printing industry. If all the newspapers in Wyoming went together and hired somebody, they would really like to be able to have somebody come in and inspect their premises, and if there's anything that's found wrong they fix it right away, and then they still get to be a part of this program. I hope that you'll take a look at that.

She also mentioned the sub-minimum wage. Senator Harkin and I worked on that for years while I was the chairman of this committee. We knew that the purpose of that was to be able to get an evaluation for people that haven't been evaluated so they could find

their place in the workforce. It was not intended to be a lifetime sub-minimum wage. We tried to do some things to eliminate that possibility and get people who are trained into the workforce.

Are there any of those three things that you'd like to comment on?

Mr. ACOSTA. Senator, thank you. I will gladly followup on the programs that you have mentioned. It's important that we think outside the box and that we—on the private enforcement matter, I would just say I think there can be a role for that, but we need to ensure that it's under appropriate guidelines.

Senator ENZI. OK. Thank you.

At the start of the Obama administration, the Department of Labor's Wage and Hour Division ended the longstanding practice of providing opinion letters but answered questions about the specific applications of the labor laws. These letters were made public and they were a useful tool for employers and employees alike who were trying to understand the law. A typical administration issued dozens of these letters each year. The last administration, though, replaced opinion letters with administrator's interpretations that only give broad opinions on a subject chosen by the agency, leaving many specific details unanswered. They only issued a total of seven interpretations during the entire Obama administration. Many employers and employees who were trying to comply with complex labor and hour laws and regulations and who want to be in compliance would like to see a return to the opinion letter system.

Will you commit to restoring the most robust and interactive compliance assistance system so folks can spend less time trying to decipher the law and more time complying with the law and growing successful businesses and creating new jobs?

Mr. ACOSTA. Senator, there's a value to opinion letters, and I think the value comes from the fact that they're grounded in a specific set of facts and not in broad legal premises. I see no reason why I would not encourage opinion letters.

Senator ENZI. Thank you. One of the innovations we're seeing right now is the on-demand economy, the Uber, the Lyft, the Air BNB and other services where users can connect to goods and services more directly through an app on their phone or through a Web site.

What kind of information or data do we need to ensure that we properly understand that segment of the economy? Do you think the Bureau of Labor Statistics is able to capture that information?

Mr. ACOSTA. Senator, I do not know if the Bureau of Labor Statistics is capturing that information. I think that's a very important question and one that I will followup on if confirmed.

Senator ENZI. Thank you. I have some other questions. I'll submit them. Thank you.

The CHAIRMAN. Thank you, Senator Enzi.

Senator Kaine.

#### STATEMENT OF SENATOR KAINE

Senator KAINE. Thank you, Mr. Chairman.

Thanks, Dean Acosta. I appreciated our visit in your office and appreciate your public service.

The committee needs to ask about, and you're entitled to respond to, an article that appeared in the *Washington Post* online version last night and this morning, and I'm just going to read the opening to it. I'm going to ask you some questions because you deserve an opportunity to address it.

"Labor nominee Acosta Cut Deal with Billionaire Guilty in Sex Abuse Case." Just the first three paragraphs, and then I'll introduce the article into the record.

"There was once a time before the investigations, before the sexual abuse conviction, when rich and famous men loved to hang around with Jeffrey Epstein, a billionaire money manager who loved to party. They visited his mansion in Palm Beach, FL. They flew on his jet to join him at his private estate on the Caribbean island of Little St. James. They even joked about his taste in younger women. President Trump called Epstein a terrific guy back in 2000, saying that 'he's a lot of fun to be with. It's even said that he likes beautiful women as much as I do, and many of them were on the younger side.'"

"Now Trump is on a witness list in a Florida court battle over how Federal prosecutors handled allegations that Epstein, 64, sexually abused more than 40 minor girls, most of whom were between the ages of 13 and 17. The lawsuit questions why Trump's nominee for Labor Secretary, former Miami U.S. attorney Alexander Acosta, whose confirmation hearing is scheduled to be on Wednesday, cut a non-prosecution deal with Epstein a decade ago rather than pursuing a Federal indictment that Acosta's staff had advocated."

I'd like to introduce the article for the record, Mr. Chairman.

The CHAIRMAN. It will be introduced.

[The information referred to may be found in Additional Material.]

Senator KAINE. I'd like to ask you about this. First, a couple of questions. My understanding is that there is a pending civil lawsuit filed by a couple of the victims in that case seeking to argue that they should have been given notice prior to the plea deal being entered into. Is that your understanding as well?

Mr. ACOSTA. My understanding is that there is a pending civil lawsuit. The Department of Justice has defended the actions of the office in that matter under both President Bush and President Obama's administrations.

Senator KAINE. The opening that I read suggests that you decided as U.S. attorney to cut a non-prosecution deal, that part of the decision was that that non-prosecution deal be held private, not appear in the public record, and there's an allegation that I just read that you did not pursue a Federal indictment even though your staff had advocated that you do so. Is that accurate?

Mr. ACOSTA. That is not accurate. Let me address that one of the difficulties with matters before the Department of Justice is that the Department of Justice does not litigate in the public record or in the media and litigates in court. Let me set forth some facts.

This matter was originally a State case. It was presented by the State attorney to the grand jury in Palm Beach County. The grand jury in Palm Beach County recommended a single count of sollicita-

tion not involving minors, I believe, and that would have resulted in zero jail time, zero registration as a sexual offender, and zero restitution for the victims in this case.

The matter was then presented to the U.S. attorney's office. It is highly unusual, and as I was speaking to some of your colleagues that have been involved in prosecutions, they mentioned that they don't know of any cases personally where a U.S. attorney becomes involved in a matter after it has already gone to a grand jury at the State level.

In this case we deemed it necessary to become involved, and we early on had discussions within the office, and we decided that a sentence or—how shall I put this—that Mr. Epstein should plead guilty to 2 years, register as a sex offender, and concede liability so the victims could get restitution. If that were done, the Federal interest would be satisfied and we would defer to the State. That was very early on in the case.

I say that because the article goes on to talk about a view that the U.S. attorney's office was not aggressive in this matter.

Senator Kaine. Can I read one other statement from the article, "Federal prosecutors detailed their findings in an 82-page prosecution memo and a 53-page indictment, but Epstein was never indicted."

And then there's a quote, "The agreement you described will not be made part of any public record, the deal between Epstein and Acosta says." The document was unsealed as part of the civil suit in 2015.

The CHAIRMAN. I'm going to give you, Senator, time to ask your question and the nominee time to answer the question, even though it goes over the 5 minutes.

Senator Kaine. Thank you.

Mr. Acosta. Senator, again to address your question, I can't discuss the details of the case, but let me take it generally. It is pretty typical in a prosecution for an indictment, a draft indictment, to be written. That doesn't necessarily mean that that draft indictment is filed because that draft indictment does not consider often the strength of the underlying case.

As part of any plea, it is not unusual to have an indictment that says these are all the places we can go, yet at the end of the day, based on the evidence, professionals within a prosecutor's office decide that a plea that guarantees that someone goes to jail, that guarantees that someone register generally, and that guarantees other outcomes is a good thing.

Senator Kaine. Was that a consensus decision in your office?

Mr. Acosta. It was a broadly held decision, yes.

Senator Kaine. I'm over my time, Mr. Chairman. I may come back to this in a second round. Thank you.

The CHAIRMAN. OK. Do you feel like you've had time to sufficiently answer?

Mr. Acosta. Mr. Chairman, I think I have.

The CHAIRMAN. We can come back to it if you'd like to.

Senator Murkowski, thank you for waiting.

## STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

Thank you, Mr. Acosta, for the time that you gave me in my office a week or so ago.

The issue of Job Corps has been raised by a couple of my colleagues, and we had an opportunity also to speak about that, and I've indicated to you that I think the Job Corps that we have in Alaska has been successful. We have seen good support in that those who graduate are actually finding jobs in the area that they're trained for. I noticed that the President's skinny budget doesn't really look as favorably on Job Corps as I might or as Senator Enzi might.

I would ask you, you indicated that evaluating the Job Corps centers not by the percent of graduates but by the percent of students who get jobs for which they're trained is something that you would be looking to, and I would again urge you in that vein as you're looking at Job Corps and other job training.

Mr. ACOSTA. Understood, Senator.

Senator MURKOWSKI. Let me bring up the issue of our fisheries and the seasonal employment aspect of it. As we have discussed, we have a limited labor pool in Alaska made more complicated and difficult because of the very compressed season in the summer where our fisheries are going full tilt, and a reality that for us to be able to meet the immediacy of the demand for that labor pool it's been important to rely on these H2B visas.

What we have seen, unfortunately, is that we've got a processing bottleneck that has been left unresolved. Our processors have been in a situation where they're not able to buy fish from the fishermen. That ripple-back effect is really very, very detrimental to our seafood industry.

Current H2B regulations State employers cannot submit applications for H2Bs prior to 90 days before the first date of employment. Then the number of workers that have requested each application are counted against that cap. What we see is, because Alaska's fishing season is later, that cap is used up by the time our employers and those in the industry are requesting their H2B visas. Add that to the slow processing times and it has really been complicated and very, very difficult.

I would just urge you, as you review the situation with the H2B visas, I would urge that you seek permanent solutions to this. We recognize that there are perhaps some administrative remedies that could be made immediately that could help States like Alaska and others that face this same seasonal aspect to our labor force but later in the season. I would just ask this morning if you will commit to review the way that these semi-annual caps are structured that really leave Alaska's fish processors at a clear disadvantage simply due to the timing of their season. Whether it's quarterly caps rather than halves, maybe that is the fix, but I would ask that you not only look at that but also commit to working with me to ensure that we have more timely processing of these H2B applications.

We also had an opportunity to discuss the unused worker applications and the prospect of being able to return those to the avail-

able pool. Whether or not there's an audit of that to determine how much is out there, again a commitment that you will be working with us, because we've got a situation where if we can't get the workers, the fishermen can't fish, the tender stock tendering, the dollars that pass over at the fuel dock stops, the welding shops aren't working, the grocery stores aren't working, the gear stores aren't working. Everything shuts down in a very small economy.

Can you speak to where we are with your view on these visas?

Mr. ACOSTA. Senator, I am happy to commit to work with you on all the issues you raised. I have a concern, which is what you articulated, because your local economy in Alaska is dependent on these workers, and if you're out of cycle, that is not the fault—that is not your fault.

Senator MURKOWSKI. Right.

Mr. ACOSTA. You have my commitment to look and understand why this hasn't been adjusted and if possible to find an appropriate solution.

Senator MURKOWSKI. I thank you for that. I would also urge that this be placed as a very high and an immediate priority——

Mr. ACOSTA. Absolutely.

Senator MURKOWSKI [continuing]. Because of the timing that we are up against currently.

Mr. ACOSTA. I fully understand, and I'm glad to do that.

Senator MURKOWSKI. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Franken.

#### STATEMENT OF SENATOR FRANKEN

Senator FRANKEN. Thank you, Mr. Chairman.

Mr. Acosta, thank you for coming to my office for a visit. We talked a lot about workforce training, which I plan to get to in a moment. But now I want to talk about pensions.

If you're confirmed, you'll be the leading Federal official charged with protecting the pensions of more than 10 million Americans. Among those are 400,000 Central States members across the country, including 20,000 in Minnesota. The pension fund faces insolvency and could run out of money in less than a decade.

Last December I spoke with over 300 retirees in Minnesota. These are middle-class workers, warehouse workers, truck drivers and other demanding blue-collar jobs. They are very worried about what will happen if Central States goes insolvent and their pensions are slashed. Many of them are disabled or too elderly to return to work. If this looming crisis isn't addressed, these workers could lose their homes, their ability to pay for prescription drugs, and the ability to put food on the table.

If confirmed as Secretary of Labor, you'll be the chair of the Pension Benefit Guaranty Corporation, which ensures pension funds like Central States. Based on current projections, PBGC Multiemployer Fund may actually run out of money before the Central States plan runs out of money. That's two major insolvencies totaling nearly \$60 billion. If you're confirmed, that means one of the largest pension crises in American history could land on your desk.

Yes or no, have you or the Trump administration proposed a plan to make the PBGC's Multiemployer Pension Insurance Fund solvent?

Mr. ACOSTA. I have not proposed a plan. I have not seen a plan that's been proposed that has worked in the past decade.

Senator FRANKEN. OK. What about a plan to help the Central States fund?

Mr. ACOSTA. Again, Senator, I have not proposed a plan.

Senator FRANKEN. OK. How about this? Yes or no, will you commit to ensuring that no one will have their pension benefits cut from what they're receiving right now?

Mr. ACOSTA. Senator, this is an issue that this Congress has been working on for years, that the prior administration tried to address and had difficulty addressing. I wish I could commit to that. That has a \$60 billion price tag, as you mentioned, and if you expand it further to include city and State pension funds, you're talking about an approximately \$2 trillion price tag.

This is a fundamental issue that we've got to think about, and it's not just the executive branch but the executive branch working with Congress, because these workers worked, they have expectations. I fully understand that. I get it. I also understand that this is an issue that has not yet been solved, and if I could come up with a solution right on the spot, I wish I could.

Senator FRANKEN. Thank you. During his campaign, President Trump said that he would help working Americans. We have a situation where hundreds of thousands of these workers or retirees may lose their pensions. There are a number of ways this could be paid for and we could fulfill the promise that was made to these workers. We should raise the funds needed to support these workers by closing the carried interest loophole that benefits Wall Street and private equity managers. By closing this loophole, which even President Trump wants to get rid of, we would raise more than enough money to fix the Central States fund, and I just would urge that.

I'll move on to workforce development. Last Friday during a press conference with Germany's Chancellor Angela Merkel, the President said,

"Germany has done an incredible job training the employees and future employees and employing its manufacturing and industrial workforce. It's crucial that we provide our American workers with a really great employment outlook."

In this case, I completely agree with the President.

I see I'm getting down to my time, so let's just kind of review what we talked about. Will you, if you're confirmed, work with me on making sure that we follow some of Germany's and Switzerland's models and that we do focus—and we talked about some of the funding cuts. Will you work with me to make sure that we have a robust plan to train our workers for the jobs of the present and the future?

Mr. ACOSTA. We discussed it during our meeting, and I will recommit to working with you on that, yes.

Senator FRANKEN. Thank you.

Thank you, Mr. Chairman.



The CHAIRMAN. Thank you, Senator Franken. We'll have time for a second round if you want to follow that up.  
 Senator Paul.

STATEMENT OF SENATOR PAUL

Senator PAUL. Congratulations, Mr. Acosta, on your nomination. As you know, we're in a big, huge national debate over what to do with healthcare, how to fix healthcare, and there is an aspect of it that may cross your desk and that you can actually participate in.

The Chairman and others have mentioned how really the biggest problem we have is in the individual market. It's about 11 million people, maybe another 10 or 20 million people who don't have insurance that might get individual market. The problem with the individual market is it's a crummy place to be. You're kind of by yourself hanging out there. If you get sick, you're worried about your prices rising, et cetera. It's better to be in a group plan.

If you had your choice to be in the individual market or be in a group plan, you'd rather be in a group plan, which gets to the Department of Labor. The Department of Labor gets to approve—let's see if I can quote it here—whether an association, a health association, ARISA group plans, qualify as a health plan under single large cap. The definition is they have to be bound together by a commonality of interest.

I would think that gives a significant degree of latitude. I'm not a lawyer and I haven't read the whole statute, but my encouragement is to get really involved with this because imagine this: Imagine that the AARP, which has over 30 million members, what if they formed a health association and they had one person negotiating with the insurance company? All of a sudden, it's 33 million people negotiating instead of you and your wife. This could really change the whole insurance market. It might be changed simply by having someone at the Department of Labor say that everybody in the AARP has a commonality of interest.

This is one of those things where the law may not even need to be changed but we could expand health associations simply by having someone there who says, "gosh, what a great idea this would be." I just wanted to bring it to your attention. I don't expect you to have a full-blown answer on this, but I would love it if you would assign someone to look into it and that really within a month of being approved I hope somebody can come back to us and talk to my office and anybody else interested about how we can expand these health associations and maybe announce it so everybody knows there are State associations.

Many of them—like I was at the Chamber recently, and they have 2,000 members. I'd like to see all of the Chambers in the whole country get one buying representative, and then you have this enormous leverage. It's a whole game-changer in the marketplace, and there's no mandate, there's no law, there's no subsidy, there's nothing other than enabling people to organize, similar to the prospect of what labor did. When labor wanted to organize to have leverage against management, they organized. Consumers ought to be able to organize, and anything we can do or you can do to help that, I would appreciate it. If you'd like to make a comment, that would be great too.

Mr. ACOSTA. Senator, let me just agree to, commit to that. The timeline of 30 days is very reasonable.

The CHAIRMAN. Thanks, Senator Paul.

We have time for additional questions if you'd like to. Senator Enzi, do you have any additional questions?

Senator ENZI. I don't.

The CHAIRMAN. Senator Murray.

Senator MURRAY. I do. Thank you very much.

Mr. Acosta, thank you. Women in this country earn about 80 cents on the dollar of what men earn, resulting in a gap of nearly \$10,470 each year. This is true actually across professions, ages, and education levels, and the gap in pay is far worse for women of color. The marketplace alone will not fix this problem.

Do you believe there is a pay gap? If so, do you agree that it hurts women and families?

Mr. ACOSTA. Senator, I have seen data that reflects the statement that you made, and to the extent that that pay gap is there, it shouldn't be.

Senator MURRAY. What steps, if you're confirmed, will you take as Labor Secretary to address that pay discrimination?

Mr. ACOSTA. Senator, certainly gender discrimination, which includes pay discrimination, should not occur. I know that there is a Women's Bureau within the Department of Labor, and I certainly would as a first instance consult them and charge them with looking at this issue.

Senator MURRAY. Will you commit to maintaining the budget for that Women's Bureau?

Mr. ACOSTA. Senator, ultimately I make recommendations as to the budget. The recommendations go to OMB. Ultimately they are issued by the President and decided by this Congress. I cannot make a commitment as to what the budget may or may not look like at the end of the day. I can only talk for my own views and recommendations.

Senator MURRAY. Do you think it should be a priority?

Mr. ACOSTA. I certainly do think it's important to have an office—

Senator MURRAY. As Secretary, will you fight for keeping that, or—

Mr. ACOSTA. It's important to have an office within the Department of Labor that focuses on women's issues. I know that there is a lot of focus on women entrepreneurship as well that's very important, and I am happy to look at that closely and try to make sure that that is available.

Senator MURRAY. Will that be a priority for you?

Mr. ACOSTA. Senator, I can certainly say—I hesitate with the word "priority" because if everything becomes a priority, then things are no longer priorities. I can certainly say it is a priority. We talk about small businesses, and women running small businesses is a great thing, and that's something the Department of Labor should focus on and encourage.

Senator MURRAY. OK.

Mr. ACOSTA. Certainly I can say that that would be a priority.

Senator MURRAY. I appreciate that. I worry because your answer was you look at it, you make recommendations, then OMB, all this. Either you as Secretary say this is a priority for me or not.

Mr. ACOSTA. I'm happy to say it's a priority. I believe in a unitary executive, and so I don't think any Cabinet secretary can make commitments because ultimately we have a boss.

Senator MURRAY. That's what worries me. I would just say that you answered that by saying you would go to the Women's Bureau to give your advice on this. If it's not there, that's going to be a problem.

Let me go to another question. It's one about an issue that happened in 2004, and I want to go back and have you have a chance to answer this, because just days before the presidential election back in 2004 you made a controversial decision to weigh in on an Ohio case about voting rights and access. That was a departure from standard practice of the Department of Justice so close to an election, and you wrote to an Ohio judge saying that laws like Ohio's, which allowed one voter to challenge another, helped election officials enforce the law.

At the time you sent the letter that the Ohio Republican Party had announced plans to use the law to place 3,500 challengers in polling places around the State on election day. Experts testified a disproportionate number of challengers were to be placed in predominantly African American precincts. You wrote the letter even though the Justice Department had no role in this case. The Justice Department was not a party to the case, and it had not filed a motion to intervene.

Mr. Acosta, you involved the Department of Justice in a case in which it had no role days before an election and with full knowledge that the law was going to be used to mount challenges in ways that suppressed the vote of African Americans in the State where the electoral outcome determined the outcome of the election. I wanted to ask you if you regret the decision to send that letter in 2004.

The CHAIRMAN. Mr. Acosta, the time is up, but you may take whatever time you need to answer the question.

Mr. ACOSTA. Senator, let me first start by—sorry, I should have brought glasses. There is a sentence that is very important from that letter, and you paraphrased it.

“Thus, a challenged statute permitting objections based on United States citizenship, residency, precinct residency, and legal voting age, like those at issue here, are not subject to facial as opposed to as-applied challenges under the Act because these qualifications are not tied to race.”

I would say, first, we provided amicus information in part because the Ohio statute, as I recall, did not have a provisional voting requirement, and early on in the letter we say that if you're going to have a challenge statute, you need to have a provisional voting requirement under HAVA, which was enacted by this Congress. It was the first major election where HAVA came into play.

Second, I read that sentence because that sentence was put there with intentionality, and it was put there to make clear that we were not weighing in on how this was being applied in Ohio. We were not taking a position on what was being done in Ohio specifi-

cally. It was on its face these are permitted, but we are not taking a position as applied. We did not take a position as to how this was being applied in Ohio.

Senator MURRAY. OK. That was a very legal answer to a question. In your own words, do you regret sending that letter?

Mr. ACOSTA. Senator, as an attorney for the Department of Justice, sometimes you have to do things that are unpopular but are legally correct. The letter is legally correct. I wish the letter was not interpreted the way it's interpreted, but the letter is legally and substantively correct, and sometimes lawyers have to do what is legally correct.

Senator MURRAY. OK. I'm way over my time, but let me just finish by saying as Secretary of Labor, I want to know if you will—and you don't have to answer it, it's just a concern I have—bow to political pressure, which I have seen under this Trump administration a tremendous amount of political pressure, and you'll have to stand up for workers, and that's why I raise this issue and others, because that will be your job.

Mr. ACOSTA. May I answer, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. ACOSTA. Senator, I've heard that, and I've heard that concern a lot, and let me say this. I'm a lawyer. I've been a prosecutor. I have prosecuted UBS, the international bank, and as a result of that prosecution they changed Swiss law. I prosecuted major drug cartels for 200,000 kilos, the heads of the Cali drug cartel for 200,000 kilos of cocaine. I have been in public service the better part of my professional career, and I've seen pressure, and I don't for a second believe that senior officials would or should bow to inappropriate pressure.

We work for the President. He is our boss. All Cabinet officials, as I believe—in preparation for this hearing I watched Secretary Chao's hearing, and she made the point that we all work for the President and we all will ultimately follow his direction unless we feel that we can't, and if we can't, then we resign, and that's our choice.

Senator MURRAY. Thank you.

The CHAIRMAN. Thank you, Senator Murray.

Senator ENZI.

Senator ENZI. Thank you, Mr. Chairman. I didn't have any questions but Senator Murray stepped on a nerve that I'm very sensitive to, and that's the disparity in women's pay.

I'm interested in the disparity of anybody's pay and know that there's a Federal law that says if you're doing the same job in the same company, you're supposed to be getting the same pay. As I travel around Wyoming, I explain to people that if they're not in those circumstances getting paid the same amount, let me know and I will help them take it to court.

On the other hand, if I have a female engineer working for a coal company making a lot of money, and the guy that runs the meal room makes a lot less money, he doesn't have a case. That's a different job. What we've got to do is get people moving up the ladder to where they're getting paid what they ought to be getting paid.

In this hearing room, one of my favorite hearings was a young lady that wanted to try something non-traditional, and she became

a brick mason. When they started as a brick mason she got to do pavers out on yards and in courtyards and things like that. After she'd done that for a while, she got to build some of the fountains in New York City, and she was so prolific at it that she got to hang the marble on the outside of skyscrapers.

I asked her what her job progression had been through these different things, and I can tell you that hanging marble on multiple stories pays a lot better than a U.S. Senator. That's what we want to have for people.

In Wyoming, we have something called Climb Wyoming, and it's for single moms who want to get into a non-typical job. In Gillette, my hometown, the jobs that they're trained for is a warehouse supervisor or a truck driver. They're amazing people that pick up these skills, and they make more money than some of the men in our community. I got to speak at one of the graduations. It was for the truck drivers, and I was amazed at how much they can make even if because of the family they can only work around town. I think they started at \$18 an hour just around town. If they were able to make day trips out and back and still comply with the needs of their family, it went to \$25. If they were willing to take long-distance trips, it really went up.

When I was at the graduation for them I said, "you can do something that I can't do." They said, "what?" I said, "back up a semi-trailer." That's one of the requirements for it, and they can do that. Women have more concentration than men do. They have more multi-tasking skills than men do. Consequently we ought to be encouraging them into the markets where they make more than the men do, and that's one of the things that I think if you can encourage through Job Corps and the other training sessions, I hope you'll do that, and I'm asking you if you will.

Mr. ACOSTA. Fair enough, Senator. Yes.

Senator ENZI. Thank you.

The CHAIRMAN. Thank you, Senator Enzi.

We'll go to Senator Kaine.

Senator KAINE. Thank you, Mr. Chair.

Dean, I would like to close the loop on the previous discussion. I have a question about the Bureau of Labor Statistics.

I asked you whether the agreement not to prosecute federally in exchange for an agreement on other matters was something that was a consensus within your office, and I think your testimony was that it was the generally held position of your office. I've not been a prosecutor, although I've practiced law.

The CHAIRMAN. It was broadly held—

Senator KAINE. Yes, broadly held position of the office. Thank you.

I want to just read this.

"In 2007, Acosta signed a non-prosecution deal in which he agreed not to pursue Federal charges against Epstein or for women who the government said procured girls for him. In exchange, Epstein agreed to plead guilty to a solicitation charge in State court, accept a 13-month sentence, register as a sex offender, and pay restitution to the victims identified in the Federal investigations. This agreement will not be made part

of any public record”—the deal between Epstein and Acosta says.

What is the reason why a deal of this kind has the specification that it will not be made part of any public record?

Mr. ACOSTA. Senator, I wish I could respond to that. You're asking for—I hesitate not because of concerns but because this is a matter that's pending litigation. Let me try to answer your question—

Senator KAINE. Then maybe you can answer it generally. I understand.

Mr. ACOSTA [continuing]. In a different way. There are times when in negotiating an outcome, there are agreements that are made that are ancillary. What we sought and what we presented at the very beginning was 2-years plus registration, plus individuals being able, victims being able to—

Senator KAINE. Seek restitution.

Mr. ACOSTA [continuing]. Seek restitution. What was obtained was 18 months plus registration, plus individuals being able to—

Senator KAINE. This says 13 months.

Mr. ACOSTA. The agreement called for 18 months. As it was applied by the State of Florida, it ended up being 13 months, which is a separate issue.

Ultimately, there are other provisions that are part of that, and that is part of the give and take of a negotiation.

Senator KAINE. I understand your concern since the matter is still pending, but as a general matter, if something is allowed to be part of the public record, then more people become aware of it. In this case there were allegations that, I guess eventually, somewhat more than three dozen women had been victimized by the individual. If something is allowed to be public, it informs the public and provides opportunities for people to come forward. If something is prohibited from being part of any public record, it has a way of making it more difficult for people to bring forward claims. Isn't that accurate?

Mr. ACOSTA. Senator, something that I think has changed over time is trust of government, and that's relevant to the issue that you raised because there was a time when keeping something—when having something confidential was less of an issue. The public expectation today is that things be very public. If there is something that I have learned or thought about it's how careful someone should be when something is not made public, because often a very positive outcome—again, not talking about this case but generally—a very positive outcome can become a negative outcome not because of a change in the underlying substance but because by something not looking public it is looked at with suspicion.

Senator KAINE. This is a question. The U.S. attorney position is a position of great power, and you're dealing with a lot of people who are in very vulnerable positions. The Secretary of Labor position is a position of great power, and you'll also be responsible for situations when there are a lot of vulnerable people. This is why I've been asking this question. Let me ask one other one.

During the campaign, President Trump often ridiculed the BLS unemployment numbers, calling them “phony” or “a hoax.” Will you

commit to keeping the Bureau of Labor Statistics independent and maintain and defend the integrity of its conclusions and data?

Mr. ACOSTA. Senator, I'll answer your question, but if I could circle back, I just want to make one final point.

Senator KAINE. Mm-hmm.

Mr. ACOSTA. At the end of this case, I received a telephone call from the special agent in charge of the FBI who had been part of this entire process and had been at the meetings and had been involved, and he called to just say congratulations, this was really hard fought and well won. I say that because this truly was a point of pride.

There was a *New York Times* article that was written concurrent to this that said, "But then the United States Attorney's Office in Miami became involved." Initially, the Epstein team was elated Mr. Epstein would avoid prison. Then the U.S. Office became involved, and last summer Mr. Epstein got an ultimatum, "plead guilty to a charge that would require to register him as a sex offender, or the government would charge him with sexual tourism."

Senator KAINE. Since you've added on, then I want to add on. You are aware that Mr. Epstein served that 13 months, he was allowed out during the day. He had to sleep at a county jail, but he was basically allowed to move and go around the community and do whatever he wants, and then that became a subject of significant criticism.

Mr. ACOSTA. I am on record condemning that, and I think that was awful.

Senator KAINE. You would say that was a problem with the way the State administered the State sentence.

Mr. ACOSTA. Yes, and I think it was wrong.

Senator KAINE. OK. How about on the Bureau of Labor Statistics?

Mr. ACOSTA. On the Bureau of Labor Statistics, briefly, the Bureau of Labor Statistics has kept statistics for decades, and it has a procedure. It's a transparent procedure that makes clear how they calculate, that publishes for public comment any changes that may take place, and that procedure is very important because BLS keeps data that is used not just for today but for the future, and that process is very important.

Senator KAINE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thanks, Senator Kaine.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

Mr. Acosta, so far you've refused to answer my questions, hiding behind an Executive order that President Trump issued asking agency heads to review pending regulations. I'm not asking you how you will respond to President Trump's Executive order. I'm asking you about what your priorities will be if you're confirmed as Secretary of Labor. You'll be called on for your judgment, and hard-working Americans want to know what your values are, what it is that you prioritize.

So far, you've said you can't commit to enforcing a rule to protect 2.3 million Americans from exposure to lethal, cancer-causing silica, and you won't commit to appeal an injunction to the Labor De-

partment's overtime rule that would give 4.2 million Americans a \$1.5 billion raise in a single year.

Let me try a third one. Let's see if you'll protect workers saving for their retirements from financial advisors who would cheat them. On April 10, a Labor Department rule is set to go into effect that would require advisors to recommend retirement products that are in the customer's best interest instead of products that give advisors the highest commissions or the fanciest prizes.

Those conflicts of interest now cost Americans \$17 billion every year. President Trump has said he is currently working on a 60-day delay of the April 10 implementation date.

My question is, if you are confirmed before this delay is finalized, will you promise to stop it?

Mr. ACOSTA. Senator, there is an executive action that addresses with specificity the fiduciary rule, and it has asked the Department of Labor to look at the rule and to assess specific questions. Will the rule reduce the investment options available to investors I believe was one of them. Will the rule increase litigation? Will the rule financially impact retiree investors? The executive action, as I recall, directs the Secretary of Labor and the Department of Labor to repeal or revise the fiduciary rule if any of the criteria laid out in that Executive order is found. That criteria really regulates and determines the Department of Labor's approach to the fiduciary rule.

Senator WARREN. That's the question I'm asking you. We know, for example, that a 60-day delay is estimated to cost Americans about \$3.7 billion that they're just going to get cheated out of by unscrupulous retirement counselors, and that's money they'll never get back. That is gone to them.

That's the question I'm trying to ask, about where your values lie, how you see what this retirement rule does, how committed you are to protecting the American investor here, and retirees, so they have a chance to retire with some dignity.

Mr. ACOSTA. Senator, I don't have access to the specific numbers that you have, but if the question is, do I think it's important to protect the American retiree?, absolutely. I understand that, particularly with the demographic changes that we're seeing, retirees are shifting from 401(k)'s to IRAs, and that the protections under IRAs—

Senator WARREN. Sir, let me stop you there. You say you think it's important to protect—because the Chairman rightly will catch me for being over time. You think it's important to protect retirees. It's important to protect retirees. We've got a rule here that will protect retirees, documented, to the terms of \$17 billion a year. I just want to know generally, do you support this rule? Do you think this rule is a good idea?

Mr. ACOSTA. Senator, with respect, the rule goes far beyond simply addressing the standard of conduct that investment—

Senator WARREN. How does it go beyond addressing the standard of conduct of investment advisors? I've read this rule. This is about the standard of conduct, and it says the standard of conduct is an investment advisor can no longer recommend products that are going to earn a whole lot more money for the investment advisor at the cost of giving a worse product to the person, the retiree, the



investor. That's all it's about. That is what it's about, is that conduct.

That's the question I'm asking. On behalf of millions of retirees around this country, do you support this rule?

Mr. ACOSTA. Senator, with respect, there is an executive action that directs how the Department of Labor will approach this rule. If I'm confirmed as Secretary of Labor, I believe and support my following Executive orders of the President, who would be my boss.

Senator WARREN. I have to say, Mr. Acosta, this has really been frustrating. You have dodged every one of my questions. None of these were trick questions. I asked you exactly these questions when you were in my office 2 weeks ago, and you said in all three cases not that you would hide behind an Executive order from Trump; you said you would get me answers to these.

I understand that you may not want to answer my questions, but there are about 150 million American workers who are pretty interested in the answers to these questions. These are questions that determine whether or not they can go to work every day without worrying about getting lung cancer at their workplace, whether they're going to be paid fairly for their work so they'll have enough money to put food on the table and send their kids to college, and whether after a lifetime of back-breaking work they're going to have a chance to retire with some dignity.

If you can't give me straight answers on your views on this, not hide behind an Executive order but your views on this and commit to stand up for workers on these obvious and very important issues, then I don't have any confidence you're the right person for this job.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Acosta, we'll go to Senator Murray, but I wouldn't have any confidence in you for the job if you did answer the question that way, because I have a completely different view than Senator Warren does. The fiduciary rule deprives millions of Americans of an opportunity for advice. We have a different point of view, and I'll ask you this question: Have you been asked, have you been directed by the President, should you be confirmed, to review regulations once you're Secretary of Labor?

Mr. ACOSTA. Senator, I have been directed pursuant to the executive action.

The CHAIRMAN. Are you the Secretary of Labor yet?

Mr. ACOSTA. I am not, sir.

The CHAIRMAN. No. Would it be presumptuous of you to announce—I wonder how many regulations you may be reviewing as a result of that direction. Do you have any idea?

Mr. ACOSTA. Senator, I do not because I haven't spoken to individuals at the Department of Labor about that issue because I'm not yet confirmed.

The CHAIRMAN. Under the fiduciary rule you've got specific directions about how to conduct the review should you be confirmed.

Mr. ACOSTA. That is correct.

The CHAIRMAN. If you are confirmed, you will conduct the review according to the directions of the President of the United States, and then you'll try to deliver a fair opinion. Is that correct?

Mr. ACOSTA. That is correct.

The CHAIRMAN. I might not like it, and the Senator from Massachusetts may not like it. I hope she doesn't like it because I hope you come down on the side that I am. It's thoroughly reasonable for you to review a regulation according to the President of the United States' direction after you're Secretary of Labor. That's my own opinion.

Senator Murray.

Senator MURRAY. Mr. Chairman, let me just say that it's critical that workers have a true advocate in the Department of Labor, a Secretary of Labor. I have some questions and I know some of my other colleagues do as well. I hope we get clear, thorough responses on that.

Mr. Chairman, I do want to ask unanimous consent to enter 15 letters from 105 organizations expressing concerns with Mr. Acosta's nomination to lead the Department of Labor into the record.

The CHAIRMAN. They will be included.

[The information referred to may be found in Additional Material.]

The CHAIRMAN. I will ask consent to introduce 19 letters of support—

[Laughter.]

Senator MURRAY. Does that mean I trumped you?

[Laughter.]

The CHAIRMAN. Nineteen letters of support representing 85 groups, business groups, including some labor unions, in support of your nomination.

[The information referred to may be found in Additional Material.]

We've had a good, thorough opportunity to ask questions. Are there further questions? Senator Kaine? Senator Warren? Senator Murray?

[No response.]

I have one question, then we'll conclude the hearing. Thank you for being here.

I talked at the very beginning about Tom Friedman's book, which I found really very good in trying to capture a lot of the conditions that probably surrounded the last election, which is the head-spinning acceleration of so many different forces, especially causing American workers to not be able to fit into the workplace.

One area where American workers are still able to fit into the workplace is our franchisees. There are hundreds of thousands. The number is about 700,000 Americans who have franchises. In other words, they have an opportunity, typically in their hometown, to take a restaurant franchise or some other franchise, and typically work 12 hours a day for many years, and often it's a family working that long for many years, and it's a way that you can still live in your own community and work in your own community and be reasonably independent and move your way into the middle class.

In my way of thinking, the prior administration's Joint Employer definition that was first established by the National Labor Relations Board begins to up-end the whole concept of franchising and to threaten it, making it more likely that a large company would decide not to have franchises but to just own all the stores itself.

A restaurant company that had 800 restaurants, for example, instead of having 700 franchises might just say, under the broad Joint Employer definition that's in the NLRB and that seems to be spreading in the Department of Labor, it makes more sense for the parent company to own it, depriving hundreds of thousands of Americans to be a franchise owner.

Let me ask you these questions. In order to be treated as the employer of an employee, shouldn't the business person have direct and immediate control over an employee?

Mr. ACOSTA. That is one of the traditional criteria, Senator.

The CHAIRMAN. Do you believe that indirect control or even unexercised potential to control working conditions could make a franchisor and a franchisee joint employers?

Mr. ACOSTA. That would be an untraditional approach.

The CHAIRMAN. Do you think that the person who hires, fires, pays, sets work hours, and issues directions to employees should be considered the employer?

Mr. ACOSTA. I'm sorry, that hires, fires—

The CHAIRMAN. Hires, fires, pays, sets work hours, and issues directions—

Mr. ACOSTA. Yes. That is—

The CHAIRMAN [continuing]. To employees should be considered the employer?

Mr. ACOSTA. That is the usual approach, Senator.

The CHAIRMAN. Thank you, Mr. Acosta, for your patience and for your answers and for your willingness to subject yourself to a confirmation session. All in all, it went very well. Part of the reason may be your experience, the fact that you've been before the U.S. Senate three times, nominated by the President of the United States, and you've been confirmed by the Senate. I have no doubt that you will be this time. I look forward to working with you as the Secretary of America's workforce at a time when many Americans are trying to find a way to fit into work, and hopefully working together with Congress we can make that easier.

This committee has a broad array of views, but many times in the past, very important times, we've been able to take our differences of opinion and come to a consensus such as our law to fix No Child Left Behind, which President Obama called a Christmas miracle, and our 21st Century CURES Act was passed last year, which Senator McConnell called the most important bill of the last Congress.

Maybe some of the most important work we can do during the next couple of years would have to do with helping the American workforce adjust to the head-spinning conditions in which we all find ourselves and fit more easily into the workplace. I know that's a concern of the Senator from Virginia. He's talked to me many times about that. Both of us used to be Governors. We understand that most of that work, much of that work has to be done, as you said in your response to the Senator from Maine, we have to understand what it's like in Culpepper and Nashville before we issue orders from here. Nevertheless, we can have a national interest in it.

If the Senators wish to ask additional questions of our nominee, questions for the record are due by the close of business tomorrow, March 23. For all other matters, the hearing record will remain

open for 10 days. Members may submit additional information for the record within that time.

Thank you very much for being here today.

The committee will stand adjourned.

Mr. ACOSTA. Thank you for the courtesy.

[Additional Material follows.]

## ADDITIONAL MATERIAL

POSITION STATEMENT BY WORKPLACE FAIRNESS—SHARON RUSZ, EXECUTIVE DIRECTOR AND PAULA BRANTNER, SENIOR ADVISOR

As the Senate HELP Committee prepares for the confirmation hearing of Alexander Acosta as Secretary of Labor, Workplace Fairness weighs in on what he must prioritize to be a suitable selection for the post.

There are three points of particular interest to Workplace Fairness and the working people that we serve.

- A Labor Secretary must guard against politicized hiring in the Labor Department.
- A Labor Secretary must aggressively pursue investigation, litigation, and enforcement against employers who violate workers' rights.
- A Labor Secretary must commit to providing comprehensive, up to date, easy to understand information to the public about workers' rights in the workplace and procedures for pursuing remedies.

While Mr. Acosta's positions in the Civil Rights Division at DOJ and NLRB called for him to recognize and protect the rights of minorities and other under-served communities, his involvement politicized hiring at DOJ, and his lack of any real record on workers' rights issues are concerning.

In light of these things, and the many questionable appointments already being made by the Trump administration, Mr. Acosta must assure us that the Department will engage in nonpartisan hiring in order to most effectively pursue its mission. Mr. Acosta must further provide assurances that he will act to protect and advance the rights of workers by aggressively pursuing enforcement actions against employers who take advantage of workers, especially those who are most vulnerable. Immigrants and members of the LGBT community, for example, are already seeing frightening signs of animosity from the Trump administration that have had a chilling effect on the likelihood that these workers will speak up and pursue justice when their employers violate their rights. The Labor Secretary must be sensitive to these concerns and take steps to address them, lest employers be allowed to run roughshod over the most underserved people in the workforce.

The Department of Labor's mission is to promote worker welfare and assure workers' benefits and rights. In order to effectively protect workers and their rights, the Secretary of Labor must also place a high level of importance on continuing to provide workers with comprehensive, accessible information about their rights in the workplace, and transparency about the aims and goals of the Department going forward. It is key to the Department's mission that workers know their rights, and more importantly, know what steps to take to make a complaint when their rights are violated. Under a new presidential administration, workers and workers' advocates must be kept apprised of rules changes, and changes in guidance and enforcement actions. But just as importantly, the Department must continue to provide information about all of the established laws and regulations that it enforces.

With the recent spate of agencies removing large sections of content from their websites, workers and their advocates are concerned. Removing vital legal and procedural information from the Department's website would have a detrimental effect on the enforcement of the laws that protect workers because they may not understand their rights, or know how to seek remedies for employer violations. We must be assured that as Secretary of Labor, Mr. Acosta would recognize the need to keep the people he is charged with protecting informed about their rights, their employers' obligations, and how they can go about making complaints.

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### ABOUT WORKPLACE FAIRNESS

Workplace Fairness is a nonprofit organization that provides information, education and assistance to individual workers and their advocates nationwide and promotes public policies that advance employee rights.

Our goals are that workers and their advocates are educated about workplace rights and options for resolving workplace problems and those policymakers, members of the business community and the public at large view the fair treatment of workers as both good business practice and sound public policy.

Workplace Fairness works toward these goals by:

- Making comprehensive information about workers' rights—free of legal jargon—readily available to workers and to advocates and organizations that assist workers;

- Providing resources to support the work of legal services organizations, community-based organizations, law schools and private attorneys that provide free legal information and services to low-income workers; and
- Presenting the employee perspective in publications, policy debates & public discussion.

The award-winning workplace fairness website, *www.workplacefairness.org*, has newly updated information throughout the site, as part of the web's most comprehensive resource educating workers about their legal rights in the workplace.

[The Washington Post, March 21, 2017]

#### LABOR NOMINEE ACOSTA CUT DEAL WITH BILLIONAIRE GUILTY IN SEX ABUSE CASE

(By Marc Fisher)

There was once a time—before the investigations, before the sexual abuse conviction—when rich and famous men loved to hang around with Jeffrey Epstein, a billionaire money manager who loved to party.

They visited his mansion in Palm Beach, FL. They flew on his jet to join him at his private estate on the Caribbean island of Little Saint James. They even joked about his taste in younger women.

President Trump called Epstein a “terrific guy” back in 2002, saying that, “He’s a lot of fun to be with. It is even said that he likes beautiful women as much as I do, and many of them are *on the younger side*.”

Now, Trump is on the witness list in a Florida court battle over how Federal prosecutors handled allegations that Epstein, 64, sexually abused more than 40 minor girls, most of them between the ages of 13 and 17. The lawsuit questions why Trump’s nominee for labor secretary, former Miami U.S. attorney Alexander Acosta, whose confirmation hearing is scheduled to begin Wednesday, cut a non-prosecution deal with Epstein a decade ago rather than pursuing a Federal indictment that Acosta’s staff had advocated.<sup>1</sup>

Although Epstein’s friends and visitors once included past and future presidents, rock stars, and some of the country’s richest men, he is no longer a social magnet. Epstein pleaded guilty to a Florida State charge of felony solicitation of underage girls in 2008 and served a 13-month jail sentence. Politicians who had accepted his donations, including former New Mexico Governor Bill Richardson and former New York Governor Eliot Spitzer, have scurried to give them back. (Harvard University kept a \$6.5 million gift, saying it was “funding important research” in mathematics.)

But Epstein’s unusually light punishment—he was facing up to a life sentence had he been convicted on Federal charges—has raised questions about how Acosta handled the case.

Former Palm Beach police chief Michael Reiter, whose department conducted the initial investigation into Epstein’s behavior, said in a civil lawsuit deposition that Epstein got off easy.

“That wasn’t an appropriate resolution of this matter,” Reiter said, arguing that the charges leveled against Epstein were “very minor,” compared with what the facts called for. In a letter to parents of Epstein’s victims, Reiter said justice had not been served.

Prosecutors in Acosta’s Miami office who had joined the FBI in the investigation concluded, according to documents produced by the U.S. attorney’s office, that Epstein, working through several female assistants,

“would recruit underage females to travel to his home in Palm Beach to engage in lewd conduct in exchange for money. . . . Some went there as much as 100 times or more. Some of the women’s conduct was limited to performing a topless or nude massage while Mr. Epstein masturbated himself. For other women, the conduct escalated to full sexual intercourse.”

Epstein has a near-legendary reputation in New York financial circles as a money manager who made many millions for his clients. Although he never graduated from college, he taught advanced math at the Dalton School, one of the city’s top private schools, and went on to be a successful trader at Bear Stearns before starting his own firm, J. Epstein & Co., which managed the finances of clients who had a minimum of \$1 billion in assets.

Federal prosecutors detailed their findings in an 82-page prosecution memo and a 53-page indictment, but Epstein was never indicted. In 2007, Acosta signed a non-prosecution deal in which he agreed not to pursue Federal charges against Epstein or four women who the government said procured girls for him. In exchange, Ep-

<sup>1</sup> Read the non-prosecution deal Acosta made with Epstein.

stein agreed to plead guilty to a solicitation charge in State court, accept a 13-month sentence, register as a sex offender and pay restitution to the victims identified in the Federal investigation.

“This agreement will not be made part of any public record,” the deal between Epstein and Acosta says. The document was unsealed by a Federal judge in a civil lawsuit in 2015.

Reiter said in the 2009 deposition that Federal prosecutors in Miami told him, “that typically these kinds of cases with one victim would end up in a 10-year sentence.” Reiter said he was surprised not only by the decision to pull back from prosecuting the case, but also by the light sentence and liberal privileges granted to Epstein during his jail term.

Acosta did not return a call seeking comment. He explained his decision in a “To whom it may concern” letter that he released to news organizations 3 years after the decision:

“The bottom line is this: Mr. Jeffrey Epstein, a billionaire, served time in jail and is now a registered sex offender. He has been required to pay his victims restitution, though restitution clearly cannot compensate for the crime.”

Acosta wrote that the case against Epstein grew stronger over the years because more victims spoke out after Epstein was convicted.

Acosta is Trump’s second nominee to be Secretary of Labor; the first, Andrew Puzder, withdrew last month after Senate Republicans questioned his past employment of an undocumented housekeeper. Support for Acosta seems strong, as some Democrats and union leaders have joined with Senate Republicans in praising the nominee, who has been confirmed for Federal positions three times in the past.

In the 2011 letter explaining his decision in the Epstein case, Acosta said he backed off from pressing charges after “a year-long assault on the prosecution and the prosecutors” by “an army of legal superstars” who represented Epstein, including Harvard Law professor Alan Dershowitz; Kenneth Starr, who as independent counsel led the investigation that brought about President Bill Clinton’s impeachment; and some of the Nation’s most prominent defense attorneys, such as Roy Black, Gerald Lefcourt and Jay Lefkowitz.

“The defense strategy was not limited to legal issues,” Acosta wrote, “Defense counsel investigated individual prosecutors and their families, looking for personal peccadilloes that may provide a basis for disqualification.”

Dershowitz said in an interview that no such effort to rattle the prosecutors ever took place. “That’s just dead wrong,” he said. “I would never participate in anything of that kind. Of course we investigated the witnesses but not Acosta’s deputies. That’s absurd.”

Acosta’s “intention was to indict, and he fought hard and tried to get the best deal he could,” Dershowitz said. “We out-lawyered him.” Epstein did not return a call seeking comment.

Conchita Sarnoff, the author of “TrafficKing,” a book on the Epstein case, said in an interview that Acosta told her a few years after his decision not to prosecute that “he felt incapable of going up against those eight powerful attorneys. He felt his career was at stake.”

In his letter about the decision, Acosta, who has been dean of the law school at Florida International University since 2009, acknowledged that, “some prosecutors felt that we should just go to trial, and at times I felt that frustration myself.” He also complained that Epstein “received highly unusual treatment while in jail,” including being allowed to serve much of his sentence in the county jail rather than a State prison, and being permitted to leave the jail 6 days a week to work at home before returning to jail to sleep.

“The treatment that he received while in State custody undermined the purpose of a jail sentence,” Acosta said.

Dershowitz said Acosta “was very anxious to prosecute” Epstein, but “we persuaded them that they didn’t have enough evidence of interstate transportation” of the underage girls to warrant Federal charges.

But Reiter, the former police chief, said the FBI had evidence “from flight logs or something” that an underage victim “was transported on an aircraft of Mr. Epstein.”

“Some may feel that the prosecution should have been tougher,” Acosta wrote. “Evidence that has come to light since 2007 may encourage that view.” But the prosecutor argued that his office’s investigation allowed State prosecutors to strengthen their charges against Epstein. And Acosta said that those who disagree with his decision “are not the ones who at the time reviewed the evidence available for trial and assessed the likelihood of success.”

The deal Acosta made with Epstein precluded any new Federal prosecution based on offenses he may have committed between 2001 and 2007, but in Florida, Trump is on the witness list in a civil case in which two attorneys accuse Federal prosecutors of having deceived Epstein's victims by failing to inform them that they would not charge Epstein.

Lawyers for the women argue that they had a right under the Federal Crime Victims' Rights Act to know about Acosta's deal with Epstein. They say Acosta sought to keep the deal under wraps to avoid "the intense public criticism that would have resulted from allowing a politically connected billionaire" to escape from Federal prosecution.

Although Trump and Bill Clinton flew on Epstein's plane and visited his homes, neither President has been accused of taking part in the sexual misdeeds. But lawyers for Epstein's victims say Trump nonetheless may have useful information. Trump banned Epstein from his Mar-a-Lago Club in Palm Beach "because Epstein sexually assaulted an underage girl at the club," Bradley Edwards, an attorney who represents three of the young women, said in court documents.

Lawyers involved with the various Epstein cases said there is virtually no chance that the President will be required to testify in a matter in which both sides agree his involvement was tangential.

Trump and Clinton are both among the dozens of names that appeared in a "black book" of Epstein's phone contacts that his houseman, Alfredo Rodriguez, obtained. Rodriguez, who died in 2015, was convicted of obstruction of justice in 2010 after he tried to sell the book for \$50,000 to lawyers representing Epstein's victims. In the book, Rodriguez circled the names of contacts he said were involved in sexual misbehavior at Epstein's properties. There were no circles around the names of Trump, Clinton or other boldfaced names such as former Israeli prime minister Ehud Barak, former British prime minister Tony Blair, and celebrities Mick Jagger, Michael Jackson, David Frost and Jimmy Buffett.

Rodriguez spent 18 months in prison, 5 months longer than Epstein served in jail.

Epstein has continued to move among his homes in New York City, where he owns one of the largest private residences in Manhattan, Palm Beach and the Caribbean.

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LETTERS OF SUPPORT

CORRY & ASSOCIATES,  
DENVER, CO 80204,  
*March 3, 2017.*

Hon. LAMAR ALEXANDER, *Chairman,*  
*U.S. Senate,*  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Senate Office Building,*  
*Washington, DC 20510.*

DEAR MR. CHAIRMAN AND COMMITTEE MEMBERS: This letter is to express strong support for R. Alexander Acosta as Secretary of the U.S. Department of Labor. I know Mr. Acosta on both a professional and personal level.

Mr. Acosta is first-rate nominee to lead the Department. I have been a practicing litigator for over 20 years, politically active, served as Counsel to the U.S. House Judiciary Committee, and graduated from Stanford Law School. In these capacities over decades, I have been acquainted with thousands of bright and accomplished people. Mr. Acosta rises above even the most qualified people for his exceptional brain, combined with a large heart, and unparalleled creativity. There is no person better than Mr. Acosta for this job, and respectfully, he should have a swift hearing and confirmation.

Thank you for your attention to this matter. My office phone is (303) 634-2244 and my e-mail is *Rob@RobCorry.com* if you have further questions or need additional information.

Sincerely,

ROBERT J. CORRY, JR., ESQ.



DELTA INDUSTRIES, INC.,  
 JACKSON, MISSISSIPPI 39215-1292,  
 March 15, 2017.

Hon. MITCH MCCONNELL, *Majority Leader*,  
 U.S. Senate,  
 Washington, DC 20510.

Hon. CHARLES SCHUMER, *Democratic Leader*,  
 U.S. Senate,  
 Washington, DC 20510.

Hon. LAMAR ALEXANDER, *Chairman*,  
 U.S. Senate,  
 Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member*,  
 U.S. Senate,  
 Washington, DC 20510.

DEAR MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER AND SENATORS ALEXANDER AND MURRAY: My name is Dave Robison and I work for Delta Industries located in Jackson, MS. We manufacture and deliver the ready mixed concrete that builds our Nation's heavy highway system and residential and commercial construction, creating jobs and accelerating economic growth. I applaud President Donald Trump's selection of R. Alexander Acosta to head the U.S. Department of Labor.

I support the President's nomination for Labor Secretary because Mr. Acosta knows and has seen first-hand the negative consequences of overregulation and enforcement from the National Labor Relations Board (NLRB), having served as a member. During his tenure on the NLRB, Mr. Acosta drafted more than 125 opinions in which he demonstrated a balanced approach to both employers and employees. It is only fitting that someone with Mr. Acosta's background lead the Labor Department—the agency responsible for ensuring the Nation's labor and safety laws are properly balanced to benefit our Nation's most valuable asset, the American workforce.

Most notably I am confident that Mr. Acosta's nomination will garner bipartisan support. He has been previously confirmed by the U.S. Senate three times with bipartisan support—for the NLRB, as Assistant Attorney General, and as U.S. attorney for the southern district of Florida. Mr. Acosta's nomination to serve as Secretary of Labor should garner the same bipartisan support.

I respectfully ask you to support Mr. Acosta as the next Secretary of Labor so that he can immediately begin helping the American economy get to work.

Sincerely,

DAVE ROBISON,  
 President, Delta Industries, Inc.

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®,  
 WASHINGTON, DC 20006-5395,  
 February 24, 2017.

Hon. LAMAR ALEXANDER, *Chairman*,  
 Hon. PATTY MURRAY, *Ranking Member*,  
 Committee on Health, Education, Labor, and Pensions,  
 U.S. Senate,  
 Washington DC 20510.

Re: IAFF Support of the Nomination for R. Alexander Acosta

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: I am writing to express the strong support of International Association of Fire Fighters, which represents over 304,000 members, for the nomination of Alexander Acosta as the Nation's 27th Secretary of Labor.

On a personal level, I have worked with every Secretary of Labor since John Dunlop in the Ford administration. I believe that Mr. Acosta possesses the appropriate qualifications, experience and temperament to fulfill the obligations and responsibility of the office.

Mr. Acosta is truly an American success story. The son of Cuban immigrants, he has achieved success in multiple governmental positions, the private sector and in academia. While the majority of IAFF members are not covered under the National Labor Relations Act, we are familiar and appreciative of his history of issuing bal-

anced rulings during his service as a commissioner of the National Labor Relations Board.

I first became acquainted with Mr. Acosta when he was the Assistant Attorney General of the Civil Rights Division at the Department of Justice. We had several sensitive issues regarding promotions and hiring issues. Mr. Acosta approached the issues in fair and dispassionate fashion. I was very impressed with his acumen and professionalism.

Subsequently, he built a stellar reputation as the U.S. attorney for southern Florida successfully prosecuting high several profile cases on political corruption, terrorism, drug trafficking and financial crimes. Mr. Acosta had the longest tenure in that capacity since anyone since the early 1970s.

In closing, the IAFF urges your committee to act favorably of the nomination of this eminently qualified nominee and work to ensure the rapid confirmation of R. Alexander Acosta as Secretary of Labor.

Respectfully,

HAROLD A. SCHAITBERGER,  
*General President.*

MILES SAND AND GRAVEL COMPANY,  
PUYALLUP, WA 98372-2516,  
*March 15, 2017.*

Hon. MITCH MCCONNELL, *Majority Leader,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. CHARLES SCHUMER, *Democratic Leader,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. LAMAR ALEXANDER, *Chairman,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER AND SENATORS ALEXANDER AND MURRAY: My name is Jerry Trudeau and I work for Miles Sand and Gravel Company located in Puyallup, WA. We manufacture and deliver the ready mixed concrete that builds our Nation's heavy highway system and residential and commercial construction, creating jobs and accelerating economic growth. I applaud President Donald Trump's selection of R. Alexander Acosta to head the U.S. Department of Labor.

I support the President's nomination for Labor Secretary because Mr. Acosta knows and has seen first-hand the negative consequences of overregulation and enforcement from the National Labor Relations Board (NLRB), having served as a member. During his tenure on the NLRB, Mr. Acosta drafted more than 125 opinions in which he demonstrated a balanced approach to both employers and employees. It is only fitting that someone with Mr. Acosta's background lead the Labor Department—the agency responsible for ensuring the Nation's labor and safety laws are properly balanced to benefit our Nation's most valuable asset, the American workforce.

Most notably I am confident that Mr. Acosta's nomination will garner bipartisan support. He has been previously confirmed by the U.S. Senate three times with bipartisan support—for the NLRB, as Assistant Attorney General, and as U.S. attorney for the southern district of Florida. Mr. Acosta's nomination to serve as Secretary of Labor should garner the same bipartisan support.

I respectfully ask you to support Mr. Acosta as the next Secretary of Labor so that he can immediately begin helping the American economy get to work.

Sincerely,

JERRY TRUDEAU,  
*Vice President and General Manager.*

MMC MATERIALS, INC.,  
RIDGELAND, MS,  
March 15, 2017.

Hon. MITCH MCCONNELL, *Majority Leader*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. CHARLES SCHUMER, *Democratic Leader*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. LAMAR ALEXANDER, *Chairman*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. PATTY MURRAY, *Ranking Member*,  
*U.S. Senate*,  
*Washington, DC 20510*.

DEAR MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER AND SENATORS ALEXANDER AND MURRAY: My name is Stanley Mangum and I work for MMC Materials, Inc. based in Ridgeland, MS, with locations throughout Mississippi. We manufacture and deliver the ready mixed concrete that builds our Nation's heavy highway system and residential and commercial construction, creating jobs and accelerating economic growth. I applaud President Donald Trump's selection of R. Alexander Acosta to head the U.S. Department of Labor.

I support the President's nomination for Labor Secretary because Mr. Acosta knows and has seen first-hand the negative consequences of overregulation and enforcement from the National Labor Relations Board (NLRB), having served as a member. During his tenure on the NLRB, Mr. Acosta drafted more than 125 opinions in which he demonstrated a balanced approach to both employers and employees. It is only fitting that someone with Mr. Acosta's background lead the Labor Department—the agency responsible for ensuring the Nation's labor and safety laws are properly balanced to benefit our Nation's most valuable asset, the American workforce.

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I respectfully ask you to support Mr. Acosta as the next Secretary of Labor so that he can immediately begin helping the American economy get to work.

Sincerely,

STANLEY MANGUM,  
*Vice President*.

NATIONAL COUNCIL OF CHAIN RESTAURANTS (NCCR),  
WASHINGTON, DC 20005,  
March 20, 2017.

Hon. LAMAR ALEXANDER, *Chairman*,  
*Committee on Health, Education, Labor, and Pensions*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. PATTY MURRAY, *Ranking Member*,  
*Committee on Health, Education, Labor, and Pensions*,  
*U.S. Senate*,  
*Washington, DC 20510*.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the National Council of Chain Restaurants, I am writing in support of President Donald Trump's nomination of Alexander Acosta to be Secretary of Labor.

Mr. Acosta has served with distinction in important policy and leadership roles over the course of his career, including his current service as Dean of the Florida International University College of Law. In addition to his strong professional and academic credentials, Mr. Acosta has also consistently demonstrated a commitment to public service as a member of the National Labor Relations Board, as an Assist-

ant Attorney General in the Department of Justice and as U.S. attorney for the southern district of Florida.

As you know, the U.S. Department of Labor has an important mission and broad policy portfolio which affects a wide array of stakeholders, including chain restaurant businesses and their highly valued employees. Mr. Acosta understands the challenges faced by small businesses around the country in navigating an oftentimes complex web of statutory and regulatory requirements imposed by the Federal Government.

Once confirmed, Mr. Acosta will be an advocate for Federal policy at the U.S. Labor Department which benefits all stakeholders—including chain restaurants, small businesses, and most importantly, their millions of team members in local communities around the United States.

We look forward to the March 22 HELP Committee hearing which will review Mr. Acosta's qualifications and then to prompt Senate consideration of this important nomination. Thank you for your consideration of these views.

Sincerely,

ROBERT J. GREEN,  
*Executive Director.*

NATIONAL READY MIXED CONCRETE ASSOCIATION (NRMCA),  
SILVER SPRING, MD 20910,  
*March 15, 2017.*

Hon. MITCH MCCONNELL, *Majority Leader,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. CHARLES SCHUMER, *Democratic Leader,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. LAMAR ALEXANDER, *Chairman,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER AND SENATORS ALEXANDER AND MURRAY: The National Ready Mixed Concrete Association (NRMCA) applauds President Donald Trump's selection of R. Alexander Acosta, Dean of the Florida International University College of Law, to serve as Secretary of the U.S. Department of Labor.

NRMCA represents an industry with more than 2,250 companies and subsidiaries that employ more than 125,000 American workers who manufacture and deliver ready mixed concrete. The Association represents both national and multinational companies that operate in every congressional district in the United States. The industry includes approximately 70,000 ready mixed concrete trucks and 5,000 ready mixed concrete plants.

NRMCA supports the President's nomination for Labor Secretary because Mr. Acosta knows and has seen first-hand the negative consequences of overregulation and enforcement from the National Labor Relations Board (NLRB), having served as a member. During his tenure on the NLRB, Mr. Acosta drafted more than 125 opinions in which he demonstrated a balanced approach to both employers and employees. It is only fitting that someone with Mr. Acosta's background lead the Labor Department—the agency responsible for ensuring the Nation's labor and safety laws are properly balanced to benefit our Nation's most valuable asset, the American workforce.

Most notably we are confident that Mr. Acosta's nomination will garner bipartisan support. He has been previously confirmed by the U.S. Senate three times with bipartisan support—for the NLRB, as Assistant Attorney General, and as U.S. attorney for the southern district of Florida. Mr. Acosta's nomination to serve as Secretary of Labor should garner the same bipartisan support.

NRMCA respectfully supports Mr. Acosta as the next Secretary of Labor so that he can immediately begin helping the American economy get to work.

Sincerely,

KERRI LEININGER,  
*Executive Vice President of Government  
and Political Affairs.*

NATIONAL RETAIL FEDERATION (NRF),  
WASHINGTON, DC 20005,  
*March 21, 2017.*

Hon. LAMAR ALEXANDER, *Chairman,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Nation's retail industry, I write to share the National Retail Federation's strong support for the nomination of Alexander Acosta to be the next Secretary of Labor.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the Nation's largest private sector employer, supporting one in four U.S. jobs—42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the Nation's economy.

Over the past 8 years, the retail industry and employers across the country have faced a crushing regulatory burden driven by ideological whims rather than economic realities. The previous Department of Labor's sweeping actions on Federal overtime rules, joint employer relationships, and many other issues have created immense uncertainty for employers and stifled economic growth. Both job creators and employees will benefit from a more balanced approach to workforce policies and a Secretary of Labor who puts the needs of American businesses and workers before partisan politics.

Mr. Acosta's diverse experiences in both public service and the private sector position him well to be an effective and pragmatic leader at the Department of Labor. The new Labor Secretary will play a critical role in implementing the President's regulatory reform Executive orders, and NRF looks forward to working with Mr. Acosta once confirmed on a pro-growth agenda that supports innovation, investments in the workforce, and American competitiveness.

Given Mr. Acosta previously has been confirmed by the Senate on three occasions with bipartisan support, NRF urges members of this committee and the Senate to support the nominee and move toward confirmation without delay.

Sincerely,

DAVID FRENCH,  
*Senior Vice President,*  
*Government Relations.*

NATIONAL STONE, SAND & GRAVEL ASSOCIATION (NSSGA),  
ALEXANDRIA, VA,  
*March 21, 2017.*

Hon. Lamar Alexander, *Chairman,*  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Dirksen Senate Office Building,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*648 Hart Senate Office Building,*  
*Washington, DC 20510.*

DEAR CHAIRMAN AND RANKING MEMBER: As the Committee on Health, Education, Labor, and Pensions prepares to vote on the nomination of Alex Acosta to serve as

Secretary of Labor, the National Stone, Sand and Gravel Association (NSSGA) would like to express its strong support for his nomination.

NSSGA represents stone, sand and gravel producers who are responsible for the essential raw materials found in every building, road, bridge and public works project. The emphasis on the regulatory reform at the Department of Labor is one of our highest priorities.

Mr. Acosta's accomplishments are numerous and impressive. He served as a Commissioner of the National Labor Relations Board, was the first Hispanic to hold the rank of Assistant U.S. Attorney General, and was named assistant U.S. attorney for the southern district of Florida. Mr. Acosta's record of pioneering leadership can be put to great use as Secretary of Labor in looking out for American workers, so many of whom have been forgotten and left behind.

Furthermore, Mr. Acosta's appreciation for appropriate government action ensures that someone with the knowledge of the issues impacting our industry including the negative impacts and unintended consequences of government regulations is at the helm of the department. This is particularly important to us given the central role played by the Labor Department's Mine Safety and Health Administration (MSHA). It is critical that MSHA significantly improve its approach to achieving its mission so that the agency can regulate and enforce for genuine safety, versus sometimes undercutting workplace safety.

NSSGA appreciates your consideration of these views. Please contact me if you have any questions or would like any additional information. I can be reached at (703) 526-1060/[mjohnson@nssga.org](mailto:mjohnson@nssga.org).

Sincerely,

MICHAEL W. JOHNSON,  
*President & CEO.*

NORTH AMERICA'S BUILDING TRADE UNIONS,  
WASHINGTON, DC 20006,  
*February 27, 2017.*

Hon. LAMAR ALEXANDER, *Chairman,*  
Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Dirksen Senate Office Building,*  
*Washington, DC 20510.*

DEAR SENATORS ALEXANDER AND MURRAY: North America's Building Trades Unions believe that Alexander Acosta is a qualified candidate to serve as the next U.S. Secretary of Labor.

He has served in three presidentially appointed, Senate-confirmed positions, and was a respected member of the National Labor Relations Board. Combined with his experience as the Assistant Attorney General for the Civil Rights Division of the U.S. Department of Justice, Mr. Acosta holds the necessary knowledge and experience to further the Department of Labor's stated mission,

"To foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights."

Our unions look forward to working with Mr. Acosta to preserve strong and existing community wage and benefit standards, apprenticeship programs, and rigorous safety standards in the construction industry that have historically brought immediate, and widespread, benefits to American workers and the American economy.

North America's Building Trades Unions believe Alexander Acosta is someone who deserves serious consideration for the position of Secretary of Labor.

Thank you for your consideration of our views on this matter,

Sincerely,

SEAN MCGARVEY,  
*President.*

NORTH AMERICAN CONCRETE ALLIANCE,  
MARCH 15, 2017.

Hon. MITCH MCCONNELL, *Majority Leader*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. CHARLES SCHUMER, *Democratic Leader*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. LAMAR ALEXANDER, *Chairman*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. PATTY MURRAY, *Ranking Member*,  
*U.S. Senate*,  
*Washington, DC 20510*.

DEAR MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER AND SENATORS ALEXANDER AND MURRAY: The North American Concrete Alliance (NACA) applauds President Donald Trump's selection of R. Alexander Acosta, Dean of the Florida International University College of Law, to serve as Secretary of the U.S. Department of Labor.

NACA is a coalition of concrete-related associations dedicated to addressing industry-wide priorities in the areas of research, education and government affairs. NACA places an emphasis on advocating for increased and efficient Federal investment in surface transportation and infrastructure funding and the impact it has on job creation.

NACA supports the President's nomination for Labor Secretary because Mr. Acosta knows and has seen first-hand the negative consequences of overregulation and enforcement from the National Labor Relations Board (NLRB), having served as a member. During his tenure on the NLRB, Mr. Acosta drafted more than 125 opinions in which he demonstrated a balanced approach to both employers and employees. It is only fitting that someone with Mr. Acosta's background lead the Labor Department—the agency responsible for ensuring the Nation's labor and safety laws are properly balanced to benefit our Nation's most valuable asset, the American workforce.

Most notably we are confident that Mr. Acosta's nomination will garner bipartisan support. He has been previously confirmed by the U.S. Senate three times with bipartisan support—for the NLRB, as Assistant Attorney General, and as U.S. attorney for the southern district of Florida. Mr. Acosta's nomination to serve as Secretary of Labor should garner the same bipartisan support.

NACA respectfully asks you to support President Trump's nomination of R. Alexander Acosta to serve as Labor Secretary.

Sincerely,

American Concrete Pavement Association, American Concrete Pipe Association, American Concrete Pressure Pipe Association, American Concrete Pumping Association, Concrete Foundations Association, Concrete Reinforcing Steel Institute, National Concrete Masonry Association, National Precast Concrete Association, National Ready Mixed Concrete Association, Precast/Prestressed Concrete Institute, and Portland Cement Association.

PORT AGGREGATES, INC.,  
LAKE CHARLES, LA 70601,  
March 15, 2017.

Hon. MITCH MCCONNELL, *Majority Leader*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. CHARLES SCHUMER, *Democratic Leader*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. LAMAR ALEXANDER, *Chairman*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. PATTY MURRAY, *Ranking Member*,  
*U.S. Senate*,  
*Washington, DC 20510*.

MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER AND SENATORS ALEXANDER AND MURRAY: My name is Andrew Guinn and I work for Port Aggregates, Inc. located in Lake Charles, LA. We manufacture and deliver the ready mixed concrete that builds our Nation's heavy highway system and residential and commercial construction, creating jobs and accelerating economic growth. I applaud President Donald Trump's selection of R. Alexander Acosta to head the U.S. Department of Labor.

I support the President's nomination for Labor Secretary because Mr. Acosta knows and has seen first-hand the negative consequences of overregulation and enforcement from the National Labor Relations Board (NLRB), having served as a member. During his tenure on the NLRB, Mr. Acosta drafted more than 125 opinions in which he demonstrated a balanced approach to both employers and employees. It is only fitting that someone with Mr. Acosta's background lead the Labor Department—the agency responsible for ensuring the Nation's labor and safety laws are properly balanced to benefit our Nation's most valuable asset, the American workforce.

Most notably I am confident that Mr. Acosta's nomination will garner bipartisan support. He has been previously confirmed by the U.S. Senate three times with bipartisan support—for the NLRB, as Assistant Attorney General, and as U.S. attorney for the southern district of Florida. Mr. Acosta's nomination to serve as Secretary of Labor should garner the same bipartisan support.

I respectfully, ask you to support Mr. Acosta as the next Secretary of Labor so that he can immediately begin helping the American economy get to work.

Sincerely,

ANDREW GUINN,  
*Chairman, CEO.*

SAN JOSE POLICE OFFICERS' ASSOCIATION,  
SAN JOSE, CA 95112,  
February 16, 2017.

Hon. LAMAR ALEXANDER, *Chairman*,  
*Committee on Health, Education, Labor, and Pensions*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. PATTY MURRAY, *Ranking Member*,  
*Committee on Health, Education, Labor, and Pensions*,  
*U.S. Senate*,  
*Washington, DC 20510*.

DEAR MR. CHAIRMAN AND SENATOR MURRAY: I am writing on behalf of the San Jose Police Officers' Association in support of the nomination of R. Alexander Acosta as Secretary of Labor. He is a committed public servant who has served with distinction in several positions. He has always served with ability and integrity, demonstrating care and concern for people of all walks of life. He is a strong supporter of law enforcement and of promoting positive relations between police and the communities they serve. We are confident that he will bring the same qualities and skills to the position of Secretary of Labor.



Alex's parents fled Communist Cuba for a better life in the United States and pursued the American dream by working hard at menial jobs. They did this in order to provide greater opportunities for their son. This example of work ethic and determination inspired and enabled him to earn both his undergraduate and law degrees from Harvard.

Mr. Acosta has a history of distinguished public service. He was a member of the National Labor Relations Board, where he participated in or authored more than 125 opinions. Following the NLRB, he was Assistant Attorney General for the Civil Rights Division at the U.S. Department of Justice and was the first Hispanic to hold the rank of Assistant Attorney General.

Mr. Acosta's government service was primarily spent serving as the U.S. attorney for the southern district of Florida. He was the longest serving U.S. attorney in the district since the 1970s and this district has one of the three heaviest criminal dockets of any U.S. attorneys' office. It consists of five offices across south Florida and requires considerable managerial skills. As U.S. attorney, Mr. Acosta dealt with prosecutions of the Cali Drug Cartel, FARC rebels, and the José Padilla for terrorism case. Under his leadership, his office also targeted white collar crime, prosecuting several bank-related cases, including a landmark case against Swiss bank UBS. This legally complex case resulted in UBS paying \$780 million in fines, and for the first time in history, the Swiss banking giant provided the United States with the names of individuals who were using secret Swiss bank accounts to avoid U.S. taxes. Mr. Acosta also had excellent relations with State and local law enforcement throughout his time as a U.S. attorney.

Again, I sincerely support the nomination of Alex Acosta as Secretary of Labor and I firmly believe he will serve with the integrity and skill the position requires. I respectfully urge your consideration of our recommendation.

Sincerely,

PAUL KELLY,  
*President.*

SEAFARERS INTERNATIONAL UNION (SIU)  
OF NORTH AMERICA, AFL-CIO,  
CAMP SPRINGS, MD 20746,  
*February 17, 2017.*

Hon. Lamar Alexander, *Chairman,*  
Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Seafarers International Union (AFL-CIO), I am writing to you today to express the SIU's support for Alexander Acosta to serve as the Nation's 27th Secretary of Labor.

Having worked closely with eight Labor Secretaries over the last five presidential administrations, I have come to respect the unique challenges and responsibilities that come with being at the helm of the U.S. Department of Labor (DOL). It is a job that calls for experiences, hard work, dedication, and the willingness to make tough decisions that aren't always popular.

Throughout his distinguished career, Mr. Acosta has demonstrated all these traits and more. He is, like many of his predecessors in this position, an American success story, and his success demonstrates to all Americans the value of hard work and the opportunities that American provides its citizens—opportunities you can find nowhere else in the world.

Like me, Mr. Acosta is a son of immigrants, and he has built a distinguished career in government service. He served on the National Labor Relations Board under President George W. Bush, a role that gave him ample insight into the relationship between employers and labor representatives that will serve him well at DOL. He also served as Assistant Attorney General for the Civil Rights Division in the U.S. Department of Justice, and as a U.S. attorney for the southern district of Florida, where he prosecuted a variety of crimes from drug trafficking and terrorism to public corruption. Given the critical role DOL plays in the enforcement of labor laws, his experience at NLRB and as a prosecutor make him uniquely qualified to lead the Labor Department.

President Trump should be applauded for this nomination, as he has found in Mr. Acosta a dedicated, qualified public servant who has served with distinction in a variety of challenging roles. His record is one of defending the rights of people from all walks of life. The SIU is confident Mr. Acosta will serve with integrity and dis-

tion as Secretary of Labor, as he has whenever he's been called upon for public service.

I look forward to working with him in the future, and I thank you for your consideration of the views of the SIU on this matter. As always, if I can be of service to you, please do not hesitate to call upon me.

Sincerely,

MICHAEL SACCO,  
*President.*

SERGEANTS BENEVOLENT ASSOCIATION (SBA),  
NEW YORK, NY 10013,  
*February 16, 2017.*

Hon. LAMAR ALEXANDER, *Chairman,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR MR. CHAIRMAN AND SENATOR MURRAY: I am writing to inform you of my union's support for the nomination of R. Alexander Acosta to be Secretary of Labor. Mr. Acosta has distinguished himself in several prior government positions and is an inspiring American success story. His parents fled Communist Cuba for a better life in the United States. His parents pursued the American dream by working hard at menial jobs in order to provide greater opportunities for their son. Their hard work paid off as Alex inherited their work ethic and determination, which enabled him to earn both his undergraduate and law degrees from Harvard.

Mr. Acosta has a history of distinguished public service. He was a member of the National Labor Relations Board, where he participated in or authored more than 125 opinions. Following the NLRB, he was Assistant Attorney General for the Civil Rights Division at the U.S. Department of Justice and was the first Hispanic to hold the rank of Assistant Attorney General.

Most of Mr. Acosta's government service was spent serving as the U.S. attorney for the southern district of Florida. He was the longest serving U.S. attorney in the District since the 1970s. This district that has one of the three heaviest criminal dockets of any U.S. attorneys' office. It consists of five offices across south Florida and requires considerable managerial skills. As U.S. attorney, Mr. Acosta dealt with prosecutions of the Cali Drug Cartel, PARC rebels, and the José Padilla for terrorism case. Under his leadership, his office also targeted white collar crime, prosecuting several bank-related cases, including a landmark case against Swiss bank UBS. This legally complex case resulted in UBS paying \$780 million in fines, and for the first time in history, the Swiss banking giant provided the United States with the names of individuals who were using secret Swiss bank accounts to avoid U.S. taxes. Mr. Acosta also had excellent relations with State and local law enforcement throughout his time as a U.S. attorney. Since leaving this position, he has remained a strong supporter of law enforcement and promoting positive relations between police and the communities they serve.

Alex Acosta is a committed public servant who has served with distinction in several positions. He has always served with ability and integrity and demonstrated care and concern for people of all walks of life. We are confident that he will bring the same qualities and skills to the position of Secretary of Labor.

Thank you for your consideration of our views on this matter.

Very Respectfully,

ED MULLINS,  
*President.*

SIoux CORPORATION,  
BERESFORD, SD 57004-1500,  
March 15, 2017.

Hon. MITCH MCCONNELL, *Majority Leader*,  
U.S. Senate,  
Washington, DC 20510.

Hon. CHARLES SCHUMER, *Democratic Leader*,  
U.S. Senate,  
Washington, DC 20510.

Hon. LAMAR ALEXANDER, *Chairman*,  
U.S. Senate,  
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member*,  
U.S. Senate,  
Washington, DC 20510.

MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER AND SENATORS ALEXANDER AND MURRAY: My name is Jack Finger and I work for Sioux Corporation, located in Beresford, SD. We manufacture and deliver industrial equipment used to produce ready mixed concrete that builds our Nation's heavy highway system and residential and commercial construction, creating jobs and accelerating economic growth. I applaud President Donald Trump's selection of R. Alexander Acosta to head the U.S. Department of Labor.

I support the President's nomination for Labor Secretary because Mr. Acosta knows and has seen first-hand the negative consequences of overregulation and enforcement from the National Labor Relations Board (NLRB), having served as a member. During his tenure on the NLRB, Mr. Acosta drafted more than 125 opinions in which he demonstrated a balanced approach to both employers and employees. It is only fitting that someone with Mr. Acosta's background lead the Labor Department—the agency responsible for ensuring the Nation's labor and safety laws are properly balanced to benefit our Nation's most valuable asset, the American workforce.

Most notably I am confident that Mr. Acosta's nomination will garner bipartisan support. He has been previously confirmed by the U.S. Senate three times with bipartisan support—for the NLRB, as Assistant Attorney General, and as U.S. attorney for the southern district of Florida. Mr. Acosta's nomination to serve as Secretary of Labor should garner the same bipartisan support.

I respectfully ask you to support Mr. Acosta as the next Secretary of Labor so that he can immediately begin helping the American economy get to work.

Sincerely,

JOHN W. FINGER (JACK),  
*President and CEO*.

SPURLINO,  
MIDDLETOWN, OH 45044,  
March 17, 2017.

Hon. MITCH MCCONNELL, *Majority Leader*,  
U.S. Senate,  
Washington, DC 20510.

Hon. CHARLES SCHUMER, *Democratic Leader*,  
U.S. Senate,  
Washington, DC 20510.

Hon. LAMAR ALEXANDER, *Chairman*,  
U.S. Senate,  
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member*,  
U.S. Senate,  
Washington, DC 20510.

MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER AND SENATORS ALEXANDER AND MURRAY: My name is Jim Spurlino and I own Spurlino Materials located in Middletown, OH with operations in Ohio, Kentucky, and Indiana. We manufacture and deliver the ready mixed concrete that builds our Nation's heavy

highway system and residential and commercial construction, creating jobs and accelerating economic growth. I applaud President Donald Trump's selection of R. Alexander Acosta to head the U.S. Department of Labor.

I support the President's nomination for Labor Secretary because Mr. Acosta knows and has seen first-hand the negative consequences of overregulation and enforcement from the National Labor Relations Board (NLRB), having served as a member. During his tenure on the NLRB, Mr. Acosta drafted more than 125 opinions in which he demonstrated a balanced approach to both employers and employees. It is only fitting that someone with Mr. Acosta's background lead the Labor Department—the agency responsible for ensuring the Nation's labor and safety laws are properly balanced to benefit our Nation's most valuable asset, the American workforce.

Most notably, I am confident that Mr. Acosta's nomination will garner bipartisan support. He has been previously confirmed by the U.S. Senate three times with bipartisan support—for the NLRB, as Assistant Attorney General, and as U.S. attorney for the southern district of Florida. Mr. Acosta's nomination to serve as Secretary of Labor should garner the same bipartisan support.

I respectfully ask you to support Mr. Acosta as the next Secretary of Labor so that he can immediately begin helping the American economy get to work.

Sincerely,

JIM SPURLINO,  
*President.*

WORKFORCE FAIRNESS INSTITUTE,  
MARCH 9, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR CHAIRMAN, RANKING MEMBER AND MEMBERS OF THE U.S. SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS: The Workforce Fairness Institute (WFI), an organization devoted to educating workers, their employers, employees and citizens about issues affecting the workplace, writes today in strong support of the nomination of Alexander Acosta as U.S. Secretary of Labor. We urge the committee to give him swift consideration and coordination for this important role, so that he can get to work rolling back years of Obama-era overregulation and red tape.

Mr. Acosta is a man with an extremely accomplished legal record. A former Assistant Attorney General in the George W. Bush administration, a U.S. attorney for the southern district of Florida, as well as a former clerk for Supreme Court Justice Samuel Alito, his reputation for pragmatism and fairness precedes him. That, coupled with his previous service as a member of the National Labor Relations Board (NLRB), make him an excellent choice to take the helm of the Department of Labor and unravel many of the misguided policies of the previous administration.

Mr. Acosta understands firsthand the balance between promoting free-market, pro-growth policies that create jobs and grow our economy while protecting workers' rights and enforcing strong labor laws and protections. There's no question he has the background and expertise to serve the American people well. WFI respectfully requests that the committee weigh in and consider these facts, and vote to confirm Mr. Acosta at the earliest possible opportunity.

Sincerely,

HEATHER GREENAWAY,  
*Workforce Fairness Institute.*

MARCH 20, 2017.

DEAR CHAIRMAN ALEXANDER, RANKING MEMBER MURRAY AND MEMBERS OF THE COMMITTEE: On behalf of the undersigned organizations, we write to express our strong support for R. Alexander Acosta, Dean of the Florida International University College of Law, who is nominated to serve as Secretary of the U.S. Department of Labor (DOL).

Businesses continue to face a great deal of uncertainty due to regulatory overreach by the previous administration. President Trump has issued numerous, vitally important Executive orders aimed at quickly addressing the regulatory challenges facing the business community and to ensure employers can focus on creating jobs and growing the economy.

Mr. Acosta is a dedicated public servant who has spent years wrestling with complex legal issues, and he has proven management and Federal agency experience. He is well-qualified to lead this important agency as it protects American workers, implements the President's Executive orders, and strives to meet the President's goals of eliminating job-crushing regulations, keeping government agencies accountable, and getting Americans back to work.

Given Mr. Acosta has been confirmed by the U.S. Senate three times with bipartisan support—for the National Labor Relations Board, as an Assistant Attorney General, and as U.S. attorney for the southern district of Florida—we are confident there will be bipartisan support for his nomination to be the Secretary of Labor.

For these reasons, *America's job creators* urge the committee to support Mr. Acosta's nomination, and we urge swift consideration and approval.

Sincerely,

Aeronautical Repair Station Association, Air Conditioning Contractors of America, American Apparel & Footwear Association, American Bakers Association, American Beverage Association, American Concrete Pressure Pipe Association, American Fire Sprinkler Association, American Foundry Society, American Fuel & Petrochemical Manufacturers, American Home Furnishings Alliance, American Hotel & Lodging Association, American Moving & Storage Association, American Staffing Association, American Supply Association, Americans for Tax Reform, American Trucking Associations, AmericanHort, Argentum, Asian American Hotel Owners Association, Associated Builders and Contractors, Associated Equipment Distributors, Associated General Contractors, Auto Care Association, Center for Worker Freedom, Coalition of Franchisee Associations, Colorado Association of Commerce and Industry, Franchise Business Services, Heating, Air-conditioning & Refrigeration Distributors International (HARDI), HR Policy Association, Independent Electrical Contractors Insured Retirement Institute, International Foodservice Distributors Association, International Franchise Association, International Warehouse Logistics Association, Leading Builders of America, Manufacturer & Business Association, Metals Service Center Institute, Montana Retail Association, MSPA Americas, National Association of Home Builders, National Association of Manufacturers, National Association of Professional Employer Organizations, National Automobile Dealers Association, National Christmas Tree Association, National Club Association, National Council of Chain Restaurants, National Federation of Independent Business, National Franchise Association, National Grocers Association, National Lumber and Building Material Dealers Association, National Precast Concrete Association, National Ready Mixed Concrete Association, National Restaurant Association, National Retail Federation, National Roofing Contractors Association, Plastics Industry Association, Private Care Association, Retail Industry Leaders Association, Small Business & Entrepreneurship Council, SNAC International, Southeastern Lumber Manufacturers Association, The Fertilizer Institute, The Vinyl Institute, Tile Roofing Institute, Tree Care Industry Association, Truck Renting and Leasing Association, United Motorcoach Association, U.S. Chamber of Commerce, Water & Sewer Distributors of America, and Wine & Spirits Wholesalers of America.

#### LETTERS OF OPPOSITION

AFR AMERICANS FOR FINANCIAL REFORM (AFR),

MARCH 20, 2017.

Hon. LAMAR ALEXANDER, *Chair*,  
*Committee on Health, Education, Labor, and Pensions*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. PATTY MURRAY, *Ranking Member*,  
*Committee on Health, Education, Labor, and Pensions*,  
*U.S. Senate*,  
*Washington, DC 20510*.

DEAR CHAIR ALEXANDER AND RANKING MEMBER MURRAY: On behalf of Americans for Financial Reform and 50 faith, consumer advocate and labor organizations, we write to reiterate our strong view that the Department of Labor's fiduciary rule,

which requires those who give retirement savings advice to put their clients best interest first must be allowed to go into effect as planned in April; and to urge you to ask the nominee for U.S. Secretary of Labor, Alex Acosta, to affirm his commitment to the rule being implemented on time.

For far too long, brokers have been able to put their own financial interests ahead of their clients, steering retirement savers into investments that serve the broker's bottom line rather than the clients. This conflicted advice costs working families more than \$17 billion in retirement savings annually.\* The DOL fiduciary rule is a responsible solution to this problem and will mean workers and families get actual advice, not misleading sales pitches when investing their hard-earned retirement savings.

As you know, the DOL promulgated the final fiduciary rule after conducting a thorough, thoughtful, and transparent multiyear process. The final fiduciary rule is the product of more than 6 years of research, consideration of more than 300,000 comments, 4 days of hearings, and hundreds of meetings. Now, at the behest of Wall Street, the Trump administration has suddenly proposed to delay the rule—a move that would cost retirees tens of millions of dollars a day.

Due diligence requires this committee to ask the nominee what he will do with regard to the fiduciary rule: will he follow the evidence and protect the interests of investors by allowing it to go into effect as planned, or will he support the delay and then the demise of this fundamentally important investor protection?

Sincerely,

Americans for Financial Reform; American Association of University Women (AAUW); Americans for Democratic Action (ADA); American Federation of Teachers Colorado; ACTION reUnion 2017, TN; Allied Progress; Aquinas Institute of Theology; Bread & Roses Missouri; Catholic Charities of St. Louis, MO; Coalition on Human Needs; Committee for the Fiduciary Standard; Communication Workers of America; Consumers Union; Economic Policy Institute Policy Center; Eliot Unitarian Chapel; Empower Missouri; Denver Area Labor Federation, AFL–CIO; Gethsemane Lutheran Church, MO; Interfaith Alliance of Colorado; Institute for Science and Human Values; John C. Danforth Center on Religion and Politics, MO; LiUNA 110; Metropolitan Congregations United, MO; Missouri Alliance for Retired Americans, Education Fund; Missouri Jobs with Justice; NAACP; National Consumers League; National Employment Lawyers Association; National Employment Law Project; Presbytery of Giddings, MO; St. Louis Episcopal Service Corps, MO; St. Louis Metropolitan Clergy Coalition, MO; State Representative Tracy McCreedy, MO; UNICOM-ARC, MO; UNITE HERE LOCAL 74; United Church of Christ, MO; Westminster Presbyterian Church, MO; Woodstock Institute; and Workplace Fairness, MO.

AMERICANS FEDERATION OF TEACHERS (AFT),<sup>1</sup>  
MARCH 16, 2017.

*Committee on Health, Education, Labor, and Pensions,  
U.S. Senate,  
Washington, DC 20510.*

DEAR SENATOR: On behalf of the 1.6 million members of the American Federation of Teachers, I write to urge the Health, Education, Labor, and Pensions (HELP) Committee to thoroughly question and examine the record of Alexander Acosta as the nominee for secretary of labor. President Trump may well have nominated Acosta because his history in government appears to make him easily confirmable, but regardless of Acosta's previous confirmations by the U.S. Senate, the American people deserve a full airing of his record and his views on matters of importance to working Americans.

The mission of the Department of Labor is:

“to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment.”

\* <https://obamawhitehouse.archives.gov/the-press-office/2016/04/06/fact-sheet-middle-class-economics-strengthening-retirement-security>.

<sup>1</sup> The **American Federation of Teachers** is a union of professionals that champions fairness, democracy, economic opportunity, and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

The American people deserve to know how Alexander Acosta plans to carry out this mission, and specifically, how he will ensure all workers have jobs that are safe, secure and fair, and provide dignified wages.

Working Americans deserve to know Acosta's views on employer-provided health benefits, retirement security, the minimum wage, and the gender and racial wage gaps.

AFT members, in particular, are interested in hearing Acosta's views on ensuring workers' health and safety; protecting workers' retirement savings; upholding the Obama administration's overtime rule; paid family leave initiatives; trade; career and technical education and programs to build prospective employees' skills; and collective bargaining.

The AFT is committed to supporting the interests of the workers we represent. We believe it is incumbent upon the HELP Committee to ask tough questions and critically examine Acosta's record to determine whether he can uphold the Nation's commitment to the rights of all workers.

Thank you for considering the AFT's views on this matter.

Sincerely,

RANDI WEINGARTEN,  
*President.*

COMMITTEE ON EDUCATION AND THE WORKFORCE,  
U.S. HOUSE OF REPRESENTATIVES,  
WASHINGTON, DC 20515-6100,  
*March 21, 2017.*

Hon. LAMAR ALEXANDER, *Chairman,*  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Senate Dirksen Office Building,*  
*Washington, DC 20515.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*648 Senate Dirksen Office Building,*  
*Washington, DC 20515.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: We write regarding President Trump's nomination of R. Alexander Acosta to serve as the Secretary of the Department of Labor (DOL). As you know, the DOL's mission is "to foster, promote and develop the welfare of the wage earners[.]" As Democratic Members of the Committee on Education and the Workforce, we have a strong interest in ensuring that the next Secretary of Labor will carry out this critical mission. During Mr. Acosta's upcoming confirmation hearing, we urge you to question Mr. Acosta about how he plans to accomplish the DOL's core functions. In particular, we urge you to ask Mr. Acosta about his views on key issues affecting workers and their families across the country, including enforcement of wage and hour, safety and health, and workplace nondiscrimination laws, the promotion of workforce training, and the administration of benefit programs over which the DOL has jurisdiction. Finally, we urge you to ask Mr. Acosta to explain the steps he will take to ensure that politicized hiring of career employees does not occur on his watch.

#### SUPPORTING ROBUST ENFORCEMENT

As Secretary of Labor, Mr. Acosta will oversee the agencies and offices that protect workers' wages, help ensure workers and miners return home safely each day from their jobs, safeguard hard-earned retirement benefits, and ensure that injured longshore workers and coal miners receive timely workers' compensation benefits. We urge you to ask Mr. Acosta how he will accomplish the goals of achieving safe and healthy working conditions, stopping wage theft, ending discrimination, and ensuring employers meet their responsibilities in the administration of employee benefits, including group health plans. Furthermore, we urge you to ask Mr. Acosta what he will do to ensure that companies doing business with the Federal Government are educated about their obligations to their employees under our Nation's workplace laws.

#### STRENGTHENING WORKFORCE TRAINING PROGRAMS

We also urge you to thoroughly investigate Mr. Acosta's plan to build and develop a highly skilled workforce. A recent study from the Georgetown University Center on Education and the Workforce found that by 2020 the United States will not have

enough skilled workers to meet the demands of our economy.<sup>1</sup> The study estimates that 65 percent of all jobs in the economy will require post-secondary education and training beyond high school, and that there will be a shortage of 5 million workers to fill these jobs. In addition, last month, two dozen chief executives from the manufacturing industry met with the administration to express their concern about the lack of highly skilled workers to fill manufacturing jobs. According to one of the CEOs who attended that meeting, The jobs are there, but the skills are not.”<sup>2</sup>

Equipping workers with the skills and training necessary to compete for good jobs is critical to achieving broadly shared economic prosperity. In the 113th Congress, Members worked in a bipartisan manner to pass the Workforce Innovation and Opportunity Act (WIOA). This law, along with strategic investment in our Nation’s opportunity youth and registered apprenticeship programs, can help build a highly skilled workforce and close the so-called skills gap. We urge you to question Mr. Acosta about how he will promote national skills building and successful, evidence-based training models at both the State and national level.

#### RAISING WAGES

While worker productivity has increased by more than 70 percent over the past 40 years, wages have not kept pace.<sup>3</sup> In fact, wages for the bottom 90 percent of income earners have only grown by 15 percent.<sup>4</sup> Working people deserve a Secretary of Labor who is committed to ensuring that hardworking people are paid fairly. We urge you to question Mr. Acosta about his support for the Department of Labor’s overtime rule and raising the Federal minimum wage.

#### AVOIDING POLITICIZED HIRING OF CAREER EMPLOYEES AND INAPPROPRIATE POLITICAL INTERFERENCE WITH CORE AGENCY FUNCTIONS

Many have raised concerns about politicized hiring practices in the hiring of career employees during Mr. Acosta’s tenure at the Department of Justice. A Department of Labor Office of the Inspector General (OIG) report from 2008 found that while Mr. Acosta led the Civil Rights Division, personnel decisions in the agency were marked by stark politicization.<sup>5</sup> The OIG found that actions taken during Mr. Acosta’s tenure violated Department of Justice policy and Federal law.<sup>6</sup> We urge a thorough investigation of these issues, as well as an exploration of Mr. Acosta’s record of service at both the DOJ and NLRB.

Furthermore, we urge you to question Mr. Acosta about the steps he will take to prevent political interference with the career DOL staff’s ability to enforce our workplace protection laws, as well as supply accurate, non-biased information about the state of jobs and the economy. We note that under the new Administration, the DOL has issued almost no press releases on its enforcement activity under our safety and health or wage and hour laws. Failing to publicize enforcement efforts greatly diminishes their potential to deter future violations. In addition, White House Press Secretary Sean Spicer said the jobs data produced by the Bureau of Labor Statistics (BLS) under the Obama administration “may have been phony in the past, but it’s very real now.”<sup>7</sup>

Criticizing the integrity of BLS data without supplying any basis for that criticism is cause for grave concern, given that key actors rely on that data to make economic decisions. We urge you to question Mr. Acosta about his positions on making enforcement actions public and the integrity of BLS data.

<sup>1</sup>*Recovery: Job Growth and Education Requirements through 2020*. Georgetown University Center on Education and the Workforce. June 26, 2013. [https://cew.georgetown.edu/wp-content/uploads/2014/11/Recovery2020.ES\\_Web\\_.pdf](https://cew.georgetown.edu/wp-content/uploads/2014/11/Recovery2020.ES_Web_.pdf).

<sup>2</sup>AP, *Factory CEOs Tell Trump: Jobs Exist, Skilled Applicants Don’t*. *LA Times*. Feb. 23, 2017, available at <http://www.latimes.com/business/la-fi-manufacturing-trump-20170223-story.html>.

<sup>3</sup>Lawrence Mishel, Elise Gould, and Josh Bivens. *Wage Stagnation in Nine Charts*. Economic Policy Institute. January 6, 2015. <http://www.epi.org/publication/charting-wage-stagnation/>.

<sup>4</sup>*Id.*

<sup>5</sup>*An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division*. U.S. Department of Justice Office of the Inspector General and the U.S. Department of Justice Office of Professional Responsibility. July 2, 2008. <https://oig.justice.gov/special/s0901/final.pdf>.

<sup>6</sup>*Id.*

<sup>7</sup>Madeline Conway, *Spicer Claims That Jobs Numbers “May Have Been Phony” Before, But Now They’re Very Real*, *Politico*. Mar. 1, 2017. <http://www.politico.com/story/2017/03/trump-monthly-jobs-numbers-sean-spicer-235936>.



Thank you for your commitment to ensuring our next Secretary of Labor will fulfill the Department's critical mission of protecting, supporting, and defending working people.

Sincerely,

Robert C. "Bobby" Scott, *Ranking Member*; Susan A. Davis, *Member of Congress*; Raúl M. Grijalva, *Member of Congress*; Joe Courtney, *Member of Congress*; Marcia L. Fudge, *Member of Congress*; Jared Polis, *Member of Congress*; Gregorio Kilili Camacho Sablan, *Member of Congress*; Frederica S. Wilson, *Member of Congress*; Suzanne Bonamici, *Member of Congress*; Mark Takano, *Member of Congress*; Alma S. Adams, *Member of Congress*; Mark DeSaulnier, *Member of Congress*; Donald Norcross, *Member of Congress*; Lisa Blunt Rochester, *Member of Congress*; Raja Krishnamoorthi, *Member of Congress*; Carol Shea-Porter, *Member of Congress*; and Adriano Espaillat, *Member of Congress*.

COMMUNICATIONS WORKERS OF AMERICA,  
WASHINGTON, DC 20001,  
March 15, 2017.

DEAR SENATOR: On behalf of the 700,000 members and officers of the Communications Workers of America (CWA), I am writing to express deep concern about the nomination of R. Alexander Acosta to serve as Secretary of the Department of Labor. Given Mr. Acosta's troubling history regarding civil rights and equal protection under the law, I urge you to oppose his nomination.

CWA has long advocated for the protection of equal rights for all Americans in the workplace, in the electoral process, and a wide range of other areas. Unfortunately, Mr. Acosta's record of service at the Department of Justice raises serious concerns about his ability to protect the equal rights guaranteed by the Constitution and Federal law to all Americans. The Department of Labor is one of the most important entities in protecting all workers' fundamental rights, so it is deeply troubling that a nominee for Secretary of Labor would have such a poor record on these issues.

Two concerns in particular stand out regarding Mr. Acosta's commitment to enforcing guarantees of equal protection. First, Mr. Acosta wrote an unsolicited letter to an Ohio judge in 2004 justifying the practice of voter caging, in which Ohio Republicans engaged in dubious practices as part of an attempt to disenfranchise voters who were predominately African American or Latino. The practice "was widely seen as a Republican strategy to disenfranchise minorities," according to news reports.

Second, Mr. Acosta's record overseeing the Department of Justice's Civil Rights Division during a time of deep politicization and dysfunction is very worrisome. Under his leadership, the Division replaced myriad career staff with clearly unqualified replacements on the basis of their political leanings, despite the fact that many of these hires did not have a demonstrated interest in the mission of DOJ's Civil Rights Division. A 2008 DOJ Inspector General report found that Mr. Acosta "had sufficient information . . . to have raised red flags warranting closer supervision," but "took no action to investigate" or bring problems to the attention of supervisors. This pattern of problematic hires dramatically undermined the Civil Rights Division's enforcement ability to the point that literally years of hard work were required to reinvigorate the Division.

As millions of working men and women strive to make ends meet, it is imperative that the Department of Labor be on their side, working to protect their rights and help them live out their dreams. It does not appear that Mr. Acosta would, if confirmed, fight for workers' rights and help expand the middle class. Therefore, I ask you to oppose his nomination.

Thank you in advance for your consideration.

Sincerely,

CHRIS SHELTON,  
*President.*

SHANE LARSON,  
*Legislative Director.*

DĒMOS,  
MARCH 10, 2017.

U.S. Senate,  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Senate Dirksen Office Building,*  
*Washington, DC 20510.*

DEAR CHAIRMAN ALEXANDER, RANKING MEMBER MURRAY, AND MEMBERS OF THE SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS: DĒMOS expresses concern about the appointment of R. Alexander Acosta as Secretary of Labor and urges the members of the Senate Committee on Health, Education, Labor, and Pensions to vote against his confirmation. Mr. Acosta's record of undermining voting rights and overseeing politicized hiring at the Department of Justice as well as and his lack of experience and expertise on the Department of Labor's core mission make the nominee a poor choice to lead the U.S. Department of Labor.

DĒmos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Mr. Acosta raises concerns on both sides. The work of the Department of Labor is critical to the ability of all Americans to benefit from equitable economic opportunity, yet Mr. Acosta has little history of defending the rights of working people. At the same time, Mr. Acosta's efforts on voting rights have undermined Americans' ability to exercise an equal voice in our democracy.

In his capacity as Assistant Attorney General for the Justice Department's civil rights division, Mr. Acosta intervened to oppose a lawsuit against an anti-democratic law allowing unwarranted challenges to Americans' right to cast ballots in Ohio. Writing to the judge in the case, Mr. Acosta promoted a weakened interpretation of the Voting Rights Act, asserting that civil rights concerns did not apply despite blatant efforts to disenfranchise African American voters with a challenge list that:

“targeted predominantly minority, urban, and Democratic districts. It was estimated that ‘in Ohio, all of the precincts in about a dozen counties that contain 91 percent of the State’s black population—including urban areas like Cleveland, Cincinnati, Dayton, Toledo, and Akron’ were targeted by Republican challengers.”<sup>1</sup>

This troubling voting rights record raises further questions about Mr. Acosta's judgment when combined with the politicized hiring process that occurred on Acosta's watch at the Department of Justice. As detailed by the Office of Inspector General's 2008 report, the Civil Rights Division headed by Mr. Acosta violated Justice Department policy and Federal law, improperly using political affiliations to assess job candidates and career attorneys.<sup>2</sup>

Finally, Mr. Acosta's lack of experience and expertise on the Department of Labor's core mission is cause for concern. The Labor Department's mission is

“to foster . . . the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment.”

One hundred and twenty million working Americans depend on the Department of Labor to enforce the Nation's most basic laws on the minimum wage, child labor, and workplace safety. Yet Mr. Acosta has little or no experience in this area.

Today a quarter of the Nation's working households depend on the pay of low-wage workers including Americans working in the retail, home health care, and food service industries. On its current path, the economy is set to generate still more low-paying jobs: analysis of U.S. Department of Labor statistics reveals that 28 percent of the new jobs being created over the next decade will be in occupations paying median hourly wages below \$12 an hour. Only proactive employment policies and strong enforcement by the Department of Labor can change the trend toward an economy based on low paying jobs.

The next Secretary of Labor will also be responsible for rules critical to the well-being of working people which have been delayed by the current administration including:

<sup>1</sup>Liz Kennedy, et al., “Bullies At The Ballot Box: Protecting The Freedom To Vote Against Wrongful Challenges and Intimidation,” DĒmos, 2012. <http://www.demos.org/publication/bullies-ballot-box-protecting-freedom-vote-against-wrongful-challenges-and-intimidation>.

<sup>2</sup>“An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division,” Office of the Inspector General & Office of Professional Responsibility, U.S. Department of Justice, 2008. <https://oig.justice.gov/special/s0901/final.pdf>.

- The expansion of access to overtime pay, which would raise incomes for 12.5 million salaried workers across the country;
- The fiduciary rule, which requires financial advisors and brokers to act in the best interest of people saving for retirement. Dēmos estimates that Americans savers would pay nearly \$25 billion less every year as a result of lower fees if the fiduciary rule goes into effect as written.<sup>3</sup>

Given these pending rules, and the reality that the Department of Labor is likely to face substantial cuts to its enforcement budget in the coming fiscal year, it is critical that the Secretary of Labor stand up for the rights of working Americans. Nothing in Alexander Acosta's record suggests that he will.

We urge you to vote against confirming Alexander Acosta as Secretary of Labor.  
Sincerely,

TAMARA DRAUT,  
*Vice President, Policy and Research.*

MAKE IT WORK ACTION!  
MARCH 10, 2017.

Senate HELP Committee,  
428 Dirksen Senate Office Building,  
Washington, DC 20510.

DEAR SENATORS: We write to express our concerns about the choice of Alexander Acosta for Secretary of Labor. Our vision for a Labor Secretary is one who will carry out the Department of Labor's (DOL's) mission to,

“foster, promote and develop the welfare of wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment and assure work-related benefits and rights.”

The DoL has a particular opportunity to continue to be a leader in advancing women in the workforce. We have not seen evidence in Mr. Acosta's record that he will be such a leader.

The Make it Work Campaign works to advance economic security for women, men and families across the country. Working families, and especially women, are increasingly experiencing deep economic instability between women and men being paid differently for their work, the increasing costs of child and elder care, the lack of paid family leave and low wages. America is ready for common sense workplace policies and ambitious solutions that will help people across the country “make it work.”

We need a Labor Secretary who understands the daunting challenges working families face and who supports raising the minimum wage (two-thirds of minimum wage earners are women), guaranteeing paid family and medical leave to all workers, the right to earn paid sick days, fair scheduling practices and equal pay for equal work. These issues are at the crux of working families' economic security, and especially women's economic security. President Trump's Cabinet nominees have not demonstrated this type of commitment to date. We need to know more about whether Mr. Acosta will work to boost the financial stability of women and working families and protect our rights. Please contact Make it Work Action's policy director Julie Kashen at [Julie@makeitworkcampaign.org](mailto:Julie@makeitworkcampaign.org) with any followup questions. Thank you.

Sincerely,

VIVIEN LABATON,  
*Co-Executive Director / Co-Founder.*

TRACY STURDIVANT,  
*Co-Executive Director / Co-Founder.*

<sup>3</sup>Robert Hiltonsmith, “Why the Fiduciary Rule Matters,” Dēmos, 2015. <http://www.demos.org/publication/why-fiduciary-rule-matters>.

NATIONAL CENTER FOR LESBIAN RIGHTS (NCLR) AND PRIDE @WORK,  
MARCH 10, 2017.

Hon. LAMAR ALEXANDER, *Chair,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR CHAIR ALEXANDER AND RANKING MEMBER MURRAY: We write today on behalf of the National Center for Lesbian Rights and Pride at Work and all those we serve to express our concerns about the nomination of Alexander Acosta as U.S. Secretary of Labor. NCLR is an organization committed to advancing the civil and human rights of LGBTQ persons and their families through litigation, legislation, policy, and public education. Pride at Work is a nonprofit organization that represents lesbian, gay, bisexual, transgender, and queer (LGBTQ) union members and their allies.

Like many working people, we know many LGBTQ people are struggling to make ends meet. In fact, LGBTQ people face a higher rate of poverty than non-LGBTQ people,<sup>1</sup> LGBTQ working people need a labor secretary who not only supports strong nondiscrimination protections but also the right to unionize, fair and equal pay, and worker safety. Workers should not have to decide between taking care of their health or that of a loved one and getting paid, and our Nation's Secretary of Labor should fight day and night for that principle.

With the recent attempts to roll back protections for LGBTQ individuals, it is essential to have a labor secretary who will defend the rights of LGBTQ working people. Unfortunately, we do not know Mr. Acosta's views on LGBTQ issues. Therefore, it is critical that the Senate HELP committee does its due diligence in vetting Mr. Acosta thoroughly on LGBTQ employment discrimination and all other issues affecting LGBTQ workers. Workers deserve a labor secretary who will stand up for all of them and their families.

Sincerely,

*National Center for Lesbian Rights,  
and Pride at Work.*

NATIONAL EDUCATION ASSOCIATION (NEA),  
WASHINGTON, DC 20036,  
*March 21, 2017.*

U.S. Senate,  
*Committee on Health, Education, Labor, and Pensions,*  
*Washington, DC 20510.*

DEAR SENATOR: On behalf of the 3 million members of the National Education Association and the 50 million students they serve, we urge you to ensure that Alexander Acosta, President Trump's nominee for Secretary of Labor, is committed to the U.S. Department of Labor's mission: to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

It is critical for the Secretary of Labor to be committed to fairness and civil rights for all workers. Every day across the country, men and women go to work hoping to do an honest day's work and provide for their families. Their contributions have made the U.S. economy one of the strongest in the world and, over time, created a stable middle class.

A strong labor force is the foundation of a strong middle class. Unfortunately, the worker voice in the workplace has eroded over the past few decades and so has the stability of the middle class. Now more than ever, America needs to invest in policies that shore up and help rebuild the middle class.

The Department of Labor is charged with addressing a range of issues related to those goals, including workplace safety, retirement security, and civil rights. We

<sup>1</sup>"Beyond Stereotypes: Poverty in the LGBT Community", The Williams Institute-UCLA School of Law (2012), <http://williamsinstitute.law.ucla.edu/headlines/beyond-stereotypes-poverty-in-the-lgbt-community/>.

urge the committee to vet Mr. Acosta thoroughly in these areas, especially with regard to his tenure at the U.S. Department of Justice as Assistant Attorney General for Civil Rights and his commitment to the U.S. Department of Labor's mission.

Thank you for your consideration.

Sincerely,

MARC EGAN,  
*Director of Government Relations,*  
*National Education Association.*

NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES,  
WASHINGTON, DC 20009,  
MARCH 14, 2017.

Hon. LAMAR ALEXANDER, *Chair,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR CHAIR ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the National Partnership for Women & Families and the activists and supporters with whom we stand, I write today to encourage rigorous questioning and a thorough review of the record of R. Alexander Acosta, the nominee to be U.S. Secretary of Labor. The Secretary of Labor should be a dedicated and powerful champion for workers and committed to the enforcement and advancement of policies that promote the best interests of working people. This includes fighting for fair wages, safe workplaces, equal pay, paid sick days, paid family and medical leave and equal employment opportunities. We will listen carefully to Mr. Acosta's responses at his upcoming confirmation hearing to evaluate whether he can be trusted to defend and protect the interests of working people, and especially workers in low-wage occupations and in dangerous industries, women workers and workers of color. We urge you to do the same, and if you are not satisfied that he will stand up for working people's best interests, to reject his nomination.

The National Partnership for Women & Families is a nonprofit, nonpartisan organization dedicated to promoting fairness in the workplace, reproductive health and rights, access to quality health care, and policies that help women and men meet the dual demands of job and family. For more than 45 years, we have worked to advance policies that create opportunities for women in the workforce and greater economic security for women and their families. The National Partnership has worked tirelessly to secure updated wage and hour protections for millions of America's workers, new equal employment opportunity protections for federal contract employees, and vigorous enforcement of the Fair Labor Standards Act and the Family and Medical Leave Act—all of which are under the jurisdiction of U.S. Department of Labor.

We have three primary areas of concern that we urge the committee to probe during Mr. Acosta's hearing.

First, we are concerned about Mr. Acosta's failure to exercise oversight over a subordinate who engaged in highly politicized and ideological hiring of civil service employees during Mr. Acosta's tenure as the Assistant Attorney General for Civil Rights at the Department of Justice. An investigation and subsequent report by the Department of Justice's Office of the Inspector General found that Mr. Acosta was aware of, and did too little to stop, his subordinate's efforts only to consider or hire attorneys with conservative credentials, and reject candidates and attorneys with liberal credentials.<sup>1</sup>

During Mr. Acosta's confirmation hearing, we urge you to question Mr. Acosta vigorously about the safeguards and protocols he will institute and maintain at the Department of Labor to ensure that the department's policy, research, regulatory and enforcement work is not compromised or undermined by partisan or ideological litmus tests for civil servants.

<sup>1</sup>U.S. Department of Justice U.S. Department of Justice Office of the Inspector General Office of Professional Responsibility. (2008, July 2). *An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division*. Retrieved 3 March 2017, from <https://oig.justice.gov/special/s0901/final.pdf>.

Second, the committee must rigorously probe Mr. Acosta's views on the role of the Department of Labor in investigating and enforcing laws that disproportionately impact women, people of color and vulnerable workers. We are concerned by reports that during Mr. Acosta's tenure at the Department of Justice, the Civil Rights Division brought significantly fewer employment discrimination cases than in prior administrations.<sup>2</sup> The division also reportedly moved away from filing high-impact cases challenging discriminatory policies affecting large numbers of people.<sup>3</sup>

During Mr. Acosta's confirmation hearing, we urge you to identify what Mr. Acosta's approach will be to investigating allegations of violations of wage and hour laws, workplace safety laws and other fundamental workplace protections, including those enforced by the Office of Federal Contract Compliance Programs (OFCCP). We ask you to hold Mr. Acosta accountable for explaining what his strategic enforcement priorities will be. And we urge you to ask Mr. Acosta to pledge that he will advocate for current or increased funding levels for the Department of Labor, including for wage and hour investigation and enforcement activities, which since 2009 have successfully recovered nearly \$1.6 billion back wages for more than 1.7 million workers across the country.<sup>4</sup>

Third, we urge you to probe Mr. Acosta's views on the need for new or expanded protections and supports that recognize workers' dual obligations to their jobs and to their families. In recent years, the Department of Labor has provided funding and technical assistance to States interested in exploring the creation of paid family and medical leave programs. The department commissioned important research that revealed the gaps in employer compliance and employees' barriers to using the Family and Medical Leave Act (FMLA). The department updated Fair Labor Standards Act regulations to guarantee more salaried workers access to overtime pay. The department created new common-sense protections requiring that Federal contractors' employees be paid a higher minimum wage and have access to earned paid sick days; it also adopted new nondiscrimination provisions for LGBT workers and protections against retaliation for workers who discuss their compensation with coworkers. Each of these policies helps to advance the interests of workers and their families and promotes their economic security.

In order to assess Mr. Acosta's commitment to these policies and to improving the lives of millions of working people, the committee should discern what types of investments Mr. Acosta will pledge to make as labor secretary and obtain his commitment to defend against rollbacks. For example, will he commit to vigorous enforcement of the FMLA? Will he support FMLA expansions? Will he invest in strong, comprehensive and sustainable solutions to America's paid family and medical leave crisis, including support for a national law that guarantees women and men access to paid family and medical leave for all FMLA reasons and continued Department of Labor funding for State paid leave analyses? Will he pledge to maintain and enforce department rules governing overtime pay, paid sick days, LGBT nondiscrimination and fair pay? The answers to these questions will help the committee—and the Nation—assess whether Mr. Acosta's views reflect those of the vast majority of voters who support these policies or whether his views are outside the mainstream and out of step with the workers whose interests he must serve.

We hope you agree that the next Secretary of Labor must strongly support the mission of the department, which is,

“No foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.”

We urge you to ask probing questions and to demand clear answers to determine whether Mr. Acosta will faithfully execute this mission. If he will not, we ask you to reject his nomination.

Sincerely,

DEBRA L. NESS,  
President.

<sup>2</sup>National Women's Law Center. (2004, April). *Slip-Sliding Away: The Erosion of Hard-Won Gains for Women Under the Bush Administration and an Agenda for Moving Forward*. Retrieved 13 March 2017, from <http://www.nwlc.org/sites/default/files/pdfs/AdminRecordOnWomen2004.pdf>.

<sup>3</sup>Ibid.

<sup>4</sup>Perez, T. E. (2017, January). Department of Labor. Memorandum to the American People. U.S. Department of Labor Publication. Retrieved 13 March 2017, from <https://www.dol.gov/sites/default/files/dol-exit-memo.pdf>.

NATIONAL URBAN LEAGUE,  
 NEW YORK, NY 10005,  
 March 10, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*U.S. Senate,*  
*Washington, DC 20510.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: As President and CEO of the National Urban League, and on behalf of its 88 affiliates in 36 States and the District of Columbia, I am writing to seek assurance that Alexander Acosta, nominee for Secretary of the U.S. Department of Labor (DOL), will make full and effective implementation of the bipartisan *Workforce Innovation and Opportunity Act* (WIOA), enacted into law in 2014, a top priority for our Nation's workforce. Given the lack of information on Mr. Acosta's views and record on workforce development policy, we urge that you conduct a thorough assessment of how he plans to assure that adults and youth having the greatest barriers to employment in today's economy have access to the services of WIOA.

The National Urban League is the Nation's largest historic civil rights and urban advocacy organization dedicated to economic empowerment in African American and other underserved communities. Every day, we strive to meet our 2025 Goal of insuring that "Every American has access to jobs with a living wage and good benefits." With the Black unemployment rate remaining at about twice the white rate across time at every level of education and the income gap remaining unchanged—now at 60 percent, the work of the Department of Labor's Employment and Training Administration (ETA) is of critical importance to our urban communities. As you are fully aware, it took more than a decade to reach a bipartisan reauthorization of our Nation's only Federal workforce development system. This landmark law increases focus on vulnerable workers, expands education and training programs, helps disadvantaged adults and youth earn while they learn, and aligns planning and accountability. However, after years of eroded funding, the new law remains sorely underfunded to fulfill its promise to meet the needs of both our labor force and the business community. For example, since 2010, Congress has cut funding to employment and job training programs by over \$1 billion.<sup>1</sup>

During his nomination hearing, the National Urban League will be looking forward to learning whether Mr. Acosta is fully committed to effectively implementing the WIOA law. Specifically, we urge that the committee probe his views on the following:

- What are Mr. Acosta's views on WIOA and is he committed to its full implementation?
- As we move into the budget and appropriations process, will he commit to aggressively seeking the funding that is needed to effectively implement WIOA so that every unemployed and under-employed adult and youth have access to the training, education and skills necessary for employment in jobs with a living wage and good benefits?
- Given that today's youth will become tomorrow's adults, summer jobs programs give young people an introduction to the labor market by exposing them to practical experiences and skills that are a critical foundation for future jobs in this challenging and competitive labor market. For many Black teenagers, it is an opportunity to gain valuable experiences and tap into a network that they may have little access to otherwise. In light of this important program for youth, will Mr. Acosta commit to expanding the summer jobs program for youth beyond WIOA so that every youth in need of a summer job will be able to obtain one?

The National Urban League will be assessing how Mr. Acosta responds to our concerns about his views and plans for fulfilling the promise of WIOA and we urge the

<sup>1</sup>National Skills Coalition. Accessed at <http://www.nationalskillscoalition.org/federal-policy/federal-funding>.

committee to fully commit to the same on behalf of the millions of adults and youth that rely on this law to survive and thrive in a 21st century labor market.

Sincerely,

MARC H. MORIAL,  
*President and Chief Executive Officer.*

NATIONAL WOMEN'S LAW CENTER,  
MARCH 15, 2017.

Hon. LAMAR ALEXANDER, *Chairman,*  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Senate Dirksen Office Building,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*Committee on Health, Education, Labor, and Pensions,*  
*154 Russell Senate Office Building,*  
*Washington, DC 20510.*

DEAR SENATORS ALEXANDER AND MURRAY: The National Women's Law Center (the Center), an organization that has advocated on behalf of women and girls for 45 years, writes to express its concern regarding the nomination of R. Alexander Acosta as Secretary of Labor. The Secretary of Labor is the Nation's most senior official tasked with ensuring the well-being and rights of working people and advancing their employment opportunities, and is therefore of great importance to women and their families. The Secretary of Labor directs the Department of Labor's interpretation and enforcement of a number of laws vital to women's economic security and right to be free from workplace discrimination, such as the Fair Labor Standards Act, the Occupational Safety and Health Act, the Family and Medical Leave Act, the Affordable Care Act, and Executive orders prohibiting employment discrimination by Federal contractors and setting labor standards for Federal contractors' employees, including protection of the right to earn paid sick days. These policies are essential to closing the gender wage gap: they remove barriers to women's employment opportunity, including sex discrimination; raise women's wages; allow women to meet caregiving responsibilities without sacrificing their employment; and ensure women's health and safety so they can continue to support their families.

Mr. Acosta's record, particularly during his tenure as Assistant Attorney General for Civil Rights at the Department of Justice from 2003–05, raises serious questions about his commitment to implementing and enforcing labor, employment and civil rights protections of critical importance to working people, and particularly to women, free from improper political influence. We urge the committee to use the opportunity presented by Mr. Acosta's confirmation hearing to conduct a rigorous examination of Mr. Acosta's record and thoroughly vet this nominee.

Mr. Acosta oversaw the Department of Justice's Civil Rights Division at a time when it engaged in highly politicized and ideological hiring and case assignments. An investigation and 2008 report by the Department of Justice's Office of the Inspector General and Office of Professional Responsibility found that while Acosta served as Assistant Attorney General for Civil Rights, a senior official directly under his supervision, Bradley Schlozman, violated the Civil Service Reform Act by considering and, indeed, prioritizing political and ideological affiliations in hiring and transferring attorneys and assigning cases in the Civil Rights Division. Acosta had delegated hiring authority to Schlozman, who sought to punish attorneys with affiliations with progressive organizations or connections to the Democratic party and elevate attorneys with conservative views or Republican party credentials. The report concluded that Acosta and others in the division "had sufficient information about Schlozman's conduct to have raised red flags warranting closer supervision of him," and that they instead took no action and failed to sufficiently supervise Schlozman.<sup>1</sup>

As the agency responsible for enforcing many of the laws that ensure safe and fair employment practices, the Department of Labor has a heightened responsibility to ensure its own labor and employment practices are unimpeachable. We urge the committee to question Mr. Acosta about this issue at his hearing, and obtain his commitment to ensuring that these politicized screenings, hirings, transfers, and

<sup>1</sup>U.S. Dep't of Justice, Office of the Inspector General and Office of Professional Responsibility, An Investigation of Allegations of Politicized Hiring and Other Improper Personnel Actions in the Civil Rights Division 50, 52 (July 2, 2008), <https://oig.justice.gov/special/s0901/final.pdf>.



workplace practices are not repeated at the Department of Labor, and that employees at the Department of Labor comply with all labor and employment laws, including the Civil Service Reform Act. Furthermore, Mr. Acosta should be asked to provide details about the specific oversight processes he would implement to ensure that Labor Department officials are complying with all relevant labor and employment laws.

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

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

The Wage and Hour Division enforces a variety of laws critical to women's economic security and health, including wage and hour protections in the Fair Labor Standards Act, and leave provisions in the Family and Medical Leave Act and the current Department of Labor rule ensuring that employees of Federal contractors can earn paid sick days. The overrepresentation of women in low-wage jobs, including minimum wage and sub-minimum wage positions, as well as the fact that women—and in particular women of color—continue to bear the burden of caregiving, are important drivers of the gender wage gap. Because women, and in particular women of color and immigrant women, are overrepresented in low-wage jobs, they have a particular stake in raising the minimum wage and in robust overtime protections; are especially vulnerable to wage theft and retaliation; and are less likely to have access to important supports like paid family and medical leave and paid sick leave. It is essential that the Wage and Hour Division receives the resources it needs to protect low-wage workers, and that it uses those resources to enforce workers' rights affirmatively, rather than relying on complaint-driven enforcement as in the George W. Bush administration, which left workers vulnerable to exploitation.<sup>3</sup> The committee must call upon Mr. Acosta to affirm that he will commit the Division to this affirmative enforcement and defend the Division against any attempts to undermine its ability to conduct vigorous implementation and enforcement activities.

Additionally, we urge you to probe Mr. Acosta's understanding of the importance of various labor and employment policies for reducing barriers to women's workplace opportunity and promoting their economic security. For instance, the committee should explore whether Mr. Acosta appreciates the implications of increasing the Federal minimum wage, ensuring tipped workers are entitled to the same cash minimum wage as other workers, and expanding eligibility for overtime pay for closing the gender wage gap. Likewise, the committee should determine whether Mr. Acosta recognizes the critical role that access to paid family, medical and sick leave pro-

<sup>2</sup>U.S. Gov't Accountability Office, U.S. Department of Justice, Information on Employment Litigation, Housing and Civil Enforcement, Voting, and Special Litigation Sections' Enforcement Efforts from fiscal years 2001 Through 2007 (Oct. 2009), <http://www.gao.gov/new.items/d1075.pdf>; Nat'l Women's Law Ctr., Slip-Sliding Away: The Erosion of Hard-Won Gains for Women Under the Bush Administration and an Agenda for Moving Forward 13–14 (Apr. 2004), <http://www.nwlc.org/sites/default/files/pdfs/AdminRecordOnWomen2004.pdf>.

<sup>3</sup>U.S. Gov't Accountability Office, Wage And Hour Division's Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft (Mar. 25, 2009), <http://www.gao.gov/assets/130/122107.pdf>.

grams play in helping women maintain employment while ensuring their own health and fulfilling caregiving responsibilities. We urge you to thoroughly explore Mr. Acosta's views on these matters during his confirmation hearing.

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

Sincerely,

MARCIA D. GREENBERGER,  
*Co-President.*

PUBLIC CITIZEN,  
WASHINGTON, DC 20003,  
*March 10, 2017.*

Hon. LAMAR ALEXANDER, *Chairman,*  
*U.S. Senate,*  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Senate Dirksen Office Building,*  
*Washington, DC 20510.*

Hon. PATTY MURRAY, *Ranking Member,*  
*U.S. Senate,*  
*Committee on Health, Education, Labor, and Pensions,*  
*428 Senate Dirksen Office Building,*  
*Washington, DC 20510.*

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: Public Citizen is a national, nonprofit public interest organization with more than 400,000 members and supporters nationwide that advocates for public health and safety interests before legislative bodies, executive branch agencies, and the courts. On behalf of Public Citizen, I am writing to urge you to thoroughly examine R. Alexander Acosta as President Trump's nominee for U.S. Secretary of Labor.

In November, American voters made it clear that they want the government to uplift the working class, and in many ways this idea was a central theme of the election. However, a 2008 U.S. Department of Justice (DOJ) report calls into question Mr. Acosta's ability to be an effective advocate for working people. The report revealed the politicization of hiring practices within DOJ's Civil Rights Division during Mr. Acosta's tenure.<sup>1</sup> Public Citizen has serious concerns about the findings of this report.

Mr. Acosta must address his record in DOJ leadership in addition to his stance on critical issues affecting working families. Among other issues, the committee should question the nominee on the following matters:

- Is Mr. Acosta committed to enforcing U.S. Department of Labor (DOL) rules, such as the recently issued silica, beryllium, and electronic recordkeeping rules?
- Will Mr. Acosta advocate for appropriate funding and staffing levels for the U.S. Occupational Health and Safety Administration?
- As head of the DOL, will Mr. Acosta actively pursue new public protections to make worksites safer nationwide?

American workers deserve a U.S. Secretary of Labor who fights for their rights in the workplace and believes in the American working public. We ask the committee to press Mr. Acosta on his commitment to advocating for workers across the country and vigorously enforcing DOL regulations. Leading DOL is a serious responsibility that requires a commitment to advocating for our Nation's workers. The committee must use its role in the confirmation process to determine whether Mr. Acosta is the correct candidate to take on this important task.

Thank you for your consideration.

Sincerely,

LISA GILBERT,  
*Director, Public Citizen's Congress Watch.*

<sup>1</sup><https://oig.justice.gov/special/s0901/final.pdf>.

THE LEADERSHIP CONFERENCE ON CIVIL AND  
HUMAN RIGHTS,  
WASHINGTON, DC 20036,  
March 10, 2017.

Hon. LAMAR ALEXANDER, *Chair*,  
*Committee on Health, Education, Labor, and Pensions*,  
*U.S. Senate*,  
*Washington, DC 20510*.

Hon. PATTY MURRAY, *Ranking Member*,  
*Committee on Health, Education, Labor, and Pensions*,  
*U.S. Senate*,  
*Washington, DC 20510*.

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 2003–05, 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.<sup>1</sup> 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.”<sup>2</sup>

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.”<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.

<sup>1</sup>“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>.

<sup>2</sup>*Ibid.* Pg. 50.

<sup>3</sup>*Ibid.* Pg. 52.

<sup>4</sup>*Spencer v. Blackwell*, Case No. 04CV738. Filed October 27, 2004. <http://moritzlaw.osu.edu/electionlaw/litigation/spencer.php>.

<sup>5</sup>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%20hic%20Challenge%20Letter%20-%20Acosta.pdf>.

Mr. Acosta, if confirmed, will preside over a very large department with 17,000 employees.<sup>6</sup> 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. 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](mailto: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; Dēmos; 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

<sup>6</sup>“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>.

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; and YWCA USA.

WORKPLACE FAIRNESS,  
Silver Spring, MD 20910.

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RESPONSE BY ALEXANDER ACOSTA TO QUESTIONS OF SENATOR ALEXANDER, SENATOR ROBERTS, SENATOR COLLINS, SENATOR MURKOWSKI, SENATOR YOUNG, SENATOR CASSIDY, AND SENATOR PAUL

SENATOR ALEXANDER

*Question 1.* The Davis-Bacon Act requires Federal contractors and subcontractors to pay employees a prevailing wage determined by the Department of Labor from a voluntary local area wage survey. The law has already been extended to more than 60 Federal statutes that provide construction funding, despite numerous government watchdog reports that uncovered errors, fraud and bias in Davis-Bacon wage survey data and questioned the statistical integrity and methodology of the wage determination process. There is a growing body of evidence and an increasing public awareness that Davis-Bacon artificially inflates the costs of Federal and federally assisted construction projects, and creates barriers to participation for small and minority-owned businesses. These costs result in American taxpayers receiving far less than they would in a true, market-based system. This waste of Federal dollars means fewer projects, and in turn, fewer workers employed than would have been otherwise.

Will you commit to review the accuracy of Davis-Bacon wage rate calculations and, if you find it lacking, to taking steps to improve their accuracy?

Answer 1. If confirmed, I look forward to being briefed on the Davis-Bacon Act and these concerns as we develop the Department's policies and priorities. I also understand the Office of Inspector General testified they are looking into the Davis-Bacon wage survey program and want to ensure the program operates efficiently and effectively, so that taxpayers get the best value and workers are paid the proper wages.

*Question 2.* Disability insurance provides Americans with crucial income protection from unexpected disability due to illness or injury. Access to disability insurance depends on affordability, which is directly affected by regulatory, administrative, and litigation costs. In December, the Department of Labor issued a final regulation regarding disability insurance claims administration. I have heard concerns that this regulation will significantly increase the cost of disability insurance by encouraging litigation and will inappropriately apply Affordable Care Act claims procedures to disability plans.

Will you commit to reviewing this regulation and working with the disability insurance community to ensure that Americans will continue to have access to affordable, high quality disability insurance?

Answer 2. I certainly support making high-quality disability insurance as affordable as possible while also ensuring that claims are processed timely and fairly. If confirmed, I expect to be briefed on this regulation and I look forward to working with Congress as we develop the Department's regulatory policies and priorities. As I noted in my hearing, the President has directed each Cabinet officer to review all rules and to make determinations if any rules should be revised.

SENATOR ROBERTS

*Question 1.* Mr. Acosta, as you are aware, contract negotiations which lapse can result in a slow down at our ports, which in turn effects our agriculture community.

The importance of resolving these conflicts expeditiously is not only important for the direct parties involved, but for our agriculture industry and so many others who rely on exporting and importing goods. A shutdown or even a slowdown to our port system can cost the economy billions of dollars by halting or delaying the export of agriculture products to other countries or the import of goods to stores across our country.

Should a situation arise, putting our economy at risk, will you—if asked—lend your assistance to finding a quick and effective solution?

Answer 1. Yes. If confirmed, I would lend my assistance to help resolve a port slow down or strike. The stakes for our economy are too high not to resolve any conflicts expeditiously.

*Question 2.* Mr. Acosta, there is significant bipartisan support on the committee for encouraging employee ownership of businesses through Employee Stock Ownership Plans (ESOPs). The data shows that ESOPs create jobs, generate economic activity, and promote retirement savings. However, the important benefits of ESOPs are being undermined by the Department of Labor, which, under the prior administration, unfairly targeted the ESOP community with overly aggressive enforcement tactics. In particular, the Department has engaged in abusive subpoena practices for document production and testimony, often without previously contacting any representative of the sponsoring company of the subject ESOP, and almost always seeking duplicative information from the professionals who provide services to ESOPs. These abusive subpoena tactics have caused needless and very significant expense to produce multiple copies of the same documents, and it is not clear that there is any cause for the subpoenas being issued.

Can you commit to reviewing the Department's ESOP enforcement practices and working with the ESOP community to encourage employee ownership?

Answer 2. I strongly support empowering Americans in all aspects of their working endeavors. A well-run ESOP, like other employment-based retirement plans, can provide valuable benefits to participating workers, and I believe that Congress and the Department have a shared responsibility to take steps to make sure that ESOPs fulfill their important mission of providing benefits and enhancing employee ownership. If confirmed, I expect to be briefed on ESOPs and I look forward to working with Congress as we develop the Department's regulatory policies and priorities to expand opportunity.

*Question 3.* Mr. Acosta, the Bureau of International Labor Affairs (ILAB) leads the Department of Labor's efforts to ensure workers across the globe are treated fairly. Their mission is to improve global working conditions, raise living standards, protect workers' rights, address workplace exploitation and ensure a fair playing field for American workers.

Should you be confirmed, how do you see ILAB playing into your overall agenda at DOL?

Answer 3. If confirmed, I will consult with the Bureau staff and seek input from Congress and other agencies on these important issues to ensure that ILAB continues its mission. A fair playing field for American workers is certainly a priority for me, and I strongly support promoting human rights and free markets for the benefit of workers generally.

#### SENATOR COLLINS

#### TEMPORARY EMPLOYMENT VISAS

*Question 1.* H-2B visas, which certify foreign nationals to work temporarily in the United States, are heavily relied upon by Maine's tourism and hospitality businesses that are in need of seasonal, temporary workers—beyond the number that they can hire in our State and region.

The H-2B program is especially important to Maine's tourism sector, which is Maine's second biggest industry. For a State with just 1.3 million people, hosting 25 times that number over the course of a year is a challenge. Most of these visitors come in the summer, which makes it all the more important for restaurants and hotels in Maine to have their H-2B visa applications processed in a timely fashion.

Unfortunately, for too many businesses in Maine, DOL's processing of these visas is taking too long, even for workers who receive a visa every year. Combined with the low unemployment rate in our State, the effect of DOL's processing delays could be catastrophic for Maine's businesses—many of which have contacted me to express concern that the 66,000 numerical cap for H-2B visas for this year was reached last week.

If confirmed, how would you try to reduce the processing times for these visas?

Answer 1. I recognize the difficulty that many employers face in this area and the potential repercussions for vital industries across the country. As I noted in the hearing, I understand how important this is for Maine and other States and look forward to working together to fix this issue if confirmed.

#### JOB TRAINING AND APPRENTICESHIPS

*Question 2.* As we've discussed, I'm a big supporter of job training and apprenticeship programs that match workers' training with the skillsets in demand. I have met with numerous business owners in Maine who have jobs available but cannot find qualified and trained workers to fill them.

Apprenticeships allow companies to retain expertise while developing the skills of younger workers, and make possible the seamless transfer of skills from one generation to the next, which is essential to Maine's trade-related industries.

In 2015, I introduced a bill with Sen. Cantwell that would have given employers a \$5,000 tax credit to provide apprenticeship programs to train workers in high-demand mechanical, technical, health care, or technology fields. We are planning to reintroduce this bill very soon.

If confirmed, how would you help American workers acquire the skills that employers need?

Answer 2. I share your belief that quality apprenticeship programs are a valuable and effective job training tool and expanding access to effective apprenticeship programs is a major facet of positioning our workforce to meet the needs of a changing economy. Apprenticeship and other work-based learning models that share strong public-private partnerships, active employer engagement training, and offer workers the opportunity to earn while you learn are critical to ensure employers get technically capable workers. Furthermore, the concept of providing employers with incentives to invest in such programs is a concept of great interest to me, and one in which I would like to work with you and other members of the committee. There are numerous examples throughout the Nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. If confirmed, I believe my role will be to make sure this model can be accessed in more communities and by displaced workers who will need to transition to new and growing industries.

#### SENATOR MURKOWSKI

*Question 1.* In Alaska, we are seeing increasing coordination and leverage of private sector workforce development funds. For example, Alaska Native Corporations, labor unions, health care employers, and other diverse private sector entities are working together to expand training funding that augments public sector investments.

What would you do as Secretary to maximize and encourage private sector funding?

Answer 1. The private sector and local non-profit leaders and labor unions are often much more in touch with the markets in their communities and can be much more agile in allocating resources than we can in Washington, DC. I believe that public-private partnerships like the ones that you describe can be a major part of the future of workforce development. There are numerous examples throughout the Nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. If confirmed, I believe my role will be to make sure this model can be accessed in more communities and by displaced workers who will need to transition to new and growing industries.

*Question 2.* The President's "skinny budget" request proposes to close Job Corps centers that do a "poor job" of educating and preparing students for jobs. The request does not detail how centers would be evaluated to determine if they do a "poor job" or not. When we spoke one-on-one, you suggested evaluating Job Corps centers not by their percentage of graduates but by the percentage of students who get jobs for which they are trained.

Given the President's proposal, do you have an estimate of how many Job Corps centers might be closed under this rubric?

Answer 2. As a nominee, I did not participate in the budget process so I am unfamiliar with any specific proposals that are assumed in that proposal. If confirmed, I expect to be briefed on the Job Corps program and the performance of each of the more than 100 Job Corps centers. I look forward to learning more about the center in your State that you had mentioned as well as others, and our focus will be on helping Job Corps centers best provide to students the vital services and training

central to their core mission. Finally, to be clear, performance must also include an assessment of the challenges faced in a particular region.

*Question 3.* The President’s “skinny” budget request also proposes to decrease Federal support for job training and employment service formula grants and shift the responsibility to States, localities, and employers. In addition, it proposes to reduce funding for unspecified “ineffective, duplicative, and peripheral job training grants”.

What are your thoughts about how these proposals would impact the Administration’s plan to increase American job training in States like Alaska that have serious budget deficits, and States where Job Corps centers are closed due to poor performance?

Answer 3. As a nominee, I was not able to participate in the budget process so I am unfamiliar with any specific proposals that are assumed in that proposal. The President proposes the budget and it is ultimately Congress that determines funding. If confirmed, I look forward to participating in that process, so that I can understand the goals, performance and resource needs of programs such as these in order to help the President develop budget proposals that will accomplish the Department’s mission and goals and deliver the greatest value to the American people. If confirmed, I also expect to be briefed on the Job Corps program and the performance of each of the more than 100 Job Corps centers. I look forward to learning more about the center in your State as well as others, and our focus will be on helping Job Corps centers to best provide to students the vital services and training central to their core mission.

*Question 4.* You may have read about international trends in which companies in the United States and abroad are turning to apprenticeship for training their employees in health care, advanced manufacturing, IT, aviation, maritime, and other occupations. On a bipartisan basis, both Congress and the USDOL have supported expansion of apprenticeship, and Alaska has worked very closely with USDOL in this regard. Major employers expanding apprenticeship in our State include nearly all of our largest hospitals, our largest provider of health care to Alaska Natives, the Alaska Air Carriers Association, multiple maritime shipping companies, many construction employers, and others.

Can you commit to continuing the Department of Labor’s critical support for Registered Apprenticeship?

Answer 4. As I stated at the confirmation hearing, I feel strongly that apprenticeship programs can deliver great value, both for workers and industry. There are numerous examples throughout the Nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. If confirmed, I believe my role will be to make sure this model can be accessed in more communities and by displaced workers who will need to transition to new and growing industries.

*Question 5.* Alaska has the lowest income inequality in America and some of the country’s highest median wages. That is partly a result of strong labor laws, including the Federal Davis-Bacon Act and the State’s Little Davis-Bacon Act.

Will you fully support enforcing Federal prevailing wage laws, since they are essential to sustaining our middle class?

Answer 5. If confirmed, I will work to enforce the laws under the Department of Labor’s jurisdiction fully and fairly, including the Federal Davis-Bacon Act.

*Question 6.* As we discussed in our previous meeting, Job Centers are important not only for employers seeking American workers, but also as a source of industry-required job training for job seekers through Workforce Innovation and Opportunity Act (WIOA) funds. In Alaska, we supplement Federal training dollars with State training funds through the State Training and Employment Program (STEP). These training funds are particularly important for an increasingly dynamic economy in which workers can expect to change jobs and even industries multiple times in the course of a career.

Will you work to sustain the Wagner-Peyser and Workforce Innovation and Opportunity Act funding that is essential for these job training efforts?

Answer 6. As I noted at the confirmation hearing, I feel strongly that well-managed and targeted job training programs, and particularly quality apprenticeship programs, can deliver great value, both for workers and industry. It is also important to ensure States and local business have input into those programs because needs are different across the country. There are numerous examples throughout the Nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. If confirmed, I



believe my role will be to make sure this model can be accessed in more communities and by displaced workers who will need to transition to new and growing industries, and I will work to sustain funding for these types of efforts.

*Question 7.* Concerns have been raised about your oversight of the Civil Rights Division of the Department of Justice, specifically regarding your oversight of personnel practices impacting career attorneys. The joint report of the Office of Inspector General and Office of Professional Responsibility stated that you, “[and other senior officials] had indications of potential problems in Schlozman’s actions and judgment” and “had sufficient information about Schlozman’s conduct to have raised red flags warranting closer supervision of him.” The report also noted that you, “did not take sufficient action in response to the information” that DAAG Scholzman had forwarded an “inappropriate, racially insensitive e-mail to other Department officials”.

How can I be confident that the actions leading to criticisms about your oversight and management of the Division will not be repeated at the Department of Labor if you are confirmed as Secretary?

*Answer 7.* As I indicated at my hearing before the committee, the conduct described in the Inspector General’s report was wrong and should not have taken place. The IG concluded that I was not aware of the misconduct. Nonetheless, it occurred on my watch as Assistant Attorney General. I am now well aware of what happened, and committed to ensure it is not repeated. Indeed, if confirmed, I will make it abundantly clear that such conduct will not be tolerated. Since that time, I am a more hands-on manager. I have also learned to better oversee and monitor subordinates while not micromanaging their performance. As U.S. Attorney, for example, I regularly walked around the office to learn what the Assistant U.S. Attorneys were doing. This day-to-day contact was important, and helped me better understand and monitor day-to-day activity.

*Question 8.* Nationwide, Job Corps centers are operating at 80 percent of their contracted capacity in part because of an inefficient procurement system and costly and unnecessary regulations and policies.

Will you commit to expediting the reduction of unnecessary regulations and improving procurement and other policies to increase Job Corps’ efficiency and effectiveness?

*Answer 8.* Thank you for bringing this important issue to my attention. As presented, the answer to this question is yes. The efficiency and effectiveness of Job Corps centers is crucial. I expect to be briefed on Job Corps centers’ operating capacity and evaluation metrics in order to better understand how they are currently performing, and how we can create the conditions for them to be more effective and efficient.

*Question 9.* Does the Department of Labor have a role in addressing wage stagnation, especially among entry-level and low-wage employment? If so, what is that role?

*Answer 9.* A growing economy combined with improved job training for in demand skills that drive productivity enhancements is the best way to improve real wages for entry and low wage workers generally. Advancing technologies will change the types of jobs that are available in our economy. As I discussed at the hearing, we need to make better efforts to align job training with the skills the market demands today and in the future. If confirmed, I look forward to working with you further on this issue.

*Question 10.* Linking to Employment Activities Pre-Release (LEAP) is an example of a positive U.S. DOL prison-to-workforce program to help returning citizens gain employment after incarceration.

What are your plans to strengthen prison-to-workforce programs given that having a job is the most important factor in determining whether a returning citizen will commit more crimes?

*Answer 10.* Programs that help reintegrate citizens into the economy post-incarceration are very important and of interest to me. I am informed that the Department has several programs that focus in this area, and I look forward to being briefed on all of them. Thank you for making me aware of your appreciation of this program and this issue. I look forward to working with you and other members of the committee on continuing and possibly improving efforts to help citizens reintegrate into the workforce post-incarceration.

SENATOR YOUNG

*Question 1.* Employee Stock Ownership Plans (ESOP) have traditionally enjoyed bipartisan support in both Democratic and Republican administrations. More than 50 ESOPs are headquartered in my home State of Indiana, with many more employing residents. ESOPs allow members of both rural and urban communities to build retirement wealth as employee owners. These members would not be afforded the same opportunities without the presence of ESOPs.

If you are confirmed as the Secretary of Labor, will you continue the tradition of support of ESOPs and work with me on issues surrounding ESOPs?

Answer 1. I strongly support empowering Americans in all aspects of their working endeavors. A well-run ESOP, like other employment-based retirement plans, can provide valuable benefits to participating workers, and I believe that Congress and the Department have a shared responsibility to take steps to make sure that ESOPs fulfill their important mission of providing benefits and enhancing employee ownership. If confirmed, I expect to be briefed on ESOPs and I look forward to working with Congress as we develop the Department's regulatory policies and priorities to expand opportunity.

*Question 2.* In most recent years under the previous Administration, ESOPs have been plagued with lawsuits. In fact, the number of lawsuits against ESOPs quadrupled. This is due to many inaccurate valuations of privately held companies that did not take into account the unique ownership of ESOPs. Furthermore, I have heard from ESOPs in my State that many field audits conducted by the Employee Benefit Security Administration were inefficient, time consuming and hostile. I certainly believe that appropriate enforcement action is necessary to ensure compliance with the law, but I do not believe that ESOPs should be unfairly scrutinized.

If you are confirmed as the Secretary of Labor, will you work with me to examine the enforcement process and explore ways to increase efficiency and predictability?

Answer 2. I strongly support empowering Americans in all aspects of their working endeavors. A well-run ESOP, like other employment-based retirement plans, can provide valuable benefits to participating workers, and I believe that Congress and the Department have a shared responsibility to take steps to make sure that ESOPs fulfill their important mission of providing benefits and enhancing employee ownership. If confirmed, I expect to be briefed on ESOPs and I look forward to working with Congress as we develop the Department's regulatory policies and priorities to expand opportunity and address your concerns.

SENATOR CASSIDY

*Question 1.* In Louisiana, our unemployment rate is stagnant at around 6.0 percent. Well above the national average of 4.8 percent. There is much talk about creating jobs and growing the economy. As you may know, there are approximately 47 Federal employment and training programs administered by the Department of Labor, and other departments and Federal agencies. Federal taxpayers spend billions of dollars on these programs (some of which are mandatory spending), yet unemployment remains high and there is a constant struggle to find qualified workers.

The Workforce Innovation and Opportunity Act (WIOA) consolidated many of the Federal programs administered by the Department of Labor and set performance accountability measures to assess their effectiveness at the State and local level. However, we won't have the first set of data until this summer. As Secretary, will you commit to analyzing such data quickly to ensure these programs are effective and held accountable for preparing people for jobs? What immediate steps will you take if inefficiencies are found?

Answer 1. If confirmed, I expect to be briefed on the data and performance metrics you mention in order to understand how effective these programs are at all levels. I commit to analyzing the data as quickly as possible. If there are instances where programs are failing to meet performance accountability measures, I expect to work both internally at the Department and with you and other members of the committee to hold those in charge accountable and to pursue policies and reforms that will increase performance and deliver more value to workers and the economy.

*Question 2.* As Secretary, will you commit to working with this committee and the other departments and agencies to review how best to coordinate all education, employment and job training programs? Particularly, will you review how we can best bring career and technical education (CTE) and the Temporary Assistance for Needy Families (TANF) employment services in line with the department's job training programs? Please explain your thoughts and recommendations for coordinating these programs?

Answer 2. Yes. As I mentioned at the hearing, I expect to work closely and coordinate with the Department of Education whenever possible. The missions of the two Departments are so closely aligned, and I believe closer and more effective coordination will allow us to provide better services and outcomes for those served by both Departments. If confirmed, I expect to be briefed on how Department of Labor programs interact with Department of Education programs, as well as other Departments like Health and Human Services in order to ensure that optimal coordination is taking place.

*Question 3.* Do you agree that all programs (across all agencies and departments) should share similar performance accountability measures? To allow us to compare apples to apples on what is working? What are your recommendations on how best to make this happen?

Answer 3. I certainly support evaluating programs for their results in an objective manner, but it may be difficult to have the same performance measures across all agencies. Each enforcement agency, for example, at DOL may have different metrics because of the nature of their responsibilities and legal authorities. Increased compliance with the law arguably is a great metric to consider but can be hard to measure, particularly in the case of discrimination prevention. Similarly, consumer-driven job training may be more difficult to measure as opposed to job placement of Job Corps graduates. If confirmed, I will consult with staff and review the performance metrics DOL agencies have been using to see if there might need to be changes and also coordinate with other departments to develop better measures where possible.

*Question 4.* While the department does make data on these programs publicly available on their website, the most current information is not always available in a timely manner. Also, people in need of job training services are not looking at the data on the outcomes, only that the services are available. Will you commit to reviewing the department's data systems to ensure they are working effectively with information available in a timely manner? Also, will you commit to having this information publicly available through an online searchable database for all programs that is accessible to Congress, stakeholders, and taxpayers?

Answer 4. If confirmed, I will look into these matters and discuss with DOL staff how to make such information more readily available.

*Question 5.* We really must do a better job of coordinating all Federal programs across the board to ensure they are effective and a good use of taxpayer dollars. Many of these programs have been around for decades and we must ensure they are working to meet today's workforce needs.

Answer 5. I strongly agree.

SENATOR PAUL

*Question 1.* Under the Obama administration, DOL exempted or significantly decreased labor union reporting requirements regarding conflicts of interest and financial disclosures. The forms eliminated or decreased are T-1 (Trust Annual Reporting), LM-2 (labor organization annual report), and LM-30 (conflict of interest disclosure reports). Would you work to ensure that there is appropriate transparency and disclosure conducted on the part of labor organizations as required by law?

Answer 1. If confirmed, I look forward to discussing these issues with the staff of the Department's Office of Labor-Management Standards to determine whether the level of disclosure that currently exists is fulfilling the mandate Congress set in the Labor-Management Reporting and Disclosure Act.

*Question 2.* If confirmed, would you consider revoking the June 20, 1995, letter of the Wage & Hour Administrator which declined to use the Agency's resources to enforce Davis-Bacon Act violations for union job targeting programs?

Answer 2. If confirmed, I look forward to being briefed on the Davis-Bacon Act and the use of job targeting programs under it as we develop the Department's regulatory policies and priorities, and I will enforce the laws under the Department of Labor's jurisdiction fully and fairly.

*Question 3.* Do you agree with the Department of Labor's Wage Appeals Board rulings in 1991 that the practice of deducting union dues from employee wages and returning them to an employer through union job targeting programs on Davis-Bacon Act prevailing wage jobs, is unlawful conduct under the anti-kickback provisions of the Davis-Bacon Act?

Do you intend to enforce the Davis-Bacon Act provisions that bar the “kickback” of any portion of a worker’s Davis-Bacon wages to an employer from a union-sponsored job target fund?

Do you agree that union job target funds undermine competition as the Department of Labor’s Wage Appeals Board indicated?

Answer 3. If confirmed, I look forward to being briefed on the Davis-Bacon Act and the use of job targeting programs under it as we develop the Department’s regulatory policies and priorities and will work to enforce the laws under the Department of Labor’s jurisdiction fully and fairly.

*Question 4.* President Obama’s Executive Order 13502 encourages Federal agencies to require project labor agreements (PLAs) on Federal construction projects exceeding \$25 million in total cost. PLAs have been shown to increase cost of Federal construction projects by 12–18 percent (Beacon Hill, 2009), and give unionized contractors an unfair advantage.

If confirmed, will you work with the President to ensure the best qualified applicants have a fair opportunity to win these contracts?

Answer 4. The decision as to whether to maintain, amend, or rescind Executive orders belongs to the President, but I will certainly provide advice if asked by the President. I support the right of construction contractors to use PLAs where appropriate.

*Question 5.* In 2012, paid Official Time (OT) taken by Federal employees to represent unions cost the American taxpayer \$157.2 million in salary and 3.4 million hours.

Would you commit to taking a serious look at the use of OT and its impact on the Federal workforce and stewardship of taxpayer dollars? If appropriate, would you support elimination of “official time” off for Federal union and member activity paid at government expense?

Answer 5. I believe Congress with the President would need to act to make substantial changes to the availability of official time, but I certainly understand your concerns and will look into them at the Department of Labor if confirmed.

*Question 6.* Do you believe that Regulations under the Davis-Bacon Act (DBA) and the Service Contract Act (SCA) could be streamlined so employer prevailing wage responsibilities are the same under both statutes? For example, DOL regulation state that fringe benefits cannot be included in wages paid under the SCA unless the employer expressly states a single amount includes fringes. 29 C.F.R. § 4.170(a), 4.177(a), while DBA regulations state the opposite. 29 C.F.R. 5.2(p).

Answer 6. If confirmed, I look forward to being briefed on the Davis-Bacon Act and Service Contract Act as we develop the Department’s regulatory policies and priorities.

*Question 7.* A September 2016 Enterprise-wide Enforcement memorandum from the Solicitor of Labor for contractor covered workplaces expands OFCCP coverage to all business owned by a corporation doing business with the Federal Government.

Do you believe this memorandum to be appropriate?

Answer 7. I have not reviewed that particular memorandum, but, if confirmed, I look forward to being briefed on the matter and investigating the legal basis. I am aware that there were concerns with attempts in the prior administration to enforce responsibilities under a number of statutes that went beyond the scope of the historical norms.

RESPONSE BY ALEXANDER ACOSTA TO QUESTIONS OF SENATOR MURRAY, SENATOR SANDERS, SENATOR CASEY, SENATOR FRANKEN, SENATOR BENNET, SENATOR WHITEHOUSE, SENATOR BALDWIN, SENATOR MURPHY, SENATOR WARREN, SENATOR KAINE AND SENATOR HASSAN

SENATOR MURRAY

*Question 1.* Will you continue the work the Department of Labor has instituted to expand registered apprenticeship and other successful training programs for American workers looking to succeed in the 21st century economy? How exactly will you do that? And can you commit to sustaining or expanding funding for these programs?

Answer 1. Apprenticeship programs are a valuable and effective job training tool and expanding access to effective apprenticeship programs is a major facet of positioning our workforce to meet the needs of a changing economy. There are numerous examples throughout the Nation of industry, local academic and training institu-

tions and government partnering effectively to train and place workers in growth sectors. If confirmed, I believe my role will be to make sure apprenticeships can be accessed in more communities and by displaced workers who will need to transition to new and growing industries, and I commit to working to sustain these types of programs.

*Question 2.* What policies would you pursue around worker automation? Around health and safety? Predictable and regular schedules? Providing workers a path to the middle class?

*Answer 2.* A growing economy combined with improved job training for in demand skills is among the best ways to grow the middle class. Advancing technologies, including automation, will change the types of jobs that are available in our economy. As I discussed at the hearing, we need to make better efforts to align job training with the skills the market demands today and in the future. In this way, workers can acquire skills that empower them to hold high quality jobs that are not automated. Encouraging economic growth and adoption of new technologies along with flexibility and creativity in the workplace will help improve health and safety and scheduling for workers. If confirmed, I look forward to reviewing policies under the Department of Labor's jurisdiction that can affect these areas and hope to benefit from an ongoing dialog with Congress as to how we can make improvements.

*Question 3.* The World Economic Forum forecasted a net loss of 5.1 million jobs by 2020 in the 15 leading economies, much of which will be due to automation and robotics. Do you think the government should help workers who have lost jobs to automation? What should that role be?

*Answer 3.* I believe the Department plays a key role in providing training and career pathways to workers who are likely to be displaced by automation and robotics in the years to come. This may be the most profound challenge before the Department in the next decade. We need to better align job training with the skills the market demands of its workers, especially as advancing technology changes the types of jobs available in our economy. The Department of Labor, along with State and local governments, industry, and educational institutions, can partner to have substantial positive impact on American workers. If confirmed as Secretary of Labor, I look forward to working with you and Members of the committee to maximize the impact of every taxpayer dollar Congress directs toward job training programs.

*Question 4.* According to the National Safety Council, agriculture is the second most dangerous occupation in the United States. Yet under lax labor laws, hundreds of thousands of children work long hours in U.S. agriculture, risking pesticide poisoning, heat illness, injuries from knives and heavy equipment, and life-long disabilities. Children working in tobacco farming also risk acute nicotine poisoning. The National Research Council and Institute of Medicine have reported that children working in agriculture in the United States make up only 8 percent of the population of working minors overall, yet account for 40 percent of work-related fatalities among minors. Exemptions for agriculture under the Fair Labor Standards Act (FLSA) allow child farmworkers to work at younger ages, for longer hours, and under more hazardous conditions than other working youths. Teens have to be at least 14 to work in an office or fast-food restaurant, and can only work for 3 hours on a school day. But in agriculture, children can work at age 12 with no limit on the number of hours that they work, as long as they do not work during school hours. While other employment sectors prohibit hazardous work before age 18, child farmworkers can perform hazardous duties at age 16. In 2014, the United States' largest tobacco companies recognized the dangers of nicotine exposure and other hazards in tobacco farming by adopting policies prohibiting children under age 16 from working on farms in their supply chains. Yet Federal law and regulations provide no special protections for children working in tobacco farming. Agriculture is the second most dangerous occupation in the United States. What action will you take to address the double standards in the Fair Labor Standards Act that allow children working in agriculture to work at younger ages, for longer hours, and under more hazardous conditions than other working youth?

*Answer 4.* I appreciate and share your concerns regarding the safety and health of children and young workers. If confirmed, I will fully and fairly enforce child labor laws designed to ensure children are protected from illegal employment in hazardous occupations and that those children who are eligible to work have safe and appropriate work experiences. If confirmed, I expect to be briefed on matters pertaining to children in the workplace, including agricultural work and tobacco farming, and hope to benefit from an ongoing dialog with Congress as to how we can advance the goal of child safety in the workplace.

*Question 5.* Do you believe that children should be protected from nicotine exposure? If so, what action will you take to address the fact that under existing law and regulations, 12-year-olds can work legally on tobacco farms for 40 or 50 hours per week?

Answer 5. If confirmed, I expect to be briefed on matters pertaining to children in agricultural work, including tobacco farming. I would need to consult with the Department of Labor staff to get more information to address your question specifically.

*Question 6.* Women of color are far more likely than white women to be a victim of intimate partner violence, stalking, or sexual assault, and to need to take time off from work to seek assistance. Do you support Federal legislative proposals to create job-protected safe leave for survivors of gender-based violence? Do you think the Department of Labor has a role to play in providing protection and support to assist women with remaining in the workforce when they experience gender-based violence? What will you do to ensure that survivors of domestic or sexual violence have access to job-protected safe leave to seek services related to gender-based violence?

Answer 6. Violence of all forms, including gender-based violence, is wrong. Further, gender-based violence can cause psychological issues that impact employment. I believe expanding job-protected leave would require congressional action and, if confirmed, I look forward to working with the President and Congress as discussions regarding leave occur.

*Question 7.* In 2004 you wrote a letter 4 days before the election telling a Federal judge that it would “undermine” election law enforcement to not let citizens contest the credentials of other voters, and denied that this had racial motivations despite being a part of a larger plan to place poll monitors in predominantly African American neighborhoods. Additionally, in 2008 you came under scrutiny for allegedly improperly factoring ideological positions in hiring practices. Are you committed to enforcing anti-discrimination laws? Building off of this, do you believe it’s time for the Nation to pass an anti-discrimination law to protect individuals from workplace discrimination based on their sexual orientation and gender identity?

Answer 7. I am committed to enforcing the anti-discrimination laws that Congress has passed, and any that you and your colleagues in Congress pass in the future. I believe discrimination in the workplace based on sexual orientation or gender identity is wrong, although I support religious entities’ freedom to hire consistent with their faith.

*Question 8.* Do you believe that workers should have the right and opportunity to bargain collectively for higher wages and better working conditions through organizing with their coworkers?

Answer 8. The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will benefit their situation then they should do so.

*Question 9.* Will you, as Secretary of Labor, advocate for, support, and defend workers’ right to advocate for workplace improvements and bargain collectively?

Answer 9. The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will benefit their situation then they should do so, and I would support that choice.

*Question 10.* Do you think collective bargaining is an appropriate means of increasing the share of the Nation’s wealth that goes to middle-class Americans?

Answer 10. The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will benefit their situation then they should do so. If they believe collective bargaining would improve their share of the Nation’s wealth, they should pursue their right to do so.

*Question 11.* Do you think the Federal Government should take action to foster collective bargaining?

Answer 11. The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If

they believe that joining together to bargain collectively will benefit their situation then they should do so.

*Question 12.* If members are not required to pay dues, do you think the Federal Government should pay the cost of union representation?

Answer 12. The Federal Government should not pay for the cost of union representation.

*Question 13.* Do you agree that labor unions are important to achieving and maintaining fairness and balance in our economy?

Answer 13. The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. This reflects a congressional judgment that providing this right can help maintain balance in our economy.

*Question 14.* Given the overwhelming business opposition to the Fair Pay and Safe Workplaces EO, and your public stance on regulations, how will you address the issue of making sure that only responsible entities that comply with labor laws get government contracts?

Answer 14. I understand that government agencies have suspension and debarment authorities and that the Department of Labor possesses a similar authority in the context of some of its statutes, including the Service Contract Act. If confirmed, in cases of willful and repeat violators, I would not hesitate to exercise that authority as Secretary.

*Question 15.* Do you think that contractors receiving Federal tax dollars should be required to pay middle-class wages?

Answer 15. I am informed that the Department sets certain wage rates on Federal contracts based on congressional mandate and statistical formulas by sector that flow from those mandates. Congress has the authority to make a decision to increase those rates across the board, and I will enforce the statutes Congress passes.

*Question 16.* The Department you have been selected to lead is responsible for setting health, safety, and fairness standards for many construction projects and construction apprenticeships. It is well-documented that women working in construction face extreme rates of sexual harassment and denigration. Indeed, a study by the Department of Labor itself reported that 88 percent of women construction workers experience sexual harassment at work. Construction has often been referred to as “the industry that time forgot” due to the overt discrimination faced by women who try to get hired into this field and the overwhelming hostility and harassment they face on the job if they are hired. As a result, the percentage of construction jobs held by women has been stuck at less than 3 percent for more than a generation. Many Federal contracts are for construction work and the Labor Department has played an important role in addressing harassment and discrimination by Federal construction contractors and opening opportunities for women and people of color. Given President Trump’s expressed commitment to infrastructure, Federal construction contracts could increase—which means the Labor Department’s role in enforcing these protections against harassment and discrimination will be more important than ever. Can we expect you to implement and enforce critical anti-harassment protections for construction projects and apprenticeship programs, and continue the efforts begun in the present administration to ensure that mega construction projects funded by Federal dollars provide real opportunities to women?

Answer 16. Sexual harassment and overt discrimination are illegal. As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly, including for apprenticeship and contracting programs, and for large scale construction projects.

*Question 17.* OFCCP updated its sex discrimination rules last year to implement Executive Order 11246 for the first time in more than a generation. The rules now explicitly address sexual harassment and pregnancy discrimination for the first time. If you are confirmed, will you commit that the Department will uphold these regulations? Will you commit that OFCCP will implement and enforce these protections for employees of Federal contractors?

Answer 17. I strongly support equal employment opportunity and preventing sexual harassment and pregnancy discrimination. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including the aspects of Executive orders and their implementing rules.

*Question 18.* After President Obama’s Executive order allowing employees of Federal contractors to accrue up to seven paid sick days per year, the Department of

Labor issued a final rule implementing these policies. If confirmed, will you urge President Trump to maintain this Executive order and commit to enforce and implement these protections to ensure employees of Federal contractors can access these benefits?

Answer 18. The decision as to whether to maintain, amend or rescind Executive orders belongs to the President. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including Executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

*Question 19.* According to the Journal of Occupational and Environmental Medicine, working sick costs the national economy \$160 billion annually in lost productivity. Currently there is an Executive order granting paid sick days to Federal contract workers to help avoid the spread of disease. Under your DOL, will you pursue efforts to expand this pro-business, pro-public health and pro-worker standard to all workers?

Answer 19. I believe any attempt to expand paid sick leave would require congressional action, and if confirmed I look forward to participating in any discussion that occurs on paid sick leave.

*Question 20.* Unemployment rates are higher for people with disabilities than other groups. According to the U.S. Bureau of Labor Statistics, in 2015 the unemployment rate for people with disabilities was approximately 11 percent, which is nearly double the unemployment rate for people without disabilities. Overseeing policies and priorities that impact our Nation's workforce development system is among the many responsibilities of the Secretary of Labor. One of the target areas of Public Law 113-128 (the bipartisan Workforce Innovation and Opportunity Act or WIOA) was to expand opportunities for people with disabilities to enter the workforce by creating a more accessible workforce system and expanding opportunities for training or apprenticeships. How will you as Secretary build on the opportunities created by WIOA to empower more people with disabilities to enter the workforce?

Answer 20. I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. Such efforts contribute to our economy, and as important, to individual self-esteem. If confirmed, I expect to be briefed on programs at the Department that serve the disabled in order to understand how they are succeeding in accomplishing their mission.

*Question 21.* The Office of Disability Employment Policy sponsors and disseminates valuable research and studies into effective practices for employment of people with disabilities as well as serves as an important coordinating office for cross-Federal agency collaborations on disability employment. Will you commit to preserving and strengthening this vital tool for economic self-sufficiency for Americans with disabilities? Will you work with Congress to ensure that the Office of Disability Employment Policy, the Office of Federal Contract Compliance Programs, and the Civil Rights Center has the funding and resources necessary to meet their objectives? What, if any, reforms would you make to these offices?

Answer 21. I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. The Office of Federal Contract Compliance Programs and the Civil Rights Center also have important roles in promoting and protecting equal opportunity. As a nominee, I have not participated in the current budget discussions. If confirmed, I commit to working with Congress to ensure those offices can meet their objectives.

*Question 22.* Section 501 of the Rehabilitation Act prohibits employment discrimination against people with disabilities in the Federal sector. President Trump has stated that it is important that the final regulations under section 501 are enforced, and that the Administration "will work with Congress to set an example of the importance and value of hiring people with disabilities." What will you do to support the President on this issue and ensure that people with disabilities have increased opportunities for employment in the Federal Government? What would you propose to President Trump to fulfill this campaign promise?

Answer 22. As I noted in my hearing, if confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly. I certainly support increasing the labor force participation rate of disabled individuals and helping these individuals lead successful and self-sustaining lives. Such efforts contribute to our economy, and as important, to individual self-esteem.



*Question 23.* The Department of Labor plays a crucial role in the implementation, enforcement, and public education of the Americans with Disabilities Act (ADA). As stated in the text of the Act, the purpose of the ADA is to

“provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities in addition to defining a central role for the Federal Government in enforcing the standards of the ADA on behalf of individuals with disabilities.”

In an effort to undercut the 26-year old law, some in Congress have proposed legislation to impose a 180-day waiting period before a person with a disability can take action to enforce their rights to gain access to a business, public building, educational institution, or other covered entity. Do you support the intent of this legislation to remove incentives for businesses and other places of public accommodation to comply with the ADA’s accessibility requirements?

*Answer 23.* I strongly support the ADA. I have not reviewed that particular piece of legislation, but I look forward to working with you and the rest of the Congress on protecting opportunities for the disabled.

*Question 24.* Section 14(c) provision of the Fair Labor Standards Act, enacted in 1937, authorizes employers to pay sub-minimum wages to workers who have disabilities. In his campaign’s response to a questionnaire from the American Association of People with Disabilities, the National Council on Independent Living and the REV UP Campaign, President-elect Trump stated,

“People with disabilities have the right to be paid on parity with all others in the workforce so they may earn a fair days wage for a fair day’s work. My administration will work with Congress to ensure that labor laws treat people with disabilities fairly.”

Do you plan to phaseout the nearly 80 year-old Section 14(c) of the Fair Labor Standards Act? If not, what are your plans for subminimum wage employment for people with disabilities? What will you do to address the underemployment and wage gaps experienced by people with disabilities, especially people with the most significant disabilities? Will you commit to increasing the number of people with disabilities in competitive integrated employment?

*Answer 24.* I understand the Fair Labor Standards Act 14(c) exemption is statutory and is an area of concern and interest for many Members of Congress. If confirmed, I want to ensure that individuals with disabilities, who might not otherwise have a job, have access to a good job and are trained for these jobs. While I would need to thoroughly review any particular program or statutory exemption before I committed to supporting or opposing it, I certainly support increasing the labor force participation rate of disabled individuals and helping these individuals lead successful and self-sustaining lives. Such efforts contribute to our economy, and as important, to individual self-esteem.

*Question 25.* Accurate data is crucial to measuring the health of the economy, including unemployment rates, as well as shedding light on pay practices and discrimination, yet President Trump has criticized the Bureau of Labor Statistics. What would you do to ensure that the government continues to collect and distribute accurate, timely, actionable data from businesses?

*Answer 25.* Accurate data are crucial. The Bureau of Labor Statistics has a long history of transparent methodology, and the process for modifying that methodology occurs openly and with ample opportunity for robust public input, including from Congress. I am committed to such transparency, and to the integrity of BLS’s mission.

*Question 26.* What steps will you take and what concrete mechanisms will you put in place to hold your own appointees and senior staff accountable for ensuring that there is no political interference in the work of the Department?

*Answer 26.* I believe all incoming political and senior career appointees receive mandatory ethics training and annual ethics training thereafter. As I noted at the hearing, if confirmed, I would enforce the law fully and fairly without regard to political pressure. I will expect that same commitment from all my subordinates.

*Question 27.* Do you agree that the process for screening and hiring employees at the Department of Labor should be free from improper political influence?

*Answer 27.* As I noted at the hearing, the use of political views in the hiring of career attorneys or staff should not be used. The Federal Government has merit selection processes that should be followed in civil service hiring.

*Question 28.* For almost a century, the Women's Bureau of the Department of Labor has sought to advance the interests of women in the workplace, through research, public education, policy development, and advocacy. For example, today the Women's Bureau provides informational resources to aid women seeking to enter high-paying, traditionally male-dominated jobs in construction, transportation, and protective services; offers one stop know-your-rights guides on issues ranging from equal pay to pregnancy discrimination; and funds research on best practices for establishing State and local paid family and medical leave insurance programs, among many other initiatives. Despite the important work the Women's Bureau does to ensure equal opportunity for women on the job, the Bush administration sought to dismantle it. The outcry from the public saved the Women's Bureau, which has continued to provide valuable tools for women seeking to enforce their workplace rights and expand their workplace opportunities. Do you commit that under your leadership the Women's Bureau will receive the resources it needs to fulfill its mandate of safeguarding and advocating for the interests of working women, and that you will defend against any attempts to reduce its budgets, or staffing, or otherwise undermine its ability to do its work? In addition, since 2014, the U.S. Department of Labor's Women's Bureau has made \$3.15 million in grants available for the development and implementation of State and local paid family and medical leave programs. Under your leadership, would the Department of Labor continue to fund such grants, such as supporting progress on paid leave in the United States, a policy area President Trump has expressed support for?

*Answer 28.* The mission of the Women's Bureau is important. If confirmed, I commit to work with Congress on this matter.

*Question 29.* Will you keep in place the Wage and Hour Division's Administrator's Interpretation No. 2016-1 ("Joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act"), which clarified the standards for finding joint employment status between multiple employers under the FLSA and MSPA? If not, why?

*Answer 29.* If confirmed, I look forward to being briefed on Wage and Hour Division matters as we develop the Department's policies and priorities.

*Question 30.* How do you plan to enforce existing employment laws, such as FLSA minimum wage and overtime protections, in today's workforce given the large numbers of workers who are hired through a staffing agency but report to work at another company's premises every day?

*Answer 30.* As I noted at the hearing, if confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly. I look forward to being briefed on this issue, as this is a growing trend in our economy.

*Question 31.* The President has said that the current minimum wage is too low, suggesting that it should be raised to \$10 an hour. Do you agree with your future boss that the current minimum wage is too low?

*Answer 31.* The minimum wage is set federally by Congress but also in States and localities by their respective governments. I recognize that cost-of-living and other economic factors vary greatly across the United States and that many States and localities have increased the minimum wage above the Federal floor. I would evaluate a proposed Federal minimum wage increase carefully to see whether the economic benefits outweighed the costs. Ultimately it is Congress' decision whether to raise the Federal rate; the Department of Labor has no authority to act unilaterally. I will faithfully enforce whatever rate Congress enacts.

*Question 32.* A majority of all employees being paid minimum wage are women. Kellyanne Conway's polling company found in a 2014 poll that Americans believe that companies should raise wages and improve working conditions for workers by nearly a 10-1 margin. Do you think that we should raise the Federal minimum wage? If so, to what? If not, what is your reasoning for not advocating for a widely popular policy? How do you respond to working families who are long overdue for a pay raise? Should it be tacked to cost-of-living increases in the future? Should there continue to be a separate tipped minimum wage? Should it be increased as well?

*Answer 32.* The minimum wage is set federally by Congress but also in States and localities by their respective governments. I recognize that cost-of-living and other economic factors vary greatly across the United States and that many States and localities have increased the minimum wage above the Federal floor. I would evaluate a proposed Federal minimum wage increase carefully to see whether the economic benefits outweighed the costs. Ultimately it is Congress' decision whether

to raise the Federal rate; the Department of Labor has no authority to act unilaterally. I will faithfully enforce whatever rate Congress enacts.

*Question 33.* Do you believe that employers should pay a wage sufficient for its workers to live on without needing to rely on government benefits? Is it fair for employers to pay wages so low that their workers are eligible for government benefits like food stamps?

*Answer 33.* As I said at the hearing, I know every member of the HELP Committee wants Americans to find jobs, good jobs, safe jobs, even if there is a difference of opinion as to how to achieve that goal. If confirmed, I hope to benefit from an ongoing dialog with the committee as to how we can advance that goal.

*Question 34.* Some States like California and New York have already enacted a minimum wage of \$15 per hour. Under Federal law, workers in these States are generally entitled to 1½ times the \$15 minimum wage for overtime. Will you carry out strong enforcement of workers' overtime rights in those States?

*Answer 34.* If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

*Question 35.* The Federal minimum wage for tipped workers is only \$2.13 per hour and it's been frozen at that level since 1991. Tipped workers are twice as likely to live in poverty and three times as likely to need food stamps when they make the Federal minimum wage of only \$2.13, yet in States where tipped workers get higher base wages, tipped workers are not nearly so disadvantaged. Do you support phasing out the subminimum wage for tipped workers?

*Answer 35.* The minimum wage is set federally by Congress but also in States and localities by their respective governments. I recognize that cost-of-living and other economic factors vary greatly across the United States and that many States and localities have increased the minimum wage, including the minimum wage for tipped employees and the allowance for a tip credit, above the Federal floor. If confirmed, I look forward to working with the President and Congress as discussions regarding the Federal minimum wage and tipped minimum wage occur.

*Question 36.* There are a number of States that have recently raised their minimum wages through ballot initiative. All won by overwhelming margins in the popular vote. Governor Paul LePage is vowing to fight the raise in Maine, and has stated that the Maine Department of Labor will not enforce parts of it. This could become precedent for other Republican Governors to try to nullify the will of the voters when it comes to the minimum wage. Please describe your understanding of the concept of the rule of law, and your respect and deference to the clear will of the voters on this issue.

*Answer 36.* I am not familiar with the specific circumstances of the enactment of Maine's minimum wage law or of Governor LePage's position on it. I certainly believe in the rule of law. More specifically, no individual or constituency is above the law, and if confirmed as Secretary of Labor I will enforce Federal laws including the Federal minimum wage.

*Question 37.* There has been a lot of discussion about worker classification as "independent contractors" in the so-called "gig" or "on-demand" economy, with some arguing that these workers are independent businesspeople, even though their work is (1) in large part dictated by the companies, (2) wages are often set by the companies, and (3) they can be disciplined for poor performance or for refusing jobs. How do you view these workers and these jobs, in the context of the broad definitions of "employee" found in the laws you will be expected to enforce, especially the Fair Labor Standards Act?

*Answer 37.* An important role of the Department of Labor is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. The use of independent contractors is a legal and valuable business practice. However, in some circumstances, when an employer incorrectly labels a worker as an independent contractor instead of an employee, the employer may not be abiding by their responsibilities to compensate the worker according to the requirements of the law. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections they are entitled to by law. This incorrect classification may also generate losses to the Federal Government and State governments in the form of lower tax revenues, as well as to State unemployment insurance and workers' compensation funds. Employers who deliberately misclassify workers undercut law-abiding employers who are making contributions to these systems and paying their workers properly. If confirmed, I look forward to being briefed on matters pertaining to the classification of employees and will work to enforce the

laws under the Department of Labor's jurisdiction, including these employment laws, fully and fairly to ensure the protection of workers. If businesses are found to be incorrectly classifying workers, I will fully and fairly enforce the relevant laws.

*Question 38.* A 2012 GAO report found that on average it takes OSHA nearly 8 years to develop and finalize needed safety and health standards. The most recent standards issued took much longer. The final standard to protect workers against deadly silica dust took nearly 19 years from start to finish, and the rulemaking to protect workers in general industry from fall and slip hazards—leading causes of injury and death—took nearly 40 years. Do you agree that taking 10–20 or even 40 years to develop and issue safety and health rules on major hazards is way too long? As Secretary of Labor, will you commit to seeing that the standards setting process can be made more timely and effective to protect workers against deadly workplace hazards?

*Answer 38.* I agree that taking 10, 20, or 40 years to develop standards is too long. If confirmed, I look forward to discussing this and many other issues with the Department's OSHA staff, to help ensure the safety of all workers. I understand that OSHA regulations are difficult to promulgate and that many take a number of years as you noted. If confirmed, I will work to ensure that necessary regulations in this area are promulgated as quickly as possible while also complying with the requirements in law for such regulations.

*Question 39.* Do you think it should be illegal for an employer to retaliate against a worker for exercising her rights under the Occupational Safety and Health Act, the Fair Labor Standards Act, or other labor and employment laws? Will you commit to maintaining a vigorous enforcement program to protect workers against illegal retaliation?

*Answer 39.* Illegal retaliation should not be tolerated. If confirmed, I will work with the Department's staff to ensure that employers follow the law in this area and will work to maintain a vigorous enforcement program to protect workers from adverse employment actions based upon exercising a right they possess under these laws.

*Question 40.* OSHA's existing safety standard for the containerized storage of flammable and combustible liquids—29 C.F.R. § 1910.106(d)—incorporates the 1969 version of a fire code (NFPA 30—Flammable and Combustible Liquids Code) that has been updated 15 times since then based on advancements in research and technology, such as improvements in containers and sprinkler systems used in warehouses. Last year, the International Association of Fire Fighters, the National Volunteer Fire Council, and the bipartisan leadership of the congressional Fire Services Caucus wrote to Labor Secretary Tom Perez urging OSHA to update this existing safety standard in order to better protect the lives of firefighters and workers. Last fall, the Industrial Packaging Safety Alliance ("PackSafe") filed a Petition for Rulemaking requesting that OSHA's existing safety standard for the containerized storage of flammable and combustible liquids—29 C.F.R. § 1910.106(d)—be updated to include the most recent version of NFPA 30. If you are confirmed, will OSHA give full consideration to the Petition for Rulemaking filed by the Industrial Packaging Safety Alliance ("PackSafe") on October 31, 2016 through an open and transparent rulemaking process that allows all stakeholders to weigh-in?

*Answer 40.* If confirmed, I look forward to reviewing the safety standards to help ensure the safety of all workers. The Occupational Safety and Health Act of 1970 requires OSHA to ensure safe and healthful working conditions and I am committed to carrying out this mission. Where necessary, OSHA will promulgate appropriate and feasible rules to address workplace hazards. OSHA has many other tools at its disposal to carry out the obligations of the Act and to address new workplace hazards as they emerge, including conducting training and education, and providing compliance assistance to employers and employees. If confirmed, I will direct the Department staff to give full consideration to any petitions for rulemaking that are received and will work to ensure that all rulemaking processes are transparent and allow full stakeholder input.

*Question 41.* Would you recommend that the President sign Joint Res. 83, which is a "congressional Review Act" resolution to block OSHA's Volks Rule, a regulation that enables OSHA to hold employers accountable for failing to keep accurate records of workplace injuries and illnesses that harm workers? If OSHA cannot hold employers accountable for failing to keep accurate records, how can OSHA help protect workers from the risk of serious injury or death on the job?

*Answer 41.* If confirmed, I look forward to discussing this issue with the Department's OSHA staff as we look for ways to ensure that employers are fully complying

with their responsibilities to record injuries and illnesses that occur in the workplace.

*Question 42.* Workers often do not report injuries to their bosses due to fear of retaliation. OSHA's final electronic recordkeeping rule includes a provision prohibiting employers from establishing programs that discourage workers from reporting their injuries. Do you support laws protecting whistleblowers from retaliation in the workplace?

*Answer 42.* No employee should be subjected to illegal retaliation in the workplace for exercising a legal right they possess. The rights of whistleblowers must be protected.

*Question 43.* In March 2016, the U.S. Occupational Safety and Health Administration (OSHA) released a final rule to reduce workers' exposure to respirable crystalline silica. The rule is expected to save over 600 lives, prevent more than 900 new cases of silicosis each year, and generate net benefits of \$7.7 billion each year. As Secretary of Labor, will you be committed to implementing this life-saving rule?

*Answer 43.* The President, through an executive action, has directed all Cabinet secretaries to review all rules within each Cabinet agency. If confirmed, this responsibility will fall to me. As part of that responsibility I look forward to discussing this and many other issues with the staff of the Department's Occupational Safety and Health Administration.

*Question 44.* Both the Bush administration and the Obama administration developed special inspection programs to further direct scarce agency inspection resources to target the worst violators—those employers who demonstrate indifference to the OSH Act by committing willful, repeated, or failure to abate violations. These programs for severe violators include inspection activities such as mandatory followup inspections and increased company awareness of OSHA enforcement. Do you support special enforcement initiatives for the worst violators with followup inspections and company-wide enforcement for similar hazards?

*Answer 44.* If confirmed, I will work with the staff of the Department's Occupational Safety and Health Administration to ensure that all workers are protected. I agree that the worst offenders of health and safety standards should be targeted for increased scrutiny.

*Question 45.* The Fair Labor Standards Act has been the law since 1938. It is needed to prevent child labor abuse and to guarantee basic wage and hour standards like minimum wage and overtime pay for American workers. Do you believe that any existing FLSA rules should be repealed? If so, what are they?

*Answer 45.* The Fair Labor Standards Act (FLSA) has been the law of the land for nearly 80 years and provides important overtime and minimum wage protections to workers, protections for children who are in the workforce, and recordkeeping requirements. As I noted in the hearing, the FLSA does require updating from time-to-time, especially when it involves dollar values. If confirmed, I look forward to being briefed by Department staff on the FLSA and the history of the Department's updates to the FLSA as we develop the Department's regulatory policies and priorities.

*Question 46.* Would you use your statutory authority to interpret section 213 of the Fair Labor Standards Act, exempting various employees from the provisions of section 206 (minimum wage, and overtime) broadly, exempting more employees from protection of the minimum wage and overtime provisions, or narrowly, requiring employers to pay the minimum wage and overtime to more employees?

*Answer 46.* There are many exemptions to the Fair Labor Standards Act's overtime and minimum wage requirements. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including the Fair Labor Standards Act and any exemptions thereunder. I look forward to being briefed by Department staff on the Fair Labor Standards Act, its exemptions, and the Department's precedent of interpreting and enforcing the statute as we develop the Department's regulatory policies and priorities.

*Question 47.* At your confirmation hearing, you stated that it was unclear whether the Secretary of Labor has the authority under the Fair Labor Standards Act (FLSA) to set a salary threshold in defining and delimiting the so-called "white collar" exemption from the FLSA's overtime pay requirements. A salary threshold has been used as part of the test for exemption by every Secretary of Labor since the FLSA was first enacted in 1938. Every Secretary of Labor to date has been quite

clear on the fact that the Secretary of Labor does, indeed, have the authority to set and enforce a salary threshold.

Do you believe that the Secretary of Labor has the authority under the FLSA to set a salary threshold in defining and delimiting the “white collar” exemption?

If confirmed, will you defend the authority of the Secretary of Labor to set a salary threshold in court, if that authority is questioned or challenged?

If you answered “No” to either of these questions, please explain in detail (i) the legal basis for your conclusion and (ii) what you would base the “white collar” exemption on if you believe you would be unable to set a salary threshold as Secretary of Labor.

Answer 47. The district court decision enjoining the rule specifically stated that, “[t]he Department exceeds its delegated authority and ignores Congress’ intent by raising the minimum salary level such that it supplants the duties test.”

*Texas v. DOL*, 4:16-cv-00731 (E.D. Tex. Nov. 22, 2016), at p. 13. Thus, there is a question as to whether a salary threshold change without a coextensive duties test is viable, and if it is, at what point does it “supplants” the duties test. I think the authority of the secretary to address this is a separate issue from what the correct amount is. The litigation needs to be considered carefully, both with respect to what would be the appropriate amount if the rule were to be changed or revised, but also what is within the authority of the secretary to do.

*Question 48.* You stated at your confirmation hearing,

“I think it’s unfortunate that rules that involve dollar values can sometimes go more than a decade—sometimes 15 years—without updating, because life does become more expensive over time.”

The final overtime rule addressed this issue through an automatic updating mechanism, increasing the salary threshold every 3 years to keep pace with inflation. Will you commit to requiring regular, automatic updates to the overtime salary threshold every 3 years, as is required by the updated overtime rule?

Answer 48. The Fair Labor Standards Act’s overtime salary threshold has not been updated since 2004. When a rule involves dollar values, I believe waiting more than a decade to update that rule is unfortunate. I do not know if every 3 years, specifically, is the best solution, but I look forward to being briefed by Department staff on the Fair Labor Standards Act and the history of the Department’s updates to the law as we develop the Department’s regulatory policies and priorities.

*Question 49.* DOL’s own research and that of other academics shows that somewhere between 15 and 30 percent of employers’ policies violate the FMLA, will you commit to addressing these violations?

Answer 49. If confirmed, I commit that I will work to enforce the laws under the Department of Labor’s jurisdiction fully and fairly, including the Family and Medical Leave Act.

*Question 50.* Paid leave policies that only apply to birth mothers are inadequate for today’s workforce, where more women are working, fathers are providing more care for children and the population is aging rapidly. Creating a policy solution that applies only to women who give birth would create barriers to women’s employment, promote stereotypes and undermine the progress that the United States has made in terms of gender fairness. Would you oppose a maternity-leave only policy and instead encourage the President to consider addressing paid leave for both women and men? For both parental as well as family and personal medical needs?

Answer 50. I recognize that many States, localities, and private sector employers on a voluntary basis, have implemented paid leave laws and policies. I believe attempts to expand paid leave federally would require congressional action. As I mentioned in the hearing in the context of the gig economy, promoting workplace flexibility is something I support, particularly for working parents with young children. If confirmed, I look forward to working with the President and Congress to work through the issues raised in your question.

*Question 51.* Will you support an update to the FMLA law to allow parents to attend meetings at their children’s schools?

Answer 51. As I mentioned in the hearing in the context of the gig economy, promoting workplace flexibility is something I support, particularly for working parents with young children. Amending the Family and Medical Leave Act would require congressional action. If confirmed, I look forward to working with the President and Congress as these discussions occur.

*Question 52.* There are well-documented health disparities in the LGBTQ community, due to a range of factors, including a higher likelihood of being uninsured, discrimination and lack of cultural competency among health care providers, and the negative health impact of social stigma and discrimination. Due to such disparities, LGBTQ people likely have a higher need for inclusive paid leave policies. Fortunately, States are passing paid leave laws to meet this need. California, New Jersey, and Rhode Island have paid family and medical leave programs in place, while New York and Washington, DC approved such programs in 2016. The State of California has had a statewide paid family leave program in place for more than a decade. Research has found that the program has substantial economic and health benefits for working families without burdening businesses. Even the California Society for Human Resource Management found the law “does not pose as many burdens as employers feared it would” and “is less onerous than expected.” During this period, California’s economic growth has outpaced the national average and its economy is now the sixth largest in the world. In recent years, the Department of Labor has provided small grants to States and localities that have allowed them to analyze and conduct feasibility studies on paid family and medical leave policies. As Secretary, will you direct the agency to continue to invest in State-paid family and medical leave analysis grants? Will you ensure that reports resulting from these grants are released to the public? Will you pledge to support States considering and adopting paid family leave measures?

*Answer 52.* I would need to review any particular grant program before I committed to supporting it. If confirmed, I look forward to learning more about the program. I do believe research is important and that results of such research should be made public. Further, I support an individual State’s right to adopt leave measures.

*Question 53.* In addition to these paid family and medical leave laws, paid sick days laws are now in effect—or soon will be—in 7 States and 32 localities. Research from the longest standing laws shows that they are working well and are not burdensome for employers. For example, both Seattle and San Francisco saw positive job growth after their paid sick days laws took effect. In San Francisco, the first city with a paid sick days standard, the local Chamber of Commerce’s vice president stated that its impact on businesses was “minimal” and that “[b]y and large, [paid sick days] has not been an employer issue.” Evidence from other localities has similarly found low costs to businesses and positive benefits for workers. As Secretary of Labor, in light of the research on the economic and health benefits of paid sick days, will you encourage or discourage other States and localities from adopting paid sick days laws? Would you support or oppose a national standard like the Healthy Families Act? Federal laws do not mandate paid annual leave, paid time off for illness or family care, or paid parental leave. The absence of such policies makes it difficult for employees to balance work and family, which can negatively impact productivity, inhibit the healthy development of children, and make recovery from major illnesses or injuries difficult. Would you propose any policies guaranteeing earned sick days or paid parental leave? What alternatives would you propose to support workers who need time off to care for themselves or their loved ones? What specifics would you like to see enshrined in law to help protect all workers, regardless of income? How do we guarantee that these policies will help all workers, not just wealthier ones who can take advantage of tax breaks? How do we incentivize all companies to provide these benefits, not just provide tax breaks for companies that are already doing the right thing?

*Answer 53.* I would need to review any legislation or policies before I committed to supporting them. As I mentioned in the hearing, promoting workplace flexibility is something I support, particularly for working parents with young children. I recognize that many States and localities have implemented paid leave laws. I believe attempts to expand paid leave would require congressional action. If confirmed, I look forward to working with the President and Congress as discussions regarding paid leave occur.

*Question 54.* Community-based organizations, advocacy groups for the working poor, and individual working people rely on the Department of Labor’s Wage and Hour Division and their regional outreach specialists (CORPS specialists) as vital points of contact for reporting and recovering stolen wages. Will you commit to expanding the number of regional outreach specialists to ensure working people legal recourse to be paid for each and every hour they work?

*Answer 54.* I would need to review any particular program before I committed to expanding it. If confirmed, I look forward to learning more about the program. That

said, I certainly support using taxpayer resources effectively in pursuit of Wage and Hour's mission.

*Question 55.* Fewer than 3 in 10 unemployed workers now receive unemployment benefits, which is a record low (in 13 States, including Florida, North Carolina, and Georgia, where lawmakers slashed the maximum duration of benefits by as much as half, fewer than one in five unemployed workers receives unemployment benefits). This has devastating consequences for the millions of workers currently locked out of the program and for those who will face major layoffs when the next recession hits. Do you believe that a social insurance program designed to help the unemployed, and their families, maintain basic living standards while they search for another suitable job and to mitigate the immediate and long-term impacts of global financial crises on State and local economies is meeting its objectives if fewer than 15 percent—or even 10 percent—of the unemployed in several States are receiving benefits?

*Answer 55.* If confirmed, I expect to be briefed on the Department's programs and benefits for the unemployed so that I can understand which services and benefits are the most effective, and best assist workers in finding new careers and mitigating the challenges that come with job loss.

*Question 56.* It has now been 7 years since the last recession officially ended, but as of early this year, only 18 States had enough reserves in their Unemployment Insurance trust funds to pay adequate benefits when the next recession hits. Given the critical role that the UI program plays in alleviating economic hardship, and boosting the economy, do you support Federal efforts to restore the solvency of the Federal and State UI trust funds, which are regulated by Federal law.

*Answer 56.* If confirmed, I expect to be briefed on the UI trust funds, their solvency and how the Department and its resources can best position them to help the most Americans and best accomplish the Department's mission.

*Question 57.* In 2012, Congress enacted the Layoff Prevention Act (sponsored by Senator Jack Reed), which provided financial incentives to States with work-sharing programs. To date, 28 States have enacted federally conforming work-sharing laws. The U.S. Department of Labor estimates that work-sharing saved over 160,000 jobs in 2009 alone and over half a million jobs since 2008. Do you believe that programs like work-sharing will be important to helping employers, especially manufacturers, withstand business downturns and any future recessions? Do you believe that work-sharing should be an option for employers in all 50 States?

*Answer 57.* If confirmed as Secretary of Labor, I will look forward to reviewing the work-sharing program—which I understand is called the “short-time compensation (STC) program”—with the States currently operating the STC program, with employers, and also, with Department staff. If confirmed, I expect to be briefed on issues such as work sharing and other innovations in the workplace to understand how they impact employment and economic growth. I support allowing as much flexibility to States, employers and employees as possible under the law.

*Question 58.* In recent years, ideologically diverse legislative and executive branches of both Federal and State governments have placed an increased emphasis on bipartisan criminal justice reform. The Labor Department's key initiative that supports criminal justice reform efforts is the Reentry Employment Opportunities (REO) program, which helps connect returning citizens to job training and employment. What is your position on REO? Would you work with Congress to ensure this important program receives the necessary funding and remains a priority for the Trump administration?

*Answer 58.* If confirmed, I look forward to learning more about REO. Programs that help reintegrate citizens into the economy post-incarceration are very important and of interest to me. I understand that the Department has several programs that focus in this area, and I look forward to being briefed on all of them. Thank you for making me aware of your appreciation of this program and this issue. I look forward to working with you and other members of the committee on efforts to help citizens reintegrate into the workforce post-incarceration.

*Question 59.* Over 30 million adult Americans lack even a high school degree or a GED—double the population of New York City, Chicago, and Los Angeles combined. These Americans include veterans and others with significant barriers to better employment. The challenge is multi-generational: half of their children will also fail to complete high school. As a result, our economy is hurt, our Nation is not as competitive as it should be, and people cannot advance in careers and life. As Secretary, how would you address this critical issue?



Answer 59. Our workforce training system must be positioned to provide training and skills to the millions of workers who lack a post-secondary education if they are to prosper in our modern and constantly changing economy. The worker training and apprenticeship programs under the Department's purview must position these workers with skills that meet the needs of growth industries and sectors.

*Question 60.* The U.S. Department of Labor is required under the Trade and Development Act of 2000 (TDA) to submit an annual report to Congress on the efforts by countries that receive trade preference under the Generalized System of Preferences (GSP) to combat the worst forms of child labor. The Department currently assesses countries on their progress, identifies positive efforts and remaining challenges, and issues recommendations to address the identified challenges. This is a critical tool the Department uses to raise awareness about the problem of child labor and engage with other governments to address the issue. What will you do to ensure that the report is a useful tool for countries to combat the problem of child labor?

Answer 60. Child labor is a truly troubling problem. I believe that the Department's Bureau of International Labor Affairs is assigned the duty described in your question, and if confirmed, I will work with that office to make certain that any reports in this area contain the information needed to help countries eliminate this problem.

*Question 61.* The U.S. Department of Labor, in coordination with the Office of the U.S. Trade Representative, is responsible for the monitoring and enforcement of labor provisions of free trade agreements. A recent Government Accountability Office report concluded that there is an overall lack of effective monitoring and enforcement of the labor provisions in our trade agreements. How will you strengthen the efforts of the Department's Bureau of International Labor Affairs (ILAB) to effectively monitor and enforce labor provisions of free trade agreements—especially given the drastic cuts to ILAB proposed in the President's skinny budget?

Answer 61. If confirmed, I look forward to working with ILAB, the Trade Representative and Congress on this important issue. While I have not been involved in the budget process as a nominee, it is worth noting that the President's budget "[f]ocuses the Bureau of International Labor Affairs on ensuring that U.S. trade agreements are fair for American workers."

*Question 62.* Do you believe that enforcing the Fair Labor Standards Act and preventing wage theft improves the U.S. economy? Why or why not?

Answer 62. If confirmed, I would be responsible for enforcing the Fair Labor Standards Act and will work to enforce this and other laws under the Department of Labor's jurisdiction fully and fairly. The protections provided by wage and hour laws provide a level of economic security to our Nation's workforce and help Americans to purchase goods and service to support their families, thereby also supporting America's businesses and improving the economy.

*Question 63.* Do you believe government should regulate issues regarding wages?

Answer 63. Yes, the government does in fact regulate wages and has for over 70 years.

*Question 64.* For many decades, the Wage and Hour Division has focused its limited enforcement resources on the industries where wage theft and child labor are rampant. Do you support this type of strategic enforcement, in addition to responding to individual worker complaints?

Answer 64. I support strategic enforcement alongside individual complaints. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

*Question 65.* Because women are overrepresented in low-wage jobs, they are especially vulnerable to wage theft and exploitation, and are often reluctant to report violations for fear of retaliation. Do you commit that under your leadership the Wage and Hour Division will not scale back or limit its implementation and enforcement efforts, and that you will defend against any attempts to undermine the Division's ability to conduct robust investigation and enforcement activities, including defending against any budget cuts to the Division?

Answer 65. As I noted at the hearing, if confirmed, I would enforce the law fully and fairly, including Wage and Hour Division responsibilities. Enforcement of these laws will be priority irrespective of the budget Congress ultimately enacts.

*Question 66.* In addition to responding to individual complaints, recent enforcement strategy at the Wage and Hour Division has emphasized targeted investiga-

tions of industries with high numbers of wage and hour violations—including the fast food, restaurant, hotel, and garment manufacturing industries—which also employ significant numbers of low-wage workers and women. Under your leadership, will the Department of Labor continue to pursue proactive, targeted enforcement strategies to protect the workplace rights of large numbers of vulnerable workers in high-violation industries, and not rely primarily or solely on a complaint-driven enforcement strategy?

Answer 66. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly. Strategic enforcement in high violation areas, alongside individual complaints, is a balanced enforcement strategy I support.

*Question 67.* The Bush DOL had an enforcement philosophy that directed more significant resources than usual toward helping employers comply with the laws that DOL administers. While compliance assistance must be part of any DOL enforcement agenda, a 2009 GAO investigation and report revealed the flaws in a strategy that put so much emphasis on compliance assistance, to the utter detriment of enforcement. The GAO report documents how phone complaints were routinely ignored and how investigations were often *pro forma* at best. Without targeted enforcement in high violation industries, where workers are justifiably afraid to complain for fear of retaliation, there is very little chance that these employers will get caught. What is your plan for ensuring that the enforcement agencies at DOL vigorously enforce the laws they are charged with overseeing?

Answer 67. As I noted at the hearing, if confirmed, I would enforce the law fully and fairly. Certainly, compliance assistance for small business particularly is a good way to help explain the laws to good employers who may not understand their responsibilities. Compliance assistance should not, however, be conducted at the expense of overall enforcement.

*Question 68.* Congress and the Administration have taken several steps in the last 8 years to expand access to, and improve the quality of, training and employment programs that prepare workers for high-skill, high-wage employment in jobs and occupations that exist right now. That progress includes bipartisan passage of the Workforce Innovation and Opportunity Act (WIOA), which authorizes the Nation's public workforce system, and new investments in job-driven training programs, including training programs designed to aid workers affected by global trade. These investments help workers build their skills and raise their wages, and help employers—particularly small- and mid-sized employers that lack large H.R. and training budgets—find skilled workers. As Labor Secretary, will you continue to invest in worker training, and maintain or expand upon the current level of service and investment that the public workforce system provides to States and local workforce development areas? In your view, what is government's role in worker training?

Answer 68. The Department of Labor, along with State and local governments, industry, and educational institutions, can partner to have substantial positive impact on America's workers. I believe it is important to view job training programs in terms of return on investment, to borrow a metric from the business world. For a modest investment in training, we can prepare a worker to land a good, safe job, to keep that job, to pay taxes—resulting in an overall net return on investment. If confirmed as Secretary of Labor, I will work to shift more responsibility for funding job training and employment services to those States, localities and employers that can demonstrate their effectiveness in addressing the needs of both employers and workers. I strongly believe it is important to invest in worker training. I look forward to working with you and Members of the committee to realize these stated goals.

*Question 69.* In 2009, Senator Jeff Sessions, now the Attorney General, opposed the Lilly Ledbetter Fair Pay Act, which Congress passed to help women bring claims of pay disparity based on gender discrimination. He opposed the Paycheck Fairness Act, which has not passed yet, but would punish employers for retaliating against employees who share wage information and allow employees to sue for damages resulting from wage discrimination. Are you concerned that the Department of Justice may provide less assistance in combating violations of equal pay laws given Senator Sessions' record of opposing such laws? Will you continue to make enforcement of equal pay laws a priority, to the same extent as the previous administration?

Answer 69. At his confirmation hearing, Attorney General Sessions pledged himself to equal justice under the law and I have no reason to question the Attorney General's commitments. If confirmed as Secretary of Labor, I am committed to enforcing all laws committed to the Department of Labor's care, including those relating to equal pay.

*Question 70.* In order to crack down on violations of equal pay laws, the National Equal Pay Enforcement Task Force made several recommendations, including that the Equal Employment Opportunity Commission (“EEOC”), the Department of Justice (“DOJ”), the Department of Labor (“DOL”), and the Office of Personnel Management (“OPM”) coordinate the responsibilities of enforcing the laws prohibiting pay discrimination. Do you think interagency coordination and enforcement efforts including communication among the agencies, coordinating investigations and litigation, identifying areas in which they can issue joint guidance to employers and employees, and conducting joint training as appropriate have made a positive impact on enforcement of equal pay laws? Do you believe these efforts deserve more or less support through funding and staffing? Please include specific examples of where there should be more or less coordination between these agencies.

*Answer 70.* I would need to look into the task force’s accomplishments to make a determination on its effectiveness. As I noted at my hearing in the context of job training, it is generally important for government agencies to work together to increase efficiency and effectiveness.

*Question 71.* An estimated 5.25 million young people ages 16 to 24 are unattached to school or work. Known as disconnected youth, they make up nearly one-third of unemployed people. Youth disconnection is not a challenge confined to urban, suburban, or rural America. In fact, rates of disconnection are particularly high across the south. Given the opportunity to reconnect with the labor market, these young people offer a return of hundreds of billions of dollars in economic productivity and savings to taxpayers. For these reasons, dozens of employers including Walmart, Starbucks, JP Morgan, CVS, Fed Ex, Hilton and others have committed to creating 100,000 opportunities to reconnect these young people with productive and self-sustaining work. Would you support setting a broader goal of reconnecting 1 million opportunity youth? What role do you see for the Department of Labor in re-engaging youth who have left high school without earning a high school diploma? In connecting Opportunity Youth to jobs, workforce and training programs?

*Answer 71.* I appreciate you raising this issue, and I agree it is vitally important. I share your belief that getting more young people involved in workforce training and apprenticeship programs is an important goal. There are numerous examples throughout the Nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. I believe that the Department of Labor, along with State and local governments, industry, and educational institutions, can partner to have a critical positive impact on American workers, especially young people who struggle with education and employment. I would be pleased to work with you and other Members of the committee to identify new ways to re-engage these youth and help them succeed in the labor force.

*Question 72.* In August 2016, *Time Magazine* reported that President Trump contracted with a company that employed undocumented immigrants from Poland to work on the site of his flagship Trump Tower in New York City and had them work 12-hour shifts without paying them overtime. According to *Time Magazine*, when the people building the Trump Tower complained that he was stealing the wages they had earned, President Trump had his lawyer threaten to call immigration officials and get the people working on the site deported. While President Trump has denied some of these facts, it is indisputable that some corporations exploit undocumented immigrants who work for them and then threaten to call immigration authorities to silence whistleblowers. Not only does this put undocumented immigrants in an extremely vulnerable position, it ends any chance to ferret out unscrupulous corporations who disregard the law, do not pay overtime, put the people who work for them in dangerous working conditions, and even sexually abuse or traffic their employees. If whistleblowers are deported, after all, the government cannot investigate charges of exploitation or abuse. Will you ensure that DOL investigators protect whistleblowers from their boss making a retaliatory call to immigration authorities? Will you commit to working with the Department of Homeland Security to ensure that DHS does not initiate deportation proceedings against immigrants during on-going investigations over workplace labor law violations or for exercising their rights as workers in the United States? Will you train Department of Labor investigators to be aware that investigations into labor law violations should take precedence over immigration proceedings absent extraordinary circumstances, such as national security? Will you instruct Department of Labor investigators to de-conflict Department of Labor investigations with Department of Homeland Security enforcement activity to prevent a raid against a worksite at which a labor investigation or action is occurring? Will you work with Department of Homeland Security to en-

sure Department of Homeland Security officials know whom to call to determine if there is an open Department of Labor investigation before initiating a workplace immigration investigation?

Answer 72. I believe that the Department has a longstanding commitment to ensuring that all workplace protections are enforced regardless of workers' immigration status. I have not reviewed it but I believe there is a Memorandum of Understanding between the two cabinet departments that is designed to avoid interfering in each other's enforcement responsibilities. If confirmed, I will discuss this issue with Department of Labor staff and ask them to work with Department of Homeland Security staff to help ensure that both agencies can continue to fulfill their responsibilities.

Question 73. There are numerous press reports already about immigrant workers being afraid to go to DOL to pick up settlement checks for unpaid wages because they fear deportation. Similarly, the press is reporting that immigrant workers, even some that have documentation, now fear complaining about unsafe conditions or wage theft. Advocates report that this is the case as well. As you know well, we must vigorously enforce the employment rights of those workers most vulnerable to exploitation not only to protect their basic human rights, but also, so we don't allow unscrupulous employers to undercut the documented and citizen workforce by hiring and abusing undocumented workers. Indeed, the single best thing we can do to protect all American workers, is to protect all who work in America. These well-founded fears threaten to sideline the DOL in these important matters, undercutting the rights of the entire low-wage workforce. If you are Secretary, what will you do to ensure that the DOL remains open to undocumented workers who are being exploited? Will you engage in targeted investigations in industries that tend to hire them and if so, what will you do to protect them from workplace raids? Will you vigorously enforce the current Memorandum of Understanding between DOL and DHS detailing how DHS must defer to DOL's investigations and enforcement actions? Will you fight to maintain this MOU if others want to abandon it?

Answer 73. I believe that the Department has a longstanding commitment to ensuring that all workplace protections are enforced regardless of workers' immigration status. I support that longstanding practice. I have not studied the MOU you reference, but I believe it is important that both agencies avoid interfering in each other's responsibilities.

Question 74. Your statements on immigration and immigrant workers are at odds with statements that President Trump has made. What policies would you like to see? How will you work with President Trump if you are in opposition to one another? What policies do you propose to welcome immigrants to the United States?

Answer 74. As I noted at the hearing, I think there is a need to have immigration laws that are transparent and clear, and I do think that we have an issue of abuse with immigrant workers. I think when workers are not part of the system, the system can abuse them. I also think it's important that we enforce immigration laws. I don't see enforcement of immigration laws as separate from immigration reform. As the child of immigrants, I certainly support and appreciate the benefits of legal immigration and the opportunities my family has had. The best way to welcome legal immigrants is to have a growing economy that gives them the opportunity to contribute.

Question 75. As reported by *The Washington Post*, President Trump is the president of a Charlottesville vineyard that has applied for H-2A workers for multiple years, including for 2017. The DOL plays a key role in implementing and enforcing the H-2A program, both as the regulatory agency that oversees the employer's application process and as the agency tasked with enforcing worker protections under the program. As President, Trump will be overseeing the very agency that will determine whether or not his business's request for foreign workers will be granted. Ethics experts cited in *The Washington Post* article described President Trump's interest in the H-2A program as a business owner and as the executive authority in charge of the H-2A program as "a classic conflict of interest" which would extend to his appointees. Given this clear conflict of interest, how will you be able to carry out the DOL's responsibilities under the H-2A program?

Answer 75. As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly and I have done that throughout my career regardless of the individuals involved.

Question 76. Do you believe that all working people, regardless of their immigration status, should be afforded the same health and safety protections and options for recourse if they are injured on the job?

Answer 76. As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly, including health and safety protections, which apply regardless of immigration status.

*Question 77.* Immigration enforcement is often used by exploitative employers as a tool to intimidate and retaliate against guest workers and other immigrant workers. This depresses wages and working conditions for all workers, and sometimes leads to forced labor and human trafficking on American soil. There have been numerous instances of Immigration and Customs Enforcement (ICE) agents impersonating OSHA officials in order to target immigrant workers, and the recent immigration enforcement surge has included worksite raids and the legal but problematic identification of ICE agents as police officers. The best way to prevent this misuse of ICE resources is to de-conflict and maintain a separation between immigration enforcement and labor enforcement.

Do you agree with the principle that immigration and labor enforcement activities should be kept separate?

If so, will you maintain or expand the interagency policy established with DHS to de-conflict worksite enforcement activities?

Answer 77. If confirmed, I will fully and fairly enforce the law in this area. I believe it is important that ICE and all DOL agencies avoid interfering in each other's responsibilities.

*Question 78.* The Labor Department during the Obama administration issued a number of rules to strengthen protections for working people—their pay, their safety and health, their pensions, and many more. These protections were issued after public notice and a full opportunity for the public to submit comments. After reviewing all these comments, the Labor Department made a decision to issue the rules. Will you commit to following the law and providing a full opportunity for public notice and comment before modifying any of the Obama administration's regulations that have already been finalized and published?

Answer 78. I will follow the requirements of the law in making changes to any regulations.

*Question 79.* Data from the Bureau of Labor Statistics indicate that it takes older workers almost a year (about 40 weeks) to return to the workforce after losing their job. This is twice as long as it takes younger workers. Congress created and recently renewed their commitment to the Senior Community Service Employment Program (SCSEP) at the Department of Labor. This program has provided job training to millions of older Americans and has successfully moved them into permanent employment. While President Trump has claimed to be the champion of the American worker, his proposed budget calls to eliminate this employment program for low-income older workers. Should older workers who are unemployed but have the need, desire, and ability to work have access to temporary earn-and-learn training opportunities in their communities? How do you plan to assist the 67,000 unemployed older workers who will lose SCSEP service under the President's plan—including the estimated 8 older workers from my State of Washington? Will you commit to work with Congress to ensure older workers who are unemployed have access to on-the-job training opportunities through SCSEP?

Answer 79. I would need to review any particular program before I committed to supporting it. If confirmed, I look forward to learning more about SCSEP. As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding levels. That said, I fully believe in assisting any worker, young or old, who seeks to rejoin the labor market but needs help developing in demand skills.

*Question 80.* As you may know, since the enactment of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and subsequent creation of the compensation Program, the Department of Labor and the Department of Energy have worked to process the claims of former employees and contractors who were exposed to radiation and toxins during their service at nuclear weapons facilities across the country. As a Senator from the State of Washington, this is a really important issue to me because we have thousands of workers and their families at the Hanford Nuclear Reservation located in the Tri-Cities who helped America win WWII and the cold war and continue to support a critical cleanup mission at Hanford. For years, I have been battling the slow and complex process that these heroes deal with in trying to secure the compensation and care promised them in a fair and timely manner. In addition, in 2005, I along with my colleagues worked to move this compensation program to the Department of Labor under the premise that it would do much better in processing claims. Yet, I still hear from workers that face

a slow claims process, continuous program inefficiencies, endless obstacles to complete their process, and difficulties in receiving the health care and benefits they earned through their dedicated service to the United States. What steps will you take to improve this critical program? Would you commit to a comprehensive review of the operations of the Division of Energy Employees Occupational Illness Compensation (DEEOIC) and the Office of Workers' Compensation Program? And report to this committee its findings within 90 days?

Answer 80. If confirmed, I will look into your concerns. I will need to consult with DOL staff in order to determine the proper scope of any review and the timelines.

*Question 81.* As Secretary of Labor, you will serve as the Chairman of the Board of the Pension Benefit Guaranty Corporation (PBGC). The PBGC's multiemployer program reported in its fiscal year 2015 Annual Report that its deficit widened to \$52.3 billion and it is likely to become insolvent in 2025.

What do you think should be done to address the continuing solvency of the PBGC's multiemployer program?

What do you think should be done to address the solvency issues for plans like Central States among other plans that applied to Treasury to cut benefits under the Multiemployer Pension Reform Act of 2014 (MPRA) and were rejected?

Answer 81. If confirmed, I will be Chair of the Pension Benefit Guaranty Corporation's Board of Directors and expect to be briefed on the matter of underfunded multiemployer pension plans. As I noted in the hearing, I have not proposed a plan to address the issue of underfunded multiemployer plans and I wish there were an easy solution. These workers have worked hard for pensions they reasonably expect upon retirement, and I understand that. I look forward to working with Congress and the President as solutions are proposed.

*Question 82.* During your confirmation hearing when questioned about the looming insolvency of Central States and the PBGC, you would not commit to maintaining pension benefits rather than taking the drastic measure of cutting them because "if you expand it further to include city and State pension funds, you're talking about approximately a \$2 trillion price tag."

Could you please discuss what you believe your role as Secretary of Labor is in overseeing city and State pension funds and the authority for such role?

Answer 82. If confirmed, I expect to be briefed on the matter of underfunded multiemployer pension plans and the PBGC's financial condition. I am aware that there are also concerns that many State and local government pension funds are substantially underfunded. Promoting retirement security is part of the Department's mission and good public policy. If confirmed, I look forward to working with Congress and the President as solutions are proposed to resolve pension funding concerns particularly as they relate to the PBGC.

*Question 83.* Do you think that the PBGC should set its own premiums for its multiemployer and single-employer programs? Please explain why or why not.

Answer 83. If confirmed, I look forward to a briefing regarding the PBGC's authority over premiums. I also look forward to working with Congress and the President as solutions are proposed, including proposals regarding PBGC premiums.

*Question 84.* Do you think the current premiums for PBGC's single-employer and multiemployer programs are sufficient? Please explain why or why not. Moreover, if you do not believe they are sufficient, please discuss what you believe a sufficient premium range would be.

Answer 84. If confirmed, I look forward to working with Congress and the President as solutions are proposed, including proposals regarding PBGC premiums. The premiums charged need to take into account both the need for funding the PBGC's guaranty programs while also keeping pension costs low so that employers continue to sponsor retirement plans.

*Question 85.* Do you believe that the current structure of the PBGC Board (the Secretaries of Commerce, Labor and Treasury) is the most effective management structure for the PBGC?

Answer 85. It is certainly important that the interests of plan participants and beneficiaries be represented on the Board. If confirmed, I look forward to briefings on these issues, including the role of the Board of Directors in the management of PBGC and discussing any proposed reforms to the structure with Congress.

*Question 86.* Do you believe that the PBGC should be given greater authority to work with distressed multiemployer and single-employer plans? If so, what authority do you think is needed?

Answer 86. Supporting the ability of retirement plans to honor commitments made to working men and women is important. If confirmed, I expect to be briefed regarding the PBGC and ways to improve the prospects of distressed multiemployer and single employer plans, and I look forward to working with Congress and the President as solutions are proposed.

*Question 87.* Do you believe every American who seeks professional investment advice regarding his or her retirement accounts deserves to receive advice that is solely in his or her best interest?

Answer 87. It is important that the retirement savings of working Americans be protected. Working Americans deserve to have access to sound financial advice at fair and transparent prices, and the law requires those who are fiduciary advisers give advice that is solely in the interest of plans, their participants, and beneficiaries.

*Question 88.* You stated in your confirmation hearing that the conflict of interest rule “goes far beyond simply addressing the standard of conduct” of investment advisers. If after your presidentially mandated review, you decide to rescind or significantly scale back the rule, what kinds of protections do you think need to be put in place to ensure that hardworking individuals and retirees receive advice that is solely in their best interest?

Answer 88. Hardworking individuals and retirees should receive advice that is in their best interest. If confirmed, I expect to carefully examine the rule, pursuant to the executive memorandum. If repealed or scaled back, the basic protection articulated above would be important to address.

*Question 89.* As part of the rulemaking process the Department of Labor undertook in completing the final conflict of interest rule, the Department prepared a 382-page regulatory impact analysis examining in great detail the expected economic impacts of the rule. This was the culmination of a roughly 6-year process that incorporated the feedback of thousands of public comments submitted to the Department in multiple comment periods. Included in the analysis were discussion of the exact issues the Administration seeks to study according to the new presidential memorandum directing the Department to study the rule. While you made it abundantly clear during your confirmation hearing that President Trump would be your boss and you would follow his direction until you couldn't, do you think it a good use of taxpayer dollars to conduct a study that has already been completed? What do you intend to do with the rule if and when the results of this new study are consistent with the previous study?

Answer 89. The presidential memorandum addresses with specificity the fiduciary rule and details the Department of Labor's obligations to review the rule. If confirmed, I will conduct a review in accordance with the presidential memorandum. As Chairman Alexander noted, as a nominee it would be presumptuous to make any regulatory determinations at this time. Indeed, given that the comment period is still open on the questions raised as part of the evaluation, it would be improper for me to prejudge the rulemaking.

*Question 90.* The Department of Labor's Employee Benefits Security Administration devotes substantial resources to protecting the contributions made by employees and the matching contributions promised by their employers to employer-sponsored benefit plans, including 401(k)'s and health plans. Workers have had their contributions to their pension or health plans withheld from their paychecks without their employers depositing the money in the plans in a timely manner—or even at all in some cases. Instead, these employers kept the workers' contributions and used them for their own purposes or for other unrelated purposes. What should the Department do to more effectively protect working people against employers' misuse of their retirement and health money?

Answer 90. If confirmed, I expect to be briefed on matters related to the Employee Benefits Security Administration and will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including taking vigorous enforcement action if employers are unlawfully withholding funding for employee pension and health benefits.

*Question 91.* During your confirmation hearing, you stated that considering “indirect control or even unexercised potential to control working conditions” when analyzing joint employer status was an “un-traditional approach.” The Restatement (Second) of Agency refers to a master as someone who “controls or has the right to control” another and refers to a servant as one who is “controlled or is subject to the right to control.” (emphasis added) Indeed, the Supreme Court's considerations

are consistent with these principles, as the Court has pointed to whether one “possessed sufficient control over the work of the employees to qualify as a joint employer.” *Boire v. Greyhound Corp.*, 376 U.S. 473 (1964) (emphasis added).

The common law has long acknowledged that control may be indirect, and the *Restatement of Employment Law*, Section 1.04(b) (March 2017) states,

“An individual is an employee of two or more joint employers if (i) the individual renders services to at least one of the employers and (ii) that employer and the other joint employers each control or supervise such rendering of services.”

Do you believe that these common law principles are “un-traditional” and should be ignored when considering joint employer status under labor and employment laws?

Answer 91. If confirmed, I look forward to being briefed on these matters as we develop the Department’s regulatory policies and priorities.

*Question 92.* While you were Assistant Attorney General of the Department of Justice’s Civil Rights Division, you chose to write a letter to an Ohio judge in defense of an Ohio voter challenger law just days before the 2004 general election. It is a departure from standard practice of the Justice Department to weigh in on cases involving issues of voters rights and access so close to an election. Furthermore, the Department of Justice had no role in the case.

Why did you choose to write the letter?

How do you explain your decision, given that the Department of Justice had no role in the case? What was the value in the Department weighing in?

Did you weigh in on cases involving voter challenger laws or other laws relating to voter rights and access at the time? Were there controversies in other States in which the Department chose to involve itself?

Answer 92. The Department of Justice has a long history of submitting its views of statutes committed to its enforcement. The Department of Justice is charged with enforcing both the Help America Vote Act of 2002 (“HAVA”) and the Voting Rights Act (“VRA”). At the time, HAVA was a relatively new statute. Because of this, there was value in bringing to Judge Dlott’s attention key aspects of HAVA, i.e., that State and local election officials must permit any individual whose name does not appear on the official registration list or whose eligibility to vote is called into question to cast a provisional ballot even if they are unable to answer specific questions posed by election judges; that provisional ballots are part of a congressionally established balance between ballot access and ballot integrity; and that as a result, non-discriminatory challenge statutes are not prohibited on their face (although they can be prohibited as applied). Provisional ballots would mitigate the impact of the Ohio “challenge statute” at issue in that case, which otherwise may have resulted in the disqualification of some voters without any recourse to confirm their eligibility and to restore their vote. The letter alerting Judge Dlott to HAVA’s requirements was consistent with the Civil Rights Division’s many other efforts to raise awareness of and to enforce HAVA in several States during 2004. Importantly, the Department did not speak to the specific allegations raised by the plaintiffs in that suit, but limited its comments only to the statutes on their face.

*Question 93.* In 2003, the Civil Rights Division’s Voting Rights Section was tasked with reviewing a plan proposed by the Texas legislature to redraw the State’s congressional districts. Under the Voting Rights Act, States with a history of discriminatory election practices had to receive approval from the Justice Department to make changes to their voting systems. This rule was designed to prohibit changes that would have harmed minority voters. The career attorneys in the Voting Rights Section found that the Texas redistricting plan would have had a discriminatory effect. Yet, senior political officials in the Department overruled the career attorneys and the Texas plan went into effect. The Supreme Court later found that the Texas redistricting plan had “failed to protect minority voting rights.” You chose to recuse yourself from this case and have refused to provide an explanation for your decision. In a congressional hearing in 2004, you stated,

“I do believe that my recusal was appropriate, that it was the right thing for me to do. I have very able deputies, good deputies, and I have full confidence in their decisionmaking process.”

Why did you choose to recuse yourself from this case? And based on the mistake made by political officials to override the correct decision by the section’s career attorneys, do you regret your decision?

Answer 93. Recusal is appropriate where an official has an actual conflict of interest, or where under the circumstances the official may reasonably appear to have



a conflict of interest. As I mentioned at my hearing, I have a longstanding friendship with the then Solicitor General of Texas, Mr. Cruz, who was litigating this matter personally. I recused myself out of concern that this contact may be portrayed as a conflict of interest. I take recusal obligations very seriously. It is as important to recuse in cases where recusal is required as it is not to recuse in cases where recusal is not required. In this case I believe my decision to recuse from any involvement in the Department's deliberations and decisionmaking was appropriate.

SENATOR SANDERS

MINIMUM WAGE

*Question 1.* On July 27, 2016, Donald Trump said at a press conference “The minimum wage has to go up. At least \$10. It has to go up.” I believe we need to increase the minimum wage to \$15 an hour. Do you believe that the Federal minimum wage of \$7.25 an hour is a starvation wage? Do you believe someone can support a family on \$7.25 an hour? In your opinion, do you believe that Donald Trump was correct when he said that the minimum wage has to go up to at least \$10 an hour?

Answer 1. The minimum wage is set federally by Congress but also in States and localities by their respective governments. I recognize that cost-of-living and other economic factors vary greatly across the United States and that many States and localities have increased the minimum wage above the Federal floor.

PENSIONS

*Question 2.* A few years ago, the Republican Congress passed a law that allows companies to cut the earned pension benefits of millions of workers in multi-employer pension plans by as much as 60 percent. I am about to re-introduce legislation that would repeal this law and prohibit employers from cutting earned pension benefits. This legislation would be paid for by closing loopholes that allow millionaires to pay lower tax rates than their secretaries. Will you work with me on this legislation? What will you do to prevent the earned pension benefits of millions of Americans in multi-employer pension plans from being cut?

Answer 2. If confirmed, I will be Chair of the Pension Benefit Guaranty Corporation's Board of Directors and expect to be briefed on the matter of underfunded multi-employer pension plans. As I noted in the hearing, I have not proposed a plan to address the issue of underfunded multiemployer plans and I wish there were an easy solution. These Americans have worked hard for pensions they reasonably expect upon retirement, and I understand that. I look forward to working with Congress and the President as solutions are proposed to address this important issue.

EMPLOYEE OWNERSHIP (ESOPs)

*Question 3.* Employee stock ownership using the ESOP model has broad-based bipartisan support in Congress. The data shows that employee-owned companies provide jobs that are more productive, competitive, and sustainable, especially in a time of economic downturns. Do you believe broad-based ownership by employees in the companies where they work is good policy for our Nation—for the employees, their companies, their communities? Will DOL work to encourage broad-based employee ownership? I have long believed that worker ownership is an economic model that we should be using to reduce income and wealth inequality. Studies have consistently shown that worker ownership increases wages, productivity, and benefits, and sharply reduces turnover and absenteeism.

Answer 3. I strongly support empowering Americans in all aspects of their working endeavors. A well-run ESOP, like other employment-based retirement plans, can provide valuable benefits to participating workers, and I believe that Congress and the Department have a shared responsibility to take steps to make sure that ESOPs fulfill their important mission of providing benefits and enhancing employee ownership. If confirmed, I expect to be briefed on ESOPs and I look forward to working with Congress as we develop the Department's regulatory policies and priorities to expand opportunity.

*Question 4.* I will be re-introducing legislation to allow the Department of Labor to provide grants to States and local government to educate workers and retiring business owners about the benefits of employee ownership. I will also be introducing legislation to create a U.S. Employee Ownership Bank to provide low-interest loans and financial assistance to workers who want to create worker-owned businesses. Will you work with me on those bills?

Answer 4. As I expressed at my confirmation hearing, I look forward to working with you and all of the members of the committee on issues like the one you raise

here. I share your interest in the benefits of employee ownership programs and look forward to learning more about the value they can provide to workers and businesses, if confirmed.

IMMIGRATION/VISA'S

*Question 5.* What specific actions will you take to prohibit U.S. workers from being replaced by guest workers through the H-1B program?

Answer 5. As I noted in my testimony, I think that this is an important issue to review, particularly where Americans are being asked to train their foreign replacements. That is not the intent of the H-1B program. If confirmed, I look forward to working with the Department staff to look for ways to eliminate this problem. If legislation is needed, I look forward to working with you and the committee to help enact any needed changes.

*Question 6.* Do you believe that businesses should be allowed to force U.S. workers to train their replacements who are here under the H-1B program in order to receive a severance package?

Answer 6. I believe this is offensive to American workers. As I noted in my testimony, I think that this is an important issue to review. That is not the intent of the H-1B program. If confirmed, I look forward to working with the Department staff and Congress to look for ways to eliminate this problem. The only thing that I can think of that is worse than losing your job is being forced to train your replacement.

*Question 7.* Currently, the H-2B program requires that the employer offer a wage that equals or exceeds the prevailing wage, or adheres to the local minimum wage. The program also requires recruitment displacement standards to protect similarly skilled U.S. workers. How do you intend to enforce these requirements?

Answer 7. Protecting U.S. workers is my priority. If confirmed, I will enforce the laws in this area that are within the jurisdiction of the Department of Labor and direct my staff to work with other Departments involved to address any issues. If legislative changes are needed, I look forward to working with you and the committee to come up with a solution.

*Question 8.* How will you make sure that H-2B guest workers are not exploited by unscrupulous employers?

Answer 8. Certainly, guest workers on any program should be treated fairly in order to protect them and maintain U.S. working conditions. If confirmed, I will enforce the laws in this area that are within the jurisdiction of the Department and direct my staff to work with other Departments involved to address any issues. If legislative changes are needed, I look forward to working with you and the committee to come up with a solution in this area.

*Question 9.* In your opinion, should companies be able to pay guest workers on a J-1 visa less than the minimum wage?

Answer 9. Certainly, guest workers on any program should be treated fairly in order to protect them and maintain U.S. working conditions. If confirmed, I look forward to being briefed regarding the J-1 visa program, but I believe that program is enforced by the State Department, not the Department of Labor as it is considered a cultural or educational visa. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including the Fair Labor Standards Act, and ask staff to assist the State Department in safeguarding these workers.

*Question 10.* How would you interpret and enforce the Fair Labor Standards Act with respect to the J-1 visa au pair program?

Answer 10. Certainly, guest workers in any program should be treated fairly in order to protect them and maintain U.S. working conditions. If confirmed, I look forward to being briefed regarding the J-1 visa program, but I believe that program is enforced by the State Department, not the Department of Labor, as it is considered a cultural or educational visa. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including the Fair Labor Standards Act, and ask staff to assist the State Department in safeguarding these workers.

*Question 11.* Are au pairs entitled to a State's minimum wage if that exceeds the Federal minimum wage? Are au pairs entitled to overtime under the Fair Labor Standards Act?

Answer 11. If confirmed, I look forward to being briefed regarding the J-1 visa program, but I believe that program is enforced by the State Department, not the Department of Labor, as it is considered a cultural or educational visa. Certainly, guest workers in any program should be treated fairly in order to protect them and U.S. working conditions. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including the Fair Labor Standards Act, and ask staff to assist the State Department in safeguarding these workers.

*Question 12.* In guest worker programs where employers are required to provide housing by statute, will you allow employers to deduct the cost of housing even if it would mean that the paycheck of the guest worker would be lower than the minimum wage?

Answer 12. If confirmed, I will fully and fairly enforce all the laws that protect guest workers. Whether employers can deduct the cost of housing from employee wages depends on the guest worker statute. It would not be appropriate for an employer to deduct the cost of housing from the required wage where the guest worker statute requires the employer to pay for housing.

*Question 13.* Should the Department of Labor protect guest workers from retaliation if they report problems with their working conditions?

Answer 13. Anti-retaliation provisions are designed to ensure that workers can assert their rights and should be supported and enforced for that reason. To the extent Congress has given authority to the Department under guest worker statutes, if confirmed, I will fully and fairly enforce all the laws that prohibit illegal retaliation.

#### CONFLICT OF INTEREST RULE

*Question 14.* The DOL estimated that Americans lose at least \$17 billion a year due to conflicted advice from their advisers. Do you think protecting investors from receiving bad, or conflicted advice, is good public policy that will help more Americans retire with financial security?

Answer 14. It is important that the retirement savings of working Americans be protected. Working Americans deserve to have access to sound financial advice at fair and transparent prices, and the law requires those who are fiduciary advisers give advice that is solely in the interest of plans, their participants, and beneficiaries.

*Question 15.* It is difficult for the average person to know who's who in giving them investment advice. Without the enactment of the conflict of interest rule, someone who is a "registered investment advisor" must provide advice in the best interest of their clients, while someone who calls themselves a "financial advisor," or "retirement advisor" has no such obligation. Do you believe the investment industry has a responsibility to make this clearer and easier to understand for average Americans, or does the burden in your view rest on the person investing?

Answer 15. I believe that transparency with respect to obligations is important generally and in this context. Working Americans deserve to have access to sound financial advice at fair and transparent prices, and the law requires those who are fiduciary advisers give advice that is solely in the interest of plans, their participants, and beneficiaries.

*Question 16.* When it developed the fiduciary rule, the DOL prepared an exhaustive economic analysis conservatively estimating that conflicted advice from advisers costs American savers at least \$17 billion a year. Yet the agency has just submitted a proposal to OMB to delay the rule pending another economic analysis. Every day that this rule is needlessly pushed back, countless hardworking Americans could lose critical parts of their retirement savings. What would you say to those investors?

Answer 16. It is important that the retirement savings of working Americans be protected. I support empowering Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies. There are concerns, however, that the fiduciary rule may adversely affect the ability of Americans, particularly those with smaller accounts, to gain access to retirement information and financial advice. As I noted at the hearing, a presidential memorandum addresses with specificity the fiduciary rule and details the Department of Labor's obligations to review the rule. If confirmed, I will conduct the review in accordance with the presidential memorandum, but with the underlying goal of ensuring the policy

meets the President's and Congress mutual goal of safeguarding retirement security.

#### FEDERAL EMPLOYEES

*Question 17.* The Federal Government continues to be American's largest low-wage job creator. On February 12, 2014, President Obama signed an Executive order establishing a \$10.10 minimum wage for Federal contract workers. Do you support or oppose that Executive order? On September 7, 2015, President Obama signed an Executive order "establishing paid sick leave for Federal contractors." Do you support or oppose that Executive order?

Answer 17. I believe that the vast majority of Federal contractors pay \$10.10 minimum irrespective of the Executive order and many also provide paid sick leave. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including Executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

*Question 18.* On July 21, 2014, President Obama signed an Executive order "prohibiting discrimination based on sexual orientation and gender identity." Do you support or oppose that Executive order?

Answer 18. I believe the White House has indicated its intent not to rescind this Executive order, and I support that decision. I am committed to enforcing anti-discrimination laws. I believe anti-discrimination laws should prohibit workplace discrimination based on sexual orientation or gender identity, although I support religious entities' freedom to hire consistent with their faith.

#### CIVIL RIGHTS

*Question 19.* Mr. Acosta, according to the Lawyers' Committee for Civil Rights Under Law:

"[You] led the Civil Rights Division at a time that was marked by stark politicization and other improper hiring and personnel decisions that were fully laid to bare in a 2008 report issued by the Office of Inspector General (OIG). The OIG found that actions taken during Mr. Acosta's tenure violated Justice Department policy and Federal law. Political and ideological affiliations were used as a litmus test to evaluate job candidates and career attorneys, wreaking havoc on the work of the Division. This egregious conduct played out under Mr. Acosta's watch and undermined the integrity of the Civil Rights Division. It is hard to believe that Mr. Acosta would now be nominated to lead a Federal agency tasked with promoting lawful hiring practices and safe workplaces."

Given your record at the Department of Justice, how can we trust you to fairly enforce our Nation's labor laws?

Answer 19. As I indicated at my hearing before the committee, the conduct described in the OIG's report was wrong and should not have taken place. The OIG concluded that I was not aware of the misconduct. Nonetheless, it occurred on my watch as Assistant Attorney General. I am well aware of what happened, and committed to ensure it is not repeated. I am committed to enforcing the Nation's labor laws, fairly and fully.

#### VOTER SUPPRESSION

*Question 20.* All over this country there has been a massive effort by Republican legislatures and Governors to suppress the vote of African Americans, Latinos, and the poor. In 2004, the Ohio Republican Party announced its plan to deploy thousands of people across Ohio to challenge votes in mostly African American precincts. Many in the civil rights community called this plan nothing more than "a vestige of Jim Crow laws" which "created the possibility of disenfranchising a voter without due process of law." Yet, you wrote a letter in defending this practice when you were at the Department of Justice. According to a 2007 article by McClatchy,

"Former Justice Department civil rights officials and election watchdog groups charge that [your letter] sided with Republicans engaging in an illegal, racially motivated tactic known as 'vote-caging' in a State that would be pivotal in delivering President Bush a second term in the White House."

If you fought to suppress the vote of African Americans in Ohio, how can we trust you to enforce our Nation's anti-discrimination laws in the workplace?

Answer 20. If confirmed as Secretary of Labor I will be committed to fairly and fully enforcing all laws entrusted to the Department of labor including workplace anti-discrimination laws.

## GENERAL

*Question 21.* Trump has been involved in at least 60 lawsuits involving employees and contractors alleging he did not pay them. According to DOL data, he has been cited for 24 violations of the Fair Labor Standards Act since 2005 for failing to pay overtime or minimum wage. Despite his campaign promises, his actions paint a portrait of a systemic culture to devalue workers. How do you plan on addressing this conflict of interest? Will you create policies that will have a direct impact on the President's pending labor investigations and lawsuits?

*Answer 21.* As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly and I have done that throughout my career regardless of the individuals involved.

## BUDGET

*Question 22.* President Trump's proposed budget cuts the Labor Department by 21 percent, or \$2.5 billion. Meanwhile, full-time workers are struggling to provide for their families and find good jobs. Do you know how many U.S. workers the Labor Department will have to turn away for job training and career services if the President's budget request to cut \$2.5 billion from the Labor Department is enacted?

*Answer 22.* As a nominee, I have not participated in the current budget discussions. If confirmed, one of my goals and responsibilities will be to use taxpayer resources wisely to provide the best job training and career services to all Americans in need of those resources.

## YOUTH EMPLOYMENT

*Question 23.* In a study of 98 of America's 100 most populous metro areas, which includes 66 percent of the U.S. population, Measure of America found that youth disconnection is not a spontaneously occurring phenomenon; it is an outcome years in the making. Disconnected young people tend to come from communities that are themselves disconnected from the mainstream by segregation and concentrated disadvantage, and young people's struggles with education and employment mirror those of their parents and neighbors. Under your leadership, would you direct discretionary funding to high-poverty urban, rural, and tribal areas/communities?

*Answer 23.* If confirmed, I look forward to working on this issue in order to find ways to better serve youth who confront the challenges you describe. I share your concerns about communities and individuals that feel disconnected from society, and expect to be briefed on what the Department is doing in this area, and how we can improve those efforts, if confirmed. The Department of Labor, along with local governments, industry, and educational institutions, can partner to have substantial positive impact on American workers, including young people who struggle with education and employment. If confirmed, I will work to maximize the impact of every taxpayer dollar directed to job training programs and ensure funds go to programs that work. I would add that efforts in these communities need to be coordinated with other Departments, including Housing and Urban Development and Education.

*Question 24.* The taxpayer and social burden of a disconnected 16-year-old young person during his or her lifetime is over \$1,014,140. Do you believe there is a Federal role in supporting States and local areas to connect unemployed youth to the labor market? If so, what is that role?

*Answer 24.* I believe that programs at the Department of Labor, most prominently those in the Employment and Training Administration, do play a role in helping to serve the communities you describe. As I mentioned previously, I share your concerns about communities and individuals that feel disconnected from society, and do believe that this Federal role is important in partnership with local government and private industry.

*Question 25.* Youth and young adults in the United States face an unprecedented employment crisis. Seven years after the "official" end of the Great Recession, teen unemployment remains high at nearly 17 percent. Will you make youth employment a top priority for your tenure as Secretary?

*Answer 25.* Thank you for highlighting this important issue. Youth and young adult employment will be a priority that I plan to focus on, if confirmed.

*Question 26.* For the middle class especially, the American dream of each generation doing better than the last is slipping out of reach. Today's young people are working just as hard as their parents did, and yet—due to stagnant wages and high-

er education costs—are less likely to out-earn their parents in their lifetimes. How will you restore and protect this generation’s right to the American Dream?

Answer 26. I share your concern about this generation struggling to experience greater successes than their parents. A strong belief in the American dream and a sense that it is achievable is important to our American identity and society. My family experienced the American dream first-hand, and I hope that if confirmed, I can bring those experiences to bear in order to support policies, initiatives and reforms that will provide the opportunity for this generation to realize greater success than did their parents.

#### WIOA

*Question 27.* The Wagner-Peyser Act of 1933 established a State-administered, federally funded national system of public labor exchange offices known as the U.S. Employment Service (ES). The Act most recently was amended in 2014 by the Workforce Innovation and Opportunity Act (WIOA). The Employment Service has for decades been providing job search assistance, job interview referrals, re-employment services to unemployment insurance claimants, and recruitment services for employers seeking to fill vacancies. It also specially meets the specific needs of youth, minorities, older workers, individuals with disabilities, and veterans. WIOA has expanded the Employment Service’s mandate to provide more intensive, staff-assisted career counseling to job seekers, thus affirming ES’s key role within American Job Centers. Will you fully support the work of the Employment Service through appropriations requests for adequate funding and other means?

Answer 27. The Department of Labor, along with State and local governments, industry, and educational institutions, can partner to have substantial positive impact on America’s workers. If confirmed as Secretary of Labor, I will work to maximize the impact of Federal taxpayer dollars directed to employment and job training programs and shift more responsibility for funding job training and employment services to States, localities and employers that can effectively address the needs of both employers and workers. I strongly believe it is important to invest in worker training. I look forward to working with you and Members of the committee to realize these stated goals.

*Question 28.* The Workforce Innovation and Opportunity Act of 2014 (WIOA) passed with virtually unanimous bipartisan support in Congress—marking the first update to the Nation’s core workforce training programs in 16 years. Since WIOA was enacted, the State and local workforce development system has worked to implement the law’s changes to the Nation’s employment, training, adult education, and vocational rehabilitation programs, including its emphasis on improving services to low-income adults and youth who have limited skills, lack work experience, and face other barriers to securing an education and getting a good job. In 2016, the Departments of Labor and Education published final rules implementing WIOA; relying on this regulatory framework, States have completed extensive stakeholder consultation processes and finalized their State workforce development plans. Will you commit to keeping these rules in place so that States and local areas can continue to implement their 4-year WIOA plans?

Answer 28. If confirmed, I expect to be briefed on WIOA and all related programs and implementing regulations in order to understand stakeholder, State workforce agency and worker interests and concerns. So long as these rules are working well, I see no reason to disturb them; if improvement would be helpful, however, I believe changes should be considered.

#### WHD ENFORCEMENT

*Question 29.* Do you believe that government should play an active role in protecting workers and policing misconduct on the part of employers? Examples of misconduct include practices that deny workers a fair wage, practices that reinforce discrimination against protected groups of workers, practices that make it difficult for employees to complain about such unfair and illegal conduct and that stack the deck against the employee and in favor of the employer when a complaint is made, and many others. If so, do you believe that this role cannot be effectively accomplished by any other entity?

Answer 29. Government has an active role and responsibility to enforce laws that protect workers. If confirmed, I will work to enforce the laws under the Department of Labor’s jurisdiction fully and fairly.

*Question 30.* Do you support similar modern-day developments to ensure that working conditions are better and pay is better for average working people, including low-wage workers?

Answer 30. I support improvements in working conditions and raising wages, and, if confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including laws pertaining to worker protections.

*Question 31.* As the head of DOL, will you actively pursue new public protections to create a safer workplace environment?

Answer 31. If confirmed, I look forward to reviewing the safety standards to help ensure the safety of all workers. The Occupational Safety and Health Act of 1970 requires OSHA to ensure safe and healthful working conditions and I am committed to carrying out this mission. Where necessary, OSHA will promulgate appropriate and feasible rules to address workplace hazards. OSHA has many other tools at its disposal to carry out the obligations of the Act and to address new workplace hazards as they emerge, including conducting training and education, and providing compliance assistance to employers and employees.

*Question 32.* As the Nation's chief worker advocate, will you pursue increased wages for the middle class?

Answer 32. Yes, I support increased wages for the middle class. A growing economy combined with improved job training for in demand skills is among the best ways to grow the middle class.

*Question 33.* The Fair Labor Standards Act at 29 U.S.C. § 201 states, as "congressional finding and declaration of policy" as follows:

"The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. That Congress further finds that the employment of persons in domestic service in households affects commerce. It is declared to be the policy of this chapter, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power."

The current WHD engages in targeted enforcement—looking specifically to industries which have high rates of violations and rather than waiting for complaints to come in, doing audits of businesses in those industries to drive higher rates of compliance with the FLSA across the board. Would you continue engaging in targeted enforcement in the industries we know have high rates of violations?

Answer 33. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly. Strategic enforcement in high violation areas, alongside individual complaints, is a balanced enforcement strategy I support.

*Question 34.* Do you believe your company's violation of WHD and OSHA regulations impairs your ability to oversee those programs as Labor Secretary?

Answer 34. I am unaware of what company you reference. In my roles at the bank and Florida International University Law School, I have promoted full compliance with the law, including the Occupational Safety and Health Act and the Fair Labor Standards Act.

#### TRADE/OUTSOURCING/INTERNATIONAL LABOR

*Question 35.* The President has talked a lot about unfair trade agreements that have taken away American jobs. While I realize you are nominated for Secretary of Labor, not as our trade representative, what will you do as Secretary to help these dislocated workers impacted by trade to find new jobs at commensurate or better wages than they received before their job moved abroad? What changes need to be made in our trade agreements to better protect our workforce?

Answer 35. The Department's Bureau of International Labor Affairs is assigned the duty to ensure the labor provisions in trade agreements are enforced fairly. If confirmed, I look forward to working with that office, the Trade Representative and Congress on this important issue. The overall best solution for preventing dislocations is to create an environment where there are few incentives to move jobs overseas. When there are displacements of workers because of trade, however, as I dis-

cussed at the hearing, we need to make better efforts to align job training with the skills the market demands today and in the future for those displaced workers.

MINIMUM WAGE

*Question 36.* This year, the Republican platform called for the Minimum wage to be handled at the State AND local level. Yet many red States are passing laws that prohibit localities (cities and counties from raising the minimum wage in their jurisdictions. Ohio is the latest State to do so. This is in direct contravention of the Republican party platform and you yourself have spoken about this being an issue that should be handled at the State and local level. What will you do as the SOL to discourage States from pre-empting their localities who wish to enact labor standards that comport with the needs of those who live and work in their jurisdictions?

*Answer 36.* Thank you for bringing this issue to my attention. If confirmed, I will examine this matter more closely.

SENATOR CASEY

*Question 1.* During the Bush administration the Mine Safety and Health Administration failed to fulfill its statutory mandate under the Federal Mine Safety and Health Act to inspect every underground mine 4 times per year, and every surface mine 2 times per year. This is known as the "4s and 2s." In fact, MSHA's budget was cut so deep during the Bush administration that MSHA did not even have enough qualified inspectors to carry out these inspections. Will you commit to that MSHA will implement this mandate to carry out the 4s and 2s every year Please provide a yes or no response.

*Answer 1.* As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly, including inspection obligations at the Mine Safety and Health Administration.

*Question 2.* The Obama administration took a number of steps through rule-making and enforcement that protected the health and safety of coal miners, including those in the Commonwealth of Pennsylvania. Previously, MSHA failed to implement the "Pattern of Violations requirement" included in the Federal Mine safety and Health Act to ensure that serial violators will face elevated sanctions if they repeatedly place miners in harm's way by violating mandatory safety standards. That was fixed by MSHA after the Upper Big Branch Mine Disaster which killed 29 miners in the worst coal mine disaster in the United States in 40 years. Will you commit to maintain, implement and enforce this rule and its implementing guidance? Please provide a yes or no response.

*Answer 2.* I have no present reason to disturb this rule, and I certainly support strong and fair use of all of MSHA's enforcement tools, including elevated sanctions where appropriate. As I noted in my hearing, the President has directed each Cabinet officer to review all rules and to make determinations if any rules should be revised. If confirmed, I will have an obligation to comply with that directive. That said, Upper Big Branch was a terrible tragedy and I support all actions that effectively ensure the tragedy is not repeated.

*Question 3.* The respirable dust rule implemented by MSHA and the industry will reduce the exposure of miners to coal dust that causes disabling lung diseases, like black lung. Will you commit to maintain this rule and fully enforce it? Please provide a yes or no response.

*Answer 3.* I have no present reason to disturb this rule, and I support efforts to reduce black lung disease. As I noted in my hearing, the President has directed each Cabinet officer to review all rules and to make determinations if any rules should be revised. If confirmed, I will have an obligation to comply with that directive.

*Question 4.* MSHA issued a rule to keep miners from being crushed by continuous mining machine. It is known as the Proximity Detection Rule, which requires operators to install equipment to automatically shut down the movement of the machine if a worker is caught in a zone where they can be crushed. Will you commit to maintain this rule and fully enforce it? Please provide a yes or no response.

*Answer 4.* I have no present reason to disturb this rule, and I support using technology to improve miner safety. As I noted in my hearing, the President has directed each Cabinet officer to review all rules and to make determinations if any rules should be revised. If confirmed, I will have an obligation to comply with that directive.

*Question 5.* The DOL issued a new Black Lung Benefits Act rule which improves the claims process to give black lung claimants better access to information and



helps level the playing field. Will you commit to maintain and implement this rule? Please provide a yes or no response.

Answer 5. I have no present reason to disturb this rule, and I support improving claims processes for injured workers generally and particularly those suffering from black lung disease. As I noted in my hearing, the President has directed each Cabinet officer to review all rules and to make determinations if any rules should be revised. If confirmed, I will have an obligation to comply with that directive.

*Question 6.* President Trump has made deregulation a priority. He also proposed a 21 percent cut to the Department of Labor's budget. Will you pledge to continue tough enforcement of these laws and regulations to protect coal miners and commit to not gutting or undoing these regulations? How do you propose to have robust enforcement given these proposed budget cuts? Please provide a yes or no response.

Answer 6. As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding for MSHA. MSHA has an important responsibility to foster mine safety and an obligation to inspect facilities proactively. Regardless of Congress' decision, MSHA must use its personnel to the best of its ability to accomplish its mission and enforce important safety and health standards.

*Question 7.* Will you advocate on behalf of coal miners and their health and pension benefits by pushing the Republican leadership in Congress and President Trump to pass and sign the Miners Protection Act?

Answer 7. I have not reviewed that particular piece of legislation, but I look forward to working with you and the rest of the Congress on potential legislative changes.

*Question 8.* Do you agree that when trading partners fail to enforce labor laws and do not uphold high-standard protections for workers, it can create a competitive disadvantage for U.S. workers, farmers, ranchers, and businesses?

Answer 8. Yes, I agree. The Department's Bureau of International Labor Affairs is assigned the duty to ensure the labor provisions in trade agreements are enforced to protect America's interests, including workers, farmers, ranchers and businesses. If confirmed, I look forward to working with that office, the Trade Representative and Congress to safeguard American jobs.

*Question 9.* If confirmed, will you vigorously investigate and enforce the labor obligations of our trading partners?

Answer 9. The Department's Bureau of International Labor Affairs is assigned the duty to ensure the labor provisions in trade agreements are enforced. If confirmed, I look forward to working with that office, the Trade Representative and Congress to vigorously safeguard American jobs.

*Question 10.* Do you agree that adopting or maintaining lax labor or human rights standards is not a legitimate way for governments to manufacture a competitive advantage for their exporters?

Answer 10. Yes, I agree. If confirmed, I will consult with the Bureau staff on ways to help countries improve compliance with their commitments to uphold the standards applicable to them.

*Question 11.* The Department of Labor is responsible for helping to enforce labor and human rights provisions of our trade agreements. In the past, DOL has provided direct technical assistance, particularly for significant problematic areas, such as anti-union discrimination, forced overtime, and sexual harassment of female workers. If confirmed, will you continue to provide robust technical assistance to countries that fall short of international standards, and hold our trading partners accountable when they violate obligations to protect worker rights?

Answer 11. The Department's Bureau of International Labor Affairs is assigned the duty to ensure the labor provisions in trade agreements are enforced and to monitor compliance with minimum international labor standards. If confirmed, I look forward to working with that office, the Trade Representative and Congress to vigorously safeguard American jobs and promote our values.

*Question 12.* Do you think women should be able to take time off work to take care of a sick child or parent?

Answer 12. Most women have had to take time off work to take care of a sick child or spouse. Dependent on the specific facts, the Family and Medical Leave Act and/or a State equivalent may be applicable and would allow for leave to take care of a sick child or parent. As I mentioned in the hearing, promoting workplace flexibility is something I support.

*Question 13.* Do you think men should be able to take time off work to take care of a sick spouse or child?

Answer 13. Most men have had to take time off work to take care of a sick child or spouse. Dependent on the specific facts, the Family and Medical Leave Act and/or a State equivalent may be applicable and would allow for leave to take care of a sick child or parent. As I mentioned in the hearing, promoting workplace flexibility is something I support.

*Question 14.* Do you think the right to take time off work to take care of a sick spouse or child should be different for same sex couples?

Answer 14. The sexual orientation of a parent would be irrelevant to the coverage. Dependent on the specific facts, the Family and Medical Leave Act may be applicable and would allow for leave to take care of a sick spouse or child.

*Question 15.* The Department of Labor has played an important role in enhancing protections for LGBT Americans. This includes the Wage and Hour Division's steps to interpret the Family and Medical Leave Act in a way that recognizes LGBT relationships. Can you assure us that, if confirmed, you will continue to enforce these orders and protect LGBT Americans?

Answer 15. I am committed to enforcing anti-discrimination laws and the Family and Medical Leave Act. I believe anti-discrimination laws should prohibit workplace discrimination based on sexual orientation or gender identity, although I support religious entities' freedom to hire consistent with their faith.

*Question 16.* Do you believe companies have the right to make hiring decisions based on pregnancy status or family plans?

Answer 16. A person's decisions regarding starting a family should be a private matter. Dependent on the specific facts, the Pregnancy Discrimination Act would likely make such decisions illegal. The Pregnancy Discrimination Act, which amended title VII, prohibits an employer from discriminating against an applicant or employee because of or on the basis of pregnancy, childbirth, or related medical conditions.

*Question 17.* Do you believe companies have the right to ask these questions related to pregnancy status or family plans during the hiring process?

Answer 17. A person's decisions regarding starting a family should be a private matter. Dependent on the specific facts, the Pregnancy Discrimination Act would likely make such decisions illegal. The Pregnancy Discrimination Act, which amended title VII, prohibits an employer from discriminating against an applicant or employee because of or on the basis of pregnancy, childbirth, or related medical conditions.

*Question 18.* If you are confirmed as the Secretary of Labor you will be expected "to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment".

Currently, 40 percent of workers experience sexual violence in the workplace at fast food restaurants, the national average for other occupations is also unconscionably high. If confirmed as the Secretary of Labor, will you commit to hosting a public forum with public and private stakeholders across the country to implement a national framework around gender-based violence in the workplace? Please provide a clear Yes or No response.

Answer 18. If confirmed, I look forward to working with you to address this important issue and would need to consult with the Department to see what sort of resources and options would be available. This seems to be an area where other government agencies like the Department of Justice and EEOC as well as State governments would have an interest as well so I would want to solicit their input. As a general matter, I believe such forums are helpful as a mechanism to call attention to important issues.

*Question 19.* One of the most important elements of economic security for the middle class is retirement security. Millions of Americans ask, "Will I have enough money saved to retire and retire comfortably?" As we have learned, the answer to that question for too many Americans is no. Yet, in one its first actions, the Trump administration has taken steps to roll back protections for retirement savers. So far this administration has demonstrated that it is working to help Trump's fellow corporate titans at a direct cost to working families and their financial and retirement security. Do you think it is fair that while Wall Street has recovered, many of the pensions that bore the brunt of the financial crash are struggling?

Answer 19. It is important that the retirement savings of working Americans be protected. Struggling pension funds are a serious problem and, if confirmed I look forward to working with Congress as we develop the Department's regulatory policies and priorities to improve pension funding and security overall.

*Question 20.* If confirmed as Labor Secretary, you will not only serve as Chair of the Board of the PBGC, which serves as the backstop for pension plans, but you will also be consulted on any applications to Treasury to cut benefits. Will you commit to a vigorous review of any application to cut pension benefits and be thoroughly engaged in the process in order to provide opinions and suggestions when called upon for consultation as required by law?

Answer 20. As you note if confirmed I will be Chair of the Pension Benefit Guaranty Corporation's Board of Directors and expect to be briefed on the matter of underfunded multiemployer pension plans and the Secretary of Labor's role in the process you reference. I will commit to a thorough review of any such applications.

*Question 21.* Do you support the use of apprenticeships to help give workers the skills they need and to give employers the skilled workers that they need? What specifically will you do to increase utilization of apprenticeships?

Answer 21. I share your belief that quality apprenticeships play a vitally important role in closing the skills gap and providing workers with the skills they need to prosper in our economy. There are numerous examples throughout the Nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. If confirmed, I believe my role will be to make sure this model can be accessed in more communities and by displaced workers who will need to transition to new and growing industries.

*Question 22.* What specifically will you do at the Department of Labor to help workers who have lost their jobs to technology or trade?

Answer 22. The Trade Adjustment Assistance program and other efforts at the Department that focus on workers who have been displaced from employment are very important. If confirmed, I will examine which programs are effective, which need reform and whether or not resources are being deployed optimally. If confirmed as Secretary of Labor, I will work with States and localities to work with industry and trade associations to identify effective programs, including public/private partnerships, that support displaced and unemployed workers' re-entry into the workforce, including those who have lost their jobs to technology or trade. I will work with Congress and stakeholders to continue to advance the Department's goals to support economic growth by aligning job training for displaced workers with the skills demands of employers. The Department's goal should be to accelerate and improve employment outcomes for workers who need new skills and credentials to find their next jobs and stay employed.

*Question 23.* Is collective bargaining an effective tool to increase income for workers and to grow the middle class?

Answer 23. The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will benefit their situation then they should do so.

*Question 24.* How specifically will you ensure thorough investigation and enforcement of violations of the Fair Labor Standards Act?

Answer 24. I support strategic enforcement alongside individual complaints. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

*Question 25.* Given President Trump's proposed 21 percent budget cuts for the Department of Labor, how specifically do you propose to ensure vigorous enforcement of FLSA violations?

Answer 25. If confirmed, one of my goals and responsibilities will be to use taxpayer resources wisely and I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly. I support strategic enforcement alongside individual complaints.

*Question 26.* Following the criticism of your leadership of the Department of Justice Civil Rights Division, how has your leadership style changed?

Answer 26. Senior leadership in government has to balance external and internal demands. I believe I am more hands-on, and more focused on internal matters. I have also learned to better oversee and monitor subordinates while not microman-

aging their performance. As U.S. attorney, I walked around the office often in order to learn what AUSAs were doing. This day-to-day contact was important, and helped me better understand and monitor day-to-day AUSA activity.

*Question 27.* How can the Department of Labor help economically disadvantaged areas attract new business investment and new jobs?

Answer 27. Small businesses produce, depending on whose numbers you look at, between 7 and 8 out of 10 new jobs. A growing economy generally and encouragement for small business particularly will foster job creation. Regulatory burdens are acute problems sometimes for small businesses, however. As I noted at the hearing, the President has made clear that every Cabinet agency should review regulations for unneeded regulatory burden, and I think that would be a good first step.

*Question 28.* Do you support increased OSHA penalties in order to provide a more effective deterrent to violations that jeopardize the health and well-being of workers?

Answer 28. If confirmed, I look forward to discussing this and many other issues with the Department's OSHA staff, to help ensure the safety of all workers. If increased penalties are warranted, I look forward to working with you and the committee to help enact these changes.

*Question 29.* Many law-abiding employers are at a disadvantage because they are being undercut by other companies that misclassify their workers as independent contractors. Do you agree this is a problem? What will you do to crack down on the misclassification of workers as independent contractors?

Answer 29. An important role of the Department of Labor is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. The use of independent contractors is a legal and valuable business practice. However, in some circumstances, when an employer incorrectly labels a worker as an independent contractor instead of an employee, the employer may not be abiding by their responsibilities to compensate the worker according to the requirements of the law. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections they are entitled to by law. This incorrect classification may also generate losses to the Federal Government and State governments in the form of lower tax revenues, as well as to State unemployment insurance and workers' compensation funds. Employers who deliberately misclassify workers undercut law-abiding employers who are making contributions to these systems and paying their workers properly. If confirmed, I look forward to being briefed on matters pertaining to the classification of employees and will work to enforce the laws under the Department of Labor's jurisdiction, including these employment laws, fully and fairly to ensure the protection of workers. If businesses are found to be incorrectly classifying workers in a way that violates the law, I will fully and fairly enforce the relevant laws.

*Question 30.* The Department of Labor has provided support to many States, including Pennsylvania, to provide assistance in studying systems to provide paid family leave. Will you and the Department of Labor continue to provide financial and technical assistance to States seeking to implement paid family leave?

Answer 30. If confirmed, I look forward to reviewing this issue with DOL staff, stakeholders and the committee. I certainly support the concept of providing technical assistance to States.

*Question 31.* Will you pursue new rulemaking? If so, in what areas will you focus?

Answer 31. If confirmed, I look forward to discussing the issue of any regulations that may need to be issued with DOL staff, stakeholders and the committee. If new public protections are needed, cost effective and legally allowed, they will be pursued.

*Question 32.* Will you implement Trump administration policy even if it will harm American workers?

Answer 32. I believe the Administration will work to benefit all Americans, including American workers.

*Question 33.* How will you represent the interests of American workers if it conflicts with Trump administration policy?

Answer 33. I believe the Administration will work to benefit all Americans, including American workers.

*Question 34.* Do you support President Trump's proposed 21 percent cut to the Department of Labor funding?

Answer 34. As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding levels.

*Question 35.* Do you support the proposal in President Trump's budget that: "Decreases Federal support for job training?"

Answer 35. As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding levels.

*Question 36.* Do you think that cutting Federal funding for job training will make workers better or worse prepared to find jobs to support their families?

Answer 36. As a nominee, I have not participated in the current budget discussions. I believe job training is very important and may offer a substantial return on investment. I recognize as well that resources are limited. That said, if confirmed, I look forward to being briefed on the Department's budget in order to understand how to efficiently and effectively utilize taxpayer dollars in order to best accomplish the Department's mission.

*Question 37.* Do you think that cutting Federal funding for job training will make it harder for employers to find workers with the skills they need?

Answer 37. There is room for efficiencies in these programs, which may reduce the impact of budget cuts. Reducing this skills gap requires better alignment of job training with the skills that the market and employers demand. This requires a concerted effort working with industry, local governments, educational institutions and public-private partnerships to have a substantial positive impact on the American workforce.

*Question 38.* How do you propose to close the skills gap and help workers compete at home and abroad?

Answer 38. We can and must work to reduce the skills gap. We need to make better efforts to align job training with the skills the market demands of its workers, especially as advancing technology changes the types of jobs available in our economy. The Department of Labor, along with local governments, industry, and educational institutions, can partner to have substantial positive impact on American workers. I believe that this is the vision of the Workforce Innovation and Opportunity Act (WIOA), of apprenticeship programs, of Job Corps and of many other programs at DOL. Closing the skills gap is a vitally important aspect of accomplishing the Department of Labor's mission. If confirmed, understanding the performance and needs of all Departmental programs can play a role in closing the skills will be one of my top priorities.

*Question 39.* What role do schools play in career and technical education and preparing workers to enter the workforce?

Answer 39. I believe that schools play a vitally important role in preparing workers to enter the workforce, from primary to post-secondary education. I am particularly interested in how community colleges and technical and vocational education programs can best be positioned, supported and leveraged in order to best serve workers and industry.

*Question 40.* Do you support the proposal in President Trump's budget that would eliminate the Senior Community Service Employment Program, a program designed to help older workers find employment?

Answer 40. As a nominee, I have not participated in the current budget discussions. If confirmed, I look forward to participating in that process, so that I can understand the goals, performance and resource needs of programs such as this one in order to deliver the greatest value to the American people.

*Question 41.* How will you make it easier for Americans to save for retirement?

Answer 41. I believe it is important to make it easier for Americans to save for retirement, and also encourage Americans to do so. An expanding economy is key to growing the assets in retirement accounts for American workers, and relaxing burdens and costs as well as reducing taxes on businesses is one way to do that. If confirmed, I expect to be briefed on retirement issues and I look forward to working with Congress as we develop the Department's regulatory policies and priorities to support the goal of helping Americans save for retirement.

*Question 42.* How will you fight sexual harassment and discrimination in the workplace?

Answer 42. As I noted in my hearing, if confirmed, I would enforce the laws Congress has written fully and fairly, including sexual harassment and discrimination in the workplace laws.

*Question 43.* The Department of Labor has provided competitive grants to successful programs at community colleges to train workers. Will you work to secure funding for similar competitive grants?

Answer 43. If confirmed, I look forward to being briefed on the many training programs funded by the Department. I understand that many of these grants have provided a substantial return on investment. I expect to encourage Department staff to seek innovative solutions to training and employment challenges and opportunities, and I look forward to working with you and other members of the committee on such solutions and initiatives.

*Question 44.* Will you make the enforcement of equal pay laws a priority?

Answer 44. As I noted in my hearing, if confirmed, I would enforce the laws under the Department's jurisdiction fully and fairly, including those related to equal pay.

*Question 45.* Do you think that the Department of Labor's past enforcement of equal pay laws have been beneficial to women and their families?

Answer 45. Nondiscrimination is the law. The Department enforces the law to ensure the rights of all Americans are protected, including women and their families.

*Question 46.* If you're confirmed as the Secretary of Labor, you will inherit a number of labor cases under our free trade agreements and trade preference programs, some of which were initially filed between 4–8 years ago. These cases cover workplace violations including discrimination, illegal firings, wage theft and unsafe working conditions. Will you commit to working toward resolving these issues in a timely manner to help level the playing field for U.S. companies and U.S. workers?

Answer 46. The Department's Bureau of International Labor Affairs is assigned the duty to ensure the labor provisions in trade agreements are enforced. If confirmed, I look forward to finding out more and working with that office in resolving the cases you describe.

*Question 47.* According to the Economic Policy Institute, from 1948 to 1973 worker productivity rose by 96.7 percent and wages increased by 91.3 percent; since then, however, worker productivity has increased 73.4 percent while wages have gone up only 11.1 percent. Further, a 2014 study by The Review of Economics and Statistics found that job displacement due to trade led to real wage losses of 12 to 17 percent from 1984 through 2002. Global companies have been known to tell their U.S. workers that they must take pay and benefit cuts to stay competitive, even as these companies report significant profits in their SEC filings.

Do you believe this is just the nature of the economy and that American families should get used to it?

If not, what is your plan, if confirmed, to change this pattern?

Answer 47. A stagnant economy and wages harms Americans; a growing economy is the best solution to also grow wages. The President has made clear that he is committed to returning jobs to America. If confirmed, I will work to support that effort.

*Question 48.* Will you continue to support the continued strong engagement by the United States at the ILO to encourage countries to adhere to international labor standards?

Answer 48. The Department's Bureau of International Labor Affairs is assigned the duty to engage with the ILO. If confirmed, I look forward to working with that office and ensuring the United States has a strong voice at the ILO.

*Question 49.* The Obama administration published an initial report on alleged labor violations in Colombia under the U.S.-Colombia FTA. Can you discuss your thoughts on the ongoing anti-union violence and workplace rights violations there. If confirmed, how do you plan to approach this problem that has included the murder of 2,500 trade unionists there in the past 20 years?

Answer 49. The Department's Bureau of International Labor Affairs is assigned the duty to ensure the labor provisions in trade agreements are enforced. If confirmed, I will consult with the Bureau staff on this important issue.

*Question 50.* What would you do differently than previous administrations to address violent suppression of working people which holds down wages, limits the growth of a middle class and by association, harms U.S. workers?

Answer 50. Freedom of association is an important American right enshrined in the constitution, and something we should support internationally without the threat of violence for doing so. I believe that the Department's Bureau of International Labor Affairs is assigned the duty to address the issue you raise. If confirmed, I will consult with the Bureau staff on this important issue and ask them for insight into what has worked and what has not worked in prior administrations to address this issue.

*Question 51.* If confirmed, part of your job as the Secretary of Labor will be to ensure that foreign countries uphold minimum international labor standards. As you know, when they do not, it undermines wages for U.S. families.

How seriously will you take this responsibility?

Can you explain how you will work to assure compliance with international labor standards?

Answer 51. If confirmed, I will take this responsibility very seriously. The Department's Bureau of International Labor Affairs is assigned the duty to monitor compliance with minimum international labor standards and represent the United States in discussions on those topics at the International Labor Organization. If confirmed, I will consult with the Bureau staff on ways to help countries improve compliance with their commitments to uphold the standards applicable to them.

SENATOR FRANKEN

DOL MANAGEMENT

*Question 1.* The mission of the Department of Labor is to

“foster, promote, and develop the welfare of wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.”

Do you believe this is the mission of the Department of Labor and should you be confirmed do you intend to change the Department's mission?

Answer 1. I support the Department's longstanding mission statement and have no plans to change it if confirmed.

*Question 2.* Under the previous Administration, the Department of Labor issued administrative interpretations to provide clarity when a statute's meaning was too plain or unambiguous. Under your leadership would the Department continue issuing administrative interpretations?

Answer 2. I support giving guidance to the regulated community to ensure compliance with the law. The specific forms of such guidance may change over time and between administrations. As I noted at the hearing, for example, I think there's a particular value to opinion letters, and I think that value comes from the fact that they are grounded in a specific set of facts, and not in a broad legal premise.

*Question 3.* Under your leadership would the Department re-instate the issuing of opinion letters? If so who would be permitted to request an opinion letter?

Answer 3. As I noted at the hearing, I believe there's a value to opinion letters because they are grounded in a specific set of facts. There may be reasons an opinion letter should be delayed (for example, if parties are in active litigation), but generally I see no reason I would not support allowing any member of the public to request an opinion letter.

*Question 4.* In 2011, the Department of Labor and the Department of Homeland Security entered into a Memorandum of Understanding to clarify the ways in which each department would work together to advance each agency's directives and avoid conflicts. Will the Department continue to honor the 2011 Memorandum of Understanding?

Answer 4. I believe that the Department has a longstanding commitment to ensuring that all workplace protections are enforced regardless of workers' immigration status. I support that longstanding practice. I have not studied the Memorandum of Understanding you reference, but I believe it is important that both agencies avoid interfering in each other's responsibilities.

CONTRACTING/WORKER MISCLASSIFICATION

*Question 5.* Under your leadership will the Department of Labor focus on the fissured workforce and the need of employers to correctly classify their workers as traditional employees or contractors so workers and employers know their legal and tax obligations, and so businesses can compete on a level playing field?

Answer 5. Employers who deliberately misclassify workers undercut law-abiding employers who are making contributions to these systems and paying their workers properly. If confirmed, I look forward to being briefed on matters pertaining to the classification of employees and will work to enforce the laws under the Department of Labor's jurisdiction, including these employment laws, fully and fairly to ensure the protection of all workers.

*Question 6.* Worker misclassification is a growing problem that threatens workers and undercuts law-abiding employers. It is a significant problem in Minnesota, particularly in the construction industry. Why do you think worker misclassification is so prevalent?

Answer 6. I am not sufficiently familiar with the circumstances in Minnesota to opine. Employers who deliberately misclassify workers undercut law-abiding employers who are making contributions to these systems and paying their workers properly. If confirmed, I look forward to being briefed on matters pertaining to the classification of employees and will work to enforce the laws under the Department of Labor's jurisdiction, including these employment laws, fully and fairly to ensure the protection of all workers.

*Question 7.* Under your leadership how does the Department plan to address worker misclassification issues and how will you improve Federal efforts to deter worker misclassification?

Answer 7. An important role of the Department of Labor is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. If confirmed, I look forward to being briefed on matters pertaining to the classification of employees as we develop the Department's regulatory policies and priorities and will work to enforce the laws under the Department of Labor's jurisdiction, including these employment laws, fully and fairly to ensure the protection of all workers.

*Question 8.* In 2015, the Wage and Hour division issued Administrative Interpretation No. 2015-1 to assist employers and workers by providing clarity as to when a worker is an employee or independent contractor. If confirmed, would you maintain this administrative interpretation?

Answer 8. An important role of the Department of Labor is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. Employers who deliberately misclassify workers undercut law-abiding employers who are making contributions to these systems and paying their workers properly. If confirmed, I look forward to being briefed on matters pertaining to the classification of employees, including this Administrative Interpretation, as we develop the Department's regulatory policies and priorities.

*Question 9.* Over the past 8 years, the Wage and Hour Division has entered into a Memoranda of Understanding (MOU) with many States, as well as the Internal Revenue Service that facilitate joint efforts to combat misclassification. Some of these MOUs are set to expire in the coming years. Will you work to renew these MOUs? Please describe which, if any, you would renew and any changes you would seek.

Answer 9. If confirmed, I look forward to being briefed on these Memoranda of Understandings. As a general matter, I support efforts to cooperate in enforcement matters, and such memoranda of understanding are helpful.

#### WAGES

*Question 10.* The current Federal minimum wage is \$7.25 an hour (\$15,080 annually) has remained unchanged since 2009. President Trump has said that the current Federal minimum wage is too low, and suggested that Americans need a raise. Do you agree the current Federal minimum wage is too low and if so to what level should it be increased to?

Answer 10. The minimum wage is set federally by Congress but also in States and localities by their respective governments. I recognize that cost-of-living and other economic factors vary greatly across the United States and that many States and localities have increased the minimum wage above the Federal floor.

*Question 11.* In recent years, we have seen large amounts of growth in the "gig" economy? Workers in this economy are often treated as independent contractors and therefore do not receive employee protections such as overtime pay, minimum wage, health insurance, or retirement benefits. The courts are reviewing a number of cases across the country that question what defines an "employee." If confirmed, how would you plan to use your regulatory authority to ensure that workers in the gig



economy are not being denied basic worker rights or their ability to achieve basic economic security through their work?

Answer 11. The use of independent contractors is a legal and valuable business practice. However, in some circumstances, when an employer incorrectly labels a worker as an independent contractor instead of an employee, the employer may not be abiding by their responsibilities to compensate the worker according to the requirements of the law. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections they are entitled to by law. An important role of the Department of Labor is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. This is particularly important in the context of a rapidly changing economy.

*Question 12.* Do you believe it is appropriate to have a Federal minimum wage?

Answer 12. A Federal minimum wage is the law. I support it.

*Question 13.* Do you believe the Federal minimum wage should be regularly adjusted for inflation so that workers ability to provide for their families keeps up with the rising costs of goods and services over time?

Answer 13. The minimum wage is set federally by Congress but also in States and localities by their respective governments. I recognize that cost-of-living and other economic factors vary greatly across the United States and that many States and localities have increased the minimum wage above the Federal floor.

*Question 14.* In Minnesota, employer-tipped credits against the minimum wage are not allowed. All tipped employees must be paid the State minimum wage of \$9.50 per hour for larger employers, and \$7.75 per hour for smaller employers, for all hours worked. Beginning Jan. 1, 2018 those wages will be indexed for inflation. Do you think the Federal-tipped minimum wage of \$2.13 per hour paid to employees that receive at least \$30 per month in tips is a living wage? Would you support an increase to the Federal-tipped minimum wage? To what level?

Answer 14. The minimum wage and tip allowance is set federally by Congress but also in States and localities by their respective governments. I recognize that cost-of-living and other economic factors vary greatly across the United States and that many States and localities have increased the minimum wage and tip allowances above the Federal floor.

*Question 15.* Do you believe gratuities provided by customers to tipped employees, whether their wage is based on the Federal tipped minimum of \$2.13 per hour or other Federal or State wage levels, are the property of the employers or the employee?

Answer 15. In its preamble to the final rule regarding this matter in 2011, the Department of Labor stated, “[t]he Department agrees with the analysis in the comments that tips are the property of the employee . . .” Updating Regulations Issued Under the Fair Labor Standards Act, 76 Fed. Reg. 18,841 (April 5, 2011). I am informed that there is current litigation on aspects of the rule that touch on your question, including a pending petition for review by the U.S. Supreme Court.

*Question 16.* Do you believe it is appropriate for a salary test to be one aspect of rules establishing exemptions to the Fair Labor Standards Act’s overtime provisions for certain salaried executive, administrative, and professional employees? If so, and if a court determined a . . .

Answer 16. This question is incomplete.

#### OSHA WORKER SAFETY

*Question 17.* The Occupational Safety and Health (OSH) Act was enacted in 1970, around the same time as the Clean Air Act and Clean Water Act. Research on our changing climate and the need to address those concerns have led to advancements in environmental laws and the penalties associated with breaking those laws. Unfortunately the OSH Act has not been significantly updated since its enactment. As a result the penalties associated with violating worker health and safety laws are so low that some unscrupulous businesses factor in those penalties as just a normal cost of doing business. Do you think the current penalty levels for OSHA are an appropriate deterrent to violating worker health and safety laws? If not what do you think is a more appropriate level? Should criminal penalties be considered for willful or repeat violations that lead to serious injury or fatality of a worker?

Answer 17. If confirmed, I look forward to discussing this and many other issues with the Department’s OSHA staff, and if legislative changes are needed I look forward to working with you and the committee to help ensure the safety of all workers. On November 2, 2015, Congress passed the Bipartisan Budget Act, which man-

dated OSHA to adjust their penalties to the rate of inflation. The legislation included a one-time catch up increase and an annual adjustment thereafter. In accordance with the legislation, on August 2, 2016, OSHA raised its maximum penalty 78 percent as a one-time adjustment and on January 15, 2017, adjusted the maximum penalties by 2 percent over the previous year.

The OSH Act also includes criminal sanctions and an employer may be liable for criminal prosecution where there is a willful violation of a specific OSHA standard that causes the death of an employee. Over the years, OSHA has made referrals to the Department of Justice (DOJ) for cases that were deemed appropriate for criminal prosecution. In December 2015, OSHA signed a Memorandum of Understanding with DOJ that created enhanced procedures for OSHA to refer potential criminal cases for consideration by DOJ. I support criminal referrals in appropriate cases.

*Question 18.* If confirmed as Secretary of Labor, do you commit that you would not reduce existing safety and health protections for workers? Further, do you commit to moving forward to develop and issue new rules to protect workers as the workplace develops and new hazards are identified?

Answer 18. If confirmed, I look forward to reviewing the safety standards to help ensure the safety of all workers. The Occupational Safety and Health Act of 1970 requires OSHA to ensure safe and healthful working conditions and I am committed to carrying out this mission. Where necessary, OSHA will promulgate appropriate and feasible rules to address workplace hazards. OSHA has many other tools at its disposal to carry out the obligations of the Act and to address new workplace hazards as they emerge, including conducting training and education, and providing compliance assistance to employers and employees.

*Question 19.* Will you support and defend OSHA's Whistleblower Protection Program? What steps, if any, will you take to ensure that whistleblower claims that should be referred to other agencies are promptly and appropriately referred? Do you believe OSHA's Whistleblower Protection Program currently has the resources needed to fulfill its mission? Will you advocate for appropriate resources for OSHA's whistleblower programs in the future? Do you agree with the Department of Labor's Inspector General that OSHA whistleblower investigator caseloads should be a maximum of 6 to 8 open cases per investigator? OSHA is currently charged with enforcing the whistleblower protection provisions of 22 different statutes. Do you believe it would be appropriate for Congress to consider consolidating these 22 provisions, to the extent possible, to provide stronger, more uniform rules for whistleblowers?

Answer 19. If confirmed, I look forward to reviewing OSHA's Whistleblower Protection Program (WPP), including ensuring the appropriate and timely sharing of complaints with other agencies and having appropriate resources needed to fulfill the Program's mission. I am informed that OSHA has agreements with a number of agencies impacted by the Whistleblower statutes to ensure a basic exchange of information and facilitate referrals between each agency. If confirmed, I will direct the review of resource levels for the Whistleblower Protection Program to determine the necessary support for this important program, and evaluate the need for the consolidation of whistleblower laws. If changes are needed to the program, or if legislation is needed, I look forward to working with you and the committee to see that these changes are enacted to help protect the safety of all workers.

#### MISC

*Question 20.* In your budgeting decisions, would you treat Trade Adjustment Assistance (TAA) in the same way you treat other workforce training programs that are subject to discretionary appropriations? Has the President proposed any cuts to programs subject to TAA? Do you support the level of funding for TAA programs authorized in the Trade Adjustment Assistance Reauthorization Act of 2015?

Answer 20. As a nominee, I have not participated in the current budget discussions. That said, if confirmed I look forward to being briefed on the TAA program to better understand its goals, performance and opportunities for improvement. Training programs that serve workers who have been displaced as a result of our trade agreements must provide participants with skills and support required to place them in permanent, well-paying jobs. As I understand it, the Trade Adjustment Assistance program is one of many entitlement programs with mandatory funding.

*Question 21.* Minnesota is home to the Hubert Humphrey Job Corps Center, a site that since 1981 has helped prepare at-risk youth for meaningful careers in in-de-

mand fields, yet the President's budget proposes cuts to the Job Corps program. Do you support continued funding for Job Corps sites like the one in my State?

Answer 21. I believe the Department of Labor, along with local governments, industry, and educational institutions, can partner to have a tremendous positive impact on American workers, especially young people seeking to enter the workforce and get good paying jobs. If confirmed, I look forward to working closely with the committee to determine the best way to ensure the success of the Job Corps program and to identify other opportunities within our States that can be better utilized to help our young people succeed. I look forward to learning more about the center in your State that you mention as well as others and our focus will be on helping Job Corps centers best provide to students the services and training central to their core mission.

*Question 22.* Youth apprenticeships have been proven to help young people succeed in their academics and put them on a clear pathway to meaningful work and careers. Will you continue to promote and expand the youth apprenticeship programs that DOL has seen increase during the Obama administration?

Answer 22. I share your belief that quality apprenticeships are part of a clear pathway to meaningful work and careers. If confirmed, I expect to focus attention on understanding the Department's important role in increasing access to apprenticeships and facilitating high performance in apprenticeship programs.

SENATOR BENNET

*Question 1.* Every year, my office hears from hundreds of Colorado employers that rely on the H-2A and H-2B visa program and who, year after year, run into difficulty obtaining visas for guest workers. Colorado is one of the top users of this program.

The jobs they are trying to fill are critical for Colorado's economy. From landscape and construction companies that cannot find enough workers to meet demand, to farmers and ranchers who don't have enough hands to cultivate the crops, there is a gap in meeting our labor needs.

I understand the concerns about potential exploitation of foreign workers and the desire for Americans to fill those jobs. I agree that there are worker protections that must be enforced. But Colorado employers lose millions of dollars every year due to the program's inefficiencies. They do all they can to comply with the law but cannot find American workers to fill those jobs.

Do you recognize the significance of the H-2A and H-2B visa programs in meeting our labor needs?

Where does the program fall within the Administration's priorities, particularly given the context of immigration reform?

Answer 1. I recognize the difficulty that many employers face on this issue and the potential repercussions for vital industries across the country. I understand how important an adequate labor supply is for the Colorado industries you identify and look forward to working together to fix this issue if confirmed. As a nominee, I have not been involved in immigration-related discussions, but, if confirmed, my primary goal will be to protect the interests of American workers. Guest workers on any program should be treated fairly in order to protect them and maintain U.S. working conditions.

*Question 2.* In his address to a joint session of Congress, President Trump said that his administration

"wants to work with members of both parties to make childcare accessible and affordable, [and] to help ensure new parents that they have paid family leave."

Paid family leave was also a major platform on President Trump's campaign.

Have you discussed paid family leave with anyone within the Trump administration? Can you discuss in further detail the Administration's plans on paid family leave?

Answer 2. I have not discussed this matter with the Administration. If confirmed, I will actively participate in these discussions.

*Question 3.* During your confirmation hearing, we discussed public-private partnerships as part of the Trump administration's plan to help dislocated workers find new jobs. Can you elaborate on the type of P3s the Administration envisions? Are there examples of successful partnerships that the Administration hopes to model? How will your Labor Department support partnerships between schools and businesses?

Answer 3. There are numerous examples throughout the Nation of industry, local academic and training institutions and government partnering effectively to train

and place workers in growth sectors. If confirmed to lead the Department of Labor, I expect to take a leadership role in compiling best practices and seeking out partnerships with the private sector, particularly partnerships with business and industry. We will work with employer associations, community colleges, and other organizations to encourage sector strategies and work-based approaches, including apprenticeship programs and other successful models carried out by States and in local communities across the country. Connecting dislocated workers to new jobs cannot just be the work of the Federal Government. Private-public partnerships with active employer engagement are essential.

If confirmed, I believe my role will be to make sure this model can be accessed in more communities and by displaced workers who will need to transition to new and growing industries.

SENATOR WHITEHOUSE

*Question 1.* Please list all DOL regulations you would seek to delay, modify, or eliminate.

Answer 1. As I noted in my hearing, the President has directed each Cabinet officer to review all rules and to make determinations if any rules should be revised. If confirmed, I will have an obligation to comply with that directive. In addition, there are a number of rules that are in litigation or that Congress may act on under the Congressional Review Act, which could require the Department to make revisions or eliminate those regulations.

*Question 2.* Knowing what you know now about the violations of Department of Justice policies and Federal employment law that occurred during your tenure by your staff at the Department of Justice, what would you have done differently as a manager?

Answer 2. With the benefit of perfect hindsight, I would not have assigned hiring responsibility in the manner I did and would have focused more closely on the activities of my deputies. I also learned the importance of ensuring that appointed personnel subordinate to you share your values.

*Question 3.* Why do you think your management of your Deputy Bradley Schlozman in the Civil Rights Division at the Department of Justice was insufficient?

Answer 3. Senior leadership in government has to balance external and internal demands. I believe I focused too much on external matters, i.e., communications with the public and the civil rights communities. I have since become more hands-on, and more focused on internal matters. I have also learned to better oversee and monitor subordinates while not micromanaging their performance. As U.S. attorney, I walked around the office often in order to learn what AUSAs were doing. This day-to-day contact was important, and helped me better understand and monitor day-to-day AUSA activity.

*Question 4.* The Department of Justice Office of Inspector General and Office of Professional Responsibility's report that you had "sufficient information about Schlozman's conduct to have raised red flags warranting closer supervision of him," that you should have been alert to "potential problems with Schlozman's conduct and judgment," and that you "did not sufficiently supervise Schlozman." What steps will you take to ensure that your staff at DOL do not engage in the same sort of inappropriate behavior and illegal activities?

Answer 4. While the OIG/OPR Report did reach the conclusion stated, the report failed to identify a single instance of anyone alerting me, or me otherwise being aware, of the improper consideration of political views in hiring career staff. None of the three instances on which the report based its conclusion involved such misconduct. That said, I am keenly aware of the laws and regulations prohibiting the consideration of politics in hiring career staff and, if confirmed, will make it abundantly clear to staff that such conduct will not be tolerated at all.

*Question 5.* During your tenure at DOJ there was a "significant" drop in civil rights enforcement, according to a 2009 GAO report—including a drop in lawsuits to enforce laws prohibiting race or sex discrimination in employment from about 11 per year to about 6 per year from the Clinton to Bush administration. What assurances can you give me that we will not see a similar drop-off in enforcement under your Department of Labor?

Answer 5. As an initial matter, the GAO report covered the 2001–07 period. As I was Assistant Attorney General for 2 of these years, I cannot comment on the premise of the question. I would note that in 2004, the Division filed more pattern

or practice employment discrimination cases than in several of the preceding years. Further, I would note that numbers of cases filed is not always reflective of enforcement outcomes. For example, a complex high-impact matter may require more resources than several low-impact cases. Yet, “1” high-impact matter may have more positive enforcement outcomes than several smaller cases. I believe the Secretary of Labor should enforce Federal labor laws fully and fairly. As a prosecutor, I used government resources carefully to bring the best cases possible and get the best resolutions. I will follow that model at the Department if confirmed.

*Question 6.* Your tenure at the Department of Justice was marred by conflicts between political appointees and career staff that reportedly led to an unusually large number of career attorneys to leave the Department. What steps will you take to retain career staff at DOL at similar levels under the previous Administration?

Answer 6. The Department of Labor career staff is expert in their areas of responsibility, and critical to the Department’s mission. Their knowledge would be difficult to replace. If confirmed, I hope to convey to the staff that I value their knowledge and expertise, and that I value them. I recognize, of course, that the appropriation levels will ultimately be set by Congress. Nonetheless, I will advocate for sufficient levels to ensure full and fair enforcement.

*Question 7.* America Rising Squared, a 501(c)(4) organization that does not disclose its donors, recently launched a six-figure digital and TV advertising campaign in support of your nomination.

Do you know who its donors are?

Have you had any contact with America Rising Squared, its employees, or its donors?

Do you believe there is a risk of a conflict of interest, or of an appearance of conflict, if funders of that effort have matters that come before the Department of Labor?

Answer 7. I do not know who the donors to this organization are or who they employ. Thus, I do not know if I have had contact with either. I will assess conflict of interest questions on a case-by-case basis in consultation with the Department’s career ethics officials as they may arise.

*Question 8.* In April 2016, the Department of Labor released a final version of the Conflict of Interest Rule which holds brokers and advisers who work with tax-advantaged retirement savings to a “fiduciary” standard. Do you believe that advisers providing advice regarding retirement accounts have a legal obligation to provide advice solely in the best interest of their clients? Why or why not?

Answer 8. Hardworking individuals and retirees should receive advice that is in their best interest. If confirmed, I expect to carefully examine the rule, pursuant to the presidential memorandum. If repealed or scaled back, the basic protection articulated above would be important to address.

*Question 9.* The Chamber of Commerce, SIFMA, ACLI and a number of other trade associations opposed to the DOL fiduciary rule have argued in court that they should not be held to a fiduciary standard because they are not “advisers”. According to their testimony, they are mere salespeople engaged in arm’s length transactions. Do you agree with that argument? Please explain why or why not, citing the legal basis for such conclusion.

Answer 9. This matter is presently under review. If confirmed, I expect detailed briefings on this distinction, including the legal basis.

*Question 10.* Apprenticeships are an important tool to train workers, and have been critical in Rhode Island. What will you do as Secretary of Labor to promote apprenticeships as a cost-effective tool for workforce training?

Answer 10. Apprenticeships are part of a clear pathway to meaningful work and careers. If confirmed, I expect to focus attention on understanding the Department’s important role in increasing access to quality apprenticeships and facilitating high performance in apprenticeship programs.

*Question 11.* Rhode Island is the home to one of the Nation’s most successful Job Corps sites, the Exeter Job Corps Center, which serves roughly almost 200 young people. For many in Job Corps, the training means the difference between success in getting a job or not. As Secretary of Labor will you commit to proposing a budget with at least level funding for Job Corps?

Answer 11. I appreciate the conversations I have had with several Senators about the difference that Job Corps centers are making for the young people in their States. If confirmed, I will support the most efficient and effective use of every tax-

payer dollar that Congress directs toward job training programs, including Job Corps. Under my leadership, the Department will continue its efforts to better align job training with the skills necessary to meet the market demands for workers, which I believe will improve the outcomes for Job Corps graduates. If confirmed, I expect to be briefed on the Job Corps program and the performance of each of the more than 100 Job Corps centers. I look forward to learning more about the center in your State that you mention as well as others and our focus will be on helping Job Corps centers best provide to students the services and training central to their core mission.

*Question 12.* Since 1994, YouthBuild has helped over 150,000 at-risk youth break the cycle of poverty by rebuilding their communities while also learning key skills. Each year I hear from Rhode Islanders whose lives were turned around through YouthBuild. As Secretary of Labor, will you commit to proposing a budget with at least level funding for YouthBuild?

*Answer 12.* As a nominee, I have not participated in the current budget discussions. If confirmed, I do look forward to being briefed on the proposed budget and programs like Youthbuild, so that I can better understand their mission, their performance and their resource needs. I will work to maximize the impact of every taxpayer dollar directed to YouthBuild and other job training programs. I look forward to engaging with the committee and private and public stakeholders in a discussion about how to improve the employment outcomes of young people in a time of resource constraints.

*Question 13.* According to the Census, as of March 2016, there are over 25 million adult Americans who do not have either a high school diploma or a GED. According to the Bureau of Labor Statistics, the unemployment rate of these workers is 8 percent. Do you consider this a problem? If so, please outline your proposal for actions the DOL would take on this matter, if you are confirmed.

*Answer 13.* Our workforce training system must be positioned to provide training and skills to the millions of workers who lack a post-secondary education if they are to prosper in our modern and constantly changing economy. The worker training and apprenticeship programs under the Department's purview must position these workers with skills that meet the needs of growth industries and sectors.

*Question 14.* The Obama administration took a number of steps over the last several years to expand the anti-discrimination provisions in Federal programs. Executive Order 13627 strengthened anti-trafficking protections in Federal contracts. Executive Order 13548 directed Federal departments to increase employment of workers with disabilities. Executive Order 13583 directed departments and agencies to implement human resource strategies that emphasize diversity and inclusion. The Department of Labor also issued complementary guidelines updating the Sex Discrimination and Ethnicity Discrimination rules. These guidelines specifically addressed the needs of populations that traditionally have been marginalized but who form a growing population of the workforce. If confirmed, do you promise not to weaken or delay these protections?

*Answer 14.* The decision as to whether to maintain, amend or rescind Executive orders belongs to the President. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including Executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

*Question 15.* Each year, thousands of workers lose their jobs simply because they need to take a day to recover from illness or care for a sick family member. Under Executive Order 13706 issued by President Obama, more than one million workers who are employed by Federal contractors gained the right to take paid, job-protected sick days. Do you support ensuring workers employed by Federal contractors having access to paid sick days?

*Answer 15.* The decision as to whether to maintain, amend or rescind Executive orders belongs to the President. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including Executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

*Question 16.* Please name which of President Obama's DOL policies you would like to see continued?

*Answer 16.* The vast majority of Department policies are continued from Administration to Administration. Executive order 13672 is one example. There are many others.

*Question 17.* Studies have shown large majorities of women in the construction industry reporting either overt discrimination or on-the-job sexual harassment, and the percentage of construction jobs held by women remains very low. Do you believe this is a problem? Can we expect you to enforce anti-harassment protections to ensure that construction projects funded by Federal dollars provide real opportunities for women?

*Answer 17.* Overt discrimination and sexual harassment are illegal, and as I noted in my hearing, if confirmed, I would enforce the law fully and fairly. OFCCP has a substantial compliance assistance program on large construction projects designed to expand the opportunity for women and minorities. I look forward to learning more about that program and assuming it is successfully and efficiently expanding equal employment opportunity, supporting it.

*Question 18.* According to BLS data as of December 2016, only 20 percent of all Americans with disabilities ages 18–64 were employed. One of the key roles of the Department of Labor, particularly the Office of Disability Employment Policy (ODEP), is to implement programs that help increase the labor force participation rate of these individuals and help them lead successful and self-sustaining lives. If confirmed, will you commit to supporting ODEP programming including the START-UP program? Can you commit that any budget you prepare will not eliminate funding for this department?

*Answer 18.* I would need to review any particular program before I committed to supporting it, but I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. I am informed that ODEP works with the Office of Federal Contract Compliance Programs to help Federal contractors meet important goals of employing disabled Americans on Federal contracts. As to funding, I expect that any budget I help prepare would include support to increase the labor force participation rate of disabled workers.

*Question 19.* At your confirmation hearing you said you would look into the FLSA 14(c) certificate issue. Have you looked into this? What have you learned about this issue?

*Answer 19.* I understand the Fair Labor Standards Act 14(c) exemption is statutory and is an area of concern and interest for many Members of Congress. If confirmed, I want ensure that individuals with disabilities who might not otherwise have a job, have access to a good job and are trained for that job. While I would need to thoroughly review any particular program or statutory exemption before I committed to supporting or opposing it, I certainly support increasing the labor force participation rate of disabled individuals and helping these individuals lead successful and self-sustaining lives.

*Question 20.* In 2008, the Mental Health Parity and Addiction Equity Act passed with overwhelming bipartisan support. This law requires that all health plans (including employee-sponsored plans) have the same limits on mental health benefits that they do for medical or surgical benefits. MHPAEA violations can result in a breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA) and an IRS excise tax of \$100 per covered individual per day. As Secretary of Labor, you will be responsible for performing audits to ensure compliance by employer-sponsored health plans. If confirmed, will you commit to publishing the de-identified results of the audits?

*Answer 20.* Treatment for mental health issues and addiction can save lives, and I support enhancing affordability and access to those services. As noted at my hearing, if confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including as to mental health and addiction coverage. If confirmed, I look forward to learning more about the Mental Health Parity and Addiction Equity Act and the Department's responsibilities pursuant to the Act and working with you on this important matter.

*Question 21.* After the election, immigrant communities have become concerned about the potential for mass deportations. The President has exacerbated these fears by stating that there will be "no amnesty" for immigrants who came into this country illegally.

What role do you envision for DOL should policies like this come to pass?

*Answer 21.* I do not believe that the Department has a role in deportation issues.

*Question 22.* Immigrants fill not just high skilled roles in the United States, but also fill technical and manual skill jobs. A 2010 study by the Federal Reserve Bank of San Francisco concluded that immigration helps companies expand, and allows

more U.S.-born employees to assume managerial and leadership positions. In particular, immigrants play a key role in startups. Between 2006 and 2012, 33 percent of venture-backed companies that went public were founded by immigrant entrepreneurs, according to a study from the National Venture Capital Association. If confirmed, your Department will have a key role in overseeing companies that seek to hire legal foreign workers. How will you use this oversight role to incentivize companies to hire legal foreign workers? How will you support foreign innovators who want to build new companies in the United States that employ American workers?

Answer 22. I recognize the role that immigration has played and continues to play in our Nation. I also recognize that abuse of the visa process costs Americans jobs. This is a difficult balance and one that I will study carefully.

*Question 23.* If confirmed as Secretary, do you commit to having your Department maintain the 2011 Memorandum of Understanding between the labor agencies and DHS, which reiterates the policy goal that immigration enforcement will not interfere with employment and labor rights in the workplace? Do you believe that threats of deportation and or ICE raids should not be used to intimidate those seeking to exercise their right to organize, collectively bargain, or otherwise seek to improve their workplaces?

Answer 23. I am informed that the Department has a longstanding commitment to ensuring that all workplace protections are enforced regardless of workers' immigration status. I have not reviewed it but I believe there is a Memorandum of Understanding between the two cabinet departments that is designed to avoid interfering in each other's enforcement responsibilities. If confirmed, I will discuss this issue with Department of Labor staff and ask them to work with Department of Homeland Security staff to help ensure that both agencies can continue to fulfill their responsibilities.

*Question 24.* Although human trafficking spans all demographics, there are some circumstances that lead individuals to become more susceptible to victimization. Foreign nationals who come to the United States on temporary work visas are a particularly vulnerable group. Many have paid large recruitment and travel fees to labor recruiters and become highly indebted. Traffickers control and manipulate these individuals by leveraging the non-portability of many temporary visas as well as the victims' lack of familiarity with surroundings, laws and rights, language fluency, and cultural understanding. Do you commit to prioritizing efforts to ensure foreign nationals on temporary work visas are not trafficked? Will you support increasing the ability of workers on temporary visas to change jobs, in order to remove a tool traffickers use to exploit victims?

Answer 24. Eliminating human trafficking is one of the most important issues upon which we should focus. If confirmed, I will work to use all tools at the Department's disposal to end this horrific practice.

*Question 25.* Do you support the use of mandatory arbitration clauses in employee contracts?

Answer 25. There is a preference for allowing the use of arbitration generally under the Federal Arbitration Act, and the Supreme Court has upheld that preference. If Congress were to change that preference and disallow arbitration clauses, I would follow the law.

*Question 26.* How do you view the "contingent workforce" and "gig" economy jobs, in the context of the broad definitions of "employee" found in the Fair Labor Standards Act? How will you approach enforcement in this area?

Answer 26. The use of independent contractors is a legal and valuable business practice. However, in some circumstances, when an employer incorrectly labels a worker as an independent contractor instead of an employee, the employer may not be abiding by their responsibilities to compensate the worker according to the requirements of the law. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections they are entitled to by law. An important role of the Department of Labor is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction, including these employment laws, fully and fairly to ensure the protection of workers.

*Question 27.* According to the Bureau of Labor Statistics, 18 percent of low-income American workers do not have access to paid leave. Is that acceptable? If confirmed, will you promote policies that increase access to paid leave for workers?



Answer 27. I recognize that many States and localities have implemented paid leave laws. I believe attempts to expand paid leave would require congressional action. As I mentioned in the hearing, promoting workplace flexibility is something I support, particularly for working parents with young children. If confirmed, I look forward to working with the President and Congress as discussions regarding paid leave occur.

*Question 28.* In recent years, there has been interest in bipartisan criminal justice reform. An important DOL initiative supporting criminal justice reform efforts is the Reentry Employment Opportunities (REO) program. REO helps connect returning citizens to job training and employment. What is your position on REO? Would you work with Congress to ensure this important program receives at least level funding from the previous Administration?

Answer 28. Reintegrating citizens into the economy after they have been involved with the criminal justice system is something I believe is of great importance, providing individual, societal and economic benefit. If confirmed, I look forward to being briefed on this important program in order to better understand its goals, its performance and its resource needs. I will work to maximize the impact of every taxpayer dollar directed to job training programs to improve the employment outcomes for America's workers, including offenders transitioning back into their communities, and build a skilled workforce that meets employer needs. I will also continue to build upon the body of evidence of what works to improve outcomes for individuals who have been part of the criminal justice system, and I look forward to working with Congress and your committee to achieve this goal.

*Question 29.* Congress recently repealed the DOL rule outlining the limited circumstances that a State may drug-test individuals applying for Unemployment Insurance. Do you support or oppose policies requiring applicants for Unemployment Insurance be drug-tested? Do you believe such policies are cost-effective? If so, what evidence do you have to support your view?

Answer 29. If confirmed, I look forward to being briefed on this matter so as to understand the impact such policies would have on cost and program effectiveness. Helping the unemployed reenter the workforce is central to the Department's mission, as is the Department's obligation to ensure that its budget dollars and policies deliver on that mission. I will work to ensure implementation of the provisions set out in law as envisioned by Congress and to ensure the benefits of the important UI program are provided to individuals meeting its eligibility requirements, including being able to work and available to work.

*Question 30.* A significant body of research finds that providing comprehensive re-employment services through job centers can help UI recipients become re-employed faster and ultimately reduce State UI benefit payments overall. Federal funding for these services—through Wagner-Peyser grants to States—has fallen by 61 percent in real terms since 1984. At the same time, workers today face a higher probability of permanent displacement and extended unemployment than they did a few decades ago. Are you concerned that the Federal Government is disinvesting in these cost-effective services? Do you believe such proven programs are worth increased funding given current labor participation rates and the costs and risks associated with unemployment?

Answer 30. As a general matter, I believe job training programs and quality apprenticeships can offer a substantial return on investment. I look forward to being briefed on the entire universe of dislocated worker and job training programs at the Department, if confirmed. Understanding the intersection between UI and job training and dislocated worker programs will be a major focus. I look forward to understanding the budgets for these programs in order to make sure taxpayer dollars are being used effectively and to ensure the programs have the resources needed to be effective.

*Question 31.* If confirmed, you might have occasion to work on the Deferred Action for Childhood Arrivals (DACA) program. I hope you share my concern for innocent youths in any transition away from DACA. These young people are looking to better themselves by going to school and are contributing to our economy. They are following the rules and have often overcome incredibly difficult personal circumstances. A key component of DACA is being able to work, and having work authorizations to do so. DOL will likely have a say in how the Administration might address work authorizations for DACA recipients. Do you agree that young individuals protected under the DACA program deserve care and consideration when developing our priorities and policies? Would you commit to giving these young people the extra consideration they deserve when developing future DOL policy?

Answer 31. To the extent that the Department has a role to play regarding these issues, if confirmed I will work to ensure that due care and consideration are taken when developing policy in this area.

SENATOR BALDWIN

*Question 1.* Mr. Acosta, as you may know, there is strong support among many members of this committee for employee ownership and ESOP (employee stock ownership plan) companies. S corporation ESOPs in particular lead to greater firm longevity and higher wages, wage growth, job stability, retirement plan contributions, employment and sales. It is a model that is working and that we should do more to promote and encourage so that more hardworking Americans can own a piece of the rock. Will the Department of Labor commit to working with Congress to promote employee ownership and ESOPs?

Answer. I strongly support empowering Americans in all aspects of their working endeavors. A well-run ESOP, like other employment-based retirement plans, can provide valuable benefits to participating workers, and I believe that Congress and the Department have a shared responsibility to take steps to make sure that ESOPs fulfill their important mission of providing benefits and enhancing employee ownership. If confirmed, I expect to be briefed on ESOPs and I look forward to working with Congress as we develop the Department's regulatory policies and priorities to expand opportunity.

SENATOR MURPHY

*Question 1.* Today's economy demands Federal investment in a highly qualified workforce. This is critical to ensure the United States to remain competitive. A recent study by the National Science Foundation found that women continue to lag behind men in obtaining STEM jobs, despite earning an increasing number of STEM graduate degrees. **At a time when our Nation faces a serious shortage of highly skilled employees in the STEM disciplines, what action items do you intend to implement that will increase recruitment and retention, specifically of women and minorities, in STEM jobs? How do you plan to ensure States are meeting performance measures and are taking steps to increase enrollment and completion in "nontraditional careers"?**

Answer 1. I have stated that helping Americans find good jobs, safe jobs, should not be a partisan issue. A labor force with the science, technology, engineering and mathematics knowledge and skill that can meet the needs of business and industry and help grow and sustain healthy regional economies is important, as is a diverse and inclusive workforce. If confirmed as Secretary of Labor, I hope to have the benefit of an ongoing dialog with you and Members of the committee about how best to advance these goals within the context of a dynamic, global economy that is changing more rapidly with each passing year, and within the constraints of limited resources. If confirmed, I also expect to be briefed on efforts being conducted by both the Department of Labor and Department of Education to encourage all Americans to succeed in STEM jobs. I hope to hear from Federal, State and private sector stakeholders on how we can ensure that performance measures are met and exceeded.

*Question 2.* Last year, I spent a week walking across my State talking to people who would not normally interact with my office. I kept hearing from people who were working at a full-time job, but were still not able to make financial ends meet. **In light of that, do you agree with the following statement, "No one who works full-time should have to live in poverty?"**

Answer 2. I hear the same concerns. That is one reason that skills training is important, as it can provide access to better jobs. Too many have difficulty finding good, safe jobs. As I said at the hearing, I know every member of the HELP committee wants Americans to find jobs, good jobs, safe jobs, even if there is a difference of opinion as to how. If confirmed, I hope to benefit from an ongoing dialog with the committee as to how we can advance that goal.

*Question 3.* Major employers across the Nation, many States including Connecticut, and over 150 cities have embraced "ban the box" and other fair chance hiring strategies that help reduce the stigma associated with a criminal record in the hiring process. **Do you support bi-partisan legislation, such as the Fair Chance Act, that would help advance employment opportunities for people with records?**

Answer 3. I have not reviewed that particular piece of legislation, but I look forward to working with you and the rest of the Congress to advance employment opportunities for all Americans. I fully believe in giving a second chance to those who

have been convicted of a crime but have paid their debts to society. I find too often that a youthful, minor offense carries an inappropriate stigma.

*Question 4.* WIOA emphasizes career pathways as a proven practice. Since the enactment of WIOA, the Departments of Education and Labor have worked to improve coordination in order to promote and support the expansion of this innovation. **Under your leadership, would the Department of Labor continue that work? In what other ways might the coordination between the Departments of Education and Labor be improved?**

Answer 4. As I mentioned in my hearing, I believe that effective coordination between these two closely linked departments is vital. I look forward to working closely with the Department of Education on WIOA and other matters, and I will strive to improve coordination whenever possible.

*Question 5.* Under administrations led by both Republican and Democratic presidents, the Department of Labor has funded competitive grants for workforce training programs at post-secondary education institutions (especially community colleges). In Connecticut, these job training activities are funded from Trade Adjustment Assistance Community College and Career Training (TAACCCT) grants. **Will you dedicate new funding for focused investments in community college-based workforce training programs? If so, how will you ensure that low-income students can affordably access the training offered under these programs?**

Answer 5. As a nominee, I have not participated in the current budget discussions. If confirmed, I look forward to participating in that process so that I can understand the goals, performance and resource needs of programs such as this one in order to deliver the greatest value to the American people. Serving low-income workers and workers displaced by trade are both very important responsibilities of the Department.

*Question 6.* As you know, Congress recently passed a major mental health bill as part of the 21st Century Cures Act. Among these are provisions designed to improve enforcement and compliance with the Mental Health Parity and Addiction Equity Act.

Among other things, the new law directs the Secretary of the Department of Labor to:

- issue new Federal guidance on compliance with mental health and substance use disorder parity requirements;
- convene a public meeting to produce an action plan to improve Federal and State coordination related to the enforcement of parity;
- audit plans that have violated mental health parity at least 5 times; and
- release an annual report for 5 years summarizing the results of all closed Federal investigations of alleged parity violations.

Will you commit that the Department of Labor will meet these specific statutory obligations to improve mental health parity compliance? Also, will you commit to have the department collaborate with the Department of Health and Human Services to ensure that parity compliance improves significantly from where it is now?

Additionally, the White House Task Force on Parity, after investigation and input from all stakeholders, issued a report in October 2016 making several recommendations to improve enforcement of the Mental Health Parity and Addiction Equity Act and its implementing regulations. For example, the report recommended increased funding for staff to audit health plans for parity compliance and allowing the department to assess civil monetary penalties for parity violations.

**Do you support these two specific recommendations? Which other recommendations are you prepared to support and which are you not prepared to support?**

Answer 6. Treatment for mental health issues and addiction can save lives, and I support enhancing affordability and access to those services. If confirmed, I look forward to learning more about the Mental Health Parity and Addiction Equity Act and the 21st Century Cures Act and the Department's responsibilities pursuant to those Acts. As I stated at my hearing, I will follow the laws that Congress has passed, including any statutory obligations. I also support coordination with other cabinet agencies to ensure the government is effective and efficient in its actions. I would need to review any recommendations on this issue and consult with staff at DOL before I could commit to them.

## SENATOR WARREN

## CONFLICTS OF INTERESTS

*Question 1.* Do you believe President Trump should fully divest from The Trump Organization in order to prevent conflicts of interest for you and other Federal Government agencies?

Answer 1. I have no personal knowledge of these issues, which are outside the scope of the Department of Labor's responsibilities. With regard to me personally, if confirmed, I will regularly consult with the Department's ethics counsel to avoid conflicts of interests.

*Question 2.* Will you commit to enforce wage and hour and occupational health and safety regulations against The Trump Organization if the company violates these laws and harms its employees?

Answer 2. As I noted at the hearing, if confirmed, I would enforce the law fully and fairly with respect to all organizations, including the Trump Organization.

*Question 3.* What is your specific plan for insulating yourself and DOL from conflicts of interest related to DOL actions that may impact the Trump Organization?

Answer 3. I worked with the career ethics staff at the Department of Labor and the Office of Government Ethics to ensure any possible conflicts of interest were addressed as part of my ethics clearance. If confirmed, I would continue to work with ethics staff to address conflicts of interest.

*Question 4a.* Will you commit to closing the revolving door and preventing Labor Department employees from personally profiting from their activities at the Department?

Will you prevent Labor Department employees from working on issues that directly impact a previous employer?

Answer 4a. I am committed to seeing that employees of the Department of Labor fully comply with all ethics laws and regulations, including the restrictions contained in 18 U.S.C. 208 and 5 C.F.R. 2635.502. Non-career employees are also subject to additional restrictions contained in Executive Order 13770 ("Ethics Commitments by executive branch Appointees"), which includes a requirement that they sign an ethics pledge.

*Question 4b.* Will you demand that, prior to appointment, political appointees pledge that they will not work in industries related to or significantly subject to Labor Department regulation for 3 or more years upon leaving Federal service?

Answer 4b. As discussed above, upon appointment all non-career employees are required to sign the ethics pledge set forth in Executive Order 13770. By signing this pledge, the non-career employee commits to

" . . . not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in any lobbying activities with respect to that agency."

All employees, including non-career appointees, are also subject to the applicable post-employment conflict-of-interest provisions in 18 U.S.C. 207.

*Question 5a.* On January 28, President Trump issued the *Ethics Commitments by Executive Branch Employees* Executive order, which prohibits executive branch appointees from participating

"in any particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients, including regulations and contracts"

for "a period of 2 years from the date of my appointment."<sup>1</sup> The beachhead team at the Department of Labor, however, includes individuals who have previously lobbied on issues in DOL's jurisdiction, including the Davis-Bacon Act and the Conflict of Interest Rule.<sup>2</sup>

Will you commit that, if confirmed, you and all of your subordinates at the Department of Labor will follow this "lobbying ban"?

Answer 5a. I am committed to complying with the quoted provision, and ensuring that my subordinates do as well.

<sup>1</sup> <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>.

<sup>2</sup> <https://www.propublica.org/article/labor-department-hire-could-presage-collision-trump-construction-unions>; <https://projects.propublica.org/graphics/beachhead>.

*Question 5b.* Will you commit to firing anyone on the DOL beachhead team who does not meet the terms of this rule?

Answer 5b. I am committed to seeing that anyone who is found to have violated the provisions of Executive Order 13770 will be disciplined appropriately in accordance with applicable personnel procedures.

POLITICIZATION OF DOJ'S CIVIL RIGHTS DIVISION

*Question 6.* Do you agree with the DOJ Inspector General in 2008 that, as Assistant Attorney General for Civil Rights, you failed to appropriately supervise your staff?

If so, to what do you attribute this failure?

What lessons did you learn from this incident?

Answer 6. As I indicated at my hearing before the committee, the conduct described in the OIG's report was wrong and should not have taken place. The OIG concluded that I was not aware of the misconduct. Nonetheless, it occurred on my watch as Assistant Attorney General. I am well aware of what happened, and committed to ensure it is not repeated. Since then, I am a more hands-on manager. I have also learned to better oversee and monitor subordinates while not micromanaging their performance. As U.S. attorney, I walked around the office often in order to learn what AUSAs were doing. This day-to-day contact was important, and helped me better understand and monitor day-to-day AUSA activity.

*Question 7.* During your confirmation hearing for your DOJ position, Senator Kennedy asked you about preventing a politicized hiring process. You answered by saying:

"I would hope that the hiring process looks for the best qualified individuals—by ensuring that those who are participating in the process, those who do the interviewing understand what the role is and what the role is not. That's something I think should be emphasized to all participants in the hiring process, and certainly if confirmed I would do that."<sup>3</sup>

Given your explicit commitment to Senator Kennedy, how did you let the DOJ politicized hiring scandal happen under your watch?

Answer 7. As I indicated in my previous answer, the conduct described in the OIG's report was wrong and should not have taken place. The OIG concluded that I was not aware of the misconduct. Nonetheless, it occurred on my watch as Assistant Attorney General. If confirmed, I will make it abundantly clear that such conduct will not be tolerated.

*Question 8.* If you are confirmed as Secretary, will you commit to preventing politicization of DOL? How will you do so?

Answer 8. I will make it abundantly clear that such conduct will not be tolerated. If I learn of inappropriate conduct I will take appropriate disciplinary action, including dismissal.

*Question 9.* During Mr. Trump's campaign, there were reports that even volunteers were required to sign non-disclosure agreements. And following his election, there were also reports that transition officials were requesting information about career employees who worked on issues such as climate change at the Energy Department or women's issues at the State Department.<sup>4</sup> Any implication that people who worked on advancing policies that the new President disagrees with may be targeted or retaliated against could create a chilling effect on non-political Federal employees simply trying to do their jobs.

If you are confirmed, will you commit to protect the rights of all civil servants in the Department of Labor?

Those rights include the right for civil servants to communicate with Congress, and in fact it is against the law to deny or interfere with their right to do so.<sup>5</sup> If you are confirmed, do you commit to protect this fundamental right for government employees?

How will you do so?

Answer 9. Civil servants have many protections under the law and I would follow the law. If I learn of inappropriate conduct I will take appropriate disciplinary ac-

<sup>3</sup> U.S. Senate, Committee on the Judiciary, July 2003. Online at <https://www.gpo.gov/fdsys/pkg/CHRG-108shrg91833/pdf/CHRG-108shrg91833.pdf>.

<sup>4</sup> [https://www.washingtonpost.com/news/josh-rogin/wp/2016/12/22/trump-team-asked-state-department-for-info-on-womens-issues-programs-stoking-fears-of-another-witch-hunt/?utm\\_term=.50b42eb8cf86](https://www.washingtonpost.com/news/josh-rogin/wp/2016/12/22/trump-team-asked-state-department-for-info-on-womens-issues-programs-stoking-fears-of-another-witch-hunt/?utm_term=.50b42eb8cf86).

<sup>5</sup> U.S.C. § 7211.

tion. If confirmed, I commit to protect the rights of all civil servants in the Department.

## BUDGET

*Question 10.* President Trump's preliminary 2018 budget proposal includes a 21 percent cut to the Department of Labor's budget.

Will you commit to advocating against large cuts to the Department's budget?

If so, how specifically will you do so?

What level of spending on the Department as a whole do you believe is necessary to fulfill its mission?

*Answer 10.* I note that the President proposes a budget but it is ultimately Congress that will determine the funding for the Department. If confirmed, I look forward to participating in that process so that I can understand the goals, performance and resource needs of programs in order to deliver the greatest value to the American people. As I noted at the hearing, I think the principles that need to be used to guide spending are how successful is the program and does the program address particular needs.

*Question 11.* How do you believe that a 21 percent cut to the Department of Labor would affect the agency?

How many career staff do you expect would lose their jobs?

Which programs do you expect would be eliminated or significantly cut?

*Answer 11.* As a nominee, I have not participated in the current budget discussions. The publicly available Labor Department chapter is all the information I have. The labor department chapter details some proposed cuts and eliminations and is available at page 31 here: [www.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](http://www.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf). I have insufficient data to answer the question more specifically.

*Question 12.* President Trump's budget proposes completely eliminating the Senior Community Service Employment Program, which helps low-income seniors seeking employment.<sup>6</sup>

Do you believe that eliminating or significantly reducing funding to the Senior Community Service Employment Program would be a wise decision?

If so, why?

If not, will you commit to aggressively advocating for funding for the Senior Community Service Employment Program?

*Answer 12.* As a nominee, I have not participated in the current budget discussions. If confirmed, I look forward to participating in that process, so that I can understand the goals, performance and resource needs of programs such as this one in order to deliver the greatest value to the American people. I do believe older Americans encounter difficulty finding jobs and that quality programs for this community are important.

*Question 13.* President Trump's budget proposes significant cuts to Job Corps, a DOL program that helps disadvantaged youth enter the workforce.<sup>7</sup>

Do you believe that making large cuts to Job Corps would be a wise decision?

If so, why?

If not, will you commit to aggressively advocating for Job Corps funding?

*Answer 13.* If confirmed, I expect to be briefed on the Job Corps program and the performance of each of the more than 100 Job Corps centers. I look forward to learning more about the centers in each State. I expect our focus will be on helping Job Corps centers best provide to students the services and training central to their core mission. If I conclude that a center is the best way to train a particular population, I will advocate to fund it.

*Question 14.* President Trump's budget proposes significant cuts to the Office of Disability Employment Policy, which helps people with disabilities succeed in the workplace.<sup>8</sup>

Do you believe that making large cuts to the Office of Disability Employment Policy would be a wise decision?

If so, why?

<sup>6</sup> [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018\\_blueprint.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf); [https://www.washingtonpost.com/business/economy/labor-dept-cuts-target-job-training-programs-for-seniors-disadvantaged-youths/2017/03/15/4aba0966-0999-11e7-93dc-00f9bdd74ed1\\_story.html](https://www.washingtonpost.com/business/economy/labor-dept-cuts-target-job-training-programs-for-seniors-disadvantaged-youths/2017/03/15/4aba0966-0999-11e7-93dc-00f9bdd74ed1_story.html).

<sup>7</sup> Id.

<sup>8</sup> Id.

If not, will you commit to aggressively advocating for funding for the Office of Disability Employment Policy?

Answer 14. I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. The President, however, proposes the budget and it is ultimately Congress that determines the budget.

*Question 15.* Do you support President Trump's proposed elimination of the OSHA-funded small grant programs that provide workers in dangerous jobs with life-saving information such as how to protect themselves from chemical hazards, prevent falls, and guard themselves against dangerous machines?

If so, why?

If not, will you commit to aggressively advocating for funding for these programs?

Answer 15. As a nominee, I have not participated in the current budget discussions. That said, if confirmed I look forward to being briefed on all aspects of the Department's budget and will work to ensure that workers are protected while the taxpayers' dollars are spent in the most effective ways possible. If, after review, I believe this program offers the most efficient use of funds to encourage safety then I will advocate for it.

#### VOTER SUPPRESSION AND DISCRIMINATION

*Question 16.* When you were the head of the DOJ's Civil Rights Division the Texas State Legislature proposed a redistricting plan that the U.S. Supreme Court found "failed to protect minority rights," you recused yourself with no explanation. Your deputy overruled several career attorneys and analysts and allowed the redistricting plan to proceed.

To your knowledge, why did your office overrule DOJ career appointees' recommendations with regard to the Texas voting rights cases?

Why did you recuse yourself from that case?

Answer 16. Recusal is appropriate where an official has an actual conflict of interest, or where under the circumstances the official may reasonably appear to have a conflict of interest. As I mentioned at my hearing, I have a longstanding friendship with the then-Solicitor General of Texas, Mr. Cruz, who was litigating this matter personally. I recused myself out of concern that this contact may be portrayed as a conflict of interest. I take recusal obligations very seriously. It is as important to recuse in cases where recusal is required as it is not to recuse in cases where recusal is not required. In this case I believe my decision to recuse from any involvement in the Department's deliberations and decisionmaking was appropriate. Because I was recused from the matter I was not privy to the decisionmaking process.

*Question 17.* Will you commit to respect the policy findings and conclusions of DOL experts and career staff?

Answer 17. If confirmed, I will certainly need the advice of career staff to ensure I am fully informed about issues. I respect their expertise. Policy decisions are ultimately for the leadership of the Department.

*Question 18.* In 2004, while you were the head of the DOJ's Civil Rights Division, you defended an Ohio voter challenge law that disproportionately disenfranchised African American voters. Despite there being no formal intervention in the case by your office, you submitted a letter-brief to the judge arguing in favor of the voter challenge law, just 4 days before the 2004 presidential election.

Why did you submit a letter-brief in that case?

In how many other voting rights cases in which DOJ did not formally intervene nor submit an *amicus brief* did you submit a letter-brief?

Answer 18. The Department of Justice has a long history of submitting its views of statutes committed to its enforcement. The Department of Justice is charged with enforcing both the Help America Vote Act of 2002 ("HAVA") and the Voting Rights Act ("VRA"). At the time, HAVA was a relatively new statute. Because of this, there was value in bringing to Judge Dlott's attention key aspects of HAVA, i.e., that State and local election officials must permit any individual whose name does not appear on the official registration list or whose eligibility to vote is called into question to cast a provision ballot even if they are unable to answer specific questions posed by election judges; that provisional ballots are part of a congressionally established balance between ballot access and ballot integrity; and that as a result, non-discriminatory challenge statutes are not prohibited on their face (although they can be prohibited as applied). Provisional ballots would mitigate the impact of the Ohio "challenge statute" at issue in that case, which otherwise may have resulted in the

disqualification of some voters without any recourse to confirm their eligibility and to restore their vote. The letter alerting Judge Dlott to HAVA's requirements was consistent with the Civil Rights Division's many other efforts to raise awareness of and to enforce HAVA in several States during 2004, and although I recall full *amici* briefs, I do not recall other less-impactful letter briefs. Importantly, the Department did not speak to the specific allegations raised by the plaintiffs in that suit, but limited its comments only to the statutes on their face.

*Question 19.* What key challenges do you see in enforcing labor laws that protect workers' civil rights? Which areas of enforcement will you prioritize?

Answer 19. The Department shares responsibilities for labor and civil rights enforcement with a number of other agencies. If confirmed, I would consult with career staff to identify the areas of greatest need and direct available resources to address those areas, but I would also want to make sure that the Department was coordinating with the other agencies that share the same responsibility.

At the Department of Labor, I would work with the agencies involved in civil rights to ensure that their efforts have the greatest benefit for those who are discriminated against, serve as a deterrent by example for those who accidentally or purposely discriminate, and increase overall compliance.

*Question 20.* What metrics will you use to determine whether DOL is fulfilling its role in protecting workers' rights and stamping out discrimination?

Answer 20. I believe results matter and need to be quantified, but it can be hard to measure reductions in discrimination. For example, one high impact case can reduce discrimination more than several lower impact matters. As a prosecutor, I used government resources carefully to bring the best cases possible and get the best resolutions for the largest number of victims. I also brought smaller individual cases. I will follow that model at the Department if confirmed.

*Question 21.* What key challenges do you see in enforcing labor laws that protect workers against discrimination? Which areas of enforcement will you prioritize?

Answer 21. If confirmed, I would consult with career staff to identify the areas of greatest need and direct available resources to address those areas, and I would also want to make sure that the Department was coordinating with the other agencies that share the same responsibility.

*Question 22.* Which workers do you believe are at greatest risk of discrimination? What specific actions will you take to protect them?

Answer 22. If confirmed, I would consult with career staff to identify the areas of greatest need and direct available resources to address those areas, and I would also want to make sure that the Department was coordinating with the other agencies that share the same responsibility for discrimination prevention. I note that there may very well be different issues dependent on wage rates, industries, and regions of the country.

#### ENFORCEMENT AND REGULATION OF WAGE AND HOUR LAWS

*Question 23.* Will you commit to continuing enforcement of DOL wage and hour and workplace safety standards?

Answer 23. Yes.

*Question 24.* What metrics will you use to assess the effectiveness of your enforcement efforts?

Answer 24. Each enforcement agency may have different metrics because of the nature of their responsibilities and legal authorities. Increased compliance with the law is a great metric to consider but can be hard to measure. For example, one high impact case can reduce violations more than several lower impact matters. As a prosecutor, I used government resources carefully to bring the best cases possible and get the best resolutions for the largest number of victims. I also brought smaller individual cases. I will follow that model at the Department if confirmed,

*Question 25.* If President Trump's 20.7 percent proposed budget cut is enacted, it will be virtually impossible to maintain the level of enforcement the previous administration obtained. How will you prioritize enforcement activities and investigations in the Wage and Hour Division if this budget is enacted?

Answer 25. As budgets are reduced, high impact cases become more important as they tend to offer more impact per dollar. It is important, however, to bring smaller individualized cases as well.



*Question 26.* President Trump has expressed criticism of the DOL Overtime Rule. Will you commit to defending the Rule, which would extend overtime protections for millions of American workers, in court, starting by appealing the injunction that is currently in place preventing implementation of this rule?

If not, what are your specific plans for updating regulations so that only bona fide executives, rather than low-income workers, are exempt from overtime protections, as the FLSA requires?

*Answer 26.* As I noted at my hearing, I am sensitive to the fact that the overtime rule has not been updated since 2004. If confirmed, this is an issue I will look at very closely and commit to examining the rule and the legal basis of the judge's decision.

*Question 27.* I am concerned about DOL's duty to ensure that all employers are held accountable for abuses of their employees—including large corporations that try to shirk responsibility through franchises, over whose policies and balance sheets they maintain significant control. Will you hold parent companies responsible for violations of the minimum wage or overtime laws of the workers in their franchises where the parent company is legally culpable?

*Answer 27.* This answer would be dependent on a specific set of facts. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

*Question 28.* What are your specific plans to protect the rights of workers of franchised companies?

*Answer 28.* If confirmed, I look forward to receiving input from the Department of Labor staff and Congress to improve the working conditions and opportunities for all Americans.

*Question 29.* Workers' ability to collect back wages is a crucial part of the enforcement of Wage and Hour Laws. Yet recent reports indicate that some workers are turning down back pay because they fear deportation in light of President Trump's anti-immigrant policy and rhetoric.<sup>9</sup>

If confirmed, will you commit to investigating this phenomenon to determine whether workers are declining back pay because they fear deportation?

If you find that this is taking place, what is your plan for ensuring that all workers who experience wage theft are able to access back wages, regardless of immigration status?

*Answer 29.* The Department of Labor's Wage and Hour Division enforces the Fair Labor Standards Act, and other laws in its purview, without regard to immigration status. If confirmed, I look forward to being briefed by DOL staff and learning more about these concerns and I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including wage and hour laws, to protect all workers' rights.

*Question 30.* What will you do to improve the implementation and enforcement of Federal labor law and ensure that all American workers can work in a safe and healthy environment, achieve financial security, and retire in old age?

*Answer 30.* As I noted at the hearing, if confirmed, I will enforce the law fully and fairly. I also look forward to working with Congress to further improve safety, security, and retirement of workers.

*Question 31.* Some employers misclassify their employees as independent contractors in order to avoid wage and hour laws and other basic worker protections, paying taxes, and fair competition with other employers. In what specific ways should the Department of Labor improve its efforts to (a) identify mis-classified workers and (b) conduct enforcement actions against employers that misclassify them?

*Answer 31.* An important role of the Department of Labor is to ensure that employers who want to do the right thing have clear compliance guidance from the Department. The use of independent contractors is a legal and valuable business practice. However, in some circumstances, when an employer incorrectly labels a worker as an independent contractor instead of an employee, the employer may not be abiding by their responsibilities to compensate the worker according to the requirements of the law. Employees incorrectly classified as independent contractors may be denied access to critical benefits and protections they are entitled to by law. This incorrect classification may also generate losses to the Federal Government and State governments in the form of lower tax revenues, as well as to State unemployment insurance and workers' compensation funds. Employers who deliberately misclassify

<sup>9</sup><https://www.bna.com/workers-turn-down-n57982084889/>.

workers undercut law-abiding employers who are making contributions to these systems and paying their workers properly. If confirmed, I look forward to being briefed on matters pertaining to the classification of employees and will work to enforce the laws under the Department of Labor's jurisdiction, including these employment laws, fully and fairly to ensure the protection of workers. If businesses are found to be incorrectly classifying workers in a way that violates the law, I will fully and fairly enforce the relevant laws.

#### WELLS FARGO, RESTAURANT ASSOCIATES, AND OTHER ONGOING INVESTIGATIONS

*Question 32.* Will you continue all ongoing investigations at the Wage and Hour Division of DOL to ensure that workers will not suffer setbacks in their effort to recover lost wages as a result of the change in leadership?

*Answer 32.* As a nominee, I do not have specific knowledge of investigations in which the Department of Labor is engaged. As a general matter, I will enforce the law fully and fairly, and I expect investigations to go forward.

*Question 33.* Will you continue with debarment proceedings of Restaurant Associates to ensure that the workers who feed Federal workers and Senate employees aren't cheated out of their wages and to ensure that Federal taxpayer dollars are being used responsibly?

*Answer 33.* As a nominee, I do not have specific knowledge of this matter. As a general matter, I will enforce the law fully and fairly, and I expect ongoing enforcement to go forward.

*Question 34.* Will you continue with any other ongoing debarment proceedings?

*Answer 34.* As a nominee, I do not have specific knowledge of other ongoing debarment proceedings. As a general matter, I will enforce the law fully and fairly, and I expect ongoing enforcement to go forward.

*Question 35.* Will you promise to continue the Department's ongoing investigation of wage and hour violations at Wells Fargo?

*Answer 35.* As a nominee, I do not have specific knowledge of this matter. As a general matter, I will enforce the law fully and fairly, and I expect investigations to go forward.

#### IMPLEMENTING DOL'S CONFLICT OF INTEREST RULE

*Question 36.* The memorandum President Trump issued on February 3 requires you to conduct a new economic and legal analysis of the Conflict of Interest Rule, and, depending on the results of this analysis, publish a new rule or rescind the rule. DOL has already asked for public comment on this analysis. Additionally, DOL has closed the comment period on a proposed 60-day delay of the April 10 applicability date of the rule.

(a) Did the President or anyone in the White House, on the transition team, or at DOL consult you about the contents of his memorandum? If so, please list the names of all parties you consulted with and send any correspondence on this topic.

(b) If you are confirmed before the 60-day delay of the fiduciary rule is finalized, will you stop the delay?

(c) Do you think the costs to investors of the delay are justified? If so, please explain how you have calculated the benefits of the delay and please identify the parties that would benefit from the delay under your analysis.

(d) Do you agree with President Trump's decision to call for additional analysis of the Conflict of Interest Rule?

(e) What information will you review as part of this assessment?

(f) Will you commit to only reviewing information that is independent and is not funded or otherwise compromised by financial industry players with a vested interest in the findings?

(g) Please identify all political staff at DOL that will conduct the analysis.

(h) Do you have any reason to believe that the findings of the new analysis will be any different from the detailed, multi-year analysis of the costs and benefits of the rule that was already conducted by DOL before the proposed rule was issued or in the extensive Regulatory Impact Analysis that was issued at the time the rule was finalized? If so, why?

(i) The memorandum asks you to consider litigation costs and possible disruptions to the financial services sector in your economic and legal analysis. Will you also consider the full benefits of the rule for retirees and consumers in addition to any potential costs for the financial industry? Will you consider the costs to financial advisers who have already invested in complying with the rule?

(j) The DOL finalized the Conflict of Interest Rule after a long process of extensive public comment periods, meetings with stakeholders, and days of public hearings. Will you commit to following the same process before finalizing any new change of the Rule, in order to allow the public to comment on the DOL's new analysis?

(k) Big banks that make huge sums of money from selling high-fee, high-commission products to investors have made it very clear in Washington that they do not support the Conflict of Interest Rule, to the point of drowning out the voices of thousands of Americans who have lost a large portion of their retirement savings because of bad advice from someone with conflicted interests. Before you make any final decisions on the Rule, will you commit to soliciting input from the victims of bad retirement investment advice?

(l) Will you refrain from taking any additional action to delay or limit the rule until your analysis is complete?

(m) Will you commit to informing Congress on an ongoing basis of the status of this analysis?

Answers 36(a) and (g). As a nominee, I did not participate in discussions regarding the presidential memorandum and do not know who will handle the analysis at the Department of Labor.

Answers 36(b)–(f), and (h)–(l). As I noted at the hearing, the presidential memorandum addresses with specificity the fiduciary rule and details the Department of Labor's obligations to review the rule. If confirmed, I will conduct the review in accordance with the presidential memorandum. Under the Administrative Procedure Act, all stakeholders may comment and their views must be considered by the Department. As Chairman Alexander noted, as a nominee it would be presumptuous to make any further regulatory determinations at this time. With that said, it is important that the retirement savings of working Americans be protected. I support empowering Americans to make their own financial decisions, to facilitate their ability to save for retirement and build the individual wealth necessary to afford typical lifetime expenses, such as buying a home and paying for college, and to withstand unexpected financial emergencies.

Answer 36(m). If confirmed, I look forward to working with Congress as we develop the Department's regulatory policies and priorities to safeguard retirement security.

*Question 37.* On February 14, I sent a letter to the White House and DOL asking about reported involvement by a Financial Services Roundtable lobbyist in the development and drafting of President Trump's memorandum. I have not heard back from either the White House or DOL.<sup>10</sup>

Will you commit to responding to the questions I asked in that letter about the potential involvement by a Wall Street lobbyist from a leading advocacy organization for the financial services industry?

Answer 37. I have not received a copy of your letter, and without knowing the contents of the letter it would be inappropriate for me to make specific commitments.

*Question 38.* My office has issued two reports on kickbacks like lavish vacations, tropical cruises, and other prizes that are offered as incentives to salespersons in the annuities industry.<sup>11</sup> Do you believe that these incentives could encourage a salesperson to recommend a product that is not in the best interest of the customer?

Answer 38. It is important that the retirement savings of working Americans be protected, and certainly there are individuals that may put their personal interests ahead of their clients in many industries where that is potentially unethical and illegal.

*Question 39.* If a family member or personal friend were to ask you about how to pick a financial adviser, would you recommend that he or she pick an adviser with a fiduciary duty to their client, or not?

Answer 39. If asked, I would recommend to my friend someone who I knew and trusted. I would also advise that in my experience the best advisors in professional fields are transparent about their fees and products, including in regards to compensation structure.

<sup>10</sup>Elizabeth. "Warren Questions White House, Labor, Financial Services Roundtable on Report that Wall Street Lobbyist Reviewed Drafts of Trump Executive Orders and Memorandums." Online at: [https://www.warren.senate.gov/?p=press\\_release&id=1451](https://www.warren.senate.gov/?p=press_release&id=1451).

<sup>11</sup>Elizabeth Warren. "Villas, Castles, and Vacations: How Perks and Giveaways Create Conflicts of Interest in the Annuity Industry." Online at: [http://www.warren.senate.gov/files/documents/2015-10-27\\_Senator\\_Warren\\_Report\\_on\\_Annuity\\_Industry.pdf](http://www.warren.senate.gov/files/documents/2015-10-27_Senator_Warren_Report_on_Annuity_Industry.pdf).

*Question 40.* In your confirmation hearing, you refused to offer your personal views on or commit to implementing the Conflict of Interest Rule. You said that, if confirmed as Secretary of Labor, you would work for the President, which is troubling in light of President Trump's anti-worker statement and policies.

Will you commit to expressing disagreement with President Trump if and when his rhetoric or policy proposals, including Executive orders, conflict with the DOL's mission to promote the welfare of wage earners, job seekers, and retirees?

To the extent they conflict, will you commit to relying on the expertise of the DOL career staff rather than the political interests of the White House in making decisions about the Conflict of Interest Rule and other policies on which hundreds of millions of workers and retirees are relying?

Will you commit to following the Administrative Procedure Act, which governs the rulemaking process, in all rulemakings you participate in if confirmed?

Will you do so even if the President asks you to do otherwise?

Answer 40. All Cabinet officers work for the President. That does not mean, however, that one cannot express disagreement on particular matters. As I stated, if confirmed, I will advocate for the mission of DOL. This includes disagreement regarding priorities or implementation. Once a decision by the President is made, however, I have an obligation to implement it or to resign. I certainly respect the expertise of staff. At all times, I will follow the law as I understand it. No one, including the President of the United States, is above the law, including the APA.

#### PROTECTING WORKERS FROM DISCRIMINATION

*Question 41.* On June 14, 2016, the Office of Federal Contract Compliance Programs (OFCCP) at DOL issued a final rule, Discrimination on the Basis of Sex, which updated OFCCP's sex discrimination regulations to explicitly include "the protections against compensation discrimination; sexually hostile work environments; discrimination based on pregnancy, childbirth or related medical conditions; and discrimination based on unlawful sex stereotypes, gender identity, and transgender status."<sup>12</sup>

Would you commit to fully enforcing this rule, should you be confirmed as Labor Secretary?

Please describe the specific steps you would take to improve enforcement of this rule, and the specific metrics you will use to measure the effectiveness of the rule and its enforcement by DOL.

Answer 21. The President, through an executive action, has directed all Cabinet secretaries to review all rules within each Cabinet agency. If confirmed, this responsibility will fall to me, including for this rule. With that said, I strongly support equal employment opportunity and, if confirmed, I will apply the law fully and fairly to prevent sex discrimination in areas under authority of the Secretary of Labor.

*Question 42.* DOL's Civil Rights Center "oversees EEO in programs and activities receiving Federal financial assistance" from DOL. The Office of Federal Contract Compliance Programs, meanwhile, oversees EEO programs among "employers holding Federal contracts and subcontracts."<sup>13</sup>

a. Will you ensure that DOL's Civil Rights Center is fully funded, so that Americans are protected from discrimination on the basis of race, religion, sex, national origin, disability, or genetic information?

- (i) If confirmed, will you commit to continuing the Civil Rights Center's work?
- (ii) What metrics will you use to evaluate its success or failure?

b. Will you ensure that DOL's Office of Federal Contract Compliance Programs is fully funded, so that employees of Federal contractors are protected from discrimination on the basis of race, religion, sex, national origin, disability, or genetic information?

- (i) If confirmed, will you commit to continuing the Office of Federal Contract Compliance Programs' work?
- (ii) What metrics will you use to evaluate its success or failure?

Answer 42. As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding for the Department's agencies. Although the level of budget reductions have not yet been approved by Congress, some reduction is likely.

<sup>12</sup>U.S. Department of Labor, "U.S. Labor Department Announces Updated Sex Discrimination Regulations for Federal Contractors" (June 14, 2016) (online at <https://www.dol.gov/newsroom/releases/ofccp/ofccp20160614>).

<sup>13</sup>U.S. Department of Labor, "Equal Employment Opportunity" (online at <https://www.dol.gov/general/topic/discrimination>).

I cannot commit to insulate any one program from some reduction. Each enforcement agency may have different metrics because of the nature of their responsibilities and legal authorities. I am aware that each Federal agency has developed comprehensive metrics and reports on them regularly. If confirmed, I will consult with staff and review the performance metrics DOL enforcement agencies have been using to see if there might need to be changes and then evaluate the agencies accordingly. The missions of both of these offices are important and I would work to ensure they can perform their responsibilities.

FEDERAL CONTRACTORS

*Question 43.* Now that congressional Republicans and President Trump have rescinded the Fair Pay and Safe Workplaces Executive order, what authorities does DOL have to ensure that contracting agencies have access to and can consider prior labor violations in procurement decisions (as Federal law and acquisition regulation requires)?<sup>14</sup>

Will you implement these authorities?

Answer 43. I understand that government agencies have suspension and debarment authorities and that the Department of Labor has existing capacity in the context of some of its statutes, including the service contract act. For example, I am informed that for certain contracts, the contracting officer at a Federal agency would be required to check if the potential contractor had received a recent review by OFCCP before awarding a contract. I am committed to providing agencies this data so they can make an informed decision.

*Question 44.* The Establishing Paid Sick Leave for Federal Contractors Executive order (Executive Order 13706) requires Federal contractors to offer covered employees up to 7 days of paid sick leave each year, giving sick leave to around 1.15 million workers.<sup>15</sup>

Would you advise President Trump to retain this Executive order?

Will you commit to enforcing this Executive order?

Answer 44. The decision as to whether to maintain, amend or rescind Executive orders belongs to the President. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including Executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

*Question 45.* The Establishing a Minimum Wage for Contractors Executive Order (Executive Order 13658) gives 200,000 workers raises by setting the minimum wage for Federal contractors at \$10.10, with modest cost-of-living increases going forward.<sup>16</sup>

Would you advise President Trump to retain this Executive order?

Will you commit to enforcing this Executive order?

Answer 45. I believe that the vast majority of Federal contractors pay this wage irrespective of the Executive order. The decision as to whether to maintain, amend or rescind Executive orders belongs to the President. As I noted in my hearing, if confirmed, I would enforce the law fully and fairly, including Executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

*Question 46.* The Sex Discrimination Regulations Executive order (Executive Order 11246) prohibits discrimination on the basis of pregnancy and childbirth, gender identity, and sexual orientation, and updated guidelines on fair pay and sexual harassment for contractors.<sup>17</sup>

Would you advise President Trump to retain this Executive order?

Will you commit to enforcing this Executive order?

Answer 46. The decision as to whether to maintain, amend or rescind Executive orders belongs to the President. As I noted in my hearing, if confirmed, I would en-

<sup>14</sup> 41 U.S.C. § 6706; 41 U.S.C. § 6504; 41 U.S.C. § 3144; Manuel, K. "Responsibility Determinations Under the Federal Acquisition Regulation: Legal Standards and Procedures." Congressional Research Service (January 4, 2013). Online at: <https://fas.org/sgp/crs/misc/R40633.pdf>.

<sup>15</sup> "Final Rule: Executive Order 13706, Establishing a Paid Sick Leave for Federal Contractors." Wage and Hour Division, United States Department of Labor. Online at: <https://www.dol.gov/whd/govcontracts/eo13706/>.

<sup>16</sup> "Fact Sheet: Final Rule to Implement Executive Order 13658, Establishing a Minimum Wage for Contractors." Wage and Hour Division, United States Department of Labor. Online at: <https://www.dol.gov/whd/flsa/eo13658/fr-factsheet.htm>.

<sup>17</sup> "OFCCP's Sex Discrimination Final Rule, Fact Sheet." United States Department of Labor. Online at: [https://www.dol.gov/ofccp/SexDiscrimination/SexDiscrimFinalRuleFactSheet\\_JRFQA508c.pdf](https://www.dol.gov/ofccp/SexDiscrimination/SexDiscrimFinalRuleFactSheet_JRFQA508c.pdf).

force the law fully and fairly, including Executive orders that apply to the Labor Department or give the Department additional enforcement responsibilities.

*Question 47.* In addition to the Executive orders described above, what are your specific plans to address the widespread labor law violations by contractors of the Federal Government? If confirmed as Labor Secretary, what will you do to ensure that taxpayer dollars are spent more responsibly?

*Answer 47.* I understand that government agencies have general suspension and debarment authorities and that the Department of Labor uses a similar authority in the context of some of its statutes, including the service contract act. If confirmed, I would need to discuss this issue with DOL staff to better understand your concerns and what additional authorities DOL may have in this area.

#### WORKPLACE HEALTH AND SAFETY

*Question 48.* Will you commit to pursue all penalties allowed by law for employers who put their workers in harm's way?

Will you commit to pursuing criminal penalties, including jail time, for employers who willfully violate OSHA and cause the death of an employee?

*Answer 48.* If confirmed, I look forward to discussing this and many other issues with the Department's OSHA staff, to help ensure the safety of all workers. I support the use of all of OSHA's penalties. If criminal penalties are warranted in a given situation they will be pursued. When the evidence demonstrates a willful violation of a specific OSHA standard that causes the death of an employee, an employer may be liable for criminal sanctions. In such cases, if confirmed, I will direct OSHA to continue to refer potential criminal matters for consideration by Department of Justice (DOJ) pursuant to established procedures, including the recently executed Memorandum of Understanding between OSHA and DOJ in 2015.

*Question 49.* Will you commit to ensuring that OSHA is fully funded so that it can continue its inspection and enforcement efforts?

*Answer 49.* As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding for the Department's agencies. Although the level of budget reductions have not yet been approved by Congress, some reduction is likely. I cannot commit to insulate any one program from some reduction. Each enforcement agency may have different metrics because of the nature of their responsibilities and legal authorities. I am aware that each Federal agency has developed comprehensive metrics and reports on them regularly. If confirmed, I will consult with staff and review the performance metrics DOL enforcement agencies have been using to see if there might need to be changes and then evaluate the agencies accordingly.

*Question 50.* Even when OSHA is fully funded, it can't inspect every workplace every year. What types of inspections will be the highest priority to the agency, and what industries will you prioritize for inspections?

*Answer 50.* If confirmed, I look forward to discussing this and many other issues with the Department's OSHA staff and working with them to make certain that the appropriate prioritizations for inspections are in place to help ensure the safety of all workers. As specified in the OSH Act, OSHA operates a balanced program of enforcement, compliance assistance, training, outreach and voluntary collaborative programs to maximize its effectiveness. OSHA cannot inspect all 8 million workplaces it covers, and as such prioritizations are required. The industries with the highest hazards will receive top priority.

*Question 51.* In June, OSHA's new Silica Rule, which will save hundreds of lives by protecting the 2.3 million workers exposed to silica in their workplaces from diseases like silicosis and lung cancer, went into effect.<sup>18</sup>

In your hearing, you would not commit to enforcing the silica rule because the President's January 20 memorandum asks agency heads to delay rules that are not yet in effect by 60 days. But the silica rule is already in effect. Will you commit to ensuring that the upcoming compliance dates for industry are implemented as currently set forth in the final rule?

Will you commit to enforcing this rule and inspecting workplaces to ensure that this rule is being properly implemented?

<sup>18</sup>"OSHA's Final Rule to Protect Workers from Exposure to Respirable Crystalline Silica." Occupational Safety and Health Administration. *United States Department of Labor*. Online at: [https://www.osha.gov/silica/factsheets/OSHA\\_FS-3683\\_Silica\\_Overview.html](https://www.osha.gov/silica/factsheets/OSHA_FS-3683_Silica_Overview.html).

Will you defend the rule against any ongoing legal challenges in the courts?

Answer 51. The President, through an executive action, has directed all Cabinet secretaries to review all rules within each Cabinet agency. If confirmed, this responsibility will fall to me. As part of that responsibility I look forward to discussing this and many other issues with the staff of the Department's Occupational Safety and Health Administration.

*Question 52.* Will you enforce the beryllium rule if you are confirmed?

Will you commit to adhere to the currently scheduled compliance dates and not delay of the effective date of this life-saving rule any further?

Answer 52. The President, through an executive action, has directed all Cabinet secretaries to review all rules within each Cabinet agency. If confirmed, this responsibility will fall to me. As part of that responsibility I look forward to discussing this and many other issues with the staff of the Department's Occupational Safety and Health Administration.

*Question 53.* On February 22, just hours after your nomination hearing, the Senate repealed OSHA's "Volks Rule" using a resolution of disapproval under the congressional Review Act. The rule clarifies OSHA's authority to hold employers accountable for their continuing obligation to maintain accurate injury and illness records for 5 years. As a result, underreporting of workplace injuries and illnesses will skyrocket and the odds that a worker is increased on the job will increase.

How will the Department of Labor enforce OSHA's recordkeeping requirements in the absence of this important rule?

How will you ensure that the DOL's statistics on workplace injury rates remain accurate, considering that employers will not be required to maintain accurate records after 6 months?

Answer 53. I believe the Occupational Safety and Health Act still requires employers to maintain records for 5 years and that the DC Circuit overturned an attempt to apply a continuing violation previously given the Act's 6-month statute of limitations. If confirmed, however, I look forward to discussing these and many other issues with the Department's OSHA staff to make certain that employers comply with the law regarding the recording of injuries and illnesses in the workplace in order to ensure that all workers are protected.

#### FAIR SCHEDULING LEGISLATION

*Question 54.* As Secretary of Labor, what specific steps would you take to improve the working conditions of low-wage workers in the food service, retail, and cleaning sectors?

Answer 54. If confirmed, I look forward to receiving input from DOL staff and Congress to improve the working conditions and opportunities for all Americans, and particularly those in low-wage sectors.

*Question 55.* Will you support the passage of the Schedules that Work Act, which would help workers address unstable and unpredictable schedules?<sup>19</sup>

If not, what are your plans for introducing fairness into work schedules so that workers are able to arrange for childcare, juggle a second job, or go back to school?

Answer 55. I would need to thoroughly review that legislation before I committed to supporting it. As I mentioned in the hearing in the context of the gig economy, promoting workplace flexibility is something I support, particularly for working parents with young children.

#### WORKFORCE DEVELOPMENT

*Question 56.* Will you commit to fully implementing the Workforce Innovation and Opportunity Act (WIOA)?

Answer 56. As you know, WIOA was enacted in 2014 and many implementing regulations have been promulgated. If confirmed as Secretary of Labor, I also will work to maximize the impact of every Federal taxpayer dollar directed to job training programs and employment service formula grants while discussing shared responsibility for these grants by States, localities and employers. I do support and commit to fully implementing the Workforce Innovation and Opportunity Act.

*Question 57.* Will you commit to aggressively advocating for any and all funding that is needed to implement WIOA?

Answer 57. As a nominee, I have not participated in the current budget discussions. If confirmed, I look forward to participating in that process, so that I can un-

<sup>19</sup> [https://www.warren.senate.gov/?p=press\\_release&id=896](https://www.warren.senate.gov/?p=press_release&id=896).

derstand the goals, performance and resource needs of programs such as this one in order to deliver the greatest value to the American people. Further, I believe that job training can offer substantial positive returns on tax payer dollars and do commit to aggressively advocate for it.

*Question 58.* In light of the importance of summer jobs programs for disadvantaged youth, will you commit to expanding the summer jobs program for youth so that every young person who could benefit from a summer job will have access to one?

Answer 58. If confirmed, I look forward to being briefed on the Department's activities and programs related to providing summer jobs for disadvantaged youth.

*Question 59.* Important Workforce Innovation and Opportunity Act (WIOA) programs are designed to connect people with disabilities to employment opportunities. How will your administration ensure that State and local workforce plans and boards use these programs and related funding streams to improve employment outcomes for people with disabilities?

Answer 59. If confirmed, I expect to be briefed on WIOA and all related programs and implementing regulations, so that I can understand the goals, performance and resource needs of programs such as this one. Taxpayer dollars are scarce and it is important that we ensure that State and local workforce plans and boards use these programs and related funding streams to improve employment outcomes for people with disabilities. I believe metrics should be used to measure outcomes success.

*Question 60.* What will you do as Secretary to encourage self-employment and entrepreneurship among Americans with disabilities?

Will you support the Office of Disability Employment Policy's START-UP program, which provides technical assistance and training to States to promote entrepreneurship among Americans with disabilities?

Answer 60. I would need to review any particular program before I committed to supporting it, but I certainly favor increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives.

#### LABOR STATISTICS

*Question 61.* Do you have doubts about the non-partisan objectivity of the Bureau of Labor Statistics?

If so, what evidence do you have to support those doubts?

If not, do you believe it is appropriate for the President to attack the credibility and objectivity of an independent government agency like the BLS?

Answer 61. As I noted at the hearing, the Bureau of Labor Statistics has kept statistics for decades. It has a transparent procedure that makes clear how they calculate statistics. I think that procedure is very important because BLS keeps data that is used not just for today but for the future. BLS provides several measures of unemployment. There is, however, legitimate disagreement as to which particular BLS measurement for the unemployment rate tells the true story of the economy.

*Question 62.* If confirmed, will you commit to defending the independence of the Bureau of Labor Statistics?

Answer 62. Yes. As I noted at the hearing, the Bureau of Labor Statistics has kept statistics for decades. It has a transparent procedure that makes clear how they calculate things. And I think that procedure is very important because BLS keeps data that is used not just for today but for the future.

*Question 63.* What steps will you take to ensure that the BLS's professional staff continue to collect and report employment and related data free from any political interference?

Answer 63. BLS must be viewed as a reliable collector of data. If confirmed, I will insist that BLS continue its tradition of being insulated from political interference.

*Question 64.* If confirmed, will you commit to aggressively advocate for full funding of the Bureau of Labor Statistics?

Answer 64. As a nominee, I have not participated in the current budget discussions. I note that the President proposes a budget but it is ultimately Congress that will determine the funding for the Department's agencies. Although the level of budget reductions have not yet been approved by Congress, some reduction is likely. I cannot commit to insulate any one program from some reduction. That said, as I mentioned at the hearing, I certainly understand the value of BLS and support its mission.



*Question 65.* The Department of Labor announced last year that it would conduct a survey on contingent and alternative employment as part of the May 2017 Current Population Survey, after collecting no such data since 2005, with the intention of continuing the CPS supplement on alternative work arrangements every 2 years going forward.<sup>20</sup>

Will you advocate for continued funding to conduct the contingent worker supplement to the CPS?

Will you commit to conducting the supplement at regular intervals in the future and to communicating the results of that survey to Congress and the public?

What steps will you take to ensure that DOL regulation, compliance, and enforcement policy adapts to the results of this survey and the changing nature of the workplace and safety net in the United States?

Answer 65. I would need to review any particular program before I committed to supporting it. That said, as I mentioned at the hearing, I certainly understand the value of BLS data and the “gig” economy is something that the Department of Labor needs to address. Data from such a BLS survey may be helpful, and I would support its collection. One reason for this is that the data will assist DOL in adapting to the changing nature of the workplace.

SENATOR KAINE

*Question 1.* Through Federal support and States encouraging apprenticeship models, the number of registered apprenticeships has increased. This includes the extension of the apprenticeship model beyond the construction and mechanical trades, into industries such as information technology, insurance, and health care. However, the average age of an apprentice still remains high at around 30, which suggests we’re not doing a sufficient job of routing young people into these pathways. Will you support expanding pre-apprenticeship programs in order to create on-ramps and more seamless pathways for youth into apprenticeships and middle-skill jobs?

Answer 1. I appreciate you raising this issue that I agree is vitally important. I share your belief that getting more young people involved in apprenticeship programs is an important goal. There are numerous examples throughout the Nation of industry, local academic and training institutions and government partnering effectively to train and place workers in growth sectors. I understand that encouraging quality pre-apprenticeship programs is part of the Department of Labor’s apprenticeship expansion strategy. If confirmed as Secretary of Labor, I expect to examine the Department’s options for providing quality pre-apprenticeship programs with States and others interested in developing this important on-ramp to careers. If confirmed, I believe my role will be to make sure this model can be accessed in more communities and by displaced workers who will need to transition to new and growing industries.

*Question 2.* The Secretary of Labor chairs the Board of the Pension Benefit Guaranty Corporation.

Do you believe there is a retirement crisis in this country?

Will you propose a plan to Congress to address the insolvency issues at the PBGC and large multiemployer pension plans before they fail?

Answer 2. If confirmed, I will be chair of the Pension Benefit Guaranty Corporation’s Board of Directors and expect to be briefed on the matter of underfunded multiemployer pension plans. I believe our system of private pensions and retirement savings is working well for many Americans. Yet, too many workers are saving too little to ensure their financial security in old age. In addition, we must grapple with the legacy of pension promises that were made but not fully funded. As I noted in the hearing, I have not proposed a plan to address the issue of underfunded multiemployer plans and I wish there were an easy solution. These workers have worked hard for pensions they expect upon retirement, I understand that. I look forward to working with Congress and the President as solutions are proposed.

*Question 3.* The Department’s conflict of interest rule was finalized after extensive public comment periods, including multiple meetings with stakeholders and 4 days of public hearings.

Will you commit to following that same transparent process and allow members of the public to comment fully on the Department’s new analysis before it is finalized?

<sup>20</sup> <https://blog.dol.gov/2016/03/05/measuring-gig-work>.

Would a delay of this rule a month before its applicability date create additional uncertainty for savers and the financial institutions that have spent considerable sums of money to comply with this rule?

Answer 3. I understand the Administrative Procedure Act (APA) governs the rule-making process and if confirmed I will abide by the requirements of the APA. As I noted at the hearing, a presidential memorandum addresses with specificity the fiduciary rule and details the Department of Labor's obligations to review the rule. If confirmed, I will conduct the review in accordance with the presidential memorandum. I believe part of the inquiry the Department is conducting addresses the issues of the effects of investor uncertainty and expenditures to meet the rule's requirements.

*Question 4.* What will you do as Secretary to encourage self-employment and entrepreneurship among Americans with disabilities? Will you support the Office of Disability Employment Policy's START-UP program providing technical assistance and training to States to promote disability entrepreneurship? How will you partner with the Department of Commerce and the Small Business Administration to support people with disabilities who want to launch their small businesses or become entrepreneurs? Furthermore, how do you plan to include business-owners with disabilities in the competitions to obtain government contracts?

Answer 4. I would need to review any particular program before I committed to supporting it, but I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. As I noted at my hearing, I believe it is important for the Department to break down silos between governmental agencies to improve efficiency, and if confirmed, I will ask Department staff to look into interagency cooperation with Commerce and the Small Business Administration on this issue. I believe it would be illegal to discriminate against disabled business-owners in awarding Federal Government contracts, and I expect that they would be encouraged to compete for contracts by all government agencies.

*Question 5.* Immigrants fill not just high-skilled roles in the United States, but also fill technical and manual skill jobs. A 2010 study by the Federal Reserve Bank of San Francisco concluded that this helps companies expand, and allows more U.S.-born employees to assume managerial and leadership positions. What role can the Department of Labor play in ensuring that employers have access to sufficient workers to perform roles needed for expansion, including access to immigrants to perform technical and manual skill jobs if needed?

Answer 5. I recognize the role that immigration has played and continues to play in our Nation. I also recognize that abuse of the visa process costs Americans jobs. This is a difficult balance and one that I will study carefully.

*Question 6.* I am a strong supporter of DOL's job training and workforce programs. I am very worried that President Trump's budget cuts to job training programs are a direct attack on the programs necessary to help put Americans back to work. Will you commit to fighting these cuts and defending the proven job training, apprenticeship, Job Corps, and career pathway programs at DOL?

Answer 6. I share your belief that job training programs can offer substantial returns on investment. The bi-partisan enactment of WIOA made advances based on evidence, lessons learned, and promising practices, such as increasing strategic alignment of investments in these programs and enhancing employer leadership and engagement. If confirmed, I will work to continue to advance goals like these within the reality of our constrained resources. I share your sense of how important these programs are and I pledge to focus on making them as effective and successful as possible.

*Question 7.* The U.S. Labor Department plays a critical leadership role in shaping Federal policy to help the one in three adults in the United States (over 70 million) who have a criminal record to navigate the challenging employment landscape, and the 700,000 Americans who are released from prison every year and seek out employment in their communities. For example, DOL is the lead agency that funds re-entry training and job placement services, which are funded by WIOA, the Second Chance Act and other critical programs, and promotes the business hiring incentives made available by the Work Opportunity Tax Credit and the Federal Bonding Program. Probably most importantly, working with other Federal agencies, the Secretary of Labor is in a unique position to engage the business community to recruit and hire people with records building on the remarkable momentum generated by business leaders on this issue over the past several years. Federal funding of job training, job placement and reentry services is a critical component of the national

strategy to help move people with records back into the labor market. As Secretary of Labor, would you prioritize support for WIOA, the Second Chance Act, and other critical reentry programs?

Answer 7. I share your belief that job training programs can offer substantial returns on investment. The bi-partisan enactment of WIOA made advances based on evidence, lessons learned, and promising practices, such as increasing strategic alignment of investments in these programs and enhancing employer leadership and engagement. If confirmed, I will work to continue to advance goals like these within the reality of our constrained resources. I share your sense of how important these programs are and I pledge to focus on making them as effective and successful as possible.

*Question 8.* We know that fair workplaces are good for business and good for the economy. Ninety-two percent of Fortune 500 companies have adopted non-discrimination provisions protecting lesbian, gay, and bisexual workers and 82 percent have adopted protections for transgender workers. These protections are essential. Recent studies have shown that more than one in five LGBTQ workers experience discrimination on the job. Transgender workers face even greater obstacles. As Secretary, you will be charged with furthering the mission of the Department of Labor, which includes advancing opportunities for all workers. What steps are you prepared to take to ensure that the Department continues to protect the rights of all workers, including ensuring the Department is proactively taking steps to combat discrimination against LGBTQ workers?

Answer 8. As I noted in my hearing, if confirmed, I would enforce the Department's laws fully and fairly. This includes efforts to combat discrimination against LGBTQ workers.

*Question 9.* The majority of minimum wage workers are women and over one-quarter have children to support. In Virginia, women earn 80 cents to every dollar that men earn. This information is concerning, but specifically for those of us who want to see women thrive and not be held back. Women make up two-thirds of the minimum wage workforce. And women are the sole or co-breadwinner in half of families with children. Do you believe gender pay discrimination exists?

Answer 9. Discrimination based on gender, including as to pay, is illegal. Though unfortunate, it does exist. As I noted in my hearing, if confirmed, I would enforce the Department's laws fully and fairly.

*Question 10.* If confirmed, will you take action to address and prevent pay discrimination?

Answer 10. Discrimination based on gender, including as to pay, is illegal. As I noted in my hearing, if confirmed, I would enforce the Department's laws fully and fairly.

*Question 11.* What do you believe is a fair minimum wage? In your view, do you believe that raising the minimum wage is a way to close the gender pay gap between men and women?

Answer 11. The minimum wage is set federally by Congress but also in States and localities by their respective governments. I am unaware if raising the minimum wage would have any effect on any variance in wage rates paid to men and women respectively, but discrimination based on gender, including as to pay, is illegal.

SENATOR HASSAN

*Question 1.* Low-income older Americans have an unemployment rate three times greater than other workers. Will you continue to support funding of the Senior Community Service Employment Program, the only Federal workforce program targeted to serve older workers?

Answer 1. As a nominee, I have not participated in the current budget discussions. If confirmed, I look forward to participating in that process, so that I can understand the goals, performance and resource needs of programs such as this one in order to deliver the greatest value to the American people.

*Question 2.* Do you believe registered apprenticeship programs—whether union or non-union affiliated—are beneficial to training workers to become better and more skilled employees? Why or why not?

Answer 2. As I mentioned during the confirmation hearing, I believe that quality apprenticeship programs are an important part of workforce development and training and are often a vital pathway to skills attainment and a prosperous career. Earn while you learn programs like Registered Apprenticeship represent work-based

learning experiences that create real opportunities to develop a workforce that is capable of meeting employers' skill needs regardless of union affiliation. Apprenticeship sponsors that meet national or State standards include a range of organizations, including employers, industry associations, joint labor-management organizations, government and the military. If confirmed, I hope to learn more about apprenticeship programs and will look for every opportunity to help position such programs to best serve workers and the economy.

*Question 3.* In 2014, a national goal was set to double the number of Registered Apprenticeships—"earn and learn" on-the-job training programs—within 5 years. Apprentices earn, on average, \$60,000 after completing an apprenticeship program, and recent research shows that the benefits to employers, employees and taxpayers outweigh the costs. Congress has increased investments to expand apprenticeships, helping to create tens of thousands of new apprenticeships across the country, in traditional industries like construction, as well as non-traditional industries like health care, advanced manufacturing, and information technology. Importantly, those funds are also aimed at ensuring greater racial and gender diversity in apprenticeship. As labor secretary, will you continue to work toward a goal of doubling the number of registered apprentices in the United States? If so, how will you proceed?

*Answer 3.* I am told that a study of U.S.-Registered Apprenticeship programs found a return of nearly \$28 in public benefits for every dollar of public funds invested in the program, and that these programs leverage significant private investment, estimated at \$1 billion, to maximize the impact of every taxpayer dollar Congress directs toward this job training program. The Department supports this public-private partnership where both employers and workers win, and if confirmed as Secretary of Labor, I will work with the Department team to support States in their efforts to expand apprenticeships and work to reduce barriers to employer participation.

*Question 4.* A Georgetown study titled America's Divided Recovery recently found that 99 percent of the jobs created since the end of the Great Recession, 11.5 of 11.6 million jobs, went to workers with some post-secondary education. These trends seem likely to be only exacerbated by technological changes related to the automation of low-skill work. As a result workers in this country that lack some post-secondary education, whether through an apprenticeship, industry-recognized credential, a certificate or a college degree, will increasingly find it difficult to secure gainful employment. Do you believe the Department has a responsibility to help every American gain the skills, particularly the post-secondary training, they require to be competitive in the labor market?

*Answer 4.* Post-secondary training—whether it be 4-year college, community college, apprenticeship or industry-recognized credential—are vital in positioning job seekers to survive in our modern economy, as you point out. If confirmed, creating viable pathways that will provide more workers with this sort of education and training will be a priority for the Department under my leadership.

*Question 5.* Do you think collective bargaining is an appropriate means of increasing the share of the Nation's wealth that goes to middle-class Americans?

*Answer 5.* The right to collectively bargain is clearly established in law, as is the right of workers to decide whether to join a union or to refrain from joining a union. The decision of whether to join a union should be left to the individual. If they believe that joining together to bargain collectively will increase their share of the Nation's wealth then they should do so.

*Question 6.* Do you support executive actions like Executive Order 13548, that President Obama issued to mark the 20th anniversary of the signing of the Americans with Disabilities Act and committed the executive branch to being a model employer of people who experience disabilities, including hiring an additional 100,000 employees with disabilities?

*Answer 6.* I support actions that uphold the Federal Government as a model employer.

*Question 7.* In light of the budget proposal stating it will eliminate "less critical technical assistance grants" within the Office of Disability Employment Policy, will you commit to providing this office with the support it needs within the Department? Yes, or no?

*Answer 7.* As a nominee, I have not participated in the current budget discussions. If confirmed, I expect to be briefed on this and other programs to understand how they are succeeding in accomplishing their mission. Serving Disabled Ameri-

cans in search of employment is a particularly important part of the Department's mission. If confirmed as Secretary of Labor, I will focus the expertise and resources of the Office of Disability Employment Policy on the areas where it can be most effective.

*Question 8.* Will you continue to direct the Department of Labor to work with the Office Personnel Management to assist executive departments and agencies to recruit, hire, and retain employees with disabilities?

Answer 8. I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. Such efforts contribute to our economy, and as important, to individual self-esteem. If confirmed, I expect to be briefed on programs at the Department that serve the disabled in order to understand how they are succeeding in accomplishing their mission.

*Question 9.* According to a recent report from the previous administration, students with disabilities graduate high school at the lowest rates of any minority population. Nationally about 83 percent of all students graduated in 2014–15. Students with disabilities graduated at a rate of nearly 65 percent. How will you partner with the Department of Education to ensure that youth with disabilities get the education and training they need to enter the workforce? What will you do through the Employment and Training Administration to ensure that youth with disabilities can gain the skills needed to compete in the 21st century economy?

Answer 9. I certainly support increasing the labor force participation rate of disabled individuals and helping them lead successful and self-sustaining lives. Such efforts contribute to our economy, and as important, to individual self-esteem. If confirmed, I expect to be briefed on programs at the Department that serve the disabled in order to understand how they are succeeding in accomplishing their mission. As I mentioned in my hearing, I believe that effective coordination between the Labor and Education departments is vital. I look forward to working closely with the Department of Education on disabled employment and training and other matters and I will strive to improve coordination whenever possible.

*Question 10.* Under Section 503 of the Rehabilitation Act, new rules mandate that all Federal contractors must take affirmative action to recruit, hire, promote, and retain individuals with disabilities. The new rules established a 7 percent utilization goal for individuals with disabilities. They also required increased data collection and record keeping to improve employer accountability. This is an important part of solving the unemployment and under-employment of people with disabilities. Will you commit to enforcing this regulation, which is under the Department of Labor's jurisdiction?

Answer 10. I certainly support expanding opportunity for the unemployed and under-employed generally, including particularly Americans with disabilities. If confirmed, I will comply with that directive. As I noted in my hearing, if confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including regulations requiring contractors to improve their equal employment opportunities for disabled Americans.

*Question 11.* What steps will you commit to take to continue to vigorously enforce the Fair Labor Standards Act, including violations relating to wage theft, and ensure that there is no political interference with the Wage and Hour career staff?

Answer 11. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, without regard to political pressure, and would expect the same commitment from all Department of Labor staff.

*Question 12.* Can you ensure that hiring made by the Department of Labor remains strictly non-politicized?

Answer 12. As I noted at the hearing, political views in the hiring of career attorneys or staff should not be used, and, if confirmed, I will not allow it. The Federal Government has merit selection processes that should be followed in hiring career staff.

*Question 13.* Will you take steps as Secretary of Labor to ensure that decision-making about case selection and litigation strategy to enforce labor and employment protections is free from improper political influence? What specific steps will you take?

Answer 13. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, without regard to improper political influence. I will make this clear to all staff.

*Question 14.* What did you learn from the DOJ hiring scandal that will change the way you manage personnel decisions at the Department of Labor?

Answer 14. Senior leadership in government has to balance external and internal demands. I believe I am more hands-on, and more focused on internal matters. I have also learned to better oversee and monitor subordinates while not micromanaging their performance. As U.S. attorney, I walked around the office often in order to learn what AUSAs were doing. This day-to-day contact was important, and helped me better understand and monitor day-to-day AUSA activity.

*Question 15.* Do you think employers should be responsible for providing health benefits to their employees?

Answer 15. Many Americans get their health care coverage through their employers and value that benefit. If confirmed, I expect to be briefed on health benefit issues in the Department of Labor's jurisdiction and I look forward to working with Congress as we develop the Department's regulatory policies and priorities to promote greater access to health care.

*Question 16.* At the end of the Obama administration, the unemployment rate hit a 9-year low of 4.6 percent. How do you propose continuing this trend? How will you make sure that, if jobs are created, they pay a living wage? Which of President Obama's policies would you like to see sustained?

Answer 16. Ensuring that all workers are positioned to find a good job and possess the skills needed to succeed and meet the needs of a changing economy will be a major priority of mine, if confirmed. Many Americans have left the workforce or are under-employed or discouraged. We must restore their faith in the American Dream and create the conditions for them to believe they can be more prosperous than their parents, as was the case in so many previous generations.

*Question 17.* What do you believe an appropriate minimum wage should be? Do you believe that the minimum wage should provide employees a path to the middle class?

Answer 17. The minimum wage is set federally by Congress but also in States and localities by their respective governments. I recognize that cost-of-living and other economic factors vary greatly across the United States and that many States and localities have increased the minimum wage above the Federal floor.

*Question 18.* Survivors of domestic violence, sexual assault and stalking are present in workplaces of all kinds across the United States. Do you believe that domestic violence and sexual assault survivors should be able to take paid time off at work in order to seek medical attention, participate in legal proceedings, and seek other services related to their victimization?

Answer 18. Violence of all forms, including gender-based violence, is wrong. Further, gender-based violence can cause psychological issues that impact the employment. I believe expanding job-protected leave would require congressional action and, if confirmed, I look forward to working with the President and Congress as discussions regarding leave occur.

*Question 19.* Should workers come to work with the flu? Doesn't coming to work sick risk spreading the illness to coworkers? Should workers in this country be guaranteed paid sick leave? Which is a better way for a company to spend five million dollars: paid sick leave for all workers or executive bonuses?

Answer 19. I recognize that many States and localities have implemented paid leave laws. I believe attempts to expand paid leave beyond Federal contractors would require congressional action. If confirmed, I look forward to working with the President and Congress as discussions regarding paid leave occur.

*Question 20.* Is sexual harassment in the workplace an issue you could decisively oppose and how would you demonstrate your opposition?

Answer 20. Sexual harassment in the workplace is illegal and wrong. If confirmed, I will enforce the laws against sexual harassment that are within DOL's jurisdiction.

*Question 21a.* As Secretary of Labor, would you enforce the Lilly Ledbetter Fair Pay Act?

Answer 21a. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including those portions of the Lilly Ledbetter Fair Pay Act that fall within DOL (as opposed to EEOC) jurisdiction.

*Question 21b.* What role will the Department of Labor play under your leadership in addressing violations of equal pay laws so that women and people of color get equal pay for an equal day's work?

Answer 21b. Employment discrimination on the basis of sex and race are illegal and wrong. The Equal Employment Opportunity Commission, instead of the Department of Labor, is generally tasked with enforcement of discrimination laws. The Department's Office of Federal Contract Compliance Programs enforces presidential Executive Order 11246, which prohibits sex discrimination in employment by Federal contractors. If confirmed, I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly.

*Question 21c.* U.S. businesses say they can't find the qualified workers they need; skills attainment is vital to our country's economic competitiveness. Today's manufacturing jobs require skills that were not necessary even 5 years ago. As Secretary, how would you enhance America's competitiveness by upskilling our workforce?

Answer 21c. As our economy innovates and changes, the training we provide must do likewise. If confirmed, I expect to be briefed on what the Department is doing to respond to the needs of a rapidly changing economy, and will focus my attention on ensuring that the taxpayer dollars that we invest in such programs are being used effectively, efficiently and with a focus on the future of our workforce. Closing the skills gap by matching training and employment services to growth industries, and expanding access to quality apprenticeships are steps I believe would be a major part of enhancing our competitiveness.

*Question 22.* Under your leadership, how would intermediary organizations like nonprofits help deliver workforce training and connect Americans to employment and career advancement?

Answer 22. Intermediary organizations currently help deliver workforce training and connect Americans to employment and career advancement as recipients of DOL grant funds. If confirmed as Secretary, I will review all workforce programs to maximize the impact of every taxpayer dollar Congress directs toward employment and job training programs, and I am open to maintaining the role of intermediary organizations in this effort if they are doing the best job. Furthermore, if confirmed, I look forward to being briefed on how such programs and partnerships can be leveraged in order to train more workers and place more Americans in prosperous employment.

*Question 23.* WIOA Title I prioritizes services to out-of-school youth. Under your leadership, will the Department of Labor provide timely technical assistance and guidance to States and local communities on effective practice and strategies?

Answer 23. If confirmed, I believe the Department should strive to be a clearinghouse of best practices and guidance to States and local communities in this area. The Department of Labor should take a leadership role in identifying and compiling promising practices and evidence-based approaches to improve youth services under the Workforce Innovation and Opportunity Act. If confirmed as Secretary of Labor, I will work with the Department of Labor staff to continue to identify and disseminate to States and localities these practices and approaches to serving out-of-school youth to make maximum use of Federal taxpayer resources. I expect to be briefed on such existing efforts and look forward to working to make sure that programs and practices that are most effective are shared and replicated far and wide.

*Question 24.* Do you consider it a form of theft when an employer fails to pay a worker the wages that worker is entitled to by law? If so, would you therefore agree that the Department of Labor should hold employers accountable for such theft? How should the Department of Labor hold such employers accountable?

Answer 24. As I noted at the hearing, if confirmed I will work to enforce the laws under the Department of Labor's jurisdiction fully and fairly, including wage and hour laws.

*Question 25.* Do you think an employer should be able to take punitive action against a woman because of her reproductive health decisions? Yes or No?

Answer 25. A person's decisions regarding starting a family should be a private matter. Dependent on the specific facts, the Pregnancy Discrimination Act would likely make such decisions illegal. The Pregnancy Discrimination Act, which amended title VII, prohibits an employer from discriminating against an applicant or employee because of or on the basis of pregnancy, childbirth, or related medical conditions.

*Question 26.* Do you think an employer should be able to deny a woman insurance coverage of birth control? Yes or No?

Answer 26. The issue of whether contraceptive coverage is required is a matter that I understand is subject to litigation and was part of the Affordable Care Act and its regulations.

*Question 27.* Do you think an employer should be able to ask a female job applicant about whether she intends to become pregnant? Yes or No?

Answer 27. A person's decisions regarding starting a family should be a private matter. Dependent on the specific facts, the Pregnancy Discrimination Act would likely make such decisions illegal. The Pregnancy Discrimination Act, which amended title VII, prohibits an employer from discriminating against an applicant or employee because of or on the basis of pregnancy, childbirth, or related medical conditions.

*Question 28.* Do you think an employer should be able to fire, demote or otherwise take a punitive employment action against, an unmarried woman who becomes pregnant? Yes or No?

Answer 28. A person's decisions regarding starting a family should be a private matter. Dependent on the specific facts, the Pregnancy Discrimination Act would likely make such decisions illegal. The Pregnancy Discrimination Act, which amended title VII, prohibits an employer from discriminating against an applicant or employee because of or on the basis of pregnancy, childbirth, or related medical conditions. There are some instances where the law allows religious organizations to require fidelity to tenets of the faith as a condition of employment.

*Question 29.* Can you tell me your opinion on electronic delivery and what changes you would make to any rules and processes, if any and how so?

Answer 29. I am not clear as to what kind of electronic delivery or Departmental program or initiative your question references, so I am unable to answer this question without additional information.

[Whereupon, at 11:44 a.m., the hearing was adjourned.]